

RENDERED: July 8, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002417-MR

JAMES RIGGS

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH McDONALD-BURKMAN, JUDGE
ACTION NO. 03-CI-006652

PREFERRED CAPITAL, INC.

APPELLEE

OPINION AFFIRMING

** **

BEFORE: BUCKINGHAM, JOHNSON, AND SCHRODER, JUDGES.

JOHNSON, JUDGE: James Riggs has appealed from the October 17, 2003, order of the Jefferson Circuit Court which denied his motion to vacate or stay enforcement and execution on a default judgment entered against him in Ohio. Having concluded that Riggs was not entitled to the relief he requested, we affirm.

In June 2000 Riggs, individually and as president of JFR Enterprises, Inc., d/b/a JR's Discount Liquor in Louisville, Jefferson County, Kentucky, entered into a lease with Preferred

Capital¹ of Brecksville, Ohio, for the use of an automated teller machine (ATM). The lease on the ATM authorized payment through a bank draft from Stockyards Bank in Louisville, Kentucky, in the amount of \$269.00 per month.

Following the first month of use, the ATM became inoperable. When Riggs notified Preferred Capital of the problem with the ATM, he was told that the vendor had become bankrupt and was no longer servicing the equipment. Riggs attempted to rescind the lease with Preferred Capital, but it refused to release Riggs from his lease obligation. Pursuant to the lease agreement's choice of law and venue provision,² Preferred Capital brought suit against Riggs to enforce the terms of the lease in Summit County, Ohio. Preferred Capital first attempted service upon Riggs at his place of business by

¹ The vendor/supplier on the lease was listed as Credit Card Center of Philadelphia, Pennsylvania, but Preferred Capital was listed as the lessor.

² The lease agreement provided, in pertinent part, as follows:

27. CHOICE OF LAW AND VENUE. This Lease shall not be effective until signed by Lessor at its principal office listed above. This Lease shall be considered to have been made in the state of Lessor's principal place of business listed above and shall be interpreted in accordance with the laws and regulations of the state of Ohio. The parties, and any guarantors, expressly agree that any action to implement and/or explore the terms of this Lease shall be brought in the Summit County Common Pleas Court in Akron, Ohio, or the county of Lessor's principal place of business.

certified mail,³ but the mail was returned as refused. Preferred Capital then attempted service, via certified mail, at Riggs's home address as listed on the lease, which was returned as unclaimed. Finally, Preferred Capital through the Clerk of Summit County attempted service on Riggs via regular mail at his home address as listed on the lease. This mailing was not returned.

On July 2, 2003, the Summit County Court of Common Pleas entered a default judgment against Riggs after he failed to respond to the suit. Preferred Capital filed a notice on July 31, 2003, in the Jefferson Circuit Court to enforce the judgment against Riggs. Riggs filed a motion to vacate or stay enforcement of judgment on August 13, 2003, claiming that he was never served with the original complaint. Preferred Capital filed its reply on August 25, 2003, claiming that the judgment was enforceable because under Ohio law the civil rules permitted service of process via regular mail, if the mail was not returned. The trial court denied Riggs's motion on October 17, 2003, and this appeal followed.

³ The address listed on the certified mail was 1739 Luken Drive, Louisville, Kentucky. It is unclear as to whether Riggs's home or business was allegedly located at this address since the lease shows the business address as 9220 Bluelick Road, Louisville, Kentucky, and his home address as 4002 Maynard Avenue, Louisville, Kentucky.

We begin our analysis with the Uniform Enforcement of Foreign Judgments Act (UEFJA) which is outlined in KRS⁴ 426.950 to KRS 426.990. KRS 426.950 defines a foreign judgment as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in the Commonwealth." The procedure for the filing and the enforcement of foreign judgments is provided for in KRS 426.955 as follows:

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of any court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a court of this state and may be enforced or satisfied in like manner.

"No doubt, the purpose of the [UEFJA] is to give holders of foreign judgments the same rights and remedies as the holder of a domestic judgment."⁵ It is well-settled in Kentucky that a "sister state's judgment is entitled to full faith and credit and to registration if the judgment is valid under that

⁴ Kentucky Revised Statutes.

⁵ Sunrise Turquoise, Inc. v. Chemical Design Co., Inc., 899 S.W.2d 856, 857 (Ky.App. 1995).

state's own laws."⁶ A judgment entered by another state is presumed to be valid, and the party attacking that judgment has the burden of demonstrating its invalidity.⁷

Riggs argues that the trial court erred in denying his motion to vacate the default judgment against him based on his claim that the Ohio judgment is void due to improper service of process. Thus, the issue before this Court is whether Riggs was properly served under Ohio law.⁸ After reviewing Ohio's procedures, we conclude that Riggs's reliance on Kentucky procedures as outlined in CR⁹ 4.04 is misplaced.

Rule 4.3 of the Ohio Rules of Civil Procedure addresses the proper procedure for service of process on an out-of-state defendant. Rule 4.3 states, in relevant part, as follows:

(A) When service permitted

Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. "Person" includes an individual, an individual's executor, administrator, or other personal representative, or a corporation, partnership, association, or

⁶ Sunrise Turquoise, 899 S.W.2d at 857-58.

⁷ Dant v. Progress Paint Manufacturing Co., 309 S.W.2d 187 (Ky. 1958); Waddell v. Commonwealth, 893 S.W.2d 376, 379 (Ky.App. 1995).

⁸ Sunrise Turquoise, supra.

⁹ Kentucky Rules of Civil Procedure.

any other legal or commercial entity, who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

- (1) Transacting any business in this state[.]

. . .

(B) Methods of Service

(1) Service by certified or express mail

Evidenced by return receipt signed by any person, service of process shall be by certified or express mail unless otherwise permitted by these rules. . . .

Preferred Capital attempted on two occasions to effectuate service of process on Riggs by certified mail. However, the first certified mailing was returned as refused and the second was returned as unclaimed. When certified mail is refused, Ohio Civil Rule 4.6 provides, in relevant part, as follows:

(C) Service refused

If service of process is refused, and the certified or express mail envelope is returned with an endorsement showing such refusal, or the return of the person serving process states that service of process has been refused, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification by the clerk,

files with the clerk a written request for ordinary mail service, the clerk shall send by ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record. Failure to claim certified or expressed mail service is not refusal of service within the meaning of division (C) of this rule [emphasis added].

(D) Service unclaimed

If a certified or express mail envelope is returned with an endorsement showing that the envelope was unclaimed, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days

after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. If the ordinary mail envelope is returned undelivered, the clerk shall forthwith notify the attorney, or serving party, by mail [emphasis added].

After a party, who has had certified mail returned "refused," complies with Ohio Civil Rule 4.6(C), a mere assertion by the defendant that service was never received is insufficient to rebut the presumption of proper service. Rather, in Ohio there is a presumption that refusal of the certified mail evidences a consciousness on the part of the person rejecting the mail and demonstrates that he knew he was being served with process.¹⁰

Thus, pursuant to Ohio Civil Rule 4.6(C), once the certified mail sent to Riggs was returned as refused, Preferred Capital had a right to effectuate service via ordinary mail through the clerk's office. The record shows that the clerk's office mailed a copy of the summons and complaint to Riggs's

¹⁰ See Staff Note to Ohio Civil Rule 4.6(C). See also Weinberger v. Weinberger, 334 N.E.2d 514, 515 (1974) (noting that the defendant had been properly served where the certified mail notices were returned "unopened" or "refused").

address of record. A printout from the Clerk of the Summit County Court of Common Pleas shows that the summons and complaint was not returned as undelivered. Under Civil Rule 4.6, service of the complaint was deemed to be complete when the ordinary mail was not returned to the clerk.¹¹ The Ohio Civil Rules provided Riggs 28 days following the mailing in which to respond to the complaint. It is undisputed that Riggs failed to respond, and accordingly a default judgment was entered against him. Hence, the trial court did not err by denying Riggs's motion to vacate or stay execution of the foreign judgment.

Based on the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard N. Bush
Louisville, Kentucky

BRIEF FOR APPELLEE:

J. Eric Rottinghaus
Cincinnati, Ohio

¹¹ See Pittsburgh Hilton v. Reiss, 489 N.E.2d 1066, 1067 (Ohio App. 1985); and City of Akron v. Gay, 351 N.E.2d 475, 476 (Ohio 1976) (noting that considering service complete when notice by ordinary mail is not returned is constitutionally valid).