IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

NEVADA D.H.H.S. DIVISION OF WELFARE AND PATRICIA TAISAGUE,
Petitioners-Appellants,

v.

RAYMOND B. LIZAMA,
Respondent-Appellee.

Supreme Court No. 2016-SCC-0031-FAM
Superior Court No. 15-0235

OPINION

Cite as: 2017 MP 16

Decided December 21, 2017

Tom Schweiger, Assistant Attorney General, Saipan, MP, for Petitioners-Appellants.

Christopher Heeb, Saipan, MP, for Respondent-Appellee.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

INOS, J.:

¶ 1 Petitioners-Appellants the Nevada Department of Health and Human Services Welfare Division and Patricia Taisague ("Petitioners") appeal the trial court's Order for DNA Testing ("DNA Order"). The DNA Order was entered subsequent to an attempt to enforce a Nevada Judgment & Order ("Nevada Order") finding Respondent-Appellee Raymond B. Lizama ("Lizama") was the father of a minor child and ordering him to pay child support. Petitioners request we vacate the DNA Order and instruct the court to enforce the Nevada Order. The issue on appeal is whether, under CNMI law and in light of the federal Full Faith & Credit for Child Support Orders Act ("FFCCSOA"), a party can seek to have a new determination of paternity completed when such a determination has already been decided in another jurisdiction.

¶ 2 Since this appeal was filed, the Commonwealth Legislature enacted PL 20-22, which included the Uniform Interstate Family Support Act, codified as 8 CMC §§ 15101–15902 ("UIFSA"). UIFSA replaced the Uniform Reciprocal Enforcement of Support Act ("URESA"), the statute under which the court ordered the paternity test. Therefore, we must also consider what impact the intervening change in law has on this appeal.

¶ 3 For the following reasons, we VACATE the DNA Order and REMAND this case for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

¶ 4 In December of 2009, a Nevada state court issued the Nevada Order finding Lizama to be the father of a minor child. The Nevada Order required Lizama to pay child support. In August of 2015, Petitioners filed a complaint in the Commonwealth Superior Court asking the court to enforce the Nevada Order. Lizama answered, asserting a defense of non-paternity pursuant to 8 CMC §§ 1547,1551 and moving the court to order a DNA test. After a hearing on Lizama's motion, the court issued the DNA Order. Section 1547 provided:

> In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence set forth in title 7 of this code [7 CMC §3301 et seq.] and in the Commonwealth Rules of Evidence, except as otherwise provided in this chapter. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity as set forth in 8 CMC §1551 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

Section 1551 provided:

> If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

¶ 5 In January 2017, Petitioners timely filed this appeal and on September 5, 2017, we heard oral argument. On November 29, Petitioner filed a notice with the Court informing us of an intervening change in law, PL 20-22, enacted on October 6, 2017, which repealed and replaced URESA with UIFSA. Unlike URESA, UIFSA does not contain a non-paternity defense to enforcement, nor any similar provision. Lizama responded, noting the intervening change in law did not implicate the threshold issue of whether this Court has jurisdiction.

¶ 6 We concur with Lizama's argument. The intervening change in law does not impact the question of jurisdiction we must answer before considering the merits of the appeal. We first consider whether we have jurisdiction to hear the appeal, then, as necessary, determine the retroactivity of PL 20-22, its effect on this appeal, and the validity of the DNA Order.

II. JURISDICTION

¶ 7 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3. Lizama challenges our jurisdiction, arguing the DNA Order is not a final order. Whether the DNA Order is a final order or whether we otherwise have jurisdiction is a question we must address as a threshold issue. Jurisdiction is a question of law reviewed de novo. *Pacific Amusement Inc. v. Villanueva*, 2005 MP 11 ¶ 7.

¶ 8 "[T]he Commonwealth Supreme Court possesses all inherent powers to accomplish all objects naturally within the sphere of its governmental duties. . . . [which] include interpreting NMI law and making binding decisions over parties bound by the laws of our jurisdiction." *Kabir v. Barcinas*, 2009 MP 19 ¶ 24. "We have repeatedly stated that we have jurisdiction to review lower court orders only if we are specifically provided authority to do so." *Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 4. Generally, this limits our appellate jurisdiction to final orders. *Id.* A judgment or order is final if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Chan v. Chan*, 2003 MP 5 ¶ 13 (quoting *Tanki v. S.N.E. Saipan Co.*, 4 NMI 69, 70 (1993)). Here, the DNA Order is not a final order. It does not end the litigation nor does it resolve the underlying issue—whether to enforce the Nevada Order.

¶ 9 While we conclude the DNA Order is not a final order, we have recognized at least four other circumstances under which we may have jurisdiction, including statutory exceptions allowing for the review of interlocutory orders,

Commonwealth v. Arurang, 2017 MP 1 ¶ 9, and three federally recognized exceptions to the rule of finality, the collateral order doctrine, the *Gillespie* doctrine, and the *Forgay* doctrine. *Camacho v. Demapan*, 2010 MP 3 ¶¶ 28–34. These exceptions apply "only where there is 'an order, otherwise nonappealable, determining substantial rights of the parties which will be irreparably lost if review is delayed until final judgment.'" *Id.* ¶ 34 (quoting *Huckeby v. Frozen Food Express*, 555 F.2d 542, 548–49 (5th Cir. 1977)).

¶ 10 In this case, we find we have jurisdiction under the collateral order doctrine. As we discussed in *Camacho*:

> [T]he collateral order doctrine provides a narrow exception for decisions that finally determine claims . . . separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. To come within the collateral order exception, the order sought to be appealed from must: (1) have conclusively determined a disputed question; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment. The crucial factor in this doctrine . . . is that the order appealed from must be effectively unreviewable if the aggrieved party is forced to wait until the entire case is fully adjudicated.

Id. ¶ 28 (internal citations and quotation marks omitted).

¶ 11 The DNA Order meets these prongs. It would conclusively determine the disputed question of paternity, meeting the first prong. The issue to be determined, whether Lizama is the biological father of the minor child, is an important issue separate from the merits of whether the local court must enforce the Nevada Order, meeting the second prong. And were we to allow the testing to proceed, the end result would be an appeal on whether the Nevada Order must be enforced, not whether a DNA test could be ordered. Therefore, the issue of the court ordering a DNA test could be unreviewable, meeting the third prong. *See generally United States v. Mitchell*, 652 F.3d 387, 393–98 (3d Cir. 2011), *cert. denied*, 565 U.S. 1275 (2012) (finding jurisdiction under the collateral order doctrine to consider trial court's denial of motion to collect DNA from a criminal defendant).

¶ 12 We conclude our jurisdiction to consider the appeal exists under the collateral order doctrine. We now turn to the merits of the appeal.

III. STANDARDS OF REVIEW

¶ 13 At the time this appeal was filed, the issue before this Court was whether FFCCSOA, 28 U.S.C. § 1738B, superseded inconsistent provisions of Commonwealth law, 8 CMC §§ 1547 and 1551. While this appeal was pending, the Legislature repealed and replaced URESA, which contained Sections 1547 and 1551, with UIFSA. The intervening change in law forces us to first consider

the retroactive application of UIFSA and whether the change in law affects the validity of the DNA Order.

IV. DISCUSSION

A. Retroactivity

¶ 14 Laws apply prospectively unless the legislature has clearly manifested an intent the law should apply retroactively. *In re Estate of Aldan*, 2 NMI 288, 298 (1991). UIFSA contains a "transitional provision," which addresses pending child support proceedings. Specifically, 8 CMC § 15902, the "Transitional Provision," provides:

> This Act applies to all child support proceedings pending as of its effective date and to all proceedings begun on or after the effective date of this Act to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

When interpreting statutes, we begin by considering the plain meaning of the statute. *Commonwealth v. Jackson*, 2015 MP 16 ¶ 9.

¶ 15 Plainly, the Legislature intended UIFSA to be applied to all proceedings pending on the law's effective date, October 6, 2017. This appeal involves child support proceedings and was pending when UIFSA was enacted. Generally, we "apply the law in effect at the time [the court] renders its decision." *Tano Grp., Inc., v. Dep't of Pub. Works*, 2009 MP 18 ¶ 57 (quoting *Landgraf v. Usi Film Prods.*, 511 U.S. 244, 273 (1994)). Simply, "if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the [subsequent] law must be obeyed." *United States v. Schooner Peggy*, 5 U.S. 103, 110 (1801). However, we will not apply the provisions retroactively if doing so would result in a violation of certain Constitutional rights, including the Fifth Amendment's Due Process Clause. *Landgraf*, 511 U.S. at 266.

¶ 16 We must consider whether retroactively applying UIFSA affects Lizama's substantive rights, or merely impacts procedural rights. *Republic of Aus. v. Altmann*, 541 U.S. 677, 694 (2004). UIFSA removes the defense of non-paternity to challenge the enforcement of an otherwise valid paternity order. We find this change does not affect Lizama's Due Process rights, whether he may challenge the enforcement of another jurisdiction's child support order. Instead, it affects his procedural right, limiting the forms of challenges he may bring in this jurisdiction.[1] *See, e.g., Shiflet v. Eller*, 319 S.E.2d 750, 754 (Va. 1984)

[1] We note Lizama may still rely on Nevada law to challenge paternity in Nevada courts. Because the change in law only affects where Lizama may challenge paternity, not if, it is merely a loss of procedural right in the Commonwealth, not a loss of the substantive right to challenge paternity. *See* NEV. REV. STAT. ANN. § 425.384 (establishing the procedure to determine disputed paternity).

("Substantive rights . . . are included within that part of the law dealing with creation of duties, rights, and obligations, as opposed to procedural or remedial law, which prescribes methods of obtaining redress or enforcement of rights."). "[T]he potential unfairness of retroactive civil legislation is not a sufficient reason for a court to fail to give a statute its intended scope." *Landgraf*, 511 U.S. at 267.

¶ 17 Because we determine the Legislature plainly intended the law apply to all pending actions including this appeal, UIFSA is the applicable law, and because it does not violate Lizama's Due Process rights, we consider the validity of the DNA Order under UIFSA and FFCCSOA, rather than URESA and FFCCSOA.

B. DNA Order

¶ 18 Had the Legislature not enacted Section 15902 of UIFSA, we would consider whether two sections of URESA, 8 CMC §§ 1547 and 1551, were preempted by FFCCSOA, codified as 28 U.S.C. § 1738B. But because the Legislature plainly intended UIFSA to apply to all pending actions, we consider the DNA Order under the UIFSA framework. UIFSA limits the defenses available to a party contesting the validity of a registered support order. Specifically, 8 CMC § 15607(a) provides:

> (a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
> (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
> (2) the order was obtained by fraud;
> (3) the order has been vacated, suspended, or modified by a later order;
> (4) the issuing tribunal has stayed the order pending appeal;
> (5) there is a defense under the law of this state to the remedy sought;
> (6) full or partial payment has been made;
> (7) the statute of limitation under 8 CMC § 15604 precludes enforcement of some or all of the alleged arrearages; or
> (8) the alleged controlling order is not the controlling order.

Notably, the provision permitting the non-paternity defense present in 8 CMC § 1551 of URESA is no longer a defense available to a party contesting the validity of a support order. 8 CMC § 15315.

¶ 19 Thus, the defense of non-paternity is no longer a valid defense to contest another state's registered support order. Because UIFSA is the applicable law, we must vacate the DNA Order, as it relates to a defense no longer available under existing law. We need not determine whether the pre-existing provisions, contained within URESA as enacted in the Commonwealth, were pre-empted by FFCCSOA.

V. CONCLUSION

¶ 20 For the foregoing reasons, we VACATE the DNA Order and REMAND this case for further proceedings consistent with this opinion.

SO ORDERED this 21st day of December, 2017.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice