

The 'Federalization' of Child Support Issues

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SINCE 1986, NEW YORK'S family laws have undergone major reform. In the area of child support, change was caused partly by the enactment of the Child Support Standards Act¹ and partly by the Court of Appeals' liberal construction of its provisions in an attempt to give broad meaning to the phrase "the best interest of the child."²

A similar approach was adopted by the Court of Appeals in custody cases, where it has emphasized viewing the totality of the circumstances to determine the best interests of the child.³ While the rights of both parents are significant factors to be considered in custody disputes the Court has emphasized that the rights and needs of the children must be accorded the greatest weight, since they are innocent victims of their parents' decision to divorce.

'Federalization' of Family Law

This "reform" of New York's child support laws came about primarily because of the "federalization" of family law, which began with the Social Security Amendments of 1975 that enacted Title IV-D of the Social Security Act.⁴ Although there were earlier amendments to the Social Security Act in 1950 and 1968, which required the then Department of Health, Education and Welfare (HEW) to "encourage" the states to improve their child support programs, they were largely ineffectual. One of the important provisions of the 1975 amendment was the creation in HEW of the Office of Child Support Enforcement, which was made responsible for the nationwide child support enforcement program. The Office of Child Support Enforcement (OCSE) was authorized to promulgate child support standards that states had to meet or lose 5 percent of federal Aid For Dependant Children. If, on the other hand, a state's enforcement program met federal standards, 75 percent of the program's cost was paid out of HEW funding. Regional OCSE offices were also established for liaison with state agencies operating under Title IV-D. Extensive regulations were issued on the maintenance of case

records, location of absent parents, establishment of paternity and support obligations, enforcement of support orders, and cooperation among states. In 1982 another federal statute established a federal Parent Locator Service, which was available to the custodial parents of children who were on welfare. A network of state Parent Locator Services was tied in to the federal service. In addition, access was given to records of the Internal Revenue Service. This facilitated the location of spouses who were not in compliance with court support orders and allowed the interception of federal tax refunds.

The Child Support Amendments of 1984⁵ were intended to build on Title IV-D. They established certain procedures and remedies for the collection and enforcement of child support orders, which were made available to both AFDC and non-AFDC families. States had to set up mandatory income withholding procedures. This further "federalized" the enforcement and collection of child support. It was the most significant legislation on child support, since all states adopted statutes for the interstate enforcement of the child support obligation.

The amendments expedited judicial and administrative processes in child support cases. The interception of state and federal tax refunds was authorized, as was the imposition of liens on real and personal property and the posting of security or bonds to guarantee support payments. In addition, credit bureaus became entitled to information on support arrearages in excess of \$1,000, and statutes of limitation on the establishment of paternity had to be extended at least until the child's 18th birthday.

States were required to establish a one-time commission to study, educate and recommend improvements in their child support systems, and they were had to publish their AFDC programs. States also were required to collect alimony or maintenance for the custodial parent, as well as child support where a court order on spousal support existed. Health insurance was mandated as part of a support order if available to the obligor at a reasonable cost.

Restructured Funds

Federal matching funds and incentive payments were restructured, with the latter encouraging non-AFDC collections as well as AFDC collections. This provision supplied the leverage needed for implementation of the 1984 statute, since a loss of AFDC funding would be an economic disaster for most if not all states. Oct. 1, 1989, was the deadline for states to formulate statutory guidelines for child support, including schedules as to the amount of support.

To comply with the federal requirements The New York State Support Enforcement Act of 1985 was passed and signed into law on Aug. 7, 1985. In 1986, the Bradley Amendment to Title IV-D⁶ directed states to enact laws that prohibit retroactive reduction of a child support arrearage

stemming from a court order. This prompted the New York State Support Enforcement Act of 1986,⁷ in which the Legislature carved out a special category for child support arrears, which barred any reduction or cancellation. The law created the current version of Domestic Relation Law §244, which mandates that the court "shall make an order directing the entry of judgment for the amount of arrears of child support," without exception.⁸

Congress next enacted the "Family Support Act of 1988."⁹ As a consequence of the 1984 Title IV-D amendments, each state had to have statewide child support guidelines in effect by Oct. 18, 1989. On July 17, 1989, the "Child Support Standards Act" became New York law. It adopted a numerical formula for determining the level of child support, based on a percentage of the combined gross income of the parents and the number of children to be supported. This formula must be used unless the court determines that its application is unjust or inappropriate.¹⁰

The federal "Child Support Recovery Act of 1992" made it a federal crime to willfully fail to pay a past-due support obligation with respect to a child who resides in another state.¹¹ In 1994, Congress adopted the "Full Faith and Credit for Child Support Orders Act," which requires each state to enforce a child support order, by a court of another state, that is consistent with the act, according to the order's own terms, and not to permit a modification of such an order except in accordance with the act.¹²

The purposes of this act are to facilitate the enforcement of child support orders among the states; to discourage continuing interstate controversies over child support; and to avoid jurisdictional competition and conflict among state courts in the establishment of child support orders.

The "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" made further amendments to Title IV-D,¹³ which will have effects into the next century. For a state to remain eligible for the federal funding of child support enforcement, it must have had in effect by Jan. 1 the Uniform Interstate Family Support Act. Congress also amended the "Full Faith and Credit for Child Support Orders Act" and amended Title IV-D to require states to adopt expedited administrative and judicial procedures for establishing paternity and for establishing, modifying and enforcing support obligations.

These expedited procedures must include methods under which statewide jurisdiction is exercised over the parties in child support cases. States must also adopt procedures under which, at least every three years, the state must, with respect to a support order being enforced, review and, if appropriate, adjust it in accordance with the child support guidelines; apply a cost-of-living adjustment to the order; or use automated methods to review and adjust the orders.

Custody Revisions

"Federalization" has not been limited to child support laws. It has been extended into the custody area as well. The "Parental Kidnapping Prevention Act of 1980"¹⁴ has in large measure preempted state law as to child custody jurisdiction.¹⁵ It established the applicable rules for full faith and credit purposes insofar as interstate recognition, enforcement and modification of child custody decrees are concerned. Because of the Supremacy Clause of the federal Constitution, the Parental Kidnapping Protection Act controls and supersedes any inconsistent state law, including the Uniform Child Custody Jurisdiction Act, which is in effect, with slight variations, in all 50 states.

The Hague Convention on the Civil Aspects of International Child Abduction was ratified by Congress on July 1, 1988. Its objective is to deter international child abduction and to provide a mechanism for the prompt return of abducted children to their home country where the tribunals there can resolve the custody issues on the merits.

The "International Child Abduction Remedies Act," whose provisions are additional to those of the treaty, also took effect on July 1, 1988. Its purpose was to establish procedures for implementing the treaty in the United States and to empower courts in the United States to determine only rights under the convention and not the merits of any underlying custody dispute.¹⁶ The act¹⁷ grants concurrent jurisdiction to federal and state courts to enforce the Convention.

The federal "International Parental Kidnapping Prevention Act," which provides criminal penalties for unlawfully obstructing parental rights outside of the United States, was enacted in December 1993.¹⁸ It, too, is in addition to The Hague Convention and specifically provides that it shall not detract from it.¹⁹

In the last few years the reach of "federalization" has extended into other areas of family law. For example, in 1994 Congress enacted "The Full Faith and Credit To Protection Orders Act," which requires that any protection order issued by the court of one state or Indian tribe, which is consistent with the act, must be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or tribe.²⁰

In 1996 Congress attempted to prohibit same-sex marriages by enacting the "Defense of Marriage Act." It provides that no state is required to give effect to any public act, record or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state, or a right or claim arising from such relationship.²¹

An Intrusion?

We believe that the flurry of federal legislation in the past few years is only the beginning of federal intrusion into family law matters. Although much of this legislation has been enacted in an attempt to enforce child

support obligations we are concerned that future legislation may be politically motivated and may unjustifiably erode individual rights and liberties. We must not allow this to happen.

Notes

- (1) Laws of 1989, ch 567, §§1 and 2.
 - (2) See for example *Cassano v. Cassano*, 85 NY2d 645 and *Graby v. Graby*, 87 NY2d 605.
 - (3) See, for example *Tropea v. Tropea*, 87 NY2d 727 (1996); *Friederwitzer v. Friederwitzer* (1982). 55 NY2d 89 and *Esbach v. Esbach* (1983). 56 NY2d 167.
 - (4) Pub.L. No.93-647, 88 stat 2337(1975). (codified at 42 USC §§661-669).
 - (5) Pub.L.No. 98-378, 98 Stat 1305 (1984).
 - (6) 42 USC §666(a)(9).
 - (7) Laws of 1986, Ch 892, §1, effective Aug. 5, 1986.
 - (8) With regard to "arrear of any other payments," the court must enter judgment for the full amount unless the defaulting spouse shows good cause for failing to request relief before the arrears accumulated.
 - (9) Pub.L. 100-485, 1988 USCCAN (102 stat). 2343.
 - (10) Laws of 1989, Ch 567, §§1,2. codified at DRL §240(1-b). and FCA §413 (1)(b).
 - (11) Added Oct. 25, 1992, P. L. 102-521, 2(a), 106 Stat.3403. Amended Oct. 11, 1996, P. L. 104-294, Title VI, 607(l), 110 Stat. 3512.
 - (12) Added Oct. 20, 1994, P. L. 103-383, 3(a), 108 Stat. 4064; Aug. 22, 1996, P. L. 104-193, Title III, Subtitle C, 322, 110 Stat. 2221.
 - (13) P.L. 104-193, s 321, 110 Stat. 2221.
 - (14) Added Dec. 28, 1980, P.L. 96-611, §8(a), 94 Stat. 3569. Codified at 28 USC 1738A.
 - (15) *Enslein v. Enslein* (1985, 2d Dept). 112 AppDiv2d 973.
 - (16) Pub L. No.100-300,102 Stat.437-442; codified as amended at 42 USC §§11601-10; See 42 USC §11601 (b). for the congressional intent.
 - (17) See 42 USC §11606.
 - (18) Added Dec. 2, 1993, P. L. 103-173, 2(a), 107 Stat. 1998. Codified at 18 USC §1204.
 - (19) 18 USC §1204 (d).
 - (20) Added Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch 2, 40221(a), 108 Stat. 1930. Codified at 18 USC §2261.
 - (21) Added Sept. 21, 1996, P. L. 104-199, 2(a), 110 Stat. 2419. Codified at 28 USC §1738C.
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