

**FILED**  
**May 26, 2022**

EDYTHE NASH GAISER, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**Charles Russell Wright,**  
**Defendant Below, Petitioner**

vs.) **No. 21-0493** (Jefferson County 20-C-149)

**Automotive Finance Corporation,**  
**Plaintiff Below, Respondent**

**MEMORANDUM DECISION**

Self-represented petitioner Charles Russell Wright appeals the May 18, 2021, order of the Circuit Court of Jefferson County lifting a stay on an April 7, 2021, order awarding summary judgment to Respondent Automotive Finance Corporation. In its April 7, 2021, order, the circuit court granted respondent's motion for summary judgment and awarded respondent \$14,811.63 plus court costs and pre- and post-judgment interest pursuant to the Uniform Enforcement of Foreign Judgments Act ("Uniform Act"), West Virginia Code §§ 55-14-1 to -8. Respondent, by counsel John C. Cox, filed a summary response in support of the circuit court's order.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

On March 8, 2018, the Superior Court of Marion County, Indiana, Division 14 ("Indiana Court"), entered a default judgment in respondent's favor against Dudley Motors, Inc. d/b/a Dudley's and petitioner, finding that the defendants were in default, that "it has personal and subject matter jurisdiction[,] and that venue is proper." Accordingly, the Indiana Court rendered judgment as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, AS TO COUNT I AND COUNT II of [respondent]’s [c]omplaint, that [respondent]’s security interest in the [c]ollateral is valid and superior to any liens, interest, claims, and security interests of the [d]efendants. Further, [respondent] is hereby given personal judgment on Count I and Count II against [d]efendants, DUDLEY MOTORS INC DBA DUDLEYS [and petitioner], in the principal sum of \$6,358.29, pre-judgment interest calculated at a rate of 15.00%, in the sum of \$3,003.34, floor plan fees, master contract fees, retail curtailment fees, [n]on-[a]uction [p]urchase, postage repossession fees, title fees[,] and/or late fees in the amount \$4,339.00, reasonable attorney’s fees in the sum of \$1,111.00 . . . .

. . . .

TOTAL JUDGMENT BALANCE: \$14,811.63 plus court costs and services fees in the sum of \$222.29, all without relief from valuation and appraisal laws.

On December 2, 2020, respondent, pursuant to the Uniform Act, filed a certified copy of the Indiana Court’s March 6, 2018, default judgment order, and an affidavit from respondent’s counsel listing petitioner’s last known address as in Ranson, West Virginia, in the Circuit Court of Jefferson County.<sup>1</sup> On December 23, 2020, petitioner filed an answer, alleging that respondent procured the default judgment from the Indiana Court through fraud.

On March 12, 2021, respondent filed a motion for summary judgment, arguing that it showed the validity of the Indiana Court’s default judgment order by providing the circuit court a certified copy of the default judgment order. The circuit court, by order entered on March 22, 2021, directed petitioner to file a response to the motion for summary judgment on or before April 6, 2021. The circuit court stated that it would thereafter “either rule upon the motion on the record presented or notice a hearing upon the same.”

Petitioner did not file a response on or before April 6, 2021. Accordingly, the circuit court, by order entered on April 7, 2021, granted respondent’s motion for summary judgment, finding that “there is no material fact remaining at issue and [respondent] is entitled to [j]udgment as a matter of law.” The circuit court awarded respondent \$14,811.63 plus court costs and pre- and post-judgment interest pursuant to the Uniform Act.

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<sup>1</sup>The Uniform Act provides, in pertinent part, that, “[a]t the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the circuit court an affidavit setting forth the name and last known post-office address of the judgment debtor and the judgment creditor.” W. Va. Code § 55-14-3(a). In this case, petitioner filed a notice of appearance informing the circuit clerk of the same Ranson, West Virginia, address that respondent’s counsel set forth for petitioner in counsel’s affidavit. The city of Ranson is in Jefferson County.

On April 9, 2021, petitioner filed a motion for a continuance, arguing that he did not receive respondent's summary judgment motion through the United States Postal Service but had to obtain a copy from the circuit clerk's office after he received the March 22, 2021, order directing him to file a response. Accordingly, the circuit court, by order entered on April 9, 2021, stayed its April 7, 2021, order awarding respondent summary judgment and directed petitioner to file a response on or before April 23, 2021.

On April 23, 2021, petitioner filed a response to the motion for summary judgment, arguing that the certified copy of the Indiana Court's default judgment order respondent filed with the circuit court was not properly authenticated.<sup>2</sup> The circuit court, by order entered on May 18, 2021, set forth additional findings in support of its April 7, 2021, order awarding respondent summary judgment. The circuit court found that respondent's summary judgment motion was supported by the certified record of the Indiana Court's default judgment order and respondent's counsel's affidavit, both filed pursuant to the Uniform Act. The circuit court's order provided that, while petitioner raised a number of affirmative defenses in its answer, including his claim that respondent committed a fraud upon the Indiana Court, he did not provide factual support for any of those defenses.<sup>3</sup> Therefore, the circuit court determined that petitioner failed to "present facts essential to his opposition to summary judgment" and that his argument against the authentication of the certified copy of the Indiana Court's default judgment order, was "without factual support." Accordingly, the circuit court lifted the stay of its April 7, 2021, order granting respondent's motion for summary judgment and awarding respondent \$14,811.63 plus court costs and pre- and post-judgment interest.

Petitioner now appeals the circuit court's award of summary judgment to respondent. Rule 56(c) of the West Virginia Rules of Civil Procedure provides that summary judgment shall be granted where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." In Syllabus Point 1 of *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994), we held that "[a] circuit court's entry of summary judgment is reviewed *de novo*." Pursuant to Syllabus Point 4 of *Painter*, "[s]ummary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." *Id.* at 190, 451 S.E.2d at 756.

On appeal, petitioner argues that the circuit court erred in granting respondent's motion for summary judgment. Respondent counters that the circuit court properly awarded it summary judgment. We agree with respondent.

In Syllabus Point 1 of *Johnson v. Huntington Moving & Storage, Inc.*, 160 W. Va. 796, 239 S.E.2d 128 (1977), we held that:

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<sup>2</sup>Respondent filed a reply to petitioner's response on May 11, 2021.

<sup>3</sup>Petitioner's answer asserted a number of affirmative defenses; however, petitioner states that the only defense he is raising on appeal is fraud upon the Indiana Court.

[u]nder Section 1, Article IV of the Constitution of the United States, the judgment or decree of a court of record of another state will be given full faith and credit in the courts of this State, unless it be clearly shown by pleading and proof that the court of such other state was without jurisdiction to render the same, or that it was procured through fraud.

*See also* Syl. Pt. 4, *State ex rel. Lynn v. Eddy*, 152 W. Va. 345, 163 S.E.2d 472 (1968) (“A judgment rendered by a court of another state or by a court of this State is subject to attack for lack of jurisdiction to render such judgment or for fraud in its procurement.”)

Petitioner argues that respondent procured the default judgment in the Indiana Court through fraud and that, prior to the award of summary judgment, he should have been allowed to conduct discovery. Pursuant to *Johnson* and *Lynn*, fraud constitutes one of the two grounds upon which a party may attack a judgment rendered by another state. However, we concur with the circuit court’s finding that petitioner “failed to set forth any facts that would tend to establish that the Indiana court lacked jurisdiction or that judgment had been obtained by fraud.” As this Court has long recognized, “the party opposing summary judgment must satisfy the burden of proof by offering more than a mere ‘scintilla of evidence’ and must produce evidence sufficient for a reasonable jury to find in a nonmoving party’s favor.” *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 60, 459 S.E.2d 329, 337 (1995) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). While petitioner further argues that the certified copy of the Indiana Court’s default judgment respondent filed with the circuit court was not properly authenticated, we find that discovery was not necessary as to that issue because a certified copy of the Indiana Court’s default judgment order was in the record.<sup>4</sup>

We have recently found that the Uniform Act “was enacted to facilitate enforcement of foreign judgments[.]” *Johnson v. Pinson*, 244 W. Va. 405, 415, 854 S.E.2d 225, 235 (2020). The Uniform Act provides, in pertinent part, that “[a] copy of any foreign judgment authenticated in accordance with . . . the statutes of this state may be filed in the office of the clerk of any circuit court of this state.” W. Va. Code § 55-14-2. Pursuant to the rule-making clause of Article VIII, § 3 of the West Virginia Constitution, rules promulgated by this Court have the force and effect of law, and “statutes that conflict[ ] with [those] rules” are deemed invalid. *Louk v. Cormier*, 218 W. Va. 81, 88, 622 S.E.2d 788, 795 (2005). Accordingly, we look to Rule 902 of the West Virginia Rules of Evidence to determine whether the certified copy of the Indiana Court’s default judgment was properly authenticated. *See id.* (“The West Virginia Rules of Evidence remain the paramount authority in determining the admissibility of evidence in circuit courts.” (quoting Syl. Pt. 7, in part, *State v. Derr*, 192 W. Va. 165, 451 S.E.2d 731 (1994))).

Rule 902 of the West Virginia Rules of Evidence provides, in pertinent part:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not

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<sup>4</sup>Petitioner notes that he made a number of discovery requests that respondent refused to answer. The circuit court found that the lifting of the stay of its April 7, 2021, order rendered the parties’ discovery dispute moot.

required with respect to the following:

(1) *Domestic Public Documents Under Seal*. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

....

(4) *Certified Copies of Public Records*. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of the United States or of this state.

The certified record for the Indiana Court’s default judgment order against petitioner has three seals affixed upon it. Each seal states that the record is an “official certified copy” from the Indiana Court, which is “true and complete.” Moreover, in the center of each seal is a place for the initials for the “clerk or deputy.” We find initials in the center of each seal. In addition, two signatures appear on the certified record, those of the presiding judge and the court clerk. Specifically, the judge who entered the default judgment order certified that the clerk of the Indiana Court “is the sole custodian of the papers, documents, records, and seal pertaining to [the Indiana] Court,” and “her signature thereto is genuine.” Next, the clerk of the Indiana Court certified that the judge, “whose signature appears to the foregoing certificate, is, and was at the time of signing said certificate, the sole [j]udge of [the Indiana] Court, duly commissioned and qualified, in accordance with the laws of the State of Indiana.” The third seal certifies that the attached copy of the default judgment is true and complete. Based upon the initials beside the clerk’s signature, one deputy clerk signed on the clerk’s behalf, and another deputy clerk placed her initials in the center of the three seals. Indiana Code § 5-6-1-2(c) provides that a deputy clerk “may perform all the official duties of the deputy’s principal, being subject to the same regulations and penalties.” Therefore, we find that the certified record for the Indiana Court’s default judgment order against petitioner was self-authenticating pursuant to Rule 902 of the West Virginia Rules of Evidence.<sup>5</sup> Accordingly, we concur with the circuit court’s finding that there was no genuine issue as to any material fact regarding the authenticity of the Indiana Court record and respondent was entitled to

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<sup>5</sup>According to the Indiana Court record, a certified copy is also referred to in that state as an “exemplified copy.” See *Black’s Law Dictionary* 423 (11th ed. 2019) (defining “exemplified copy” as another term for a certified copy). To the extent that petitioner argues that there is a distinction between a “certified copy” and an “exemplified copy,” we disregard any such argument due to petitioner’s failure to provide authorities in support of it. As we have stated, “[a]lthough we liberally construe briefs in determining issues presented for review, issues which are not raised, and those mentioned only in passing but are not supported with pertinent authority, are not considered on appeal.” *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996).

a judgment as a matter of law. Thus, we conclude that the circuit court properly awarded respondent summary judgment.

For the foregoing reasons, we affirm the circuit court's May 18, 2021, order lifting the stay of the circuit court's April 7, 2021, order granting respondent's motion for summary judgment.

Affirmed.

**ISSUED:** May 26, 2022

**CONCURRED IN BY:**

Chief Justice John A. Hutchison  
Justice Elizabeth D. Walker  
Justice Tim Armstead  
Justice William R. Wooton  
Justice C. Haley Bunn