

NOT DESIGNATED FOR PUBLICATION

MITCHEL KALMANSON * **NO. 2008-CA-1196**
VERSUS *
RICHARD L. DUCOTE * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-15425, DIVISION "E-7"
Honorable Madeleine Landrieu, Judge

* * * * *

Judge David S. Gorbaty

* * * * *

(Court composed of Judge Michael E. Kirby, Judge David S. Gorbaty, Judge Roland L. Belsome)

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IN PROPER PERSON, DEFENDANT/APPELLANT

AFFIRMED

This sordid affair began in Lake County, Florida, where plaintiff Mitchel Kalmanson and his ex-wife were embroiled in custody litigation. After the litigation was underway, Ms. Robinson, f/k/a Mrs. Kalmanson, hired defendant Richard Ducote, an attorney licensed to practice in Louisiana, to represent her. Mr. Ducote obtained permission to practice *pro hac vice* in Florida, and jumped into the fray.

On August 5, 2003, the Florida court issued a judgment finding in part that Mr. Ducote had litigated in bad faith. The judgment listed in great detail the specific instances of bad faith including frivolous objections during a deposition, using illegally obtained evidence, and attempting to intimidate a witness. The judgment awarded Mr. Kalmanson \$42,594.27, representing attorney's fees and costs, plus interest, which was to be paid by Mr. Ducote personally.¹

On October 14, 2003, Mr. Kalmanson filed in the Civil District Court for the Parish of Orleans an *Ex Parte* Petition for Enforcement of Foreign Judgment

¹ The record contains a copy of an opinion rendered by the Florida Bar, approved by the court, finding Mr. Ducote not guilty of any alleged misconduct. This ruling, however, has no bearing on the subject appeal.

Pursuant to La. R.S. 13:4241, *et seq.* In response, Mr. Ducote filed on March 3, 2004, an Exception of No Right of Action, and further sought a stay of all proceedings. He argued that Mr. Kalmanson had assigned his rights to the judgment to his Florida attorneys to whom Mr. Kalmanson owed attorney's fees and costs. Accordingly, Mr. Kalmanson no longer had a right of action to enforce the judgment in Louisiana. Mr. Ducote further argued that if Mr. Kalmanson were allowed to collect on the judgment in Louisiana, but had in reality assigned that judgment to the attorneys in Florida, Mr. Ducote could be forced to pay double. Notably, Mr. Ducote did not raise any due process or nullity issues in his exception.

While the saga unfolded in Civil District Court, Mr. Ducote was still busy on the eastern front, appealing the Florida judgment against him. There is record evidence that he first appealed to the Florida Fifth Circuit Court of Appeal,² which issued a *per curiam* affirmance, *Ducote v. Kalmanson*, 905 So.2d 898 (Fla. App. 5 Dist. 5/17/05, of the underlying judgment on May 15, 2005.

Thereafter, Mr. Ducote moved the trial court that rendered the sanctions to vacate its original judgment arguing that Mr. Ducote's due process rights had been violated. The original judge examined the record, and rendered a judgment vacating the original judgment on those grounds. The original trial judge later recused himself from the case, and his replacement again examined the record and ordered Mr. Kalmanson to produce proof that Mr. Ducote had been properly

² This Court does not have the record of the Florida proceedings. However, some documents entered in the Florida record appear in the Civil District Court record as exhibits.

served and/or notified of the hearing. When no proof was submitted, the new judge again rendered judgment vacating the original judgment. Mr. Kalmanson appealed to the Florida appeals court, which rendered the above referenced opinion, *Kalmanson v. Ducote*, 955 So.2d 50 (Fla. App. 5 Dist. 3/23/07). The appeals court specifically stated that Mr. Ducote raised the issue that imposition of the money sanctions violated his rights of due process. Whether because of some prohibition in Florida procedural law or because Mr. Ducote failed to do so, the appeals court judgment was not appealed to the Florida court of last resort and became final.

The court in this instant case found that Mr. Ducote could not challenge the Florida judgment because it was *res judicata*, and therefore, ruled that the judgment was entitled to full faith and credit status, allowing Mr. Kalmanson to execute the judgment in Louisiana. Mr. Ducote appeals that judgment.

LAW AND ANALYSIS:

Mr. Ducote argues that because the Florida judge who originally rendered the subject judgment later reversed himself, citing lack of due process, the Louisiana court must conduct an evidentiary hearing to independently determine if due process was had in obtaining the judgment sought to be enforced. We disagree for the following reasons:

First, despite Mr. Ducote's protestations that the Florida appeals court summarily affirmed the judgment without considering the merits, it is apparent from the subsequent Florida appeals court opinion that the court did consider Mr. Ducote's due process arguments. *See Kalmanson v. Ducote*, 955 So.2d 50 (Fla. App. 5 Dist. 3/23/07).

Though not germane to the instant appeal, we concur in the opinion of the Florida appeals court granting Mr. Kalmanson's writ, declaring the issues raised in Mr. Ducote's motion to vacate *res judicata*.

Article IV, Section 1, of the United States Constitution provides that a state court must give full faith and credit to a judgment of a court of a sister state. A state may deny full faith and credit to a judgment rendered in another state's court when it is shown that the court rendering the judgment lacked subject matter or personal jurisdiction over the parties or that the judgment was obtained through extrinsic fraud. *State, Dep't of Health & Resources v. Bethune*, 618 So.2d 1045, 1047 (La.App. 1 Cir. 1993). Louisiana courts may also deny full faith and credit when a collateral attack on the foreign judgment would have been permitted in the state court that rendered judgment. *Lepard v. Lepard*, 31, 351, p.4 (La.App. 2 Cir. 12/9/98), 722 So.2d 367, 370.

Mr. Ducote argues that he should be allowed to mount a collateral attack on the Florida judgment. A litigant who seeks to deny a foreign judgment full faith and credit based on a collateral attack where rendered has the burden of proving the basis of availability of the collateral attack. *Summers v. Pray*, 02-1840, p. 7 (La.App. 1 Cir. 6/27/03), 850 So.2d 46, 53-54, *citing Lepard, supra*.

A collateral attack is no longer available to Mr. Ducote because he has already challenged the validity of the subject judgment in Florida based on due process violations. The Florida courts have reviewed his arguments, and found them meritless. The judgment Mr. Kalmanson seeks to enforce in Louisiana is a final judgment. Mr. Ducote does not get another bite of the apple in Louisiana.

Accordingly, finding no error in the ruling of the court below, we affirm.

All costs of this appeal are to be borne by Mr. Ducote.

AFFIRMED