IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JEFFREY STROBEL, *Petitioner/Appellee*,

v.

GAIL ROSIER, *Respondent/Appellant,*

STATE OF ARIZONA, ex rel., DEPARTMENT OF ECONOMIC SECURITY, *Intervenor/Appellee*.

No. 1 CA-CV 16-0644 FC
FILED 12-26-2017

Appeal from the Superior Court in Maricopa County
No. FC2012-001202
The Honorable Paul J. McMurdie, Judge

AFFIRMED

COUNSEL

Baskin Richards PLC, Phoenix
By William A. Richards, David E. Wood
Counsel for Petitioner/Appellee

Horne Law PLLC, Phoenix
By Mark W. Horne
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judge Jennifer B. Campbell and Judge Margaret H. Downie (retired) joined.

B R O W N, Judge:

¶1 Gail Rosier ("Mother") appeals from an order enforcing New Hampshire child support arrearage orders. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Jeffrey Strobel ("Father") obtained arrearage orders in New Hampshire, where he lives with the parties' now-adult child. Father sought to enforce the New Hampshire orders in Arizona, and in early 2012, the Arizona Department of Economic Security ("ADES") filed a notice of registration and petition to enforce support, asking the superior court to enter a judgment against Mother for $202,500 for past due child support. The New Hampshire orders in question are a result of a complicated procedural background, summarized as follows.

¶3 The parties' marriage was dissolved in 1996 pursuant to a Dominican Republic divorce decree that did not include an order for child support. In 2006, Father and the child lived in New Hampshire, and Mother lived in Arizona. Mother filed a petition to register the divorce decree in New Hampshire and establish a parenting plan, which resulted in a July 2006 order registering the decree and establishing long-distance visitation. This order did not include any child support provisions.

¶4 In 2008, Father filed a motion to clarify, which essentially requested a child support order. Father alleged that in 1997, the parties agreed Mother would save for college instead of paying child support, and in the 2006 proceedings, Mother admitted she held an interest in real property valued at $150,000 for that specific purpose.[1] As a result, the New

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[1] Later, Mother asserted she made a clerical error in her financial affidavit, and that the value of her interest in the real property was actually $105,000.

Hampshire court entered an order in March 2009 ("March 2009 Order") directing Mother to immediately liquidate the real property being held for the child's education expenses and place the funds in an appropriate account. The court stated that although there had never been a child support order entered, it specifically considered and found it had jurisdiction over Mother "to establish, enforce, or modify a support order pursuant to [New Hampshire Revised Statutes Annotated ("R.S.A.") section] 546-B:3 II, III, and IV," and that the parties' 1997 agreement was valid and enforceable. Mother was not present at the hearing and the court found she was in default.

¶5 When Mother failed to provide an accounting as ordered, Father filed a petition for contempt in July 2009, requesting the New Hampshire court enter an order specifying that Mother owed $105,000 in past child support. In a letter to the court dated December 8, 2009, Mother stated she was incarcerated in Arizona and could not appear at the contempt hearing set for December 22, 2009 until after she was released and received permission to travel from her parole officer. On December 22, 2009, the court granted Mother's request and continued the hearing to March 9, 2010. However, the court also granted Father's proposed order "on an ex parte basis" and found Mother in contempt of the March 2009 Order to pay child support.

¶6 In a subsequent letter, Mother informed the New Hampshire court that she could not afford to attend the March 9, 2010 hearing and asked to appear telephonically. Mother also stated her late husband's assets were subject to probate litigation and she could not liquidate the real property.

¶7 On March 9, 2010, the New Hampshire court entered an order ("2010 Arrearage Order") finding Mother in contempt for failing to pay child support and ordered an immediate payment of $25,000. The court found Mother owed $202,500 in child support arrearages plus interest and ordered Mother to reimburse Father for a $7,500 inheritance her late husband left for the child that "she spent." The 2010 Arrearage Order included a payment schedule indicating Mother owed $105,000 in back child support as of March 1, 2010, payable immediately or pursuant to a payment schedule that added $10,000 a year, up to and including March 1, 2020 for a total of $205,000 in back child support. The New Hampshire court issued a corresponding Uniform Support Order ("USO") for child

support arrearages of $202,500 as of October 31, 2009, which included the payment schedule.[2]

¶8 Shortly thereafter, Father moved to clarify the USO to require that Mother make consistent monthly payments. In June 2010, the New Hampshire court issued an amended USO ("June 2010 USO") ordering Mother to pay child support arrearages of $202,500 at the rate of $10,000 per "month." The June 2010 USO did not include the payment schedule attached to Father's motion to clarify.

¶9 Father, with the assistance of ADES, sought to enforce the June 2010 USO in Arizona. In response to the Arizona petition to enforce, Mother claimed the New Hampshire orders were issued ex parte, in violation of her due process rights and without any legal basis. Mother admitted she was served with unspecified papers regarding the New Hampshire motions while incarcerated but stated she was in no position to respond financially or emotionally. Mother informed the Arizona court that a hearing on her motion to vacate the New Hampshire orders was pending, which resulted in a continuance of the hearing in Arizona pending a resolution of Mother's New Hampshire motion to vacate.

¶10 In May 2014, after briefing and oral argument, the New Hampshire court found no basis for vacating the existing orders, concluding that "[t]he June 21, 2010 [c]ourt [o]rder approving the [USO] in this matter is an enforceable order on a child support arrearage." The New Hampshire appellate court declined to accept Mother's notice of appeal. The matter proceeded in Arizona, where Mother raised several defenses to enforcement pursuant to Arizona Revised Statutes ("A.R.S.") section 25-1307 and the Full Faith and Credit for Child Support Orders Act ("FFCCSOA"), 28 United States Code ("U.S.C.") section 1738B. ADES took no position on Mother's request to vacate the registration or enforcement. Father argued Mother was precluded from seeking relief from enforcement under the doctrine of res judicata, the Full Faith and Credit Clause of the United States Constitution and 28 U.S.C. § 1738B.

¶11 After an evidentiary hearing, the Arizona court found Mother failed to establish a defense to enforcement under A.R.S. § 25-1307(A) and confirmed the registration and enforcement of the New Hampshire

[2] Mother claimed she first received the 2010 Arrearage Order on November 11, 2013, after appearing in court in Arizona.

arrearage orders. We have jurisdiction over Mother's timely appeal pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

¶12 To contest the validity or enforcement of the New Hampshire orders, Mother had the burden of proving the orders were not entitled to full faith and credit or establishing one of the defenses recognized in A.R.S. § 25-1307(A), which is part of Arizona's version of the Uniform Interstate Family Support Act. This section provides as follows:

> A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
>
> 1. The issuing tribunal lacked personal jurisdiction over the contesting party.
> 2. The order was obtained by fraud.
> 3. The order has been vacated, suspended or modified by a later order.
> 4. The issuing tribunal has stayed the order pending appeal.
> 5. There is a defense under the law of this state to the remedy sought.
> 6. Full or partial payment has been made.
> 7. The statute of limitations applicable under § 25-1304 precludes enforcement of some or all of the alleged arrearages.
> 8. The alleged controlling order is not the controlling order.

A.R.S. § 25-1307(A). Whether a foreign judgment is entitled to full faith and credit is a question of law that we review de novo. *Grynberg v. Shaffer,* 216 Ariz. 256, 257, ¶ 5 (App. 2007).

A. Res Judicata and Full Faith and Credit

¶13 Pursuant to 28 U.S.C. § 1738B(c)(1)(A), a foreign support order is entitled to full faith and credit if the issuing court had subject matter jurisdiction to hear the matter and enter the order and had personal jurisdiction over the parties. Mother argues the New Hampshire court did not have subject matter jurisdiction (1) to enforce the agreement to pay college expenses as a child support order, or (2) to enter an arrearage order when there was no prior child support order.

¶14 Mother characterizes these arguments as challenges to the New Hampshire court's subject matter jurisdiction; however, her arguments are based on the *correctness* of the rulings under applicable New Hampshire law. Subject matter jurisdiction "refers to a court's statutory or constitutional power to hear and determine a particular case." *In re Marriage of Thorn,* 235 Ariz. 216, 220, ¶ 17 (App. 2014) (quoting *State v. Maldonado,* 223 Ariz. 309, 311, ¶ 14 (2010)). Alleged legal error does not constitute a lack of subject matter jurisdiction. In *Estes v. Superior Court,* 137 Ariz. 515, 517 (1983), our supreme court "distinguished 'the right of a court to misconstrue the law measuring the rights of the parties . . . [from] the right of a court to misconstrue a statute or law from which jurisdiction or power of the court flows—a jurisdictional law.'" (quoting *Ariz. Pub. Serv. Co. v. S. Union Gas Co.,* 76 Ariz. 373, 382 (1954)). "Misinterpreting a procedural matter amounts to legal error which may result in reversal by an appellate court, but subject matter jurisdiction remains unaffected by the misinterpretation." *Estes,* 137 Ariz. at 517. Allegations that the New Hampshire orders were improperly based on a contract, instead of child support guidelines, and were not based on a prior child support order constitute assertions of legal error, not a lack of subject matter jurisdiction.[3]

¶15 Mother also argues the 2010 Arrearage Order and subsequent New Hampshire orders were based on Father's fraudulent misrepresentations in the March 2010 hearing. Mother's allegations of legal errors and fraud were either raised or could have been raised in the 2014 New Hampshire proceedings or earlier. In seeking to vacate the March 2009 Order and subsequent orders, Mother argued in part that there was no basis in fact or law for the New Hampshire orders. And as her counsel acknowledged at the Arizona evidentiary hearing, Mother could have raised all of her substantive claims, including fraud, in her 2014 New Hampshire motion to vacate, but she did not.

¶16 Mother's collateral attacks on the merits of the New Hampshire orders are precluded under the doctrine of res judicata (claim preclusion), which provides that an existing final judgment on the merits by a court of competent jurisdiction bars further litigation between the same parties on every point decided, as well as every point that could have been decided on the record in the prior proceeding. *See Underwriters Nat'l*

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[3] Even assuming Mother has appropriately raised a subject matter jurisdiction challenge, she fails to address the statement in the 2014 motion to vacate that "[she] does not dispute that the Court had jurisdiction to establish a child support order under the Uniform Interstate Family Support Act, [R.S.A.] chapter 546-B:31."

Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n, 455 U.S. 691, 710 (1982) ("A party cannot escape the requirements of full faith and credit or res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding."); *Pettit v. Pettit,* 218 Ariz. 529, 531, ¶4 (App. 2008) (holding that res judicata bars re-litigation of matters actually litigated in a prior action as well as issues that might have been litigated); s*ee also Brooks v. Trs. of Dartmouth Coll.*, 20 A.3d 890, 894 (N.H. 2011) (same).

¶17 Mother contends the New Hampshire orders do not have preclusive effect because they were entered by default, citing *Schilz v. Superior Court*, 144 Ariz. 65 (1985), and *Lofts v. Superior Court,* 140 Ariz. 407 (1984). In *Schilz,* 144 Ariz. at 68, our supreme court held that a foreign judgment was not entitled to res judicata effect because the father had not appeared and contested the foreign court's personal jurisdiction. Thus, the Arizona court could consider whether the issuing court properly exercised jurisdiction. Conversely, *Lofts*, 140 Ariz. at 410-11, specifically found the issuing court's subject matter jurisdiction had been fully and fairly litigated in the foreign jurisdiction, and thus was entitled to res judicata effect. These cases are not on point. As noted, *see supra* ¶14, Mother challenges the correctness of the New Hampshire orders, not the court's subject matter jurisdiction. As to Mother's non-jurisdictional arguments, a "default judgment has the same res judicata effect as a judgment in a matter where the issues were litigated."[4] *Norriega v. Machado,* 179 Ariz. 348, 353 (App. 1994) (citing *Technical Air Prods., Inc. v. Sheridan-Gray, Inc.*, 103 Ariz. 450, 452 (1968)).

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[4] Mother cites *State ex rel. Dep't of Econ. Sec. v. Powers,* 184 Ariz. 235 (App. 1995), which is also distinguishable. In *Powers,* the parties' default divorce decree did not mention any children common to the parties. *Id.* at 237-38. The court concluded that the child's paternity was not actually litigated and declined to apply collateral estoppel (issue preclusion). *Id.* at 238. The analysis in *Powers* did not involve application of res judicata and thus it is not relevant to the issues presented here. Unlike collateral estoppel, res judicata does not require actual litigation. *See Circle K Corp. v. Indus. Comm'n of Ariz.*, 179 Ariz. 422, 425 (App. 1993) ("Issue preclusion does not apply in this case because the issue of causation has never been litigated."); *see also In re Gen. Adjudication of All Rights to Use Water in the Gila River Sys. and Source*, 212 Ariz. 64, 69, 70 n.8, ¶ 14 (2006) (noting that only "claim preclusion" was at issue and recognizing that with respect to a default judgment, "none of the issues is actually litigated.").

¶18 Mother never appealed the 2009 New Hampshire orders, and they became final. Her attempt to vacate those orders in 2014 was unsuccessful. She argues the 2014 New Hampshire proceedings are not entitled to res judicata effect because the issues raised here were not litigated. However, in her motion to vacate and at the 2014 hearing, Mother argued there was no child support order on which to base an arrearages order; the amount of the arrearages had no factual basis; she could not liquidate the real property and thus could not be found in willful violation of a court order; and she was wrongfully denied a continuance or telephonic appearance. The New Hampshire court affirmed the prior orders, and Mother's subsequent appeal was denied. Regardless of whether the New Hampshire courts decided these issues correctly in 2009, 2010, and again in 2014, the doctrine of res judicata precludes Mother from challenging those orders in this proceeding.[5]

B. Due Process

¶19 Mother also argues the New Hampshire orders are not entitled to full faith and credit because she was denied due process. *See* 28 U.S.C. § 1738B(c)(2). She contends she was never served with the December 2009 order, the 2010 Arrearage Order, Father's May 2010 motion to clarify, or the resulting June 2010 USO. However, Father's 2010 motion to clarify included a certificate of service signed by his attorney. The June 2010 USO states it was issued after a hearing and lists Mother's Church Road address. Mother now claims the Church Road address was incorrect and that she notified the New Hampshire court to send everything to her criminal defense attorney in Arizona. But Mother's December 8, 2009 letter to the court does not list an Arizona address or give her criminal defense attorney's address. Similarly, Mother's letter asking to continue the March 9, 2010 hearing does not provide a criminal defense attorney's address, and although it includes a different address under her signature, the letter does not constitute proper notification of a change of address.

¶20 Additionally, at the 2014 hearing in New Hampshire, Mother stated she received the "2010 order" and "contacted her New Hampshire attorney." In the 2014 New Hampshire proceedings, Mother never claimed she was not served or did not receive any orders. This is inconsistent with her claim in the Arizona proceedings that she was not aware of the 2010

[5] Because we conclude the New Hampshire orders are entitled to full faith and credit, we need not address Father's argument that Mother's unsuccessful litigation against him in federal court also precludes her challenge to the New Hampshire orders.

Arrearage Order until November 2013. In light of these facts and Mother's letters to the New Hampshire court in December 2009 and March 2010, we can reasonably infer that the Arizona court found Mother's claim that she was unaware of the New Hampshire orders or the status of the arrearage litigation was not credible. *See Wippman v. Rowe*, 24 Ariz. App. 522, 525 (1975) (holding that an appellate court "may infer any findings necessary to sustain the judgment if such findings do not conflict with express findings and are reasonably supported by the evidence").

¶21 Mother also contends she was denied due process by the New Hampshire court's denial of her request to appear telephonically and to appoint counsel. Regarding appointment of counsel, Mother does not direct us to any part of the record where she made such a request in the New Hampshire court proceedings. Thus, we reject Mother's contention that she was denied due process when the New Hampshire court failed to *sua sponte* appoint counsel. Moreover, a trial court *may* appoint counsel in child support enforcement cases when the possibility of incarceration exists and when the defendant may be treated unfairly without the assistance of counsel. *Duval v. Duval,* 322 A.2d 1, 4 (N.H. 1974). Mother has failed to establish how she would have been treated unfairly if she had appeared on her own behalf in New Hampshire in connection with the 2009 and 2010 proceedings.

¶22 The reasons for the New Hampshire court's failure to rule on Mother's informal request to appear telephonically at the hearing are unclear. The New Hampshire court continued the December 2009 hearing, thus implicitly denying the request, but in the same order it found Mother in contempt. The 2010 Arrearage Order was entered after Mother sent another letter stating she was available to appear telephonically or "open to continuing the matter." Father claimed he received Mother's letter one day before the March 2010 hearing. Mother did not establish when the New Hampshire court received her letter. Without such evidence, the New Hampshire court may have deemed Mother's request untimely or improperly filed. Mother also raised this issue in the 2014 New Hampshire motion to vacate, which was denied. Although the ex parte/default nature of the December 2009 and June 2010 orders seems unusual, we cannot conclude on this record that Mother was deprived of due process.

C. Application of A.R.S. § 25-1307(A)

¶23 Under A.R.S. § 25-1307(A)(5), a party may seek to vacate the registration of a foreign support order if he or she establishes "a defense under the law of this state to the remedy sought." Mother contends her

obligation to pay college expenses is not child support, but is a contractual obligation which cannot be enforced by way of contempt in Arizona after the child turns eighteen. In *Solomon v. Findley,* 167 Ariz. 409, 411-12 (1991), our supreme court held that the superior court lacked authority to enforce child support provisions after a child reached majority, but the parties' agreement to pay college expenses was enforceable as an independent contract claim.

¶24 Mother contends she could not have raised this Arizona defense in the New Hampshire proceedings; therefore, it is not barred by res judicata. However, her attempt to challenge the authority of the court to enter a child support order that arguably should have been handled as a contract claim constitutes an impermissible collateral attack on the New Hampshire arrearage order. Correctly or incorrectly, the New Hampshire court expressly concluded that the parties' agreement supported a valid and enforceable child support order. After Mother failed to comply with that order, the New Hampshire court found her in contempt and entered a child support arrearage order. Mother seeks to apply Arizona law regarding agreements to pay college expenses to an issue already decided by the New Hampshire court based on New Hampshire law.[6]

¶25 Because Mother challenges the *interpretation* of the arrearage order as a child support order, the law of the issuing state applies pursuant to 28 U.S.C. § 1738B(h)(2).[7] This is not an issue of enforcement, where

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[6] New Hampshire does allow contempt enforcement in some circumstances. *See Lund v. Lund,* 74 A.2d 557, 559 (N.H. 1950) (allowing contempt action for spouse's failure to pay tuition expenses of the parties' child after she turned eighteen; cited in *Solomon*, 167 Ariz. at 411-12 n.2, as one of several jurisdictions allowing post-majority support provisions to be enforced by contempt).

[7] The choice of law provision in the FFCCSOA, 28 U.S.C. § 1738B(h), provides, in relevant part:

> (1) In general. – In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).
> (2) Law of State of issuance of order. – In interpreting a child support order including the duration of current payments and other obligations of support, a court shall

Arizona law would apply. *See id.* § 1738B(h)(1). On this choice of law question, we defer to 28 U.S.C. § 1738B, which "preempts all similar state laws pursuant to the Supremacy Clause of the United States Constitution." *In re Marriage of Yuro,* 192 Ariz. 568, 571, ¶ 7 (App. 1998). Pursuant to 28 U.S.C. § 1738B(h), we apply New Hampshire law to interpret the orders, not Arizona law. Mother, therefore, cannot rely on *Solomon* in her effort to challenge the correctness of the arrearage orders issued by the New Hampshire court.

CONCLUSION

¶26 We affirm the order to enforce the arrearage orders. We deny Father's request for an award of attorneys' fees on appeal because he failed to cite any authority to support his request. *See Ezell v. Quon,* 224 Ariz. 532, 539, ¶ 31 (App. 2010); *see also* Arizona Rules of Civil Appellate Procedure ("ARCAP") 21(a)(2). As the successful party on appeal, Father is entitled to an award of costs upon his compliance with ARCAP 21(b). *See* A.R.S. § 12-342.

AMY M. WOOD • Clerk of the Court
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apply the law of the State of the court that issued the order.

(3) Period of limitation. – In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provide the longer period of limitation.