

STATE OF MICHIGAN
COURT OF APPEALS

DIANE LORRAINE GIANCASPRO,

Plaintiff-Appellant,

v

LISA ANN CONGLETON,

Defendant-Appellee.

UNPUBLISHED
February 19, 2009

No. 283267
Berrien Circuit Court
LC No. 2007-002194-DC

Before: Davis, P.J., and Wilder and Borrello, JJ.

Wilder, J., (*dissenting*).

I respectfully dissent. Because plaintiff has failed to authenticate the Illinois Judgment of Adoption from which she claims rights of enforcement, she has failed to establish entitlement to proceed in a child custody action in the state of Michigan. Accordingly, I would remand to the trial court for further proceedings.

As noted by the majority, “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” US Const, art IV, § 1. However, the constitutional full faith and credit clause also provides: “*And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.*” US Const, art IV, § 1 (emphasis added). In 28 USC 1738, Congress has required that judgments or orders, for which full faith and credit are sought, “*shall be authenticated,*” “*shall be proved or admitted,*” and that full faith and credit are only owed to orders “*so authenticated*”. As used in a statute, the word “shall” is mandatory. *In re Estate of Kostin (Williams v Kent)*, 278 Mich App 47, 57; 748 NW2d 583 (2008), citing *Roberts v Farmers Ins Exch*, 275 Mich App 58, 68; 737 NW2d 332, 339 (2007). Thus, before full faith and credit can be accorded to the judgment at issue herein, that judgment is required to be authenticated. MCL 691.1173 provides in relevant part that “[a] copy of a foreign judgment authenticated in accordance with an act of congress of the laws of this state may be filed in the office of the clerk of the circuit court. . . .” Authentication may be accomplished as provided by MRE 901 or 902.

Not only did plaintiff fail to authenticate the judgment that she seeks to enforce, but none of the pleadings from the Illinois proceeding have been made part of the record. This failure is significant for, as acknowledged by the majority, the foreign judgment is given the same effect that it has in the state of rendition only to the extent of what was actually adjudicated. *Owen v*

Owen, 389 Mich 117, 121; 205 NW2d 181 (1973). Importantly, a foreign judgment can be collaterally attacked by evidence that the rendering court was without jurisdiction over the parties or the subject matter. *Henkel v Henkel*, 282 Mich 473, 486-487; 276 NW 522 (1937); *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 621; 692 NW2d 388 (2004). Defendant, who appeared on appeal in pro persona, has asserted that the Illinois adoption was contrary to the law of the People's Republic of China. The majority dismisses this assertion as unworthy of consideration on the basis that no jurisdictional argument was raised below. However, challenges to subject matter jurisdiction can be raised at any time. *Polkton Twp v Pellegrom*, 265 Mich App 88, 97; 693 NW2d 170 (2005). See also, *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992) (“[A] court must take notice of the limits of its authority, and should on its own motion recognize its lack of jurisdiction and dismiss the action at any stage in the proceedings”). Certainly, a foreign judgment that the presiding court lacked jurisdiction to enter is not entitled to full faith and credit in the state of Michigan. Plaintiff has failed to file an authenticated judgment; therefore, this Court cannot make the necessary determination of what was actually adjudicated and that jurisdiction was properly exercised.¹ As such, there is nothing for the courts of Michigan to enforce.

For the foregoing reasons, I would vacate the circuit court's order, and remand for further proceedings consistent with this opinion (i.e., for an additional opportunity for plaintiff to file, prove, and authenticate the Illinois judgments, and for the circuit court then to have an opportunity to make a ruling on whether the Illinois court that issued the judgments had subject matter jurisdiction).

/s/ Kurtis T. Wilder

¹ I would further note that plaintiff, as the appellant, failed to file with this Court the transcript of the oral argument of the parties below. An appellant is responsible for securing the complete transcript of all proceedings, unless excused by court order or the parties' stipulation. MCR 7.210(B)(1); *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992). Plaintiff's failure to fulfill her duty to provide the complete transcript calls into question the majority's assertion that a challenge to the jurisdiction to the Illinois court that issued the adoption order(s) was not made below. In any event, plaintiff's failure to file the oral argument transcript subjects the appeal to dismissal on this basis alone.