NO. 926204

SUPREME COURT OF THE STATE OF WASHINGTON

In Re: the Paternity of M.H.,

STEPHANIE BELL,

Petitioner,

v.

JUAN SIDRAN HEFLIN,

Respondent.

BRIEF OF AMICUS CURIAE STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

I. IDENTITY AND INTEREST OF AMICUS CURIAE

The State of Washington, Department of Social and Health Services (DSHS), provides child support establishment and enforcement services to help families become or remain self-sufficient. It is the agency designated to administer the child support program under Title IV-D of the Social Security Act. RCW 26.23.030(1). DSHS has 350,000 active child support cases and collects more than 675 million dollars in child support annually.

There is a federal requirement that DSHS provide the same services to residents of other states that it provides to its own residents. 42 U.S.C. § 654(6). DSHS opens a child support enforcement case when it receives a request for child support enforcement services from another state and also refers cases to other states. RCW 74.20.040(3). DSHS has a substantial interstate caseload and regularly implements federal and state laws specific to interstate cases. It is required to determine the applicable statute of limitations under the choice of law provision contained in the Uniform Interstate Family Support Act (UIFSA) and stop enforcement when child support can no longer be collected.

DSHS respectfully submits this amicus brief to urge the Court to accept review of this case. The appellate decision is inconsistent with the express terms of UIFSA, the federal Full Faith and Credit for Child Support

Orders Act and out-of-state cases construing these Acts. Because there is scant published appellate guidance in Washington, the decision, even though unpublished, will contribute to the confusion and complicate the efforts of DSHS to apply the statute of limitations correctly in interstate cases.

II. ISSUE ADDRESSED BY AMICUS

Does the Court of Appeals' decision conflict with UIFSA's choice of law provision governing the enforcement of child support arrearages, when the decision disregards express language in RCW 26.21A.515(2) requiring tribunals to apply the longer of this state's (Washington) or the issuing state's (Indiana) statute of limitations?

III. STATEMENT OF THE CASE

Stephanie Bell filed a parentage action in Indiana regarding M.H., who was born on May 13, 1985. *In re Paternity of M.H.*, No. 72527-1, Op. 1 (COA Div I Sept. 28, 2015). In 1994, the Vigo County Court entered an order establishing Juan Heflin as M.H.'s father and requiring him to pay child support. *M.H.*, Op. at 1. In 2010, Bell registered the Indiana child support order for enforcement in King County Superior Court under UIFSA (RCW 26.21A.500-535). *M.H.*, Op. at 2. The King County Superior Court confirmed registration of the Indiana child support order over Heflin's objection. *M.H.*, Op. at 2. When an order is registered for

enforcement in Washington, it can generally be enforced the same as if the order was entered in this state. RCW 26.21A.510.

On November 30, 2010, the King County Superior Court determined that Heflin's accrued obligation under the 1994 Indiana child support order was $110,709.23, including interest. *M.H.*, Op. at 2. A corresponding judgment was entered on February 24, 2011. *M.H.*, Op. at 2. On August 8, 2014, when M.H. was 29 years old, Bell moved for a wage assignment under RCW 26.18.070. Heflin relied on RCW 4.56.210(2) and RCW 6.17.020(2) to assert that Bell was barred by the statute of limitations from enforcing the order. *M.H.*, Op. at 2. It is undisputed that these statutes limit enforcement of child support obligations to ten years after the child's eighteenth birthday.

Bell countered that per RCW 26.21A.515, Indiana's statute of limitation applies rather than Washington's because the underlying child support order was entered in Indiana. *M.H.*, Op. at 5. The appellate court discussed RCW 26.21A.515(1)(a) and (b) and concluded that "Indiana law governs the nature, extent, amount, and duration of current payments, as well as computation of the amount of arrearages, the accrual of interest, and the satisfaction of other obligations . . . [but] does not govern how long a child support order can be enforced in the registering state." *M.H.*, Op. at 5. The appellate court further determined that Indiana law does not

apply since the issue before the court was the trial court's authority to enforce the order for arrearages, which was different from the duration of current payments. *M.H.*, Op. at 5-6. The opinion does not discuss RCW 26.21A.515(2), which explicitly addresses which state's statute of limitations applies when arrearages are enforced in a state that is different from the state where the order was entered. *M.H.*, Op. at 5-7.

IV. ARGUMENT

A. Because of the Large Number of Families Affected, the Correct Enforcement of Arrearages in Interstate Child Support Cases Involves an Issue of Substantial Public Interest

This Court should grant review because the issue before the Court is one of first impression that involves an issue of substantial public interest that should be determined by the Supreme Court.[1] RAP 13.4(b)(4). In 2014, nearly 16 million or one in four children in the United States received child support enforcement services.[2] One researcher estimated that in 30 percent of all child support cases, noncustodial parents live in a different state than their children.[3] In 2014

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[1] Arguably, the decision below conflicts with *Waters v. Anderson*, 116 Wn. App. 211, 63 P.3d 137 (2003). The *Waters* court observed that under (now former) RCW 26.21.510(2), the longer of the issuing or responding state's statute of limitations governs. *Id.* at 219 n.4. Former RCW 26.21.510 was repealed when Washington enacted a later version of UIFSA. Former 26.21.510(2) is similar to RCW 26.21A.515(2), but not identical.

[2] Office of Child Support Enforcement, *FY 2014 Preliminary Report* (Apr. 16, 2015), http://www.acf.hhs.gov/programs/css/resource/fy-2014-preliminary-report.

[3] Margaret Campbell Haynes, *Supporting Our Children: A Blueprint for Reform*, 27 Fam. L. Q., no. 1, Spring 1993, at 7.

alone, 1,037,644 cases in the United States were sent from one state to another state for child support enforcement services.[4] From 2010 through 2014, DSHS referred over 36,500 child support cases to other states annually for support enforcement services.[5] During this same period, DSHS received an average of over 21,500 requests each year for support enforcement services from other states.[6]

There are more obstacles to child support enforcement when parents reside in different states. In the early 1990s, custodial parents in interstate cases reported receiving far less child support than other parents.[7] In fact, 34 percent of those parents reported they never received a dime.[8] This prompted Congress to require states to standardize state child support laws and improve interstate enforcement remedies. One of the federal mandates required each state to enact UIFSA, and subsequent amendments, as a condition of maintaining eligibility for federal matching funds for its child support program. 42 U.S.C. § 666(f). UIFSA governs the procedures for establishing, enforcing, and modifying child support orders and for determining parentage when more than one state is involved. Kurtis A. Kemper, *Construction and Application of Uniform*

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[4] *See* note 2, *FY 2014 Preliminary Report* at 39 (Table P-34).
[5] *Id.*
[6] *Id* at 40 (Table P-35).
[7] *See* note 3, *Supporting Our Children: A Blueprint for Reform.*
[8] *Id.*

Interstate Family Support Act, 90 A.L.R.5th 1 (2001). All states have enacted UIFSA. *Id.; In re Schneider*, 173 Wn.2d 353, 369, 268 P.3d 215 (2011). Washington's version of UIFSA is codified at RCW 26.21A.[9]

B. The Court of Appeals Decision Conflicts With UIFSA, Other Applicable Law, and Cases Construing Them

A basic principle of UIFSA is that throughout the enforcement process, the order remains the order of the issuing state (in this case Indiana) and that the responding state's (Washington) role is limited to assisting with the enforcement of the out-of-state order.[10] Model UIFSA's choice of law provision is set forth at section 604. *Id.* at 77. Section 604(b) contains explicit direction about which state's statute of limitations applies when child support arrearages are being enforced in a different state than where the child support order was entered. *Id.* at 77.

The corresponding section of Washington law is codified at RCW 26.21A.515(2), and identically to the model act states: "In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies." RCW 26.21A.515(2). In other words, UIFSA directs the court

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[9] Like the court below, this brief cites to the current version of UIFSA because the changes, effective July 2015, do not affect the issue before the court. *M.H.*, Op. at n.3.

[10] *See* model Uniform Family Support Act (2008) at 77-79, http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008) (view Final Act (PDF)). The model act was drafted by the National Conference of Commissioners on Uniform State Laws and contains their official comment after each section to aid in construing the Act.

to determine whether Indiana or Washington has the longer statute of limitations. The model Act's official comment pertaining to section 604 explains that this provision applies not only to the time period arrears remain owing but also "to the time period after the accrual of the arears in which to bring an enforcement action."[11] The rationale behind this requirement is the recognition that substantial arrears often accumulate in interstate cases and the obligor should not gain an undue benefit if the forum state has a shorter statute of limitations. *Id.* Unless the directive to apply the longer limitation period also applies to the enforcement period, this objective can easily be thwarted.

Thus, Washington's statutory scheme requires the court to compare Washington's statute of limitations for calculating and enforcing child support arrears with Indiana's to determine which permits longer enforcement. Although the appellate court concluded that it was reviewing an arrearage dispute involving the enforcement of an out-of-state order, it failed to apply the law most directly on point. Instead, the court analyzed a different subsection of RCW 26.21A.515 and concluded that Washington's statute of limitations controls since the subsection applicable to the duration of a child support order was inapplicable to an arrearage dispute. *M.H.*, Op. at 5-6.

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[11] *See* model Uniform Family Support Act (2008) at 79.

The lower court also failed to comply with the federal Full Faith and Credit for Child Support Orders Act (federal Act), which contains wording that is similar to UIFSA's choice of law provision. *See* 28 U.S.C. § 1738B(h)(3). The federal Act provides: "*In an action to enforce arrears* under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation." 28 U.S.C. § 1738B(h)(3) (emphasis added). The federal Act is binding on all states under the Supremacy Clause of the United States Constitution and supersedes any inconsistent provisions of state law. *See* U.S. Const. art. VI, cl. 2. The federal Act, similarly to UIFSA, required the court to apply the longer of Washington's or Indiana's statutory limitations on enforcement.

Further, when the court applies and construes UIFSA, it must consider "the need to promote uniformity of the law with respect to its subject matter among states that enact it." RCW 26.21A.905. Out-of-state decisions uniformly confirm that in arrearage cases, UIFSA calls for each state to review the statute of limitations of the state where the order is entered and where the order is being enforced, and apply the longer of the two. *See* Kurtis A. Kemper, *Construction and Application of Uniform Interstate Family Support Act*, 90 A.L.R.5th at 119.

The analysis in *Martin v. Phillips*, 51 Kan. App. 2d 393, 347 P.3d 1033

(2015), is particularly instructive. The *Martin* court distinguished between two types of statutes of limitations: (1) statutory-limitation periods for bringing a lawsuit; and (2) statutory-limitation periods for using judicial process (such as garnishment) to enforce a judgment. *Id.* at 1037. The court explained that the latter is called a dormancy statute, which is a type of statute of limitations. *Id.* It concluded that in an arrearage proceeding under UIFSA, the choice of law provision applies to both types of statutes of limitation. *Id.* Thus, unless a judgment is dormant in both the state where it was issued *and* the state where it is being enforced, enforcement action can be taken. *Id.; accord Hale v. Hale*, 33 Kan. App. 2d 769, 771, 108 P.3d 1012 (2005) (per UIFSA's choice of law provision, Oklahoma law authorizes enforcement of the unsatisfied Oklahoma judgment in Kansas, even though the underlying Oklahoma order would otherwise be dormant under Kansas law); *Owens v. Dep't of Human Res.*, 255 Ga. App. 678, 566 S.E.2d 403 (2002) (Florida law applies to the Florida child support judgment being enforced in Georgia since Florida has no statute of limitations or dormancy provisions applicable to child support and its general 20 year statute of limitations is longer than Georgia's seven-year dormancy statute); *In re Marriage of Morris*, 32 P.3d 625 (2001) (UIFSA's choice of law provision permits a Texas child support order to be enforced in Colorado even though the mother's right to obtain a Texas

judgment had expired; Colorado's 20-year statute of limitations for the enforcement of judgments law applied because it is longer).

Contrary to Heflin's assertion, Indiana's and Washington's statutes of limitations are not identical. Per *Estate of Wilson v. Steward*, 937 N.E.2d 826 (Ind. Ct. App. 2010), Indiana only applies its similar 10-year statute of limitations when there is no child support judgment. When there is a child support judgment, a separate statute permits enforcement for 20 years, or even longer. *Id.* at 829. In any case, it was incumbent upon the Court of Appeals Division I to compare the statutes of limitation in both Washington and Indiana, and apply the one that is longer. The court's failure to do so shows that published guidance is needed.

V. CONCLUSION

Despite the large number of interstate child support cases, there are no published Washington appellate cases providing guidance on the applicable statute of limitations. Statute of limitations issues come into play frequently in these cases because there are more enforcement obstacles. Guidance is needed on this issue of substantial public interest that affects many children, who have parents who live in different states. Therefore, this Court should accept review.

RESPECTFULLY SUBMITTED this 29 day of January, 2016.

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PROOF OF SERVICE

I certify that I served a true and correct copy of this document, **BRIEF OF AMICUS CURIAE STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES**, on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 29 day of January 2016, at Tumwater, Washington.

Melissa Knight, Legal Assistant

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