IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD SIMON,
Appellant,
vs.
AMY MCCLURE,
Respondent.

No. 50740

FILED

DEC 16 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order dismissing an action involving the registration of a foreign child support order. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

This case arises out of appellant Arnold Simon's registration of a California child support judgment with the Clark County district court family division. Arnold and respondent Amy McClure met in Las Vegas and conceived a child, Kiley. Kiley was born in California and Amy and Kiley lived in California for a time. Arnold and Amy entered a stipulated judgment regarding child support and custody, and a California court entered the judgment. Amy and Kiley then moved back to Nevada, where they were living when Arnold filed a petition in the Nevada district court for registration of the foreign judgment along with a support modification motion. Amy and Kiley moved back to California. Amy then opposed the modification motion and moved to dismiss the registration of foreign judgment, arguing that it was invalid because Arnold did not comply with the Uniform Interstate Family Support Act (UIFSA), and therefore, the district court did not have subject matter jurisdiction to modify the

judgment or personal jurisdiction over Amy. The district court granted her motion to dismiss.

Arnold now appeals, arguing: (1) the amended version of UIFSA applies retroactively; (2) the registration issue is not properly before this court; (3) the district court had jurisdiction to modify the California judgment because (a) it was properly registered and noticed, and (b) the district court had personal jurisdiction over Amy.

We conclude that: (1) the amended version of UIFSA does not apply retroactively; (2) the registration issue is properly before this court; (3) the district court had jurisdiction to modify the judgment because (a) Arnold properly registered and noticed the foreign judgment by substantially complying with UIFSA, and (b) all the requirements of NRS 130.611 were satisfied, including (i) Amy was a resident of Nevada when Arnold filed the judgment registration, and (ii) the district court had personal jurisdiction over Amy. We therefore affirm in part, reverse in part, and remand this matter for further proceedings.

The parties are familiar with the facts and procedural history of this case; therefore, we do not recount them in this order except as is necessary for our disposition.

Standard of review

This court reviews de novo the district court's determination regarding personal jurisdiction. Hospital Corp. of America v. Dist. Court, 112 Nev. 1159, 1160, 924 P.2d 725, 725 (1996). While this court has not yet specifically stated a standard of review for motions to dismiss for lack of subject matter jurisdiction, we find the standard used by the United States Court of Appeals for the Ninth Circuit to be instructive. See Schnabel v. Lui, 302 F.3d 1023, 1029 (9th Cir. 2002) (stating that a question of subject matter jurisdiction is reviewed de novo). A motion to

dismiss for lack of subject matter jurisdiction is proper if the lack of jurisdiction is apparent on the face of the pleading. Rosequist v. Int'l Ass'n of Firefighters, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), overruled on other grounds by Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007).

Statutory interpretation is a matter of law that this court reviews de novo. Irving v. Irving, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006). This court follows the plain meaning of the statute absent any ambiguity. Id.

I. The UIFSA amendments do not apply retroactively

On January 1, 1998, the 1996 version of UIFSA became effective as NRS Chapter 130. 1997 Nev. Stat., ch. 489, § 195, at 2311, 2353. On October 1, 2007, the 2001 amendments to UIFSA became effective in Nevada. 2007 Nev. Stat., ch. 56, § 1, at 117; NRS 218.530. The 2001 amendments became effective after the district court's dismissal of this case. Arnold argues that the 2007 amendments to UIFSA apply to this case because they were procedural and remedial and, therefore, apply retroactively. We conclude that Arnold's argument lacks merit because the amendments were substantive and only apply prospectively.

Generally, statutory amendments only apply prospectively absent clear legislative intent that they apply retroactively. Castillo v. State, 110 Nev. 535, 540, 874 P.2d 1252, 1256 (1994), disapproved of on other grounds by Wood v. State, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995). However, this court has discretion to apply amendments retroactively if they are remedial, meaning that they clarify or technically correct an ambiguous statute, and do not contravene any judicial constructions of the statute. Id. at 541-42, 874 P.2d at 1256-57.

Here, the Nevada Legislature noted that the intent of Senate Bill No. 77 was to amend UIFSA "by reorganizing, updating and revising various provisions to ensure that Nevada law remains consistent with the law of . . . other jurisdictions." 2007 Nev. Stat., ch. 56, Legislative Counsel's Digest, at 117. The amendments to the parts of the Act relevant in this case were enacted to "revise and clarify various powers, duties and procedures under the Uniform Act." Id. The Prefatory Note to the 2001 amendments to UIFSA by the National Conference of Commissioners on Uniform State Laws explains that the amendments were "significant substantive and procedural amendments," but noted that, "[n]one of the amendments, however, make a fundamental change in the policies and procedures established in UIFSA 1996." Unif. Interstate Family Support Act Prefatory Note (amended 2001), 9 U.L.A. 162 (2005). The amendments do not contravene any judicial constructions of UIFSA by this court.

Although these amendments may not have fundamentally changed UIFSA, the amendments were significant and involved more than clarifications or technical corrections. For example, the Legislature removed references requiring parties to file foreign judgments with the "State Information Agency." 2007 Nev. Stat., ch. 56, § 44, at 132 (amending NRS 130.602(1) and (2) in Section 44). This is a significant change, as discussed below, because Nevada never established a state information agency. Also, the amendments created additional jurisdictional requirements a party must follow to modify a foreign judgment under NRS 130.611. Id. § 15, at 120 (adding the additional requirement of compliance with NRS 130.611 and 130.201 in Section 15).

Therefore, we conclude that the amendments do not apply retroactively, and we apply the pre-amendment UIFSA to this case.

II. The registration issue is properly before this court

Arnold argues that because the district court did not make a ruling regarding registration and Amy did not raise the issue on cross-appeal, she did not preserve the issue for appeal. We disagree.

Generally, a respondent must file a cross-appeal to preserve an issue not raised in appellant's briefs. Sierra Creek Ranch v. J.I. Case, 97 Nev. 457, 460, 634 P.2d 458, 460 (1981). In this case, the district court did not make any findings of fact or conclusions of law, and it is unclear from the record on what basis the district court granted Amy's motion to dismiss. Therefore, any issues argued at the district court could have been the basis for the district court's decision. Because Amy argued the registration issue in her motions before the district court, she preserved the issue for appeal. Also, Arnold argues in his opening brief that he properly registered the foreign judgment. Therefore, it was proper for Amy to respond to the issue in her answering brief. As such, we conclude that the registration issue is properly before this court.

Arnold argues that Amy cannot establish any of the grounds on which she could challenge the registration pursuant to UIFSA. We conclude that Arnold's argument lacks merit because Amy can challenge the registration if there is a defense under Nevada law to the remedy sought.

A nonregistering party can only challenge the registration or enforcement of a registered judgment by proving that (1) the issuing tribunal lacked jurisdiction, (2) the order was obtained by fraud, (3) the order was vacated, (4) the issuing tribunal stayed the order pending appeal, (5) there is a defense to the remedy sought under state law, (6) full

or partial payment has been made, (7) the statute of limitation precludes enforcement, or (8) the order is not the controlling order. NRS 130.606(1); NRS 130.607(1).

Amy only has grounds to challenge the registration in this case if there is a defense to the remedy sought under Nevada law. NRS 130.607(1)(e). Amy argues that the California judgment is invalid for all purposes because (1) Arnold did not properly register it, and therefore the Nevada district court did not have subject matter jurisdiction over the case; and (2) the Nevada district court did not have personal jurisdiction over her. On the contrary, Arnold argues that the district court had jurisdiction to modify the foreign judgment because he properly registered it under UIFSA, and the district court had both subject matter jurisdiction to modify support and personal jurisdiction over Amy. We agree. Arnold substantially complied with the registration and notice requirements, and satisfied all the requirements under NRS 130.611 so that the district court had subject matter jurisdiction to modify the judgment and personal jurisdiction over Amy. We discuss these arguments in turn.

III. The district court had jurisdiction to modify the foreign judgment

The most crucial aspect of UIFSA is that it creates a one-judgment system, so that there is only one controlling child support order at a time. Unif. Interstate Family Support Act § 205 (amended 2001), 9 U.L.A. 193 cmt. (2005). If the party wishes to modify the judgment in the second state, he may only do so under specific, narrow circumstances, and must comply with the statutory requirements of UIFSA. Id. at 195 cmt.

For a Nevada district court to have jurisdiction to modify another state's support judgment, it must have subject matter jurisdiction over the support judgment and personal jurisdiction over the parties. See In re Marriage of Haddad, 93 P.3d 617, 619 (Colo. App. 2004) (interpreting

UIFSA). The judgment must be properly registered in Nevada, which requires that proper notice be given to the other party. NRS 130.601-130.605. Also, the parties must comply with NRS 130.609-130.614. In this case, NRS 130.611 is at issue, which applies when neither the obligor, obligee, nor child live in the issuing state, or, if one or more of the parties live in the issuing state, all parties file a written consent to the foreign state's jurisdiction with the issuing jurisdiction. NRS 130.611(1)(a)(1) and (b). Also, the petitioner must be a non-resident of Nevada, and the respondent must be subject to personal jurisdiction here. NRS 130.611(1)(a)(2) and (3).

A. Arnold properly registered the foreign judgment

Amy argues that Arnold's registration of the California judgment was invalid because it did not comply with UIFSA filing requirements because Arnold only cited to NRS Chapter 125A and he did not file with the state information agency. We conclude that Arnold's registration was proper because he substantially complied with the UIFSA filing requirements by (1) sufficiently informing the district court and Amy of the grounds for the motion, (2) properly registering the judgment with the district court, and (3) giving Amy proper notice of the registration and modification motion.

1. Arnold sufficiently informed the district court and Amy of the grounds for his motion

We conclude that Arnold's registration was proper because his motion was proper under NRCP 7(b), and he substantially complied with the registration requirements of UIFSA.

Subject matter jurisdiction is "the authority of the court to decide a particular matter." See Haddad, 93 P.3d at 619. UIFSA grants courts subject matter jurisdiction to take actions in support issues as

authorized by the Act. See id. (holding that a court is authorized to order a party to reimburse other party overpaid child support under UIFSA). Courts do not have the discretion to decline jurisdiction if the statutory requirements are met. Unif. Interstate Family Support Act § 611 (amended 2001), 9 U.L.A. 257 cmt. (2005). The issue here is whether Arnold's filing was sufficient to invoke UIFSA, thereby giving the district court subject matter jurisdiction.

Arnold filed the foreign order pursuant to NRS 125A.465, 125A.475, and 125A.545. NRS Chapter 125A is Nevada's adoption of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). NRS 125A.005. Because Arnold was attempting to register a support order for the purposes of modifying support, he should have registered the foreign order pursuant to UIFSA, but incorrectly registered it pursuant to UCCJEA. Nonetheless, we conclude that Arnold's filing was sufficient under the Nevada Rules of Civil Procedure and UIFSA.

NRCP 7(b) requires a party to make a written motion that states with particularity the grounds for the motion and the relief sought. Interpreting the nearly identical Federal Rule of Civil Procedure 7(b), the Federal Circuit held that a motion is sufficiently particular if it affords the court and opposing party with notice of the grounds for the motion and relief sought, providing the "'party with a meaningful opportunity to respond and the court with enough information to process the motion correctly.'" Fort James Corp. v. Solo Cup Co., 412 F.3d 1340, 1347 (Fed. Cir. 2005) (quoting Registration Control Systems v. Compusystems, Inc., 922 F.2d 805, 807 (Fed. Cir. 1990)). A motion is sufficiently particular if it provides such information through documents referenced in the motion. Id.

Pursuant to NRS 130.602(1), a party may register a foreign support order by filing a letter requesting registration and enforcement, copies of the order, a sworn statement of the obligor regarding any arrearages, the name of the obligor, and the name and address of the obligee and the person to whom support payments are remitted. Upon receipt of the request, the tribunal "shall" file the order as a foreign judgment "regardless of their form." NRS 130.602(2) (emphases added). Under NRS 130.311, the petition must include the name, address, social security number, and address for the obligor and obligee; the name, sex, address, social security number, and birth date of the child; and a copy of the support order. The party may file a modification motion at the same time. NRS 130.602(3); NRS 130.609. Once registered, the judgment is enforceable as an order issued by a Nevada court. NRS 130.603.

Substantial compliance with the UIFSA registration filing requirements is sufficient to register a foreign judgment. Twaddell v. Anderson, 523 S.E.2d 710, 714 (N.C. Ct. App. 1999); Cowan v. Moreno, 903 S.W.2d 119, 122 (Tex. App. 1995). Presenting a facially valid judgment establishes a party's prima facie case for registration, and the court must register it unless the nonpetitioning party proves that the judgment is void because the issuing court lacked jurisdiction or some other procedural defect. Cowan, 903 S.W.2d at 123; In re G.L.A., 195 S.W.3d 787, 791-92 (Tex. App. 2006).

In this case, Arnold filed a motion titled "Filing of Foreign Order/Judgment" with the district court family division. The motion requested that the court file and give full faith and credit for the enforcement of the order and that the "[j]udgment be domesticated and jurisdictionally accepted by the Eighth Judicial District Court." Attached

to the motion was the order and stipulated judgment from the California court, an affidavit from Arnold's attorney stating the names and addresses of Arnold and Amy, and a motion to reduce child support with points and authorities. The judgment also stated Kiley's birth date. These documents were served on Amy on July 31, 2007. On August 14, 2007, she was served with an official notice of registration of the order.

These documents, taken together, put Amy on notice that Arnold was seeking to reduce the amount he paid her in child support and that he was attempting to do so in Nevada. These documents also informed the court that Arnold was seeking to modify child support pursuant to a California court order. Therefore, the filing complied with NRCP 7(b). The documents also provided the necessary information about the child, obligor, and obligee, as required by NRS Chapter 130. As such, Arnold's improper citation to NRS Chapter 125A, as opposed to NRS Chapter 130, does not invalidate his filing. Rather, Amy and the court had the necessary information to determine the grounds of the motion and the relief that Arnold was seeking. Therefore, we conclude that Arnold's filing satisfied NRCP 7(b) and substantially complied with UIFSA, and was valid.

2. Arnold properly filed the judgment with the district court

We conclude that Arnold's registration was also proper because he appropriately registered the support order with the district court.

Before its amendment, NRS 130.602 required registration of a foreign support order to be with the "State Information Agency," which would then file it with the "registering tribunal." 2007 Nev. Stat., ch. 56, § 44, at 132. NRS 130.310 defines the state information agency as, "[t]he central unit established pursuant to NRS 425.400." NRS 425.400

authorizes the Division of Welfare and Supportive Services of the Department of Health and Human Services to establish a central unit to gather information and coordinate with law enforcement regarding the support of dependent children. However, it does not identify such a unit or discuss the registration of foreign support orders. Therefore, Nevada has not established a central unit to serve as a state information agency.

Even if Nevada did have a state information agency, such an agency was to file the judgment with the "registering tribunal." 2007 Nev. Stat., ch. 56, § 44, at 132. NRS 130.10159 defines "[r]egister" as filing "a support order . . . with the clerk of a district court of this state." A registering tribunal is "a tribunal in which a support order is registered." NRS 130.10163. A tribunal is a court or agency "authorized to establish, enforce or modify support orders or to determine parentage," and the district courts are tribunals in Nevada. NRS 130.10191; NRS 130.102. Therefore, the state information agency would have ultimately filed the judgment with the district court. As such, we conclude that Arnold properly filed his foreign judgment with the district court because there was no state information agency and because it was ultimately required to be filed with the district court.[1]

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[1]Also, the 2007 amendments indicate that the legislative intent was to have foreign orders filed with the district court. The amendments removed the requirement that the party file the judgment with the state information agency, and instead NRS 130.602 requires registration with the "appropriate tribunal." 2007 Nev. Stat., ch. 56, § 44, at 132.

3. Arnold gave Amy proper notice of the registration

We conclude that Arnold gave Amy proper notice of the registration under NRS 130.605 because the notice fully informed Amy, and she had the opportunity to challenge his motion.[2]

Generally, if notice of a motion fails to state the particular grounds for the motion, but the grounds can be determined from the accompanying papers and record, the defect in the notice should be disregarded. Carrasco v. Craft, 210 Cal. Rptr. 599, 607 (Ct. App. 1985). Under UIFSA, once a foreign support order is registered, the registering tribunal must notify the nonregistering party with a copy of the order and relevant accompanying documents. NRS 130.605. The notice must inform the nonregistering party that (1) the foreign order is enforceable as an order issued by a Nevada court, (2) she must request a hearing to contest the validity of the enforcement within 20 days after notice, and (3) failure to contest the enforcement will result in the confirmation of the order and its enforcement. Id.

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[2]Amy cites two cases for the proposition that technically deficient notice makes the foreign judgment invalid for any purpose. Both cases are distinguishable from this case. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645, 651 (Minn. 1983), only states that a judgment that is not registered is not properly before the court. The case provides no explanation of why the judgment was not registered and therefore is not helpful here. State, Office of Recovery Services v. Johnson, No. 20031038-CA, 2004 WL 1368177, at *1-2 (Utah Ct. App. June 4, 2004) is an unpublished opinion that vacated a contempt order because the obligor properly filed an objection to the registration of the judgment and was never granted a hearing as required under the statute. Here, Amy filed a motion to dismiss and a reply and had a hearing. Thus, Johnson is inapplicable here.

However, even if some of the statutorily required information is missing, notice satisfies due process if the party is fully informed and has an opportunity to challenge the motion. See Calvert and Calvert, 82 P.3d 1056, 1062-63 (Or. Ct. App. 2004) (holding that obligor was not deprived of due process when notice of registration of foreign judgment failed to include interest rate for arrearages because obligor had opportunity to challenge the interest and did challenge it); In Re Marriage of Owen and Phillips, 108 P.3d 824, 829 (Wash. Ct. App. 2005) (holding that notice was sufficient under UIFSA despite not stating the amount of arrearages because order attached to notice contained the information, thereby fully informing the obligor).

In this case, Amy received notice on July 31, 2007, which included a notice of domestication of foreign judgment and the modification motion. This notice did not state that Amy was required to request a hearing within 20 days of notice to contest the enforcement of the foreign judgment. Also, on August 14, 2007, Amy was served with official notice of registration. Amy then filed a motion to dismiss registration of foreign judgment on September 6, 2007, and later filed a reply and opposition to the modification motion. Here, despite the missing 20-day information, the notice was sufficient. The notice of foreign judgment and the accompanying modification motion put Amy on notice that Arnold was attempting to register the California judgment in Nevada and modify child support. Amy's filing of a motion to dismiss the registration and then a reply and opposition to the modification motion indicates that she had sufficient notice and opportunity to respond to the registration and modification. Therefore, we conclude that the initial notice was adequate.

B. All the requirements of NRS 130.611 were satisfied

NRS 130.611 authorizes a Nevada court to modify a foreign support order if it finds after notice and a hearing that: (1) neither the obligor, obligee, nor child reside in the issuing state; (2) a nonresident petitioner seeks modification; and (3) the respondent is subject to personal jurisdiction here.

Arnold lives in New Jersey, so he is a nonresident petitioner seeking modification. The issues here are (1) whether Amy resided in Nevada when Arnold filed the foreign judgment and modification motion and (2) whether the district court had personal jurisdiction over Amy. We conclude that all the requirements of NRS 130.611 were met because Amy resided in Nevada, and the district court had personal jurisdiction over her.

1. Amy resided in Nevada when Arnold filed the foreign judgment and modification motion

We conclude that Amy resided in Nevada under UIFSA because residence means where the party lives, and Amy lived in Nevada.

Under UIFSA, the issuing state retains continuing exclusive jurisdiction over the judgment if the obligor, obligee, or child still resides in the state, or if they do not live in the issuing state, they consent to that state's continuing exclusive jurisdiction. NRS 130.205(1); Unif. Interstate Family Support Act § 205(a) (amended 2001), 9 U.L.A 192 & 193 cmt. (2005). The issuing state only loses this jurisdiction if the specific requirements of the Act are met to register or modify the judgment elsewhere. Unif. Interstate Family Support Act § 205 (amended 2001), 9 U.L.A. 194-95 cmt. (2005).

The Comment to Section 205 indicates that the focus is "residence, not domicile." Id. at 194 cmt. Legal residence or domicile

requires physically living in a place and the intent to stay there. Williams v. Clark County Dist. Attorney, 118 Nev. 473, 482, 50 P.3d 536, 542 (2002). But residence is merely where a person lives, and does not require an intent to remain. Id. Because the Comment to Section 205 clearly distinguishes residence from domicile, we conclude that the test for residence in NRS 130.611 is mere residence, not legal residence or domicile. The determination of residence is made at the time the modification motion is filed. Unif. Interstate Family Support Act § 205 (amended 2001), 9 U.L.A. 194 cmt. (2005).

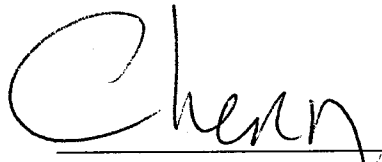
In this case, Amy left Nevada for California after Arnold filed the foreign judgment and modification motion in Nevada. Amy and Kiley lived in Nevada from 2005 until August 26, 2007. Therefore, they lived in Nevada when Arnold filed the judgment and modification motion on July 18, 2007. At the hearing, Amy produced a valid Nevada driver's license that was good until April 2010 and an expired California driver's license from April 1995. She explained that she was waiting for her new California license. Also, Kiley was registered for school in Nevada for the 2007-2008 school year until Amy unenrolled her three weeks after Arnold filed the modification motion. Given that Amy and Kiley lived in Nevada for two years, Amy had a Nevada driver's license, and Kiley was registered to attend school here for the next year, we conclude that Amy and Kiley resided here. Therefore, neither the obligor, obligee, nor child resided in California. Thus, if the Nevada district court had personal jurisdiction over Amy, then the Nevada district court had jurisdiction to modify the foreign judgment.

2. The district court had personal jurisdiction over Amy

The district court usually has personal jurisdiction over the nonregistering party by virtue of the party residing in the state. Unif.

Interstate Family Support Act § 611 (amended 2001), 9 U.L.A. 256 cmt. (2005). As discussed above, residence under UIFSA means where a person lives, and Amy was living in Nevada. Also as discussed above, the initial notice was proper. Because Amy was living in Nevada when she received the initial notice, the district court had personal jurisdiction over her.

Accordingly, we ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and REMAND this matter to the district court for proceedings consistent with this order.



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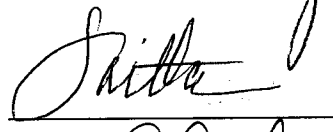

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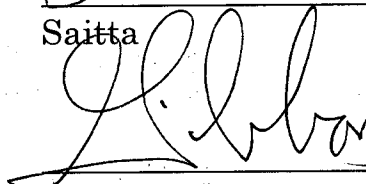

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cc: Eighth Judicial District Court Dept. K, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
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