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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Marriage of SHIRLEY and KEITH GRAY.	B287867
SHIRLEY GRAY, Respondent, v. KEITH GRAY, Appellant.	Los Angeles County Super. Ct. No. BD610556

APPEAL from an order of the Superior Court of Los Angeles County, Dean Hansell, Judge. Vacated and remanded with directions.

Oliveri Law, Matthew M. Oliveri and Meghan E. Oliveri for Appellant.

Alison F. Triessl for Respondent.

Appellant Keith Gray appeals from an order granting respondent Shirley Gray's request to modify a spousal support order contained in a Utah divorce decree and judgment.[1] Keith contends the trial court erred by increasing spousal support without the requisite showing of a material change in circumstances. As we explain, however, the statutory law pertaining to interstate support orders permits enforcement—but not modification—of foreign spousal support orders. We therefore vacate the trial court's order modifying spousal support.

FACTS AND PROCEDURAL HISTORY

In 2006, Keith and Shirley divorced in Utah after being married for almost 19 years. On December 28, 2006, a Utah court entered a stipulated judgment, which both parties signed. Shirley was awarded assets in the divorce, including the marital home, a vehicle, and one-half of the parties' retirement account. The judgment also obligated Keith to pay spousal support, which the parties agreed would be $3,500 per month. The support was to continue until Shirley remarried, cohabitated, or June 30, 2025.

In 2007, both Shirley and Keith relocated to California, with Keith taking up residence in Northern California and Shirley in Southern California. The Utah judgment of dissolution was registered in California on December 10, 2014.[2]

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[1] As is customary in family law cases where the parties share the same surname, we refer to them by their first names. (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1466, fn.1.)

[2] Although the registration documents are not part of the record on appeal, both parties agree the Utah decree was registered in this state in 2014.

On October 12, 2016, Shirley filed a request for order (RFO) seeking an upward modification of monthly spousal support from $3,500 to $13,000 and an extension of the 2025 termination date. On January 18, 2017—after failed attempts at mediation—Shirley filed an amended RFO seeking the same relief. She cited Keith's increased income, her inability to work due to health problems, and her recent bankruptcy. Keith opposed the request, stating his increase in earned income was due to post-dissolution efforts and that he had no evidence about Shirley's purported health issues. Shirley replied, reiterating her allegations and noting the cost of living is higher in California than it is in Utah.

On December 4, 2017, after an evidentiary hearing, the trial court issued an order modifying the Utah dissolution judgment by increasing monthly spousal support from $3,500 to $6,500, to continue through the termination date specified in the Utah judgment. The court also ordered Keith to pay $5,000 in attorney fees to Shirley's counsel.

This timely appeal followed.

DISCUSSION

In ruling on the modification request, the trial court concluded it had the power to modify spousal support under Family Code section 3651,[3] because "neither party pointed to any provision in the 2006 agreement that, in any respect, limited the power the court could make such a modification."[4] However,

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[3] Statutory references are to the Family Code unless otherwise specified.

[4] Section 3651, subdivision (d) provides: "An order for spousal support may not be modified or terminated to the extent that a written agreement or, if there is no written agreement, an oral agreement entered into in open court between the parties,

section 5700.211, enacted in accordance with the Uniform Interstate Family Support Act (UIFSA), prohibits modification of a spousal support order issued by a foreign state deemed to have continuing, exclusive jurisdiction over the order.[5] There is no indication the trial court considered section 5700.211, or was directed to any UIFSA provisions by the parties.

We asked the parties to file supplemental letter briefs addressing whether—in light of UIFSA—the trial court lacked jurisdiction to modify a spousal support order rendered by a Utah court. The parties submitted their responses, with Keith asserting the trial court lacked jurisdiction and Shirley contending otherwise. In arguing in favor of jurisdiction, Shirley makes no mention of the statutes enacted under UIFSA. Instead, she asserts, "Utah relinquished its continuing exclusive jurisdiction, or never had such jurisdiction in the first place." As we explain, while a rendering state may lose jurisdiction

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specifically provides that the spousal support is not subject to modification or termination."

[5] Section 5700.211 provides in pertinent part:

> "(a) A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.
>
> "(b) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country."

over *child* support under limited circumstances, its jurisdiction over *spousal* support is permanent and exclusive.

1. *The rule at issue is one of subject matter jurisdiction*

" ' "Subject matter jurisdiction . . . is the power of the court over a cause of action or to act in a particular way." ' " (*Saffer v. JP Morgan Chase Bank, N.A.* (2014) 225 Cal.App.4th 1239, 1248.) It is conferred by constitutional or statutory law. (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42.) By contrast, " 'the lack of subject matter jurisdiction means the entire absence of power to hear or determine a case; i.e., an absence of authority over the subject matter.' " (*Saffer*, at p. 1248.) Section 5700.211 confers exclusive jurisdiction over modifications of spousal support orders on the issuing state. Because the rule confers jurisdiction on one court, and explicitly withholds it from another, it is a rule of subject matter jurisdiction. (§ 5700.211; *Lundahl v. Telford* (2004) 116 Cal.App.4th 305, 312 (*Lundahl*) [question of whether California had exclusive jurisdiction over spousal support is one of subject matter jurisdiction].)

An order entered by a court without subject matter jurisdiction is void and vulnerable to direct or collateral attack at any time. (*San Diegans for Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416, 427.) Thus, it may be considered for the first time on appeal (*People v. Lara* (2010) 48 Cal.4th 216, 225), and requires no particular procedural vehicle.[6]

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[6] For example, in *In re Marriage of Oddino* (1997) 16 Cal.4th 67, the question of the trial court's "subject matter jurisdiction was not raised by the parties in either of the lower courts and was not addressed by the Court of Appeal." (*Id.* at p. 73.) The issue was raised "for the first time in [the] petition for review." (*Ibid.*) Nevertheless, the California Supreme Court considered itself bound to address the issue. (*Ibid.*; see also *Minor v.*

(*Great Western Casinos, Inc. v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4th 1407, 1417–1418.)

The existence of subject matter jurisdiction is a question of law, which we review de novo. (*Robbins v. Foothill Nissan* (1994) 22 Cal.App.4th 1769, 1774; *Lundahl, supra,* 116 Cal.App.4th at p. 312.)

2. *The UIFSA*

The Uniform Interstate Family Support Act (UIFSA), now codified in California at section 5700.101 et seq., provides a comprehensive and efficient scheme for the enforcement of foreign support orders.[7] All 50 states have adopted UIFSA,

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Municipal Court (1990) 219 Cal.App.3d 1541, 1547.) Thus, while it is unfortunate Keith's counsel failed to question the trial court's jurisdiction, we must address the issue—and would be compelled to do so even if Keith had cross-filed a request for a modification in his favor. (*In re Marriage of Horowitz* (1984) 159 Cal.App.3d 377, 381, fn. 4 [wife not estopped from jurisdictional challenge because she herself sought increase at modification hearing; "jurisdictional challenges . . . can be asserted for the first time on appeal, regardless of inconsistent conduct below"]; see also *Douglass v. Serenivision, Inc.* (2018) 20 Cal.App.5th 376, 385 ["parties may not confer subject matter jurisdiction upon a court by consent, waiver, or estoppel because our jurisdiction is defined by our Constitution or our Legislature, not by litigants" (italics omitted)].)

[7] Senate Bill No. 646 (2015-2016 Reg. Sess.), which adopted the 2008 amendments to UIFSA, took effect on January 1, 2016. (Stats. 2015, ch. 493, § 5, eff. Jan. 1, 2016; see *County of Los Angeles Child Support Services Dept. v. Superior Court* (2015) 243 Cal.App.4th 230, 237, fn. 1.) UIFSA was previously codified at section 4900 et seq. The pertinent provisions relating to jurisdiction over spousal support orders have remained unchanged since UIFSA's adoption in 1997. (Compare

with California and Utah adopting it in 1997. (*de Leon v. Jenkins* (2006) 143 Cal.App.4th 118, 124 (*de Leon*); *In re Marriage of Haugh* (2014) 225 Cal.App.4th 963, 968 (*Haugh*); Cal. Stats. 1997, ch. 194, § 2, codified at Fam. Code, §§ 4900–4976; Utah Laws 1997, ch. 232 [renumbering UIFSA codification at Utah Code from § 78-45f-100 to § 78-45f-901].)

"UIFSA was designed to eliminate the 'multiple support order system' that had evolved under the previous uniform statute, the Revised Uniform Reciprocal Enforcement of Support Act (RURESA)." (*de Leon*, *supra*, 143 Cal.App.4th at p. 124.) Under RURESA, new support orders in a sister state were deemed to be a cumulative remedy, not a modification of the original order. (*Lundahl*, *supra*, 116 Cal.App.4th at p. 317.) This left obligors facing multiple support obligations. (*Id*. at pp. 317-318.) In contrast, UIFSA ensures that in every case only one state exercises jurisdiction over support at any given time. (*Haugh*, *supra*, 225 Cal.App.4th at p. 968.) "The 'cornerstone' of the UIFSA is the concept of 'continuing, exclusive jurisdiction,' . . . ." (*Id.* at p. 969; see also *In re Marriage of Gerkin* (2008) 161 Cal.App.4th 604, 612.)

Under UIFSA, the rules differ for spousal support and child support. With regard to child support orders, the issuing state retains exclusive jurisdiction "only for as long as at least one of the parties—the obligor, the obligee, or the child—resides in the issuing state." (*In re Marriage of Rassier* (2002) 96 Cal.App.4th 1431, 1437 (*Rassier*); § 5700.205, subd. (a), formerly § 4909, subd. (a).) The issuing state loses jurisdiction over child support if all relevant parties have permanently left the issuing state,

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§§ 5700.211 & 5700.603, subd. (c) with former §§ 4909, subd. (f) & 4952, subd. (c).)

or the relevant parties expressly consent to allow another state to assume exclusive jurisdiction. (*Haugh*, *supra*, 225 Cal.App.4th at p. 969; § 5700.205, subd. (a), formerly § 4909, subd. (a).)

However, as decisional law in California recognizes, a state issuing a spousal support order has continuing, exclusive jurisdiction over the support order throughout the entire existence of the support obligation. (*In re Marriage of Connolly* (2018) 20 Cal.App.5th 395, 403; § 5700.211, subd. (a), formerly § 4909, subd. (f).) Thus, " 'the CEJ [Continuing, Exclusive Jurisdiction] of the issuing State over a spousal support order *is permanent*.' " (*Lundahl, supra,* 116 Cal.App.4th at pp. 317–318, italics added.) This rule is firmly established by UIFSA, and has been in existence since its inception. (*Id.* at p. 318; *Connolly*, at p. 403.).

3. *The trial court lacked jurisdiction to modify the Utah-issued spousal support order*

In this case, a Utah court ordered spousal support as part of an original judgment of dissolution. In so doing—and under the UIFSA—the Utah court obtained continuing, exclusive jurisdiction over spousal support between Keith and Shirley. (*State, Dept. of Human Services v. Jacoby* (Utah Ct.App. 1999) 975 P.2d 939, 945–946 (*Jacoby*) [Utah obtains " 'continuing, exclusive jurisdiction' " over a spousal support order issued by its own tribunals].) Utah's jurisdiction continues throughout the existence of the support obligation and—contrary to Shirley's suggestion—cannot be relinquished by the relocation of the parties or their appearance in a Los Angeles Superior Court. (See *Rassier, supra,* 96 Cal.App.4th at p. 1437 [noting for purposes of spousal support under UIFSA, "the residence of the parties is irrelevant as to whether the issuing court has continuing exclusive jurisdiction"]; *Sampsell v. Superior Court*

(1948) 32 Cal.2d 763, 776-777 [submission of personal jurisdiction to a court does not confer jurisdiction over the subject matter of an action], questioned on other grounds by *Robinson v. Superior Court* (1950) 35 Cal.2d 379, 385.)

To the extent the Utah divorce decree and judgment was registered in California, that registration—consistent with the Full Faith and Credit Clause—allows *enforcement* of the Utah-issued support order. (See *Scheuerman v. Hauk* (2004) 116 Cal.App.4th 1140, 1144; § 5700.601, formerly § 4950; § 5700.603, subd. (c), formerly § 4952, subd. (c); *In re Marriage of Crosby & Grooms* (2004) 116 Cal.App.4th 201, 206.) It does not confer jurisdiction on a California tribunal to alter or modify the order. (*Scheuerman*, at p. 1144 ["although the California court must recognize and enforce a registered order, it may not modify the order if the issuing tribunal had jurisdiction"].) Thus, the registration of the Utah spousal support order in California for enforcement has no bearing on the outcome of this case.[8]

Accordingly, the trial court lacked the power to modify the Utah spousal support order. If either Shirley or Keith wishes to modify the spousal support order, they must attempt to do so in the Utah courts. (See *Rassier*, *supra*, 96 Cal.App.4th at pp. 1434–1438 [notwithstanding passage of time and relocation of parties to California, Florida—as the issuing court—"retains jurisdiction over [the spouses] for the purpose of determining whether the support order should be modified"]; accord, *Jacoby*,

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[8] Section 5700.603, subdivision (c) provides: "Except as otherwise provided in this part, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction." As noted, UIFSA contains exceptions for child support but not spousal support orders.

supra, 975 P.2d at pp. 945–946 ["a Virginia court issued the spousal support order and therefore, the order could not be modified by the trial court in Utah"].) The trial court's order in this case must be deemed void. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196 ["any judgment or order rendered by a court lacking subject matter jurisdiction is 'void on its face' "].)

DISPOSITION

The order modifying spousal support is vacated. The matter is remanded to the trial court with directions to enter a new order dismissing Shirley Gray's amended RFO for lack of jurisdiction.

The spousal support order contained in the 2006 Utah divorce decree and judgment remains the controlling order between the parties.

The parties shall bear their own costs on appeal.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.