

MAUREEN WOLFE, Petitioner
v.
RALPH VERNON WOLFE, Respondent
Civil Action No. 18-74
Trial Division of the High Court
Marshall Islands District
August 1, 1974

Uniform Reciprocal Enforcement of Support Act action. The Trial Division of the High Court, Turner, Associate Justice, held that a support order could not be granted.

Domestic Relations—Uniform or Reciprocal Statutes—Prior Orders

In action under Massachusetts Uniform Reciprocal Enforcement of Support Act, Trust Territory court could not enter a support order where neither the Massachusetts court nor the court in the state in which the divorce was granted, North Carolina, had entered a support order, and where there was no showing as to the needs of the children and the ability of the parents to meet those needs.

TURNER, Associate Justice

A petition under the Uniform Reciprocal Enforcement of Support Act (Commonwealth of Massachusetts G. L.

Chap. 273 A) was received by the Clerk of Courts of the Mariana Islands District. He transmitted the file to the Clerk of Courts of the Marshall Islands District, it appearing the respondent was residing on Kwajalein Island in the Marshall Islands.

Summons was issued and proceedings commenced in accordance with Title 39, Chapter 9, Trust Territory Code, being the uniform act adopted by the Congress of Micronesia for the Trust Territory. Hearing was held, at which time the respondent and his counsel appeared and submitted in evidence a certified copy of the decree of absolute divorce granted petitioner in the Forsyth County, North Carolina court. Also submitted was the certified and attested copy of the Massachusetts reciprocal support act. Upon the submission of the two instruments, counsel for the respondent moved to dismiss the petition. The motion was granted.

The court finds a number of deficiencies in the proceedings. The first of these is that the North Carolina divorce decree made no provision for the support of the plaintiff's wife, nor did the decree make any mention of minor children of the parties, and, of course, made no award of custody nor order for support of minor children.

The petition before this court was executed by a member of the staff of the "Support Unit Public Welfare" for petitioner. The welfare officer asserted in his petition that petitioner, as shown in the case caption but not in the pleading itself, and respondent were the parents of two minor children and that the "children are entitled to support from the respondent under the provisions of the Uniform Reciprocal Enforcement of Support Act of this Commonwealth." The Massachusetts Act provides:

"Section 4. Duties of support enforceable under this chapter are those imposed under the laws of any state in which the alleged obligor was present during the period for which support is sought or

in which the obligee was present when the failure to support commenced.”

No law of the Trust Territory mandatorily imposes an obligation of support for minor children. The only statute pertaining to support is 39 TTC 103 which says:

“In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children for their support, for support of either party . . . as it deems justice and the best interests of all concerned may require”

This court is not granting a divorce and accordingly may not make an order for support under this statute. It would be preposterous to expect this court to enter a support order on the information before it. Neither North Carolina nor Massachusetts have entered an order which this court could enforce, nor has there been any showing by the Massachusetts welfare department as to the needs of the children or the ability of the mother to meet those needs.

Assuming the mother (the children being the obligees) was present with her children in Massachusetts “when the failure to support commenced,” there is nothing before the court to show what duties of support should be imposed upon respondent under Massachusetts law.

The court recognizes, in general terms, the obligation of a divorced father to support his minor children. This court cannot enter a support order, however, without any information as to the needs of the children and the ability of the respondent father or of the mother to meet those needs.

This court has in the past been willing to enter an order for support of minors even when the divorce decree made no provision for such support as is the situation in the North Carolina decree in the present case. When an order for support has been entered by this court, the parties (and the minor children) were before the court and the order was based upon both need and financial ability to

pay. This court said in *Ngodril v. Kumaichi*, 5 T.T.R. 212, in a case brought under Palau District law:

“Almost without exception, the American view is that child support may be ordered after a divorce decree which contained no provision for support, . . . The husband, however, owes his former wife an obligation to share in the property acquired during the marriage, as well as the statutory duty to provide support for his children. In the present case, a fair solution is to require the husband to provide for the children in the future by dividing the property, or its value, with his former wife for the benefit of their children. It does not necessarily follow that the same solution should be applied to future cases. Other determinations by the courts should be made upon the facts presented and should take into consideration the amount of individual property acquired during the marriage and the disposition and needs of the children after the divorce.”

An order for support must be supported by adequate probative evidence. The welfare department of Massachusetts has offered nothing to support its prayer for an order for support.

There is one other aspect of this case that deters us from entering any order. The Trust Territory is not a “state” as defined in the Massachusetts act since it is neither a territory nor possession of the United States. This court said in *Overby v. Olson*, 7 TTR 49, Marshall Islands Civil Action No. 25-73:

“As previously indicated, the court will adhere to the Congressional enactment (meaning the Congress of Micronesia) unless it is challenged and held to be invalid. A hearing on the propriety of the act would require the response of the petitioner either in person or by deposition as provided in 39 TTC 414.”

In the present case, the challenge is not to the Trust Territory Act but is directed toward the applicability of the Massachusetts Act to the Trust Territory because this jurisdiction does not come within the definition of “state” in the Massachusetts law.

There is another reason for holding the Massachusetts act not applicable. Under the Trust Territory law, the "initiating state" or "rendering state" is defined in 39 TTC 302 as a "state in which the court has issued a support order." As has been previously said none has been issued in the present case and there is "nothing" therefore to enforce under Trust Territory law.

It is possible, as has been demonstrated in the past, to come before this court and obtain an order enforcing a support order from a foreign jurisdiction when this court has jurisdiction of the obligor. The petitioner, the welfare department of Massachusetts, has not demonstrated any obligation upon the respondent. It is therefore,

Ordered, that the petitioner shall be and hereby is denied relief and the petition filed herein is dismissed.