

Wolfram v. Wolfram

Decided Dec 29, 2004

No. 04-03-00686-CV

Delivered and Filed: December 29, 2004.

Appeal from the 73rd Judicial District Court, Bexar County, Texas, Trial Court No. 2001-CI-08847, Honorable Andy Mireles, Judge Presiding.

Reversed and Remanded.

Sitting: Paul W. GREEN, Justice, Karen ANGELINI, Justice and Sandee Bryan MARION, Justice.

OPINION

KAREN ANGELINI, Justice.

Nancy J. Wolfram appeals the summary judgment rendered in favor of Lou Ann Wolfram, individually and as trustee of the Herbert E. Wolfram and Lou Ann Wolfram Revocable Living Trust Agreement dated June 24, 1997. In one issue, Nancy asserts that the trial court's summary judgment was improper because Nancy's fraudulent transfer suit against Lou Ann was not time-barred by section 16.066(b) of the Texas Civil Practice and Remedies Code. We reverse the summary judgment of the trial court and remand the cause to the trial court for proceedings consistent with this opinion.

BACKGROUND

Nancy J. Wolfram ("Nancy") and Herbert E. Wolfram ("Herbert"), residents of the state of California, divorced in 1987 after a marriage of more than two years. Not being a community property state, on February 4, 1988, the Superior Court of California for Orange County ordered spousal support from Herbert to Nancy in the sum of \$1,900.00 per month, "commencing on January 1, 1988, and continuing thereafter until the death of either party, re-marriage of [Nancy] or until further order of court, whichever shall first occur." In August of 1990, Herbert, who had remarried, moved with his new wife, Lou Ann Wolfram ("Lou Ann"), to Bexar County, Texas, at which time it appears he stopped making payments to Nancy.¹

¹ Nancy claims such payments ended December of 1990.

Nancy petitioned the Superior Court of Orange County, California, for issuance of an Abstract of Judgment and Writ of Execution on the unpaid balance of the California alimony judgment, which she received on February 11, 1997. This amount of judgment plus accrued interest totaled \$179,173.88. Following the issuance of this abstract of judgment and writ of execution, on or about June 24, 1997, Herbert and Lou Ann created and transferred assets into the HERBERT E. WOLFRAM AND LOU ANN WOLFRAM REVOCABLE LIVING TRUST ("Wolfram trust"). Herbert died on September 7, 1999. Following Herbert's death, on February 10,

2000, Nancy filed a petition entitled "Plaintiff's Original Petition to Enforce Foreign Judgment" against Herbert Wolfram and Estate in the Probate Court of Bexar County, Texas, attaching authenticated copies of the California abstract of judgment and writ of execution. On October 19, 2000, Nancy filed a petition entitled "Supplement to Plaintiff's Original Petition to Enforce Foreign Judgment" in the same court, attaching authenticated copies of the original California alimony judgment along with an affidavit of compliance with the Uniform Enforcement of Foreign Judgments Act ("Uniform Act").

At the time of his death, Herbert, by his will, requested that Lou Ann serve as independent executor. Nancy contested Lou Ann's appointment and, on June 18, 2001, filed suit to Request for TRO and Temporary Injunction against Lou Ann in District Court in cause number 2001-CI-08847. Nancy sued Lou Ann individually and as trustee, alleging violations of the Texas Uniform Fraudulent Transfer Act ([TEX. BUS. COM. CODE ANN. § 24.001](#) et seq.). Nancy and Lou Ann filed cross motions for summary judgment.

In her motion for summary judgment, Nancy asserted that: (1) Nancy domesticated the California alimony judgment in Texas state court pursuant to the Uniform Act contained within chapter 35 of the Texas Civil Practice and Remedies Code; (2) Nancy, therefore, is a judgment creditor of Herbert; (3) Herbert transferred all of his assets to the Wolfram trust as sole beneficiary to his Estate; (4) Herbert made this transfer with the actual intent to hinder, delay and defraud Nancy of her right as a creditor of Herbert in violation of the Texas Uniform Fraudulent Transfer Act ("FTA").

In response, Lou Ann asserted that she was entitled to summary judgment on two grounds. First, Lou Ann argued that Nancy could not maintain a fraudulent transfer action against her because no debtor-creditor relationship existed between them.² Secondly, Lou Ann argued that, alternatively, the fraudulent transfer suit was time-barred by section 16.066(b) of the Texas Civil Practice and Remedies Code.

² Lou Ann concedes the inquiry posed in Appellant's first issue and suggests that it need not be decided in resolving this appeal. *Johnson v. Rancho Guadalupe*, 789 S.W.2d 596, 597 (Tex.App. 1990, writ denied). Thus, we will not consider this issue.

The trial court granted summary judgment in favor of Lou Ann. Nancy appeals from this summary judgment.

SUMMARY JUDGMENT

A. Standard of Review

We review a summary judgment *de novo*. *Reynoso v. Huff*, 21 S.W.3d 510, 512 (Tex.App. 2000, no pet.). Accordingly, we will uphold a summary judgment only if the summary judgment record establishes that there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law on a ground set forth in the motion. *Amer. Tobacco Co. v. Grinnel*, 951 S.W.2d 420, 425 (Tex. 1997); [TEX. R. CIV. P. 166a\(c\)](#). In deciding whether the summary judgment record establishes the absence of a genuine issue of material fact, we view as true all evidence favorable to the non-movant and indulge every reasonable inference, and resolve all doubts in its favor. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985).

B. Scope of Review

In reviewing an order granting summary judgment, we sit in the same position as the trial court. *See Reynoso*, 21 S.W.3d at 512. Accordingly, on appeal, we cannot affirm the summary judgment on a ground not presented to the trial court in the motion. *Travis v. City of Mesquite*, 830 S.W.2d 94, 100 (Tex. 1992); *see Davis v. City of Palestine*, 988 S.W.2d 854, 859 (Tex.App. 1999, no pet.) (granting summary judgment on grounds not in motion is reversible error).

When, as in this case, the parties have filed competing motions for summary judgment, and the trial court grants one motion and denies the other, we may consider the propriety of the denial as well as the grant. *Gramercy Ins. Co. v. MRD Inv., Inc.*, 47 S.W.3d 721, 724 (Tex.App. 2001, pet. denied). If resolution of the issues rests on disputed facts, summary judgment is inappropriate, and we should reverse and remand for further proceedings. *Id.* If the issue raised is based on undisputed and unambiguous facts, however, we may determine the question presented as a matter of law. *Id.*

ENFORCEMENT OF A FOREIGN JUDGMENT

Nancy contends that the trial court erred in granting Lou Ann's motion for summary judgment because Nancy's fraudulent transfer suit against Lou Ann was not time-barred by section 16.066(b) of the Texas Civil Practice and Remedies Code.³ We have consistently applied section 16.066(b) as the relevant statute of limitations to actions brought to enforce foreign judgments from federal courts and sister states. *See Carter v. Jimerson*, 974 S.W.2d 415, 417 (Tex.App. 1998, no pet.); *see also Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 207 (Tex.App. 1994, pet. denied). Section 16.066(b) provides that "[a]n action against a person who has resided in this state for 10 years prior to the action may not be brought on a foreign judgment rendered more than 10 years before the commencement of the action in this state." TEX. CIV. PRAC. REM. CODE ANN. § 16.066(b) (Vernon 1997).

³ Lou Ann's motion for summary judgment asserts that "Defendant is also entitled [to summary judgment] as a matter of law because the statute of limitations has run for each of Plaintiff's causes of action." In support, the only variant of limitations Lou Ann cites to is section 16.066(b) of the Texas Civil Practice and Remedies Code, which specifies the limitations period applicable to the enforcement of foreign judgments. *See* TEX. CIV. PRAC. REM. CODE ANN. § 16.066(b) (Vernon 1997 Supp. 2004). Because, on appeal, we cannot affirm the summary judgment on a ground not presented to the trial court in motion, *Travis*, 830 S.W.2d at 100, we analyze the judgment with respect only to section 16.066(b).

On appeal, Nancy contends that her fraudulent transfer suit is not a suit brought to enforce a foreign judgment. Instead, Nancy asserts that, because she had already brought an action on a foreign judgment and properly "domesticated this judgment of a sister state" in Texas probate court, her fraudulent transfer suit is an action brought to enforce a valid and final Texas judgment.

A. Was Nancy's suit an action on a foreign judgment?

The Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1, declares that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. U.S. Const. art. IV, § 1. Under this principle, Texas is required to enforce any valid and final judgment from another state. *See Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 794 (Tex. 1992). Texas courts recognize two methods of enforcing foreign judgments: (1) filing a judgment pursuant to the Uniform Enforcement of Foreign Judgments Act ("Uniform Act"), or (2) filing a common law action to enforce a foreign judgment.⁴ **I. Uniform Enforcement of Foreign Judgments Act**

⁴ The common law action is recognized and preserved in section 35.008 of the Uniform Act. *See* TEX. CIV. PRAC. REM. CODE ANN. § 35.008 (Vernon 1997 Supp. 2004).

On appeal, Nancy claims to have proceeded under the Uniform Act, which provides:

(a) A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.

(b) The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed.

(c) A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.

TEX. CIV. PRAC. REM. CODE ANN. § 35.003 (Vernon 1997).

Under the Uniform Act, by following the relatively simple procedure for filing an authenticated copy of a sister state judgment in a Texas court, the judgment holder can "domesticate" the foreign judgment. In other words, the filing makes the judgment the same as if it had been rendered by that Texas court. TEX. CIV. PRAC. REM. CODE ANN. § 35.003(c) (Vernon 1997 Supp. 2004-05). There is no further need to file an independent lawsuit in Texas to convert the foreign judgment into a Texas judgment; filing a foreign judgment pursuant to the Uniform Act has the effect of initiating an enforcement proceeding while simultaneously and instantly rendering a final Texas judgment. *Walnut Equip. Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996) ("when a judgment creditor proceeds under the [Uniform Act], the filing of the foreign judgment comprises both a plaintiff's original petition and a final judgment"); *Lawrence Sys.*, 880 S.W.2d at 208; see generally 9 WILLIAM V. DORSANEO III, TEXAS LITIGATION GUIDE § 134.51 (Nov. 1999). Here, Nancy filed an authenticated copy of the foreign judgment in the Probate Court of Bexar County, Texas, on October 19, 2000.⁵ Accordingly, it became a final Texas judgment, as if rendered by that court on the same date. Therefore, beginning on October 19, 2000, if Lou Ann wished to challenge Nancy's judgment on limitations or any other ground, she could do so only by post-judgment motion.⁶ **2. Compliance with the Uniform Act**

⁵ In her efforts to comply with the Uniform Act, Nancy made two filings with the Probate Court of Bexar County, Texas: (1) an Original Petition to Enforce Foreign Judgment ("Original Petition") on April 10, 2000, and (2) a Supplement to Original Petition ("Supplement") on October 19, 2000. In her Original Petition, however, Nancy failed to attach an authenticated copy of the California judgment, choosing instead to file an authenticated copy of the abstract of judgment. Therefore, here, we are called on to decide whether the California court's abstract of judgment met the requirement of section 35.003 that a "copy" of a foreign judgment be filed in any court of competent jurisdiction in this state. Black's Law Dictionary defines the term "copy" as "a transcript, double, imitation, or reproduction of an original writing, painting, instrument, or the like." BLACK'S LAW DICTIONARY 303-04 (5th ed. 1979). Moreover, the word "'copy' implies that the instrument so labeled is identical with another instrument." See *In re Janes' Estate*, 116 P.2d 438, 441 (Cal. 1941); see also *Rasmussen v. Baker*, 50 P. 819, 825 (Wyo. 1897) ("We are convinced that a copy of that instrument can consist only in a reproduction of the words of which it is composed in the same relation as they are there found, and thus, as a necessary consequence, in the language in which it is written").

The abstract of judgment cannot fit these definitions of "copy." An abstract of judgment is not identical to the original judgment. It is not a reproduction of the words of the original judgment. Indeed, an abstract is not even signed by the judge of the rendering court. Rather, an abstract of judgment is a printed form designed to give parties notice of a judicial lien upon the property of a judgment debtor. See TEX. PROP. CODE ANN. § 52.001 (Vernon 1995 Supp. 2004-05); see also *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex.App. 1988, pet. denied). Accordingly, we cannot hold that Nancy filed a "copy" of a judgment with her Original Petition as required under the Uniform Act.

⁶ The procedural devices available to resist enforcement of a domesticated foreign judgment depends on when the challenge is to be asserted and the nature of the challenge itself.

[1] *Within 30 days after judgment filed*

If an objection to enforcement can be made within thirty days after the sister state judgment was filed in Texas, the

judgment debtor can file a motion to vacate the judgment on the ground that it is not entitled to full faith and credit, following the ordinary procedural timetable governing motions for new trial. *Walnut Equip. Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996); see TEX. R. CIV. P. 329b. Alternatively, if the judgment appears on its face to be a final judgment but the judgment debtor contends that it is not final, a motion to stay enforcement may be presented to the trial court. The motion to vacate seeks to nullify the filing of the judgment and render it unenforceable in Texas. The motion to stay the enforcement of the judgment requests suspension of the judgment's enforcement pending the outcome of another proceeding. In either case, the issues raised can be heard in the trial court, and if relief is denied, the domesticated judgment is subject to appeal under the usual rules.

[2] *After expiration of 30-day period*

As a general rule, the court's plenary power over the judgment expires thirty days after it is filed for recognition. The other devices available for use after expiration of the court's plenary power are procedurally similar to the remedies available to an out-of-time defendant suffering a default judgment in a Texas lawsuit. The selection depends on the time and the context of the challenge. An assertion can be made that the domesticated judgment is not enforceable (it is not entitled to full faith and credit) by perfecting a restricted appeal within six months after the sister state judgment is domesticated. See TEX. R. APP. P. 30. If the time for a restricted appeal has elapsed, the judgment debtor may file an independent lawsuit known as a bill of review to assert that the judgment is not entitled to full faith and credit. *Malone v. Emmert Indus. Corp.*, 858 S.W.2d 547, 548 (Tex.App.-Houston [14 Dist.] 1993, pet. denied). In the rare case in which the domesticated judgment has been overturned or declared void in the rendering state, the judgment debtor may resort to mandamus to prevent its enforcement in Texas. *Enis v. Smith*, 883 S.W.2d 662, 663 (Tex. 1994).

Nevertheless, on appeal, Lou Ann contends that Nancy did not domesticate the California alimony judgment through her filings in probate court due to her failure to "meet the requirement of strict compliance with the [Uniform Act]." A party seeking to register a foreign judgment under the Uniform Act must comply with its provisions. *Carter v. Jimerson*, 974 S.W.2d 415, 417 (Tex.App. 1998, no pet.) ("An essential prerequisite to application of the Uniform Act is compliance with its provisions"). Specifically, Lou Ann asserts that because the probate suit was brought against the "Estate of Herbert E. Wolfram," a legal non-entity, the case should be a nullity, thus having no effect on the tolling of limitations.

Indeed, it is generally a mistake to name an "Estate" as the party to a suit. Estates are not legal entities that can either sue or be sued. *Henson v. Estate of Crow*, 734 S.W.2d 648, 649 (Tex. 1987);⁷ *Price v. Estate of Anderson*, 522 S.W.2d 690, 691 (Tex. 1975); *Miller v. Estate of Self*, 113 S.W.3d 554, 556 (Tex.App. 2003, no pet.). A suit seeking to establish the decedent's liability on a claim and subject property of the estate to its payment should be filed against the personal representative, or, under appropriate circumstances, against the heirs or beneficiaries. *Miller*, 113 S.W.3d at 556; *Estate of C.M. v. S.G.*, 937 S.W.2d 8, 10 (Tex.App.-Houston [14 Dist.] 1996, no pet.) (holding that not naming the personal representative of an estate in a lawsuit was a matter of fundamental jurisdiction that cannot be waived). Nevertheless, in a case of first impression, we are of the opinion that filing a judgment under the Uniform Act presents circumstances that warrant an exception to this general rule.

⁷ In *Henson*, the plaintiff sued the defendant for rental payments due under an oral lease. The defendant died shortly before the trial. Henson thereafter amended his petition and named the Estate of Bruce L. Crow as the defendant. The trial was had on those pleadings. Henson argued the Estate of Crow had waived the error by failing to except to the defect in Henson's pleadings. However, the Texas Supreme Court rejected that argument, saying, "This merely begs the question. Inasmuch as no legal entity was named as a defendant, there was no one to except to the pleadings or waive any defect therein." *Henson*, 734 S.W.2d at 649.

Initially, we note that the Uniform Act does not specify a party against whom the filing must be made. To the contrary, under the plain meaning of the statute, the judgment creditor (plaintiff) need only file an authenticated copy of the foreign judgment with the court clerk of any court of competent jurisdiction in Texas. *See* TEX. CIV. PRAC. REM. CODE ANN. § 35.003-.004 (Vernon 1997 Supp. 2004-05). Therefore, for the purposes of giving notice to the debtor, the Uniform Act provides that the judgment creditor should also prepare and file with the judgment an affidavit by a person having knowledge of the facts attesting to the names and last known addresses of the judgment debtor and the judgment creditor. *See* TEX. CIV. PRAC. REM. CODE ANN. § 35.004(a) (Vernon 1997 Supp. 2004-05). However, no other pleading is required; nothing else needs to be introduced into evidence. *Lawrence Sys.*, 880 S.W.2d at 207.

Moreover, because the finality of the judgment is instantaneous upon filing, the judgment debtor retains few grounds upon which to challenge the enforcement of a filed foreign judgment. Under the Uniform Act, the debtor has the burden of collaterally attacking the judgment by establishing a recognized exception to the full faith and credit requirements, and those challenges are limited to:

- (1) showing the judgment to be void, such as by attacking the rendering court's attempt to exercise jurisdiction;
- (2) demonstrating that the judgment lacks finality; or
- (3) proving that the judgment is not subsisting in that it is dormant or its enforcement is barred by limitations.

Dear v. Russo, 973 S.W.2d 445 (Tex.App. 1998, no pet.). Accordingly, Texas case law has compared the filing of a foreign judgment under section 35.003 to the entry of a no-answer default judgment. *See Moncrief v. Harvey*, 805 S.W.2d 20, 23 (Tex.App. 1991, no pet.).

Here, Lou Ann did not challenge the validity of the California judgment. With regard to the filings in probate, Lou Ann apparently chose to neither answer nor defend in a suit where an "Estate," and not herself, was named the party. This was so even though the Original Petition was filed within the period of limitation, notice of the probate filings was served promptly on Lou Ann, and the purpose of the suit and the nature of the claim asserted were clear from the outset. Moreover, Lou Ann participated in proceedings at the probate level by contesting the appointment of Nancy as the personal representative of Herbert's estate and filing her own application for probate of will and letters testamentary. Therefore, while it can be argued that Nancy made a mistake in her petition as to the defendant that should have been named, Lou Ann was at all times fully cognizant of the facts and could not have been misled as to the basis of the suit.

Under these facts and conditions, we are of the opinion that it would be a misapplication of the law to allow Lou Ann to raise such an argument on appeal. The policy underlying the Uniform Enforcement of Foreign Judgments Act is one designed to prevent judgment debtors from using state boundaries to escape payment of their adjudicated obligations. *See* TEX. CIV. PRAC. REM. CODE ANN. § 35.001-.008 (Vernon 1997 Supp. 2004-05). To this end, it is necessary that the Uniform Act and associated case law governing judgments be interpreted in a manner to promote the policy of the Act and to further the constitutional mandate that a state give full faith and credit to judgments rendered by its sister states. Thus, we hold that Nancy's filing against the "Estate of Herbert E. Wolfram" properly domesticated the judgment in the state of Texas. Accordingly, Nancy's suit was not time-barred by section 16.066(b).

B. Trial court should have applied statute of limitations for fraudulent transfer suit

Instead, Nancy contends that the trial court should have applied the limitations period for claims of fraudulent transfers. In her suit against Lou Ann, Nancy alleges that Herbert transferred all of his assets to the Wolfram trust with the intent to hinder, delay, and defraud Nancy of her right as a creditor of Herbert. See [TEX. BUS. COM. CODE ANN. § 24.005\(a\)\(1\)](#) (Vernon 2002 Supp. 2004-05). A fraudulent transfer claim brought on these grounds must be brought, if at all, within four years after the transfer was made or obligation incurred. See [TEX. BUS. COM. CODE ANN. § 24.010\(a\)\(1\)](#) (Vernon 2002 Supp. 2004-05); see also *Cadle Co. v. Wilson*, 136 S.W.3d 345, 350 (Tex.App. 2004, no pet. h.) (holding that [section 24.010](#) is "technically a statute of repose, rather than a statute of limitations"). Here, Nancy complains of a transfer Herbert allegedly made on June 24, 1997, approximately four months after Nancy abstracted the judgment in California court. Nancy brought suit against Lou Ann on June 18, 2001. Accordingly, Nancy's suit was brought in time, and we hold that the trial court erred in granting summary judgment in favor of Lou Ann.

CONCLUSION

We hold that the trial court erred by granting summary judgment in favor of Lou Ann because Nancy's suit was not time-barred by [section 16.066\(b\)](#). By definition, [section 16.066\(b\)](#) applies to judgments rendered in a state or country other than Texas. See [TEX. CIV. PRAC. REM. CODE ANN. § 16.066\(c\)](#) (Vernon 1997). A proper filing under the Uniform Act operates to domesticate a foreign judgment, however, and any application of [16.066\(b\)](#) as the relevant limitations period ends accordingly. Pursuant to the Uniform Act, Nancy domesticated her California judgment upon filing it in the probate court of Bexar County, Texas. Therefore, with regard to the present action, the basis of the debt was no longer a judgment from another state, but a judgment of the state of Texas.

Accordingly, we reverse the summary judgment of the trial court and remand the cause to the trial court for proceedings consistent with this opinion.
