

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
DOMESTIC RELATIONS SECTION**

MARINA KARPENKO,

Plaintiff,

v.

PAUL LEENDERTZ,

Defendant.

Docket No. DR-0136411

PACSES Case No. 545111143

Superior Court No. 2357 EDA 2012

**PENNSYLVANIA RULE OF APPELLATE PROCEDURE
1925(a) STATEMENT**

AND NOW, this 21st day of November, 2012, the Court issues the following statement:

Appellant Paul Leendertz ("Father") appeals from an order entered in this Court on August 2, 2012, following a hearing held on June 26, 2012, granting the request of Appellee Marina Karpenko ("Mother") to register and enforce a December 12, 2008 child support order issued in Mother's favor by a court in Holland. For the reasons that follow, we respectfully suggest that Father's appeal lacks merit and should be dismissed.¹

¹ Record sources referenced herein are cited in full at the end of this Opinion.

BACKGROUND

Father resides in the Borough of Northampton in Northampton County, Pennsylvania. (N.T. June 26, 2012 at 5; Ex. D1, Attach. M (Op.) at 5.) He was born in Indonesia to Dutch parents. (Ex. D1, Attach. M (Op.) at 5.) He came to the United States for pilot training and has been employed as an international airline pilot for Continental Airlines since 1985. (Ex. D1, Attach. M (Op.) at 5; N.T. June 26, 2012 at 5.) On August 10, 2006, Father renounced his Dutch citizenship and became a United States Citizen. (N.T. June 26, 2012 at 27.)

Mother is a native of the Ukraine and now resides in Ede, Holland. (Ex. D1, Attach. M (Op.) at 5.) She was a nurse in the Ukraine before she married Father but was not employed during or after the marriage. (Ex. D2, Attach. I (Report) at 6, 24.)

The Marriage and Separation

The parties met in Moscow, Russia in 1999. (Ex. D1, Attach. M (Op.) at 5.) They were married on February 29, 2000 in Lehigh County, Pennsylvania. (Ex. D1, attach. M (Op.) at 5.) Thereafter, they resided at Father's home in Bethlehem in Lehigh County. (Ex. D1, Attach. J at 1; Ex. D2, Attach. I (Report) at 7.) On June 13, 2001, the parties had a daughter (the "Child"). (Ex. D1, Attach. M (Op.) at 5; Ex. D1, Attach. J at 1.)

On July 1, 2001, Mother commenced a custody action against Father in the Lehigh County Court of Common Pleas (the "Lehigh County Court").

(Ex. D1, Attach. K at 1 n.1.) On September 19, 2002, the parties entered into a Custody Stipulation, entered as an Order of Court, providing, *inter alia*, that (1) the parties would have shared legal custody of the Child; (2) Mother would have primary physical custody, and Father would have partial physical custody; (3) Mother and the Child would relocate to Kiev, Ukraine; (4) Father would purchase an apartment for Mother and the Child in Kiev; (5) Father would pay \$250 per month in child support; and (6) Father would have visitation with the Child in the United States or Holland for three 3-week periods and one 4-week period each year, for a total of 13 weeks per year, in addition to visits of unspecified duration whenever Father might travel to Kiev, at times to be agreed by the parties. (Ex. D1, Attach. J.)

On September 22, 2002, the parties separated. (Ex. D1, attach. M (Op.) at 5.) Father sold his home in Bethlehem and moved to the Borough of Northampton in Northampton County, Pennsylvania. (Ex. D2, Attach. I (Report) at 4, 7.) Pursuant to the parties' September 19, 2002 Custody Stipulation, Mother and the Child moved to Kiev, Ukraine and lived in an apartment purchased by Father. (*Id.* at 7.) The apartment was titled in the names of Father and Mother. (*Id.* at 7.)

In May 2003, at Father's request, Mother and the Child relocated to Ede, Holland in order to improve their standard of living and to make it easier for Father to visit the Child. (*Id.* at 7, 16; Ex. D13 at 261.) Father

was then a Dutch citizen and had family in Holland. (Ex. D2, Attach. I (Report) at 5, 16.) Father purchased an apartment for Mother and the Child in Ede, Holland, and the parties rented out the apartment in Kiev, Ukraine. (*Id.* at 7-8.) Thereafter, Father paid the expenses of maintaining both apartments. (*Id.* at 8.) Father continued to visit the Child, sometimes staying with his own family and sometimes staying in the apartment where Mother and the Child lived. (Ex. D2, Attach. H (Op.) at 4). Father continued to work in the United States and live in Northampton County, Pennsylvania. (*Id.* at 13.)

The Divorce Proceedings and Economic Claims

On July 8, 2005, Father filed for divorce in the Northampton County Court of Common Pleas (the "Northampton County Court"). (*Id.* at 1.) Thereafter, the relationship between the parties deteriorated. (*Id.* at 5.) Mother filed the equivalent of a Protection from Abuse action against Father in Holland and had him barred from her home. (*Id.*) She took Father's car for her personal use. (*Id.* at 6.) She evicted the tenants from the parties' jointly owned apartment in Kiev and transferred title to her mother without Father's consent. (Ex. D2, Attach. I (Report) at 7-8.)

On May 22, 2006, Mother filed for divorce in the District Court of Arnhem, Holland (the "Dutch Court"). (Ex. D2, Attach. I (Report) at 9; Ex. D3, Attach. C at 1.) On August 11, 2006, Mother filed a petition in the Dutch Court seeking custody of the Child, exclusive use of the marital home,

child support, and household support (the equivalent of alimony *pendente lite*). (Ex. D3, Attach. B at 1-3.) On September 21, 2006, the Dutch Court awarded Mother custody of the Child, exclusive use of the marital home, child support of €500 (euros) per month, and household support of €2,000 per month, with both support awards to begin on the date of the Order, September 21, 2006. (*Id.* at 6.)

Mother eventually vacated the apartment in Ede, Holland when Father's lenders foreclosed on it. (Ex. D2, Attach. H (Op.) at 8-9.) She took the Child, moved to another location in Holland, and refused to give Father her new address. (Ex. P2 at 2.)

On May 16, 2007, the Dutch Court granted Mother's petition for divorce. (Ex. D3, Attach. C.) Although the Dutch Court was aware of Father's earlier-filed divorce action in the Northampton County Court, the Dutch Court did not defer to the Northampton County Court's jurisdiction, because Mother told the Dutch Court that she had not been properly served in the Pennsylvania action until after she had filed her divorce action in the Dutch Court. (*Id.* C at 2-3.) Father appealed the Dutch Court's divorce judgment to the Dutch Appeals Court in Arnhem, Holland (the "Dutch Appeals Court"). (Ex. D3, Attach. D at 1.)

One month later, on June 15, 2007, the Northampton County Court entered a final divorce decree. (Ex. D2, Attach. H (Order).) Because the Northampton County Court determined that Mother had misled the Dutch

Court in order to have her divorce action heard there first, the Northampton County Court made its divorce decree retroactive to March 7, 2007, so that its divorce decree predated Mother's Dutch divorce decree. (Ex. D2, Attach. H (Op.) at 2-3, 15.) The Northampton County Court retained jurisdiction over the parties' economic claims. (Ex. D2, Attach. H (Order)).

Notwithstanding entry of the final divorce decree by the Northampton County Court and despite Father's pending appeal of the Dutch Court's divorce judgment, the Dutch Court proceeded to entertain Mother's economic claims incident to her Dutch divorce action. On January 21, 2008, the Dutch Court awarded Mother retroactive household support (*alimony pendente lite*) of €1,500 per month for the period from January 1, 2006 to September 21, 2006, a period that predated its September 21, 2006 award of household support. (Ex. D2, Attach. I (Report) at 9; Ex. D3, Attach. A at 1-2; Ex. D3, Attach. E (Storm Letter); Ex. D3, Attach. E (Zwarts Letter).)

Eight days later, on January 29, 2008, Father won his appeal in the Dutch Appeals Court, and the Dutch Court's May 16, 2007 divorce decree was vacated in deference to the March 7, 2007 divorce decree entered in the Northampton County Court. (Ex. D3, Attach. D at 1-2; Ex. D3, Attach. E (Zwarts Letter); Ex. D2, Attach. I (Report) at 2.) Because the Dutch Court was now required to dismiss Mother's divorce action, it was also required to dismiss her related economic claims. Therefore, on February 7, 2008, the Dutch Court dismissed Mother's pending claims for alimony, division of

marital assets, and child support, but left in place its January 21, 2008 Order awarding retroactive household support (*alimony pendente lite*) for the period January 1, 2006 to September 21, 2006. (Ex. D3, Attach. D at 1-2; Ex. D3, Attach. E (Storm Letter 1); Ex. D3, Attach. E (Zwarts Letter); Ex. D2, Attach. I (Report) at 2.)

On February 26, 2008, Mother refiled her petition for child support in the Dutch Court. (Ex. D3, Attach. G at 3.) Mother's petition was served on Father at the address Father had provided to the Dutch Court, the address of his second home in Jacksonville, Florida, which was also listed as his residence on his Florida-issued driver's license. (N.T. June 26, 2012 at 23-24, 32-34; Ex. D7.) In addition, Mother's Dutch attorney, Maarten Lodewyk Edwin Storm Van's Gravesande ("Mr. Storm"), personally served Mother's petition on Father's Dutch attorney, R.P. Zwarts ("Mr. Zwarts"). (*Id.* at 49-56.)

After the Northampton County Court entered its March 7, 2007 divorce decree, a Special Master in Northampton County heard the parties' claims for *alimony pendente lite*, permanent alimony, equitable distribution of the marital estate, and reimbursement of costs and counsel fees. (Ex. D2, Attach. I (Report) at 1, 10.) The Special Master received submissions and took testimony from Father at a hearing in which Mother chose not to participate. (*Id.* at 1-4.)

On July 22, 2008, following submission of the Special Master's Report, the Northampton County Court denied Mother's request for alimony and awarded Father \$65,000 in equitable distribution. (Ex. D2, Attach. I (Order); Ex. D2, Attach. I (Report) at 25-28.) The Special Master was not charged with determining child support; however, one factor the Special Master considered in denying Mother's claims for alimony was that Father had voluntarily subsidized all of Mother's and the Child's living expenses from the date of separation through 2007, paying Mother some \$250,000 during that period, an amount that "far exceeded what this Court would have ordered for child support and alimony *pendente lite*." (Ex. D2, Attach. I (Report) at 1, 10, 24-28; N.T. June 26, 2012 at 27-32.) The equitable distribution award was composed of \$75,000 for Father's share of the Kiev, Ukraine apartment that Mother had wrongfully transferred to her mother; \$3,000 for Father's car that Mother had taken for her personal use; and \$2,000 in court costs, for a total of \$80,000, less approximately \$15,000 that Father still owed Mother for the remaining balance on the Dutch Court's January 21, 2008 Order requiring Father to pay retroactive household support (alimony *pendente lite*) for the period from January 1, 2006 to September 21, 2006. (Ex. D2, Attach. I (Report) at 9-10, 14-15, 22, 25-28; Ex. D3, Attach. E, (Storm Letter); Ex. D3, Attach. E (Zwarts Letter).)

On August 25, 2008, the Dutch Court held that the Northampton County Court's equitable distribution award of July 22, 2008 precluded the

Dutch Court from entertaining any further petitions by Mother for alimony but that it could entertain Mother's February 26, 2008 petition for child support. (Ex. D3, Attach. F at 2.) On October 21, 2008, Father's Dutch attorney, Mr. Zwarts, submitted documents on Father's behalf in Mother's child support proceeding in the Dutch Court. (Ex. D3, Attach. G at 1-2; N.T. June 26, 2012 at 32-35., 49-56.) According to Mother's Dutch attorney, Mr. Storm, Father's attorney also appeared physically before the Court in connection with Mother's petition. (N.T. June 26, 2012 at 49-56.)

There is no indication in the record of the Dutch child support proceeding that Father raised the defenses of lack of personal jurisdiction or insufficient service of process; rather, Father presented a defense on the merits of Mother's claims. (Ex. D3, Attach. G at 1-3.) Specifically, Father disputed Mother's asserted financial needs and the period for which she claimed she was entitled to support. (*Id.*) Father told the Dutch Court that the Northampton County Court had awarded him \$65,000 in equitable distribution, but he did not argue that he should be given a credit against his future child support obligations for either the \$65,000 in equitable distribution or the \$250,000 he had paid to subsidize Mother's living expenses from the date of separation through 2007. (*Id.* at 2.) Father proposed to the Dutch Court that he pay €422 per month in child support. (*Id.* at 1.) On December 12, 2008, the Dutch Court agreed with Father's contentions and ordered Father to pay €422 per month in child support

retroactive to February 26, 2008, the date on which Mother had filed her petition for child support. (*Id.* at 2-4.)

Father made some payments in satisfaction of the Dutch Court's December 12, 2008 child support Order, but after March 4, 2009, his payments on that Order ceased. (Registration Statement for the Dec. 12, 2008 Order at 1.) Father made some payments in satisfaction of the January 21, 2008 household support Order, but some of that balance remained unpaid, and on January 13, 2009, the Dutch Appeals Court awarded Mother €5,052.36 in arrears arising from that Order. (Jan. 13, 2009 Order.) (N.T. June 26, 2012 at 27-32.)

The Custody Litigation

After the Child's fifth birthday on July 13, 2006, Mother refused to permit Father to see the Child. (Ex. D1, Attach. M (Op.) at 6.) Because the parties' September 19, 2002 Custody Stipulation had been entered as an Order of Court in the Lehigh County Court, on October 27, 2006, Father filed a petition for contempt in the Lehigh County Court, alleging that Mother had denied him his visits with the Child. (*Id.* at 4.) After a series of proceedings in which Mother failed to appear personally, on December 31, 2007, the Lehigh County Court ordered Mother to permit visitation with the Child as set forth in the parties' September 19, 2002 Custody Stipulation. (*Id.* at 4; Ex. D1, Attach. K.)

On February 28, 2008, Mother filed a petition in the Dutch Court seeking sole custody of the Child and termination of Father's visitation rights. (Ex. P2 at 3.) On May 23, 2008, Father filed petitions for contempt and modification of custody in the Lehigh County Court, alleging that Mother had continued to prevent him from seeing the Child, in violation of the Court's Order of December 31, 2007, and seeking primary physical custody of the Child. (Ex. D1, Attach. M (Op.) at 1, 4.)

A hearing was held in the Lehigh County Court on August 26, 2008. (*Id.*) Mother participated by telephone from her home in Holland. (*Id.*) Mother admitted that she had not permitted Father to see the Child since 2006, despite having received a copy of the Court's December 31, 2007 Order directing her to permit Father's visits. (*Id.*) The Lehigh County Court scheduled a trial on Father's petitions for contempt and modification of custody for October 14, 2008. (*Id.* at 5.) On October 14, 2008, the parties appeared for trial. (*Id.* at 5; Ex. D1, Attach. L.) Mother again participated by telephone from Holland and was represented in the courtroom by American counsel. (Ex. D1, Attach. M (Op.) at 5; Ex. D1, Attach. L at 7-10.) On that day, based on Mother's agreement that she would permit a visit between Father and the Child in the coming month, the Court deferred the trial and directed the parties to work out the details of the visit. (Ex. D1, Attach. L at 3-4, 17-18.)

On January 8, 2009, Father filed another petition for contempt in the Lehigh County Court, alleging that Mother had continued to prevent him from seeing the Child, in violation of the Court's Order of October 14, 2008. (Ex. D1, Attach. M (Op.) at 1, 5.) On February 20, 2009, the Dutch Court stayed Mother's Dutch custody action in deference to Father's custody proceeding in Lehigh County. (Ex. P2 at 2.) On March 10, 2009, the Lehigh County Court held a trial in which Father appeared and was represented by counsel and in which Mother did not appear, although her attorney observed the proceedings. (Ex. D1, Attach. M (Op.) at 1; Ex. D1, Attach. N at 6.)

Following the trial, on May 20, 2009, the Lehigh County Court ruled in favor of Father. (Ex. D1, attach. M (Op.). The Court noted that Father and his new wife (Father had remarried on July 22, 2007) could provide a stable and suitable home for the Child and would encourage a full relationship between the Child and Mother, while Mother had repeatedly violated Court Orders and her own agreements and had prevented Father from seeing the Child for almost three years. (*Id.* at 5-9.) The Court's Order provided, *inter alia*, that (1) Father would have sole legal and primary physical custody of the Child; (2) Mother would have partial physical custody as agreed by the parties; (3) Father could "obtain custody of the child at any place that she may be found whether in the United States or in any other country;" and (4) "Father shall be provided with the physical custody of the child instantly and shall transport the child to Lehigh County, Pennsylvania, without need of

further court action or restriction by any other court or any other official.” (Ex. D1, Attach. M (Order) ¶¶ 2-3, 6, 11.) The Lehigh County Court did not address whether it had jurisdiction to direct Father to enter onto foreign soil and commit actions that might be deemed to violate that country’s law without seeking further action by that country’s courts. (Ex. D1, Attach. M (Op.).)

Father could have filed a petition with the Dutch Court to register and enforce the Lehigh County Court’s May 20, 2009 Custody Order, but Father did not do so. (Ex. P2 at 3, 7 & n.1.) Under Dutch law, a foreign custody order has no effect until it is registered in a Dutch court; therefore, since Father had not registered the Lehigh County Custody Order, it remained a nullity under Dutch law. (Ex. P2 at 7 & n.1.) Nevertheless, with the case still in that posture, on May 27, 2009, Father went to the child’s school in Holland, found her playing on the sidewalk outside the school, and without notice to Mother or the school, removed the Child with the assistance of a third party. (Ex. P2 at 3; N.T. June 26, 2012 at 8-9.) He drove the Child to Germany, took a flight to Dubai, United Arab Emirates, and then flew from Dubai to the United States. (*Id.* at 3.)

As soon as the Child was removed from her school, an Amber Alert was issued in Holland seeking return of the Child to Mother. (Ex. P2 at 3.) Two days later, on May 29, 2009, the Dutch Court entered an order holding that Mother and Father had joint custody of the Child under Dutch law and

that Father had therefore removed the Child illegally. (*Id.*) The Dutch Court ordered Father to return the Child to Mother immediately. (*Id.*)

On June 2, 2009, Mother appealed the Lehigh County Court's May 20, 2009 Custody Order to the Pennsylvania Superior Court. (Ex. D1, Attach. N at 7.) On the same day, Mother filed a "Verified Petition for Return of Child" in the United States District Court for the Eastern District of Pennsylvania (the "Eastern District") under the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980 (the "Hague Convention"), T.I.A.S. No. 11,670 at 1, 22514 U.N.T.S. at 98, *reprinted in* 51 Fed. Reg. 10, 494 (1986), as codified by the International Child Abduction Remedies Act, 42 U.S.C. § 11601, et seq. ("ICARA"). (Ex. D13 at 262.) Father appeared in that action and was represented by counsel. (*Id.* at 1.)

On February 19, 2010, the Pennsylvania Superior Court affirmed the Lehigh County Court's May 20, 2009 Custody Order. (Ex. D1, Attach. N.). In her appeal to the Pennsylvania Superior Court, Mother had not raised the issue of whether the Lehigh County Court had jurisdiction to direct Father to enter onto foreign soil and commit actions that might be deemed to violate that country's law without seeking further action by that country's courts. (Ex. D1, attach. N at 7.) Therefore, the Pennsylvania Superior Court did not address that issue in its opinion. (Ex. D1, attach. N at 7.)

On March 3, 2010, the Eastern District ruled in favor of Mother on her petition under the Hague Convention, holding that (1) the Child's "habitual residence" was Holland; (2) the parties had joint custody of the Child under Dutch law at the time the Child was removed from Holland; (3) the Child had been unlawfully removed from Holland; and (4) the Child must be returned to Mother. (Ex. P2 at 6-9.) Father appealed that decision to the United States Court of Appeals for the Third Circuit (the "Third Circuit") and was represented by counsel on the appeal. (Ex. D13 at 261.) On March 15, 2010, the Eastern District stayed enforcement of its Order pending Father's appeal. *See Karpenko v. Leendertz*, 2010 WL996465, at *3 (E.D. Pa. Mar. 15, 2010).

On May 3, 2010, the Dutch Court terminated its May 29, 2009 joint custody order and awarded Mother sole custody of the Child, finding that Father's actions in abducting the Child, separating her from her mother, and taking her to live in another country with no advance warning or preparation had demonstrated a lack of concern for the Child's best interests. (Order of Arnhem District Court, May 3, 2010 at 5, 8, attached to Dutch Transmittal.) On June 21, 2010, the Dutch Court denied Father's belated request to register the Lehigh County Court's May 20, 2009 Order awarding him primary custody of the Child, holding that to do so after he had abducted the child would violate public policy. (Order of Arnhem District Court, June 10, 2010 at 4-6, attached to Dutch Transmittal.)

On August 24, 2010, the Third Circuit affirmed the Eastern District's decision on Mother's Petition under the Hague Convention. (Ex. D13.) The Third Circuit held that Father had improperly relied on the Lehigh County Court's May 20, 2009 Custody Order when he had removed the Child from Holland, because the Lehigh County Court had lacked jurisdiction to authorize Father's conduct on foreign soil and Father had not registered the Lehigh County Court's Custody Order with the Dutch Court. (*Id.* at 264-65.) The Third Circuit noted that the Dutch Court had stayed Mother's Dutch custody action in deference to Father's Pennsylvania custody action but that Father had ignored the Dutch courts and engaged in precisely the type of conduct that the Hague Convention was designed to deter, *i.e.*, a "snatch and grab" kidnapping. (*Id.*) The Third Circuit held that despite Mother's past misconduct, the Court was required to give controlling weight to the overriding policies of the Hague Convention, *i.e.*, prevention of parental kidnapping and the documented harm it causes to vulnerable children. (*Id.* at 265-66.) The Third Circuit ordered Father to return the Child to Mother immediately. (*Id.* at 266.)

On September 20, 2010, Father returned the Child to Mother. (N.T. June 26, 2012 at 25.) Thus, the Child lived with Father in Northampton County for approximately sixteen months, from May 27, 2009 until September 20, 2010. (*Id.*) Mother paid no child support to Father during the time the Child lived with Father. (*Id.* at 26.)

Mother's Requests for Registration and Enforcement

On September 6, 2011, in accordance with the Uniform Interstate Family Support Act ("UIFSA"), 23 Pa. C.S. §§ 7101-7802, Mother filed in the Northampton County Court a request to register and enforce (1) the Dutch Order of December 12, 2008 awarding child support from February 28, 2008 forward; and (2) the Dutch Order of January 13, 2009 ordering arrears on the Dutch Court's January 21, 2008 Order awarding retroactive household support (*alimony pendente lite*) for the period January 1, 2006 through September 21, 2006. (Dutch Transmittal and attachments.) On Mother's behalf, the Dutch domestic relations agency (designating itself the "Initiating State") submitted to the Northampton County Domestic Relations Section (the "Responding Jurisdiction") a "Transmittal and Acknowledgment" dated August 22, 2011 seeking "[e]nforcement of the enclosed Order" and "[c]ollection of arrears." (Dutch Transmittal.)

In accordance with UIFSA procedures, attached to the Dutch Transmittal were two Registration Statements, each of which:

- (1) included two copies of the Order sought to be registered and a "Certificate of Enforceability" executed by the Registrar of the Dutch Court;
- (2) listed the amount of the arrears claimed, described how the arrears had been calculated, and included a sworn statement by Mother that "the information concerning the arrearage accrued under this order is true and correct to the best of my knowledge and belief";
- (3) provided Father's name, address, social security number, employer's name and address, known assets, and other information; and

(4) identified Mother as the obligee.

(*Id.*) Mother's address was listed as "secret" due to her concerns about possible abduction of the Child, a procedure specifically permitted by 23 Pa. C.S. § 7312. (*Id.*) However, the Registration Statements indicated that Mother's address was known to the Dutch domestic relations agency, and the Dutch Transmittal attached the two Dutch Orders concerning the May 27, 2009 abduction. (*Id.*)

As to the December 12, 2008 child support Order, Mother sought (1) prospective enforcement of the monthly child support payments; and (2) arrears for the period from February 28, 2008 through the end of the month in which Mother's registration request was filed, September 30, 2011. (Registration Statement for the Dec. 12, 2008 Order at 1.) At the time of filing of Mother's request for registration and enforcement, the monthly child support payments under the December 12, 2008 Order had increased from €422 per month to €452.58 per month (or \$646.54 per month, based on then-current exchange rates) due to an annual increase imposed by Dutch law on all maintenance contributions using an indexation percentage announced annually in November by the Dutch Minister of Justice. (*Id.*) The arrears under the December 12, 2008 child support Order were €17,680 or \$25,257.21. (*Id.*)

As to the January 13, 2009 Order for arrears arising out of the January 21, 2008 retroactive household support Order covering the period from

January 1, 2006 through September 21, 2006, Mother sought a fixed sum of €5,052.36, the full amount due under the Order. (Registration Statement for the Jan. 13, 2009 Order at 1.) At the time of filing of Mother's request for registration and enforcement, based on then-current exchange rates, the arrears under the January 13, 2009 Order were \$7,217.66. (*Id.*)

On February 17, 2012, Father filed objections to Mother's requests to register the two Dutch Orders. (Objections to Dec. 12, 2008 Order; Objections to Jan. 13, 2009 Order.) Father pleaded every affirmative defense allowable under UIFSA, 23 Pa. C.S.A. § 7607:

- a. The Netherlands lacks personal jurisdiction over Petitioner;
- b. The Order was obtained by fraud;
- c. Petitioner has no connection to the Netherlands pursuant to Pa. C.S. § 7201;
- d. Full or partial payment has been made;
- e. The Order has been modified;
- f. The statute of limitations under 23 Pa. C.S. § 7604 precludes enforcement of some or all of the arrearages.

(Objections to Dec. 12, 2008 Order ¶ 5; Objections to Jan. 13, 2009 Order ¶ 5.)

On June 26, 2012, this Court held an evidentiary hearing on Mother's requests for registration and enforcement of the two Dutch Orders. (N.T. June 26, 2012.) Both parties participated in the hearing and were

represented by counsel. (*Id.*) Following the hearing, both parties submitted memoranda of law.

On August 2, 2012, after consideration of the evidence presented and the memoranda submitted by the parties, this Court entered an Order (1) denying Mother's request to register and enforce the January 13, 2009 Order requiring Father to pay arrears on the January 21, 2008 Order awarding retroactive household support for the period from January 1, 2006 to September 21, 2006; and (2) granting Mother's request to register and enforce the December 12, 2008 Order requiring Father to pay child support from February 26, 2008 forward. (Order of Aug. 2, 2012 ¶¶ 1-2, 5.) This Court's Order provided that the monthly child support payments would be the index-adjusted amount of \$646.54 per month and that the arrears on the December 12, 2008 Order for the period from February 26, 2008 to September 30, 2011 would be \$25,257.21. (*Id.*) Our Order directed Father to pay \$775.54 per month, representing \$646.54 per month for prospective child support payments and \$129.00 per month to apply on the arrears. Our Order indicated that, pursuant to Dutch law, (1) the amount of the prospective monthly child support payments would increase on January 1 of each year upon notification from the Dutch Court of the annual indexation percentage announced by the Dutch Minister of Justice; and (2) the amount of the arrears would be periodically adjusted upon notification from the Dutch Court of changes in the exchange rates. (*Id.* ¶¶ 3-4.)

On August 31, 2012, Father filed a timely Notice of Appeal from the August 2, 2012 Order granting Mother's request to register and enforce the December 12, 2008 child support Order. (Notice of Appeal.) Mother did not cross appeal. Accordingly, the only Order at issue on this appeal is the December 12, 2008 child support Order.

On September 5, 2012, this Court entered an Order directing Father to file "A Statement of Errors Complained Of" pursuant to Pa. R.A.P. No. 1925(b). (Order of Sept. 5, 2012.) On September 25, 2012, Father filed his Statement of Errors Complained of on Appeal, in which he raised the following 20 issues:

1. The Court acted improperly in allowing registration of a child support order of a foreign country (the Netherlands) when 23 Pa.C.S.A. § 7601 allows only for a support order issued by a tribunal of another state to be registered in Pennsylvania for enforcement.
2. While § 7601 may apply to orders issued by some foreign countries, it applies only to orders issued by a country defined as a "state" pursuant to 23 Pa.C.S.A § 7101: "a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under" 23 Pa.C.S.A. §§ 7101-8415.
3. No evidence was presented that the Netherlands qualifies as a "state" within the meaning of § 7601.
4. This Honorable Court erred in ordering the registration and enforcement of the Dutch Support Order despite its failure to determine the existence of any legal authority allowing the registration in Pennsylvania of a support order issued by a court of the Netherlands.

5. The general procedure for establishing a support order when parties live in two separate jurisdictions in the United States is for the "initiating state" or "initiating tribunal" (which if the Dutch Court qualified, would be that country or court) to send to the "responding tribunal" (the Northampton County Court) information so the responding tribunal can conduct a hearing pursuant to the special rules of evidence and procedure set forth in 23 Pa.C.S.A. § 7316. This Honorable Court erred in not following the procedure set forth in § 7316.
6. This Honorable Court erred in failing to conduct a hearing pursuant to the provisions set forth for the "responding tribunal" if the Dutch court had properly initiated this action.
7. This Honorable Court's failure to act as the "responding tribunal," and instead simply purporting to "register" the Dutch Order, caused the problems of personal jurisdiction and notice as set forth in more detail below.
8. This Honorable Court erred in failing to recognize plaintiff's actions in filing for support in the Netherlands as inappropriate forum shopping, contrary to the intent of the Uniform Interstate Family Support Act, 23 Pa.C.S. §§ 7101-7901, which has the "general purpose to make uniform the law with respect to [child support] among the states enacting it." 23 Pa.C.S. § 7901.
9. The Dutch Court did not have personal jurisdiction over the Defendant.
10. The Defendant was never served notice of a support hearing in the Netherlands. (N.T. 23). Some Court papers were sent to an address for the defendant in Florida, even though the Defendant has long maintained his primary residence in Pennsylvania. Defendant never received the Dutch Court papers.
11. Defendant was tried in absentia in the Dutch Court. (N.T. 24) without a meaningful opportunity to present a defense.
12. The Defendant engaged a Dutch Attorney, Mr. Zwarts for the limited purpose of contesting jurisdiction. Mr. Zwarts filed a petition to challenge jurisdiction in the Netherland's support case, but never appeared at a support hearing. (N.T. 35).

- The Decree of the Dutch Support Court indicates that Mr. Zwartz submitted documents but the Defendant did not appear at the hearing. (Exhibit A). The Plaintiff's lawyer, Mr. Storm, gave generalized and uncorroborated testimony that Mr. Zwartz attended the divorce, custody and support hearings, without specifying which hearing Mr. Zwartz was present. (N.T. 52-55).
13. This Honorable Court erred in failing to credit a child support judgment of \$65,000.00 against Plaintiff and in favor of Defendant, against the Support Order. The Dutch Court failed to give the Defendant credit for the \$65,000 judgment. (N.T. 24-25). This Honorable Court erred by failing to correct error in Dutch Support Order.
 14. This Honorable Court erred by accepting the conversion rate from Euros to dollars, established by the Dutch court without affording the Defendant the opportunity to contest the conversion rate.
 15. This Honorable Court erred by imposing the Netherlands annual index without affording the Defendant the opportunity to contest the accuracy of the index. No proof has been offered of the correctness of the annual index. The imposition of the annual index fails to consider the ability of the Defendant to pay the increase in the cost of living in the community in the Netherlands where the child resides, is equal, greater or less than the increase in the cost of living in Northampton County.
 16. This Honorable Court erred by accepting and adopting the imposition of an annual inflation adjustment by the Dutch Court despite the absence of Pennsylvania Law allowing for such future speculative adjustments to support Orders. Upon information and belief, the Pennsylvania Support Collection and Disbursement Unit--the Pennsylvania agency responsible for collecting, disbursing and keeping track of child support payments is not equipped to implement and track such a variable order.
 17. This Honorable Court erred by ordering that the arrears to be adjusted in the future according to exchange rates between Euros and dollars, without affording the Defendant the opportunity to contest the exchange rates.

18. This Honorable Court erred in ordering the registration and enforcement of the Dutch Support Order for the period of time May 27, 2009 through September 27, 2010, when the Defendant legally and properly had custody of the child, a citizen of the United States, in Pennsylvania, and during which time she paid no child support to the Defendant (N.T. 25-25, 29). This Honorable Court should have granted a credit to the Defendant for payments due from May 27, 2009 through September 27, 2010.
19. This Honorable Court erred in ordering the registration and enforcement of the Dutch Support Order because the Defendant was denied due process before the Dutch Court as set forth above.
20. This Honorable Court erred in ordering the registration and enforcement of the Dutch support order, which has an effective date before the filing of plaintiff's petition with the Dutch court. Such retroactivity is contrary to the well established Pennsylvania law, as set forth in Pa. R. Civ. P. 1910.17(a).

(Statement of Errors.)

DISCUSSION

A petition to register a foreign support order filed on or after April 4, 1996 is governed by the Uniform Interstate Family Support Act ("UIFSA"), 23 Pa. C.S. §§ 7101-7802. *See Goddard v. Hentzelman*, 875 A.2d 1119, 1121-22 (Pa. Super. 2005). "In reviewing a decision concerning the registration of a foreign support order, [the] standard of review is whether the trial court manifestly abused its discretion or committed an error of law." *See Simpson v. Sinclair*, 788 A.2d 1016, 1017 (Pa. Super. 2001). As more fully set forth below, the Court respectfully suggests that it neither

committed errors of law nor abused its discretion and that Father's appeal therefore lacks merit and should be dismissed.

Father's Contention that The Netherlands Is Not a "State" Within the Meaning of UIFSA (Nos. 1-4)

Father's claim that Holland is not a "state" within the meaning of UIFSA was raised for the first time in his Rule 1925(a) Statement of Errors Complained of On Appeal. Because this issue was not raised during the proceedings, it is untimely and is therefore waived on appeal.

Where a party has failed to seek a ruling on an issue in the trial court, the issue is waived and cannot be raised on appeal. *See Goddard v. Heintzelman*, 875 A.2d 1119, 1123 n.2 (Pa. Super. 2005) (on appeal from order registering foreign support order, where party had failed to seek ruling from trial court on alternative theory for assessing interest on arrears, the party was precluded from raising that theory on appeal); *see also* Pa. R. App. P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."); *Knarr v. Erie Ins. Exch.*, 723 A.2d 664, 666 (Pa. 1999) ("We have held on numerous occasions that where the parties fail to preserve an issue for appeal, the Superior Court may not address the issue, even if the disposition of the trial court was fundamentally wrong."); *Summers v. Summers*, 35 A.3d 786, 789-90 (Pa. Super. 2012) (on appeal from order modifying support order based on father's disability after *de novo* hearing, challenge to admission of doctor's letter was waived where appellant had failed to object to admission of the letter before or after

the hearing); *In re S.C.B.*, 990 A.2d 762, 767 (Pa. Super. 2010) (on appeal from involuntary termination of parental rights, where party had failed to object to proceeding in absence of guardian *ad litem*, party could not raise that objection on appeal, even though issue was listed in party's Rule 1925(a) Statement); *Thompson v. Thompson*, 963 A.2d 474, 475-476 (Pa. Super. 2008) (on appeal from modification of custody, where appellant had failed to object to trial court's rulings with regard to opening and closing statements and examination of witnesses, appellant could not raise those issues on appeal); *Hong v. Pelagatti*, 765 A.2d 1117, 1123 (Pa. Super. 2000) (on appeal from grant of nonsuit for failure to produce evidence, where appellant had not argued to the trial court that he had in fact produced evidence, that issue was waived on appeal). In *Thompson v. Thompson*, the Superior Court stated:

In order to preserve an issue for appellate review, a party must make a timely and specific objection at the appropriate stage of the proceedings before the trial court. Failure to timely object to a basic and fundamental error will result in waiver of that issue. On appeal the Superior Court will not consider a claim which was not called to the trial court's attention at a time when any error committed could have been corrected. In this jurisdiction . . . one must object to errors, improprieties or irregularities at the earliest possible stage of the adjudicatory process to afford the jurist hearing the case the first occasion to remedy the wrong and possibly avoid an unnecessary appeal to complain of the matter.

963 A.2d at 475-76 (quoting *Hong v. Pelagatti*, 765 A.2d at 1123).

Father's claim that Holland is not a "state" within the meaning of UIFSA was not raised below and, under the authorities cited above, is

therefore waived on appeal. Even if this issue were not waived on appeal, it still fails because, contrary to Father's contention, Holland is a "state" within the meaning of UIFSA.

Section 7101 of UIFSA defines a "state" as "a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this part." 23 Pa. C.S.A. § 7101. The United States Secretary of State and the Secretary of Health and Human Services are vested with authority for determining which foreign countries are deemed to be "reciprocating countries" for purposes of enforcing child support obligations. See 42 U.S.C. § 659A(a)(1):

The Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to obligees who are residents of the United States, and such procedures are substantially in conformity with the standards prescribed under subsection (b) of this section.

Id.

The United States Secretary of State and the Secretary of Health and Human Services have declared that Holland is a "reciprocating country" for purposes of enforcing child support obligations. See "Agreement Between the Government of the United States of America and the Government of the Kingdom of the Netherlands for the Enforcement of Maintenance (Support)

Obligations” (executed May 13, 2001, eff. May 1, 2002) [hereinafter, the “Agreement”], U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, Foreign Reciprocating Countries, Netherlands: Foreign Reciprocating Country, Official Reference Documents, <http://www.acf.hhs.gov/programs/css/resource/netherlands-frc> (last visited Nov. 20, 2012).

Article VII of the Agreement provides:

Recognition and Enforcement of Maintenance Decisions

1. Maintenance decisions, including maintenance decisions arising from a determination of paternity from the United States shall be recognized and enforced in the Kingdom of the Netherlands to the extent that the facts in the case support recognition and enforcement under the Convention to the Recognition and Enforcement of Decisions relating to Maintenance Obligations, concluded on 2 October, 1973, at the Hague as if that instrument were in force between the Parties

2. Maintenance decisions, including maintenance decisions arising from a determination of paternity, from the Kingdom of The Netherlands shall be recognized and enforced in the United States to the extent that the facts in the case support recognition and enforcement in accordance with the Uniform Interstate Family Support Act as if that law were in force between the Parties.

Id. art. VII.

As of the effective date of the Agreement, May 1, 2002, the U.S. Department of Health and Human Services listed Holland as a foreign reciprocating country for child support purposes. See Foreign Reciprocating Countries, U.S. Department of Health and Human Services, Administration

for Children and Families, Office of Child Support Enforcement, <http://www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries> (last visited Nov. 20, 2012); 67 Fed.Reg. No. 231 at p. 71605 (Dec. 2, 2002). Based on these declarations, Holland is a "state" within the meaning of UIFSA. See *Methorst v. Verkek*, 2011 WL 921519 at *3 (Mich. App. Ct. 2011); *Torrigo v. Smithson*, 2006 WL 334032 (Tenn. App. Ct. 2006). Accordingly, Father's contention on this issue fails.

Father's Contention that the Northampton County Court Failed To Follow the Correct Procedure as the "Responding Tribunal" Under UIFSA (Nos. 5-7)

Father asserts that "if the Dutch court had properly initiated this action," the Northampton County Court "erred in failing to conduct a hearing pursuant to the provisions set forth for the 'responding tribunal'" in 23 Pa. C.S. § 7316. (Statement of Errors ¶¶ 5-7.) However, Father does not specify how this Court failed to follow the procedures set forth in § 7316. Father failed to raise this issue below, and it is therefore waived on appeal. (See waiver cases cited *supra*.)

Even if this issue were not waived on appeal, it still fails, because this Court correctly followed the UIFSA procedures. The procedure for registering a support order of another state is set forth in 23 Pa. C.S.A. § 7602(a).

(a) General rule.--A support order or income-withholding order of another state may be registered in this State by sending the following documents and information to the appropriate tribunal in this State:

- (1) A letter of transmittal to the tribunal requesting registration and enforcement.
- (2) Two copies, including one certified copy, of the order to be registered, including any modification of the order.
- (3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage.
- (4) The name of the obligor and, if known:
 - (i) the obligor's address and Social Security number;
 - (ii) the name and address of the obligor's employer and any other source of income of the obligor; and
 - (iii) a description and the location of property of the obligor in this State not exempt from execution.
- (5) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) Docketing.--On receipt of a request for registration, the registering tribunal shall file the order as a foreign judgment, together with one copy of the documents and information, regardless of their form.

23 Pa. C.S.A. § 7602(a)-(b).

Once all of the documents listed in § 7602(a) are submitted, registration under §7602(b) is automatic. *See Simpson v. Sinclair*, 788 A.2d 1016, 1018 (Pa. Super. 2001).

This Section makes it clear registration is a ministerial act, requiring the trial court to register the foreign order upon receipt of the specified documents. 23 Pa. C.S. §7602(b). The language in Subsection (b) is mandatory: if a party provides the proper documents, "the registering tribunal *shall* file the order as a foreign judgment. . . ." *Id.* (emphasis added).

Id.

Mother satisfied all of the above-described statutory requirements. The Dutch domestic relations agency submitted a "Transmittal and Acknowledgment" seeking "[e]nforcement of the enclosed Order" and "[c]ollection of arrears" to the Northampton County Domestic Relations Section. Attached to the Transmittal were certified copies of the Dutch support Orders, Mother's sworn statements concerning the arrears under the two Orders and how they were calculated, the required identifying information about Father and his assets, and the required identifying information about Mother. Under the authorities cited above, once these documents were submitted, the Northampton County Court was required to register the two Dutch Orders.

After registration of the two Dutch Orders, it was Father's burden to contest their validity or enforcement under the procedure set forth in 23 Pa.C.S.A. § 7606:

(a) Action.--A nonregistering party seeking to contest the validity or enforcement of a registered order in this State must request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 7607(relating to contest of registration or enforcement).

(b) Inaction.--If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) Hearing.--If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

UIFSA provides seven narrowly defined affirmative defenses that may be raised by a contesting party. See 23 Pa.C.S.A. § 7607:

(a) Defenses.--A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving any 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 section 7604(relating to choice of law) precludes enforcement of some or all of the arrearages.

(b) Relief.--If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this State.

(c) Affirmance.--If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

In seeking to establish one of the affirmative defenses set out in § 7607, the contesting party bears the burden of proof. *See Simpson v. Sinclair*, 788 A.2d 1016, 1018-19 (Pa. Super. 2001).

At the hearing to contest registration and enforcement, the Court is required to follow the procedures set forth in 23 Pa. C.S.A. § 7316.

§ 7316. Special rules of evidence and procedure

(a) Physical presence.--The physical presence of the petitioner in a responding tribunal of this State is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.

(b) Hearsay exception.--A verified petition, affidavit or document, substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) Payment record.--A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Bills.--Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

(e) Transmission of documentary evidence.--Documentary evidence transmitted from another state to a tribunal of this State by telephone, telecopier or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) Testimony.--In a proceeding under this part, a tribunal of this State may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state. A tribunal of this State shall cooperate with a tribunal of another state in designating an appropriate location for the deposition or testimony.

(g) Self-incrimination.--If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) Spousal communications.--A privilege against disclosure of communications between spouses does not apply in a proceeding under this part.

(i) Family immunity.--The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this part.

On June 26, 2012, this Court held a hearing pursuant to the above-described statutory procedures. (N.T. June 26, 2012.) Father participated in the hearing and was represented by counsel. (*Id.*) Although Father asserts that the Court “erred in failing to conduct a hearing pursuant to the provisions set forth for the ‘responding tribunal’” in 23 Pa. C.S. § 7316 (Statement of Errors ¶¶ 5-7), as noted above, Father does not specify how the Court failed to follow those procedures. Accordingly, Father’s contention on this issue fails.

Father’s Contention that Mother Engaged in Improper Forum Shopping (No. 8)

Father did not ask the Court to decide, either at the hearing or in a post-hearing motion for reconsideration, that Mother engaged in improper

forum shopping under UIFSA. Thus, this issue is waived on appeal. (See waiver cases cited *supra*.) Even if this issue were not waived on appeal, it still fails, because it is an issue that should have been presented to the Dutch Court. As is set forth in 23 Pa.C.S.A. § 7604:

(a) General rule.--The law of the issuing state governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearages under the order.

23 Pa.C.S.A. § 7604; *accord* 23 Pa. C.S.A. § 7604 Comment (“The basic principle of the Act is that throughout the process the controlling order remains the order of the issuing state, and that responding states only assist in the enforcement of that order.”). This principle is a reflection of the doctrines of *res judicata* and collateral estoppel, which bar relitigation of issues already decided between the parties.

“A final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or *their privies* on the same cause of action.” *See Stevenson v. Silverman*, 208 A.2d 786, 788 (Pa. 1965) (emphasis in original).

“When a court of competent jurisdiction has determined a litigated cause on its merits, the judgment entered and not reversed on appeal is, as between the parties to the suit *and their privies*, final and conclusive with regard to every fact which might properly be considered in reaching a judicial determination and with regard to all points of law adjudged as those facts and points of law relate directly to the cause of action in litigation.”

Id. (quoting *Goldstein v. Ahrens*, 108 A.2d 693, 695 (Pa. 1954) (emphasis added)). The *Stevenson* Court stated:

“The rule should not be defeated by minor differences of form, parties, or allegations, when these are contrived only to obscure the real purpose,—a second trial on the same cause between the same parties. The thing which the court will consider is whether the ultimate and controlling issues have been decided in a prior proceeding in which *the present parties actually had an opportunity to appear and assert their rights*. If this be the fact, then the matter ought not to be litigated again, nor should the parties, by a shuffling of plaintiffs on the record, or by change in the character of the relief sought, be permitted to nullify the rule.”).

Id. (quoting *Hochman v. Mortgage Fin. Corp.*, 137 A. 252, 253 (1927) (emphasis added)). “Res judicata encompasses not only those issues, claims or defenses that were actually raised in the prior proceeding, but also those which could or should have been raised and were not.” See *Scott v. Mershon*, 657 A.2d 1304, 1307 (Pa. Super. 1995).

Collateral estoppel, a doctrine similar to *res judicata*, bars relitigation of issues where:

(1) the issue decided in the prior case is identical to one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privity to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding and (5) the determination in the prior proceeding was essential to the judgment.

Yamulla Trucking & Excavating Co. v. Justofin, 771 A.2d 782, 786 (Pa. Super. 2001)

Father and Mother were both represented by counsel in the Dutch child support proceeding. Forum shopping was an issue that Father could have and should have raised in the Dutch proceeding, since the Dutch Court was

ruling on the merits of Mother's claims. If Father had lost on that issue in the Dutch Courts, his remedy would have been to raise the issue on appeal to the Dutch Appeals Court. Having failed to raise the issue in the Dutch Court, under the authorities cited above, Father is now barred from relitigating the issue here.

Father was also represented by counsel in Mother's action under the Hague Convention in the Eastern District. (PX 2.) That entire proceeding was about the issue of whether Mother had engaged in improper forum shopping by ignoring the Pennsylvania Courts and seeking relief in the Dutch Courts. (PX 2.) The Eastern District ruled against Father, holding that the Child should be returned to her habitual residence in Holland. (*Id.*) Although the Eastern District did not purport to decide which country's courts should hear the parties' disputes, its holding certainly implied that Mother had not engaged in improper forum shopping by seeking relief in the Dutch Courts. Father appealed that decision to the Third Circuit and lost. (DX 13.) Thus, Father has fully and fairly litigated the issue of whether Mother engaged in improper forum shopping, and under the authorities cited above, he is precluded from relitigating the issue here. This Court notes that if the Child had lived in Holland for five years, it can hardly be deemed improper forum shopping for Mother to have sought child support in the Dutch Court.

Father's Contention that the Dutch Court Lacked Personal Jurisdiction Over Him (No. 9)

Although Father raised the affirmative defense of lack of personal jurisdiction in his Objections to Mother's request for registration and enforcement, he did not raise the issue again at the June 26, 2012 hearing or in his post-trial briefs, nor did he present any evidence to support his contention that the Dutch Court lacked personal jurisdiction over him. Father's objection to the purported lack of due process in the Dutch Court was confined to his assertion that he was not properly served with Mother's February 26, 2008 petition for child support. (N.T. June 26, 2012 at Defendant's Post-Trial Br. at 9-10.) Therefore, the issue of personal jurisdiction is waived on appeal.

"Generally, an issue once raised must be preserved at each stage of the case." See *Ins. Co. of Evanston v. Bowers*, 758 A.2d 213, 221 (Pa. Super. 2000). Where a party raises an issue in the pleadings but then fails to press the issue at later stages of the litigation, the issue is waived and cannot be raised on appeal. See *id.* (issue waived where party raised it in counterclaim but then "failed to preserve th[e] issue by again raising it either in opposition to [opponent's] motion or in its own motion for judgment on the pleadings"); *Kraus v. Taylor*, 710 A.2d 1142, 1146-47 (Pa. Super. 1998) (where party raised 63 errors in post-trial motions but briefed only 13, the other 50 issues were waived on appeal); *Bryant v. Girard Bank*, 517

A.2d 968, 973 (Pa. Super. 1986) (where party failed to raise legal theories in post-trial motions or briefs, they were waived on appeal).

Even if the issue of personal jurisdiction were not waived on appeal, it still fails, because Father waived it when he appeared and participated in the Dutch child support proceeding (through his attorney) and did not challenge personal jurisdiction there. "A defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge the judgment on jurisdictional grounds in a collateral proceeding." *Ins. Corp. of Ireland Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982). But once a defendant chooses to appear in an action, he must raise the issue of personal jurisdiction, or it is waived. *See Sherrer v. Sherrer*, 334 U.S. 343, 348-56 (1948) (where husband appeared and participated in Florida divorce action but failed to raise the issue of personal jurisdiction, husband could not later assert lack of personal jurisdiction in a collateral attack on the Florida court's judgment in Massachusetts); *State ex rel. Dep't of Soc. Servs v. Peteet*, 40 So. 3d 1015, 1019 (La. Ct. App. 2010) (where Louisiana mother had participated in Ohio support proceeding and had failed to raise the issue of personal jurisdiction there, mother had waived any objection to Ohio court's lack of personal jurisdiction and could not raise the issue by way of later collateral attack in father's action to register the Ohio support order in Louisiana). The *Sherrer* Court stated:

The respondent personally appeared in the Florida proceedings. Through his attorney he filed pleadings denying the substantial

allegations of petitioner's complaint. It is not suggested that his rights to introduce evidence and otherwise to conduct his defense were in any degree impaired; nor is it suggested that there was not available to him the right to seek review of the decree by appeal to the Florida Supreme Court. It is clear that respondent was afforded his day in court with respect to every issue involved in the litigation, including the jurisdictional issue of petitioner's domicile. Under such circumstances, there is nothing in the concept of due process which demands that a defendant be afforded a second opportunity to litigate the existence of jurisdictional facts.

Id. at 348.

Here, Father could have elected not to appear in the Dutch proceeding, allow a default judgment to be entered against him, and then raise the issue of personal jurisdiction by way of collateral attack in Pennsylvania. But once Father chose to appear in the Dutch proceeding, under the authorities cited above, he was required to raise his defense of lack of personal jurisdiction in that forum, and by his failure to do so waived it.

It is possible that Father's attorney raised the issue of personal jurisdiction in the Dutch proceeding and that that fact is simply not reflected in the record. At the June 26, 2012 hearing on Mother's registration requests, Father testified that when his attorney appeared on his behalf in the Dutch proceeding, the attorney filed a "contempt against the jurisdiction." (N.T. June 26, 2012 at 35). However, even if, as Father asserts, he did raise the defense of lack of personal jurisdiction in the Dutch proceeding, as more fully set forth below, that fact does not permit Father to raise the personal jurisdiction issue in a collateral attack.

If a defendant appears in a foreign action and raises the issue of personal jurisdiction, then the defendant is bound by that forum's determination on the jurisdiction issue and is limited to seeking review on appeal in the courts of that state; the defendant may not collaterally attack the judgment based on lack of personal jurisdiction in a later proceeding in another state. *See Durfee v. Duke*, 375 U.S. 106, 111 (1963) ("[A] judgment is entitled to full faith and credit -- even as to questions of jurisdiction -- when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment."); *Cairns v. Cairns*, 741 A.2d 800, 801-03 (Pa. Super. 1999) (where mother sought child support order in Oregon, and Pennsylvania father appeared in Oregon proceeding solely to contest Oregon's jurisdiction, father was bound by Oregon Court's determination that it had personal jurisdiction over him and was limited to seeking appellate review in Oregon; father could not relitigate the issue of personal jurisdiction through a collateral attack in Pennsylvania).

Under the authorities cited above, even if Father did raise the issue of personal jurisdiction in the Dutch child support proceeding, he is still bound by the Dutch Court's determination that it had jurisdiction, and he was limited to seeking appellate review in Holland. He is now precluded from raising the issue in a collateral attack in Pennsylvania.

Even if Father had a colorable defense of lack of personal jurisdiction in the Dutch action, he abandoned the defense and voluntarily submitted to the Dutch Court's jurisdiction when he proceeded to address the merits of Mother's child support claims. "A defendant manifests an intent to submit to the court's jurisdiction when the defendant takes 'some action (beyond merely entering a written appearance) going to the merits of the case, which evidences an intent to forego objection to the defective service.'" *Fleehr v. Mummert*, 857 A.2d 683, 685 (Pa. Super. 2004) (where defendant's attorney moved to consolidate plaintiff's complaint with defendant's counterclaim, attorney's behavior implicitly served as acceptance of service of plaintiff's complaint and waived any objection to personal jurisdiction) (quoting *Cathcart v. Keene Indus. Insulation*, 471 A.2d 493, 499 (1984)), *app. denied*, 889 A.2d 89 (2005); accord *O'Barto v. Glossers Stores, Inc.*, 324 A.2d 474, 475-76 (Pa. Super. 1974) (where party answered complaint on the merits, served interrogatories, and joined an additional defendant, party voluntarily submitted to the court's jurisdiction and waived any defense of lack of personal jurisdiction). Father admitted at the June 26, 2012 hearing that in the Dutch proceeding, his attorney presented a defense on the merits of Mother's claims. (Ex. D3, Attach. G at 1-3; N.T. June 26, 2012 at 34-35, 49-56.) Therefore, Father voluntarily submitted to the Dutch Court's jurisdiction and is precluded from raising the personal jurisdiction issue here.

Even if Father had not voluntarily submitted to the Dutch Court's jurisdiction, his personal jurisdiction defense would still fail, because the Dutch Court had personal jurisdiction over him. When examining whether a court that issued a foreign support order had personal jurisdiction over the defendant, the Court may look to the long-arm provision of UIFSA as a guide. *See Country of Luxembourg ex rel. Ribeiro v. Canderas*, 768 A.2d 283, 287 (N.J. Super. Ch. 2000). Although UIFSA's long-arm provision provides for exercise of personal jurisdiction by Pennsylvania's courts, nevertheless, the intent of the long-arm provision is to insure that every enacting state has a long-arm statute as broad as constitutionally permitted. *See* Comment to 23 Pa. C.S.A. § 7201. Therefore, UIFSA's long-arm provision serves as a useful guide in determining whether reciprocating foreign states (such as Holland) may properly exercise personal jurisdiction over a defendant. *See Country of Luxembourg*, 768 A.2d at 287 (holding that Luxembourg did not have personal jurisdiction over non-resident father based on long-arm provision of UIFSA). The long-arm provision of UIFSA provides as follows:

§ 7201. Bases for jurisdiction over nonresident

In a proceeding to establish, enforce or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if any of the following apply:

- (1) The individual is personally served with a writ of summons, complaint or other appropriate pleading within this State.

(2) The 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.

(3) The individual resided with the child in this State.

(4) The individual resided in this State and provided prenatal expenses or support for the child.

(5) The child resides in this State as a result of the acts or directives of the individual.

(6) The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse.

(7) The individual acknowledged parentage of the child on a form filed with the department under section 5103 (relating to acknowledgment and claim of paternity).

(8) There is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

23 Pa. C.S.A. § 7201.

At a minimum, Father's contacts with Holland satisfy subsections (2), (5), and (8) of the UIFSA long-arm provision. Father's conduct satisfies subsection (2) because, as noted above, he voluntarily submitted to the Dutch Court's jurisdiction.

Father's conduct satisfies subsection (5), because the Child resided in Holland "as a result of the acts or directives" of Father. Mother and the Child moved to Holland at Father's request so that they would be closer to Father's Dutch family and so that it would be easier for Father to visit the

Child. They also lived there in an apartment that Father purchased and maintained. Therefore, Father's conduct satisfies subsection (5).

Father's conduct satisfies subsection (8), because there is another basis for the exercise of personal jurisdiction that is "consistent with the constitutions of this State and the United States," *i.e.*, the "minimum contacts" standard for personal jurisdiction under the due process clause of the United States Constitution. *See Cresenzi v. Cresenzi*, 2004 WL 2668272 at *5 (Conn. Super. Ct. 2004) ("In determining the application of UIFSA or affording of comity to a judgment of a foreign court, the minimum contacts standard may still be a useful criterion of whether the underlying judgment afforded the adverse party reasonable notice and due process.").

The law applying the minimum contacts test for personal jurisdiction is well developed. *See, e.g., Kenny v. Alexon Equip. Co.*, 432 A.2d 974, 980 (Pa. 1981). "It is well settled that a state court may exercise personal jurisdiction over a non-resident defendant only so long as there exist 'minimum contacts' between the defendant and the forum state. . . . It is essential in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state." *Id.* at 980 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citations omitted)). "[T]he foreseeability that is critical to due process analysis is . . . that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled

into court there.” *Id.* at 981 (quoting *Worldwide Volkswagen v. Woodson*, 444 U.S. 286, 297 (1980)).

Where a party has fathered a child with a woman who lives in a foreign state, has spent considerable time in that state, and knows that the woman and child will likely remain in the state after his departure, it does not offend due process for the father to be subjected to the jurisdiction of that state’s courts for purposes of defending a child support action relating to the child. *See C.L. v. W.S.*, 968 A.2d 211, 214-17 (N.J. Super. Ct. App. Div. 2009) (interpreting long-arm provision of Uniform Parentage Act and noting that UIFSA was based on the same provision).

[T]he parties' contacts with New Jersey were not limited to a fleeting act of sexual intercourse. Plaintiff was then and has continued to be a New Jersey domiciliary. Defendant was engaged to plaintiff and spent a substantial amount of time at her home. Thus, defendant had to have been aware that if the parties terminated their engagement and he left New Jersey, it was likely that plaintiff and any child their relationship might produce would remain in New Jersey. Moreover, the entirety of the parties' relationship occurred in New Jersey. The substantiality of the parties' contacts with New Jersey clearly establishes the reasonableness and fairness of New Jersey's exercise of jurisdiction to determine plaintiff's paternity claim.

Id. at 217.

Courts finding personal jurisdiction to be lacking have emphasized the fleeting nature of the defendant’s contacts with the jurisdiction and the absence of economic benefits flowing to the defendant from the jurisdiction, especially the absence of property ownership, factors that are not present here. *See Kulko v. Superior Court of California*, 436 U.S. 84, 91-101 (1978)

(California had no personal jurisdiction over New York father where father's only contacts with California were two brief stopovers in the state 13 years earlier and his acquiescence in his daughter's desire to move to California to live with her mother, especially given that father derived no financial benefit from his daughter's presence in California); *Country of Luxembourg ex rel. Ribeiro v. Canderas*, 768 A.2d 283 (N.J. Super. Ch. 2000).

In this case, the defendant has no contacts at all with Luxembourg. He has never physically visited the country and he owns no property there. Relying the precedents cited above, this court finds that there is no basis consistent with the constitution of New Jersey and the United States for the exercise of personal jurisdiction over him. As a result, this court cannot find that the issuing tribunal acted in accordance with a law or procedure which was substantially similar to that of UIFSA for obtaining personal jurisdiction over a non-resident.

Id. at 288.

Here, unlike the defendant in *Country of Luxembourg*, Father purposely availed himself of the rights and privileges of Dutch law in connection with the subject matter of the dispute. At the time of the marriage, Father was a Dutch citizen. Father's family lived in Holland. Mother and the Child relocated to Holland at Father's request, to make it easier for Father to visit the Child. Father purchased an apartment for Mother and the Child in Holland, paid the costs of maintaining the apartment, and regularly visited Mother and the Child in Holland over a period of years. In addition, Father voluntarily submitted to the Dutch Court's jurisdiction to defend his economic interests in numerous legal

proceedings in connection with Mother's divorce and custody actions. (Ex. D3, Attachs. B, C, D, E, F.) Under the authorities cited above, Father's contacts with Holland were more than sufficient to satisfy the due process clause. Therefore, Father could reasonably expect to be haled into court in Holland to defend a child support action relating to the Child, and it would not violate Father's due process rights to require him to defend a child support action in Holland. Therefore, Father's claim that the Dutch Court lacked personal jurisdiction over him fails.

Father's Contentions that He Received Insufficient Notice and Service of Process and that He Was Denied Due Process (Nos. 10-12, 19)

At the June 26, 2012 hearing on Mother's registration requests, Father maintained that he had not been properly served with Mother's February 26, 2008 petition for child support, since he had not been occupying his Florida home at the time Mother's petition was served on him there and that he did not receive the papers. (N.T. June 26, 2012 at 23-24, 32-34, 42.) Father raised this issue as an affirmative defense under UIFSA § 7607(5), stating, "There is a defense under the law of this State to the remedy sought." See Defendant's Post-Hearing Brief at 9-10. We note that service on Father appears to have been proper under Pennsylvania law, see Pa. R.C.P. 1930.4, since Father admitted that he had two homes, one in Pennsylvania and one in Florida, and that he provided both addresses to the Dutch Court; therefore, he was on notice that he might be served at his Florida residence.

(N.T. June 26, 2012 at 23-24, 32-33.) In addition, Mother's attorney, Mr. Storm, testified that he personally served the petition on Father's attorney, Mr. Zwarts. (*Id.* at 49-56.) However, even if service was improper, this issue fails, because Father waived any defects in service when he voluntarily submitted to the jurisdiction of the Dutch Court.

Under Pennsylvania law, as with personal jurisdiction, discussed above, "[a] defendant can waive service of process and become a party to a suit by voluntary appearance, and, in that event, service of process is not necessary for assumption of jurisdiction by the court." 2 Standard Pennsylvania Practice 2d § 10:60. "Defects in service of process may also be waived by answering the complaint on the merits, or taking affirmative action to defend the case, or by otherwise participating in the case in a manner evidencing an intent to forego the objection to the defective service." 2 Standard Pennsylvania Practice 2d § 10:183 (footnotes omitted). As with personal jurisdiction, discussed above, "A defendant manifests an intent to submit to the court's jurisdiction when the defendant takes 'some action (beyond merely entering a written appearance) going to the merits of the case, which evidences an intent to forego objection to the defective service.'" *Fleehr v. Mummert*, 857 A.2d 683, 685 (Pa. Super. 2004) (where defendant's attorney moved to consolidate plaintiff's complaint with defendant's counterclaim, attorney's behavior implicitly served as acceptance of service of plaintiff's complaint and waived any objection to

defective service) (quoting *Cathcart v. Keene Indus. Insulation*, 471 A.2d 493, 499 (1984)), *app. denied*, 889 A.2d 89 (2005); *accord O'Barto v. Glossers Stores, Inc.*, 324 A.2d 474, 475-76 (Pa. Super. 1974) (where party answered complaint on the merits, served interrogatories, and joined an additional defendant, party voluntarily submitted to the court's jurisdiction and waived any objection to defective service).

Here, Father not only answered Mother's complaint in the Dutch child support action and presented a defense on the merits of her claims (through his attorney), he also requested affirmative relief from the Dutch Court by making a proposal concerning the amount of child support he would be willing to pay per month and the date his obligations should begin. Accordingly, Father submitted to the Dutch Court's jurisdiction and waived any objection to defects in service.

Father's Contention that He Was Entitled to a \$65,000 Credit Against His Child Support Obligation Due To the Equitable Distribution Judgment he Obtained from the Northampton County Court (No. 13)

Father claims that part of the \$65,000 equitable distribution judgment he was awarded by the Northampton County Court was for "overpayments" of child support and that he should therefore receive a credit in that amount against his child support obligations as set forth in the Dutch Order. This is an issue that Father should have raised with the Dutch Court at the time his support obligations were determined. Although Father told the Dutch Court about the equitable distribution award, he did not ask that it be credited

against his future child support obligations. (Ex. D3, Attach. G at 2.)

Having litigated this issue in the Dutch proceeding, Father is now barred from relitigating it here. (See discussion of *res judicata* and collateral estoppel, *supra*.)

Even if Father were not barred from relitigating this issue, the claim still fails, because the equitable distribution award was not for child support. The Master's Report states that the equitable distribution award consisted of \$75,000 for Father's share of the Kiev apartment that Mother transferred to her mother, \$3,000 for Father's car that Mother took for her personal use, and \$2,000 for court costs, for a total of \$80,000, less \$15,000 that Father owed Mother for unpaid household support. (Ex. D2, Attach. I (Report) at 9-10, 14-15, 22, 25-28; Ex. D3, Attach. E (Storm Letter); Ex. D3, Attach. E (Zwarts Letter).) No portion of the \$65,000 equitable distribution award was for overpayments of child support. "As with the other elements of child support, a parent may receive credit against his or her support obligation only for those expenditures which actually satisfy the obligation of reasonable and necessary support." *Spahr v. Spahr*, 869 A.2d 548, 555 (Pa. Super. 2005). Money owed by one parent to the other may not be deducted from child support payments but must be made the subject of a separate civil action. See *Bean v. Bean*, 1993 WL 765823, at *1 (C.P. Bradford Co. 1993).

The Special Master noted that Father had voluntarily paid Mother more than the Court would have ordered for alimony and child support from the time of separation through 2007. (Ex. D2, Attach. I (Report) at 24.) However, at the June 26, 2012 hearing on Mother's request for registration, Father's counsel conceded that the \$250,000 Father had paid Mother from the date of separation through 2007 was "not relevant" to Mother's request to enforce the Dutch Court's December 12, 2008 child support Order, which covered the period from February 28, 2008 forward. (N.T. June 26, 2012 at 28-29.)

Father's Contention That He Was Not Given an Opportunity To Challenge the Correctness of the Conversion Rate from Euros to Dollars (No. 14)

The conversion rate from euros to dollars was set forth in Mother's Registration Statement, along with the amounts Mother was seeking, expressed in both euros and dollars. (Registration Statement for Dec. 12, 2008 Order at 1.) This Court used the same numbers in its Order. If Father wished to challenge the conversion rate, he had more than sufficient notice and opportunity to do so, either at the hearing or in a post-hearing motion for reconsideration. (See authorities on waiver, *supra*.) He did neither. This issue is therefore waived on appeal.

Father's Contention that It Was Improper To Impose the Annual Inflation Index on His Child Support Obligation (Nos. 15-17)

This issue is not one of the affirmative defenses listed in UIFSA § 7607(a) and therefore cannot be raised in opposition to a request to register. If Father wanted to argue that it was unfair to apply an annual inflation index to his child support obligations because he could not afford to pay the annual increase or because the inflation index exceeded the actual increase in the cost of living, Father should have raised that challenge in the Dutch proceeding. He may not raise it here. See 23 Pa. C.S.A. § 7604 Comment ("The basic principle of the Act is that throughout the process the controlling order remains the order of the issuing state, and that responding states only assist in the enforcement of that order.")

Even if this Court could consider this claim, the claim still fails, because Father failed to raise it below. (See authorities on waiver, *supra*.) Moreover, Father failed to cite any authority holding that the inflation index is prohibited by Pennsylvania law or that the Pennsylvania Support Collection and Disbursement Unit will be unable to administer the index. We note that annual indexation clauses in child support orders are not uncommon. See *In re Marriage of Stamp*, 300 N.W.2d 275, 279 (Iowa 1980); *In re Marriage of Mahalingam*, 584 P.2d 971, 976 (Wash. App. Ct. (1978)); Note, Inflation-Proof Child Support Decrees: Trajectory to a Polestar, 66 Iowa L.Rev. 131 (1980). Because Father is barred from raising the issue of the indexation

provision in this Court and because he has cited no authority in support of his position, this issue fails.

Father's Contention That He Should Not Owe Child Support for the Period When He "Legally and Properly" Had Custody of the Child in the United States (No. 18)

Father contends that he legally had custody of the Child while she resided with him in the United States, because the Lehigh County Court's May 20, 2009 Custody Order had awarded him primary custody of the Child and authorized him to remove her from Holland. However, the Third Circuit determined that Father did not lawfully have custody of the Child while she resided with him in the United States. (DX13 at 264-66.) This issue was finally adjudicated on the merits in an action between the same parties in federal court where both parties had a full and fair opportunity to litigate, and it was held that Father had illegally removed the Child from Holland. (DX 13.) Father is therefore precluded from relitigating the issue here. (See *res judicata* and collateral estoppel cases cited above.) Since Father did not legally have custody of the Child while she resided with him in the United States, his child support obligation continued during that time, and his contention that he should not owe child support during that time fails.

To the extent Father argues that he should receive a credit because Mother incurred no child care expenses during the time the Child was living with him, Father's argument is foreclosed by public policy. See *Larson v. Diveglia*, 700 A.2d 931, 933 (Pa. 1997) ("[A]n individual cannot vest himself

with legal rights regarding a child merely by asserting physical control over that child.”); *Seder v. Seder*, 841 A.2d 1074, 1077 (Pa. Super. 2004) (allowing a party to seek child support when the party has taken custody of the child in defiance of a court order would be an “absurd result”).

Accordingly, Father’s contention on this issue fails.

Father’s Contention that the Dutch Child Support Order Violates Pennsylvania Law Because It Is Retroactive to a Date Before the Filing of Mother’s Petition with the Dutch Court (No. 20)

Because Father did not raise this issue below, it is waived. (See waiver cases cited above.) Even if this issue were not waived, it would still fail, because the Dutch order is not retroactive to a date before the filing of Mother’s petition. Father raised this issue in the Dutch Court, and the Dutch Court ruled in his favor, holding that “the date of commencement for the payment of child maintenance must be February 26, 2008, i.e. the date on which the wife filed her petition.” (Ex. D3, Attach. G.) Father obtained the ruling he sought, and the issue is moot.

CONCLUSION

All of the issues raised by Father in his Statement of Errors Complained of on Appeal have been addressed herein, each of the issues lacks merit, and no further statement is required.

BY THE COURT:

MICHAEL J. KOURY, JR., J.

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Ex. D1, Attach. K, *Leendertz v. Leendertz*, No. 2001-FC-893 (C.P. Lehigh Co. Dec. 31, 2007) ["Ex. D1, Attach. K"].

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Ex. D3, Attach. D, *Karpenko v. Leendertz*, No. 141509/ES RK 06-416 (Dist. Ct. Arnhem, Holland Feb. 7, 2008) ["Ex. D3, Attach. D"].

Ex. D3, Attach. E, Letter from M.L.E. Storm van's Gravesande, Marina Karpenko's Dutch Counsel, to R.P. Zwarts, Paul Leendertz's Dutch Counsel (Jan. 28, 2008) ["Ex. D3, Attach. E (Storm Letter)"].

Ex. D3, Attach. E, Letter from R.P. Zwarts, Paul Leendertz's Dutch Counsel, to Paul Leendertz (Jan. 28, 2008) ["Ex. D3, Attach. E (Zwarts Letter)"].

Ex. D3, Attach. F, *Karpenko v. Leendertz*, No. 166985/FA RK 08-10515 (Dist. Ct. Arnhem, Holland Aug. 25, 2008) ["Ex. D3, Attach. F"].

Ex. D3, Attach. G, *Karpenko v. Leendertz*, No. 166985/FA RK 08-10515 (Dist. Ct. Arnhem, Holland Dec. 12, 2008) ["Ex. D3, Attach. G"].

Ex. D7, Florida Driver's License of Paul Leendertz issued Mar. 27, 2006, expiring April 24, 2012 ["Ex. D7"].

Ex. D13, *Karpenko v. Leendertz*, 619 F.3d 259 (3d Cir. 2010) ["Ex. D13"].

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