

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001523-MR

HAROLD DALE COX

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 01-CI-00514

SHANNON KAY COX (NOW ESSLINGER)

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS, McANULTY AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is an appeal from an order entered by the Boyle Circuit Court enforcing a final divorce decree entered by a Texas court. For the reasons stated hereafter, we affirm.

The parties married in 1998 and separated two years later. No children were born of the marriage. Although Boyle County, Kentucky was the site of the marital residence, the parties met and married in Texas, appellee returned there after they separated, and appellant continued to do business there

while residing in Boyle County. Appellee filed a petition for divorce in Texas, and the record shows that appellant was personally served with notice in Kentucky by a Boyle County deputy sheriff. Appellant did not respond in any way to the petition for divorce, and the Texas court entered a decree of dissolution after determining that it had jurisdiction. It appears that the court divided the marital property by awarding the parties the personal items which they already physically possessed or held in their respective names. The debts were divided and the real property located in Kentucky was awarded to appellant. However, in order to secure the monetary award to appellee, the court granted an equitable lien in the amount of \$87,079.72 in favor of appellee against the real and personal property held by appellant.

Appellee subsequently filed a Notice and Affidavit of Foreign Judgment Registration in the Boyle Circuit Court. Appellant responded by filing a motion to dismiss, alter, amend or vacate the filing of the judgment. That motion was overruled, and the circuit court eventually sustained appellee's motion to enforce the Texas judgment. This appeal followed.

It is settled in Kentucky that a judgment entered by another state is presumed to be valid, and that the party attacking that judgment has the burden of demonstrating its invalidity. Dant v. Progress Paint Manufacturing Co., Ky., 309

S.W.2d 187 (1958); Waddell v. Commonwealth, Ky. App., 893 S.W.2d 376, 379 (1995). Here, the Texas court specifically found that appellant failed to appear although he was "duly and properly cited," and that the court had jurisdiction over both the cause of action and the parties. Despite his subsequent assertions concerning jurisdiction, appellant simply has done nothing to demonstrate that jurisdiction was improperly exercised under Texas law. Appellant admitted in his affidavit that he was served by mail in Boyle County with notice of the divorce petition and the citation for personal service. Moreover, although appellant asserted that he was never "personally served" while in Texas, the record shows and appellant does not deny that a Boyle County deputy sheriff personally served him in Kentucky with a Texas "citation for personal service" of the divorce action. Clearly, appellant did not meet his burden of showing that the foreign judgment was invalid due to a failure to satisfy due process requirements.

Unlike the cases which appellant cites on appeal, the Texas judgment was subject to the Uniform Enforcement of Foreign Judgments Act, which is set out in KRS 426.950 to KRS 426.990. KRS 426.955 provides that foreign judgments shall be filed and treated as follows:

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office

of the clerk of any court of competent jurisdiction of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of any court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a court of this state and may be enforced or satisfied in like manner.

Here, there is no dispute that appellee filed the foreign judgment in Kentucky in accordance with KRS 426.955 requirements. While appellant does not specifically appeal the Texas court's allocation to him of the property located in Kentucky at the time of dissolution, he does object to the Texas court's attachment of an equitable lien against such property to secure the payment of the money judgment against him. However, it is clear that once the Texas judgment was filed in Kentucky pursuant to KRS 426.950 - KRS 426.990, it was subject to enforcement or satisfaction just as if it had been rendered by a Kentucky court. It follows, therefore, that the lien imposed by the judgment was subject to being treated as if it had been imposed by a Kentucky court. Since a Kentucky court certainly could have imposed a lien against the Kentucky property in order to enforce a judgment, under these particular circumstances we cannot say that the trial court erred by enforcing the Texas order which purported to do the same thing.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul V. Hibberd
Louisville, Kentucky

BRIEF FOR APPELLEE:

Adam C. Miller
Danville, Kentucky