NO. 92620-4

SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 72527-1- I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

In Re: the paternity of M.H.:

STEPHANIE BELL,

Petitioner,
(Respondent in Court of Appeals)
and

JUAN SIDRAN HEFLIN,

Respondent.
(Appellant in Court of Appeals)

AMENDED ANSWER TO PETITION FOR REVIEW

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ANSWER TO PETITION FOR REVIEW

Identity of Respondent:

Juan Sidran Heflin, respondent in the Court of appeals, opposes the petitioner's Petition for Review.

RAP 13.4(b) states that a petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

None of the criteria for acceptance of review are satisfied by Stephanie Bell's petition.

Review should be denied.

The Court of Appeals should be affirmed.

The parties are referred to by their first names in this Answer. No disrespect is intended.

STATEMENT OF FACTS

Stephanie commenced proceedings in this case for the registration, determination of arrears, and collection of an Indiana Order of Child Support, by filing a CHILD SUPPORT ENFORCEMENT TANSMITTAL #1 – INITIAL REQUEST (sic) in King County Superior Court on September 9, 2010, under cause number 10-3-06637-7 KNT. (CP 1 – 4). She separately filed a stand-alone copy of the underlying Indiana ORDER of child support under the same case number. (CP 5)

Juan contested registration of the Indiana Order.

The parties' child M.H. was born on May 13, 1985. (CP 2 at section VI. Dependent Children; CP 4)

M.H.'s 18th birthday was on May 13, 2003. The child's 21st birthday was May 13, 2006.

M.H.'s 28th birthday was May 13, 2013. This date is significant in this matter because under Washington law the remedies for enforcement and collection of child support arrears expire after the 10th year following the youngest child's 18th birthday. RCW 4.56.210(2) and RCW 6.17.020(2).

Order Entered March 23, 1994, in the state of Indiana:

The underlying child support obligation in this case arises from an Order of Child Support entered March 23, 1994 in Vigo Circuit Court,

Juvenile Division, State of Indiana. (CP 1 – 5), which provides, among other things, that:

> "the respondent is the father of [M.H.] born May 13, 1985 in Swedish Hospital, Seattle. Washington * * * to the petitioner and respondent herein."

It further provides that Juan shall

> "pay into the office of the Clerk of this Court the sum of $77.00 a week, each and every week for the support of the minor child, commencing on April 1, 1994 and each and every week thereafter until further Order of the Court. The Court finds that 7 weeks have elapsed since the filing date of the petition herein and therefore makes a back support order in the amount of $539.00 which should be paid into the Office of the Clerk by the respondent within the next 12 months. * * * ."
>
> (CP 4)

In Stephanie's proceedings for registration, determination of arrears, and enforcement in Washington of the Indiana order, the trial court entered four orders in 2010/2011, three on the merits and the fourth for attorney fees and costs. The order at issue on this appeal is the fifth order, a Wage Withholding Order entered August 28, 2014. (CP 72 – 75)

First Order Entered in Washington:

The first order entered October 28, 2010, is titled ORDER ON RESPONSE TO NOTICE OF CHILD SUPPORT ORDER, REQUEST FOR HEARING AND REQUEST TO DISMISS WITH PREJUDICE. (CP 6 – 7) and states in relevant part that:

"This reserves the issue as to the amount of the obligation.

"NOW, THEREFORE, IT IS HEREBY,

"ORDERED: * * * In accordance with RCW 26.21A.530(3), the Order of Support issued by the Indiana Court is hereby confirmed by this Court. Mother is Awarded $1,500.00 in Attorneys Fees. The issue of additional petitioner's costs and attorneys' fees is reserved for determination by this Court at a later date.

" * * * *

"Without credit, as may be determined by this court at a later date, the Court finds $37,191 in support was to be paid until the child's 18th birthday."

(CP 6 – 7)

Second Order Entered in Washington:

The second order was entered December 22, 2010, titled ORDER ON MOTION FOR REVISION (CP 10 – 11). It states that Juan's obligation under the Indiana order continued until M.H.'s 21st birthday, May 13, 2006. This revision order makes no determination of the amount of support that was to be paid, the payments made, other credits allowed, or other charges, during that period, or the final balance owed, if any:

"The Order of this Court entered on October 28, 2010 is hereby revised to include the requirement that the respondent is obligated to pay child support including that period of time defined as the child's 18th to 21st birthday. Any other issues including visitation credits, attorneys' fees and credits for child support payments are currently pending before this court and are not part of this Order on motion for revision."

(CP 10 – 11)

Third Order Entered in Washington:

The third order was entered on February 24, 2011, titled ORDER CONFIRMING AMOUNT OF SUPPORT OBLIGATION. (CP 12 – 13) It states without explanation or findings that the Indiana Order of Support is confirmed in the sum of $110,709.23:

> "NOW, THEREFORE, IT IS HEREBY:
>
> "ORDERED: the Indiana Order of Support, in the sum of $110,709.23*, is hereby confirmed as registered by this Court pursuant to this Court's Order of October 28, 2010 and RCW 26.21A.500. et. Seq. per the laws of Indiana, the obligation shall bear interest at the rate of 18% interest per annum. * * *"
>
> *Credit is given to the father for wire transfers of $1,300 and $1,350 plus interest of $2,350 (59 months at 1.5% per year. This reduces his total obligation to $110,709.23 which includes interest.." (sic)

Fourth Order Entered in Washington:

The fourth order entered April 11, 2011 awards Stephanie $12,500 attorney fees and $306.64 costs at 12% interest per annum. (CP 14 - 16)

The August 28, 2014, Wage Withholding Order:

The case before the Court arises from the trial court's entry of a WAGE WITHHOLDING ORDER on August 28, 2014, which contains the following findings/conclusions:

> "The court finds that as a matter of law, the Indiana Order of Child-Support is not subject to the same limitations of the Washington Order of Child Support and that the Indiana Order of Child Support

> is fully enforceable in Washington. Furthermore, the court finds that the Juan Heflin is more than (15) days late and the payment of his child support obligation in the principal sum of $117,290.92 as of April 1, 2013 with interest thereon at the daily rate of $57.84 from April 1, 2013."

Juan has paid in excess of $70,000 through cashier's checks and wage withholding since entry of the February 2011 order. Yet Stephanie only credits Juan for payments of $27,300. (CP 26).

All enforcement and collection remedies expired and became unavailable per RCW 4.56.210(2) on May 13, 2013.

ARGUMENT AND AUTHORITY

The Decision of the Court of Appeals does not conflict with the Uniform Interstate Family Support Act (UIFSA), Chapter 26.21A RCW, Washington Supreme Court Precedent, or the Constitutional Rights and Protections Afforded to Stephanie Bell Pursuant to Article IV, Section 1 of the United States Constitution.

Stephanie argues that Juan is asserting a statute of limitations defense, whereas, to the contrary, Juan is asserting the defense that the court's authority and jurisdiction to enforce the Indiana Order of Child Support expired on May 13, 2013, at the end of the 10th year after the child M.H's 18th birthday and is, therefore, barred pursuant to RCW 4.56.210(2).

Stephanie confuses the issue as one involving a statute of

limitations, while Juan's position is that the remedies for enforcement expired at the end of the 10th year following the child's 18th birthday.

RCW 4.56.210 provides:

> "(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment theretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years."
>
> "(2) An underlying judgment or judgment lien entered after the effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. * * * ."

Stephanie relies on RCW 26.21A.515 which provides as follows regarding Choice of law:

> (1) Except as otherwise provided in subsection (4) of this section, **the law of the issuing state governs**:
>
> (a) The nature, extent, amount, and **duration** of current payments under a registered support order;
>
> (b) The computation and payment of arrearages and accrual of interest on the arrearages under the registered support order; and
>
> (c) The existence and satisfaction of other obligations under the registered support order.

> (2) In a proceeding for arrears under a registered support order, **the statute of limitation of this state or of the issuing state, whichever is longer, applies**.
>
> (3) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.
>
> (4) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state issuing the registered controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.
>
> [Bold emphasis in original at CP 21]

Under RCW 4.56.210(2) the superior court's jurisdiction to enforce the child support arrearage expired 10 years after M.H.'s 18th birthday. RCW 4.56.210 is not a statute of limitations. It terminates the power to enforce the expired judgment. The case law construing RCW 4.56.210 makes this perfectly clear. This statute establishes the duration of the lien and the time of its expiration. The time limit is jurisdictional. There can be no enforcement or collection action taken after the judgment has terminated per this statute. *Hazel v. VanBeek,* 135 Wn.2d 45, 954 P.2d 1301 (1998); *Grub v Fogle's Garage*, 5 Wn.App. 840, 491 P.2d 258 (1971).

The issue is not one of conflicting statutes of limitation. It bears noting that the limitations period under both Indiana law and Washington law expired on May 13, 2013.

Indiana's Statute of Limitations on Child Support:

Indiana's statute of limitations on child support is the same as Washington's:

> Indiana Statues
> Title 34. Civil Law and Procedure
> Article 11. Limitation of Actions
> Chapter 2: Specific Statutes of Limitation
>
> § 34-11-2-10. Enforcement of Child Support Obligations:
>
> > An action to enforce a child support obligation must be commenced within not later than ten (10) years after:
> >
> > (1) the eighteenth birthday of the child; or
> >
> > (2) the emancipation of the child;
> >
> > whichever occurs first

Washington's Statute of Limitations on Child Support:

Washington's statute of limitations on child support provides:

> **RCW 4.16.020 Actions to be commenced within ten years — Exception.**
>
> The period prescribed for the commencement of actions shall be as follows:
>
> Within ten years:
>
> (3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued

> under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after July 23, 1989.

RCW 4.56.210 is not a statute of limitations. It establishes the duration of the lien and the time of its expiration. The time limit is jurisdictional. There can be no enforcement or collection action taken after the judgment has been terminated per this statute.

RCW 4.56.210(2) establishes that the remedy terminates, expires, and is available for no longer than 10 years after the 18th birthday of the youngest child name in the Order of Child Support:

In *Grub v. Fogle's Garage, Inc.*, 5 Wn.App. 840, 491 P.2d 258 (1971), the court held that RCW 4.56.210 is not merely a statute of limitations. Rather, it is a statute that takes away the right of action and eliminates all authority to enforce the judgment against the estate or person of the judgment debtor.

In *Hazel v. Van Beek*, 135 Wn.2d 45, 60 - 61, 954 P.2d 1301 (1998), the Washington Supreme Court concurred with the Court of Appeals, Div. 3, decision the *Grub v Fogle's Garage, Inc.*, supra, stating:

> A statute creating a lien right for a definite length of time only, is something that is in addition to the cause of action or substantive right in question and is not a statute of limitations, because it does not exist outside of the period during which it is conferred.

> The lien here in question may not be invoked outside the period during which it is conferred by statute. This is not because of a statute of limitations that would be overcome by Rem. Rev. Stat., § 167, but because **outside the terms of the statute creating the lien, no lien exists.**"

The Opinion of the Court of Appeals is not in Conflict with Washington's UIFSA, RCW 26.21A.500 et. seq. or the Ruling of the Washington Supreme Court in *In re Schneider*, 173 Wn.2d 353 (Washington 2011)

The Court of Appeals' decision in this case is not in conflict with *In re Schneider,* 173 Wn.2d 353, 358-359, 268 P.3d 215 (2011). The *Schneider* decision does not address the issue that was before the Court of Appeals in this case. *Schneider* addressed the question whether the Washington court had authority to modify the duration of current support under a Nebraska order of child support by imposing a post-secondary support obligation which is not available under Nebraska law. *Schneider* held that the imposition of the post-secondary support obligation is a durational change in the father's obligation to pay current child support and, since it is not available under Nebraska law, the Washington court lacked authority to modify the Nebraska order of child support in that manner..

The Court of Appeals decision does not state that 26.21A.515(4) only applies to current child support obligations but not past-due support obligations. Juan's current support obligation ended at the latest on M.H.'s

21st birthday which was May 13, 2006. Collection of past due support has actually continued until after the Court of Appeals decision was filed on September 28, 2015.

Washington's Conflicts of Laws Does Not Preclude Applying RCW 4.56.210(2) and 6.17.020(2) as the controlling law in this case.

The case of *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 875 P.2d 1213 (1994) is inapplicable to the issues in this matter. The *Rice* decision is a product liability tort case. Contrary to Stephanie's argument, the *Rice* case expressly holds as follows:

> "We hold that statutes of repose do not fall under the statute of limitations bowworing statute, RCW 4.18.020 * * * ." (*Rice,* 124 Wnd.2d at 212)

The Court of Appeals' decision does not violate the United States Constitutions Full Faith and Credit Clause.

Stephanie's argument that application of the remedy expiration and limitation provisions of RCW 4.56.210 and 6.17.020 violates federal constitutional provisions for full faith and credit is illogical and unsupported by citation to relevant authority and thus should be disregarded by this court. The courts of Washington have given the Indiana Child Support Order the full faith and credit to which it is entitled.

In the Indiana case of *Johnson v. Johnson*, 849 N.E.2d 1176, 1178 (Ind.App. 2006), the Indiana appellate court discusses full faith and credit.

The key issue in *Johnson* is whether a domesticated Washington judgment for child support arrears should bear interest at Washington's or Indiana's statutory rate of interest. The court explained that full faith and credit does not require one state to apply another state's laws in violation of its own legitimate public policy:

> "A judgment from a sister state that is domesticated in an Indiana court will be given full faith and credit. See Mahl v. Aaron, 809 N.E.2d 953, 959 (Ind.Ct.App.2004). Full faith and credit means that "the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced." Id. at 959. **Full faith and credit, however, does not mean that states must adopt the practices of other states regarding the time, manner, and mechanisms for enforcing judgments. Id. Enforcement measures do not travel with the sister state judgment as preclusive effects do: such measures remain subject to the evenhanded control of forum law. Id. And the full faith and credit clause does not require one state to apply another state's laws in violation of its own legitimate public policy.** (citations omitted)
>
> [Bold emphasis added]

RCW 4.56.210 and RCW 6.17.020 are expressions by the Washington legislature of our state's legitimate public policy regarding the subject matter addressed by these statutes. Juan's position is that the remedial law of the state of Washington is to be applied to this judgment for arrears arising under a registered Indiana Order of Child Support,

including the provisions of RCW 4.56.210(2) and 6.17.020(2) that the judgment remedies expire and cannot be enforced after 10 years following the 18th birthday of the youngest child. These duration and judgment expiration provisions are part of the remedial law of Washington which the UIFSA, RCW 26.21A.515(3), expressly states is to be applied to any registered judgment:

> A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.

CONCLUSION

Nothing in the UIFSA as adopted in Washington, nor any fact or law cited by Stephanie, supports her argument that the Indiana judgment for arrears survives the express duration and termination provisions of RCW 4.56.210(2) and 6.17.020(2).

The matters addressed above are covered in detail in the respondent's opening brief and reply brief in the Court of Appeals. Respondent relies upon the statements, argument and authority set forth in those documents.

Respectfully submitted this 9th day of January, 2016.

/s/ Helmut Kah
Helmut Kah, WSBA 18541
Attorney for respondent on review

PROOF OF SERVICE

I, Helmut Kah, hereby certify that a true and complete copy of this document was served on petitioner's attorney by first class mail, postage prepaid, on Saturday, January 9, 2016, sent to the following address:

Bruce O. Danielson
Danielson Law Office
1001 4th Avenue, Suite 3200
Seattle, WA 98154

DATED this 9th day of January, 2016

/s/ Helmut Kah
Helmut Kah, WSBA # 18541
Attorney for respondent on review

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Case Name: In Re: Paternity of M.H.; Stephanie Bell, Respondent, vs. Juan Sidran Heflin, Appellant
Court of Appeals case no.: 72527-1-I
Supreme Court case no.: 92620-4
This email and attachment(s) submitted by:

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Attached for filing is the AMENDED ANSWER TO PETITION FOR REVIEW filed by Helmut Kah, attorney for Juan Sidran Heflin, who is the appellant in the court of appeals and the respondent on the petition for review pending in this court.

This AMENDED ANSWER is submitted to replace the ANSWER submitted end of day on Friday, January 8, 2016, because the original ANSWER lacked the required TABLE OF CONTENTS. No substantive changes are made. A few minor grammatical and spelling errors have been corrected.

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