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Joannou v. Corsini

District Court of Appeal of Florida, Fourth District, May 3, 1989 543 So.2d 308 14 Fla. L. Weekly 1092 (Approx. 6 pages)

Disagreed With by Synchron, Inc. v. Kogan, Fla.App. 2 Dist., April 26, 2000

Original Image of 543 So.2d 308 PDF

543 So.2d 308
District Court of Appeal of Florida,
Fourth District.

George C. JOANNOU, Appellant,
v.
Frank A. CORSINI, Appellee.

Nos. 87-3136, 88-0334. May 3, 1989.

In a proceeding to enforce a domesticated foreign judgment, the defendant appealed from orders of the Circuit Court, Broward County, Constance Nutaro, J., which granted plaintiff's motions to compel discovery and to hold defendant in contempt. After consolidation, the District Court of Appeal, Warner, J., held that: (1) trial court had jurisdiction over the defendant; (2) even if trial court did not have personal jurisdiction over defendant to order defendant to answer interrogatories, defendant was not free to disobey trial court's order; and (3) civil contempt order was rendered moot by reversal of foreign judgment to extent that it sought to compel defendant to answer the interrogatories, however, contempt order was not moot to extent that it awarded sanctions to plaintiff's counsel to compensate plaintiff for his attorney fees expended in securing compliance without discovery order.

Affirmed in part, reversed in part, and remanded.

West Headnotes (8)

Change View

- 1 **Judgment** Enforcement in other states
Foreign judgment sought to be domesticated must be final. West's F.S.A. § 55.501.
1 Case that cites this headnote
- 2 **Judgment** Enforcement in other states
Whether or not foreign judgment is final, for purposes of seeking domestication of that judgment, must be determined by law of state of rendition, but where that state's law is not brought to court's attention, law of that state may be presumed to be law of forum state. West's F.S.A. § 55.501.
3 Cases that cite this headnote
- 3 **Judgment** Final judgment
Judgment is final where nothing further remains to be done to fully effectuate termination of cause between the parties directly affected except enforcement by execution or otherwise.
6 Cases that cite this headnote
- 4 **Judgment** Enforcement in other states
California judgment was final when rendered and was entitled to enforcement pursuant to Florida statute governing domestication of foreign judgments at time it was recorded in Florida where no stay was requested of Florida court and where no enforcement had been stayed in California; thus, trial court had subject matter jurisdiction to act in enforcement proceedings. West's F.S.A. § 55.501; West's F.S.A. RCP Rule 1.530(b); West's F.S.A. R.App.Rule 9.310.
4 Cases that cite this headnote
- 5 **Courts** Estoppel arising from submitting to or invoking jurisdiction

SELECTED TOPICS

Child Support

Modification

Provisions of Uniform Enforcement of Foreign Judgments Act

Power to Punish, and Proceedings Therefor

Criminal Contempt Orders of the Trial Judge

Courts

Nature, Extent, and Exercise of Jurisdiction

Personal Jurisdiction and Venue Analyses

Secondary Sources

Construction and effect of provision of uniform reciprocal enforcement of support act that no support order shall supersede or nullify any other order

31 A.L.R.4th 347 (Originally published in 1984)

...This annotation collects and analyzes the state and federal cases dealing with the construction and effect of the portion of § 31 of the Uniform Reciprocal Enforcement of Support Act which provides, in...

Validity, construction, and application of uniform enforcement of foreign judgments act

31 A.L.R.4th 706 (Originally published in 1984)

...This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided questions involving the validity, construction or application of the Uniform Enforcement ...

Change in Circumstances Justifying Modification of Child Support Order

1 Am. Jur. Proof of Facts 2d 1 (Originally published in 1974)

...This article deals with proof that circumstances which existed at the time an order of child support was made pursuant to a divorce decree, and which served as the basis of that order, have changed in ...

See More Secondary Sources

Briefs

Petition for Writ of Certiorari

2002 WL 32133452

Herbert G. JONES, Petitioner, v. STATE OF TEXAS, Attorney General and Stephanie D. Goodson, Respondents.
Supreme Court of the United States.
October-09, 2002

...Herbert G. Jones, petitioner, by Cheryl J. Roberts, Attorney Chartered, his attorney, petitions this Court to issue a Writ of Certiorari to review the opinion of the Kansas Court of Appeals issued on A...

Respondent's Brief on Certiorari

1957 WL 87211

Vanderbilt v. Vanderbilt
Supreme Court of the United States.
April 03, 1957

...Petitioner (husband) seeks review of that portion of the judgment of the New York Supreme Court dated March 30, 1955 (R. 2), affirmed by the New York Court of Appeals (R. 55A, 55B), as awards respondent...

Defendant, against whom California judgment had been entered, waived claim of lack of personal jurisdiction over proceedings to enforce that judgment, which had been domesticated, when he voluntarily entered an appearance by moving for protective order against taking of depositions without asserting his claim of lack of personal jurisdiction by making substantive objections to extent of discovery requested from third-parties.

5 Cases that cite this headnote

6 Pretrial Procedure  Order Compelling Answer

Even if trial court did not have personal jurisdiction over defendant to order defendant to answer interrogatories, defendant was not free to disobey order of trial court.

1 Case that cites this headnote

7 Contempt  Validity of mandate, order, or judgment

When a party is charged with contempt for violating an order of court, he may defend on ground that court was without jurisdiction over the party, however, party must obey order until it is vacated or modified by trial court or reversed on appeal.

3 Cases that cite this headnote

8 Contempt  Review

Appeal of civil contempt order, which was entered against defendant in proceeding to enforce domesticated foreign judgment for failure to answer interrogatories, was rendered moot by reversal of foreign judgment to extent that it sought to compel defendant to answer the interrogatories, however, contempt order was not moot to extent that it awarded sanctions to plaintiff's counsel to compensate plaintiff for his attorney fees expended in securing compliance without discovery order.

Attorneys and Law Firms

*309 John Beranek of Klein, Beranek & Walsh, , West Palm Beach, and Kaye, Scholer, Fierman, Hays & Handler, Los Angeles, Cal., for appellant.

Scott Jay Feder of Floyd, Pearson, Richman, Greer, Weil, Zack & Brumbaugh, , Miami, for appellee.

Opinion

WARNER, Judge.

This non-final appeal questions the jurisdiction of the trial court over the person of appellant in a proceeding to enforce a foreign judgment domesticated pursuant to section 55.501, Florida Statutes (Supp.1984).

In April, 1987 appellee filed a California judgment in Florida pursuant to section 55.501, Florida Statutes (Supp.1984). Notice was sent to appellant pursuant to the statute, and appellant does not challenge the domestication of the judgment pursuant to that statute in these proceedings. In aid of execution on the domesticated judgment, appellee set depositions and served subpoenas on the record custodians of two Florida banks. In July of 1987, appellant made an appearance in the proceedings by filing two motions for protective orders to prevent the taking of the depositions of bank officials. He claimed that as a party he was entitled to notice of the taking of depositions pursuant to Florida Rule of Civil Procedure 1.351(b) which he did not receive and he also argued that the notice demanded production of records regarding dealings of his wife who was not a party to the judgment. Nowhere in the *310 motion did the appellant challenge the jurisdiction of the trial court over his person.

Subsequently, appellee served voluminous interrogatories on appellant in aid of execution. Receiving no timely response, appellee filed a motion to compel answers to interrogatories, and the trial court entered an agreed order compelling responses within ten days. Thereafter, in objections to interrogatories, appellant raised for the first time his contention

Petition for Writ of Prohibition and/or in the Alternative Writ of Mandamus

2002 WL 32135442
In Re: Herbert G. JONES, Petitioner.
Supreme Court of the United States.
October 10, 2002

...Herbert G. Jones , Box 3182, Wichita, Kansas 67201 The Attorney General of the State of Texas who brought this action.
Stephanie D. Goodson, formerly Stephanie D. Jones; Supreme Court Chief Justice...

See More Briefs

Trial Court Documents

In re Ocala Funding, LLC

2013 WL 4417430
In re Ocala Funding, LLC
United States Bankruptcy Court, ,
Florida
June 20, 2013

...THIS CASE came on for continued hearing on June 14, 2013 at 11:00  on the Debtor's Motion for Entry of Order Approving (i) Disclosure Statement; (ii) Procedures for the Solicitation and Tabulation...

In re Pacific Ethanol Holding Co. LLC

2009 WL 8189032
In re Pacific Ethanol Holding Co. LLC
United States Bankruptcy Court, D.
Delaware.
May 17, 2009

...Pacific Ethanol Holding Co., LLC, Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton LLC and Pacific Ethanol Magic Valley, LLC, debtors and debtors-in-possession in the...

In re Pacific Ethanol Holding Co. LLC

2009 WL 8189031
In re Pacific Ethanol Holding Co. LLC
United States Bankruptcy Court, D.
Delaware.
May 17, 2009

...Pacific Ethanol Holding Co., LLC, Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton LLC and Pacific Ethanol Magic Valley, LLC, debtors and debtors-in-possession in the...

See More Trial Court Documents

that the trial court did not have jurisdiction over his person and further that the interrogatories were irrelevant, immaterial and that they exceed the number allowed under the rules. In response, appellee moved to hold appellant and his attorney in contempt of court, which motion was withdrawn at hearing. Instead the trial court ordered the appellant to file the answers within ten days.

Appellant appealed the order compelling answers to this court pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i) on the ground that the order granting the motion to compel necessarily overruled his objection to jurisdiction and thus determined that the court had jurisdiction over his person. Appellant filed a motion for stay of the trial court's order which was denied. Review by this court under Florida Rule of Appellate Procedure 9.310(f) was also denied.

Receiving no response to the motion to compel after the stay had been denied, appellee filed a motion for contempt. In granting the motion, the trial court found that the appellant had intentionally violated the court's prior orders, held appellant in contempt, ordered him to answer the interrogatories, and to pay a \$1,000 sanction to appellee's counsel within ten days. This order was also appealed to this court and consolidated with the prior appeal.

After both appeals were filed, Appellant moved to relinquish jurisdiction and stay this appeal because the underlying California judgment was reversed upon appeal. Thus appellant could now move pursuant to Florida Rule of Civil Procedure 1.540(b) to vacate what is now a Florida judgment. § 55.503, Fla.Stat. (Supp.1984). However, appellee resists the dismissal of this appeal because he claims that the jurisdictional issue and subsequent sanction imposed in the contempt order are not rendered moot by the reversal of the California action. We agree that the issues are not moot.

1 2 Foreign judgments are entitled to domestication in Florida pursuant to section 55.501, Florida Statutes (Supp.1984). This statute merely adopts the method by which foreign judgments, entitled to full faith and credit under constitutional standards, may become Florida judgments for enforcement purposes. As such, under the statute the judgment sought to be domesticated must be final. See *Jones v. Roach*, 118 Ariz. 146, 575 P.2d 345 (Ariz.App.1977), interpreting the identical Arizona Uniform Enforcement of Foreign Judgment Law. Whether or not the judgment is final must be determined by the law of the state of rendition, but where that state's law is not brought to the court's attention, the law of that state may be presumed to be the law of the forum state. See *Aboandandolo v. Vanella*, 88 So.2d 282 (Fla.1956).

3 4 In the instant case, no California law has been presented, so we presume that the law of California is the same as the law of Florida with regard to the finality of judgments. In Florida a judgment is final "[w]here nothing further remains to be done to fully effectuate termination of the cause between the parties directly affected except enforcement by execution or otherwise." *Chan v. Brunswick Corp.*, 388 So.2d 274, 275 (Fla. 4th DCA 1980). Accord *Pruitt v. Brock*, 437 So.2d 768 (Fla. 1st DCA 1983). That termination occurs when the trial court loses jurisdiction over the cause upon the expiration of the time limits set forth in Florida Rule of Civil Procedure 1.530(b). *Pruitt*, at 774. An appeal does not affect finality, but a party may stay enforcement of a judgment by posting a supersedeas bond in the case of a money judgment. § 9.310. Therefore, we conclude that the California judgment was final when rendered and that it was entitled to enforcement pursuant to section 55.501, Florida Statutes (Supp.1984) at the time it was recorded in Florida. No stay was requested of the 311 Florida court, nor was it brought to the trial court's attention or our attention that enforcement had been stayed in California. Consequently, the trial court had subject matter jurisdiction to act in the enforcement proceedings in this case.

5 The second question is whether the trial court had jurisdiction over the person of appellant. While appellant appears to be a non-resident and was not served with process in this case, he voluntarily entered an appearance by moving for a protective order against the taking of depositions without asserting his claim of lack of personal jurisdiction. In that motion he claimed that he was not given notice of the taking of deposition and request for documents to which he as a party was entitled under Florida Rule of Civil Procedure 1.351 (b). Further, he made substantive objections to the extent of discovery requested from third parties. There is nothing in the record presented to show whether an order was entered on this motion, although appellee states in his brief that a hearing was held on the motion and the motion was denied. Nevertheless, appellant made an appearance and claimed rights under the Florida Rules of Civil Procedure which are available to parties. When the appellant makes such an appearance in these proceedings he is deemed to have waived his claim of lack of jurisdiction. *Cumberland Software, Inc. v. Great American Mortgage Corp.*, 507 So.2d

794 (Fla. 4th DCA 1987). Thus, when the trial court entered its order compelling discovery it had both subject matter jurisdiction and personal jurisdiction over the defendant. And consequently, it also had the authority to enforce its order.

6 7 As to the contempt order, not only do we find that there was personal jurisdiction of the appellant, but also even if the trial court did not have personal jurisdiction at the time to order appellant to answer the interrogatories, appellant was not free to disobey the order of the trial court. When a party is charged with contempt for violating an order of the court, he may defend on the ground that the court was without jurisdiction over the party. However, the party must obey the order until it is vacated or modified by the trial court or reversed on appeal. *Kaylor v. Kaylor*, 466 So.2d 1253 (Fla. 2d DCA 1985); *Jamason v. State*, 447 So.2d 892 (Fla. 4th DCA 1983), *aff'd*, 455 So.2d 380 (Fla. 1984). In *Jamason*, this court clearly held that when the party's claim is that the court does not have jurisdiction over his person to subject him to the orders of the court, lack of personal jurisdiction makes such order voidable only, not void. "One may not disobey with impunity the order of a court which is merely voidable, as here." *Jamason* at 896. We further find that the trial court had authority to determine the motion for contempt notwithstanding the appeal of the order compelling discovery to this court. *Waltham A. Condominium Association v. Village Management, Inc.*, 330 So.2d 227 (Fla. 4th DCA 1976); *FMS Management Systems, Inc. v. IDS Mortgage Corp.*, 402 So.2d 474 (Fla. 4th DCA 1981).

8 However we now come to the question of whether the appeal is moot. The contempt proceeding is unquestionably civil in nature.

In a civil contempt proceeding an offended party to the cause is primarily seeking relief, personal and private to himself, as distinguished from punishment for conduct offensive to the public or disrespectful to the court and its authority.

Demetree v. State, 89 So.2d 498 (Fla. 1956). In the instant case the discovery sought was for appellee's personal and private interest in enforcing the California judgment. Since that judgment which was sought to be enforced in this Florida action is of no further force and effect, the appellee can no longer seek relief in the way of discovery going toward the enforcement of the judgment, as appellee in his brief even concedes. Thus, to enforce that portion of the order which compels the appellant to answer the interrogatories would solely at this point act as a punishment to appellant, which is not the primary purpose of civil contempt. We therefore vacate as moot so much of the contempt order as requires appellant to answer the interrogatories and respond to the request for production. However, as to the award of sanctions to appellee's counsel which, based upon the *312 affidavits presented below, were to compensate appellee for his attorney's fees expended in securing compliance with the valid order of the trial court, we affirm. *Pollock v. T & M Investments, Inc.*, 455 So.2d 673 (Fla. 3d DCA 1984). That compliance with the order requiring answers to interrogatories has been rendered moot by subsequent events does not erase the efficacy of the attempts by appellee's attorneys to seek compliance with the discovery orders which at the time were improperly resisted by appellant.

In summary, we hold that the trial court did have jurisdiction over the appellant in this action, and appellant was required to obey the orders of the trial court. However, since execution on the judgment has been rendered moot by the reversal of the California judgment, it follows that compliance with discovery is moot. Nevertheless, although the part of the purge provision of the contempt order requiring compliance with discovery is moot, that portion requiring payment of sanctions for attorneys fees to appellee's counsel is not moot and must be complied with by the appellant.

We therefore affirm the order compelling discovery which determined the issue of personal jurisdiction, reverse in part the order of contempt, and remand for proceedings consistent with this opinion.

ANSTEAD and GLICKSTEIN, JJ., concur.

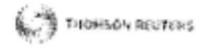
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