

RENDERED: JULY 21, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000379-MR

ROGER REDNER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 08-CI-04690

THE ESTATE OF MIKE EVERT

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: KRAMER, CHIEF JUDGE; MAZE AND STUMBO, JUDGES.

MAZE, JUDGE: This appeal arises from an order of the Fayette Circuit Court denying the motion of Appellant, Roger Redner, to vacate a default judgment.

As the record shows the trial court's decision was based on sound legal principles, we affirm.

Background

On or about December 16, 1998, Appellant, Roger Redner, along with his now-deceased wife, Sally, purchased Mike Evert's Lexington business. Mike Evert is also now deceased and his estate is a party to this appeal. As part of the agreement, the Redners were required to make monthly payments to Evert. The Redners, however, failed to make their payments and eventually ended all communication with Evert before closing the business and moving to Florida. They did not inform Evert of their actions. Instead, Evert learned the business had closed and the Redners had left Lexington only after receiving a call from a concerned customer. It then took Evert seven years to locate the Redners in Florida, due in large part to them using an alias, "Zeeb," as opposed to "Redner."

On September 15, 2008, Evert initiated an action against the Redners for breach of the agreement. Evert served the Redners through the Kentucky Secretary of State's Office and procedurally complied with KRS¹ 452.210, Kentucky's long-arm statute. The envelopes mailed to Mr. and Mrs. Redner were returned to the Secretary of State's Office. Mr. Redner's envelope was returned marked by the US Postal Service as "Deceased." Mrs. Redner's envelope was also returned by the US Postal Service marked "Return To Sender, Attempted, Not Known."

As it turned out, Mrs. Redner was actually deceased. Both Redner and the Estate of Evert agree, through counsel, that the address used by Evert was

¹ Kentucky Revised Statutes.

the proper address. Redner maintains, however, that he did not have notice of the September 15th action, and as proof of that, he offers the returned envelopes.

After serving the Redners through the Secretary of State's office, and receiving no response, Evert filed a motion for default judgment against the Redners. The Fayette Circuit Court entered a default judgment against the Redners, jointly and severally, on September 17, 2009. The court then properly vacated the action against Sally Redner, after it was brought to the court's attention that she was deceased at the time the complaint was filed. Then, in 2012, Evert filed an action in Monroe County, Florida, in an attempt to collect from Roger Redner on the Kentucky default judgment. At that time, Redner retained counsel and filed an action contesting the domestication of the Kentucky default judgment in Florida.

In that action, Redner raised the issue of service and argued that he was not properly served and therefore the Kentucky default judgment should not be recognized. This Florida action was litigated for three years (2012 through 2015). The Florida court found that "Kentucky law was complied with in serving the [d]efendant as required under the Kentucky long-arm statute Kentucky Statute section 454.210 and thus Florida is required to recognize the Kentucky Judgment sought to be localized under the Florida Uniform Enforcement of Judgments Act." Upon receiving a judgment from the Florida court not in his favor, Redner then brought this current action in January 2016.

Redner argued that he did not have notice of the initial complaint and therefore the default judgment should be vacated. The trial court denied Redner's motion to vacate the default judgment for several reasons. First, the court explained that the doctrine of *res judicata* bars Redner from re-litigating this same issue that the Florida court already addressed. Second, the court concluded that Redner's motion was not filed within a reasonable time and would result in extreme prejudice to Evert because Evert is no longer living and able to testify. Lastly, the court noted that Mrs. Redner is deceased and was not currently before the court. Redner then filed a motion to reconsider the denial, which was also denied. This appeal followed.

Standard of Review

On appellate review, a trial court's denial of a motion to vacate a default judgment is evaluated under an abuse of discretion standard. To amount to an abuse of discretion, the trial court's decision must be "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007), citing *Commonwealth v. English*, 933 S.W.2d 941, 945 (Ky. 1995). Absent a "flagrant miscarriage of justice," the trial court will be affirmed. *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983).

Analysis

On appeal, Redner primarily contends that he was not properly served and therefore the default judgment against him was not proper. Therefore, he

argues the Florida court's determination is also not valid because it is based on what should be a void Kentucky judgment. We will begin with addressing the issue of the Florida action, as it is dispositive in this case.

a. Florida Action and *Res Judicata*

Redner contends that because service was allegedly not properly perfected against himself, the Kentucky default judgment is void as though it never happened, and thus the Florida court's enforcement of the default judgment has no present effect. The problem with Redner's position, however, is that he fails to recognize the significance of having litigated the exact same question of proper service before the Florida court.

The Kentucky Supreme Court in *Miller v. Admin. Office of Courts*, 361 S.W.3d 867, 872 (Ky. 2011), clearly stated the three elements that must be met for the doctrine of *res judicata* to apply in barring re-litigation. First, "there must be an identity of the parties between the two actions." *Id.* Second, "there must be an identity of the two causes of actions." *Id.* And lastly, "the prior action must have been decided on the merits." *Id.* The Court emphasized that *res judicata* "is basic to our legal system and stands for the principle that once rights of the parties have been finally determined, litigation should end." *Id.* at 871, quoting *Slone v. R & S Mining, Inc.*, 74 S.W.3d 259, 261 (Ky. 2002). The purpose of *res judicata* "is to preclude repetitious actions." *Id.* at 872, citing *Harrod v. Irvine*, 283 S.W.3d 246, 250 (Ky. App. 2009).

Here, the Fayette Circuit Court granted Evert a default judgment against Redner. Evert then, in 2012, in an attempt to collect on the default judgment, filed an action against Redner in Monroe County Circuit Court in Florida. In response to this Florida action, Redner, through counsel in Florida, filed an action contesting the foreign Kentucky judgment. The “Action Contesting Foreign Judgment,” stated,

[d]efendant hereby contests the foreign judgment filed and recorded herein. The grounds for this motion are as follows.

1. The Kentucky court lacked jurisdiction and failed to effect service of process on defendant. The validity of the final judgment is contested.

After about three years of litigating the service of process issue in Florida, the Monroe County Circuit Court granted summary judgment in favor of Evert. The Florida court found that Evert complied with the service requirements of KRS 454.210, and consequently, Kentucky had personal jurisdiction to enter the default judgment against Redner. Based on this conclusion, the Florida court allowed Evert to domesticate the Kentucky default judgment.

After the Florida court granted summary judgment in Evert’s favor, Redner then began the current action in Fayette Circuit Court alleging that service was not proper. The trial court denied the motion to vacate the default judgment and cited several reasons for doing so, including that “the doctrine of *res judicata* applies to estop Defendant Roger Redner from litigating for a second time the issue

of the validity of service of the Complaint and summons in this case after the issue has been fully litigated, on the merits . . .”

The Florida action involved Redner and Evert, and the current Kentucky action involves Evert (through his estate) and Redner, therefore, meeting the first element of *res judicata*. Second, the Florida court litigated the claim that service was not proper under Kentucky’s long-arm statute. This is the same claim that Redner presented to the Fayette Circuit Court in seeking to vacate the default judgment in the present case. Because the causes of actions are the same, the second element is met. Lastly, the Florida order was a final summary judgment order of the court based on the merits of the cause of action, thus meeting the third element of *res judicata*. *Res judicata*, therefore, bars re-litigating the claim pertaining to the question of proper service. The trial court did not abuse its discretion in applying *res judicata* and made a determination based on sound legal principles. The motions to vacate the default judgment and to reconsider were properly denied by the trial court.

b. Notice Requirement

For the reasons expressed herein regarding *res judicata*, it is not necessary to address the issue of proper service. Both parties agreed that the requirements of Kentucky’s long-arm statute were met. While we agree, we will not discuss the issue of proper service as it is a cause of action that has already been properly litigated by a Florida court.

Conclusion

Accordingly, the Fayette Circuit Court order denying Redner's motion to vacate the default judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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