

RENDERED: August 8, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-1734-MR

SHTEIWI/DAVID, INC.;
KENNETH M. DAVID; and
MICHAEL DAVID

APPELLANTS

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE WILLIAM J. WEHR, JUDGE
ACTION NO. 95-CI-532

MATTHEW W. HENRY

APPELLEE

OPINION

AFFIRMING

*** *** *** ***

BEFORE: KNOPF, MILLER, and SCHRODER, Judges.

MILLER, JUDGE: Shteiwi/David, Inc., Kenneth M. David, and Michael David bring this appeal from a May 21, 1996, order of the Campbell Circuit Court. We affirm.

This action stems from appellants' attempt to register an Ohio judgment in the Campbell Circuit Court pursuant to the Uniform Enforcement of Foreign Judgments Act, codified in this Commonwealth as Ky. Rev. Stat. (KRS) 426.950-.975. On May 22, 1995, appellants filed a Form AOC-160, Notice and Affidavit of Foreign Judgment Registration with the Clerk of the Campbell

Circuit Court. The matter was assigned to Division I of the Campbell Circuit Court.

On August 29, 1995, appellee, Matthew W. Henry, filed a motion for relief from the Ohio judgment pursuant to Ky. R. Civ. P. (CR) 60.02, for suspension of proceedings, and to strike the notice for violations of CR 11 and Local Rule 4 as the notice of registration was not signed by an attorney admitted to practice in this Commonwealth. A hearing ensued, and, on November 16, 1995, the circuit court, Division I, granted appellee's motion.

The order specifically stated as follows:

IT IS ORDERED AND ADJUDGED that Defendant's Motion for Relief from Judgment, for suspension of proceedings, and to squash the subpoena is sustained.

No appeal was taken from this order.

On November 29, 1995, appellants filed a Notice of Voluntary Dismissal in the circuit court, Division I, pursuant to CR 41.01(1). On the same day, appellants filed in the Campbell Circuit Court a second Form AOC-160 Notice and Affidavit of Foreign Judgment Registration. The matter was assigned to Division II of the Campbell Circuit Court. On March 13, 1996, the circuit court, Division II, entered an order, which, in relevant part, stated as follows:

Two issues are presented to this Court on Defendant's motion to dismiss: (1) what is the proper interpretation of Judge Wehr's Order, and (2) did Plaintiffs have the right to file a notice of voluntary dismissal pursuant to CR 41.01(1). . . . **Judge Wehr's Order directs Plaintiffs to cease attempting to collect the Ohio Judgment through proceedings in Kentucky.**

The effect of granting Mr. Henry's motion for relief under CR 60.02 was to vacate the Ohio Judgment for purposes of its enforcement in Kentucky. Judge Wehr's Order granted Mr. Henry a suspension of all proceedings to collect that Judgment (emphases added).

No appeal was taken from the March order. Instead, on April 16, 1996, appellants filed, in Division I of the Campbell Circuit Court, a motion for leave to amend the first notice of registration and to withdraw the motion to voluntarily dismiss. On May 21, 1996, the circuit court, Division I, overruled appellants' motion to amend. The court concluded that appellants could withdraw their notice of voluntary dismissal since "it has no legal effect without their [the parties] concurrence and the Court's approval, neither of which was obtained." This appeal followed.

Appellants contend that the circuit court committed reversible error in overruling the motion for leave to file an amended notice of registration. Appellants raise three assignments of error:

I. The trial court failed to apply the proper standard of review to appellants' motion for leave to amend[;]

II. The trial court erroneously relied on the decision reflected in the November order[; and]

III. The trial court unconstitutionally denied appellants' right to full faith and credit.

As to the first assignment of error, we believe it without merit. Appellant sought to amend its notice of registra-

tion pursuant to CR 15.01. There exists myriad impediments to utilization of that rule upon the facts of this case. Suffice it to say, appellants' motion to amend was filed some five months after final judgment was rendered in the action. As such, we cannot say the circuit court abused its discretion in denying the motion to amend.

As to the second assignment of error, we believe it barred by the doctrine of res judicata. The doctrine of res judicata provides that a final judgment rendered on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties concerning the same points and issues.

In the case sub judice, there is no allegation that the Campbell Circuit Court lacked jurisdiction over the subject matter and the parties. Moreover, it is beyond dispute that the same parties are involved. A review of the record reveals that the specific issues raised in appellants' second assignment of error were adjudicated by the Campbell Circuit Court, Divisions I and II, in their respective November 1995 and March 1996 orders. No appeals were taken from these orders. Hence, we are of the opinion that appellate review of appellants' second assignment of error is precluded by the doctrine of res judicata.

As to appellants' third assignment of error--that the circuit court denied appellants' constitutional right of full faith and credit--we likewise view it as being without merit. The March order, of the Campbell Circuit Court, Division II, specifically held that the Ohio judgment had been "vacate[d]" pursuant to CR 60.02. No appeal was taken therefrom. KRS

426.955, by its clear and unambiguous language, subjects foreign judgments "to the same procedures, defenses and proceedings for reopening, vacating . . . a judgment of a court of this state" As the Ohio judgment is considered void in this Commonwealth, there exists no judgment to which full faith and credit may be extended. As such, we are of the opinion that appellants were not denied their constitutional right of full faith and credit.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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