STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
November 9, 2012
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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Ya Mei Y. Chen,
Petitioner

v.) No. 11-1056 (Nicholas County 83-C-277)

Ming Chung Chen,
Respondent

MEMORANDUM DECISION

The Petitioner, Ya Mei Y. Chen, by counsel Christopher T. Pritt, appeals the Order entered by the Circuit Court of Nicholas County, West Virginia, on June 10, 2011, reversing the decision of the family court. The circuit court determined that an order entered on December 29, 1992, awarding the Petitioner judgment against the Respondent, Ming Chung Chen, in the amount of $58,736, in addition to other relief, was no longer valid and enforceable as the ten-year statute of limitations, set forth in West Virginia Code § 38-3-18 (2011), had run. The Respondent filed a response by his counsel, Charles R. Webb. The Petitioner raises four separate, but largely redundant, assignments of error regarding the circuit court's decision.[1] The only argument discussed by the Petitioner is whether the ten-year statute of limitations for a judgment in West Virginia is dispositive as to whether a judgment can be enforced in another state.

After carefully reviewing the record provided, the briefs and oral arguments of the parties, and taking into consideration the relevant standard of review, the Court determines that the circuit court committed no error. Based on our decision that this case does not present a new question of law, a memorandum decision is appropriate under Rule 21 of the West Virginia Revised Rules of Appellate Procedure.

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[1]The Petitioner argued that the circuit court erred: 1) in its determination that the 1992 order was no longer valid and enforceable; 2) in its determination that a ten-year statute of limitations applied to the enforcement of the order; 3) in its application of West Virginia Code § 48-16-604(b) (2009); and 4) in its determination that the Respondent is no longer obligated for the judgment entered in 1992.

The parties filed for divorce in Nicholas County, West Virginia, in 1983.[2] There were two children born during the marriage on October 12, 1973, and February 4, 1978, respectively. On September 6, 1983, a temporary support order was entered ordering the Respondent to pay the Petitioner $1,000 per month in alimony and $500 per month in child support.

Subsequently, on January 9, 1985, an order was entered pursuant to the Petitioner's motion to modify temporary support. The court increased the Petitioner's alimony to $1,500 per month, but the child support award of $500 per month remained unchanged.

On June 16, 1987, the circuit court ordered the Respondent to pay $9,000 in back alimony and child support. The amount was ordered to be paid in two checks, each for the amount of $4,500. The Petitioner's counsel was to hold the second check until the Respondent was allowed to visit his children. The children were in California and were to spend the summer with the Respondent in West Virginia.

On December 3, 1987,[3] the final divorce order was entered. Issues of alimony, child support and equitable distribution were not resolved by this order.

On July 1, 1992, the circuit court entered an order after a hearing on the Petitioner's Motion for Contempt/Declaratory Judgment. The circuit court determined that the Respondent owed the Petitioner spousal and child support in the amount of $60,736 with pre-judgment interest in the amount of $5,711.55 for a total judgment of $66,447.55. The circuit court further ordered the Respondent to pay all the costs of the proceeding, including attorney fees in the amount of $500.

On December 29, 1992, the Recommended Findings of Fact and Conclusions of Law of the Family Law Master was entered after hearings that occurred in June of 1992. Relevant to the instant appeal, the family law master determined that the Petitioner was entitled to $58,736 in arrearages for temporary alimony and child support as of May 19,

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[2]While the record is not clear, it appears that since the filing of the divorce and the entry of the 1992, order, the Petitioner has resided in California.

[3]The final divorce order was not part of the record on appeal. The reference to the date of that order was taken from the Recommended Findings of Fact and Conclusions of Law of the Family Law Master entered on December 29, 1992.

1990. The circuit court incorporated the family law master's findings of fact and conclusions of law in a final order also entered on December 29, 1992.[4]

Approximately seventeen years after the entry of the 1992 final order, on December 19, 2009, the Respondent filed a Motion for Determination of Arrearages and Assertion of Statute of Limitations and Credits in circuit court. The Respondent asserted that the statute of limitations on the December 29,1992, order had expired and that he was not credited for all the payments he made in different states. The family court, by order entered August 18, 2010, denied the Respondent's motion and declined to nullify the arrearages due to the statute of limitations. Thus, on September 10, 2010, the Respondent appealed the decision of the family court to circuit court.

On January 28, 2011, the circuit court held a hearing on the Respondent's appeal. After the hearing, by Order entered June 10, 2011, the circuit court reversed the decision of the family court. The circuit court found that no writ of execution issued after the final order awarding the Petitioner judgment for $58,736 was entered on December 29, 1992.[5] Further, the circuit court found that the family court

> erred when it found Petitioner [referring to Mrs. Chen] 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.

Further, the circuit court determined that the "conclusions of law issued by the Family Court of Nicholas County, West Virginia, to be wholly erroneous." The circuit court also declined to address the issue raised by Mrs. Chen regarding the Uniform Interstate Family Support Act ("UIFSA"), West Virginia Code §§ 48-16-101 to -903 (2009), because the court found the

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[4]While the family law master's findings of fact and conclusions of law were part of the record on appeal, a copy of the circuit court's order was not included in the appendix.

[5]A writ of execution would have preserved the judgment. *See* Syl. Pt. 7, *Collins v. Collins*, 209 W. Va. 115, 543 S.E.2d 672 (2000)("By the specific terms of W. Va. Code § 38-3-18 (1923) (Repl. Vol. 1997), the issuance of an execution operates to preserve the judgment, and the statute of limitations commences to run from the return date of the execution.").

law governing the case was set forth in West Virginia Code § 38-3-18(a), which establishes a ten-year statute of limitations. The circuit court determined, based upon the clear language of the statute, that "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."

The standard of review applicable to this case is as follows:

> In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.

Syllabus, *Carr v. Hancock*, 216 W. Va. 474, 607 S.E.2d 803 (2004).

The Petitioner argues that a ten-year period for filing an execution after a judgment is not dispositive as to whether a West Virginia judgment can be enforced in another state. The Respondent maintains that the circuit court correctly reversed the family court and found that the statute of limitations set forth in West Virginia Code § 38-3-18 governs this case.

West Virginia Code § 38-3-18 establishes a ten-year statute of limitation within which an execution on a judgment must be issued so that the right to bring an action is preserved. *See* Syl. Pt. 7, *Collins v. Collins*, 209 W. Va. 115, 543 S.E.2d 672 (2000). Specifically, West Virginia Code § 38-3-18(a) provides:

> 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.

Id. This Court has previously determined that the foregoing statute of limitations applies to judgments for both alimony and child support. In syllabus point six of *Robinson v. McKinney*, 189 W. Va. 459, 432 S.E.2d 543 (1993), we held, in part, that "[t]he ten-year statute of limitations set forth in *W. Va. Code*, 38-3-18 [1923] . . . applies when enforcing decretal judgment which orders the payment of monthly sums for alimony or child support."

189 W. Va. at 461, 432 S.E.2d at 545. Subsequently, in *Shaffer v. Stanley*, 215 W. Va. 58, 593 S.E.2d 629 (2003), this Court stated:

> There is no dispute that the limitation period in W. Va. Code § 38-3-18 applies to the collection of child support judgments. According to Syllabus Point 6 of *Robinson v. McKinney*, 189 W. Va. 459, 432 S.E.2d 543 (1993), "[t]he ten-year statute of limitations set forth in *W. Va. Code*, 38-3-18 [1923] and not the doctrine of laches applies when enforcing a decretal judgment which orders the payment of monthly sums for alimony or child support."

215 W. Va. at 63, 593 S.E.2d at 634.

During the hearing in the instant matter when the circuit court inquired of the Petitioner's counsel whether the judgment was still enforceable in West Virginia, the Petitioner agreed that it was not. Instead, the Petitioner argued that under the choice of law provision contained within the UIFSA, the circuit court did not "have the power to determine whether California can or cannot enforce this judgment; California must decide this." In other words, as the circuit court found, the Petitioner argued that "under West Virginia Code § 48-16-604(b) Petitioner has the right to choose which state law, either West Virginia or California, . . . will apply to the Judgment Order entered by [the] Circuit Court of Nicholas County, West Virginia, on December 29, 1992[.]"

The problem with the Petitioner's argument, however, is that contrary to the family court's finding that the 1992 order was registered in California, the circuit court correctly determined that there was no evidence in the record that the judgment order at issue was ever registered in California. Counsel for the Petitioner conceded both during the hearing before the circuit court and before this Court during oral argument that the Petitioner has not been able to establish that she validly registered the judgment in California.

If the Petitioner sought to register the judgment in California, she would have had to follow the procedure set forth in the UIFSA. *See* Cal. Fam. Code § 4951. Further, when an order is sought to be registered in California, the following notice is given pursuant to California Family Code § 4954:

> (a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice shall be accompanied

> by a copy of the registered order and the documents and relevant information accompanying the order.
>
> (b) The notice shall inform the nonregistering party:
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> (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
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> (2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice;
>
> (3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
>
> (4) Of the amount of any alleged arrearages.
>
> (c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to Chapter 8 (commencing with Section 5200).

Cal. Fam. Code § 4954. Once registered, "[a] registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state." Cal. Fam. Code § 4952(b); *see Keith G. v. Suzanne H.*, 72 Cal. Rptr. 2d 525, 528 (Cal. Ct. App. 1998)("When an out-of-state judgment or order for child support is registered in California, it becomes a California judgment for the arrearages and is subject to the same defenses as any other judgment."). Additionally, if an order is properly registered under the UIFSA, "[i]n a proceeding for arrearages, the statute of limitation under the laws of this state [referring to the registering state] or of the issuing state, whichever is longer, applies." Cal. Fam. Code § 4953 (b). Under California law, "[a] money judgment . . . including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied." Cal. Fam. Code § 291(a).

The circuit court did not err in its determination that the provisions of the UIFSA only apply to orders that have been registered. Further, the circuit court correctly found West Virginia to be the issuing state[6] under the UIFSA. *See* W. Va. Code § 48-16-102

[6]Also, under the UIFSA, "[t]he 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." Cal. Fam. Code § 4953 (a); *see* W. Va. Code § 48-16-604(a)

(9) ("'Issuing state' means the state in which a tribunal issues a support order . . . ."). Thus, the circuit court did not err in concluding that this case did not fall within the purview of the UIFSA, but was controlled by provisions of the statute of limitations set forth in West Virginia Code § 38-2-18(a).[7]

Thus, the circuit court did not err in reversing the decision of the family court and determining that based upon language set forth in West Virginia Code § 38-3-18(a), as well as case law, the judgment order entered on December 29, 1992, was no longer valid and enforceable.

Based on the foregoing reasons, the decision of the circuit court is affirmed.

Affirmed.

("Except as otherwise provided in subsection (d) of this section, the law of the issuing state governs: (1) The nature, extent, amount and duration of current payments under a registered support order; (2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and (3) The existence and satisfaction of other obligations under the support order.").

[7]As an ancillary matter, at least one California court, as well as the Supreme Court of Oklahoma, has determined that a judgment declared unenforceable by the issuing state can not be registered. *See Thornton v. Thornton*, 247 P.3d 1180 (Okla. 2011) (determining that Texas support order that had become unenforceable in Texas could not be registered and enforced in Oklahoma under UIFSA); *see also Scheuerman v. Hauk,* 11 Cal. Rptr.3d 125, 128 (Cal. Ct. App. 2004) (holding that "an Arizona court determined that any arrearages under its 1980 child support order had become unenforceable and thus Arizona would set any judgment at zero. Therefore, if California were to register and enforce the 1980 child support order to collect any more than 'zero,' it would be denying full faith and credit to the later Arizona ruling. 'A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.' (*Baker v. General Motors Corp*. (1998) 522 U.S. 222, 233, 118 S.Ct. 657, 139 L.Ed.2d 580.).").

ISSUED: November 9, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh