RENDERED: February 19, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001204-MR

JAMES R. CAMERON — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 93-CI-000172

BRENDA CAMERON — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BUCKINGHAM, GARDNER, AND KNOPF, JUDGES.

KNOPF, JUDGE: This case concerns some of the vexatious problems inherent in the interstate enforcement of child support orders. James and Brenda Cameron were divorced in Hillsborough County, Florida, by decree entered November 15, 1979. Brenda was awarded custody of the parties' three (3) minor children, and James was ordered to pay child support of $26.67 per child per week ($80 per week). He was also ordered to pay a portion of the childrens' medical expenses. Not long thereafter, James became a resident of Kentucky; Brenda and the children remained in Florida. In June 1991, after two (2) of the children had reached the age of majority and the youngest child was about fourteen

(14) months from doing so, Brenda petitioned the Florida Circuit Court for an order declaring James more than $7,000.00 in arrears in his child support and medical expense obligations. She also sought a modification of the divorce decree increasing James' support obligation for the youngest child. In January 1992, the Florida court entered a default judgment granting Brenda this relief.

A year later, in February 1993, Brenda sought enforcement of her Florida support and arrearage judgment by registering that judgment in the Kenton Circuit Court, pursuant to the Uniform Reciprocal Enforcement of Support Act (URESA), KRS 407.010 *et seq.* James was duly notified of the registration, and he filed a timely objection. An assistant Kenton County attorney represented Brenda's claim, and at a hearing on the matter in March or early April 1993, James, through counsel, successfully argued that the Florida judgment overstated his arrearage. The court found that James's total outstanding obligation was $602.02. When James agreed to pay that amount, the trial court summarily dismissed the remainder of Brenda's claim.

There ensued, apparently, informal attempts by both Brenda and the Florida office of child-support enforcement to obtain clarification of the Kentucky court's order and reconsideration of Brenda's claim, but these attempts were unavailing. Then, on October 31, 1995, Brenda filed a motion pursuant to CR 60.02(f) asking the Kenton Circuit Court to vacate its April 1993 order and reopen her claim for enforcement of the Florida judgment. By order entered May 10, 1996, the circuit

court agreed to reopen the case. Then, on April 17, 1997, following the dismissal of James' appeal of the May 10th ruling and after a hearing on the merits of Brenda's motion, the trial court reversed its prior decision. It ruled that the Florida judgment of January 1992 was entitled to "full faith and credit" and accordingly ordered James to satisfy that judgment with interest. It is from that April 17, 1997, order that James now appeals.

As James correctly notes, CR 60.02 is not meant to provide an alternative to an appeal, but is applicable only in cases of serious error not otherwise subject to review. Barnett v. Commonwealth, Ky., 979 S.W.2d 98 (1998). Application of the rule is entrusted to the sound discretion of the trial court. Two (2) factors important to the exercise of that discretion are "whether the movant had a fair opportunity to present his claim at the trial on the merits and whether the granting of the relief sought would be inequitable to other parties." Fortney v. Mahan, Ky., 302 S.W.2d 842, 843 (1957); Schott v. Citizens Fidelity Bank and Trust Co., Ky. App. 692 S.W.2d 810 (1985). James maintains that CR 60.02 relief is inappropriate in this case because the error Brenda alleges—that the trial court misconstrued both Kentucky's version of URESA and the Full Faith and Credit Clause—was amenable to review by direct appeal. There is some merit to this contention. For the reasons that follow, however, we are persuaded that the trial court did not abuse its discretion by reopening and reconsidering this case.

We must begin with a brief recapitulation of the case as it originally came to the Kentucky court. At that point,

Brenda had obtained a money judgment in Florida for alleged child support arrears and an order increasing James's support obligation. She registered both the judgment and the modified support order in Kenton County pursuant to former KRS 407.450 – 407.480: Registration of Foreign Support Orders.[1] The effect of that registration, according to KRS 407.480, was as follows:

> Upon registration a foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in a like manner.

This registration procedure, provided nonresident claimants with a means of, in effect, converting foreign child support orders to Kentucky orders and thus conferring jurisdiction on Kentucky courts to modify them. Commonwealth ex. rel. Ball v. Musiak, Ky. App., 775 S.W.2d 524 (1989); Cordie v. Tank, 538 N.W.2d 214 (N.D. 1995). An obligor's means of challenging such a registered order were limited to an attack upon the validity of the foreign order, KRS 407.470(4), and to those actions referred to in KRS 407.480, *supra*, which were available against comparable Kentucky judgments. *Cf.* Cordie v. Tank, *supra* (discussing the URESA registration procedure), *and* Cowan v. Moreno, 903 S.W.2d 119 (Tx. 1995) (discussing the similar defenses available under the Uniform Interstate Family

[1]Pursuant to federal mandate (*see* 42 U.S.C. § 666), the General Assembly repealed Kentucky's URESA as of January 1, 1998, and replaced it with the Uniform Interstate Family Support Act (UIFSA), KRS 407.5101 - 407.5902.

Support Act). Because Brenda was seeking enforcement, not modification, of her Florida judgment, James could challenge the judgment only by showing that the Florida order was void or that there was some other reason, sufficient under Kentucky law, to reject it. *Cf.* Sunrise Turquoise, Inc. v. Chemical Design Co., Inc., Ky. App., 899 S.W.2d 856 (1995) (construing the similar provisions of KRS 426.955, the "Enforcement of Foreign Judgments Act").

In his brief to this Court, James argues that the January 1992 Florida judgment is void because the Florida court lacked personal jurisdiction over him. He has failed to specify, however, where in the record this argument was preserved. On the contrary, at the end of the merits hearing, the trial court expressed regret that this issue had not been addressed. Nor is there any suggestion that Kenton Circuit Court's April 1993 dismissal of Brenda's claim was based on this ground. This argument, therefore, is not properly before us, and we must decline to consider it. CR 59.06; CR 76.12(iv); Kaplon v. Chase, Ky. App., 690 S.W.2d 761 (1985).

Instead of attacking Brenda's Florida judgment as void, James has, from the beginning, insisted that that judgment is based on an erroneous determination of his support obligation and arrearage. He claims to have paid all the child support he was obliged to pay. In 1993, the Kenton Circuit Court agreed and so found. The first question before us, therefore, is whether that ruling, or the procedure leading to it, was so improper as to justify reopening Brenda's case.

In granting Brenda's CR 60.02 motion, the trial court seems to have assumed that under the Full Faith and Credit Clause, the only possible basis for refusing to enforce the January 2, 1992, Florida judgment would be a finding that the judgment was void. The court's apparent reliance in 1993 on another ground for refusing to enforce it was thus deemed a palpable error of sufficient magnitude to warrant CR 60.02 relief. We do not share this reasoning.

Pursuant to Article IV, Section I, the Full Faith and Credit Clause of the United States Constitution, Kentucky courts must give full faith and credit to the judgments of sister states so long as the foreign court had jurisdiction to enter the judgment and no procedural defect rendered the judgment void. Furthermore, "[a] foreign judgment is presumptively valid and the party attacking it has the burden to demonstrate its invalidity." Waddell v. Commonwealth, Ky. App., 893 S.W.2d 376, 379 (1995). As the trial court noted, "[e]scape from obedience to a judgment of a sister-state can be had only if said judgment is void and entitled to no standing even in that state." Morrel & West, Inc. v. Yazel, Ky. App., 711 S.W.2d 501, 502 (1986).

On the other hand, even valid foreign judgments are entitled to no more faith and credit in Kentucky than they would enjoy in the rendering state.

> [T]he judgment of a state court should have the same credit, validity, and effect, in every other court in the United States, which it had in the state in which it was pronounced.

Hampton v. M'Connel, 16 U.S. (3 Wheat.) 234, 235, 4 L. Ed. 378, 379 (1818) (Marshall, C. J.). In other words, even if a judgment

is entitled to full faith and credit, if that judgment is subject to collateral attack where rendered, it is subject to collateral attack here. If there is a viable defense to enforcement in the rendering state, our courts may consider that defense. Even if Brenda's Florida judgment is valid, therefore, the Full Faith and Credit Clause does not necessarily imply that the April 1993 order of Kenton Circuit Court was erroneous.

Moreover, KRS 407.480 the registration provision upon which Brenda relied, expressly subjected validly registered foreign support orders to any defense available against a comparable Kentucky order. *See* Cowan v. Moreno, *supra* (distinguishing, in the similar context of the UIFSA, between defenses to the existence of foreign support orders and defenses to such orders' enforceability, neither of which, if properly raised, are precluded by the Full Faith and Credit Clause); *and cf.* KRS 426.955, the similar provision of the Uniform Enforcement of Foreign Judgments act; *and* Sunrise Turquoise, *supra* (construing that act). We must ask, therefore, whether in April 1993 the Kenton Circuit Court could properly have determined that Brenda's Florida judgment was unenforceable for some reason other than invalidity. We believe that it could have so determined.

CR 55.02 embodies this state's policy disfavoring default judgments. That rule provides that, "[f]or good cause shown the court may set aside a judgment by default in accordance with Rule 60.02." As with CR 60.02 rulings, rulings under CR 55.02 are entrusted to the discretion of the trial court. Green Seed Co. v. Harrison Tobacco Storage Whse., Inc., Ky. App., 663

S.W.2d 755 (1984). In exercising that discretion, the trial court is to consider whether the party seeking relief from the judgment has a valid excuse for the default and a meritorious defense to the claim, and whether the non-defaulting party would be unduly prejudiced were the judgment set aside. We believe that this rule gave Kenton Circuit Court authority, in 1993, to deny enforcement of Brenda's claim even if the foreign judgment underlying her claim was valid. We are persuaded, nevertheless, that in this instance that authority was so seriously misapplied as to require that the April 1993 order be reconsidered

There is no dispute that James did not participate in the 1992 Florida proceeding or that the Florida judgment was entered against him by default. The record on its face, therefore, raises a serious question concerning the enforceability of Brenda's judgment. The deference we ordinarily owe to the trial court with respect to such questions could thus have led us to uphold the April 1993 order of Kenton Circuit Court. At the preliminary hearing on Brenda's CR 60.02 motion, however, the Kenton County official who in April 1993 represented Brenda's claim under the URESA program testified that at no time during that proceeding--not when James asserted his defense to Brenda's claim nor even when the court upheld James' defense--did she communicate with Brenda. Brenda herself testified that she was afforded no opportunity to participate in that proceeding and was not even apprised of the Kentucky result until after the appeal period had expired. This lack of notice was likely a denial of due process, and certainly it violated the procedural mandates of URESA.

Among the principal purposes of that act was the fashioning of a system whereby parties separated by large distances and subject to different state jurisdictions might nevertheless be afforded a full and fair opportunity to assert and defend claims for familial support. The system devised for this purpose employed limited representation by forum state officials and relied for its success upon those officials' facilitating communications between absent foreign claimants and the local court. KRS 407.470.[2] Upon notice that a support obligor objected to a registered foreign support order, URESA required that the obligee be informed and afforded an opportunity, by affidavit, tele-conference, or some similar method, to present evidence in support of her claim. KRS 407.380; Carlson v. Eassa, 62 Cal.Rptr.2d 884 (1997) (holding that a prosecutor's settlement of an out-of-state URESA claim without the consent of the petitioner was void); *and cf.* KRS 407.5316 and 407.5606 (the similar provisions of the UIFSA).

The Kenton court's failure in 1993 to recognize and abide by this notice requirement violated URESA and denied Brenda her right thereunder to a hearing. This was a serious enough error to justify recourse to CR 60.02. Relief under that rule is not precluded by Brenda's failure to appeal, moreover, because she was denied a fair opportunity to do so. We thus affirm, although for different reasons, the trial court's decision to

[2]The system does not create an agency or fiduciary relationship between the obligee and the forum state official who presents the obligee's claim. That official, rather, represents the forum state in its efforts to further the purposes of the interstate enforcement act. *Cf.* KRS 407.5307(3). There is thus no merit to James' contention that Brenda should be bound by the acts of her Kenton County representative as she would have been by the acts of a private attorney.

vacate its April 1993 order and to reconsider James's opposition to Brenda's Florida support judgment.

Finally, James contends that even if the trial court's April 1993 decision was so procedurally flawed as to justify a reopening, on its merits that decision was correct and should be upheld. We disagree.

At the hearing on the merits of Brenda's CR 60.02 motion, Brenda presented the Florida child support agency's records of James's payment history. She also presented records of her out-of-pocket expenditures for her youngest daughter's medical expenses. Apparently the trial court did not consider this evidence in 1993. This was evidence of substance supporting Brenda's claim, and it was not so clearly refuted by James' contentions to the contrary as to compel a finding in James' favor. Indeed, the evidence convincingly contradicted James' assertion, which he relied upon both in 1993 and in 1997, that the Florida support agency had over-charged him by failing to adjust his support obligation as his children came of age. James admitted at the hearing, moreover, that he had refused to contribute to his youngest daughter's medical bills.

We review the trial court's fact-finding for clear error, CR 52.01, and we review its conclusions for mistakes of law and abuses of discretion:

> In reviewing the decision of a trial court the test is not whether the appellate court would have decided it differently, but whether the findings of the trial judge were clearly erroneous or that he abused his discretion.

Cherry v. Cherry, Ky., 634 S.W.2d 423, (1982). As discussed above, absent an attack on the jurisdiction of the Florida court, to be entitled to relief from the Florida default judgment, James was obliged to satisfy the requirements of CR 55.02, including the requirement that he proffer a sufficiently meritorious defense. The decision by the trial court, upon reconsideration, that James failed to meet that requirement neither was clearly erroneous nor was it an abuse of discretion. Accordingly, we affirm the April 17, 1997, order of the Kenton Circuit Court.

ALL CONCUR.

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