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Court of Appeals
Division I
State of Washington

No. 92620-4

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Paternity of: M.H. STEPHANIE BELL, Respondent, and JUAN SIDRAN HEFLIN, Appellant.	NO. **72527-1-I** (Trial Ct # 10-3-06637-7 KNT King County Superior Court) APPELLANT'S OPENING BRIEF

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PREFATORY NOTE

Juan Sidran Heflin is the appellant and Stephanie Bell is the respondent on this appeal. The parties are referred to by their first name in this brief. No disrespect is intended.

I. INTRODUCTION

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 then 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)

<u>Third Order Entered in Washington</u>:

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)

This order fails to state the date of the earliest unpaid child support installment. It does not reveal how much of the $110,790.23 figure represents principal, prejudgment interest, or other charges. It contains no findings regarding the total child support payable to M.H.'s 21st birthday or any detail or totals regarding the credits and payments used to arrive at

that figure. It is impossible to discern how much of that figure is *principal* and how much is *prejudgment interest.* This point is important because, as shown below, interest accrues only on principal. It is simple interest, not compound, and interest does not accrue on previously accrued interest, though Stephanie's counsel has assiduously charged Juan interest at 18% per annum / 1.5% per month on both the interest and principal components of the $110,709.23 figure! (CP 24 l. 24 – 27) (CP 26: Stephanie's June 16, 2014 spreadsheet) Based on the record, it appears that the $110,709.23 figure includes roughly $70,000 or more in prejudgment interest.

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:

This appeal 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) Juan is in the process of preparing a motion for an accounting, stay of collection and terms.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in issuing the Wage Withholding Order on August 28, 2014 (CP 72, lines 21 – 24)
2. The trial court erred in "finding" that "[A]s a matter of law, the Indiana Order of Child Support is not subject to the same limitations as a Washington Order of Child Support". (CP 72 lines 21 – 24)
3. The trial court erred in "finding" that "[A]s a matter of law,* * * the Indiana Order of Child Support is fully enforceable in Washington" after the 10 years from the child's 18th birthday. (CP 72, lines 21 – 24)
4. The trial court erred in stating that Juan has a child support arrears debt in the *principal* sum of $117,290.92 as of April 1, 2013, where that figure represents a sum that includes both *principal* and *prejudgment interest*. (CP 72 line 25)

III. ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Whether the Indiana Order of Child Support registered in Washington under RCW 26.21A.500 et. seq. can be enforced

in Washington more than ten years after the child's 18th birthday.

2. Whether the statement in the trial court's order that Juan owes a child support obligation in the *principal* sum of $117,290.92 is supported by the record.
3. Whether the statement in the trial court's order that interest accrues at the daily rate of $57.84 from April 1, 2013, is erroneous in that this daily rate represents interest at 18% per annum on $117,290.92 which includes not only principal but prejudgment interest and, thus, constitutes charging interest on interest.

IV. STANDARD OF REVIEW

This appeal involves the question whether RCW 4.56.210(2) bars enforcement of an Indiana Order of Child Support that was registered for determination of arrears and enforcement under the Uniform Interstate Family Support Act, Chapter 26.21A RCW [2002 c 198 § 101] (UIFSA) after the 10th year following the youngest child's 18th birthday. This appears to be an issue of first impression in Washington. Appellant has found no Washington case law addressing this discrete question.

Issues of law are reviewed de novo. *Clayton v. Grange Ins. Ass'n,* 74 Wash.App. 875, 877, 875 P.2d 1246 (1994).

Statutory construction is a question of law and is reviewed de

novo. *Qwest Corp. v. City of Bellevu*e, 161 Wn. 3563, 358, 166 P.3d 667 (2007).

V. STATEMENT OF THE CASE

Stephanie's August 2014 Motion for Wage Withholding Order:

On August 8, 2014, Stephanie filed a MOTION FOR WAGE WITHHOLDING ORDER (CP 17 – 22) together with a DECLARATION OF STEPHANIE A. BELL IN SUPPORT OF WAGE WITHHOLDING ORDER (CP 23 – 30) and a NOTICE OF COURT DATE scheduling a hearing date of August 28, 2014 (CP 31 – 32). Stephanie's cites and discusses RCW 4.56.210 which 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's motion also cites 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]

Juan's Response:

On August 22, 2014, Juan filed a MEMORANDUM OF LAW AND RESPONSE TO MOTION FOR WAGE WITHHOLDING ORDER (CP 33 – 35) and declaration of JUAN SIDRAN HEFLIN (CP 36 - 42).

Juan's response explains that pursuant to RCW 4.56.210(2) 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. Juan cited *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) in support of his position.

Stephanie's Reply:

On August 25, 2014, Stephanie filed a REPLY IN SUPPORT OF MOTION FOR ORDER FOR WAGE WITHHOLDING (CP 43 – 47). In this document Stephanie argues

> " * * * RCW 26.21A.515 provides in pertinent part:
>
> "**RCW 26.21A.515 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 order.
>
> [Bold emphasis in original]
>
> (CP 44 lines 4 – 16)

and reiterates her argument that RCW 4.56.210 is a statute of limitations, stating:

> "The limitations imposed by RCW 4.56.210 do not relate to foreign judgments or foreign child support Orders. RCW 4.18.020(1) provides in pertinent part:
>
> **Conflict of laws – Limitation periods**:
>
> (1) Except as provided by RCW 4.18.040, if a claim substantively based (sic):
> (a) Upon the law of other state, <u>the limitation period</u> of <u>that state</u> applies: or . . .
>
> [Emphasis in original]
>
> (CP 45 lines 8 – 16)

Under Indiana law there is no issue regarding the duration of current support in this case. Current support terminated no later than Stephanie's 21st birthday, May 13, 2006, and sooner if M.H. was earlier emancipated.

<u>Juan's Supplemental Memorandum of Law</u>:

On August 26, 2014, Juan filed a SUPPLEMENTAL MEMORANDUM OF LAW (CP 48 – 58) with a more thorough explanation of the applicable statutory and case law of both Washington and the state of Indiana.

<u>Stephanie's Objection and Reply</u>:

On August 27, 2014, Stephanie filed an OBJECTION TO AND REPLY TO SUPPLEMENTAL MEMORANDUM OF RESPONDENT

(CP 59 -63). She objected to consideration of Juan's supplemental memorandum as untimely and asserts that it "also raises new issues i.e. the statute of limitations." (CP 59, lines 21 – 26) However, both the statute of limitations and the RCW 4.56.210 issues were discussed and argued by Stephanie in her original motion for wage withholding order. (CP 17 – 22 at CP 20 – 21)

In her OBJECTION AND REPLY Stephanie also argues for the first time that the Indiana statute of limitations for judgments is twenty years, citing but not quoting, Indiana Code 34-11-2-12. (CP 61, lines 16 – 21). In addition, she erroneously asserts that because Juan was never a resident of Indiana, the statute of limitations is forever tolled as to any claims she has against him. (CP 61 l. 21 to CP 62 l. 3)

The Hearing and Order Entered on August 28, 2014:

A hearing was held in King County Superior Court on August 28, 2014. No testimony or evidence was presented at the hearing. At the conclusion of the hearing, the Superior Court Commissioner entered the Wage Withholding Order with the "findings" to which Juan objects, i.e.:

> "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."
> [CP 66 – 69 at CP 66, line 21 to CP 67, line 1]

VI. ARGUMENT AND AUTHORITIES

(Argument applicable to
all assignments of error)

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, which is the first day following 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 defense is that the remedies for enforcement expired after the 10th year following the child's 18th birthday. Even if it was a statute of limitations issue, 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

<u>Washington's Statute of Limitations on Child Support</u>:

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.

<u>Uniform Interstate Family Support Act (UIFSA)</u>
<u>Regarding Choice of Law re Statute of Limitations</u>:

As shown above, Washington and Indiana have identical statutes of limitation for enforcement of child support obligations, i.e. not later than 10 years after the youngest child's 18th birthday. Both Indiana's and

Washington's limitation periods expired on May 13, 2013, and all remedies for enforcement and collection in Washington expired that day pursuant to RCW 4.56.210(1)&(2).

The UIFSA, RCW 26.21A.515(2), provides that:

> In a proceeding for arrears under a registered order, the statute of limitations of this state or of the issuing state, whichever is longer, applies.

Because both Washington and Indiana have statutes of limitation of equal duration, this result does not offend the UIFSA.

Juan's Assertion of the Enforcement Bar Under RCW 4.56.201(2) is not precluded by the UIFSA:

RCW 26.21A.535 re "Confirmed Order" provides that:

> Confirmation of a registered order, whether by operation of law or after notice of hearing, precludes further contest of the order **with respect to any matter that could have been asserted at the time of registration**.

The UIFSA does not preclude Juan from asserting the bar of RCW 4.56.210(2) for enforcement of the expired child support obligation. Juan could not have asserted a statute of limitations defense other than latches, or an expiration of judgment bar when the Indiana Child Support Order was registered in Washington in September 2010. The statute of limitations had not run. The enforcement bar date had not yet arrived. Only seven, not ten, years had passed since M.H.'s 18th birthday. The

obligation was not yet barred by RCW 4.56.210(2) because the 10th year after the child's 18th birthday ended at midnight on May 12, 2013.

The Judgment for Arrears Expired and Became Unenforceable on May 13, 2013:

RCW 6.17.020(2) establishes and limits the remedy for enforcement of child support obligations to a period ending 10 years after the 10th birthday of the youngest child named in the order of child support:

> "After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered."

RCW 4.56.210(1)&(2) establishes that the remedy terminates, expires, and is available for no longer than 10 years after the 18th birthday of the youngest child named in the Order of Child Support:

> RCW 4.56.210(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."

RCW 4.56.210(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. * * * ."

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:

A Court's Determination of the Sum of Accumulated Child Support Arrears is Not a New Judgment:

Indiana law, like Washington law, provides that a delinquent child support payment is automatically treated as a judgment against the obligor for the delinquent amount:

> INDIANA STATUTES
> TITLE 31. FAMILY LAW AND JUVENILE LAW
> ARTICLE 16. FAMILY LAW: SUPPORT OF CHILDREN AND OTHER DEPENDENTS
> CHAPTER 16: ENFORCEABLE JUDGMENT AGAINST A PERSON DELINQUENT IN PAYMENT OF CHILD SUPPORT
>
> § 31-16-16-2. Delinquent payment as judgment against obligor:

> A payment that is:
>
> (1) required under a support order; and
>
> (2) delinquent
>
> Shall be treated as a judgment against the obligor for the delinquent amount.
>
> (copy of statute is attached to this memorandum)

The same rule applies in Washington. *Kruger v. Kruger*, 37 Wn.App. 329, 332, 679 P.2d 961 (1984) (as support payments come due and are not paid on the due date, each becomes a judgment).

Under Washington law, a finding, order, or judgment for accumulated arrears is not a new judgment in lieu of the support installments that vested on the dates the support payments were due. Rather, it is an ancillary proceeding to clarify the amount where there is a question as to the amount of the arrearage. *Valley v. Selfridge*, 30 Wn.App. 908, 915, 639 P.2d 225, (Wash.App. Div. 3 1982)

Authority and Jurisdiction for Collection and Enforcement Expired on May 13, 2013, the Child's 28th Birthday:

Because the 10th year after M.H.'s 18th birthday ended May 13, 2013, per RCW 4.56.210(1)&(2), the remedies for enforcement and collection of the Indiana child support arrears expired that day. Stephanie, her lawyer, and the court had no authority after that date to collect or enforce any further sums from Juan. The trial court had no authority on August 28, 2014 to issue the Wage Withholding Order directing Juan's

employer to make payment from Juan's wages on the expired child support obligation. Jurisdiction and authority to do so had expired and was barred effective May 13, 2013.

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 UIFSA at RCW 26.21A.515(3) as adopted in Washington expressly provides that :

> 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.

Stephanie's motion and her reply both quote RCW 26.21A.515(1)(a) for the broad proposition that the law of the issuing state governs the duration of child support, but she omits to note the words "*current payments*" in subsection (1)(a) of 26.21A.515 which provides that the issuing state's law governs

> The nature, extent, amount and **duration** of **current payments** under a registered support order.
>
> [Bold emphasis added]

Stephanie's reliance on the holding in *TCAP Corp. v. Gervin,* 163 Wn.2d 645, 185 P.3d 589 (2008) is misplaced. (See CP 61 lines 2 – 16) The *TCAP* case only holds that a foreign judgment which has expired in the issuing state cannot be enforced in Washington, citing RCW 6.17.020(7) and stating that:

> ¶ 14 Judgments and their enforcement are governed by statute in Washington. See *Hutton v. State*, 25 Wash.2d 402, 407, 171 P.2d 248 (1946) . Under the Uniform Enforcement of Foreign Judgments Act, chapter 6.36 RCW,
>
> 163 Wn.2d 651
>
> creditors holding a judgment against a debtor from another jurisdiction can enforce that judgment in Washington. RCW 6.36.025 . Once the foreign judgment is filed with the clerk's office of a superior

> court, or alternatively a district court, in this state, it becomes a registered foreign judgment. RCW 6.36.010(2), .025(1), (2). A registered foreign judgment "has the same effect and is subject to the same procedures ... and proceedings for reopening, vacating, staying, or extending as a judgment of a superior court of this state and may be enforced, extended, or satisfied in like manner." RCW 6.36.025(1) .
>
> RCW 6.17.020(7) , which provides the lifetime of a registered foreign judgment cannot extend beyond the lifetime of the underlying judgment.
>
> [185 P.3d 593]
>
> Except as ordered in RCW 4.16.020(2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW, **no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court**. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.
>
> RCW 6.17.020(7) ; see also RCW 6.36.035(3)(c) ("**Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated**.").

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).

<u>Full Faith and Credit</u>:

Stephanie argued below 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. (CP 16; RP 5 l. 14, 6, l. 4, 6 l. 25, 17 l. 24) Her argument is illogical and unsupported by citation to authority and thus should be disregarded by this court. In fact, 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 in a case where the key issue 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.

In *Krueger v. Tippett*, 155 Wn.App. 216, 226, 229 P.3d 866 (Div. 3 2010), the court explained as follows:

¶ 24 The Washington Supreme Court has consistently described this enforcement statute as a “nonclaim statute." *Bellevue Sch. Dist. No. 405 v. Brazier Constr., Co.,* 103 Wash.2d 111, 117, 691 P.2d 178 (1984). In an oft-cited passage, the court once explained:

> There are two types of statutes which the courts had to apply. One of them is the statute which either by its plain terms or by the construction given it by the court makes the limitation of time inhere in the right or obligation rather than the remedy. It is sometimes referred to as a statute of nonclaim, and, strictly speaking, is not a statute of limitations at all. In its usual form the statute creates some right or obligation and a time is fixed within which the right must be asserted or the obligation sought to be enforced, or the same will be barred. When the limitation period expires, the right or obligation is extinguished and cannot be revived by a subsequent statute enlarging the time limitation. Illustrations of nonclaim statutes in this state are those providing for liens of laborers and materialmen, claims against estates of deceased persons, and claims for damages against municipal corporations.

....

The other type of statute is one which relates only to the remedy and has nothing to do with any right or obligation, does

> 155 Wn.App. 225

not inhere in either, and is wholly independent of them. It is a statute of limitations in its strict sense, and, although a remedy may become barred thereunder, the right or obligation is not extinguished. It is a statute of repose.

> *Lane v. Dep't of Labor & Indus*., 21 Wash.2d 420, 425-426, 151 P.2d 440 (1944).

and further that

> ¶ 30 Washington's statutory framework for enforcing judgments focuses on the judgment lien. Entry of judgment creates a lien. When that lien expires, there is no longer any statutory method of enforcing the judgment, and nothing can be done to revive the lien. (citation omitted)
>
> 155 Wn.App. 226

<u>Response to Stephanie's *tolling* argumen</u>t:

Stephanie argued that the statute of limitations was tolled because Juan is not an Indiana Resident. (CP 61, l. 21) In support of her *tolling* argument, Stephanie cites Indiana Code – Section 34-11-4-1: *Tolling of time while nonresident* which provides:

> "The time during which the defendant is a nonresident of the state is not computed in any of the periods of limitation except during such time as the defendant bylaw maintains in Indiana and agent for service of process or other person who, under the laws of Indiana, may be served with process as agent for the defendant."
>
> (CP 62, lines 1 – 3)

Washington has a similar tolling statute:

> **RCW 4.16.180 Statute tolled by absence from state, concealment, etc.**
>
> If the cause of action shall accrue against any person who is a nonresident of this state, or who is a resident of this state and shall be out of the state, or concealed therein, such action may be commenced within the terms herein respectively limited after the coming, or

> return of such person into the state, or after the end of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this state, or conceal himself or herself, the time of his or her absence or concealment shall not be deemed or taken as any part of the time limit for the commencement of such action.

Juan's defense is under the enforcement bar of RCW 4.56.210(1)&(2) rather than the RCW 4.16.020 statute of limitations, so the tolling argument does not apply. Furthermore, such tolling statutes only apply where service of process cannot be made because the defendant's place of residence is unknown and not discoverable through the exercise of reasonable diligence. *Im Ex Trading Co. v. Raad*, 92 Wn.App. 529, 963 P.2d 952 (1998); *Summerrise v. Stephens*, 75 Wn.2d 808, 812, 454 P.2d 224 (1969). Stephanie only cites the Indiana statute but no case law construing it.

Stephanie's argument that the statute of limitations never began to run is specious at best. Juan has always been a resident of Washington and never a resident of Indiana. M.H. was born at Swedish Hospital in Seattle on May 13, 1985. M.H. lived with Juan and Stephanie in Seattle for the first three years of her life. Then Stephanie moved to Indiana and M.H. remained in Juan's care in Washington. During that time, Stephanie made no contribution toward M.H.'s support. In August 1993 when M.H. was 8 years old, at Stephanie's request, Juan allowed M.H. to move to

Indiana to live with Stephanie. Six months after M.H.'s arrival Stephanie, commenced proceedings in Indiana to establish parentage, child support, and financial obligations. Juan was served with process in the 1994 Indiana proceedings at his home in Washington, at the same address where he resides today. Stephanie does not, and cannot, claim that she did not know Juan's local King County residence address. She had Juan served at that address with process in this case in 2010 her King County Superior Court UIFSA proceeding to register the Indiana Order of Child Support for determination of arrears and enforcement.

(See Declaration of Juan Heflin at CP 36 – 41)

THE LAW REGARDING INTEREST ON CHILD SUPPORT ARREARS:

No Indiana court has made a determination of the principal amount of child support arrears, if any, or interest on such arrears, if any, owed by Juan. The February 24, 2011 Order titled ORDER CONFIRMING AMOUNT OF SUPPORT OBLIGATION (CP 12 -13) was drafted by Stephanie's counsel, and fails to differentiate between the principal and interest components of the $110,790.23 arrears figure. (CP 13, lines 3 – 6)

The August 28, 2014 Wage Withholding Order, which was drafted by Stephanie's lawyer, states that the entire arrears figure of $117,290.92 is interest-generating *principal*: "his child support obligation in the

principal amount of $117,290.92 as of April 1, 2103, with interest thereon at the daily rate of $57.84 from April 1, 2013. (Italic emphasis added). (CP 66 line 26 – CP 67 line 1) The effect and apparent design of that language is to charge interest at 18% per annum, 1.5% per month, not only on the principal component of the arrears figure, but also on the interest component.

Interest on Arrears Under Washington Law:

Under Washington law, interest on child support is to be at the statutory rate of 12% per annum, is simple interest, and must be awarded on arrears from the date each arrears installment was due and not paid.

RCW 4.56.110(2) provides:

> All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

Caruso v. Local Union of Int'l Bhd. of Teamsters, 690, 50 Wn. App. 688, 749 P.2d 1304 (1988) (post-judgment interest is simple rather than compound interest); *In re Marriage of Glass*, 67 Wn. App. 378, 835 P.2d 1054 (1992) (a court has no power to decline to award the full amount of statutory interest.)

Allocation of Payments Toward Current Support and Arrears:

Under Washington law, payments on child support obligations are applied as follows: (1) first to current support; (2) second to interest on the oldest unexpired obligation until that interest is paid off; (3) third to the principal amount of the oldest unexpired obligation itself; and (4) fourth to the interest on the next-oldest unexpired obligation. *Marriage of Maccarone*, 54 Wn. App. 502, 774 P.2d 53 (1989); *Kruger v. Kruger*, 37 Wn. App. 329, 333, 679 P.2d 961 (1984); *Roberts v. Roberts*, 69 Wn.2d 863, 420 P.2d 864 (1966)

Interest on Arrears Under Indiana Law:

The UIFSA, RCW 26.21A.515(1)(b), provides that the law of Indiana, the issuing state, governs interest on arrears:

> "The computation and payment of arrearages and accrual of interest on the arrearages under the registered support order."

Under Indiana law there is no automatic right to an award of interest on child support arrears. Indiana law treats interest on child support arrears as "prejudgment" interest. In Indiana, a party is not entitled to receive prejudgment interest on arrears unless the party specifically requests such interest in the party's petition or motion for determination of the amount of arrears. A party who delays raising a

claim for child support arrears is not barred from claiming arrears, but the court must consider the requesting party's delay in making the discretionary decision whether to award prejudgment interest on the arrears. Indiana Code §34-51-4-8; *Whited v. Whited*, 859 N.E.2d 657 (Supreme Court of Indiana 2007)

> Indiana Statutes
> Title 34. CIVIL LAW AND PROCEDURE
> Article 51. DAMAGES
> Chapter 4. PREJUDGMENT INTEREST
> Current through P.L. 4-2015
>
> § 34-51-4-8. Time of accrual of prejudgment interest
>
> (a) If the court awards prejudgment interest, the court shall determine the period during which prejudgment interest accrues. However, **the period may not exceed forty-eight (48) months.** Prejudgment interest begins to accrue on the latest of the following dates:
>
> (1) Fifteen (15) months after the cause of action accrued.
>
> (2) Six (6) months after the claim is filed in the court if IC 34-18-8 and IC 34-18-9 do not apply.
>
> (3) One hundred eighty (180) days after a medical review panel is formed to review the claim under IC 34-18-10 (or IC 27-12-10 before its repeal).
>
> (b) **The court shall exclude from the period in which prejudgment interest accrues any period of delay that the court determines is caused by the party petitioning for prejudgment interest.**
>
> {Bold emphasis added]

The Indiana Supreme Court case of *Whited v. Whited*, 859 N.E.2d 657 (2007) applies the provisions of IC 34-51-4-8 to prejudgment interest

on judgments for accumulated child support arrears. The *Whited* court denied prejudgment interest on arrears to a mother who had delayed a number of years before requesting a judgment for arrears. The factors considered were the length of delay, the difficulty of calculating the amount of arrears, and IC 34-51-4-8(b) which provides that:

> The court shall exclude from the period in which prejudgment interest accrues any period of delay that the court determines is caused by the party petitioning for prejudgment interest.

Significantly, IC 34-51-4-8(a) limits awards of prejudgment interest on arrears to **no more than 48 months**, in other words, the court may award prejudgment interest for up to 48 months, and whether it be for 1 month or 48 months or some period in between is in the court's discretion.

VII. CONCLUSION

Appellant respectfully asks this Court to:

1. Hold that the August 28, 2014, Order's statement that the child support obligation is in the *principal* sum of $117, 290.92 is erroneous since the record shows that this figure includes without differentiation both principal and pre- and post-"judgment" interest.

2. Determine that the Indiana child support obligation registered in King County Superior Court under cause no. 10-3-06637-7 KNT expired

and became unenforceable pursuant to RCW 4.56.210(2) and 6.17.020(2) on May 13, 2013, M.H.'s 28th birthday, and that all further enforcement and collection action was barred effective that date.

2. Vacate the August 28, 2014 Wage Withholding Order (CP 66 – 69) which was entered 15 months after the obligation expired and became unenforceable under Washington law.

3. Remand this matter to the trial court for determination of the amount Stephanie Bell has collected from Juan Heflin on and after May 13, 2013, and order pursuant to RAP 12.8 that all such sums shall be restored to Juan Heflin within a specified period of time not to exceed six months, and that judgment be entered in such amount in favor of appellant Juan Heflin against respondent Stephanie Bell and any other person or entity that has received all or any portion of such sums.

4. Award appellant Juan Heflin his costs, disbursements, and statutory attorney fees on this appeal.

5. Such other relief as is just and proper.

Respectfully submitted this 21st day of April, 2015.

Helmut Kah, WSBA # 18541
Attorney for Appellant

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Paternity of: M.H. STEPHANIE BELL, Respondent, and JUAN SIDRAN HEFLIN, Appellant.	NO. **72527-1-I** (Trial Ct # 10-3-06637-7 KNT King County Superior Court) PROOF OF SERVICE BY MAIL OF REPLACEMENT PAGE 5 TO APPELLANTS' OPENING BRIEF DATED APRIL 21, 2015

I hereby certify that on Tuesday, April 21, 2015, I deposited a true and complete copy of the replacement page 5 of Appellant's Opening Brief dated April 21, 2015, with the U.S. Postal Service, First Class Mail postage prepaid, enclosed in a sealed envelope addressed to:

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

The full brief was mailed and emailed to Mr. Danielson earlier in the day. As a courtesy, a copy of the replacement page 5 in PDF format was emailed to Mr. Danielson at the email address of bruce@brucedanielsonlaw.com in the evening of April 21, 2015.

DATED: April 21, 2015.

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