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ATTORNEY GENERAL OPINION NO. 80- 129

Charles V. Hamm, General Counsel
Department of Social and Rehabilitation Services
2nd Floor, Biddle Bldg.
2700 W. 6th Street
Topeka, Kansas 66606

Re: Domestic Relations--Enforcement of Support--
Jurisdiction; Proper County to Initiate Action

Synopsis: The Kansas Uniform Reciprocal Enforcement of Support Act (K.S.A. 23-451 et seq.) is not in conflict with decisions of the state supreme court. A proceeding under the act seeks to enforce the duty of support, while the decisions of Wheeler v. Wheeler, 196 Kan. 697 (1966) and Nixon v. Nixon, 226 Kan. 218 (1979) deal with the modification of support orders by a district court other than the one which granted them. As long as the remedy sought is merely the enforcement of a previously established duty to pay, the county of the obligor's residence is the proper place for URESA proceedings to be litigated, pursuant to K.S.A. 23-460. Cited herein: K.S.A. 23-409, 23-427, 23-460, 23-468, 23-473, 23-475, 23-482, K.S.A. 1979 Supp. 60-1610.

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Dear Mr. Hamm:

As General Counsel for the State Department of Social and Rehabilitation Services, you have requested our opinion concerning what you believe is a conflict between provisions of the Kansas Uniform Reciprocal Enforcement of Support Act (URESA) and Kansas case law. Specifically, you state that decisions of the Kansas Supreme Court such as Wheeler v. Wheeler, 196 Kan. 697 (1966) and Nixon v. Nixon, 226 Kan. 218 (1979) have, when read together with K.S.A. 23-460, raised doubts as to which district court properly has jurisdiction in certain situations. Chief among these are cases where a URESA

petition filed in a foreign jurisdiction is sent to Kansas for enforcement. Due to the apparent conflict, you state that situations have occurred where neither the county attorney in the obligor's county of residence nor the county attorney where the action was initially decided will accept the foreign court's petition for filing. Accordingly, you request our assistance.

URESA was first adopted in Kansas in 1951, and was significantly revised in 1953 and again in 1970. In each instance, the entire previous act was replaced with a revised, updated version. Jurisdiction, for example, was originally covered by K.S.A. 23-409 (repealed, L. 1953, ch. 187, §29). There, it was stated that "[j]urisdiction of all proceedings hereunder shall be vested in the district courts." (Emphasis added.) This language was again used in the 1953 act, at K.S.A. 23-427 (repealed, L. 1970, ch. 132, §42). Only in 1970, at K.S.A. 23-460, was the statement of jurisdiction narrowed to its present form, i.e., "[j]urisdiction of any proceeding under this act is vested in the district court of the county in which the obligor or obligee resides." (Emphasis added.)

Actions under URESA, it should be noted, can arise in two different contexts, namely, interstate and intrastate. In the former case, a person residing in a foreign jurisdiction may institute a proceeding under the act to enforce a duty of support which exists from an obligor residing somewhere in this state. A petition to this end is filed with an "appropriate" court in the obligee's state of residence [K.S.A. 23-461(b)], and is then forwarded to the "responding court," which is in the obligor's county of residence (K.S.A. 23-464). Upon the receipt of the petition [K.S.A. 23-468(a)], the district or county attorney is to prosecute the case "diligently" [K.S.A. 23-468(b)] and, if a duty of support is found, the responding court may make an order to that effect (K.S.A. 23-473). Additionally, if both the obligor and obligee reside in this state, K.S.A. 23-482 allows the URESA mechanism to be used as well, with the duty to prosecute placed on the district or county attorney in the county where the obligor resides.

Your inquiry involves a line of Kansas cases which you feel negate this intrastate application of the act. Specifically, you indicate that the cases of Wheeler v. Wheeler, supra, and Nixon v. Nixon, supra, have been interpreted by some prosecutors as holding that only the county in which a prior domestic action was determined (i.e., a divorce or previous support order) may have jurisdiction. On the other hand, K.S.A. 23-460 indicates that the county of the obligor's current residence is the proper forum for such actions. We have examined the two cases, and would conclude that their holdings do not conflict with the act so as to make any part of it nugatory.

In Wheeler, the parties involved resided in Shawnee County at the time of their divorce. Therein, the court made certain orders relating to the support of their minor child, who, together with his mother, moved thereafter to California. Mr. Wheeler at some point also changed his residence, moving to Johnson County. When support payments by him failed to keep up under the initial order, a URESA action was instituted by his ex-wife, with the district court of Johnson County acting as responding court. Following a hearing, the court found that a duty of support existed, and entered an order which directed Wheeler to pay $125 per month, a sum, it should be noted, which was different than that initially fixed by the Shawnee County court.

On appeal, the supreme court reversed, finding that:

> "[t]he effect of the plaintiff's complaint in this case is to ask the district court of Johnson county to amend, modify or change the earlier order of the district court of Shawnee county. To apply the act as requested by plaintiff (wife) in this case, would require a holding that a district court of one county in this state may acquire jurisdiction to modify support orders previously entered by the district court of another county. In view of the continuing nature of jurisdiction in child support matters such a holding would be in direct conflict with the established rule of this state that where once a court acquires jurisdiction of the subject matter and parties that jurisdiction continues to the exclusion of the exercise of jurisdiction of courts of coordinate jurisdiction." (Citation omitted.) 196 Kan. at 702.

This decision, it should be noted, was rendered under the pre-1970 URESA statutes, in which jurisdiction was given to "the district courts." Faced with this language alone, the court in Wheeler relied on previous case law to find that an obligee who wished to modify a support order did not have a choice of forum if a previous support order had already been issued by another district court in this state. In support, the court also relied on the provisions of K.S.A. 69-1610(a) (now in the 1979 Supp.), as it is stated therein that the district court "shall always" have jurisdiction to "make any order to advance the welfare of a minor child." Id. at 700.

As noted hereinabove, following the 1970 modification of the Kansas URESA, jurisdiction was specifically vested in the district court of the county in which the obligor resided. K.S.A. 23-460. The case of Nixon v. Nixon, supra, while on its face reaching a different result, in our opinion is limited by its facts as is Wheeler. In Nixon, as in the earlier case, a support order issued in one Kansas district court was modified by another. This had the result of leaving the obligee under order by two different district courts to make different amounts of support payments. The court, per Justice Miller, found this result to be unacceptable, and held that the district court which made the initial support order has both continuing and exclusive jurisdiction to modify such order as long as the children are minors. 226 Kan. at 220.

Can these holdings, considered along with K.S.A. 1979 Supp. 60-1610(a), be reconciled with the Kansas URESA provisions which give jurisdiction to the obligor's county of residence and which allow intra-state application of the act? We would conclude that they may both be given effect, without doing violence to either. The basis for our conclusion can best be seen in the following examples.

First, there is the situation where no Kansas support order exists, and the provisions of URESA are invoked against an obligor by an out-of-state obligee. Neither Wheeler nor Nixon would apply, and it would be up to the district or county attorney in the obligor's county to act upon the obligee's petition. The district court, in its role as "responding court" under K.S.A. 23-473, could then determine if a duty of support exists. If so, an order for such support could be directed to the obligor, enforced if necessary by the posting of a bond or proceedings in contempt of court. K.S.A. 23-475.

Second, there is the situation found in Wheeler where a district court in Kansas has granted a divorce to the parties, together with the award of a support order. The obligor under that order remains in Kansas, while the obligee leaves the state. Following non-payment, a URESA action is initiated in the foreign jurisdiction. If the obligor still resides in the same county, no conflict with Wheeler or Nixon occurs. However, if the obligor's residence is outside the authority of the district court which originally issued the support order, it would appear that the responding court's power is limited to the enforcement of the duty of support as found in the original order, and not any modification thereof. In this way, the key concern raised by the court in Wheeler and Nixon (conflicting support orders issued by district courts of coordinate jurisdiction) would be avoided, while the benefits of URESA (more effective enforcement of the order and collection of past due sums) would still be realized. If, as in Wheeler, the petition seeks an amount of support which differs from that originally given, then the proper place for its filing is in the district court which had the initial action, in order to comply with Nixon's finding that only that court has the on-going jurisdiction to modify such orders.

Finally, an intrastate situation like that in Nixon could arise. There, it is clear that the same result as found in the preceding example must be reached, i.e. if only enforcement alone is sought, the district court in the obligor's county of residence may entertain the petition. While there exists language in Nixon (226 Kan. at 221) which would suggest that no district court in Kansas should accept jurisdiction save that one which originally heard the domestic proceeding, this would appear to be dicta and is not necessary to the result. In addition, such a reading would totally obviate K.S.A. 23-482, which provides for the intrastate application of the act. Of course, a private remedy would still exist for an obligee whose ex-spouse remains in the state, namely a proceeding in civil contempt. However, it is evident that the Legislature, by enacting K.S.A. 23-482, intended that an obligee may also look to agents of the state in order to enforce a support order. Accordingly, the negation of this statute should not be inferred from Nixon, especially as that decision may stand without such a result.

In conclusion, the Kansas Uniform Reciprocal Enforcement of Support Act (K.S.A. 23-451 et seq.) is not in conflict with decisions of the state supreme court. A proceeding under the act seeks to enforce the duty of support, while the decisions of Wheeler v. Wheeler, supra, and Nixon v. Nixon, supra, deal with the modification of support orders by a district court other than the one which granted them. As long as the remedy sought is merely the enforcement of a previously established duty to pay, the county of the obligor's residence is the proper place for URESA proceedings to be litigated, pursuant to K.S.A. 23-460.

Very truly yours,

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