

WEDNESDAY, SEPTEMBER 11, 2024

PERSPECTIVE

Navigating the rough waters of foreign support orders

By Gary Kearney

When spouses break up, they are often separated by emotional and psychological oceans. They may be dealing with loss of trust, anger, a sense of personal violation. They may wish to never see their unfaithful, abusive, deceitful or simply forgettable partners ever again.

Sometimes former spouses are separated by physical oceans. After the marriage is over, they may live on different continents, in different time zones. But even if they both ultimately end up living in California, a support order that was originally issued in a foreign country may be difficult to enforce in California. Their divorce or dissolution may be orders of magnitude more complicated - from a legal perspective - than if the support order came from a court in California.

When minor children are involved, the picture may be even more convoluted. A foreign court may have issued an order requiring the California-based parent to pay monetary support to family members, in California or elsewhere. But unless the correct laws and processes have been invoked, that order may not be enforceable by a California court.

We were all taught in law school that jurisdiction is the primary factor in enforcing orders. Until the mid-20th century, parties had to file a new lawsuit if they wanted a court to enforce a foreign decree in California. Today, orders and judgments from other jurisdictions can generally be enforced in California as long as they are registered with the court. Unless successfully chal-



Shutterstock

lenged - on a limited set of grounds - by the obligor, it should be simple to collect money from other jurisdictions. But unless the correct procedures are followed, enforcing that order will be anything but simple.

Multiple laws deal with enforcement of foreign support orders, but determining which law applies in any given case and what process must be followed will depend on the foreign country involved. In addition, the amount that the payor must pay is a moving target, tied to real-time monetary exchange rates.

The issues are complex and esoteric, and even seasoned family law judges don't always get things right. It is helpful to understand the evolution of laws governing foreign money judgments, but it is critical that parties seeking foreign support and their counsel work with a legal

professional - whether a judge or a mediator - who actually knows the law.

The case that proves the point

Over the course of my career in family law, I handled hundreds of complex cases, but one in particular stands out. It involved support orders for three children that were issued by a court in pre-revolution Iran. The case was so challenging for the various judges assigned to hear the case that it dragged on for more than two and a half years. Every judge but one, as well as opposing counsel, believed that the order could simply be registered and enforced. Not so.

Only one judge recognized that in the absence of a diplomatic relationship with Iran, registration was off the table. A new lawsuit was needed for the court to enforce a

Gary Kearney is a family law neutral with Alternative Resolution Centers. Over a legal career spanning more than 46 years, he specialized in complex family law issues and was counsel in more than 65 appeals and 17 writs.



foreign judgment that dated back to the time of the Shah. The amount owed was equally problematic: A monetary order for 53,000 rials per month was rendered in 1974. How much was owed more than four decades later? At what exchange rate, and with what interest?

The case from Iran illustrates the challenges faced by even the most seasoned family law practitioners when dealing with foreign support orders. Oversight of such cases should be entrusted to judges and neutrals who fully understand the applicable laws and procedures.

History of enforcing foreign judgments

Historically, foreign money judgments were only enforceable in the United States under the international common-law doctrine of “the comity of nations.” International comity allows courts to defer to the laws and judicial decisions of other jurisdictions as a token of respect and mutual understanding, rather than as a matter of obligation. It requires courts to balance competing public and private interests while considering potential conflicts between the public policies of different countries.

The guidelines for enforcement of foreign support orders were first laid out in the landmark case of *Hilton v. Guyot* ((1895) 159 S.Ct. 113, 204-205). Over the years, consistent with the Hilton guidelines, international treaties have been signed and statutes adopted to simplify the enforceability of foreign support orders in the United States. As long as a given order fell within the scope of the controlling statute or treaty, it was deemed entitled to recognition. In California, as the appellate court stated in *AO Alpha-Bank v. Yakovlev* ((2018) 21 Cal.App. 5th 189), such an order would be “enforceable in the same manner and to the same extent as a judgment rendered in this state.” (*AO Alfa-Bank, supra, at page 200.*)

International comity was the basis for recognizing foreign judgments in California until 1962, when California adopted the Uniform Foreign Money-Judgments Recognition Act (Recognition Act). The Recognition Act, which has been adopted by most states, codifies rules propounded by most courts for recognizing foreign money judgments. Its original purpose was to encourage the reciprocal recognition of U.S. judgments abroad.

The California laws governing foreign judgments, California Code of Civil Procedure Sections 1713, et seq., were amended in 2005 to reflect amendments made to the Recognition Act. Those amendments clarified the procedure for seeking recognition of a foreign judgment, added a statute of limitations, and set forth applicable burdens of proof.

Not all foreign judgments, however, are covered by the Recognition Act. For those that fall outside of its scope, such as domestic relations judgments, comity remains the basis for recognizing foreign judgments. (*See Manco Contracting Company vs Krikor Bezdikia* (2008) 45 Cal.4th 192, 198.)

Foreign support orders in California

California law recognizes four ways to collect on a foreign support judgment or order. These include the following:

- Hague Convention. The International Recovery of Child Support and Other Forms of Family Maintenance, or Hague Convention, is an international treaty for the collection of support between signatories of the convention. Currently 81 countries are signatories to the convention. Forms have been developed for the transmittal of a request to a foreign Central Authority. Generally the forms are transmitted in two languages: the official language of the country’s courts and English.

- Foreign Reciprocating Country (FRC). The federal government

has declared certain nations to be foreign reciprocating countries because they have established, or have undertaken to establish, procedures for the establishment and enforcement of duties of support. Today 18 countries are recognized as reciprocating countries. After a support order from a reciprocating country is registered, it is served on the non-registering party, who may contest registration on procedural issues as defined in Family Code Section 5700.607. Failure to timely contest the registration makes the orders enforceable.

- Uniform Interstate Family Support Act (UIFSA). Pursuant to Family Code Sections 5700.101 et. seq., a “foreign country” covered by the Act is a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and meets one of the following criteria:

- It has been declared under the law of the United States to be a foreign reciprocating country;

- It has established a reciprocal arrangement for child support with the state as provided in Section 5700.308;

- It has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under the Act; or

- It recognizes the Hague Convention with respect to the United States.

- International common-law of comity. If the foreign country is not included within the countries covered by the above processes, it can only be recognized and processed under international common-law of comity. The process begins with a complaint filed in the enforcing court asking for domestication of the foreign support orders in California. Unlike registration cases, where the orders are simply adopted without change, the court is not bound to all of the terms of the foreign order. It can fashion

an order that is consistent with California law. For example, a foreign child support order may call for payment of the judgment until a female child is married or has employment. The California court can modify this to terminate support upon the attainment of the age of 18 years or graduation from high school.

To underscore the complex nature of this subject, it should be noted that Japan is neither a Hague signatory nor an FRC and only three Canadian provinces are included in those categories.

Amount owed

Under California law, when enforcing a foreign judgment rendered in foreign currency, the amount due must be converted into U.S. Dollars using the exchange rate that was in effect at the time of entry of judgment. (*Pecaflor Construction, Inc., vs. Landes* (1988) 198 Cal. App 3rd 342; *Levi Strauss & Co. v. Aetna Casualty & Sur. Co.* (1986) 184 Cal. App. 3rd 1479, 1487.) This is predicated on the principle that if a cause of action arose in a foreign county, the date of the judgment serves as the date used for the exchange rate. (*Farmer vs. Orme* (1933) 131 Cal. App 628.)

If a support order is to be paid in installments, however, each installment is a separate judgment, and the exchange rate is measured at the time each installment becomes due. (Code of Civil Procedure Section 685.020.)

Conclusion

The discussion above is not intended to make readers expert in the law of foreign support orders. It is only to show how many pieces there are to the foreign support puzzle. When dealing with enforcement of judgments from other countries, parties and counsel will be best served by working with judges and neutrals who know the intricacies of the law.