

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DONALD WEISS,)
)
Appellant,)
)
v.)
)
LOIS WEISS, n/k/a LOIS COLE,)
)
Appellee.)
_____)

Case No. 2D10-2429

Opinion filed November 14, 2012.

Appeal pursuant to Fla. R. App. P. 9.130
from the Circuit Court for Lee County;
Elisabeth Adams, Judge.

Robert Koop Johnson of Robert Koop
Johnson, P.A., Naples, for Appellant.

Toni A. Butler of Toni A. Butler, P.A.,
Naples, for Appellee.

SHEPHERD, FRANK A., Associate Judge.

This is an appeal of a nonfinal order, rendered by the Circuit Court of the
Twentieth Judicial Circuit in and for Lee County, enforcing a contempt provision in a
postdissolution order entered in the Circuit Court of Cook County, Illinois County
Department – Domestic Relations Division, which has been domesticated in Lee

County. The objective of these and several related orders issued by the Florida and Illinois trial courts is the enforcement of a property settlement provision in the parties' 1972 Cook County divorce decree that requires Donald Weiss (the Former Husband) to maintain two life insurance policies for the benefit of Lois Weiss, now known as Lois Cole (the Former Wife). The Cook County order found the Former Husband in contempt, calculated the amount of the Former Husband's delinquencies under the property settlement provision, and further ordered that interest be applied at the "[Illinois] statutory rate," together with attorney's fees. After domesticating this order in Florida, the trial court, applying Full Faith and Credit principles,¹ entered a final money judgment in the amount of the delinquencies in favor of the Former Wife, calculated the amount of interest due on the delinquencies, and found that "[because] the contempt orders were validly entered in Illinois," the court had the authority to enforce the final judgment, including interest, and the attorney's fee award through the use of contempt, despite the fact an equivalent Florida judgment would not be enforceable by contempt in this state.

This is the second appearance of this case before this court. See Weiss v. Weiss, 973 So. 2d 1247 (Fla. 2d DCA 2008) ("Weiss I"). The Former Husband's primary argument in this appeal is that the trial court erred by determining that the Illinois order domesticated below is enforceable by contempt in our courts. He also

¹See U.S. Const. art. IV, § 1.

contends the trial court erred in its calculation of interest in the order under review.² We conclude the Full Faith and Credit Clause obligates the courts of this state to enforce the contempt feature of the Illinois money judgment, but we reverse for recalculation of the interest on the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The parties to this postdissolution proceeding were divorced by a final judgment of dissolution, entered on April 13, 1972, in Cook County, Illinois. Article VI of the marital settlement agreement, incorporated in the final judgment, entitled "Insurance," obligated the Former Husband to maintain three policies of insurance for the benefit of the Former Wife. It reads:

1. That the Husband has had issued on his life certain paid up policies of insurance, to-wit: New York Life Insurance in the amount of \$100,000.00 and Mutual of New York Insurance in the amount of \$50,000.00. The total face value and coverage of these policies is \$150,000.00. The Wife shall remain the irrevocable beneficiary of said policies and the minor children shall be contingent beneficiaries as now provided in said life insurance policies. A list of the policies is set forth and described in schedule A, attached hereto and made a part hereof.

2. In connection with said policies, the Husband shall deposit duplicate policies with the Wife; that duplicate premium notices and receipts be sent to the Wife; pay off any outstanding liens on the policies and not borrow in the future; do all acts to keep the policies in full force and effect.

Pursuant to an agreed order signed by the parties and filed in the Cook County divorce case on January 6, 1994, the Former Husband purchased all claims the Former Wife might have concerning the Mutual of New York policy for a cash payment of \$10,000.

²The Former Wife suggests in her answer brief that the Former Husband's appeal in this case was taken untimely. We find no merit in this argument.

The Former Husband also reaffirmed his promise "to maintain the [New York Life Insurance Policies] . . . per [the] provisions of the Judgment for Divorce heretofore entered."³

On May 9, 2007, pursuant to the Former Wife's third petition for rule to show cause, the Illinois court issued a rule to show cause against the Former Husband for failure to abide by all of the Illinois court's previous orders.⁴ Because the Former Husband neither appeared nor responded, the Illinois court issued an order on May 31, 2007, the pertinent Illinois court order affecting this appeal. In its order, the Illinois court found the Former Husband to be in contempt of court again and ordered, as follows:

1. Lois Cole's Third Petition for Rule to Show Cause and Other Relief is hereby granted.
2. A final money judgment for the following is hereby entered:

³On this date, New York Life Insurance Policy #37-912-820 was encumbered by a lien in the sum of \$17,661 (calculated as of September 30, 1993) for a policy loan taken by the Former Husband, who, at the time, was the owner of the policy. New York Life Insurance Policy #37-912-823 had an outstanding loan to the Former Husband in the sum of \$28,050 as of the same date. The record does not disclose whether these borrowings occurred before or after the date of the final judgment of dissolution.

⁴The Former Husband previously was found in contempt of court for failure to comply with the final judgment of dissolution and agreed order on October 27, 2005, and November 15, 2005, as chronicled in our earlier opinion in this case, and again on July 25, 2006, for the same reason. By then, the delinquencies included both the loans taken out on the two insurance policies and unpaid premiums on the policies. Although these orders "ordered" payment of the delinquencies, neither included an incarcerative feature such as that commonly found in civil contempt orders entered by the trial judges in this state.

a. \$68,869.74, representing the balances of the loans under New York Life Insurance Company Policy Numbers . . . plus statutory interest from date of Judgment;

b. \$2,597.46, representing actual reinstatement fee premiums and loan interest paid by Lois Cole to New York Life Insurance Company to reinstate Policy Number. . . and

c. \$10,000, representing attorney's fees to Davis Friedman,

FOR WHICH LET EXECUTION LIE.

3. Lois Cole shall become the owner of New York Life Insurance Company Policy Numbers . . . by operation of law pursuant to this Order. If any cooperation from Donald Weiss is necessary, he shall immediately comply or face possible incarceration. This provision does not modify or supersede any other provisions of prior orders which find Donald Weiss in contempt and require Donald Weiss to repay the loans to said Policies, or which give Lois Cole a claim against his estate in the event he has not repaid the loans upon his death. The claim against Donald Weiss' estate by Lois Cole is not intended by this Court to be her sole and exclusive remedy.

On August 25, 2007, this order was domesticated in Florida, and enforcement proceedings ensued both here and in Illinois.

On May 12, 2010, after multiple mesne skirmishes in both circuit courts and the first appeal heard by us, the trial court rendered its order, which is the subject of the present appeal. It reads as follows, in pertinent part:

1. That the Court GRANTS the Former Wife's Motion to Determine Current Interest, which shall be set at the Florida statutory rate from the date of entry of the Illinois orders granting same.

A-F. [Interest Calculations]

G. Therefore, the total amount due to the Former Wife for the unpaid loans against the New York Life Insurance Policies is \$84,455.93 [\$68,869.74 plus \$16,586.19 in interest], FOR WHICH LET EXECUTION LIE.

. . . .

3. The Former Wife's Motion for Order to Show Cause, Motion to Enforce Contempt Order, and Motion to Enforce, for Judgment and Fees and Costs are GRANTED. The Former Husband has failed to show cause why he should not be held in contempt of court for his failure to abide by the Illinois Orders and the prior orders of this Court. This Court can enforce the contempt orders from the Illinois court because, as previously found, the contempt orders were validly entered in Illinois. Additionally, the Court finds the Former Husband in contempt for his failure to pay attorney's fees previously awarded by the Illinois Court and domesticated in this Court.

4. To avoid further sanctions, the Former Husband is ORDERED to pay \$2,500.00 per month as a purge for contempt and to enforce the previous Orders and Judgments entered in Illinois and Florida. The Court will enter a separate Continuing Writ of Garnishment against the account into which the Former Husband's monthly income is deposited.

This appeal followed.

ANALYSIS

The Contempt Provision

The central question on this appeal is whether the trial court was correct in its decision to enforce the contempt feature of the Illinois court order in this state.

It is conceded by the Former Wife on this appeal that Article VI of the marital settlement incorporated in the Illinois Final Judgment for Divorce, entitled "Insurance," is a property settlement provision, not a support provision.⁵ Under Florida law, the remedies available to enforce the breach by a party of a property settlement provision in a marital settlement agreement are those available to creditors against debtors. Braswell v. Braswell, 881 So. 2d 1193, 1198 (Fla. 3d DCA 2004). Neither

⁵This point was left unsettled in Weiss I. 973 So. 2d at 1250 n.1.

contempt nor incarceration is included among them. See Luzenberg v. Forand, 929 So. 2d 546, 546 n.1 (Fla. 2d DCA 2006). Illinois, on the other hand, permits the enforcement of property settlement provisions of a final judgment of dissolution through civil contempt, including the use of incarceration. See In re Marriage of Admire, 549 N.E.2d 620, 623 (Ill. App. Ct. 1989) ("[M]aintenance and property-settlement provisions of a dissolution judgment may be enforced through contempt proceedings.").

In Weiss I, we did not address the question whether this difference in the law of contempt in the two jurisdictions rendered the contempt feature of the Illinois judgment unenforceable. The primary focus of our analysis at the time was the Full Faith and Credit Clause's "finality" requirement. 973 So. 2d at 1250-51; Joannou v. Corsini, 543 So. 2d 308, 310 (Fla. 4th DCA 1989) ("[U]nder the [Florida Enforcement of Foreign Judgments Act], the judgment sought to be domesticated must be final." (citing Jones v. Roach, 575 P.2d 345 (Ariz. Ct. App. 1977), and interpreting the identical Arizona Uniform Enforcement of Foreign Judgment Law)). However, we did state:

The trial court's decision regarding whether to domesticate the modified divorce decree and postdissolution [contempt] orders does not confer any new rights on the Former Wife; it merely provides a forum in which the Former Wife may seek to enforce the rights already conferred to her by the Illinois court.

Weiss I, 973 So. 2d at 1251.⁶

The Former Husband's Full Faith and Credit concern on this appeal is incarceration. He argues that because the public policy of Florida does not allow incarceration to pay a debt, see Art. I, § 11, Fla. Const. ("No person shall be imprisoned

⁶The statement is consistent with the meaning of a "foreign judgment," defined in section 55.502(1), Florida Statutes (2007) to mean "any judgment, decree or order of a court of any other state or of the United States if such judgment, decree or order is entitled to full, faith and credit in this state."

for debt, except in cases of fraud."), a Florida court may not resort to the contempt power to reprimand the Former Husband's failure to abide by the terms of the property division in this case requiring him to repay monies taken from the insurance policies and keep them current. We conclude the Former Husband's argument is premature.

As we explained in Weiss I, although the Illinois orders finding the Former Husband in contempt were entitled to full faith and credit in Florida, no court, either in Florida or Illinois, has yet ordered incarceration to compel compliance with the contempt orders in this matter.⁷ Moreover, incarceration is not the only coercive sanction available to a court in a civil contempt proceeding. See Parisi v. Broward Cnty., 769 So. 2d 359, 365 (Fla. 2000) (acknowledging "there is a broad arsenal of coercive civil contempt sanctions available to the trial court, including 'incarceration, garnishment of wages, additional employment, the filing of reports, additional fines, the delivery of certain assets, the revocation of a driver's license' ") (quoting Gregory v. Rice, 727 So. 2d 251, 254 (Fla. 1999)). Thus, it is not for us to speculate about the remedies the trial court may employ if the Former Husband does not pay as ordered.⁸

⁷Ten days before the entry of the order on appeal, the trial judge ordered, but then withdrew an order which expressly ordered incarceration and substituted the "Continuing Writ of Garnishment" sanction. The record does not reflect the reason for the substitution.

⁸The analysis is slightly different for the attorney's fee award to the Former Wife in the May 31, 2007, order. Illinois and Florida equally authorize an attorney's fee award to be enforced through civil contempt, including incarceration and a purge provision if the contemnor has the financial ability to pay. See, e.g., Mattioda v. Mattioda, 243 N.E.2d 495, 500 (Ill. App. Ct. 1968); Wertkin v. Wertkin, 763 So. 2d 465, 466 (Fla. 4th DCA 2000). On remand, the trial court is authorized to enforce the Former Wife's fee entitlement through the use of civil contempt, provided the Former Husband is shown to have the ability to pay. See Bowen v. Bowen, 471 So. 2d 1274, 1277 (Fla. 1985) ("[I]ncarceration for civil contempt cannot be imposed absent a finding by the trial court that the contemnor has the present ability to purge himself of contempt.").

The Interest Calculation

The May 31, 2007, Illinois court order decreed that "statutory interest" be added from the date of "Judgment" entered by the court. Although we have some doubt concerning whether the Illinois court correctly ordered the addition of statutory interest under Illinois law on the amounts due from the Former Husband to the New York Life Insurance Company—as distinguished perhaps from any penalties, contractual interest under the policies themselves, or other charges that might be owed directly to the insurance company—the Illinois court did so order, the Former Husband did not appeal or otherwise contest the order, and thus the Full Faith and Credit principles require that the trial court carry out the mandate of the May 31, 2007, order on this point.

In so doing, however, the trial court added interest at the Florida statutory rate from the date of entry of the May 31, 2007, order to the date of the entry of the order under review. In this, the trial court made an error of calculation. The May 31, 2007, Illinois order was domesticated in Florida effective August 25, 2007. See § 55.505(3), Fla. Stat. (2007). At that time, the Illinois order became a Florida order subject to enforcement in this state. See § 55.503; Weiss I, 973 So. 2d at 1250. Thus, interest on the amounts due under the Illinois order should have been calculated at the Illinois statutory rate from May 31, 2007, to August 25, 2007, and at the Florida statutory rate thereafter. See Parsons v. Sovran Bank, N.A., 655 So. 2d 220, 220 (Fla. 4th DCA 1995). Because the trial court utilized only the Florida rate, the trial court shall recalculate the interest due on the delinquencies upon remand.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

WALLACE, J., Concur.

CASANUEVA, J., Concur with opinion.

CASANUEVA, Judge, Concurring.

I concur in the majority opinion. While the majority opinion properly observes that "the Former Husband's argument is premature" when confronted with the potential remedy of incarceration as a contempt sanction, I write because it is likely that the issue will surface in the future. And a review of certain precedents may aid in a future resolution of a contempt issue.

The majority properly explains that the Illinois court's order of contempt is based upon the Former Husband's failure to comply with a property division award of a marital settlement agreement. But in Florida, "as a general proposition, property division awards may not be enforced by contempt." Roth v. Roth, 973 So. 2d 580, 591 (Fla. 2d DCA 2008). This is because the Florida Constitution bars imprisonment for debt. Id. "No person shall be imprisoned for debt, except in cases of fraud." Art. 1, § 11, Fla. Const.

Thus, the issue may arise whether the trial court in Florida may enforce the postdissolution order by utilizing remedies afforded under Illinois law, the state of origin of the order. An enforcement request of this nature will likely trigger a

consideration of the reach of the Full Faith and Credit Clause of the Constitution of the United States.

The Full Faith and Credit Clause

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State." Art. IV, § 1, U.S. Const.

The animating purpose of the full faith and credit command . . . "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."

Baker by Thomas v. Gen. Motors Corp., 522 U.S. 222, 232 (1998) (quoting Milwaukee Cnty. v. M.E. White Co., 296 U.S. 268, 277 (1935)). "The Full Faith and Credit Clause does require each State to give effect to official acts of other States. A judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter." Nevada v. Hall, 440 U.S. 410, 421 (1979).

In the Full Faith and Credit context, if the first state had jurisdiction over the parties and the subject matter, "the validity of the claim on which the foreign judgment was entered is not open to inquiry. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940)." M&R Invs. Co. v. Hacker, 511 So. 2d 1099, 1101 (Fla. 5th DCA 1987) (quoting Trauger v. A.J. Spagnol Lumber Co., 442 So. 2d 182, 183 (Fla. 1983)). This is because "[a] foreign order of contempt is entitled to full faith and credit in Florida if it is valid in the state in which it was issued." Roosa v. Roosa, 519 So. 2d

1108, 1109 (Fla. 4th DCA 1988). To the extent that Florida must enforce the Illinois judgment of contempt, I agree with the majority.

However, I am of the view that with regard to enforcing the postdissolution order it would be error for a Florida court to utilize the Illinois remedy of contempt. My conclusion is based upon a review of the following authorities.

Full faith and credit . . . does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law. See McElmoyle ex rel. Bailey v. Cohen, 13 Pet. 312, 325, 10 L.Ed. 177 (1839) (judgment may be enforced only as "laws [of enforcing forum] may permit"); see also Restatement (Second) of Conflict of Laws § 99 (1969) ("The local law of the forum determines the methods by which a judgment of another state is enforced.").

Baker, 522 U.S. at 235 (footnote omitted). Further, "[t]he Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy." Hall, 440 U.S. at 422 (footnote omitted). Florida's public policy, as woven into our constitution, is not to imprison people for civil debts such as the one in this case. Accordingly, imprisonment is unavailable to the Florida trial court as a remedy to enforce this particular contempt order, whether or not that remedy is available in Illinois to enforce the same.

Holdings of Other Courts

A few other jurisdictions have ruled on similar cases. In Johnson v. Johnson, 13 S.E. 2d 593 (S.C. 1941), the Supreme Court of South Carolina determined how its courts should enforce a Florida alimony decree:

The effect of the full faith and credit clause of the Constitution is not primarily in issue here. We are

considering only the method of collecting the judgment, and the procedure of enforcement to be followed is a matter exclusively for our Courts. We think that it cannot be seriously contended that a citizen of this State would in a contempt proceeding be placed in jail by our Courts because of his inability to pay a judgment of a foreign Court established here, when under similar circumstances in the enforcement of a domestic judgment for alimony we would not do so. The Florida decree is in force here solely for the purpose of enforcement through the equitable remedies afforded by our Courts of equity, and this being true, it occupies no higher position than a domestic judgment. If a Court of equity had no authority to take cognizance of the altered financial condition of the parties, the matter of contempt proceedings and imprisonment upon failure to pay would be automatic. The fallacy inherent in plaintiff's argument is demonstrated when its reasoning is followed to its ultimate conclusion. If this contention should prevail then a husband in default as to alimony payments, and without funds, could be jailed for life merely because he lacked the means which would enable him to reach a distant jurisdiction and there seek the relief which the local Court deemed itself impotent to grant. Equity, pre-occupied with the administration of justice in the light of things as they are, must, in a case of this kind, look to realism and not to theory.

Id. at 595-96.

A North Carolina court has also weighed in on the issue of enforcement in domesticated judgments. In Sainz v. Sainz, 245 S.E. 2d 372 (N.C. Ct. App. 1978), the former wife brought an action asking the North Carolina trial court to adopt a New York judgment that ordered specific performance by the former husband. "[Her] express purpose in seeking the remedy of specific performance was to enable her to enforce the provisions of the separation agreement by civil contempt proceedings" which would not ordinarily be available in North Carolina. Id. at 374. The North Carolina trial court dismissed the case.

On appeal, the court held:

Under the full faith and credit clause a valid judgment for the payment of money must, as a general rule, be recognized and enforced in a sister state. Restatement 2d, Conflict of Laws ss 93 and 100 (1971). Likewise, a judgment in the nature of an equitable decree that orders the doing of an act is entitled to recognition to the same degree as another judgment. Id. s 102, Comment b. However, there is a distinction between recognition of a foreign judgment, on the one hand, and its enforcement, on the other hand

Id. at 375.

The court determined that the New York decree should be enforced insofar as it adjudicated the rights and liabilities as between the parties, but that "[t]he methods by which a judgment of another state is enforced are determined by the local law of the forum." Id. at 375. The court held that the " 'mere modes of execution provided by the laws of a state in which a judgment is rendered are not, by operation of the full faith and credit clause, obligatory upon the courts of another state in which the judgment is sought to be enforced[.]' " Id. (quoting Sistare v. Sistaie, 218 U.S. 1, 26 (1910)). The court concluded that the remedy of specific performance was not available to the former wife in North Carolina. Id.

More recently, in Rosin v. Monken, 599 F. 3d 574, 575 (7th Cir. 2010), the Seventh Circuit Court of Appeals confronted an issue where Mr. Rosin entered a plea agreement to a misdemeanor sexual offense in New York. As part of the agreement, he was not required to register as a sexual offender. Mr. Rosin later moved to Illinois, where the State of Illinois required him to register as a sex offender. Mr. Rosin filed suit under 42 U.S.C. § 1983, alleging that the persons responsible for enforcing Illinois' sex offender registration policies were not giving full faith and credit to the New York judgment. Id.

The Seventh Circuit applied the Full Faith and Credit Clause and held:

[I]t is a profound mistake to jump . . . to the conclusion that New York can dictate the manner in which Illinois may protect its citizenry. Illinois's recognition of the New York order does not carry with it an obligation that Illinois enforce that order in the manner which it apparently prescribes.

Id. at 576. Further, it stated that "[t]he Full Faith and Credit Clause was enacted to preclude the same matters' being relitigated in different states as recalcitrant parties evade unfavorable judgments by moving elsewhere. It was never intended to allow one state to dictate the manner in which another state protects its populace." Id. at 577.

These cases support a conclusion that the Full Faith and Credit Clause requires Florida to recognize the judgments of other states, but it does not require Florida to utilize the enforcement mechanisms of other states. This is especially so when the enforcement mechanisms of other states are against Florida's legitimate domestic public policies. In this instance, full faith and credit does not subordinate Florida's laws – prohibiting imprisonment for mere debt – to Illinois' laws.