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CIRCUIT CLERK
IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

2011 JUN 10 PM 2:51

YA MEI Y. CHEN,
Petitioner - Appellee,

Civil Action No.: 83-C-277
Honorable Judge Jack Alsop

MING CHUNG CHEN,
Respondent - Appellant.

ORDER

This matter comes before this Court on Respondent's "PETITION FOR APPEAL" filed by Charles R. Webb on September 13, 2010. This Court held a hearing in this matter on January 28, 2011, at which time neither party was present, but both counsel for Petitioner and counsel for Respondent were present and made oral arguments, on behalf of each of their respective client's, to the Court. Following oral arguments on this matter, the Court permitted Petitioner to file a Supplemental Memorandum of Law within fifteen (15) days; Respondent was then granted ten (10) days in which to file a Response Memorandum of Law.

After carefully considering the arguments presented by each party, the parties' briefs, the record, and pertinent legal authority, the Court has concluded the Family Court of Nicholas County, West Virginia, did abuse its discretion and it did err in its findings of fact and conclusions of law by order dated August 18, 2010. Further, the Judgment Order entered on December 29, 1992 is no longer valid. The findings and conclusions for this decision are set forth below.

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I. FINDINGS OF FACT

1. The parties filed for divorce in Nicholas County, West Virginia in 1983.
2. On July 18, 1991, the Petitioner obtained a decretal judgment against the Respondent in the sum of \$66,447.55.
3. The Order from the July 18, 1991 hearing was not entered by the Court until July 1, 1992, after then final hearing in this matter was held on June 10, 1992.
4. At the final hearing, held on June 10, 1992, the Petitioner was awarded a judgment for \$58,736.00 retroactive to May of 1990, and rehabilitative alimony in sum of \$1,000.00 per month for four years. Additionally, the child support order was increased to \$1,500.00 per month.
5. A Final Order incorporating the findings above was entered in the Circuit Court of Nicholas County, West Virginia, on December 29, 1992. There was no Writ of Execution issued after the entry of the aforesaid judgment.
6. On the 14th day of December, 2009, Respondent, by and through counsel Charles R. Webb, filed a Motion for Determination of Arrearages and Assertion of Statute of Limitation and Credits.
7. On May 14, 2010, Petitioner, by and through counsel, Christopher T. Pritt and Kelly C. Pritt, filed a Response and Memorandum of Law in Opposition to Respondent's Motion.
8. On May 17, 2010, Respondent, by and through counsel, filed a Response to Petitioner's Response.
9. On the 14th day of June, 2010, Petitioner, by and through her counsel, filed a Response to Reply to Response of Respondent.

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10. On August 18, 2010, an Order was entered by the Family Court of Nicholas County, West Virginia, denying all relief requested by Respondent, and finding the order entered by Circuit Court of Nicholas County, West Virginia, on December 29, 1992 to be wholly valid and enforceable in its entirety.

11. Respondent, by and through counsel, Mr. Webb, filed his Notice and Petition for Appeal on September 13, 2010.

12. On September 23, 2010, the Honorable Judge Jack Alsop of the Fourteenth Judicial Circuit was assigned to hear the appeal in the Twenty-Eighth Judicial Circuit, to wit Case No.: 83-C-277.

13. Pursuant to West Virginia Code § 38-3-18, West Virginia has a ten (10) year statute of limitations in which a person must enforce a judgment. If a judgment is not enforced within that period, the judgment is no longer enforceable.

II. STANDARD OF REVIEW

Most of the contended errors raised in this appeal are subject to particular standards of review, such standards will be set out in connection with the *Discussion* section, found below, containing the alleged errors made by the Family Court of Nicholas County, West Virginia. Nevertheless, the Court notes here that the general standards a circuit court must follow when reviewing findings and rulings made by a family court are as set forth in West Virginia Code §51-2A-14(b):

The circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard.

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With this general standard in mind, the Court proceeded to address the issues herein raised by Respondent.

III. DISCUSSION

A. Rulings of the Family Court of Nicholas County, West Virginia

The main issue at contest in this Appeal is whether the Family Court of Nicholas County, West Virginia, erred in its conclusions of law as found in the Order entered on August 18, 2010. Pursuant to West Virginia Code §51-2A-14, this Court has the authority to review this appeal and as such, is of the opinion the Family Court of Nicholas County, West Virginia, was wholly erroneous with its findings of fact, and abused its discretion with regard to the court's conclusions of law.

This appeal is mainly based on arrearages and the conclusions of law found by the Family Court of Nicholas County, West Virginia. By Order entered August 18, 2010, the Family Court of Nicholas County, West Virginia, found Respondent was responsible for all child support and spousal support that had gone uncollected since the parties divorce in 1983. The Family Court further found that the statute of limitations argument, pursuant to West Virginia Code §38-3-19, as posed by Petitioner was not supported by West Virginia case law. This Court agrees with this finding. However, the Family Court found Petitioner's argument with regard to West Virginia Code § 48-16-604 provided a valid defense and was the prevailing statutory authority to be applied in this case. West Virginia Code §48-16-604 (b) states, "In a proceeding for arrears under a registered support order, the statute of limitations of this state or of the issuing state, whichever is longer, applies."

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Petitioner's argument, both before this Court and before the Family Court of Nicholas County, West Virginia, provided that under West Virginia Code §48-16-604(b) Petitioner has the right to choose which state law, either West Virginia or California, that will apply to the Judgment Order entered by Circuit Court of Nicholas County, West Virginia, on December 29, 1992, as Petitioner properly registered this judgment in California. The Family Court of Nicholas County, West Virginia, agreed with Petitioner's contention and found such by order entered the 18th day of August, 2010. This Court believes that the findings of fact and conclusions of law drawn by the Family Court of Nicholas County, West Virginia, with regard to West Virginia Code §48-16-604 is clearly wrong for two reasons.

First this Court finds the Family Court of Nicholas County, West Virginia, erred when it found Petitioner properly registered the Judgment Order entered by the State of West Virginia in the State of California. There is nothing in the record, nor did counsel for Petitioner provide any evidence during oral argument, that Petitioner properly registered the judgment from West Virginia in California. The only thing found in the record to establish registration is a one page Case Overview document printed from the California Child Support Self-Service website. This Court finds this document insufficient to establish proper registration, and even if this Court were to find California law applicable, the document provided to the Court does not comply with the standards set forth in California Family Code §4951 for proper registration.¹

¹ For proper registration, California Family Code §4951, requires:

a) A support order or income-withholding order of another state may be registered in this state by sending the following records 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 person requesting 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:
 - (A) The obligor's address and social security number;
 - (B) The name and address of the obligor's employer and any other source of income of the obligor; and

Secondly, this Court finds the Family Court of Nicholas County, West Virginia, clearly abused its discretion when that court concluded: "West Virginia Code §48-16-604(b) states that, *'In a proceeding for arrears under a registered support order, that statute of limitations of this state, or of the issuing state, whichever is longer applies'*. In this case West Virginia is the issuing state and California would be the state in which the order was registered for collection. §48-16-604(b) presumes a situation in which West Virginia is not the issuing state but rather the state in which the foreign order is registered, and gives the litigant the choice of the longer statute of limitations. Though the statute does not explicitly state that the reverse of the situation would also be true there is no reason to suppose that the choice would not be available in a situation where West Virginia is the issuing state and California is the state in which the order was registered and the court so finds", without setting forth any authority for such conclusions.

This Court finds the conclusions of law issued by the Family Court of Nicholas County, West Virginia, to be wholly erroneous. In this case, under the plain language of West Virginia Code §48-16-604(b), West Virginia is both the issuing state and the only state that the judgment order has been properly registered in. Petitioner continues to argue that the judgment order has

(C) A description and the location of property of the obligor in this state not exempt from execution.

(5) Except as provided in Section 4926, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

d) If two or more orders are in effect, the person requesting registration shall do all of the following:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section.

(2) Specify the order alleged to be the controlling order, if any.

(3) Specify the amount of consolidated arrears, if any.

e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

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been registered in California but, as stated earlier, has provided no evidence of such. Further, the primary object in construing a statute is to ascertain and give effect to the intent of the legislature by examining the statute in its entirety, without selecting any single part, provision, section, sentence, phrase or word. *Mills v. Van Kirk*, 192 W.Va. 695, 453 S.E.2d 678 (1994). The Court finds nothing in the record or in the notes surrounding the enactment of §48-16-604(b) that leads the Court to believe the legislature intended the statute be applied as the Family Court of Nicholas County, West Virginia, applied it in this case.

Additionally, the Petitioner advances contentions under the Uniform Interstate Family Support Act ("UIFSA"). This Court finds that UIFSA has been adopted by the State of West Virginia; however, this Court will not address these issues as the Court is of the opinion the governing law in this case is found in §38-3-18(a). West Virginia Code §38-3-18(a) states as follows:

On a judgment, execution may be issued within ten years after the date thereof. Where execution issues within ten years as aforesaid, other executions may be issued on such judgment within ten years from the return day of the last execution issued thereon, on which there is no return by an officer, or which has been returned unsatisfied.

Petitioner argues that this Court cannot control an order that has been entered in another jurisdiction; specifically, this Court cannot dictate to California whether or not to enforce this Judgment Order. The Court agrees with Petitioner on that point. However, based on the clear language of this statute this Court is of the opinion the Judgment Order entered on December 29, 1992, is no longer valid and as such can no longer be enforced as the ten (10) year statute of limitations period has run. Although this Court is of the opinion the Respondent in this matter has neglected his financial obligations as a father,

the law clearly states Respondent is no longer obligated for the Judgment Order entered by the Circuit Court of Nicholas County, West Virginia, on December 29, 1992.

B. Attorney Fees

In this case, both Petitioner and Respondent have addressed the issue of attorney fees for the expenses incurred in litigating this appeal. Although the Court agrees with the Family Court of Nicholas County, West Virginia, in its finding that it is the Respondent's delinquency that occasioned this action, the Court nonetheless finds that Respondent is not liable for Petitioner's attorney fees pursuant to *Banker v. Banker*. 196 W.Va. 535, 474 S.E.2d 465 (1996). "In divorce actions, an award of attorney's fees rests initially within the sound discretion of the family law master and should not be disturbed on appeal absent an abuse of discretion. In determining whether to award attorney's fees, the family law master should consider a wide array of factors including the party's ability to pay his or her own fee, the beneficial results obtained by the attorney, the parties' respective financial conditions, the effect of the attorney's fees on each party's standard of living, the degree of fault of either party making the divorce action necessary, and the reasonableness of the attorney's fee request." *Id.*, Syl. Pt. 4; *Sharon B.W. v. George B.W.*, 519 S.E.2d 877 (1999); West Virginia Code §48-1-305.

In this case, the Family Court of Nicholas County, West Virginia, found Respondent to be responsible for all attorney fees incurred by both he and the Plaintiff. However, this Court finds this holding to be a clear abuse of discretion, and as such within the jurisdiction of this Court. The Family Court of Nicholas County, West Virginia, provides no evidence to support this holding, but merely states it "assumes that Respondent is still a licensed physician and the Petitioner is not." An assumption is not an acceptable method of applying the law. Accordingly, pursuant to *Banker v. Banker*, the Court finds Petitioner is responsible for her own

attorney fees and Respondent is responsible for his attorney fees. *Id.* Both parties attorney fees requests are denied.

IV. CONCLUSION

It is therefore **ADJUDGED** and **ORDERED** that the Judgment Order entered by the Circuit Court of Nicholas County, West Virginia on December 29, 1992, is no longer valid and enforceable as the ten (10) year statute of limitations, pursuant to §38-3-18, has run. Further, the conclusions of law reached by the Family Court of Nicholas County, West Virginia, were a clear abuse of discretion and as such reviewable by this Court.

It is further **ADJUDGED** and **ORDERED** that this will be the Final Order with regard to this matter. If either party disagrees with the findings of fact and conclusions of law, that individual may appeal this Order to the West Virginia Supreme Court of Appeals alleging any errors of law this Court made.

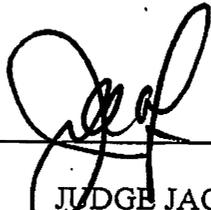
It is further **ADJUDGED** and **ORDERED** that this matter is dismissed and is stricken from the active docket of this Court.

Both parties' objections and exceptions are noted.

The Clerk of this Court shall send certified copies of this Order to counsel of record.

Enter this 9 day of June, 2011.

Partie's signature 11
~~ROBBIE FACEMIRE~~ CIRCUIT CLERK
Nicholas County Circuit Court
Suttonsville, W. Va. 26058
amb



JUDGE JACK ALSOP

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IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

YA MEI Y. CHEN,

Petitioner – Appellee,

v.

**Civil Action No.: 83-C-277
The Honorable Jack Alsop**

MING CHUNG CHEN,

Respondent – Appellant .

CERTIFICATE OF SERVICE

I, Christopher T. Pritt, counsel for the Petitioner, Ya Mei Y. Chen, hereby certify that a true and exact copy of the forgoing “Notice of Appeal” has been sent via US Mail, postage prepaid, to the following:

Charles R. Webb, Esq.
The Webb Law Firm, PLLC
108 ½ Capitol Street, Suite 201
Charleston, WV 25301

Sent this the 8th day of July, 2011.



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