IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-472

No. COA21-623

Filed 5 July 2022

Wake County, No. 20 CVS 5749

TRACIE SETZER, Plaintiff,

v.

MONARCH PROJECTS LLC dba MAINSTAY SUITES, MOLI KHAD, individually, and KAVAN PATEL, individually, Defendants.

Appeal by Defendant from order entered 26 March 2021 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 6 April 2022.

Young Moore and Henderson, P.A., by Angela Farag Craddock, for the Plaintiff-Appellee.

John M. Kirby for Defendant-Appellant.

DILLON, Judge.

¶ 1 This case involves the domestication of a foreign judgment. We affirm.

I. Background

¶ 2 In 2019, a Florida trial court granted Plaintiff a $600,337.61 judgment against the Defendants for wrongful termination. The judgment was never appealed in the Florida courts.

¶ 3 In May of 2020, Plaintiff filed this action, seeking to domesticate the Florida judgment in North Carolina against Defendant Moli Khad[1] ("Defendant"). Defendant responded with a motion, arguing that the Florida judgment was invalid. She contended that she was not properly served in the Florida action and that her due process rights were, otherwise, violated. Our trial court denied her motion and directed the Florida judgment to be docketed.

¶ 4 Defendant timely appealed.

II. Standard of Review

¶ 5 North Carolina's Uniform Enforcement of Foreign Judgments Act sets out the procedures for filing a foreign judgment in accordance with the Full Faith and Credit Clause of the United States Constitution. *See* N.C. Gen. Stat. § 1C-1703 (2020); *see also DocRx, Inc. v. EMI Servs. of N.C.*, 367 N.C. 371, 375, 758 S.E.2d 390, 393 (2014) (discussing U.S. Const. art. IV, § 1). "[T]he test for determining when the Full Faith and Credit Clause requires enforcement of a foreign judgment focuses on the validity and finality of the judgment in the *rendering state*." *DocRx*, 367 N.C. at 375, 758 S.E.2d at 393 (emphasis added).

¶ 6 "Because a judgment from a rendering court is only entitled to the same credit, validity and effect in a sister state as it had in the state where it was pronounced, the

[1] Defendant has many pseudonyms, one being "Moli Shah," but we will refer to her exclusively as "Defendant."

judgment from the rendering court must be deemed to have satisfied certain requisites of a valid judgment before full faith and credit will be granted to it." *Boyles v. Boyles*, 308 N.C. 488, 490-91, 302 S.E.2d 790, 793 (1983) (quotation omitted). Thus, our Court considers whether the rendering court had subject matter jurisdiction and personal jurisdiction, and whether a defendant was properly afforded due process. *Id.* at 491, 302 S.E.2d at 793. We review the issue *de novo* as it involves a question of law. *DocRx*, 367 N.C. at 375, 758 S.E.2d at 393.

III. Analysis

¶ 7 There are two issues that are properly before us, which we review in turn.

A. Personal Jurisdiction

¶ 8 The first issue concerns whether the Florida court had personal jurisdiction over Defendant to enter its judgment against her on the amended complaint Plaintiff filed against her. Defendant argues that the Florida court lacked personal jurisdiction because: (1) she was improperly served with the amended complaint through the Secretary of State and (2) Plaintiff's amended complaint was filed prior to obtaining leave from the Florida court. We disagree.

¶ 9 We note that "under Florida law, service of process and personal jurisdiction are two distinct but related concepts." *Borden v. East-European Ins.* Co., 921 So. 2d 587, 591 (Fla. 2006). Personal jurisdiction is the power that a court has to render a judgment against a particular party, while service of process "is the means of

notifying a party of a legal claim and, when accomplished, enables the court to exercise jurisdiction over the defendant and proceed to judgment." *Id.* at 591.

1. Service of Process

¶ 10 Defendant argues that she was improperly served through the Secretary of State. However, it is clear from the record that she had actual notice of the Florida action.

¶ 11 The Florida Supreme Court has held that a judgment is not void where the party has actual notice, notwithstanding that the service might have been irregular:

> A distinction is to be noted between a total want of service where the defendant received no notice at all, and a service which is irregular or defective but actually gives the defendant notice of the proceedings against him. 19 Ency. Pl. & Prac. 704.
>
> The former confers no jurisdiction of the person by the court, but the latter or defective service of process on the contrary confers jurisdiction upon the court of the person summoned so that the judgment based upon it is voidable only and not void and cannot be *collaterally attacked*.

State ex rel. Gore v. Chillingworth, 126 Fla. 645, 652, 171 So. 649, 652 (Fla. 1936) (emphasis added); *see also Kathleen G. Kozinski, P.A. v. Phillips*, 126 So. 3d 1264, 1268 (Fla. 4th DCA 2013) (stating that total lack of service of process renders a judgment void, while defective service of process renders it voidable).

¶ 12 We conclude that the Florida judgment is not subject to collateral attack in this action based on the alleged irregular service.

2. Amended Complaint Filed Without Leave

¶ 13 Defendant next argues that the Florida trial court lacked jurisdiction over her because Plaintiff had not obtained leave from the Florida court to file an amended complaint, which added Defendant to that action.

¶ 14 In that action, Plaintiff filed an amended complaint, and Defendant responded with a motion to dismiss. That motion argued, *inter alia*, that Plaintiff amended her complaint before obtaining leave from the court. Plaintiff corrected this supposed error by filing a motion for leave to amend the (already once) amended complaint. Defendant filed no response in opposition, and the Florida court granted the motion.

¶ 15 Defendant now collaterally attacks the Florida judgment here in North Carolina, contending that her motion to dismiss was a "responsive pleading" barring Plaintiff from amending the amended complaint. She cites Fla. R. Civ. P. 1.190 (2019), a provision dictating that a party may amend a pleading once as a matter of course at any time before a *responsive pleading* is served. However, under Florida law, a motion to dismiss is not a responsive pleading. *See Forum v. Boca Burger, Inc.*, 788 So. 2d 1055, 1057 (Fla. 4th DCA 2001) ("A motion to dismiss is not a 'responsive pleading' because it is not even a pleading.") *rev'd in part*, 912 So. 2d 561 (Fla. 2005) (unrelated).

¶ 16 And, in any event, the record shows that Plaintiff did obtain leave from the court.

B. Due Process

¶ 17 Defendant argues that her due process rights were violated because she was not provided with notice in the Florida case of the summary judgment hearing and a damages trial. We disagree.

¶ 18 Due Process "contemplates that the defendant shall be given fair notice[] and afforded a real opportunity to be heard and defend[] in an orderly procedure, before judgment is rendered against him." *Dep't of Law Enforcement v. Real Prop.*, 588 So. 2d 957, 960 (Fla. 1991) (citation omitted). "[U]nder Florida law, the sufficiency of legal notice is measured by the substantial compliance standard." *Megacenter US LLC v. Goodman Doral 88th Court LLC*, 273 So. 3d 1078, 1084 (Fla. 3d DCA 2019). Substantial compliance is universally understood to mean "compliance which substantially, essentially, in the main, or for the most part, satisfies the procedures." *North Carolina Nat'l Bank v. Burnette*, 297 N.C. 524, 532, 256 S.E.2d 388, 393 (1979).

¶ 19 Here, Defendant's attorney[2] was granted leave to withdraw from the case in April 2018, prior to the summary judgment hearing being noticed. Defendant alleges that she received no notice of her impending litigation after her counsel's withdrawal, and in fact, that she was not ever aware of her attorney's withdrawal from her case.

¶ 20 When her attorney withdrew, however, the attorney provided the trial court

[2] Counsel represented all of the Defendants named in the amended complaint.

and all parties with a physical and email address that he believed to be Defendant's. Defendant claims she never resided at the physical address, nor used it as a location to receive mail, and stopped using the email address in October 2018. Defendant, nevertheless, must have been receiving some notice of the case as she: (1) was at least using the email address provided to the court from April 2018 to October 2018, and (2) attended a deposition in Raleigh concerning the Florida case in the Fall of 2018. Moreover, there is no indication that Defendant ever notified the Florida court or other parties of a different physical address than provided by her attorney before he withdrew.

¶ 21 After assessing all the facts of this case, we agree with the trial court that Defendant "failed to take reasonable steps to protect her interests by providing the court with current contact information" such that her due process rights were not violated in the Florida action.

¶ 22 We note that Defendant was aware that she was being represented by counsel in a lawsuit. If her counsel withdrew in April 2018 without telling her, a couple months of radio silence would lead a reasonable person to inquire as to status of a lawsuit against them—especially when exposed to hundreds of thousands of dollars of personal liability. Lawsuits do not just disappear. One call to the court, co-defendants, or former counsel would have confirmed that the case against her was ongoing.

C. Judicial Notice

¶ 23 Defendant argues that the trial court in this present action erred by taking judicial notice, *sua sponte*, of records from the Florida court in its order. We disagree.

¶ 24 We review a trial court's taking of judicial notice for abuse of discretion, a standard requiring a showing that the court's actions were manifestly unsupported by reason. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)

¶ 25 Defendant argues that she was robbed of her opportunity to contest the judicial notice based on its timing. The North Carolina Evidentiary Code states that "[a] court may take judicial notice, whether requested or not," and "'[j]udicial notice may be taken at any stage of the proceedings." N.C. Gen. Stat. § 8C-1, R. 201(c),(d) (2020). But Section (e) of that same statute, entitled "Opportunity to be Heard," dictates:

> In a trial court, a party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. *In the absence of prior notification, the request may be made after judicial notice has been taken.*

Id. § 8C-1, R. 201(e) (emphasis added).

¶ 26 Defendant argues that by taking judicial notice in its order without prior notification, the trial court did not give Defendant an opportunity to request to be heard on the matter. This is not so, as Defendant could have been heard on this issue by filing a Rule 60 motion to set aside the order, yet chose not to. *See id.* § 1A-1, R. 60.

¶ 27 But even assuming the court erred, Defendant has failed to show prejudice. In fact, Defendant relies on many of these documents to argue her appeal and has not contended that the filings relied upon by the trial court were inauthentic.

¶ 28 Our Courts have routinely held that a trial court may take judicial filings in this and other jurisdictions. For example, in *Muteff v. Invacare Corp.,* 218 N.C. App. 558, 569, 721 S.E.2d 379, 387 (2012), we held that a trial court did not err by taking judicial notice of an opinion from the Texas Supreme Court. And our Supreme Court has been emphatic that "important public documents will be judicially noticed." *State ex rel. Utils. Comm'n. v. Southern Bell Telephone Co.*, 289 N.C. 286, 288, 221 S.E.2d 322, 323 (1976).

¶ 29 We note other holdings that a North Carolina court may take judicial notice of its own prior proceedings. *See West v. G.D. Reddick, Inc.*, 302 N.C. 201, 274 S.E.2d 221 (1981); *see also In re J.W.*, 173 N.C. App. 450, 619 S.E.2d 534 (2005) (trial court did not err in by taking judicial notice of previous order in a termination of parental rights hearing).

¶ 30 Defendant also argues that our trial court should not have taken judicial notice of the Florida documents because they contain the disputed fact of whether she had notice of the trial against her in Florida. *See West*, 302 N.C. at 203, 274 S.E.2d at 223 (stating the rule that a judge "may take judicial notice of a fact which is either so notoriously true as not to be the subject of reasonable dispute or is capable of

demonstration by readily accessible sources of indisputable accuracy.") By taking judicial notice of the documents, though, the trial court was not attesting to the facts contained therein, but rather to these documents' existence, the arguments within them, and the timing of their filing. In a domestication of a foreign judgment such as this, our Courts would not assess whether the findings of fact were supported by competent evidence. That would be a question for an appellate court in Florida to determine.

IV. Conclusion

¶ 31 We conclude that our trial court did not err by recognizing the validity of the Florida judgment against Defendant, nor did it abuse its discretion by taking judicial notice of Florida records in its order.

AFFIRMED.

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).