IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

LARRY FRASURE,
Petitioner/Appellant,

v.

JOHNNIE MAE FRASURE,
Respondent/Appellee.

No. 2 CA-CV 2014-0149
Filed September 25, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. D20134083
The Honorable Dean Christoffel, Judge Pro Tempore

REVERSED AND REMANDED

COUNSEL

Law Offices of Hector A. Montoya, P.L.L.C.
By Hector A. Montoya, Tucson
Counsel for Petitioner/Appellant

Patricia A. Taylor, Tucson
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Miller and Chief Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 Larry Frasure appeals a judgment entered in favor of Johnnie Mae Frasure in the amount of $22,302.88 in this action to enforce a foreign divorce decree. On appeal, Larry[1] does not dispute that Johnnie Mae is entitled to compensation, but contends the trial court erroneously applied Utah's statute of limitations to this matter, which resulted in a larger judgment. For the following reasons, we reverse and remand.

Factual and Procedural Background

¶2 The relevant facts are undisputed. In 1991, a decree of divorce was entered between the parties in Utah. At the time of dissolution, Larry was employed by the military, and Johnnie Mae was a civil service employee. The divorce decree divided their interests in each other's retirement plans as follows:

> That both [Larry] and [Johnnie Mae] shall be awarded interest in the other's retirement pursuant to Woodward vs. Woodward. [Larry] shall be entitled to one-half of nine over the number of years in [Johnnie Mae's] Civil Service retirement, and [Johnnie Mae] shall be entitled to one-half of eleven over the number of years of [Larry's] Military Service retirement.

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[1]For clarity and convenience, we refer to the parties by their first names.

¶3 In 2000, Larry retired from the military and began receiving his retirement benefit. He did not pay Johnnie Mae her share of his benefit nor did he inform her he had retired. In 2009, Johnnie Mae learned of the retirement and applied to the Defense Finance and Accounting Service (DFAS) for her portion; she began receiving payments in January 2010. That same year, Larry applied for his share of Johnnie Mae's retirement, which he began receiving in 2013 after she retired.

¶4 In December 2013, Johnnie Mae registered the Utah decree "for the purpose of enforcement" in the Pima County Superior Court "pursuant to A.R.S. [§] 12-1701 et[s]eq" along with a notice of filing. Larry thereafter filed a motion for summary judgment in which he asserted Arizona's statute of limitations, arguing it governed the enforcement of foreign judgments and barred Johnnie Mae from recovering any benefit he had received before December 2009. *See* A.R.S. § 12-544(3) (four-year limitation period applicable to foreign judgments). Because Johnnie Mae had begun receiving benefits in January 2010, Larry claimed she was entitled only to one month's payment. Johnnie Mae argued that no statute of limitations defense was available.

¶5 In an under-advisement ruling, the trial court relied on Utah's eight-year statute of limitations and the "continuing claims doctrine," which applies a "discrete statute of limitations" to each accrued right to payment.[2] Under that approach, the court determined Johnnie Mae was entitled to her share of Larry's military retirement benefits for the eight years preceding the date she commenced her enforcement action. Because she began receiving benefits in January 2010, the trial court determined Johnnie Mae was owed $22,302.88—her share of Larry's retirement benefit from December 2005 through December 2009—and entered judgment in

[2]*See* Utah Code Ann. § 78B-2-311 ("An action may be brought within eight years upon a judgment or decree of any court . . . of any state or territory within the United States."); *see also Johnson v. Johnson*, 330 P.3d 704, 708-10 (Utah 2014) (explaining continuing claims doctrine).

that amount.[3] Larry timely appealed and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1), (2).

Discussion

¶6 On appeal, Larry argues the trial court erred in applying Utah's statute of limitations to an "action on enforcement of [a] foreign decree[]." Johnnie Mae responds that the decision to do so was proper, citing *Cristall v. Cristall*, 225 Ariz. 591, 242 P.3d 1060 (App. 2010), as recognizing the propriety of applying the Utah statute of limitations.[4] We review de novo choice-of-law questions, *see Pounders v. Enserch E & C, Inc.*, 232 Ariz. 352, ¶ 6, 306 P.3d 9, 11 (2013), and questions of law concerning a statute of limitations

[3]The trial court resolved attorney fees and entered judgment against Larry in an unsigned minute entry. We suspended the appeal pursuant to Rule 3(b), Ariz. R. Civ. App. P., and remanded to allow the trial court to enter a signed written judgment pursuant to Rule 81(A), Ariz. R. Fam. Law P., which it did. *Cf. Baker v. Bradley*, 231 Ariz. 475, ¶¶ 11, 13, 296 P.3d 1011, 1015-16 (App. 2013) (exception to final judgment requirement for appellate jurisdiction applies when ruling appealed from could not have changed and remaining tasks "merely ministerial").

[4]Johnnie Mae also argues that regardless of which statute of limitations applies, it should be tolled pursuant to A.R.S. § 12-501 "due to [Larry's] hiding out, failure to inform [her] of his retirement, secretly converting property not belonging to him, fraud, and absence from the state." She also contends she was entitled to all payments "revert[ing] back" to Larry's retirement date under an unjust enrichment theory. Johnnie Mae, however, did not file a cross-appeal and thus we do not address her arguments because she cannot seek relief on appeal greater than she obtained in the trial court. *See* Ariz. R. Civ. App. P. 13(b)(2) (absent cross-appeal, appellate court may not alter judgment in manner favorable to appellee); *see also Saldate v. Montgomery*, 228 Ariz. 495, n.6, 268 P.3d 1152, 1154 n.6 (App. 2012).

defense, *see Rogers v. Bd. of Regents of Univ. of Ariz.*, 233 Ariz. 262, ¶ 6, 311 P.3d 1075, 1078 (App. 2013).

¶7 "Arizona has adopted the Uniform Enforcement of Foreign Judgments Act (UEFJA), A.R.S. §§ 12-1701 to -1708 (2010), which enables judgment creditors from sister states to 'obtain a valid Arizona judgment.'" *Cristall*, 225 Ariz. 591, ¶ 10, 242 P.3d at 1062, *quoting C & J Travel, Inc. v. Shumway*, 161 Ariz. 33, 35, 775 P.2d 1097, 1099 (App. 1989). The UEFJA is procedural in nature, providing an avenue for "'enforcing rights conferred by the Full Faith and Credit Clause of the United States Constitution,'" but filing a foreign judgment in an Arizona court does not domesticate it for purposes of avoiding the statute of limitations applicable to foreign judgments. *Id.* ¶ 11, *quoting Citibank (South Dakota), N.A. v. Phifer*, 181 Ariz. 5, 6, 887 P.2d 5, 6 (App. 1994); *see also* § 12-544(3).

¶8 The trial court relied on *Cristall* to support its decision to apply Utah's statute of limitations, specifically, its "clarifi[cation] that the filing of the foreign judgment in an Arizona court 'does not turn the foreign judgment into a domestic judgment for the purpose of avoiding the statute of limitations [applicable to] foreign judgments.'" *Id.*, ¶ 11, *quoting Citibank*, 181 Ariz. at 7, 887 P.2d at 7 (alteration in *Cristall*). The trial court apparently interpreted this phrase to mean Arizona courts must apply "the originating state's appropriate statute of limitations" in foreign judgment enforcement proceedings. The *Cristall* court, however, was referring to § 12-544(3)—Arizona's statute of limitations governing enforcement of foreign judgments—not the foreign state's equivalent statute. *Id.*, *see also Citibank*, 181 Ariz. at 6-7, 887 P.2d at 6-7 (foreign judgment subject to § 12-544(3) rather than Arizona's five-year statute of limitations governing actions on domestic judgments).

¶9 When a conflict arises between a foreign statute of limitations and an Arizona statute, Arizona courts apply our own statute of limitations "even if it bars the enforcement of a foreign judgment filed under the [UEFJA]." *Citibank*, 181 Ariz. at 6, 887 P.2d at 6. And an action to enforce a foreign judgment is subject to the four-year statute of limitations, even if that judgment has been domesticated pursuant to the UEFJA. *See id.* (judgment

domesticated under UEFJA is still foreign judgment subject to § 12-544(3)). Since Johnnie Mae filed an Arizona action under the UEFJA to enforce a foreign judgment, § 12-544(3) applies; thus, the trial court erred in applying Utah's statute of limitations to this enforcement action.[5]

Disposition

¶10 For the foregoing reasons, we vacate the trial court's judgment and remand for further proceedings consistent with this decision.

[5]We are not unsympathetic to Johnnie Mae's position and recognize the harshness of this result, but note she could have preserved all or part of her claim by utilizing avenues available to her, such as applying to DFAS to enforce her rights to Larry's future retirement benefits before he had retired, *see* 10 U.S.C. § 1408(d), or filing the decree in Arizona in 2009, when she discovered Larry had retired, instead of waiting until 2013. She also could have initiated enforcement proceedings in Utah.