SMU | Dedman School of Law

SMU Law Review

Volume 19 | Issue 4 Article 8

1965

Reciprocal Enforcement of Support in Texas - Civil Enforcement

Gerald William Ostarch

Reciprocal Enforcement of Support in Texas — Civil Enforcement

Since June of 1951, Texas has had a statute which is commonly and very aptly known as "The Runaway Pappy Act."[1] The purpose of this legislation is to aid a dependent woman or child in securing support payments from a husband or father who is in another jurisdiction.[2] It offers a simplified and inexpensive procedure in place of the normal practice of suing the defaulting obligor in the jurisdiction in which he is located. This much-needed act has received widespread use.[3] It was effective, with only minor amendments,[4] until August 31, 1965, when a considerably amended version was promulgated.[5]

I. 1951 TEXAS U.R.E.S.A.

The procedure under the former act called for hearings in two states. The alleged obligee[6] filed a complaint in a court of the state of his domicile (initiating state[7]). If the court of the initiating state found sufficient facts to indicate that the alleged obligor[8] *might* owe a duty of support,[9] and that the court of another state (responding state[10]) might be able to obtain jurisdiction over the alleged obligor or his property, then the court would forward the required supporting documents to the court in the responding state. The district attorney was designated to represent the obligee.[11]

[1] Former art. 2328b, Tex. Rev. Civ. Stat. Ann. (1964). This act, together with its amendments, is based upon the Uniform Reciprocal Enforcement of Support Act (herein U.R.E.S.A.) which was drafted by the National Conference of Commissioners on Uniform State Laws, and approved by the American Bar Association in 1950. All states and territories and the District of Columbia now have similar legislation.

[2] A man who is dependent upon his wife for support, and who has been deserted, may also obtain support under the act. Brockelbank, Interstate Enforcement of Family Support (The Runaway Pappy Act) 60 (1960).

[3] No statistics have been found for Texas, but it is reported that between July, 1952 and December, 1959, 18,771 cases under the California act were filed in Los Angeles County alone. Brockelbank, *op. cit. supra* note 2, at v.

[4] Texas Acts 1953, ch. 374, General and Special Laws of Texas (1953).

[5] Vernon's Tex. Sess. Law Serv. ch. 679, §§ 1-41, at 1561 (1965). The new Uniform Reciprocal Enforcement of Support Act will be art. 2328b-4, Tex. Rev. Civ. Stat. Ann. Throughout this note, corresponding sections of the old and the new Texas statute will be cited, *e.g.*, formerly § 2(2), now § 2(b).

[6] Formerly § 2(8), now § 2(h). An obligee is defined as "any person to whom a duty of support is owed." The new act adds "a state or political subdivision thereof." In the event that an obligee on relief refuses to sue, the state may seek reimbursement.

[7] Formerly § 2(2), now § 2(b). An initiating state is defined as "any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced."

[8] Formerly § 2(7), now § 2(g). An obligor is defined as "any person owing a duty of support."

[9] Formerly § 11, now § 14.

[10] Formerly § 2(3), now § 2(c). A responding state is defined as "any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced."

[11] Formerly § 12, now § 12.

Under section 7, the responding court would apply the law of whatever state the obligor was in during the period for which support was sought (usually the responding state) *or* the law of the state in which the obligee had been present when the failure to support commenced (usually the initiating state). The obligee could choose which law he wished to be applied.[12] The responding court then would determine whether a duty of support existed,[13] and in so doing it was not bound by the results of the preliminary inquiry in the initiating state.[14] Alimony for a former spouse was not to be considered a "duty of support" in Texas.[15]

The former act was designed primarily for an obligee who did not have a judgment for support against the obligor. It made no provision for a simplified procedure to enforce a valid foreign judgment. Technically, therefore, a judgment was considered strong evidence to be weighed by the responding court in its determination of whether a duty of support existed.[16] Accordingly, even if a duty was found by a responding Texas court, that court might alter payments fixed by a previous foreign court order though the payments had accrued and had remained unmodified by the original rendering court.[17]

II. BJORGO v. BJORGO[18]

A recent case brought under the old act has demonstrated certain weaknesses in the U.R.E.S.A. In that case, a husband (H) and a wife (W) were divorced and later had a bastard child. W obtained a judgment against H for support of the child in Kentucky where H and W were domiciled. H paid support for a short time, de-

[12] Formerly § 7. This section has had conflicting interpretations. The commissioners stated that it was not intended to give the obligee an absolute choice of laws. Rather, it was designed to enable the obligee to attach or garnish property which the obligor has in the responding state, even if the obligor is not then present in that state. Commissioners' Note, 9C Uniform Laws Annotated 27 (1957). However, it has been interpreted by a California court to allow the obligee such a choice. "The purpose of the section is to give the dependent an election in the event of conflicting laws." Smith v. Smith, 125 Cal. App.2d 154, 270 P.2d 613, 618 (1954). In Freeland v. Freeland, 313 S.W.2d 943 (Tex. Civ. App. 1958), the court held that only the law of the responding state could be used. This statement may have been a dictum, or applicable only to the particular facts of this case, but it is the first appellate court interpretation of § 7, and it has been followed extensively by lower courts.

[13] Formerly § 13, now § 23.

[14] Pfueller v. Pfueller, 37 N.J. Super. 106, 117 A.2d 30, 32 (1955).

[15] Formerly § 7, now § 7.

[16] Practically speaking, this is a mere academic point because the majority of cases are resolved informally in the district attorney's office and never reach a courtroom; the responding Texas courts, in practice, have accorded great weight to the determination of the initiating state. Interviews With Assistant District Attorneys in Dallas and Amarillo, Oct. 1965.

[17] Clapp v. Clapp, 393 S.W.2d 412 (Tex. Civ. App. 1965).

[18] 391 S.W.2d 528 (Tex. Civ. App. 1965).

faulted, and became a Texas resident. Approximately nine years after the default, W initiated proceedings in Kentucky under the Kentucky version of the U.R.E.S.A.[19] The Kentucky court made a preliminary investigation and found sufficient facts to indicate that H was in default of the support payments imposed by the original judgment. Upon receipt of the necessary documents from Kentucky, the district attorney in Amarillo instituted a proceeding in the district court seeking future support payments. The district court found that H owed a duty of support and granted judgment in favor of W. The court of civil appeals reversed on two grounds. The district court's ruling could not be sustained on the basis of according full faith and credit to the Kentucky judgment because the court found that the judgment was modifiable retrospectively and hence was not a final judgment. Secondly, under Texas law a father is not required to provide support for his illegitimate children.[20] The court held that to apply Kentucky law as permitted by section 7 would deny H equal protection of the law.[21] In support of its equal protection argument, the court relied upon *California v. Copus*[22] and cited *Pennsylvania ex. rel. Dept. of Public Assistance v. Mong*.[23] In *Copus*, support was sought in California in behalf of an aged woman from her son who had been domiciled there when, according to California law, a duty to support commenced. The son subsequently became a resident of Texas, which has no similar support law. The obligee attempted to apply California law for support during a period when the son was a Texas resident. The Texas court found no duty of support because to hold otherwise would deny the son equal protection under the laws. This dissenting opinion in *Bjorgo*, however, noted that the duty in *Copus* was not based on a judgment, but on a California law, and that the suit was not brought under the U.R.E.S.A.

The *Bjorgo* Case is important because relatively few cases brought under the U.R.E.S.A. ever reach the appellate level. It is not a good

[19] Ky. Rev. Stat. § 407 (1962). In such a case, the act provides an alternative to the classic method of suing on a judgment. The obligee may be spared the expense and inconvenience both of appearing in Texas and of bringing a suit on a judgment.

[20] Lane v. Phillips, 69 Tex. 240, 6 S.W. 610 (1887).

[21] U.S. Const. amend. XIV, § 1.

[22] 158 Tex. 196, 309 S.W.2d 227 (1958).

[23] 160 Ohio St. 445, 117 N.E.2d 32 (1954). In Pennsylvania support was sought by an aged father from a son in Ohio under the Uniform Dependents Act (same as the U.R.E.S.A.). Both states had similar support laws, but the responding state, in addition, had a statute which forbade support of a parent by progeny who had been previously deserted at an early age by that parent. Such was the case here, and the responding Ohio court refused to allow the application of Pennsylvania law, (initiating state) which had no such prohibitory provision, because this was contrary to an express provision of Ohio law. It should be noted that in *Bjorgo*, however, there was no Texas statute which expressly prohibited support for illegitimate children. Thus the cases seem to be distinguishable on their facts.

example of how the old law applied, but it raised serious questions as to the old act, some of which are potential problems under the new act. The following aspects of *Bjorgo* should be noted:

1.) W sued for current support and not the nine years' back payments.[24]

2.) Section 7 (providing that the obligee could choose the applicable law) was, in effect, declared unconstitutional in this case.

3.) A foreign judgment was involved, yet it received no more regard than if the suit had been brought on just a foreign statute. A judgment here was given no preferential treatment. Although the new act may not entirely eliminate these problems, it does attempt to resolve them.

III. New Texas U.R.E.S.A.

In the new act, the basic purpose and procedure of the old act are unaffected, and numerous rules now clarify the administration and extent of application of the act.[25] However, several changes wrought by the new act merit special attention. First, the act expressly provides that arrearages may be obtained.[26] Although arrearages always could be sued for under the old act, this was commonly misunderstood.[27] Section 7, which in effect was declared unconstitutional in *Bjorgo*, based on the *Copus* reasoning is changed; the obligee is no

[24] In many instances the obligor is financially insolvent, and there would be no monetary benefit for the obligee to sue for arrearages and then follow with contempt proceedings, which would lead to incarceration.

[25] The following new provisions appear in the new act: § 2 provides additional definitions; § 8 gives public agencies the right to sue for reimbursement for any support furnished the obligee; § 11 states that the obligee can send information with the petition which might aid in locating the obligor; § 12 designates officials who should represent the obligee in the responding state; § 13 denies the necessity for appointment of a guardian in suits in behalf of a minor; § 15 provides means to pay the obligee's costs and fees; § 16 gives the responding state power to arrest the obligor; §§ 18 and 19 impose a duty on the courts of the responding state to help the obligee obtain jurisdiction over the obligor;§ 19 provides that the necessary documents can be forwarded to any other county where the obligor is now present; § 20 provides for the continuance of the case for further hearing when only the obligor is present and he presents evidence which constitutes a defense; § 22 provides for the same rules of evidence as are applicable in the district courts; § 28 states that no proceeding shall be stayed because another suit affecting the parties is then pending; § 29 provides that no previously existing support order can be superseded by a Texas court order when Texas is acting as a responding state. Thus, there is no basis for claiming "double jeopardy" as a defense because of the existence of a prior support order which affects the same parties. The broad language used implies that an earlier and still valid support order of a Texas court in a different judicial district will also not be superseded. Section 30 states that jurisdiction cannot be extended to other matters; § 31 provides for application of the act when the obligor and obligee are merely in different counties in the same state.

[26] Now § 9. "How Duties of Support Are Enforced. All duties of support, *including arrearages,* are enforcable by petition irrespective of the relationship between the obligor and the obligee." (Emphasis added.)

[27] See Brockelbank, *op. cit. supra* note 2, at 34, 35.

longer allowed to choose the applicable law.[28] Now the law to be applied is the law of that state where the obligor was present during the period for which support is sought by the obligee, and the obligor is presumed to have been present in the responding state.[29] Thus, in most instances, the law of the responding state will prevail.

If the presumption is rebutted, it is still possible that the responding state must apply the law of another jurisdiction.[30] However, the equal protection argument raised by *Copus* and relied upon in *Bjorgo* now seems inappropriate. In both *Copus* and *Bjorgo,* support had been sought under sister-state laws for periods in which the obligors had been Texas residents, and this is inconsistent with section 7 of the new act. Section 7 states that duties of support "are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought . . . ." Thus, support may be obtained under foreign law for only that period during which the obligor was present in a state other than Texas. A sister-state law no longer applies and a duty to support based on foreign law ceases the moment an obligor is present in Texas. Thereafter, only Texas law applies.

The old statute made no provision for a simplified procedure giving effect to foreign judgments, and confusion existed in this area. The new act provides that a foreign support order may be registered in a court of the responding state.[31] A support order is defined as "any judgment, decree, or order of support whether temporary or final, whether subject to modification, revocation or remission."[32] The responding court conducts a brief hearing to confirm the foreign order, at which time the obligor may raise any defense he could raise in a suit on a foreign judgment.[33] When the foreign order is confirmed, it serves as an up-to-date determination of the obligor's accrued payments, and may in turn be registered in another jurisdiction if the obligor flees there. The fact that a modi-

[28] Now § 7. "Choice of Law. Duties of support applicable under this Act are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought; but shall not include alimony for a former wife. The obligor is persumed to have been present in the responding state during the period for which support is sought until otherwise shown."

[29] *Ibid.*

[30] In present practice, a responding Texas court will hesitate to apply foreign law, due to the statement in the *Freeland* case, 313 S.W.2d 943 (Tex. Civ. App. 1958), which was reaffirmed in the *Bjorgo* case. Thus, presently, if the presumption is rebutted, it appears that the case will not be heard by a responding Texas court, and that the papers received from the initiating state will be returned. Interviews With Assistant District Attorney in Dallas, Oct. 1965.

[31] Now § 33.

[32] Now § 2(j).

[33] Now § 36.