

NO. A10-726

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State of Minnesota  
**In Court of Appeals**

Denise Michelle Montgomery,  
f/k/a Denise Michelle Wareham,

*Appellant,*

vs.

Robert David Wareham,

*Respondent.*

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**APPELLANT'S BRIEF, ADDENDUM AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE ISSUE

**I. Does Minnesota have subject matter jurisdiction to modify its child support order when (1) the parties and minor children have left the state and reside in different states, (2) the parties have not filed written consents with Minnesota for another state's tribunal to assume continuing and exclusive jurisdiction to modify Minnesota's order, and (3) Minnesota has personal jurisdiction over the parties?**

The issue was raised in the district court at a hearing on Petitioner's motion to modify child support. (A. 17, A. 26) The Child Support Magistrate held that Minnesota does not have subject matter jurisdiction to modify the child support obligation under Minnesota Statutes Chapter 518C. (Ad. 3)

The Petitioner, Denise Montgomery, timely served a Notice of Appeal, which was filed with the Court of Appeals on April 22, 2010. (A. 15)

### **Apposite Statutes and Case:**

Minn. Stat. § 518C.205(a)(2), (b), and (c) (2009);

Minn. Stat. § 518C.201(2) (2009);

*Porro v. Porro*, 675 N.W.2d 82 (Minn. Ct. App. 2004)

## STATEMENT OF THE CASE

Appellant-Petitioner Denise Montgomery brought a motion to modify Respondent Robert Wareham's ("Wareham") child support obligation on January 13, 2010, in Goodhue County District Court in Minnesota. Respondent filed responsive documents requesting the court deny Petitioner's motion. A hearing was held before the Honorable Mary H.C. Flynn, Child Support Magistrate, on February 16, 2010. Appellant-Petitioner was present and was represented by Theresa M. Gerlach. Respondent appeared by telephone from his military assignment in Germany.

Magistrate Flynn, citing *Porro v. Porro*, 675 N.W.2d 82, 85 (Minn. Ct. App. 2004), dismissed the action after determining that Minnesota does not have subject matter jurisdiction over the child support modification according to Minn. Stat. § 518C, the Uniform Interstate Family Support Act.

### STATEMENT OF FACTS

Appellant-Mother Denise Montgomery (hereinafter “Montgomery”), formerly known as Denise Wareham, and Respondent-Father Robert Wareham (“Wareham”) were divorced in 1998 pursuant to a judgment of Goodhue County District Court in Minnesota, Court File 25-F6-98-710. (A. 7-14) Montgomery was awarded physical custody, with the parties sharing joint legal custody of their three minor children. (A. 10) Wareham’s child support was set at \$600 per month for basic support and \$100 per month for child care support. (A. 11) Wareham’s total support obligation has been increased to \$790 per month due to cost of living adjustments. (Ad. 2)

Wareham’s residence at the time of entry of the dissolution decree was, and continues to be, the state of Washington; however, Wareham is in the military and was stationed overseas at the time of the modification proceedings. (Ad. 3; A. 20; A. 7) Subsequent to the entry of the divorce decree, Montgomery and the children moved from Minnesota to Kentucky. (Ad. 3)

Montgomery continues to receive non-public assistance IV-D child support services from Goodhue County, Minnesota. (Ad. 2). Goodhue County has a “pecuniary interest, as well as an interest in the welfare of the child due to [Montgomery’s] application for child support services pursuant to Minn. Stat. §518A.49.” (Ad. 2)

Montgomery served a Motion to Modify child support on Wareham and Goodhue County by mail on December 30, 2009. (Ad. 2; A. 1-3) Wareham served and filed a responsive motion. (A. 4-6) A hearing was held on February 16, 2010, over which the

Honorable Mary H. C. Flynn, Child Support Magistrate, presided. (Ad. 1) Montgomery appeared in person and with counsel. (Ad. 1) Wareham appeared by telephone from Germany. (A. 20)

Counsel for Montgomery asserted that Minnesota has jurisdiction over the modification matter pursuant to Minn. Stat. § 518C.205(a)(2), Minnesota's version of the Uniform Interstate Family Support Act ("UIFSA"). (A. 17) In an Order filed March 9, 2010, Magistrate Flynn found, "pursuant to Minn. Stat. §518C,205 (a)1 the court loses continuing exclusive jurisdiction over a child support order when none of the parties or the child continue to live in the State." (Ad. 3) Magistrate Flynn did not address the statute raised by Montgomery's counsel, namely Minn. Stat. § 518C.205(a)(2), as relevant to the matter. (Ad. 3) Moreover, Magistrate Flynn cited *Porro v. Porro*, 675 N.W.2d 82 (Minn. Ct. App. 2004), as follows:

This conclusion is consistent with the intent of the UIFSA, which contemplates that, when the parents have both left the state where the child support order was issued but do not currently reside in the same state, the party petitioning for modification of the support order must do so in a state that (1) has personal jurisdiction over the other parent, and (2) is not the state in which the petitioner resides. As the commissioner's comment to section 611 explains, [t]his restriction attempts to achieve a rough justice between the parties in the majority of cases by preventing a litigant from choosing to seek modification in a local tribunal to the marked disadvantage of the other party.... In short, the Petitioner is required to register the existing order and seek modification of that order in a state which has personal jurisdiction over the Respondent other than the State of the Petitioner's residence. (Ad. 3)

Magistrate Flynn did not reconcile the fact that Montgomery brought the child support modification motion in a state of which Montgomery was not a resident, and which has personal jurisdiction over Respondent, consistent with the

“intent of the UIFSA” as stated in *Porro*. (Ad. 3) Magistrate Flynn ordered Montgomery’s Motion to modify child support stricken. (Ad. 4)

Montgomery challenges the determination of the Child Support Magistrate that Minnesota does not have subject matter jurisdiction to modify its child support obligation under Minnesota Statutes Section 518C.

## ARGUMENT

### A. STANDARD OF REVIEW

On appeal from a child support magistrate's decision, the standard of review is the same as that of a district court decision. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. Ct. App. 2002). This Court applies de novo review to district court decisions on subject matter jurisdiction. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002); *Porro v. Porro*, 675 N.W.2d 82, 85 (Minn. Ct. App. 2004).

### B. THE CHILD SUPPORT MAGISTRATE IMPROPERLY RULED THAT THE COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO MODIFY THE EXISTING CHILD SUPPORT ORDER

#### 1. **Minnesota has continuing, exclusive jurisdiction to modify the child support order according to the Uniform Interstate Family Support Act.**

Minnesota has adopted the Uniform Interstate Family Support Act ("UIFSA"). *See Minn. Stats. §§ 518C.101-.902* (2009). The UIFSA applies when parties live in different states and one party seeks to establish, enforce, or modify interstate child support orders. *Id.* The relevant portions of Minnesota's version of the UIFSA, as set forth in sections 518C.205(a)(2), (b), and (c) are as follows:

(a): A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b): A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of

another state pursuant to this chapter or a law substantially similar to this chapter.

(c): If a child support order of this state is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state...

*Minn. Stat. § 518C.205(a)(2), (b), (c) (2009).*

The issue in this case is one of first impression in Minnesota. According to the UIFSA, Minnesota courts have subject matter jurisdiction to modify their child support order when the parties and the minor children have left Minnesota and live in different states, Minnesota has personal jurisdiction over the non-petitioning party, and there is no written consent by the parties for another court to assume jurisdiction, nor is there an intervening order from another state's tribunal. *See Minn. Stats. §§ 518C.205(a)(2), (b), (c) (2009).*

**2. The plain meaning of Section 518C.205(a)(2) supports a conclusion that Minnesota has subject matter jurisdiction to modify the child support order.**

An analysis of the plain meaning of the statute reveals that Minnesota has continuing, exclusive jurisdiction over the child support order. *See Minn. Stat. § 518C.205(a)(2) (2009).* Minnesota has continuing, exclusive jurisdiction over a child support order “until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.” *Id.* The critical term here is the word “until.”

Black's Law Dictionary defines the word "until" as, "[u]p to time of. A word of limitation, used ordinarily to restrict that which precedes to what immediately follows it, and its office is to fix some point of time or some event upon the arrival or occurrence of what precedes will cease to exist." *Black's Law Dictionary, 1540* (6<sup>th</sup> ed. 1990) (citing *Empire Oil and Refining Co. v. Babson*, 77 P.2d 682, 684 (Okla. 1938)). Thus, since the parties have not filed written consents with the Minnesota court for another state's court to modify the order and assume jurisdiction, the "preceding", or Minnesota's continuing and exclusive jurisdiction, continues to exist.

**3. Minnesota retains jurisdiction to modify its child support order because the parties have not filed written consents with Minnesota for another state's tribunal to assume jurisdiction.**

Under the UIFSA, a state is authorized to modify another state's support order if both parents have filed written consents with the issuing court for the new state to modify the support order and assume continuing, exclusive jurisdiction over it. *See Minn. Stat. § 518C.611(a)(2)*. The UIFSA explicitly requires that only one state retain exclusive jurisdiction over child support orders. *See Minn. Stat. § 645.22* (2009); National Conference of Commissioners on Uniform State Laws, UIFSA (2001) Prefatory Note II.B.3 (noting that even if both parties and the child have left the issuing state, "only one valid support order may be effective at any one time"); *see also In re Welfare of: S.R.S.*, 756 N.W.2d 123 (Minn. Ct. App. 2008) (despite issuing state's declination of subject matter jurisdiction over child support modification, Minnesota refused jurisdiction on grounds that petitioning party was Minnesota resident and both parties had not consented to Minnesota assuming jurisdiction).

Under the UIFSA, when both parties and the children have moved from Minnesota but live in different states, Minnesota district court has continuing, exclusive jurisdiction over a child support order “until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.” *Minn. Stat. § 518C.205(a)(2)* (2009). The record is clear that Minnesota issued the initial child support order and the parties have not filed written consents with Minnesota for another state’s court to modify the order and assume jurisdiction. Moreover, by complying with the UIFSA’s requirements, the actions of both parties in bringing the motion and responsive motions should be construed as tantamount to filing written consents for the issuing state, Minnesota, to modify its child support order and maintain exclusive, continuing jurisdiction over its own order. *See Minn. Stat. § 518C.205(a)(2)*. Therefore, Minnesota retains continuing, exclusive jurisdiction over the child support order modification.

**4. Allowing the district court to assert its continuing jurisdiction to modify its order is consistent with the legislative intent and policies behind the UIFSA.**

Notwithstanding other jurisdictions’ conclusions that the issuing court loses subject matter jurisdiction when the parties and children have left the issuing state, *see Jurado v. Brashear*, 782 So. 2d 575, 580-81 (La. 2001); *LeTellier v. LeTellier*, 40 S.W.3d 490, 493-94 (Tenn. 2001); *Groseth v. Groseth*, 600 N.W.2d 159 (Neb. 1999), a close look at the intent and policies of the UIFSA makes it clear that Montgomery’s argument that Minnesota has jurisdiction to modify the child support order is well grounded.

The UIFSA was drafted by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”). The NCCUSL drafting committee specifically addressed the situation in this case, stating,

**A 2001 amendment adds that even if the parties and child have moved from the issuing State they may agree that the tribunal that issued the controlling order will continue to exercise its continuing, exclusive jurisdiction, Section 205. This recognizes the fact that it may be preferable for the parties to return to a tribunal familiar with the issues rather than to be required to fully inform another tribunal of all the facts and issues that have been previously litigated. This exception may be particularly appropriate if both child-support and spousal-support are involved in the same case; under this Act, jurisdiction to modify the spousal support order is exclusively reserved to the issuing tribunal, regardless of where the parties reside.**

*National Conference of Commissioners on Uniform State Laws, Uniform Interstate Family Support Act (2001) Prefatory Note, pages 5-6 (emphasis added).*

“Under UIFSA, the only tribunal that can modify a support order is one having continuing, exclusive jurisdiction over the support issue. As an initial matter, this is the tribunal that first acquires personal and subject matter jurisdiction over the parties and the support obligation. If modification of the order by the issuing tribunal is no longer appropriate, another tribunal may become vested with the continuing, exclusive jurisdiction necessary to modify the order. Primarily this occurs when neither the individual parties nor the child reside in the issuing State, or when the parties agree in a record that another tribunal may assume modification jurisdiction. Only then may another tribunal with personal jurisdiction over the parties assume continuing, exclusive jurisdiction and have jurisdiction to modify the order, Sections 205, 206, 603(c), 609-612. Further, except for modification by agreement, Section 205 and 207, or when the parties have all moved to the same new State, Section 613, the party petitioning for modification must be a nonresident of the responding State and must submit himself or herself to the forum State, which must have personal jurisdiction over the respondent, Section 611. **The vast majority of the time this is the State in**

**which the respondent resides.** A colloquial short-hand summary of the principle is that ordinarily the movant for modification of a child support order ‘must play an away game.’

*National Conference of Commissioners on Uniform State Laws, Uniform Interstate Family Support Act (2001) Prefatory Note, pages 5-6.*

The drafters acknowledged that the “vast majority of the time” the state that may assume continuing, exclusive jurisdiction to modify the order when the parties and the child have left the issuing state and live in separate states is the state of the nonpetitioning party. *Id.* Notably, there are times, such as in the present case, in which the issuing state may be the appropriate tribunal to modify as well. *See Id.*

Also relevant and critical to this matter is the NCCUSL’s note as follows:

**A 2001 amendment adds that even if the parties and child have moved from the issuing State they may agree that the tribunal that issued the controlling order will continue to exercise its continuing, exclusive jurisdiction, Section 205. This recognizes the fact that it may be preferable for the parties to return to a tribunal familiar with the issues rather than to be required to fully inform another tribunal of all the facts and issues that have been previously litigated.**

*National Conference of Commissioners on Uniform State Laws, Uniform Interstate Family Support Act (2001) Prefatory Note, pages 5-6 (emphasis added).*

The NCCUSL’s note specifically addresses the present issue. The Minnesota tribunal is familiar with the issues pertaining to this family and has a mechanism for Wareham to appear by telephone, making it easier for Wareham to participate in the proceedings from overseas. *See Minn. Stat. § 518C.316(f); see also Minn. Gen. R. Prac. 359.01 (2001) (authorizing a child support magistrate to conduct a hearing by telephone with proper request by a party).* “In a proceeding under this chapter, a tribunal of this

state may permit a party...residing in another state to...testify by telephone....” *Minn. Stat. § 518C.316(f)*(2009). As was contemplated by the drafters of the UIFSA, it is preferable for the parties in this case to return to the Minnesota tribunal that is familiar with the issues, saving the parties the time and expense of registration, filing, and having to educate another tribunal on the issues that have already been litigated in Minnesota.

**5. Reading sections 518C.205(a)(2), (b), and (c) together supports Minnesota’s assumption of subject matter jurisdiction to modify the order.**

Taken as a whole, the statutory language in 518C.205(a)(2), (b), and (c), indicates that Minnesota only loses continuing and exclusive jurisdiction to modify its child support order *if* another state’s court modifies its order. *Minn. Stat. § 518C.205(a), (b), and (c)* (2009). By implication, the Minnesota tribunal retains continuing, exclusive jurisdiction to modify its child support until the parties have filed written consents for another court to assume jurisdiction, or until another state’s tribunal modifies the order. *Id.* Here, the parties have not filed written consents for another court to assume jurisdiction, nor has another state’s tribunal modified Minnesota’s child support order. Thus, under sections 518C.205(a)(2), (b), and (c), the district court has subject matter jurisdiction to modify its order in this case.

Minnesota has jurisdiction to modify the order despite the fact that neither party nor the minor children live in Minnesota. The Uniform Interstate Family Support Act (“UIFSA”) “contemplates that, when the parents have both left the state where the child-support order was issued but do not currently reside in the same state, the party petitioning for modification of the support order must do so in a state that (1) has

personal jurisdiction over the other parent, and (2) is not the state in which the petitioner resides.” *Porro v. Porro*, 675 N.W.2d 82 at 87 (Minn. App. 2004).

In *Porro*, both parents and the minor child left Massachusetts, the issuing state. When the mother and child lived in Minnesota and the father lived in Nebraska, Mother registered the Massachusetts order in Minnesota and petitioned for a child support modification. 675 N.W.2d 82 (Minn. Ct. App. 2004). The court held that Minnesota did not have jurisdiction to modify the issuing state’s order because the petitioner had not met the requirement of the UIFSA that the party requesting modification must bring the petition in a state of which that party is not a resident. *Id.*

The *Porro* court stated that the UIFSA does not confer jurisdiction onto another court, but rather it sets forth ways in which a court can lose jurisdiction: “Although subsection 205(a) of the UIFSA identifies how the issuing court may lose continuing, exclusive jurisdiction to modify an order, it does not confer jurisdiction to modify the order of another court.” *Porro* at 86. Here, both Montgomery and Wareham satisfy the requirements for the Minnesota court to assume jurisdiction to modify its child support order.

This case is distinguishable from *Porro* in that the circumstances identified in the UIFSA that prevented Minnesota from having subject matter jurisdiction to modify in *Porro* would give Minnesota courts subject matter jurisdiction to modify in the present matter. See *Minn. Stat. § 518C.611(a)* (2009); *Porro*, 675 N.W.2d 82 (Minn. Ct. App. 2004) . In *Porro*, the issue hinged on the requirement that the petitioning party may only seek modification of a child support order in a state in which he or she is a nonresident.

*Id*; see also *In re Welfare of S.R.S.*, 756 N.W.2d 123, 127-128 (Minn. Ct. App. 2008) (subject matter jurisdiction remains in the issuing state if one party or the child remains there). In this case, Montgomery petitioned for the modification in a state in which she is a nonresident. Therefore, even under *Porro*, Montgomery petitioned in the appropriate tribunal.

*Porro* explained that the requirement of nonresidency of the petitioning party comports with the intent of the UIFSA, which is to achieve a "rough justice between the parties" by requiring that, when the parents do not reside in the same state, the party seeking modification of a support order must do so in a state that is not the state in which the party seeking the modification resides. 675 N.W.2d at 87. However, *Porro* did not squarely address the issue at present; namely, Minnesota's continued subject matter jurisdiction to modify its child support order after the parties and minor child leave the state and one of the parties seeks modification in Minnesota. In conclusion, Minnesota's subject matter jurisdiction over this matter comports with *Porro* as well as the intent of the UIFSA.

**6. If Minnesota lost jurisdiction after the parties and children left Minnesota, the UIFSA authorizes Minnesota to assume jurisdiction to modify its order.**

Even if Minnesota lost its continuing, exclusive jurisdiction over the Wareham child support order when the parties and the children left the state, the UIFSA authorizes Minnesota to assume jurisdiction to modify its order. Sections 518C.611 and .613 set forth the three circumstances under which Minnesota may assume jurisdiction to modify another issuing state's child support order. First, the order must be registered in

Minnesota and, after notice and hearing, the registering court finds that:

- (1) the child, obligee, and obligor do not reside in the issuing state;
- (2) a petitioner who is a nonresident of this state seeks modification; and
- (3) the respondent is subject to the personal jurisdiction of the tribunal of this state. *Minn. Stats. §§ 518C.611, .613 (2009); Stone v. Stone*, 636 N.W.2d 594 (Minn. App. 2001)

In *Stone v. Stone*, the mother, a Minnesota resident, registered her South Dakota child support order in Minnesota. 636 N.W.2d at 596. The Court of Appeals affirmed the district court's judgment vacating the mother's registration of the South Dakota order in Minnesota. *Id.* Although the *Stone* court did not directly address the issue of child support modification, the court noted the requirement for registration and modification of a foreign child support order; namely, that the petitioning party must be a nonresident of the state in which the petitioner seeks to modify the foreign order. 636 N.W.2d at 597.

In this case, the three requirements under section 518C.611 and .613 and *Porro* for Minnesota to assume jurisdiction to modify the support order have been met. First, the record is clear that neither party nor the minor children live in Minnesota. Montgomery and the children live in Kentucky, while Wareham's state of residence while he is on military duty overseas is Washington.

The second requirement for modification has also been established. The party petitioning for modification, Montgomery, is a nonresident of this state.

Lastly, as for the third requirement, it is undisputed that Minnesota has personal jurisdiction over Wareham. According to Minn. Stat. § 518C.201(2), Minnesota courts

may exercise personal jurisdiction over a nonresident individual if that individual “submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.” *Minn. Stat. § 518C.201(2)* (2009). In this case, Wareham entered a general appearance when he appeared by telephone at the hearing. Additionally, he filed responsive documents to Montgomery’s motion that made no mention of or objection to personal jurisdiction. Thus, the record is clear that Minnesota courts have personal jurisdiction over Wareham.

Moreover, while Montgomery did not register the order in Minnesota, there was no need to register it because Minnesota was the issuing tribunal. Thus, the spirit of the statute was met with regard the requirements for modification of the order after the parties and the children moved from Minnesota.

**7. The district court’s assumption of subject matter jurisdiction in this case will honor the spirit and purpose of the UIFSA.**

In the event this Court follows the majority view of this issue, an exception based on the circumstances in this case is appropriate. Other jurisdictions have held that the issuing state loses continuing, exclusive jurisdiction once the parties and minor children reside elsewhere. *Lunceford v. Lunceford*, 204 S.W.3d 699 (Mo. App. 2006); *In re Marriage of Myers*, 56 P.3d 1286 (Kan. Ct. App. 2002); *Jurado v. Brashear*, 782 So. 2d 575, 580-81 (La. 2001); *LeTellier v. LeTellier*, 40 S.W.3d 490, 493-94 (Tenn. 2001). The majority view is based on the theory that there is no longer a sufficient “nexus” between the parties and the issuing state - the evidence is no longer in the state, the state does not

have an interest as far as taxes, etc. *See Id.* Although the majority view in other states goes contrary to the plain meaning of the UIFSA and the intent of the drafters, the majority may have merit where the parties are completely devoid of any nexus to the state. The facts in this case warrant not only that the Court follow the plain meaning of the statute, but also to reject the majority view because the parties in this case have a sufficient nexus to Minnesota.

Here, there is a nexus: the file, including relevant income information for child support, has remained in Minnesota; Montgomery utilizes non IV-D services for income withholding, which places funds into the state. Because Wareham is stationed overseas, it is just as convenient for him to appear in Minnesota as it is for him to be hailed into a court in his state of residence, Washington, if not more so, because he is authorized to appear by telephone in Minnesota. It is certainly not convenient for Montgomery to have to come to Minnesota for the matter. Most importantly, both parties have consented to Minnesota deciding the modification issue through their respective motions and appearances at the modification hearing.

In this case it is appropriate for Minnesota to have jurisdiction to hear and decide this child support modification. The parties and the minor children left Minnesota. Minnesota does have personal jurisdiction over Wareham based on Wareham's motion submissions and appearance at the hearing. The non-petitioning party, Wareham, is stationed overseas and is able to conveniently appear by telephone. As anticipated by the UIFSA, it is proper for Minnesota to hear and decide this child support modification issue.

## CONCLUSION

When Minnesota has issued a child support order and neither party nor the children reside in Minnesota or in the same state, and Minnesota has personal jurisdiction over the non-petitioning party, the parties may petition Minnesota for a modification of its order. The Child Support Magistrate erred by concluding that Minnesota does not have subject matter jurisdiction to modify the child support order under Minnesota Statutes Chapter 518C. The order should be reversed and remanded for modification of Respondent Wareham's child support obligations according to Minnesota statutes. Additionally, Montgomery should be awarded her costs and reasonable fees for this appeal.

Respectfully submitted this 18<sup>th</sup> day of May, 2010,

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