

Cite as 2012 Ark. App. 464

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA12-58

ALLEN W. BIRD II

APPELLANT

V.

LARRY SHAFFER

APPELLEE

Opinion Delivered September 5, 2012

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[NO. CV-11-1863-4]HONORABLE CHADD MASON,  
JUDGE

AFFIRMED

**WAYMOND M. BROWN, Judge**

Appellant Allen W. Bird II appeals the September 28, 2011 final judgment of the Washington County Circuit Court, which granted appellee Larry Shaffer's petition to revive a foreign judgment against Bird for a period of ten years. The judgment continued all interest accrued from June 22, 2001, until full satisfaction of the judgment. Bird raises five points for reversal. Those points can be grouped into two arguments: (1) the foreign judgment was not properly authenticated, therefore the trial court lacked jurisdiction to grant the petition to revive, and (2) the petition to revive was barred by the running of the statute of limitations. We affirm.

The facts are not in dispute. On June 22, 2001, the U.S. Bankruptcy Court for the Western District of Arkansas entered a judgment against Bird in favor of "the Debtor

Cite as 2012 Ark. App. 464

Corporations' estates"<sup>1</sup> in the amount of \$199,979.26. Another judgment was entered on August 29, 2003, which was identical to the first judgment but included a provision for interest from June 22, 2001. Shaffer was assigned the judgment against Bird by an order of abandonment filed on October 20, 2003. On June 22, 2011, Shaffer filed an application to register a foreign judgment in Washington County Circuit Court. The August 29, 2003 judgment and the October 20, 2003 order were included with the application. Bird was given notice that the foreign judgment had been filed for registration in Washington County. Bird filed a response and motion to dismiss, quash, and deny the petition to revive the foreign judgment on July 15, 2011. He also filed a response and motion to dismiss, quash, and deny Shaffer's application to register the foreign judgment. In the responses, Bird challenged the authentication of the foreign judgment, and he argued that revival was barred by the statute of limitations, that the court lacked subject-matter jurisdiction, and that venue was improper in Washington County. He also filed a brief in support of his responses on July 15, 2011. On July 25, 2011, Shaffer filed a request for the court to deny Bird's motions along with a brief in support of his request. Bird filed a reply and brief on September 8, 2011. Shaffer filed a supplemental citation of authorities on September 14, 2011. He filed an amended and substituted petition to revive the foreign judgment on September 20, 2011.

The court held a hearing on September 20, 2011. At the conclusion of the hearing, the court found that the foreign judgment was properly authenticated under Rule 44 of the

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<sup>1</sup>Debtor Corporations were Northwest Financial Express, Inc.; NWEX, Inc.; and Gold Financial Express, Inc.

Cite as 2012 Ark. App. 464

Arkansas Rules of Civil Procedure. The court relied on Arkansas Code Annotated section 16-11-301<sup>2</sup> to support its finding that Rule 44 superceded the statute requiring authentication. The court also found that even if the June 22, 2001 judgment was the applicable judgment, as Bird argued, the application was still filed timely. The court granted Shaffer's petition to revive. A final judgment was entered on September 28, 2011. Bird filed a timely notice of appeal on October 28, 2011. This appeal followed.

Although Bird filed a motion to dismiss, the court heard matters outside the complaint. It is well settled that when a circuit court considers matters outside the pleadings, the appellate court will treat a motion to dismiss as one for summary judgment.<sup>3</sup> Ordinarily, upon reviewing a court's decision on a summary-judgment motion, we would examine the record to determine if genuine issues of material fact exist.<sup>4</sup> However, in a case such as this one, which does not involve the question of whether factual issues exist but rather the application of legal rules, we simply determine whether Shaffer was entitled to judgment as a matter of law.<sup>5</sup>

Bird's first argument challenges the authentication of the foreign judgment under the Uniform Enforcement of Foreign Judgments Act.<sup>6</sup> Arkansas Code Annotated section 16-66-

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<sup>2</sup>(Repl. 2010).

<sup>3</sup>See *Comcast of Little Rock, Inc. v. Bradshaw*, 2011 Ark. 431, \_\_\_ S.W.3d \_\_\_.

<sup>4</sup>See *Travis Lumber Co. v. Deichman*, 2009 Ark. 299, 319 S.W.3d 239.

<sup>5</sup>*Id.*

<sup>6</sup>Ark. Code Ann. §§ 16-66-601 to -608 (Repl. 2005).

Cite as 2012 Ark. App. 464

602 states that a “foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of any court of this state having jurisdiction of such an action.” A foreign judgment is “any judgment . . . of a court of the United States or of any other court which is entitled to full faith and credit in this state.”<sup>7</sup> It is undisputed that the judgment Shaffer sought to register and revive is a foreign judgment. According to Bird, since Shaffer did not follow the process of authenticating the foreign judgment as prescribed by the act of Congress when he attached a certified copy of the judgment with his application, the application was invalid and the court lacked jurisdiction to revive the judgment.

Bird’s argument ignores the language in the statute that states that a foreign judgment may also be authenticated in accordance with statutes of this state. Rule 44 of the Arkansas Rules of Civil Procedure states that an official record kept within the United States can be certified by any public officer having a seal of office and having official duties in the government unit in which the record is kept, and authenticated by the seal of his office. Rule 44 is applicable in this instance because the supreme court’s rule-making authority over procedure matters is exclusive.<sup>8</sup> Section 3 of Amendment 80 to the Arkansas Constitution provides that the supreme court “shall prescribe the rules of pleadings, practice and procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right

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<sup>7</sup>Ark. Code Ann. § 16-66-601.

<sup>8</sup>*Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135.

Cite as 2012 Ark. App. 464

and shall preserve the right of trial by jury as declared in this Constitution.”<sup>9</sup> Shaffer’s foreign judgment was signed and stamped by the clerk of the U.S. Bankruptcy Court for the Western District of Arkansas. Thus, it was properly authenticated under Rule 44.<sup>10</sup> Bird’s argument that the court lacked jurisdiction rested on his contention that the application was not valid due to improper authentication. Having found that the judgment was properly authenticated, we need not address the jurisdiction issue.

Next, Bird contends that Shaffer’s petition to revive was barred by the running of the statute of limitations. Arkansas Code Annotated section 16-56-114<sup>11</sup> states that actions on judgments must be commenced within ten years after the cause of action accrues, and not later. A judgment can be revived by bringing an ordinary civil action or by seeking a writ of *scire facias*.<sup>12</sup> Here, Shaffer chose to bring a civil action on his judgment against Bird. Shaffer registered the judgment filed on August 29, 2003. Thus, he had ten years from the date the judgment was filed to bring an action on it. Shaffer filed his application on June 22, 2011, well within the limitations period. However, even if we accepted Bird’s argument that the

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<sup>9</sup>This authority is recognized by Ark. Code Ann. § 16-11-301, which states that the rules adopted by the supreme court supercedes all statutes concerning pleading, practice, and procedure in all courts.

<sup>10</sup>Bird has cited decisions from other jurisdictions to support his position that the judgment was not properly authenticated; however, the sheer numbers of decisions of other jurisdictions one way or the other on any given question are not controlling on this court. See *Chamberlin v. State Farm Mut. Auto Ins. Co.*, 343 Ark. 392, 36 S.W.3d 281 (2001).

<sup>11</sup>(Repl. 2005).

<sup>12</sup>See *Agribank, FCB v. Holland*, 71 Ark. App. 159, 27 S.W.3d 462 (2000).

Cite as 2012 Ark. App. 464

judgment filed on June 22, 2001, was the appropriate judgment to begin the running of the statute of limitations, we would still hold that the application was timely filed. Rule 6 of the Arkansas Rules of Civil Procedure states that we do not count the day of the act, event, or default when computing any period of time prescribed or allowed by our rules, order of the court, or any applicable statute. Since we do not count June 22, 2001, when computing the statute of limitations for that judgment, Shaffer had until June 22, 2011, to pursue an action on the judgment. He filed his application to revive the judgment exactly ten years from the date the judgment was entered. Thus, the action was not barred by the statute of limitations as Bird contends.<sup>13</sup>

Bird also contends that the October 20, 2003 judgment is a nullity. However, it appears that he is actually challenging the August 29, 2003 judgment. We need not address this issue because we have already held that regardless of the date of the judgment, Shaffer's application was timely made.<sup>14</sup> Accordingly, we affirm.

Affirmed.

WYNNE and ABRAMSON, JJ., agree.

*Allen W. Bird II, P.A.*, by: *Allen W. Bird II*, for appellant.  
*Howerton Law Firm*, by: *Wendy R. Howerton*, for appellee.

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<sup>13</sup>Bird's argument that the statute of limitations has also run in the bankruptcy court is of no consequence because Shaffer timely filed his application in Washington County.

<sup>14</sup>As part of his statute of limitations challenge, Bird suggests that Shaffer waived his right to argue that the June 22, 2001 judgment was not a final order. Although he raised the issue of waiver at the hearing, he did not obtain a ruling, which operates as a waiver of the argument on appeal. See *Morgan v. Chandler*, 367 Ark. 430, 241 S.W.3d 224 (2006).