

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEN MORROW,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY
OF CLARK, AND THE HONORABLE JOSEPH S.
PAVLIKOWSKI, SENIOR JUDGE,
Respondents,
and
PAYROLL SOLUTIONS, INC.,
Real Party in Interest.

No. 46898

FILED

MAY 26 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order determining that petitioner's foreign judgment is not entitled to full faith and credit and staying the foreign judgment's enforcement.

Petitioner seeks a writ of mandamus compelling the district court to afford full faith and credit to an Alabama circuit court summary judgment. Alternatively, petitioner asks this court to issue a writ of prohibition preventing the district court from conducting further proceedings to determine whether the Alabama circuit court had personal jurisdiction over real party in interest. Having reviewed both the petition and the answer, we conclude that our intervention by way of extraordinary relief is warranted.

The underlying dispute concerns three parties: (1) petitioner Ken Morrow; (2) real party in interest Payroll Solutions, Inc.; and (3) Payroll Solutions V, Inc. Morrow instituted a breach of contract action

against Payroll Solutions, Inc. in the Circuit Court of Franklin County, Alabama. Without answering the complaint, Payroll Solutions moved to dismiss the action for lack of jurisdiction, arguing that, pursuant to the written contract purportedly governing their agreement, the parties consented to jurisdiction in Nevada to settle any disputes. Morrow maintained that a prior written contract, in which the parties consented to jurisdiction in Alabama, governed their agreement. And, in opposing the motion to dismiss, Morrow apparently argued that Payroll Solutions had contacts in Alabama sufficient to subject it to jurisdiction there.

In its order on the motion to dismiss, the Alabama circuit court acknowledged the parties' contractual dispute regarding jurisdiction without resolving the issue, but found that, at any rate, Payroll Solutions, "had sufficient contacts with the State of Alabama to subject itself to its personal jurisdiction." The circuit court order further directed Payroll Solutions to answer Morrow's complaint.

In its answer, Payroll Solutions generally denied Morrow's allegations and maintained the affirmative defense that Alabama lacked jurisdiction over it. Thereafter, Morrow filed an unopposed motion for summary judgment. The circuit court granted summary judgment to Morrow; he enforced the judgment in Alabama through a writ of garnishment.¹

After enforcing, in part, the circuit court summary judgment in Alabama, Morrow filed an action in the Nevada district court attempting to enforce the Alabama judgment. Payroll Solutions then

¹Neither party disputes that, other than maintaining a personal jurisdiction affirmative defense, Payroll Solutions failed to challenge, by way of appeal or otherwise, the circuit court summary judgment or personal jurisdiction determination.

moved the district court to stay enforcement of the Alabama summary judgment, arguing, among other things, that the Alabama judgment was entered against the incorrect entity.² In its motion, Payroll Solutions asserted that, as it had delegated its duties in, and thus its contacts with, Alabama to Payroll Solutions V, Inc. almost four years before the parties' dispute arose, Payroll Solutions V, Inc.—not Payroll Solutions—had contacts with Alabama. And, as a result, the underlying dispute concerned Morrow's business dealings with Payroll Solutions V, Inc. Consequently, Payroll Solutions argued that, because the circuit court judgment was entered against the wrong party and Morrow had allegedly failed to include a party necessary to the dispute, the Alabama judgment was void.

After a hearing on the stay motion, the district court entered an order staying enforcement of the Alabama judgment. The order set forth that the Alabama circuit court's finding that it had personal jurisdiction over Payroll Solutions and the subsequent circuit court summary judgment were not entitled to full faith and credit. The district court order also contemplated further proceedings concerning the Alabama circuit court's personal jurisdiction over Payroll Solutions. This original petition for extraordinary relief followed.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious

²This argument ostensibly stems from the deposition, during the proceedings in the Alabama circuit court, of Tim Menfield, the chief financial officer of Payroll Solutions and Payroll Solutions V, Inc. During the deposition, Morrow's counsel apparently "identified" Payroll Solutions V, Inc. as doing business in Alabama and stated that for the purposes of the deposition he was referring to Payroll Solutions V, Inc.

exercise of discretion.³ This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial function, when such proceedings are in excess of the district court's jurisdiction.⁴ The issuance of either writ is entirely discretionary with this court.⁵ Further, a writ of mandamus or prohibition may issue only when there is no plain, speedy, and adequate legal remedy.⁶

The issues raised by the petition and addressed by the answer concern the interplay between the Full Faith and Credit Clause of the United States Constitution and the doctrine of res judicata. In particular, the Constitution's mandate that "Full Faith and Credit shall be given in each State to the . . . judicial Proceedings of every other State"⁷ creates a res judicata bar to the extent that a foreign court's valid judgment on a claim precludes relitigating that claim in the forum state.⁸ Whether the district court properly applied the full faith and credit clause and the res judicata doctrine presents legal questions subject to de novo review.⁹

³See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁴See NRS 34.320.

⁵See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁶See NRS 34.170 and 34.330.

⁷U.S. Const. art. IV, § 1.

⁸See Clark v. Clark, 80 Nev. 52, 389 P.2d 69 (1964); In Re Porep, 60 Nev. 393, 111 P.2d 533 (1941); see also Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 835, 963 P.2d 465, 473 (1998).

⁹Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 45 (1992) (noting that whether the doctrine of res judicata bars a party's claim is a legal question); SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993) (stating that "[q]uestions of law
continued on next page . . .

As an initial matter, “a judgment of a court in one State is conclusive upon the merits [and thus entitled to full faith and credit] in a court in another State only if the court in the first State had . . . jurisdiction . . . to render the judgment.”¹⁰ The forum court, then, need not afford full faith and credit to the foreign judgment if, as relevant here, the foreign court lacked personal jurisdiction. Accordingly, before a court is bound by a foreign court’s judgment, it may inquire whether the foreign court had jurisdiction over the relevant parties.

This inquiry into the jurisdictional bases of a foreign court’s judgment is limited, however. Indeed, because the doctrine of res judicata also applies to questions of personal jurisdiction, the scope of the review conducted by a court to determine whether a foreign court had jurisdiction to enter the challenged judgment is confined to whether the jurisdictional issue was fully and fairly litigated and finally decided in the foreign court.¹¹ A foreign court’s specific adjudication that it has jurisdiction becomes res judicata on that issue and is not subject to collateral attack on the enforcement of the ensuing judgment in another court.¹²

. . . continued

are reviewed de novo.”); see also First St. Bank of Holly Springs v. Wyssbrod, 124 S.W.3d 566, 573 (Tenn. Ct. App. 2003) (recognizing that the issue whether to grant full faith and credit to a foreign judgment is a legal question).

¹⁰Underwriters Assur. Co. v. N. C. Guaranty Assn., 455 U.S. 691, 704 (1982) (quoting Durfee v. Duke, 375 U.S. 106, 110 (1963)).

¹¹See Underwriters, 455 U.S. at 706; accord Marshall v. Marshall, No. 04-1544, 2006 WL 1131904, at *14 (U.S. May 1, 2006).

¹²See Paffel v. Paffel, 732 P.2d 96, 99 (Utah 1986).

Here, on Morrow's attempt to enforce the Alabama judgment in the district court, Payroll Solutions moved to stay the Alabama judgment's enforcement and collaterally attacked the circuit court's personal jurisdiction to render it. The district court order granting Payroll Solution's motion stayed enforcement of Morrow's Alabama judgment and directed that the "Alabama order finding that Alabama has personal jurisdiction over [Payroll Solutions] and the Alabama [Summary] Judgment are not entitled to full faith and credit." Further, the order specifically contemplated "further proceedings . . . on the issue of Alabama's personal jurisdiction over [Payroll Solutions.]" Payroll Solutions argues that, in staying enforcement of the Alabama judgment, the district court properly inquired into the factual bases on which the Alabama circuit court concluded that it had personal jurisdiction to enter summary judgment against Payroll Solutions. We disagree.

In light of the full-faith-and-credit principles set forth above, the threshold issue is whether the Alabama circuit court's personal jurisdiction over Payroll Solutions was fully and fairly litigated and finally decided. Relevantly, then, in the Alabama circuit court, Payroll Solutions moved to dismiss the action, specifically challenging the Alabama court's jurisdiction to consider the matter. And pursuant to the motion, the Alabama court conducted a hearing on the jurisdiction issue, entertaining argument from both parties.

As Payroll Solutions raised the issue of jurisdiction in its motion and had an opportunity to present argument to the circuit court on that issue, Payroll Solutions had the opportunity to litigate the personal

jurisdiction issue.¹³ We thus conclude that the Alabama court's personal jurisdiction over Payroll Solutions was fully and fairly litigated and that, as a result, the Alabama court's determination is entitled to full faith and credit, precluding relitigation of the issue in the district court.¹⁴ Thus, because the district court exceeded its authority,¹⁵ we conclude that a writ of prohibition is warranted.


¹³See Underwriters, 455 U.S. at 706 n. 13 (“After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined.”) (quoting Stoll v. Gottlieb, 305 U.S. 165, 172 (1938)); Reinwand v. Swiggett, 421 S.E.2d 367, 370 (N.C. Ct. App. 1992) (stating that for full faith and credit purposes, appearing in an action through a motion to dismiss based on lack of jurisdiction, constitutes litigating that issue).

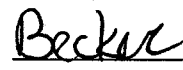
¹⁴We note that, under the circumstances, Payroll Solution's “calculated gamble” to take no further part in the Alabama proceedings and to “allow . . . a summary judgment against it” weighs in favor of precluding Payroll Solutions from relitigating the jurisdictional issue in the district court. Because Payroll Solutions raised the personal jurisdiction issue in the Alabama court, and it had the opportunity to pursue it, and failed to do so—by appeal or otherwise—it is precluded from collaterally attacking jurisdiction in the district court. See Ponderosa Associates, Ltd. v. Verret, 714 So. 2d 956, 957 (La. Ct. App. 1998).

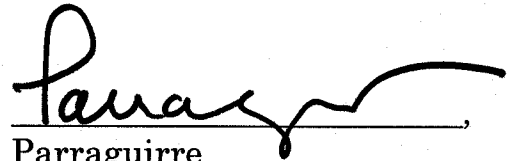
¹⁵Payroll contends that statements by Morrow's counsel during the above-referenced deposition demonstrate and constitute Morrow's admission that Payroll Solutions did not have contacts in Alabama sufficient to subject it to personal jurisdiction. This argument is unpersuasive. As set forth above, jurisdictional inquiry in the district court is limited to whether the jurisdiction issue was fully and fairly litigated and finally decided in the Alabama court—not the factual bases or soundness of the Alabama court's jurisdictional determination. See L & L Wholesale, Inc. v. Gibbens, 108 S.W.3d 74, 80 (Mo. Ct. App. 2003) (stating that once a party litigates personal jurisdiction in a foreign court, “that court's determination, whether right or wrong, is conclusive upon that party and entitled to full faith and credit”).

Accordingly, the clerk of this court shall issue a writ of prohibition precluding the district court from staying enforcement of Morrow's judgment against Payroll Solutions and precluding any relitigation of the personal jurisdiction issue finally decided in the Alabama circuit court.

It is so ORDERED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Joseph S. Pavlikowski, Senior Judge
Peter Dubowsky
Andrew L. Rempfer
Clark County Clerk