

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

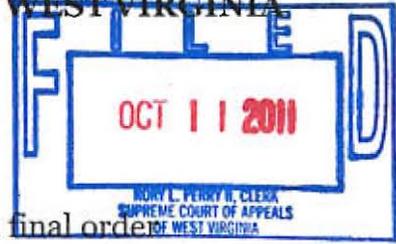
DOCKET NO. 11-1056

YA MEI Y. CHEN
Petitioner

v.)

MING CHUNG CHEN
Respondent

Appeal from a final order
of the Circuit Court of Nicholas County
(83-C-277)



Petitioner's Brief

Counsel for Petitioner, Ya Mei Y. Chen

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ASSIGNMENTS OF ERROR

The Circuit Court erred and abused its discretion when it found that the judgment order entered on December 29, 1992 is no longer valid.

The Circuit Court erred and abused its discretion when it determined that West Virginia has a ten-year statute limitations within which a person must enforce a judgment without further specification.

The Circuit Court erred and abused its discretion when it determined that the family court was incorrect in its application of West Virginia Code § 48-16-604(b).

The Circuit Court erred and abused its discretion when it determined that the law clearly states that the Respondent is no longer obligated for the judgment order entered by the Circuit Court of Nicholas County, West Virginia, on December 29, 1992.

STATEMENT OF THE CASE

The case before the Court is in some respects very simple. The Court must decide whether an order from a West Virginia Family Court ordering child support that was not executed within 10 years of the judgment can be found to be invalid for all purposes. As stated in the Circuit Courts finding of facts, the parties filed for divorce in Nicholas County in 1983, and a decretal judgment was obtained on July 18, 1991 in the amount of \$66,447.55. Further, the Petitioner was awarded a judgment retroactive to May of 1990 in the amount of \$58,736. No executions were ever done on the judgments the Petitioner had on the Respondent. Based on statements from the State of California, the Respondent has an arrearage totaling \$467,525.23 as of last year. Though this latter fact is not formally part of the record, such a fact is not dispositive regarding the relevant issues. The position of the Petitioner is that while such an order can be concluded as unenforceable for the purposes of collections in West Virginia, the West

Virginia Code and West Virginia Supreme Court precedent do not support that such an order is invalid, void, and precluded from enforcement.

The Respondent appealed the judgment of the Family Court, which found judgment with the Petitioner, which is found with the attached Exhibit 1. The Petitioner appeals the judgment of the Circuit Court, which is found with the attached Exhibit 2.

SUMMARY OF ARGUMENT

The order of the Circuit Court is overly broad and would preclude the Petitioner from having any remedy. The West Virginia Code does not state that because an order is not enforceable in West Virginia, the order is invalid and void.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is necessary and is requested because case law upon information and belief because no case law is precisely on point. Argument based on Rule 20 is appropriate because the issue is of fundamental public importance and the issue is one of first impression.

ARGUMENT

The crux of the Petitioner's argument is that a ten-year period for filing an execution after a judgment is not at all dispositive as to whether a West Virginia judgment can be enforced in another state. West Virginia Code § 38-3-18 provides for a ten-year period within which an execution must be done so that the right to bring an enforcement action is preserved, but this only applies to West Virginia. West Virginia Code § 48-16-604 states that "in a proceeding for arrears under a registered support order, the statute of limitation of this State or of the issuing state, whichever is longer, applies." Based on this choice of law provision of the West Virginia Code, West Virginia

cannot dictate to California or any other state what statute of limitations applies to arrears that are owed.

The Petitioner contends that her order was registered in the State of California. Specifically, California Family Code § 291 states that “a money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied.” This section further states that “a judgment described in this section is exempt from any requirement that a judgment be renewed.” The Circuit Court determined that credible evidence was not presented that such an order was in fact registered in the State of California. The Circuit Court is correct, but this is beside the point. West Virginia cannot unilaterally declare that a valid order is void because states have the authority to determine what orders from other jurisdictions are enforceable. This is exactly the purpose behind the Uniform Interstate Family Support Act (hereinafter UIFSA), which is codified above that W. Va. Code § 48-101 et seq., of which West Virginia Code § 48-16-604 is a part. Based on this choice of law provision in UIFSA, West Virginia cannot dictate to California or any other state what can and cannot be enforced.

One final point is with regard to whether the order is “registered” in California or elsewhere. The Respondent has not proven that the order was not registered in California. Reference is only made to the West Virginia record indicating that no order was referenced as being registered elsewhere; this does not mean it was not registered in California. Even if the order is not registered, West Virginia nonetheless may not control the enforcement of judgments by declaring its own judgments void without cause. A judgment is a judgment.

The Family Court does not have the power to determine whether California can or cannot enforce this judgment; California must decide this. Since the Family Court was presented with the issue that another state may be able to enforce the previous judgment, the Family Court did not error by concluding that the Respondent is not relieved of his obligation. Counsel for the Petitioner has found nothing in West Virginia law that states that if a judgment cannot be enforced it must therefore be vacated and effectively declared void. On this basis the order of the Circuit Court must be reversed or remanded.

CONCLUSION

The Circuit Court's order should be reversed, and the previous court order findings and conclusions of law should be vacated, or in the alternative that the Court reverses the decision and remand for further proceedings.

Signed: _____



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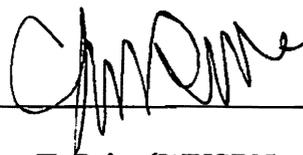
CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2011, true and accurate copies of the foregoing **Petitioner's Brief** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

Counsel for Respondent

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Signed: _____



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