

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000837-MR

JACK JONES

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE KRISTI HOGG GOSSETT, JUDGE
ACTION NO. 05-CI-00342

MARILYN JONES

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ROSENBLUM, SENIOR JUDGE: Jack Jones appeals from an order of the Carter Circuit Court of April 5, 2006, which directed the Carter Circuit Clerk to transfer a \$50,000.00 cash bond to the Family Court Clerk for Chester County, South Carolina, where Jones is a party in a divorce action. Jones contends that the Carter Circuit Court thereby violated his due process rights because it had given full faith and credit to an unperfected foreign judgment. We disagree and affirm.

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Jack and Marilyn Jones are residents of Chester County, South Carolina, where they are in the process of obtaining a dissolution of their marriage. This appeal concerns a \$50,000.00 bond that Jack posted with the Carter County Circuit Court Clerk in Kentucky for an individual named Randall Miller. Some members of Miller's family thereafter raised funds to cover the bond, so on July 26, 2005, Jack requested a revocation of the bond and a release of the funds to him. Marilyn responded by filing a complaint in Carter Circuit Court, stating that the \$50,000.00 constituted marital property and should not be returned to Jack. She attached a restraining order issued by the Family Court of Chester County, South Carolina, which prohibited either party in the dissolution action from selling, conveying or disposing of any marital assets. It specifically directed that if Jack

receives any portion of the bond money from Kentucky that the parties put up for Randall Miller this shall be placed in trust pending further order from this court or until the parties agree on a division.

In her complaint, Marilyn explained that she feared if the Kentucky bond proceeds were released to Jack, he would misappropriate them for his own purpose and benefit. The complaint was accompanied by a motion requesting a restraining order directing the \$50,000.00 bond to be held by the Carter Circuit Court Clerk until the funds could be directly transferred to the Clerk of the Family Court of Chester County, South Carolina. The Carter Circuit Court entered a temporary restraining order which directed the Carter Circuit Court Clerk to hold the bond and not release it to Jack. Jack responded by filing a

pro se response which contained various allegations of fraud against Marilyn, and requested the court to release the bond money to him.

On November 17, 2005, Marilyn moved the court to convert the temporary restraining order to a temporary injunction. She also moved the court to direct the clerk to forward the \$50,000.00 bond to the Law Office of Strickland and Keels, P.A., in accordance with a further order of the Chester County, South Carolina Family Court. That order stated in relevant part as follows:

Judge Samuel Long of the Carter Circuit Court in Kentucky issued a temporary restraining order effective September 29, 2005 stating that the \$50,000.00 bond should continue to be held by the clerk of the court until further order of this court.

Defendant has disobeyed two orders of the Chester County Family Court and . . . he has fired two attorneys. I find that the Plaintiff is afraid that if the Defendant obtains the bond money that he will leave this area. I find that the Defendant has already moved to North Carolina.

NOW THEREFORE, IT IS ORDERED:

That the \$50,000.00 cash bond which was posted in Kentucky shall be issued and payable to Strickland & Keels, P.A., Escrow Account and held in this account until further order of the Court.

The Carter Circuit Court thereafter transferred the action to the Carter Circuit Court, Family Division. On April 5, 2006, the family court issued an order directing the Carter Circuit Clerk to transfer the bond to the Family Court Clerk for Chester County, South Carolina to be held by that clerk pending orders from the judge in the dissolution action as to how the sum should be dispersed. The order also stated:

As to whether or not the \$50,000.00 cash bond is a marital asset is an issue that should be determined by the South Carolina court where the parties' dissolution of marriage action is pending. This court does not have jurisdiction, nor has it been requested, to determine the rights of the parties in and to the \$50,000.00 cash bond.

The court also observed that "Plaintiff [Marilyn] did not file her complaint pursuant to KRS 426.950 requesting full faith and credit be given to the South Carolina order."

On appeal, Jack argues that the court violated his due process rights by enforcing a foreign judgment that was not properly perfected according to the provisions of the Uniform Enforcement of Judgments Act, KRS 426.950 *et seq.* That statute provides that foreign judgments must be authenticated and filed before they may be executed or enforced by a court in Kentucky. He argues that the family court cannot give full faith and credit to an out of state order without first abiding by the requirements of the statute. He contends that the court should have gone no further than to order a transfer of the \$50,000.00 cash bond to Jack, the surety who placed the bond.

We disagree. The family court was not enforcing a foreign judgment. It was merely exercising its in rem jurisdiction over an asset located in Kentucky. "[A] proceeding in rem is an adjudication upon the status of some particular thing by a tribunal having jurisdiction of the subject matter[.]" *Kentucky Farm Bureau Mut. Ins. Co. v. Ryan*, 177 S.W.3d 797, 805-806 (Ky. 2005). The family court made no move to implement the order of the South Carolina court, beyond ordering the bond funds to be transferred to that jurisdiction for further adjudication. Indeed, as we have noted above,

the court plainly stated in its order that it did not possess the jurisdiction to determine the rights of the parties in relation to the bond. We believe that the family court was acting well within its jurisdiction when it ordered the transfer of the funds. There was no requirement that the order of the South Carolina court be authenticated and filed because Marilyn did not seek its enforcement by the Kentucky court.

The order of the Carter Circuit Court, Family Court Division, is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis E. Kelley
Ashland, Kentucky

BRIEF FOR APPELLEE:

Robert W. Miller
Grayson, Kentucky