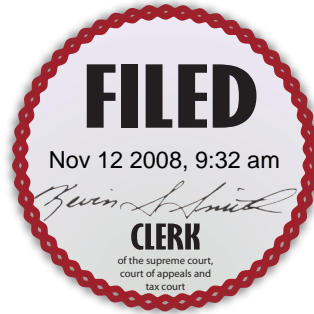


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KIDANE BERAKI,)

Appellant-Respondent,)

vs.)

No. 49A02-0808-CV-684

DEHAB BERAKI)

Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gerald S. Zore, Judge
Cause No. 49D07-0605-CC-19916

November 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Kidane Beraki (Husband) and Dehab Beraki (Wife) were divorced in 2004 via a California decree of dissolution. In 2006, Wife filed an action in Marion County, Indiana to enforce a portion of the California decree. At that time, Husband apparently¹ challenged the California court's jurisdiction to enter the original judgment. Wife petitioned the Indiana court to register and enforce the California decree. The trial court granted Wife's petition. Upon appeal, the sole issue presented by Husband is the correctness of that ruling.²

We affirm.

The undisputed facts are that in 2004, Husband filed for divorce in California, where the parties resided, and on September 23, 2004, the parties were divorced. On August 27 of that year, the California court issued an order entitled, "Partial Judgment Re: Financial Issues." *Appellant's Appendix* at 10-14. Among other things, that judgment ordered Husband to pay certain monies to Wife. Evidently, Husband failed to obey the order to pay. Thus, on May 12, 2006, by which time both parties had moved to Indiana, Wife filed a complaint in Marion Superior Court alleging that said money judgments remained "wholly unpaid" and, attaching a certified copy of the California judgment, asked the trial court to "adopt the foreign judgments as its own" and order Husband to comply with that aspect of

¹ As will be set forth more fully below, the Appendix submitted by Husband does not contain all of the materials that are or might be relevant to the issues presented in this appeal, including the answer.

² We cannot discern from the scant materials submitted in this appeal the substantive nature of Husband's jurisdictional challenge. Indeed, we cannot even be certain what form of jurisdiction he claims is lacking. We assume he cannot challenge the California court's personal jurisdiction over him, as he was the plaintiff in that divorce action. Even assuming it was a challenge to the California court's subject matter jurisdiction, the only indication of the substantive nature of Husband's argument is to be found in a single sentence in *Wife's* appellate brief, i.e., "Since Appellant took no action in California to dispute the Court's jurisdiction to enter the division of the parties [sic] real estate" *Appellee's Brief* at 5. Be that as it may, we understand that on appeal, Husband is not asking this court to review and determine the merits of his jurisdictional arguments, but instead he asks us to hold on procedural grounds that the Marion Superior Court erred in granting Wife's request to register the California judgment in the face of his jurisdictional challenge.

the California order. *Id.* at 8-9. In his answer, Husband allegedly claimed that the California court did not have jurisdiction to enter the judgment in the first place. On February 29, 2008, Wife refined her request and filed an “Amended Petition to Register and Enforce Foreign Decree.” *Id.* at 21. Without conducting a hearing, the trial court granted that motion on March 5, thereby “register[ing] [the decree] in [the trial] Court as a judgment and giv[ing] full faith and credit to the California property judgment and enter[ing] it in the judgment docket of Marion County, Indiana, for enforcement.” *Id.* at 23. The trial court denied husband’s subsequent motion to correct error, and this appeal ensued.

The records and judicial proceedings from courts in other states “shall have full faith and credit given to them in any court in Indiana as by law or usage they have in the courts in which they originated.” Ind. Code Ann. § 34-39-4-3 (West, PREMISE through 2007 1st Regular Sess.). Yet, before an Indiana court is bound by a foreign judgment, it may inquire into the jurisdictional basis of the foreign court’s decree. *Commercial Coin Laundry Sys. v. Enneking*, 766 N.E.2d 433 (Ind. Ct. App. 2002). If the first court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given. *Id.* We presume that a foreign judgment, regular and complete on its face, is valid. *Id.* “The party attacking the judgment of a sister state has the burden of rebutting the presumption of validity and of showing that the sister state lacked jurisdiction.” *Id.* at 439. Husband has failed to demonstrate that he carried this burden.

Wife filed her enforcement action on May 12, 2006. Husband filed his answer on July 6, 2006. Husband alleges that in his answer he denied California had jurisdiction. Perhaps such is the case, but we cannot know, as Husband did not include a copy of his answer in the

appellate materials. It is doubtful, however, that a simple denial would be sufficient to carry Husband's burden to overcome the presumption of jurisdiction.

After filing his answer, Husband did nothing to press his alleged claim that the California court lacked jurisdiction, at least so far as we can tell. Wife submitted an amended petition to register the California judgment on February 29, 2005, and the trial court granted same on March 5, 2008. Husband then filed his motion to correct error. As was true with his answer, we cannot discern the nature of the argument or arguments underlying his motion to correct error because he has included in the appendix only the motion, and not the accompanying brief, which presumably contained his legal arguments challenging the registering of the foreign judgment.³ Thus, we cannot know whether his motion to correct error set forth his jurisdictional challenge, or whether it merely focused on the right to a hearing, or whether it was something else altogether. The point is, nowhere do we find any indication that Husband has carried the burden to rebut the presumption of jurisdiction. We understand that Husband might complain here that it is the chance to present his argument that he is claiming was denied in the first place. Yet, by his own admission, Husband's jurisdictional arguments did not involve disputed facts and thus no hearing was required. *See Appellant's Brief* at 7 (“[w]hat Wife needs to do if she wants to enforce this judgment is to prevail at trial or summary judgment. Likely, the latter would be appropriate; *it does not seem that there would be any issues of material fact requiring a trial*”). (Emphasis supplied.) Thus, this issue was ripe for summary disposition.

³ In his motion to correct error, Husband asserted the trial court erred in granting Wife's motion to set aside the judgment, “and in support of said motion submits his brief.” *Appellant's Appendix* at 24.

In conclusion, Husband had the burden of proving that the California judgment was void for lack of jurisdiction. The resolution of that question did not involve disputed questions of fact and thus was ripe for summary disposition. On the record before us, it appears that he did nothing more than assert a bare denial of jurisdiction. To the extent it might be otherwise, Husband has not submitted a record that permits us to review his claim in this regard. “It is the duty of an appellant to provide this court with a record sufficient to enable us to review the claim of error”. *Lenhardt Tool & Die Co., Inc. v. Lumpe*, 703 N.E.2d 1079, 1084 (Ind. Ct. App. 1998), *trans. denied*. Husband must bear the consequences of that failure. *See Cortez v. Jo-Ann Stores, Inc.*, 827 N.E.2d 1223 (Ind. Ct. App. 2005). Based upon the record before us, we hold that Husband did not carry his burden to demonstrate that jurisdiction was lacking. Therefore, the trial court did not err in registering the California judgment.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur