

MARY BECKER MCINTYRE

\*

NO. 2005-CA-0257

VERSUS

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COURT OF APPEAL

PHILLIP BECKER

\*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2004-12151, DIVISION "K"

Honorable Herbet Cade, Judge

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**Judge Patricia Rivet Murray**

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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge Max N. Tobias, Jr.)

**TOBIAS, J., DISSENTS IN PART AND ASSIGNS REASONS**

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IN PROPER PERSON, DEFENDANT/APPELLANT

## **AFFIRMED**

This is a domestic matter. Phillip Becker appeals a judgment recognizing and making executory a Calcasieu Parish divorce judgment and a stipulation agreement incorporated therein as a judgment of the Civil District Court for the Parish of Orleans (“CDC”). Mr. Becker argues the trial court’s judgment should be reversed because the stipulation agreement is not a “judgment.” Alternatively, he argues that even assuming the stipulation agreement is a “judgment,” the Calcasieu Parish court that rendered that judgment has exclusive jurisdiction over this matter to the extent it involves a rule to modify his child support obligation, which is set forth in the stipulation agreement. For the reasons that follow, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The underlying facts in this case are undisputed. Mr. Becker and his former wife, Mary Becker McIntyre (now Toca), were divorced in Calcasieu Parish, their last matrimonial domicile. In the Calcasieu divorce proceeding, both Mr. Becker and Mrs. McIntyre were present in open court on December 19, 2000, when a lengthy stipulation agreement was read into the record.

That agreement covered, among other matters, custody of the two minor children born of the marriage, visitation, and Mr. Becker's child support obligation. At the end of that hearing, both Mr. Becker and Mrs. McIntyre were sworn in, and they both acknowledged their understanding of the stipulation agreement. They also agreed to sign any documents necessary to effect the intent of the stipulation agreement.

The certified minute entry from the December 19, 2000 hearing reads:

A joint stipulation is dictated to the Court Reporter and recognized by the Court. Judgment is rendered in accordance with the stipulation. Costs are assessed against the defendant [Mr. Becker]. The Court questions the parties and they state that they understand. A formal decree will be signed upon presentation.

Likewise, the March 22, 2001 divorce judgment expressly incorporates the stipulation agreement as follows:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties have further entered into a stipulation regarding all other incidental matters to the divorce, said stipulation entered in the record of these proceedings shall be put in Judgment form and submitted to the Court for signature.

Despite the latter mandate in the divorce judgment that the parties put the stipulation agreement in judgment form, neither party submitted such judgment for the trial court's signature.

On August 23, 2004, Mrs. McIntyre filed in CDC a petition captioned "Petition to Make Foreign Judgment Executory, and Rule." In the body of

the petition, she sought recognition and enforcement of a Calcasieu Parish court judgment and related proceedings, averring:

IV.

That on December 19, 2000, petitioner and defendant herein [Phillip Becker] entered into a stipulation regarding matters of visitation, support and other ancillary matters in the “**14<sup>th</sup> Judicial District Court for the Parish of Calcasieu**”, in **Proceedings No. 2000-005735, entitled “Mary Becker vs. Phillip Becker”**, and that by “**Judgment**” signed on March 22, 2001, said stipulation was to be made a Judgment of Court. Petitioner attaches hereto certified true cop[ies] of said “**Judgment**” dated March 22, 2001, . . . and further attaches stipulation from the hearing held on December 19, 2000. . . .

V.

Petitioner herein avers that all proceedings in the 14<sup>th</sup> Judicial Court for the Parish of Calcasieu, State of Louisiana, in **Proceedings No. 2000-005735, entitled “Mary Becker v . Phillip Becker”**, including but not limited to the “**Judgment**” dated March 22, 2001 resulting from the stipulation entered into by the parties hereto in open Court on December 19, 2000, be recognized and given full faith and credit as a judgment of this Honorable Court.

On August 24, 2004, the trial court signed an *ex parte* order making the Calcasieu judgment and related proceedings executory in CDC and setting October 6, 2004 as the date for Mrs. McIntyre’s rule to increase child support and other requested rulings.

On October 4, 2004, Mr. Becker responded by filing a peremptory exception of no cause of action, a dilatory exception of nonconformance

with La. C.C.P. art. 891, a declinatory exception of *lis pendens*, and an Article 863 motion for sanctions. The *lis pendens* exception was based on Mr. Becker's argument that the divorce proceedings are still pending in Calcasieu Parish and that venue should remain there. According to Mr. Becker, he filed a rule for reduction in child support in the Calcasieu proceeding on September 1, 2004.

On October 6, 2004, the trial court affirmed its original August 24, 2004 *ex parte* order, which recognized all proceedings in the Calcasieu Parish proceeding, including but not limited to the March 22, 2001 judgment with the incorporated stipulation agreement, as a judgment of the CDC. This appeal followed.

## **DISCUSSION**

On appeal, Mr. Becker asserts the following two assignments of error:

- i. The trial court erred in signing the October 6, 2004 judgment which recognized the stipulated agreement between the parties as an executory foreign "judgment" entitled to full faith and credit.
- ii. The trial court lacks jurisdiction to modify a support order of the 14<sup>th</sup> Judicial District Court for the Parish of Calcasieu because Mr. Becker resides in that parish.

Mr. Becker's first argument is that there is no child support order or

“judgment” to be made executory or enforced. In support, he cites La. C.C.P. arts. 1841, 1911, and 1918. He emphasizes that despite the trial court’s mandate in the divorce judgment, neither party submitted such a judgment to the trial court for signing; thus, there is only “a stipulation, which binds the parties with certain obligations.” Although Mr. Becker acknowledges that the stipulation is “a judicially enforceable right,” he contends that “judicially enforceable” does not equate to a “final judgment. Given the lack of a judgment, he argues that the trial court erred in recognizing the stipulation agreement and making it executory in CDC.

Mrs. McIntyre counters that the stipulation is an enforceable judgment. She stresses that the stipulation (in all but written form) has been recognized by the Calcasieu court as a final judgment. She further stresses the jurisprudence recognizing stipulations in similar settings as enforceable between the parties as if they were child support judgments. *See Melanson v. Melanson*, 94-884 (La. App. 5 Cir. 3/1/95), 652 So. 2d 114.

We find the language in the minute entry from the December 19, 2000 hearing that “[j]udgment is rendered in accordance with the stipulation” coupled with the express reference in the divorce judgment to the stipulation agreement is sufficient to make the stipulation agreement a part of the judgment. We thus find no error in the trial court recognizing and making

executory the judgment, including the stipulation agreement, as a judgment of the CDC.

Mr. Becker further argues that even assuming the stipulation is a “judgment,” it is not a “foreign judgment” under La. R.S. 13:4241, which defines a “foreign judgment” as a judgment of “a court of the United States or of any other court which is entitled to full faith and credit in this state.” La. R.S. 13:4241. Although Mrs. McIntyre acknowledges that the judgment is not “foreign” as defined by that statute, she contends that it was foreign to Orleans Parish in the sense that it arose in Calcasieu Parish. She further contends that although she erroneously captioned her petition as a “Petition to Make a Foreign Judgment Executory,” the trial court properly applied the procedure for making a judgment of a Louisiana court executory in another Louisiana court, which is set forth in La. C.C.P. arts. 2781 and 2782.

We find the pertinent procedural provisions that the trial court correctly utilized are La. C.C.P. arts. 2781 and 2782. Those articles apply because this case involves one Louisiana court (a CDC court) recognizing and making executory a judgment of another Louisiana court (a Calcasieu court).

Our finding that the trial court properly recognized and made executory the stipulation agreement under La. C.C.P. arts. 2781 and 2782

disposes of Mr. Becker's related argument regarding Mrs. McIntyre's failure to follow the procedures for making a foreign judgment executory set forth in La. R.S. 13:4243 as that statute is inapplicable. As Mrs. McIntyre stresses, the applicable statutory provisions are Article 2781 and 2782, and the requirements set forth in those provisions have been satisfied.

Mr. Becker's next argument is that the trial court erred in recognizing "all pleadings" in the Calcasieu proceeding as executory judgments of the CDC. He argues that doing so lacks precedential support. We find, as Mrs. McIntyre contends, that the trial court's reference to "all pleadings" was simply a reference to the pleadings annexed to the petition to make the judgment executory and submitted with the petition for that purpose. Stated otherwise, the reference to "all pleadings," when read in context, is intended to reference only the transcript of the hearing at which the stipulation was read into the record, which transcript as well as the divorce judgment were attached to Mrs. McIntyre's petition.

Mr. Becker's final argument is that the Calcasieu Parish court, as the rendering court under La. C.C.P. art. 2785(2), retains exclusive jurisdiction with respect to any support order rendered in that court, including the stipulated judgment at issue, under La. C.C.P. art. 2786 A. He further argues that Mrs. McIntyre's petition cannot be a registration of support order under

La. C.C.P. art. 2785, *et seq.*, because he still resides in the parish of the rendering court, Calcasieu Parish (Lake Charles).

We find, as Mrs. McIntyre contends, that Mr. Becker's reliance on the provisions set forth in La. C.C.P. arts. 2785, *et seq.*, for intrastate registration of support orders for modification and enforcement is misplaced. Those provisions are designed to address the situation in which the rendering court is divested of jurisdiction because the parties no longer reside there, and the registering court is vested with jurisdiction. They do not, as Mr. Becker suggests, establish exclusive jurisdiction in the rendering court when, as here, one party still resides there.

Although there is scant jurisprudence construing these provisions, we note the following comment regarding the legislative purpose for enacting them:

Acts 1997, No. 603 enacted a statutory scheme apparently designed to eliminate jurisdictional conflicts between district, family, and juvenile courts, and to provide greater certainty as to the proper venue of proceedings to modify or enforce support orders. Code of Civil Procedure Articles 2785 *et seq.* allows a support order rendered by a court in one parish to be registered with a court in another parish. The support order may be registered with the district court, or if applicable, a juvenile or family court. C.C.P. Art. 2785(3). If registered and confirmed, a proceeding to modify the support order must be brought in the parish of the registering court (except the parish of domicile of the person awarded support is always allowed). The prior court is divested of jurisdiction to modify the support order. C.C.P. Art. 2789 (B).

Lucy S. McGough and Kerry Triche, *Louisiana Children's Code Handbook*, 36-37 (2005 ed.)(Authers' Notes to Ch.C. art. 311). The commentators' statement that "the parish of domicile of the person awarded support is always allowed" is based on La. C.C.P. art. 74.2, upon which Mrs. McIntyre relies. Under that article, the CDC is a court of proper venue as the parish where the person awarded support, Mrs. McIntyre, resides. Given our finding that the provisions in La. C.C.P. art. 2785, *et seq.*, are inapposite, Mr. Becker's reliance on those provisions to support his argument that the Calcasieu Parish court, as the rendering court, has exclusive jurisdiction is misplaced.

### **DECREE**

For the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRMED**