

CAROL N. OVERBY, Petitioner

v.

OSCAR FREDERICK OLSEN, Respondent

Civil Action No. 25-73

Trial Division of the High Court

Marshal Islands District

July 1, 1974

Uniform Reciprocal Support Act action. The Trial Division of the High Court, Turner, Associate Justice, held defendant liable for payments in arrears.

1. Constitutional Law—Applicable Law

The United States Constitution and its Full Faith and Credit Clause are not applicable to the Trust Territory.

2. Constitutional Law—Due Process—Hearing

Should respondent under a Uniform Reciprocal Support Act action challenge the validity of the act, the petitioner or obligee under the act would have to be given an opportunity to respond at the hearing, and failure to give such opportunity would be contrary to the principles of due process provided by statute. (39 TTC Ch. 9; 1 TTC § 4)

3. Domestic Relations—Uniform or Reciprocal Statutes—Foreign Judgments and Orders

Under the Uniform Reciprocal Support Act, a foreign judgment will be enforced as a result of the mandate of the act and not under the

Full Faith and Credit Clause of the United States Constitution, which does not apply to the Trust Territory. (39 TTC Ch. 9)

4. Domestic Relations—Uniform or Reciprocal Statutes—Modification of Orders

Where respondent under Uniform Reciprocal Support Act action asked that support payments be reduced, but neither alleged nor showed at hearing that there were changed circumstances warranting the modification, court did not have to resort to section of the act allowing continuance at request of either party to allow submission of evidence by both parties, as modification was not in order. (39 TTC Ch. 9)

Counsel for Petitioner: RUSSELL W. WALKER, *Marshall Islands District Attorney*

Counsel for Respondent: PRO SE

TURNER, *Associate Justice*

This is a case of first impression brought pursuant to the Uniform Reciprocal Support Act as modified by the Congress of Micronesia to apply to the Trust Territory. Title 39, Chapter 9, Trust Territory Code. The Uniform Act provides a scheme whereby a judgment or decree for support of a spouse or minor children entered in another jurisdiction may be enforced in the jurisdiction other than the one entering the decree in which the person obligated to pay the support is found.

The Act was modified to "fit" the Trust Territory by defining "state," the term used for the separate jurisdictions involved, as: "(13) 'State' includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect." The Congress apparently did not boggle at distinguishing between the Trust Territory and any "other" foreign jurisdiction. It did not include the word "other."

[1] The enforcement of support decrees, prior to legislative mandate upon the Courts by enactment of the Uni-

form Act, was upon the theory of the full faith and credit clause of the United States Constitution requiring the acceptance of a final judgment of one state by another state. The United States Constitution and its full faith and credit clause are not applicable to the Trust Territory.

The Courts are bound, however, by legislative enactment, until, at least, there is a successful challenge to the legal propriety of the statute. No challenge has been made by respondent in the present case, so the court may proceed to a determination of the obligations of the respondent in accordance with the act.

A petition for support under the Uniform Act was filed with the Clerk of Courts of the Marshall Islands District by the Prosecuting Attorney for King County, Washington, in behalf of the petitioner, for the support of the two minor children of the parties. The amount sought was awarded by the divorce decree entered in the State of Washington. The petition alleged the respondent to be in arrears on his payments.

Summons was issued by the Marshall Islands Clerk of Courts and personal service was made upon respondent on Kwajalein Island, Kwajalein Atoll, Marshall Islands District. The respondent answered denying he was in arrears and asked for a reduction in the monthly support for the reason that petitioner was not applying the support payments for the benefit of the minor children.

At the hearing, the respondent established that his payments were current until November 1, 1973, when he ceased making payments as result of the petition filed October 15, 1973. Respondent also urged that the method of payment be changed from monthly to semi-annually. This request was subsequently agreed to by petitioner as evidenced by a communication from the Washington Prosecuting Attorney to the Marshall Islands District Attorney and filed in the record prior to the entry of this judgment.

There are two questions that arise in connection with this proceeding. The first of these is whether or not the Washington support decree may be enforced by this court, and, the second, assuming the decree to be enforceable, is it subject to modification?

[2] As previously indicated, the court will adhere to the Congressional enactment unless it is challenged and held to be invalid. A hearing on the propriety of the act would require the response of the petitioner either in person or by deposition as provided in 39 TTC 414. Failure to give the petitioner, or the "obligee" designated by the Act, this opportunity to contest an attack would be contrary to the principles of due process provided in 1 TTC 4.

This court said in *Ichiro v. Bismark*, 1 T.T.R. 57: "While it is often stated that no precise definition of due process of law can be given, it is clear from many court decisions that notice and an opportunity to be heard are among the essential elements of it." *Purako v. Efou*, 1 T.T.R. 236, *Trust Territory v. Tarkong*, 5 T.T.R. 252. These principles are well expressed by Justice Traynor of the California Supreme Court in *Worthley v. Worthley*, 283 P.2d 19. The Court said:

"Under the Uniform Reciprocal Enforcement of Support Act the California courts must recognize and enforce foreign alimony and support decrees whether modifiable or not and must afford the defendant an opportunity to litigate the issue of modification."

This ruling was made in response to the argument recognized in the earlier decision of *Biewind v. Biewind*, 109 P.2d 701, where the court said:

"An order for the payments of money as alimony rendered by a court of competent jurisdiction in one state must be recognized by all other states under the full faith and credit clause of the United States Constitution as to all accrued installments not subject to modification by the court rendering the original order (citing). Only if such accrued payments are still subject to modification may recovery be denied."

[3] The theory of the decisions based upon the Constitutional clause was that the clause only required one state to recognize the "final" judgments of another. If the support decree was subject to modification it was not final, the courts held. The *Worthley* decision held that under the Reciprocal Support Act the foreign judgment will be enforced as result of the statutory mandate rather than a constitutional clause. The rule of the case is adopted for this jurisdiction.

Next, we come to the question of modification. Normally, courts hold that due to changed circumstances of the parties, the original decree may be modified in the interests of justice. This rule requires, however, under the principles of due process, that the petitioner, who is seldom physically present although subject to the court's jurisdiction as result of filing the petition, should be given an opportunity to respond to the request for modification. The Act recognizes this requirement by the provision of 39 TTC 414. This section provides:

"If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the case for further hearing and the submission of evidence of both parties by deposition or by appearing in person before the court."

[4] In the present case, the respondent asked in his responsive prayer that support be reduced from \$150 to \$100 per month. He did not, however, allege or show at the hearing that there were changed circumstances warranting the modification. The only allegation made in the response touching upon the issue of modification was the denial of petitioner's allegation as to respondent's earnings.

Since there was nothing before the court warranting reduction of the monthly payments, it was unnecessary to resort to 39 TTC 414 before proceeding further. Accordingly,

the court finds the respondent under a duty to support the minor children of the parties in the amount fixed by the Washington decree. 39 TTC 418.

Ordered, adjudged and decreed:—

1. That respondent shall pay in a single amount the sum of the support due from November 1, 1973, to July 1, 1974, at the rate of \$150.00 per month, subject, however, to credit against the lump sum of any monthly payments made during the period.

2. That commencing July 1, 1974, respondent shall pay support in bi-annual installments.

3. That support payments shall be made to the Clerk of Courts, Majuro, Marshall Islands, for transmittal to the Clerk of Courts for the Superior Court of the State of Washington for King County, Seattle, Washington, for the use of petitioner for the support and maintenance of Gifford Allan and Kevin Lee.

4. That upon reasonable request, the Clerk of Courts, Majuro, shall furnish a certified copy of the payments made in behalf of petitioner.