

FILED

2014 JULY -5 AM 3:30

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

DONALD J. HARPER,
Plaintiff-Appellee,

v.

ROSE A. HARPER,
Defendant-Appellant.

Supreme Court Case No. CVA13-010
Superior Court Case No. CS0323-10

OPINION

Cite as: 2014 Guam 9

Appeal from the Superior Court of Guam
Argued and submitted on November 6, 2013
Hagåtña, Guam

Appearing for Defendant-Appellant:

Nicolas Toft, *Esq.*
Assistant Attorney General
Office of the Attorney General
Child Support Enforcement Division
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

Appearing for Plaintiff-Appellee:

Jeffrey A. Cook, *Esq.*
Cunliffe & Cook, P.C.
210 Archbishop Flores St., Ste. 200
Hagåtña, GU 96910

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.¹

MARAMAN, J.:

[1] The Office of the Attorney General, Child Support Enforcement Division (hereinafter “Government”) appeals on behalf of Defendant-Appellant Rose A. Harper (“Rose”) from a final judgment ruling that the Government may not register a foreign child support order naming Plaintiff-Appellee Donald J. Harper (“Donald”) as the obligor. The Government argues that the Superior Court’s ruling is void because the court exceeded its time limit in issuing its decision and the Government is able to enforce the child support order under the Uniform Interstate Family Support Act (“UIFSA”). Donald argues that his obligations to pay child support are barred by time limitations on the enforcement of judgments and, if not barred, then he is entitled to a hearing on the amount of child support owed.

[2] For the reasons set forth below, we reverse the Superior Court’s Decision and Order barring the Government from registering the foreign support order and remand the issue of Donald’s defense asserting his full payment for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Alaska issued a decree of dissolution of the marriage of Donald and Rose Harper on July 22, 1987. The decree contained a child support order directing Donald to pay \$200.00 per month per child. Because the couple had three children, the payments would begin at \$600.00 per month and taper off until the last child reached the age of majority in 1999.

¹ The signatures in this opinion reflect the titles of the Justices at the time this matter was considered and determined.

[4] Subsequent to the dissolution of marriage, Donald moved to Guam, and Rose moved to Kansas. Between the years of 1987 and 2010, the parties did not have any contact with the courts in regards to the child support payments.

[5] On September 2, 2010, the Government sought to register the 1987 Alaska divorce decree which contained the child support order. Along with the foreign support order registration, the Government filed an “Arrearage Calculation Worksheet” prepared by the government of Kansas. RA, tab 2 (Notice of Registration of Foreign Supp. Order, Sept. 2, 2010). The worksheet states that Donald owes \$70,378.07 in child support after paying a total of \$5,421.93.

[6] Donald timely contested the validity and enforcement of the registered Alaska order and sought to vacate the registration. Donald asserted numerous defenses, including that the statute of limitations for collection had expired and his child support obligations had been paid in full. He requested a hearing to contest the validity and enforcement of the registered order. The Child Support Referee (“Referee”) heard the matter and issued her Recommended Findings and Order ruling the statute of limitations did not bar the registration of the foreign support order in Guam. Donald timely filed his Objection challenging the Referee’s Recommended Findings and Order.

[7] The Superior Court heard the matter in review of the Referee’s recommendations and issued a written Decision and Order on March 5, 2013, ruling that the Alaska five-year enforcement statute bars the Government from registering the support order, thus reversing the Referee’s recommendations. The Government timely filed a Notice of Appeal, appealing the Superior Court’s Decision and Order.²

² On August 22, 2013, the Superior Court of Alaska reduced an order to judgment in the amount of \$70,378.12. Harper v. Harper, CVA13-010 (Submission of Alaska Judgment Entered Aug. 22, 2013 (Sept. 23, 2013)). On December 11, 2013, the Superior Court of Alaska issued an Order Granting Motion for Relief from

II. JURISDICTION

[8] This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-92 (2014)) and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[9] “When the Superior Court approves or modifies the findings of a referee, and converts the entire matter into a judgment, the opinions of the judge and referee merge into a single judgment which is then reviewable in its entirety by this court.” *Palomo v. Manglona*, 2012 Guam 18 ¶ 13 (quoting *Lamb v. Hoffman*, 2008 Guam 2 ¶ 43) (internal quotation marks omitted). After a bench trial, the trial court’s findings of fact are reviewed for clear error while its conclusions of law are reviewed *de novo*. *Id.* Additionally, issues of statutory interpretation are reviewed *de novo*. *People v. Ojeda*, 2011 Guam 27 ¶ 9 (citing *People v. Manley*, 2010 Guam 15 ¶ 12).

IV. ANALYSIS

A. Guam Rules of Expedited Process: Rules 6.7 and 7.1

[10] Recommendations made by the referee who hears child support matters are subject to review by the judges of the Superior Court. The legal effect of a referee’s recommendation is explained in the Guam Rules of Expedited Process Rule 6.7, which states:

The referee shall, after hearing any motion or other application for relief, recommend entry of an order and shall make a written recommendation as to each matter heard. The referee’s recommendation has the effect of an order of the Court unless it is modified by the Court. The Court must reject the referee’s recommendation within ten days of hearing or i[t] shall be deemed adopted by the Court without signature.

Judgment and allowing Donald the opportunity to file his Opposition to Rose’s motion to reduce child support arrears to judgment. *Harper v. Harper*, CVA13-010 (Submission of Alaska Order Granting Mot. Relief Judgment (Jan. 13, 2014)). Thus, it appears the issue of arrears is still pending resolution in Alaska.

Guam R. Exp. Process (“GREP”) 6.7.

[11] GREP 6.7 states that the referee’s recommendation is the governing order unless the recommendation is altered by the Superior Court. *Id.* To properly modify the recommendation, the Superior Court must take action within ten days. Otherwise, the recommendation becomes a Superior Court order. *Id.*

[12] However, GREP 6.7 only applies when an objection is not made by one of the parties. If an objection is made, GREP 7.1 dictates the procedure.³

[13] GREP 7.1(2) allows ten days for the objecting party to file an objection. GREP 7.1(2). Upon the filing of an objection, the referee will refer the matter to a Superior Court judge for review. GREP 7.1(4). While under review, the Superior Court judge may request additional briefing and a hearing to resolve the issues. *See* GREP 7.1(6).

[14] The ten-day period contemplated in GREP 6.7 could not refer to the ten days following the referee’s recommendations in which a party must lodge an objection under GREP 7.1.

³ Rule 7.1 provides:

(1) Any party objecting to the recommended order shall file a written objection to the recommendations in the form prescribed by the Judicial Council and serve copies of the objections on the referee’s office and opposing counsel.

(2) Objections shall be filed within 10 days of the date the recommendation was made in open court or if taken under advisement, 10 days after the date of the subsequent written recommendation made by the referee.

(3) Objections shall be to specific recommendations and shall set forth reasons for the objections.

(4) The referee shall then refer the matter to a Superior Court Judge for review of matters specifically objected to by the parties or certified by the referee.

(5) If no objection or request for review is made within 10 days, the party is considered to have consented to entry of an order in conformance with the referee’s recommendation.

(6) After hearing in the Superior Court, the Court may award attorney’s fees and costs if the appealing party does not prevail and the recommendations of the referee have not been substantially modified by the Court.

Palomo, 2012 Guam 18 ¶ 20. It would be senseless to require the Superior Court to issue an order rejecting or modifying the referee's recommendation within days after the filing of an objection. In that instance, the Superior Court would be required to issue an order before the parties are heard. Thus, once an objection is filed, GREP 7.1 controls, and the parties have an opportunity to be heard by the Superior Court.

[15] In the case at hand, hearings took place before the Referee on October 13, 2010, and December 1, 2010. *See* RA, tab 13 (Hr'g Mins., Oct. 13, 2010); RA, tab 18 (Hr'g Mins., Dec. 1, 2010). On February 6, 2012, the Referee issued her recommendations, and Donald objected within ten days. RA, tab 19 at 4-5 (Recommended Finds. & Order, Feb. 6, 2012); RA, tab 25 (Objection to Recommended Finds. & Order, Feb. 16, 2012). On December 5, 2012, the Superior Court heard the matter in review of the Referee's recommendations and issued a written Decision and Order on March 5, 2013. RA, tab 35 (Dec. & Order, Mar. 5, 2013).

[16] The Government argues that the ninety-day period after the Superior Court hearing for the issuance of the written decision is in violation of the ten-day limitation in GREP 6.7. Appellant's Br. at 13 (June 20, 2013). However, as previously discussed, GREP 6.7 does not apply; GREP 7.1 applies, and since no additional time limitation is imposed on the Superior Court, the court's decision in this matter is not void as suggested by the Government.

B. Choice of Law

[17] The next issue is whether the registration and enforcement of the Alaska divorce decree is barred. Donald and Rose divorced in Alaska. Their divorce decree contained a child support order requiring Donald to pay support to Rose until the last child reached the age of majority. Subsequently, Donald moved to Guam, and Rose sought to register the Alaska child support order in Guam.

[18] UIFSA provides that “[a] registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of Guam.” 5 GCA § 35603(b) (2005). The Guam tribunal shall recognize and enforce, but may not modify the registered order if the issuing state had jurisdiction. *Id.* § 35603(c). In this case, Alaska is the issuing state, and Guam is the registering state.

[19] Title 5 GCA § 35604(a) specifies that the law of the issuing state governs the “nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.” 5 GCA § 35604(a) (2005). Essentially, the terms of the child support order are determined in accordance with the law of the issuing state, Alaska. The enforcement of the order, however, is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of Guam. Thus, the laws of Guam govern the procedures and remedies available to enforce the registered Alaska order.

[20] The Alaska order set out specific child support obligations for Donald. The actual terms of the child support order are not being contested in this case. Thus, Alaska law governing the nature, extent and amount of the child support order is not a concern. The parties are, however, contesting the manner in which the order may be enforced. In determining how to enforce the registered order or whether enforcement is possible and the procedures to follow, Guam law must be applied. However, there is another choice of law consideration that must be addressed, which is the applicable statute of limitations.

C. Statute of Limitations

[21] “In a proceeding for arrearages, the statute of limitation under the laws of Guam or of the issuing state, whichever is longer, applies.” 5 GCA § 35604(b). We must therefore determine whether Alaska or Guam has the longer statute of limitations.

[22] Alaska Statutes section 09.10.040(a) states that an action upon a judgment or a decree must be brought within ten years. Alaska Stat. Ann. § 09.10.040(a) (West 2014). Alaska Statutes section 25.27.225 states, “A support order ordering a noncustodial parent obligor to make periodic support payments to the custodian of a child is a judgment that becomes vested when each payment becomes due and unpaid.” Alaska Stat. Ann. § 25.27.225 (West 2014).

[23] The Alaska Supreme Court has recognized that “[a]s in the majority of jurisdictions, Alaska considers periodic child support obligations ‘judgments’ that vest when an installment becomes due but remains unpaid.” *State, Dep’t of Revenue, Child Support Enforcement Div. ex rel. Inman v. Dean*, 902 P.2d 1321, 1323 (Alaska 1995). The court explained that each unpaid child support obligation is considered a judgment because child support arrearages are not subject to retroactive modification. *Id.* “[T]he right to the payment of support becomes vested as it becomes due. Thus an order of child support is essentially a ‘judgment in installments.’” *Id.* (alteration in original) (quoting *Carter v. Carter*, 611 A.2d 86, 87 (Me. 1992)). Accordingly, in Alaska, the ten-year limit on bringing an action upon a judgment does not apply in child support cases. *Id.* at 1323-24. The ten-year Alaskan collection statute applies only when litigants “bring an action,” usually by way of a complaint. *Id.* at 1323. The statute does not apply when the Child Support Enforcement Division is seeking to collect on a valid judgment. *Id.* at 1324.

[24] The Alaska statute will govern this proceeding because the statute of limitations for missed child support payments is essentially an unlimited time period in Alaska. *See Dean*, 902 P.2d 1321; *State, Dep’t of Revenue, Child Support Enforcement Div. ex rel. Gerke v. Gerke*, 942 P.2d 423 (Alaska 1997); *State, Dep’t of Revenue, Child Support Enforcement Div. ex rel. Valdez*

v. *Valdez*, 941 P.2d 144 (Alaska 1997); *Koss v. Koss*, 981 P.2d 106 (Alaska 1999). Thus, Alaska's statute is the longer of the two jurisdictions.⁴

[25] UIFSA mandates that the Alaska statute of limitations govern the Guam proceedings because it extends indefinitely. Thus, Donald may not use the Guam statute of limitations to bar the Government from registering the child support order.

D. Five-Year Enforcement Statute for Judicial Proceedings

[26] The Government is attempting to register the Alaska divorce decree, which details the support obligation of the noncustodial parent. The Referee ruled that the Government is not barred from registering the support order. RA, tab 19 at 4-5 (Recommended Finds. & Order). If the Government attempts to obtain a writ of execution, however, it will have to contend with a possible time limitation on enforcement. *Id.* at 3-4; *see also* 7 GCA § 23101 (2005) ("The party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement.").

[27] The Superior Court, in its review of the Referee's recommendations, stated, "Alaska Courts have clearly ruled that the five (5) year requirement that some action be taken to act on the judgment in court actions must be demonstrated." RA, tab 35 at 5 (Dec. & Order). For a period of eleven years, the Government has shown no evidence of any attempt to collect through judicial or administrative processes. *See id.* at 4-5. The court continued by stating that there cannot be an enforcement of arrears because the issue of arrears was never adjudicated. *Id.* at 5.

[28] This case is in its infancy. The current stage of the litigation is the Government seeking to register the Alaska support order. The five-year enforcement statute used by the Superior

⁴ Guam does not have a statute of limitations for the enforcement of arrears. However, a Guam statute of limitations is inconsequential to this matter because Alaska does not place time limitations on the administrative enforcement of arrears.

Court to block the registration is designed to end judgment enforcement efforts by neglectful parties. The enforcement statute does not apply to the registration of a foreign support order. Essentially, using the enforcement statute to block the registration is misplaced. The Government must seek to enforce a registered order before Donald may argue that enforcement is time barred. After the Government successfully registers the order and then attempts to collect child support arrearages, it will be ripe for the trial court to determine if Guam law allows for the collection using either judicial or administrative processes.

E. Donald's Other Defenses

[29] In contesting the registration of the Alaska support order, Donald raised two objections. Donald claimed that the enforcement of the order is procedurally barred and that he fully paid all child support payments. RA, tab 6 at 1 (Request for Hr'g to Contest Validity & Enforcement of Registered Order, Sept. 22, 2010). Donald argues that he was given a chance to present evidence and argument challenging the registration and enforcement, but not his defense of full payment. Appellee's Br. at 5 (July 26, 2013).

[30] UIFSA enumerates a list of possible defenses when a party is seeking to contest the registration or enforcement of a foreign support order.⁵ 5 GCA § 35607 (2005). The possible defenses include that full or partial payment has been made. *Id.* § 35607(a)(6).

⁵ Title 5 GCA § 35607(a) provides:

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registering has the burden of proving one or more of the following defenses:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended, or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of Guam to the remedy sought;
- (6) full or partial payment has been made; or

[31] In its Decision and Order, the Superior Court stopped any further action in this case by overturning the Referee's recommendations. Because we reverse the Superior Court's Decision, Donald's defense of full payment remains unadjudicated, and he is entitled to present this defense on remand.

V. CONCLUSION

[32] Because the Superior Court erroneously ruled that enforcement of the Alaska child support order was barred by the Alaskan enforcement collection statute, we **REVERSE**. Donald was not given the opportunity to fully contest the validity or enforcement of the Alaska support order on the basis that full or partial payment had been made. Accordingly, we **REMAND** so Donald may present evidence in his defense on full or partial payment.

Original Signed By: **Robert J. Torres**

ROBERT J. TORRES
Associate Justice

Original Signed By: **Katherine A. Maraman**

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **F. Philip Carbullido**

F. PHILIP CARBULLIDO
Chief Justice

(7) the statute of limitation under Section 35604 of this Chapter, 'Choice of law', precludes enforcement of some or all of the arrearages.

5 GCA § 35607(a).