[J-8-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

LEILA HILKMANN,	:	No. 29 WAP 2003
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 21, 2003 at No.
	:	613WDA2002, reversing the Order of the
v.	:	Court of Common Pleas of Allegheny
	:	County, entered March 25, 2002 at No.
	:	3852 of 2001.
DIRK H. HILKMANN,	:	
	:	816 A.2d 242 (Pa. Super. 2003)
Appellee	:	
	:	
	:	ARGUED: March 1, 2004

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: SEPTEMBER 21, 2004**

Although I agree with the Majority's decision to affirm the order of the Superior Court, my basis for doing so diverges from that of the Majority. Therefore, I write separately to express the reasoning I would utilize in determining the outcome of this matter.

I begin by echoing the Dissent's agreement with much of the Majority Opinion. I, however, also share in the Dissent's discomfort with the Majority announcing a "burdensome and stringent" procedural framework for transferring foreign guardianship judgments to Pennsylvania and then applying this new framework in dismissing Mrs. Hilkmann's claim. See Dissenting Slip Op. at 2-3. Rather than constructing such a procedural framework and then finding that Mrs. Hilkmann failed to follow these new procedures, I am inclined to answer the substantive legal issues raised in this appeal:

whether, as a general proposition, the courts of this Commonwealth should grant comity to foreign guardianship judgments; if so, what standard should our courts apply in deciding whether they should extend comity to individual foreign guardianship judgments; and, whether the foreign guardianship judgment in the matter *sub judice* should be granted comity.

In Pennsylvania, no statutory framework exists whereby a foreign guardian can seek to transfer his or her guardianship order to Pennsylvania. Therefore, comity is the only means by which a foreign guardian can have his or her order transferred to and recognized in this Commonwealth. Accordingly, when a foreign guardian seeks recognition of his or her foreign guardianship decree in Pennsylvania, the courts of this Commonwealth should, as a general proposition, extend comity to those decrees. However, "[u]nder the principles of comity[,] the recognition of a foreign decree is not a matter of absolute obligation." In re Christoff's Estate, 192 A.2d 737, 739 (Pa. 1963) (citing Hilton v. Guyot, 159 U.S. 113 (1895)). As such, this Court needs to provide the bench with a standard to measure foreign guardianship decrees against when deciding whether to extend comity to such decrees.

In Christoff's Estate, this Court recognized that, in considering whether to extend comity to foreign judgments,

> [when a] foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties and upon due allegations and proofs, and *opportunity to defend against them*, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court….

In re Christoff's Estate, 192 A.2d at 739 (quoting Hilton, 159 U.S. at 205) (emphasis added). We also went on to state that such a judgment should be given full credit and effect "unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice…." In re Christoff's Estate, 192 A.2d at 739 (quoting Hilton, 159 U.S. at 205-06). I find this model for determining comity to be as

equally applicable to foreign guardianship judgments as it was to the foreign adoption decree at issue in Christoff's Estate.

Applying these guiding principles of comity to the matter *sub judice*, I find that the trial court record supports a decision not to extend comity to Mrs. Hilkmann's Israeli guardianship decree. When Mrs. Hilkmann's counsel asked her whether Daniel knew of the Israeli guardianship proceedings prior to the Israeli court granting her permanent guardianship status over Daniel on January 31, 2000, Mrs. Hilkmann testified that Daniel only learned of the proceedings through his father, while Daniel visited Mr. Hilkmann in Belgium in late December of 1999. N.T., 3/19/01 at 54-55. Furthermore, at the trial court level, Mrs. Hilkmann's counsel conceded that Daniel did not receive formal notice of the guardianship proceedings in Israel. N.T., 3/19/01 at 10.[1]

It is clear from the record that in the Israeli proceedings at issue in this case, Daniel was not afforded formal notice of the proceedings, nor was he afforded an opportunity to be heard. These are not oversights that the courts of this Commonwealth may pass over lightly, as formal notice and an opportunity to be heard provide "the central meaning of procedural due process" in the United States. Fuentes v. Shevin, 407 U.S. 67, 80 (1971). Although, as a general proposition, the courts of this Commonwealth should extend comity to foreign guardianship decrees, our courts should not do so when the ward of the foreign decree was not afforded notice and the opportunity to defend against the allegations put forth by the guardian in the foreign court.

[1] At the trial court level, the court stated that "the main thing I want to hear from [Daniel] is if he knew anything about this proceeding in Israel. Was he advised at all[?] He was 18 at the time." N.T., 3/19/01 at 10. Mrs. Hilkmann's counsel responded by stating, "We will acknowledge that [Daniel] was not served with documents or the [c]ourt papers." N.T., 3/19/01 at 10.

In the instant case, Mrs. Hilkmann filed for guardianship status over Daniel with an Israeli court, and that court granted guardianship without providing Daniel with notice and an opportunity to defend himself against Mrs. Hilkmann's claims that he required her guardianship. Under such circumstances, the judgment of the foreign court was not prima facie evidence of the truth of the matter adjudged, and thus, the courts of this Commonwealth should not extend comity to such a foreign guardianship judgment.[2] Therefore, I would affirm the order of the Superior Court for the reasons cited above.

[2] For the reasons stated above, I believe that the courts of this Commonwealth should extend comity to foreign guardianship decrees. I would be remiss, however, not to acknowledge that due to the special nature of the impact of a grant of guardianship over a person coupled with the heightened procedural due process rights enjoyed by the citizens of the United States, a foreign guardian seeking recognition of a foreign guardianship judgment in Pennsylvania has an arduous task in proving that his or her foreign decree should be recognized by utilizing principles of comity.