Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00199-CV

SOFOLI INVESTMENTS LLC, Sonia Hernandez and Rhenso Hernandez,
Appellants

v.

NURSE NEXT DOOR HOME HEALTHCARE SERVICES (USA), INC.,
Appellee

From the 57th Judicial District Court, Bexar County, Texas
Trial Court No. 2020CI24021
Honorable John D. Gabriel, Jr., Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Irene Rios, Justice
Beth Watkins, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: May 11, 2022

REVERSED AND REMANDED

Appellants Sofoli Investments LLC, Sonia Hernandez, and Rhenso Hernandez challenge two separate orders in this appeal. First, in a restricted appeal, they complain about the domestication of a foreign judgment in a Bexar County district court in favor of appellee Nurse Next Door Home Healthcare Services (USA), Inc. ("NND"). In a separately filed non-restricted appeal, they challenge an order awarding NND attorney's fees in connection with a motion to compel post-judgment discovery. We reverse the domestication of the foreign judgment and the trial court's order awarding attorney's fees to NND and remand this cause for further proceedings.

BACKGROUND

NND is a Washington corporation. Appellants executed two franchise agreements with NND to open franchises in the San Antonio area. Because the franchises were not profitable, appellants notified NND that they intended to terminate the agreements. NND then pursued breach of contract claims against appellants in arbitration. The arbitrator found in NND's favor and awarded it monetary damages. A Washington state court granted NND's petition to confirm the arbitration award and signed a judgment consistent with that award.

On December 15, 2020, NND filed an original petition to domesticate the Washington judgment in a Bexar County district court. NND contends that it mailed notice of that filing to appellants, but the notice was lost in the mail. The record does not show that NND filed proof of this mailing with the district clerk. On February 20, 2021, a process server personally served appellants with notice of the filing, and affidavits confirming this service were filed with the district clerk on March 1, 2021.

On April 7, 2021, NND filed a motion to compel appellants to respond to post-judgment discovery. In response, appellants filed motions to stay execution of the judgment and for a protective order prohibiting NND from seeking post-judgment discovery. On May 13, 2021, appellants filed a notice of restricted appeal, which stated they "desire to appeal the judgment filed by [NND] in this court on December 15, 2020" because they "did not receive prompt notice of the filing of the judgment in Texas in accordance with section 35.004(b) of the Texas Civil Practice and Remedies Code." On May 21, 2021, appellants filed a motion to stay the trial court proceedings pending the resolution of the restricted appeal.

On June 15, 2021, the trial court signed an order granting appellants' request for a stay pending appeal but permitting NND to "conduct limited post-judgment discovery to ascertain [appellants'] net worth and identify [appellants'] total assets and liabilities." The same day, the

trial court signed an order granting NND's motion to compel post-judgment discovery and ordering appellants to pay $4,000 in "reasonable expenses NND incurred in obtaining this order[.]" On June 29, 2021, appellants filed a notice of appeal from the trial court's June 15 orders.

ANALYSIS

Restricted Appeal

Standard of Review and Applicable Law

In a restricted appeal, an appellant must show: (1) it filed a notice of appeal within six months of the signing of the challenged judgment; (2) it was a party to the underlying lawsuit; (3) it did not participate in the "decision-making event" that resulted in the challenged judgment and did not timely file any post-judgment motions or requests for findings of fact or conclusions of law; and (4) error is apparent on the face of the record. TEX. R. APP. P. 30, 26.1(c); *Texaco, Inc. v. Cent. Power & Light Co.*, 925 S.W.2d 586, 589 (Tex. 1996).

A judgment creditor seeking to enforce another state's judgment in Texas may do so by: (1) bringing a common law action to enforce the judgment; or (2) following the procedures in the Uniform Enforcement of Foreign Judgments Act. *Counsel Fin. Servs., L.L.C. v. David McQuade Leibowitz, P.C.*, 311 S.W.3d 45, 50 (Tex. App.—San Antonio 2010, pet. denied); *see generally* TEX. CIV. PRAC. & REM. CODE ANN. §§ 35.001–.008. When a judgment creditor chooses to domesticate an out-of-state judgment under the UEFJA, "the filing of a foreign judgment is in the 'nature of both a plaintiff's original petition and a final judgment: the filing initiates the enforcement proceeding, but it also instantly creates a Texas judgment that is enforceable.'" *Counsel Fin. Servs.*, 311 S.W.3d at 50 (quoting *Moncrief v. Harvey*, 805 S.W.2d 20, 22 (Tex. App.—Dallas 1991, no writ)); *see also Walnut Equip. Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996) (per curiam). The judgment creditor "shall . . . promptly mail notice of the filing

of the foreign judgment to the judgment debtor" and "file proof of mailing of the notice with the clerk of the court." TEX. CIV. PRAC. & REM. CODE ANN. § 35.004(b).

Application

NND filed its petition to domesticate the Washington judgment on December 15, 2020. That filing instantly created an enforceable Texas judgment. *Counsel Fin. Servs.*, 311 S.W.3d at 50. The record shows appellants filed their restricted appeal within six months of that date, did not participate in the "decision-making event" that led to the Texas judgment, and did not file any post-judgment motions or requests for findings of fact or conclusions of law. TEX. R. APP. P. 30; *Texaco*, 925 S.W.2d at 589. Because appellants therefore satisfied the first three requirements of a restricted appeal, we have jurisdiction to turn to the fourth requirement: whether appellants showed error apparent on the face of the record. *See Clopton v. Pok*, 66 S.W.3d 513, 515 (Tex. App.—Fort Worth 2001, pet. denied).

Appellants contend they can satisfy this requirement because the record does not show that NND "promptly mail[ed]" them notice that it had domesticated the Washington judgment or that NND filed proof of that mailing with the trial court clerk. *See* TEX. CIV. PRAC. & REM. CODE § 35.004(b). While appellants primarily argue that this alleged error requires a remand to the trial court for additional time to file post-judgment challenges to the domestication, their list of issues presented asks "[w]hether the judgment should be reversed" for this reason. Liberally construing appellants' brief, as we must, we conclude appellants seek reversal of the domestication. *See, e.g.*, *Weeks Marine, Inc. v. Garza*, 371 S.W.3d 157, 162 (Tex. 2012) ("Appellate courts must treat the statement of an issue 'as covering every subsidiary question that is fairly included.'") (quoting TEX. R. APP. P. 38.1(f)); *see also Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008) (per curiam) ("[A]ppellate courts should reach the merits of an appeal whenever reasonably possible.").

Our sister court recently held that a judgment creditor's failure to comply with section 35.004(b) was error apparent on the face of the record that required a reversal of the domestication of an out-of-state judgment. *See Dana v. Diamante Members Club, Inc.*, No. 05-20-00828-CV, 2022 WL 152659, at *1 (Tex. App.—Dallas Jan. 18, 2022, no pet.) (mem. op.) (citing TEX. CIV. PRAC. & REM. CODE § 35.004(b)(2)). Here, while NND contends it mailed notice to appellants as required by section 35.004(b)(1), the record does not show it filed proof of that mailing as required by section 35.004(b)(2), and NND does not contend otherwise. TEX. CIV. PRAC. & REM. CODE § 35.004(b)(2). Because the trial court clerk had a statutory duty to note any such mailing in the docket, *id.* § 35.004(d), the record affirmatively shows that either NND or the trial court clerk failed to comply with a requirement of the UEFJA. *See* TEX. CIV. PRAC. & REM. CODE § 35.004(b)(2), (d).

NND notes that it personally served appellants with notice that they had filed the Washington judgment in Texas, and it argues this personal service "can hardly be considered noncompliance with the Act's notice requirements." However, because "[w]e are constrained by the written language of the statute, not its presumed purpose," we "must interpret and apply the statute's requirements as written." *Hebner v. Reddy*, 498 S.W.3d 37, 45 (Tex. 2016) (Boyd, J., concurring). Here, the legislature provided that the judgment creditor and the trial court clerk "shall" comply with the mailing and filing requirements of sections 35.004(b) and 35.004(d), and the statute does not provide for a personal service exception to those requirements. *See id.* §§ 34.005(b)(2), (d); TEX. GOV'T CODE ANN. § 311.016(2)("'Shall' imposes a duty.").

For these reasons, we conclude that appellants have shown error apparent on the face of the record. *See Dana*, 2022 WL 152659, at *1. Because appellants have satisfied all four elements of a restricted appeal, we sustain the issue presented by that appeal and reverse the domestication of the Washington judgment. *See id.*

Attorney's Fees

In addition to their notice of restricted appeal, appellants filed a separate notice of appeal from the trial court's June 15, 2021 order awarding NND $4,000 in attorney's fees in connection with its motion to compel post-judgment discovery. Generally, orders regarding post-judgment discovery are not final orders that may be challenged on direct appeal; instead, such orders are reviewable by mandamus. *See Sintim v. Larson*, 489 S.W.3d 551, 556 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *see also Travel Music of San Antonio, Inc. v. Mott*, No. 04-01-00086-CV, 2001 WL 356271, at *1 (Tex. App.—San Antonio Apr. 11, 2001, no pet.) (mem. op.). "However, when an order of monetary sanctions is issued as part of post-judgment discovery proceedings, a challenge to the monetary sanctions properly may be reviewed by appeal." *Sintim*, 489 S.W.3d at 557 (citing *Arndt v. Farris*, 633 S.W.2d 497, 500 n.5 (Tex. 1982)). Here, because NND sought attorney's fees as a sanction under Texas Rule of Civil Procedure 215.1(d), we have jurisdiction to review the fee award. *See id.*; *see also generally* TEX. R. CIV. P. 215.1.

Appellants argue NND "should not have been permitted to pursue post-judgment discovery" and, by extension, should not have been awarded attorney's fees connected to that discovery. Again, we agree. The rule under which NND sought post-judgment discovery—Texas Rule of Civil Procedure 621a—presumes the existence of a valid judgment. *See* TEX. R. CIV. P. 621a (authorizing post-judgment discovery by the successful party "[a]t any time after rendition of judgment . . . for the purpose of obtaining information to aid in the enforcement of such judgment"). Because we have reversed the domestication of the Washington judgment, there is no Texas judgment upon which NND could have sought post-judgment discovery. *See id.* For that reason, we reverse the trial court's award of attorney's fees to NND.

CONCLUSION

We reverse the December 15, 2020 domestication of the Washington judgment against appellants and the June 15, 2021 award of attorney's fees to NND. We remand this cause for further proceedings consistent with this opinion.

Beth Watkins, Justice