NOT DESIGNATED FOR PUBLICATION

No. 92,673

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

JODIE GAIL BEESON,
Appellant,

and

GEERT VAN DER WEG,
Appellee.

MEMORANDUM OPINION

Appeal from Harvey District Court; CARL B. ANDERSON, JR., judge. Opinion filed September 23, 2005. Affirmed.

Elizabeth A. Carson, of Bruce, Bruce & Lehman, LLC, of Wichita, for appellant.

Marcia Montgomery, of Overland Park, and *Joseph W. Booth* and *Ronald W. Nelson*, of Nelson & Booth, of Overland Park, for appellee.

Before GREENE, P.J., CAPLINGER and BUSER, JJ.

Per Curiam: Jodie Gail Beeson appeals the district court's dismissal of her motion to modify child support for lack of subject matter jurisdiction. We affirm.

Factual and Procedural Background

Beeson, a citizen of the United States, and Geert van der Weg, a citizen of the Netherlands, were married in Newton, Kansas, in 1990. They moved to the Netherlands, where two children were born. In May 2001, Beeson returned to Newton with the children. Van der weg filed for divorce in the Netherlands in October 2001.

The partial translations of the Dutch proceedings in the record show that Beeson appeared through Dutch counsel and filed a defense asking for child support and certain pension rights held by van der Weg. In January 2002, the Dutch court entered a preliminary injunction requiring van der Weg to pay child support pending further rulings.

When the divorce decree was issued in August 2002, Beeson was no longer represented by counsel in the Dutch court. The divorce decree nevertheless stated

Beeson's opinion was "that Dutch law must be applied to the child support." Van der Weg also did not contest the Dutch court's jurisdiction over support. The Dutch court held that Dutch law should apply because "both of the children who are entitled to support as well as the parent obligated to pay child support are in possession of Dutch nationality, and this parent who is obligated to pay child support maintains his principal place of residence in the Netherlands . . . ." With regard to visitation rights, the Dutch court held it was without jurisdiction because the children resided in the United States.

In October 2002, Beeson filed a petition in Harvey County pursuant to the Kansas Uniform Child Custody Jurisdiction and Enforcement Act, K.S.A. 38-1336 *et seq.* (UCCJEA). Beeson filed "to establish jurisdiction for purposes of child custody and parenting time under the [UCCJEA], and to provide a convenient forum for any future modifications as may be required." She prayed for the Kansas court to "establish child custody and parenting time under the laws of the State of Kansas" and to "issue such orders as it may deem just and equitable in regard to custody and parenting time."

Van der Weg retained Kansas counsel, and on March 27, 2003, he filed a "Father's Motion to Establish Final Parenting Plan" in the Kansas case. Van der Weg stated the Dutch court had not ordered a parenting schedule and that "[i]t is in the best interests of

the minor children to have an order of the court establishing a final parenting plan providing for [van der Weg's] access to the minor children both here and abroad."

On March 28, 2003, Beeson and van der Weg jointly filed a parenting agreement with the Kansas court. The parenting agreement was signed by Beeson, van der Weg, and the Kansas judge. Beeson and van der Weg agreed to joint custody of the children, and they set out the specifics of parenting time. The parenting agreement also discussed the children's health care as follows:

> "Because of the distance between the parties, [Beeson's] rather restrictive insurance coverage and by reasons of courtesy, [van der Weg] will not make appointments with any health, dental or psychiatric providers without written permission of [Beeson], and if he does, [van der Weg] will bear the full cost of the billings and [Beeson] shall not be considered the guarantor of such obligations. . . . [Beeson] shall maintain health insurance upon the children . . . . Any uncovered expenses, co-payments, or deductibles in relation to medical, dental or psychiatric care provided will be divided by the parties, with [Beeson] paying 25% of such expenses and [van der Weg] 75% of such services, in accordance with their relative incomes.
>
> "Presently, [Beeson] has insurance for the children through Health Waves (Medicaid) which does not require co-pay or have a deductible. . . . [Beeson] will advise [van der Weg] immediately upon any change in insurance."

The terms of the parenting agreement were incorporated into an order of custody and parenting time also filed in the Kansas court on March 28, 2003.

In October 2003, Beeson filed a pro se petition for modification of child support with the Kansas court in the same case as the earlier custody orders. Beeson acknowledged the Dutch support order under which she received payments but alleged that the "[e]xisting order is unjust and leaves the two minor children without adequate support." She claimed she had little access to the Dutch courts because of the expense and that the "Dutch Minister of Justice has refused any assistance in this matter as [Beeson] has a legal forum open to her, namely the [Kansas court]." Beeson maintained the Kansas court had already modified the Dutch support order "by adding additional requirements . . . such as the requirement to keep health insurance of the two minor children."

Van der Weg moved to dismiss Beeson's motion for lack of jurisdiction. He acknowledged the Kansas court's "subject matter jurisdiction and personal jurisdiction . . . with respect to the custody and parenting time of the 2 minor children." He maintained, however, that subject matter jurisdiction under the UCCJEA did not confer subject matter jurisdiction for purposes of child support. Van der Weg argued the Kansas Uniform

Interstate Family Support Act, K.S.A. 23-9,101 *et seq.* (UIFSA), placed exclusive jurisdiction with the Dutch court in matters pertaining to child support.

Beeson eventually retained counsel and moved for attorney fees alleging that "[Beeson] and children are in necessitous circumstances and justice and equity require that [van der Weg] be responsible for [Beeson's] attorney's fees herein."

After a hearing on March 12, 2004, the Kansas court held that, under the UIFSA, the Dutch court had sole jurisdiction over child support. In his opinion letter the judge concluded that Beeson "must resort to the Court in the Netherlands for any modification." The Kansas court did not specifically rule on Beeson's motion for attorney fees.

Subject Matter Jurisdiction

This case presents a question of subject matter jurisdiction, over which we have unlimited review. See *State v. James*, 276 Kan. 737, 744, 79 P.3d 169 (2003).

All states participating in the federal Aid to Families with Dependent Children program are required to enact the UIFSA. See 42 U.S.C. § 666(f) (2000); *Blessing v. Freestone*, 520 U.S. 329, 333-35, 137 L. Ed. 2d 569, 117 S. Ct. 1353 (1997). After its

enactment in Kansas, UIFSA and not the common law control "when Kansas district courts can modify other states' child support orders . . . ." *Genizel v. Williams*, 25 Kan. App. 2d 552, 557, 965 P.2d 855 (1998).

UIFSA § 205 establishes the principle of continuing, exclusive jurisdiction. See Sampson, *Uniform Interstate Family Support Act (2001) With Prefatory Note and Comments (With Still More Unofficial Annotations)*, 36 Fam. L.Q. 329, 367 (2002) ("perhaps the most crucial provision in UIFSA"). This section, codified at K.S.A. 23-9,205, states in part: "A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this act or a law substantially similar to this act." K.S.A. 2004 Supp. 23-9,205(d). The term "state" includes "a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this act, the uniform reciprocal enforcement of support act or the revised uniform reciprocal enforcement of support act." K.S.A. 2004 Supp. 23-9,101(s)(2).

Beeson asserts on appeal that van der Weg "has done nothing to establish that the Netherlands is . . . a foreign jurisdiction where these laws or procedures are properly in place." The record shows, however, that van der Weg informed the Kansas court the

United States Secretary of State had made such a designation regarding the Netherlands. Under 42 U.S.C. § 659a(a)(1), (b)(1)(A)(i) & (ii), the Secretary of State may declare which foreign countries have in effect "procedures, available to the residents of the United States . . . for establishment of orders of support for children," and "for enforcement of orders to provide support to children . . . ." Reciprocating countries must provide procedures, "including legal and administrative assistance . . . to residents of the United States at no cost." 42 U.S.C. § 659a(b)(1)(B). The Secretary of State gave notice in the December 2, 2002, Federal Register that, as of May 1, 2002, the Netherlands had been declared a "reciprocating country." 67 Fed. Reg. 71605-06 (2002).

Beeson contends, nevertheless, that the Dutch court does not have continuing, exclusive jurisdiction because its order of January 2002 was temporary and issued pending resolution of a jurisdictional conflict. Under K.S.A. 2004 Supp. 23-9,205(e), "[a] temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal."

The record does not support Beeson's contention. According to the January 2002 order, Beeson "filed a defense which is also an independent petition." The August 2002 divorce decree identified this as "an independent petition for determination of the child support payments to be paid by [van der Weg] . . . ." The January 2002 order, therefore,

was neither ex parte nor subject to a jurisdictional conflict. Beeson appeared and asked the Dutch court to order support – invoking rather than challenging the Dutch court's jurisdiction.

Beeson does allege in a conclusory fashion that she was never served and did not consent to the Dutch court's jurisdiction, but she may not controvert court orders in passing. If the orders of the Dutch court, which show she requested support pursuant to Dutch law, are inaccurate, Beeson bore the burden of establishing this in the record. Without such an adequate record, the claim of error fails. See *Unrau v. Kidron Bethel Retirement Services, Inc.*, 271 Kan. 743, 777, 27 P.3d 1 (2001).

We conclude the record shows that the January 2002 order of the Dutch court, confirmed by the August 2002 divorce decree, constituted a child support order as that term is defined in UIFSA: "[A] judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages or reimbursement, and may include related costs and fees . . . and other relief." K.S.A. 2004 Supp. 23-9,101(u). Under the UIFSA, then, the Dutch court has "continuing, exclusive jurisdiction" over its order. K.S.A. 2004 Supp. 23-9,205(d).

Beeson offers numerous reasons why we should depart from the UIFSA and permit the Kansas court to modify the Dutch order. Based on van der Weg's participation in the parenting agreement, Beeson argues he should be estopped from contesting the jurisdiction of the Kansas court, that he may not collaterally attack the jurisdiction of the Kansas court, and that he effectively consented to the transfer of jurisdiction from the Dutch court under K.S.A. 2004 Supp. 23-9,205(a)(2). Beeson cites in support *Hoehn v. Hoehn*, 716 N.E.2d 479, 481-82 (Ind. App. 1999), where the court decided its support order controlled over that of another state, and *Stout v. Stout*, 207 W. Va. 580, 583-84, 534 S.E.2d 776 (2000), where the court accepted modification of its support order by the court of another state.

In our opinion, Beeson's focus on the parenting agreement and her reliance on *Hoehn* and *Stout* are misplaced. Here, unlike in *Hoehn*, the issue is not whether a court should enforce its own support order. In her petition for modification of child support, rather than seeking enforcement of the parenting agreement, Beeson asked the Kansas court to modify the Dutch support order. Similarly, Beeson did not ask the Kansas court to accept modification of its own order, *i.e.*, the parenting agreement, by the court of another state, as in *Stout*. Rather, contrary to the statutory scheme, Beeson wished the Kansas court to modify the already existing Dutch order.

The procedure for modifying foreign support orders is controlled by the UIFSA. Under K.S.A. 2004 Supp. 23-9,611(a), a child support order issued in another state may be registered in Kansas, and the courts of Kansas may then modify the order under certain conditions. See K.S.A. 2004 Supp. 23-9,611(a)(1)-(2). We need not discuss these conditions or attempt to apply them here because Beeson did not register the Dutch order in Kansas. The UIFSA "establishes a one-order system . . . ," *Williams*, 25 Kan. App. 2d at 556, and the district court correctly refused to depart from this system by modifying the Dutch order outside the statutory framework.

Whatever relevance van der Weg's actions may have to the enforcement of the parenting agreement, he may not confer subject matter jurisdiction on the Kansas court contrary to the UIFSA. See *In re Marriage of Abplanalp*, 27 Kan. App. 2d 833, 836, 7 P.3d 1269 (2000) (Knudson, J., concurring) (consent does not confer subject matter jurisdiction). Van der Weg also did not consent to a transfer of jurisdiction under K.S.A. 23-9,205(a)(2), which controls how a court of this state may cede continuing, exclusive jurisdiction to that of another state. Even if the statute were read to describe how the Dutch court would lose its jurisdiction in favor of the Kansas court, Beeson acknowledges that van der Weg "has not filed his written consent with the Netherlands . . . ."

We conclude that the Kansas court correctly held it was without subject matter jurisdiction to modify the Dutch support order.

Van der Weg also maintained the Kansas court was without personal jurisdiction regarding child support, but given our holding, this issue is moot.

Regarding Beeson's motion for attorney fees, as she concedes, K.S.A. 2004 Supp. 23-9,313 allows attorney fees only if the obligee prevails. Since the Kansas court correctly dismissed Beeson's motion to modify child support, this issue is also moot.

Affirmed.