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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1066

Filed: 6 October 2020

Buncombe County, No. 18 CVS 3470

GENNADII FEDOROVYCH ROZUMIEI, Plaintiff,

v.

VASIL UHNYUK, Defendant.

Appeal by defendant from order entered 31 May 2018 by Judge W. Erwin Spainhour in Buncombe County Superior Court. Heard in the Court of Appeals 13 May 2020.

The Van Winkle Law Firm, by Esther E. Manheimer and Jonathan H. Dunlap, for plaintiff-appellee.

Ferikes & Bleynt, PLLC, by H. Gregory Johnson, for defendant-appellant.

YOUNG, Judge.

Where a foreign-country money judgment was properly assigned, and was neither a penalty or fine nor procedurally unfair, the trial court did not err in granting plaintiff's motion to recognize it. We affirm the order of the trial court.

I. Factual and Procedural Background

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On 26 October 2018, Gennadii Fedorovych Rozumiei (plaintiff) filed an amended complaint¹ against Vasil Uhnyuk (defendant), alleging that certain parties had obtained a valid order in the High Court of Justice, Chancery Division, London, England, awarding costs against defendant, and that subsequently these parties had assigned the judgment to plaintiff. Plaintiff sought, via his complaint, to enforce the foreign-country money judgment against defendant pursuant to the North Carolina Foreign-Country Money Judgments Recognition Act (the Recognition Act), N.C. Gen. Stat. § 1C-1850 *et seq.* On 14 December 2018, defendant filed an answer to plaintiff's complaint, alleging that the claimed debt was a penalty not capable of being reduced to a judgment, that the assignment alleged in the complaint was unenforceable due to a lack of valid signature, and that the foreign-country money judgment was unenforceable due to a lack of valid authentication.

On 1 March 2019, plaintiff filed a motion to recognize the foreign-country money judgment, including exhibits. On 15 March 2019, plaintiff filed a verification of his amended complaint.

The matter was heard on 20 May 2019. The trial court granted plaintiff's motion to recognize the foreign-country money judgment in open court, and on 31 May 2019, entered a written order granting the motion.

From this order, defendant appeals.

¹ The original complaint was stricken by consent order, and is absent from the record.

II. Recognition of a Foreign Judgment

In his sole argument on appeal, defendant contends that the trial court erred in granting plaintiff's motion to recognize a foreign-country money judgment. We disagree.

A. Standard of Review

“Questions of statutory interpretation are questions of law, which are reviewed *de novo* by an appellate court.” *Proposed Assessments of Additional Sales & Use Tax for Period of Jan. 1, 1994 Through Nov. 30, 1996 by Sec'y of Revenue v. Jefferson-Pilot Life Ins. Co.*, 161 N.C. App. 558, 559, 589 S.E.2d 179, 180 (2003).

B. The Recognition Act

The Recognition Act provides the guidelines for recognition or nonrecognition of a foreign-country money judgment. N.C. Gen. Stat. § 1C-1850 (2019) *et seq.* As a preliminary matter, our statutes provide that such judgments are generally enforceable. N.C. Gen. Stat. § 1C-1853(a) (2019); *see also Jenner v. Ecoplus, Inc.*, 224 N.C. App. 275, 279, 737 S.E.2d 121, 124 (2012) (holding that “the Recognition Act is a statute of inclusion with a strong presumption that foreign-country judgments will be recognized”). However, exceptions to this rule do exist. Certain exceptions bar recognition of a foreign-country judgment absolutely, while others may preclude recognition subject to a judicial determination of reasonableness. N.C. Gen. Stat. §§ 1C-1853(b), (c). Moreover, the statute specifically does not apply to a money judgment

for taxes, fines or penalties, or alimony or similar support. N.C. Gen. Stat. § 1C-1852(b) (2019). In any event, the party resisting recognition of a foreign-country judgment bears the burden of showing grounds for nonrecognition. N.C. Gen. Stat. §§ 1C-1852(c), 1C-1853(f), (g).

In his answer to the complaint, defendant alleged three bases for nonrecognition of the foreign-country judgment at issue: first, that the claimed debt was a penalty not capable of being reduced to a judgment; second, that the assignment alleged in the complaint was unenforceable due to a lack of valid signature; and third, that the foreign-country judgment was unenforceable due to a lack of valid authentication. On appeal, defendant raises two of these bases, alleging that the foreign-country judgment at issue was a penalty, and thus precluded from enforcement by N.C. Gen. Stat. § 1C-1852(b)(2), and that the trial court erred in recognizing the assignment of the judgment. Because defendant does not argue the other third basis he raised below, that the foreign-country judgment was not validly authenticated, we deem this argument abandoned. N.C.R. App. P. 28(b)(6).

C. Penalty or Fine

The Recognition Act explicitly “does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is. . . [a] fine or other penalty[.]” N.C. Gen. Stat. § 1C-1852(b)(2). It is undisputed that the English judgment that plaintiff sought to enforce was for court

costs and attorney's fees. The question before this Court is whether, as defendant contends, such a judgment is a "fine or other penalty," such that the courts of this State will not enforce it.

This Court has addressed a related matter in the case of *Savage v. Zelent*, 243 N.C. App. 535, 777 S.E.2d 801 (2015). In that case, the plaintiff filed a complaint to recognize a foreign-country money judgment from Scotland against the defendant. In Scotland, the defendant filed suit against the plaintiff, but ultimately failed in her claim. As a result of this, the Scottish court awarded expenses, to be determined in a judicial proceeding, to be awarded to the plaintiff. It was the judgment for these costs that the plaintiff sought to enforce in this State. The trial court granted the plaintiff's motion to recognize the foreign-country money judgment, and the defendant appealed. On appeal, the defendant argued *inter alia* that the judgment was one for alimony or similar support. This Court disagreed, however, noting that "[t]he Scottish judgment, rather, is a judgment 'for' attorneys' fees and expenses incurred by plaintiff and awarded against defendant. The purpose of the judgment was to reimburse plaintiff for expenses in defense of a claim brought by plaintiff and denied by the Scottish court." *Id.* at 540, 777 S.E.2d at 805. This Court went on to hold that because this was a judgment for attorney's fees, not an award of matrimonial support, it was enforceable under the Recognition Act.

Although the primary question in *Savage* was whether an order was for matrimonial support, our ruling in that case upheld the enforcement of a claim for a foreign-country award of attorney's fees. In so holding, this Court implicitly held that an award of attorney's fees or court costs is not *per se* excluded as a penalty or fine.

Defendant further contends, nonetheless, that the award in the instant case was excessive and unfair. However, this Court in *Savage* likewise addressed the issue of unfairness, noting that the Scottish court found its award to not be excessive. As such, in that case, we held that the award was not repugnant to the public policy of North Carolina. *Id.* at 547, 777 S.E.2d at 810. *Savage* therefore stands for the principle that an award of costs and fees is not *per se* unfair, and that we will not hold such absent a showing by the party challenging recognition.

In the instant case, having reviewed defendant's arguments, we do not agree with defendant that this award was procedurally or fundamentally unfair. Defendant's argument that the award was excessive for the "short amount of time that he was a party prior to the judgment" is conclusory and unsupported by evidence. Nor does defendant support his baseless contention that "the English court clearly desired to send a warning to current and future litigants" convincingly. As such, we hold that the foreign-country money judgment awarding costs and fees is not a penalty or fine, is not excessive or unfair, and is enforceable under the Recognition Act.

D. Assignment of Judgment

Defendant next contends that the trial court erred in holding that the foreign-country money judgment was validly assigned.

Plaintiff's evidence of assignment was a formal assignment of judgment attached to the amended complaint as an exhibit, which was signed by two of the original parties to the English complaint. Defendant contends, however, that this document is invalid, noting the existence of two different versions of the document in the record. Defendant contends that the "putative date when the alleged assignment instrument was signed is suspect[.]" and that these details "call[] the validity of the alleged assignment instrument into question[.]" Notwithstanding these inconsistencies, however, the text of the documents themselves is identical, and the putative signatures belong to the same person. What appears different, if anything, is the location of the signatures on the signature lines. While this may suggest that the same documents were executed multiple times, it does not suggest to this Court that the documents were fraudulent. To the contrary, one document is verified by plaintiff, and another by plaintiff's attorney, supporting their authenticity. We hold that this evidence does not show a failure to assign, and does not meet defendant's evidentiary burden of establishing a basis for nonrecognition.

Defendant also contends that, although the foreign-country money judgment below was assigned in 2014, Ukrainian court documents show that plaintiff

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attempted to collect on the foreign-country money judgment in Ukraine in 2016. Defendant contends, somewhat perplexingly, that the original party, who purportedly assigned the judgment to plaintiff, was the one who filed the Ukrainian action. However, according to the documents provided by defendant, it was in fact plaintiff who commenced the Ukrainian action. The fact that plaintiff is also seeking to enforce the judgment against defendant in Ukraine does not somehow show that the prior party failed to properly assign the judgment. Nor does defendant contend that this putative Ukrainian action has been satisfied, precluding recovery from the courts of this State. We therefore hold that this evidence does not show a failure to assign, and does not meet defendant's evidentiary burden of establishing a basis for nonrecognition.

Accordingly, we hold that the judgment was validly assigned, and that the trial court did not err in permitting plaintiff to pursue recognition of the foreign-country money judgment.

AFFIRMED.

Judges STROUD and DILLON concur.

Report per Rule 30(e).