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UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT—EXTRADITION AND RELIEF THEREFROM

Petitioner was indicted in Ohio for the crime of non-support of a minor child. The Governor of Ohio issued an extradition warrant to the Governor of California, and petitioner sought his release through a habeas corpus action stating that prior to his arrest he had petitioned for and secured from the Superior Court of San Diego County an order requiring him contribute to the support of his wife and minor child in Ohio. He claimed this procedure as his right under Section 3115.04 of the Ohio statutes which is identical to the California law.¹ Both Ohio and California have adopted the Uniform Reciprocal Enforcement of Support Act. The pertinent language of that act is contained in Section 6 and reads:²

Any obligor... who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this state during the period of such compliance.

Held: that the alleged fugitive obligor may not initiate proceedings in California, thereby voluntarily submitting to its jurisdiction, and upon compliance with its support order be relieved from extradition under the Uniform Reciprocal Enforcement of Support Act.³

The argument against allowing such proceedings as attempted by the petitioner in the instant case rests upon a construction of other sections in the act entitled "Part III.—Civil Enforcement."

¹ Ohio Rev. Code § 3115.04 (1953); Cal. Code Civ. Proc. § 1661 (1953). See Neb. Rev. Stat. § 42-706 (Reissue 1952). The Uniform Reciprocal Enforcement of Support Act and the Uniform Support of Dependents Law, which is sufficiently similar to the Reciprocal Enforcement of Support Act to permit reciprocity, have been enacted in 43 states, Hawaii, Puerto Rico and the Virgin Islands. 9A Uniform Laws Ann. 49, 82 (1953). Nebraska approved the 1950 Act on March 14, 1951.

² 9A Uniform Laws Ann. § 6 (1953).

³ Ex parte Floyd, 273 P.2d 820 (Calif. 1954).

Generally, these sections provide that the wife may institute an action for support against the husband in state *A*. State *A* then certifies the petition to state *B* where the husband is living. A hearing is held in state *B* and the husband is ordered by the court in state *B* to pay support.⁴ The court reasoned that because this procedure was set out, "the act contemplates two distinct courses of action in the enforcement of support duties: (1) extradition and (2) the initiation of civil proceedings in the demanding state, with the opportunity *thereafter* given to the obligor to submit to the subsequently assumed jurisdiction of the court in the responding state."⁵ In the instant case a civil action of support had not been started by the wife against the petitioner in Ohio. The court interprets "obligor" as used in Section 6 to be the defendant in any support proceeding. Since a civil action had not been begun against the petitioner, he was not a defendant in any support action and could not escape extradition under Section 6. The Act, however, defines "obligor" much more broadly as "any person owing a duty of support."⁶

The sections involved, Sections 5 and 6 of the Act, however, are contained in Part II of the Act which deals exclusively with criminal enforcement. These proceedings are not made dependent upon the instigation of civil proceedings under Part III. Section 6 as part of the criminal provisions is not ambiguous; ambiguity exists only when this section is read in association with the civil provisions. The court felt its definition of "obligor" was supported by the definition of "responding state" as "any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced."⁷ In the criminal part of the Act, however, no reference is made to "initiating state" or "responding state" although these terms could have been used to give Section 6 the meaning relied upon by the California court.

The policy argument has been made that by allowing the obligor to initiate proceedings even though no civil action for support is pending, he may be able to buy cheap immunity by an order based upon insufficient evidence of the family's circumstances. It is argued that a California court does not know all

⁴ For an excellent discussion see Brockelbank, *Multiple-State Enforcement of Family Support*, 2 St. Louis U.L.J. 27 (1952); Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A.B.A.J. 93 (1951).

⁵ *Ex parte Floyd*, 273 P.2d 820, 823 (1954). Emphasis supplied.

⁶ 9A Uniform Laws Ann. § 1 (3) (1953); Neb. Rev. Stat. § 42-702 (Reissue 1952).

⁷ *Ibid.*

the facts concerning the wife in Ohio. Since the husband will only give facts favorable to himself, the order of the California court may not provide adequate support for the wife in Ohio. But as the dissenting opinion points out in the instant case, it is possible for justice to be done by literally following Section 6 since, "the courts are not powerless to devise a fair and appropriate procedure to be followed which would permit the evidence of the obligee (i.e., the obligee's conditions, circumstances, or needs) to be as fully presented in our courts as would be the case if the support proceedings are initiated in the obligee's home state . . ."⁸

The Commissioner's Prefatory Note to the Act points out that Section 6 is, "designed to encourage voluntary compliance which will be much more profitable to both states than the expensive procedure of extradition."⁹ Other policy considerations are the possibility of the obligor losing his job or at the least losing his wages, his lessened chance for gainful employment in the demanding state due to a criminal record, the odds against a reconciliation of the family under such a situation and even the possibility of the husband becoming an added expense to the state.¹⁰

This decision which makes extradition mandatory uponn the obligor unless civil proceedings are first brought by the obligee in the demanding state seems clearly contradictory to all the policy considerations behind the Act and the practical objective of obtaining voluntary compliance.

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⁸ Ex parte Floyd, 237 P.2d 820, 823 (Calif. 1954).

⁹ 9A Uniform Laws Ann., Pocket Part, 54 (1953).

¹⁰ Supra note 5. Report of Judiciary Committee on L.B. 61, Neb. Legis., 62d Sess. (1951).