

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1525
Lower Tribunal No. 16-1452

Esther Frank,
Appellant,

vs.

Marsha Kay Frank and Bennett David Frank,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Bernard S. Shapiro, Judge.

Ronald H. Kauffman, P.A., Ronald H. Kauffman and Raquel A. Lacayo-Valle, for appellant.

Lorenzen Law, and Dirk Lorenzen; Marks & West, P.A., Carolyn W. West and Evan R. Marks, for appellees.

Before FERNANDEZ, LOGUE and GORDO, JJ.

GORDO, J.

Esther Frank, intervenor in the dissolution of marriage between Bennett Frank and Marsha Frank, appeals the trial court’s final judgment for failure to give full faith and credit to a domesticated foreign judgment by reducing a money damages award entered in her favor in Missouri. For the reasons that follow, we agree and remand for entry of judgment in accordance with the Full Faith and Credit Clause of the United States Constitution and the Florida Enforcement of Foreign Judgments Act (FEFJA).¹

Bennett and Marsha Frank were married in 1995. In July 2007, while their marriage remained intact, they asked to borrow money from Esther Frank, Bennett’s mother, to purchase a marital residence in Missouri. Esther Frank agreed to lend them the funds for the escrow deposit and the down payment with the couple’s agreement to repay her in full. The couple also requested that Esther Frank make mortgage payments and lend them money for renovations on the new home with the arrangement that they would repay her for the loan with the proceeds from the sale of their previous home. Bennett and Marsha Frank failed to repay the loan. In 2012, the couple moved to Florida and later defaulted on their Missouri mortgage. Esther Frank filed an action for money damages on the unpaid loan in the Missouri Circuit

¹ The Florida Enforcement of Foreign Judgments Act defines a “foreign judgment” as “a judgment, decree, or order of a court of any other state, territory or commonwealth of the United States, or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state.” § 55.502 (1), Fla. Stat. (2019).

Court against Bennett and Marsha Frank. The parties consented to arbitration and the case was tried in April 2018. In May 2018, an arbitration award was entered in favor of Esther Frank against Bennett and Marsha Frank jointly and severally in the amount of \$383,514.00. The Missouri court entered a final judgment adopting and incorporating the arbitration award.

In 2016, Marsha Frank filed for dissolution of marriage in Florida. In July 2018, Esther Frank filed a motion to intervene in the dissolution of marriage action as a foreign judgment creditor and to enforce the Missouri final judgment. The trial court granted the motion to intervene and designated Esther Frank as an intervenor. Thereafter, Esther Frank recorded the Missouri final judgment in Miami-Dade County and filed a request for judicial notice of the Missouri final judgment, arbitration award and partial satisfaction of the Missouri judgment. The documents were introduced into evidence during the trial on the dissolution of marriage petition. After the trial, the court entered a final judgment dissolving the marriage.

As regards this appeal, the trial court reduced the Missouri judgment for money damages of the debt owed to Esther Frank and divided the remaining debt equally between Bennett and Marsha Frank. Esther Frank appeals the judgment arguing the court denied full faith and credit to the Missouri judgment, erroneously reduced the damages award and refused to enforce it jointly and severally in the full amount.

The standard of review for this constitutional claim is de novo. See A.B. v. Fla. Dept. of Children & Family Servs., 901 So. 2d 324, 326 (Fla. 3d DCA 2005).

We first address and reject Appellees’ contention that Esther Frank failed to properly intervene and assert her right to enforce the foreign judgment. Florida Rule of Civil Procedure 1.230 states that “[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.” Here, the court order permitted intervention and declared the intervention is not in subordination to, and in recognition of, the propriety of the main proceeding. Esther Frank, thereafter, recorded the foreign judgment pursuant to section 55.503(1), Florida Statutes (2019). A foreign judgment so recorded in the office of the clerk of the circuit court of any county “shall have the same effect and shall be subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, and it may be enforced, released, or satisfied, as a judgment of a circuit or county court of this state.” § 55.503(1), Fla. Stat.; see New v. Bennett, 249 So. 3d 704, 706–07 (Fla. 1st DCA 2018) (“A foreign judgment domesticated under FEFJA has the same effect as a Florida judgment and is subject to the same legal and equitable defenses and rules of procedure.” (citation omitted)). “If a Florida litigant shows that a sister state’s judgment is valid and final

and that subject matter and personal jurisdiction existed in the foreign state, the judgment is properly authenticated.” Id. at 707 (citing Robinson v. Robinson, 487 So. 2d 67, 68 (Fla. 1st DCA 1986)).

“FEFJA stems from the Full Faith and Credit Clause of the United States Constitution, which states: ‘Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State.’” Id. at 707 (quoting Art. IV, § 1, U.S. Const.). “As explained by the Supreme Court, the Full Faith and Credit Clause ‘requires each State to recognize and give effect to valid judgments rendered by the courts of its sister States.’” Ledoux-Nottingham v. Downs, 210 So. 3d 1217, 1222 (Fla. 2017) (quoting V.L. v. E.L., 136 S. Ct. 1017, 1020 (2016)). “[O]ne state may not modify or alter the judgment or decree of a sister state . . .” Lopez v. Avery, 66 So. 2d 689, 691 (Fla. 1953).

With respect to judgments, “the full faith and credit obligation is exacting.” Baker v. Gen. Motors Corp., 522 U.S. 222, 233 (1998). “A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.” Id. A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits. On the contrary, “the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.” Milliken v. Meyer, 311 U.S. 457, 462 (1940).

Ledoux-Nottingham, 210 So. 3d at 1222–23 (quoting V.L., 136 S. Ct. at 1020). “Further, the Court [has] held that there are no public policy exceptions to the full faith and credit which is due to judgments entered in another state.” Dennis v. Kline, 120 So. 3d 11, 21 (Fla. 4th DCA 2013) (quoting Embry v. Ryan, 11 So. 3d 408, 409–10 (Fla. 2d DCA 2009)). “Thus, ‘[w]here a party has had notice and opportunity to be heard and the foreign court has satisfied Florida’s jurisdictional and due process requirements their orders will be entitled to comity.’” Id. (quoting Nahar v. Nahar, 656 So. 2d 225, 230 (Fla. 3d DCA 1995)).

The parties do not dispute the validity of the Missouri judgment. The record is clear that the parties consented to arbitration and participated in a full trial on the merits of Esther Frank’s claim for money damages. The trial court, therefore, was precluded from inquiring into the merits of the cause of action or the logic or consistency of the Missouri court’s decision. Because Esther Frank appropriately intervened in this action and asserted her right to enforce the Missouri judgment, the court did not have discretion to alter or reduce the foreign judgment in violation of the Full Faith and Credit Clause.

Appellees claim however, for the first time on appeal, that the trial court was entitled to alter and reduce the Missouri judgment because Esther Frank engaged in fraud and collusion with her son to inequitably enforce the judgment. This argument is unpreserved and unsupported by the record in this case. We, therefore, reverse

the portion of the judgment altering and reducing the damages award owed to Esther Frank and remand to the trial court for reallocation of its equitable distribution giving full faith and credit to the Missouri judgment.

Reversed and remanded.