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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ANNIE P. ROBERTO,)	URESА CIVIL ACTION
)	NO. 90-724
Petitioner,)	
)	
v.)	DECISION AND ORDER
)	AWARDING CHILD SUPPORT
ANTONIO Q. ROBERTO,)	PURSUANT TO 8 CMC § 1511
)	ET SEQ. (URESА)
Respondent.)	
_____)	

This matter was submitted for decision on September 10, 1992, the parties having waived hearing. Petitioner Annie P. Roberto ("Annie") claims entitlement to current child support and arrears under the terms of an Order for Separate Maintenance issued by the Superior Court of Guam on December 28, 1978. Respondent Antonio Q. Roberto ("Antonio") claims that his obligations are limited to those contained in an order issued on November 14, 1986 by the Superior Court of California, Kern County, acting as responding state under California's RURESА statute. Both parties ask this Court to modify the amount of monthly support set forth in the original Guam order; Annie requests additional monthly maintenance, while Roberto requests both prospective and retroactive reduction of his support duties.

FOR PUBLICATION

1 I. FACTS

2 Annie and Roberto were married in 1960 and divorced on Guam
3 on July 10, 1980. They had five children: Edward, born January
4 27, 1960; Andrew, born January 18, 1965; Philip, born September 2,
5 1970; Stephen, born July 4, 1974; and Mark, born August 27, 1977.
6 Under the terms of the divorce decree,^{1/} Antonio was obligated to
7 pay \$175.00 per month, per child, until each reached majority.
8 Antonio's monthly obligations under the original order are
9 summarized below:

10	December 1978 through January 1983:	\$700.00 per month
11	February 1983 through August 1988:	\$525.00 per month
12	September 1988 through July 1992:	\$350.00 per month
13	July 1992 through August, 1995:	\$175.00 per month

14 See Judgment for Separate Maintenance, Domestic Case No. 533-78.

15 In 1986, Annie brought an action to enforce this order. As
16 Antonio was then residing in California, the case was forwarded
17 under California's Revised Uniform Reciprocal Enforcement of
18 Support ("RURESA") statute. The California court found that
19 Antonio "was current on his child support" until January 1, 1980.
20 See Respondent's Exhibit A. Further, the California Order found
21 that "From 1-1-80 through 5-31-83 there was an agreement that Mr.
22 Roberto pay \$100 on the Long Beach mortgage -- a debt awarded to
23 Mrs. Roberto -- in lieu of child support." Id. Based on
24 Antonio's non-payment for other periods, however, the court found
25 him in arrears in the amount of \$19,627.50 for the period from
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28 ^{1/} The divorce decree incorporated the terms of the Superior Court's December 28, 1978 Judgment for Separate Maintenance.

1 December 1, 1978 through July 31, 1986. Id. Antonio paid this
2 amount in July 1987. See Respondent's Exhibit C.

3 In addition, the California court found that Antonio had a
4 current duty of support in the amount of \$91.00 per minor child
5 per month. See Respondent's Exhibit B. However, the court's
6 Order made no mention of the original Guam order and did not state
7 that it intended to modify or supersede the Guam order.

8 The parties submitted conflicting evidence as to Antonio's
9 payment history since July 31, 1986. According to Petitioner's
10 records as kept by the Child Support Enforcement Division of the
11 Guam Attorney General, Antonio paid \$18,186.00 between August 1,
12 1986 and July 31, 1992. Antonio claims that he made monthly
13 payments of \$273.00 to the Kern County District Attorney
14 throughout this period, and he has submitted records of cancelled
15 checks and money orders totalling \$18,500.00. See Respondent's
16 Exhibit C.^{2/}

17 Annie now claims arrears totalling \$25,318.00, based on the
18 Guam Child Support Enforcement Division's records going back to
19 1978. Of this amount, \$12,900.00 dates from before July, 1986;
20 over \$9,000.00 dates from 1978 and 1979, a period for which the
21 California court found no arrearages owed.

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24 ^{2/} From the records submitted by the parties, it is unclear
25 how long it usually took for the Guam Child Support Enforcement
26 Division to receive the payments Antonio made to the Kern County
27 District Attorney, or whether the California authorities ever
28 transferred certain payments to Guam. In particular, the Guam
records show no payments from May through October, 1990, although
Antonio submitted cancelled checks paid to the Kern County
District Attorney throughout this period. Compare "General
Testimony For URESA," submitted by Petitioner, with Respondent's
Exhibit C.

1 In addition to the arrearage dispute, both parties request
2 that this Court modify Antonio's current child support
3 obligations, as described below.

4 **II. ISSUES PRESENTED**

5 1. What is the effect of the 1986 California RURESA Order
6 on the 1978 Guam Support Order, both in its adjudication of
7 arrearages and in its establishment of monthly support payments?

8 2. Should this Court modify Antonio's monthly support
9 obligations?

10 **III. ANALYSIS**

11 **A. EFFECT OF THE CALIFORNIA ORDER**

12 Both parties cite 8 CMC § 1555, which provides:

13 A support order made by a Court of the Commonwealth
14 pursuant to this Chapter does not nullify and is not
15 nullified by a support order made by a court of another
16 state pursuant to a substantially similar act or any
17 other law, regardless of priority of issuance, unless
18 otherwise specifically provided by the Court. Amounts
paid for a particular period pursuant to any support
order made by a court of another state shall be credited
against the amounts accruing or accrued for the same
period under any support order made by a Court of the
Commonwealth.

19 Guam's URESA statute has a similar provision (see Guam C.C.P.
20 §1528), as did California at the time the Kern County Order
21 issued. (see Cal. C.C.P. § 1689; In Re Marriage of Straeck, 203
22 Cal. Rptr. 69 (Cal. App. Ct. 1984). The California order does not
23 explicitly modify -- or even mention -- the Guam order in the
24 course of setting Antonio's support obligation at \$91.00 per
25 child.

26 Authority from other jurisdictions also holds that, in the
27 absence of express modification by the URESA responding court, an
28 original support order will stand. Taylor v. Vilcheck, 745 P.2d

1 702, 705 (Nev. 1987) (URESAs Court's reduction of monthly support
2 payments "has no effect on the prior decree issued by the
3 [original] court" (emphasis in original)); Gibson v. Gibson, 800
4 P.2d 1011, 1015 (Haw. App. 1990) (under Hawaii and Washington
5 URESA, "the existence of one or more valid court orders does not
6 preclude the existence of one or more other valid court orders");
7 Kammersell v. Kammersell, 792 P.2d 496, 498 (Utah App. Ct. 1990);
8 In Re Marriage of Popenhager, 160 Cal. Rptr. 379, 383 (Cal. App.
9 Ct. 1979) (under California URESA, modification must be
10 specifically pleaded and litigated in responding court for second
11 order to modify original decree).

12 In light of this authority, the Court holds that the 1986
13 California judgment did not modify or alter in any way Antonio's
14 support duties under the 1978 Guam decree. While Antonio resided
15 in California, he was subject to that state's enforcement powers;
16 however, that fact did not alter his concurrent obligations under
17 the original decree. Taylor v. Vilcheck, 745 P.2d at 705. Based
18 on the foregoing, the Court finds that Antonio's support
19 obligations since July 31, 1986 have accrued at the rate of
20 \$525.00 (and later \$350.00) per month, minus the payments he made
21 under the terms of the California order.

22 **B. ARREARAGES AFTER JULY 1986**

23 Respondent claims that this Court lacks the power to order
24 payment of arrearages without a prior adjudication by the Guam
25 courts. This argument is meritless; 8 CMC § 1548 grants this
26 Court "the same powers and duties to enforce [a foreign support
27 order] as have those of the state in which it was first issued."
28 Section 1533 expressly includes "the duty to pay arrearages" among

1 the Court's enforcement powers.^{3/} Thus, this Court has clear
2 authority to order payment of arrearages between August 1, 1986
3 and July 31, 1992. The Guam Child Support Enforcement Division
4 has computed Antonio's total obligation during that period as
5 \$30,100.00. Antonio has submitted proof of payment of \$18,500.00.
6 Therefore, arrearages of \$11,600.00 are due and owing.

7 **C. ARREARAGES PRIOR TO JULY 1986**

8 Annie's claim for pre-July 1986 arrearages presents a
9 different question, namely, whether the specific factual findings
10 of the California Court as to amounts owed under the Guam decree
11 are res judicata in this Court. The CNMI's URESA statute is
12 silent on the question, and there is scant and conflicting
13 authority from other jurisdictions. In Re Marriage of Sabala, 802
14 P.2d 1163, 1165 (Colo. App. 1990), cited by Respondent, clearly
15 states that a prior arrearage judgment is res judicata; but that
16 holding was premised on a provision of Colorado's URESA which the
17 Commonwealth's statute lacks. Conversely, Sheres v. Engelman, 534
18 F. Supp. 286, 290 (S.D. Tex. 1982) held the District Court was not
19 bound under Texas law by a prior arrearages determination; the
20 Court reasoned that if the later order did not modify the terms of
21 the prior one, neither could its enforcement of arrearages be
22 binding in a third action.

23 This Court is unpersuaded by the logic of Sheres. Both the
24 parties and the Court have a strong interest in protecting the
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26 ^{3/} Henry v. Knight, 746 P.2d 1375 (Colo. App. 1987), cited by
27 Respondent, is inapposite. The URESA statute at issue there
28 required registration of the foreign judgment before Colorado as
responding state could order payment of arrearages. In Henry,
this required procedure was not followed. The CNMI's URESA
imposes no such registration requirement.

1 finality of judgments. As the CNMI Supreme Court stated in Sablan
2 v. Iginoef, slip op. at 10 (N.M.I. June 7, 1990), appeal
3 dismissed, Sablan v. Manglona, 938 F.2d 970 (9th Cir. 1991):
4 "[t]here has to be an end to litigation between parties.
5 Individuals are not entitled to have several tries in court on
6 their claim." Sablan, slip op. at 10, emphasis in original.

7 Here, the California court made explicit findings of
8 arrearages due as of 1986 under the Guam decree. Annie did not
9 appeal the California order. She is therefore bound by its
10 adjudication of the amount of support owed, an amount which
11 Antonio has already paid. No arrearages are payable for periods
12 prior to July 31, 1986.

13 **D. MODIFICATION OF CURRENT SUPPORT**

14 As noted above, both parties have asked this Court to modify
15 Antonio's monthly support obligations.

16 Annie requests an increase of child support payments to
17 \$600.00 per month. However, at this point she has only one minor
18 child, Mark, currently fifteen years old. Her income and expense
19 declaration indicates that she is paying college tuition for
20 Philip; but the obligations of the Guam order carry only through
21 high school, and Annie has not requested an extension of the term
22 of Antonio's support obligations. Based on the facts presented,
23 Annie's modification request is not reasonable and will be denied.

24 Antonio requests a reduction, both prospective and
25 retroactive, of his support obligations. He bases this request on
26 his change in circumstances since 1983, when he lost his job with
27 Continental Airlines. Declaration of Antonio Roberto, ¶¶ 14-17.
28 However, when the Guam order originally issued, his support

1 obligation was \$700.00 per month. Now it is only \$175 per month,
2 or nearly \$100 less than under the terms of the California order
3 he has been complying with since 1986. Antonio's declaration
4 makes no showing of changed circumstances since 1986. Therefore,
5 Antonio's request for prospective modification will also be
6 denied.

7 The Court will likewise deny Antonio's request for
8 retroactive modification. The California order's assessment of
9 \$91.00 per child does not appear based on a reduction in Annie's
10 needs, but rather on a change in Antonio's ability to pay. Aside
11 from a statement of his 1991 declared income, Antonio submitted no
12 evidence of his financial assets and liabilities. The Court thus
13 lacks sufficient proof that Antonio is unable to repay the
14 outstanding arrears.^{4/}

15 IV. ORDER

16 In view of the foregoing findings, the Court hereby ORDERS:

17 1. Respondent shall pay Petitioner the sum of \$11,600.00,
18 representing child support arrearages for the period from August
19 1, 1986 through July 31, 1992.

20 2. Respondent shall continue to make monthly child support
21 payments under the terms of the Judgment For Separate Maintenance
22 of the Superior Court of Guam, entered December 28, 1978.

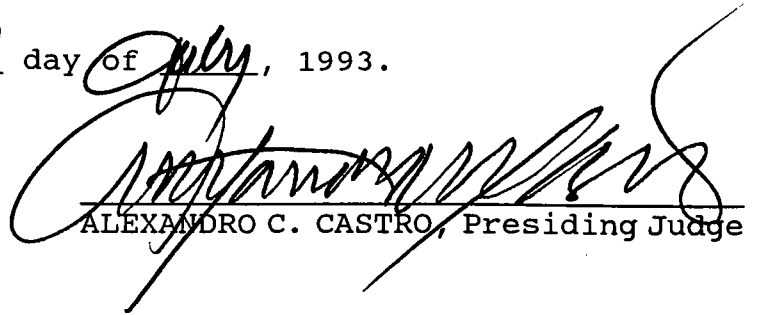
23 3. Petitioner's request for modification of the Guam decree
24 is denied.

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26 _____
27 ^{4/} In view of this factual finding, the Court need not rule
28 on Antonio's legal argument that such retroactive modification is
proper when considerable arrearages exist. However, the Court
points out that other jurisdictions consider the "clean hands"
doctrine to bar any modification claim while arrearages remain
unpaid. See Altman v. Altman, 683 P.2d 62, 68 (N.M. App. 1984).

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4. Respondent's request for modification of the Guam decree is denied.

So ORDERED this 30 day of July, 1993.



ALEXANDRO C. CASTRO, Presiding Judge