



THE ENFORCER

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Comity is Not Funny

You have a new client who wants to collect on a support order from a foreign country. Do you know how to proceed? You may turn to the provisions of the Uniform Interstate Family Support Act ("UIFSA"). But note, the UIFSA only applies if the order is for support, and if the foreign state is a reciprocating state. If your answer is "no" to one of those questions, what do you do? There is a solution which may have a broader application in your practice.

UIFSA governs the procedure for enforcement of foreign support orders. Its stated purpose is "to make uniform the law with respect to the subject of this act among states enacting it." MCL 552.1107. The term "State" is defined as "a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. State includes an Indian tribe and a foreign jurisdiction that has enacted a law or establish procedures for issuance and enforcement of support orders that 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, 1952 PA 8, MCL 780.151 to 780.183." MCL 552.1104(f).

The United States Secretary of State is granted the authority to determine foreign reciprocating countries that have established procedures available to residents of the United States for issuance of child support orders under 42 USC

659a(a)(1), (b)(1)(A)(i) and (ii). The U.S. Department of Health and Human Services, Office of Child Support Enforcement, maintains a list of Foreign Reciprocating Countries (FRC's). As of the time of drafting, there were 26 countries and provinces declared by the U.S. government as FRC's. What that means is that most countries in the world are not FRC's. But lack of FRC status is not a limiter; it does not mean that you can only collect on orders and judgments from countries with reciprocal agreements. You just cannot use the UIFSA to do so. You must employ another strategy.

Such was the case in *Gaudreau v Kelly*, 298 Mich App 148; 826 NW2d 164 (2012). In *Gaudreau*, custodial grandparents, Serge and Claire Gaudreau, sought to enforce a child support order issued in the province of Quebec, which is not a FRC. The father of the children, Brian Kelly, moved from Quebec to Michigan, did not pay the child support as ordered by the Quebec court, and accumulated an arrearage. Initially, the Gaudreaus attempted to register and enforce the Quebec support order with the Oakland County Friend of the Court. However, the Friend of the Court denied their request as Quebec is not a reciprocating state under the UIFSA.

Next the Gaudreaus filed a complaint for child support, requesting that the trial court declare Quebec a reciprocating state pursuant to the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), MCL 780.151, register and enforce the support order, and require Kelly to pay the arrearage. The trial court granted the Gaudreaus' complaint for support, found that it had subject matter jurisdiction, and that it could



enforce the child support order on the basis of comity. Kelly appealed, basically arguing that Quebec's non-reciprocal status was a limiter. He argued that the trial court's reliance on comity to enforce the Quebec order violated Michigan's public policy as set forth in UIFSA. However, the greater public policy of supporting children prevailed.

The Michigan Court of Appeals upheld the trial court's enforcement of the Quebec child support order under the principle of comity. The Michigan Supreme Court has defined comity as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws." *Dart v Dart*, 460 Mich 573, 574-575 n1; 597 NW2d 82 (1999). (Internal quotation omitted.) Comity "is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." *Electrolines, Inc. v Prudential Assurance Co., Ltd*, 260 MichApp 144, 156; 677 NW2d 874 (2003). *Hilton v Guyot*, 159 U.S. 113, 163-164, 16 S.Ct. 139, 40 L.Ed 95 (1895).

In *Gaudreau*, the trial court had a well developed record that met the standards required to enforce a foreign order on the basis of comity. The United States Supreme Court emphasized in *Hilton* that before invoking comity, "it is the paramount duty of the court, before which any suit is brought, to see to it that the parties have had a fair and impartial trial, before a final decision is rendered against either party." 159 US at 205. In *Dart*, the Michigan Supreme Court applied the following factors identified in *Hilton* that dictate whether a court should give full effect to a judgment of a foreign country:

"Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those

of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in the country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact." [*Dart*, at 58, quoting *Hilton*, at 202-203.]

The trial court in *Gaudreau* relied upon the following facts in making its decision to honor the Quebec support order on the basis of comity:

- (1) that it had been presented with "clear and formal pleadings of record" from the Quebec court, and that the child support order was signed by the Honorable Claude Bouchard, and was part of the Quebec court record;
- (2) that Kelly had a fair hearing in Quebec, had been represented by counsel, and actively participated in the proceeding;
- (3) that the Quebec order states that the court was in receipt of the Gaudreaus' motion for custody and child support, as well as Kelly's response;
- (4) Kelly had been ordered to appear at the hearing regarding the Gaudreaus' motion, and Kelly had retained an attorney to represent him at those proceedings. However, neither Kelly nor his attorney were present.

The trial court had been presented with a sufficient record from the Quebec court, which met the standards outlined in *Hilton* and *Dart*, to enable it to give full effect to the Quebec order. *Hilton* provides a roadmap for practitioners looking to enforce foreign orders on the basis of comity. The key is understanding the factual inquiry and standards required for its application. The use of comity as an enforcement tool is another arrow for your quiver, and need not be limited to support orders or even domestic relations.