Not Designated for Publication

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-1026

	Opinion Delivered APRIL 22, 2009
JOSEPH T. ELLZEY, SR. APPELLANT	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT, [NO. CV07-544]
V.	HONORABLE DAVID L. REYNOLDS, JUDGE
BROOKHOLLOW ASSOCIATES, L.P. APPELLEE	AFFIRMED

ROBERT J. GLADWIN, Judge

Appellee Brookhollow Associates, L.P. (Brookhollow), obtained a judgment against appellant Joseph Ellzey, Sr., an Arkansas resident, in a Kansas state court. Brookhollow then registered the judgment in the Faulkner County Circuit Court pursuant to the Uniform Enforcement of Foreign Judgments Act, Ark. Code Ann. §§ 16-66-601 to 16-66-608 (Repl. 2005). Ellzey did not contest the registration of the Kansas judgment. Instead, he appeals the circuit court's denial of his motion to vacate and set aside the judgment. On appeal, Ellzey argues that he lacked certain "minimum contacts" with the state of Kansas, that the Kansas judgment is void for lack of proper service of process, and that the Kansas judgment was procured by fraud. We affirm.

Background

The facts are essentially undisputed. The underlying Kansas action involved the lease of Kansas real property owned by Brookhollow. The lease was assigned to, and assumed by, a limited-liability company owned by Ellzey's son and daughter-in-law. Ellzey was a member of the company. Ellzey signed the assignment twice, once as an assignee and once as a guarantor. The lease was extended by the limited-liability company for an additional two-year period in 2006. Brookhollow filed the Kansas action in March 2007. Service of process on Ellzey in the Kansas action was made by certified mail. Ellzey's wife, Debra, signed for the package. The Kansas court entered a default judgment against Ellzey in the amount of $58,927.13, together with interest, costs, and attorney's fees.

On June 28, 2007, Brookhollow filed a petition in the Faulkner County Circuit Court seeking to register the Kansas judgment. Notice of the filing of the Kansas judgment was sent to Ellzey the same day. When Ellzey did not respond to the registration of the Kansas judgment, Brookhollow attempted to garnish Ellzey's bank accounts. On November 21, 2007, Ellzey filed a motion to set aside and vacate the Kansas judgment. He alleged that he lacked the requisite minimum contacts with Kansas, that the Kansas court lacked personal jurisdiction over him because he was not properly served with process in the Kansas action, and that the Kansas judgment was procured by fraud.

After a hearing, the circuit court ruled from the bench and found that Ellzey was properly served with process in the Kansas action, that he failed to respond to the Kansas action, and that he was raising defenses that should have been raised in the Kansas action. The

court's written order also found that the Kansas judgment was not void as a result of fraud in the procurement. This appeal timely followed.

Discussion

As noted above, Ellzey did not contest the registration of the Kansas judgment. The Uniform Enforcement of Foreign Judgments Act requires only that foreign judgments be regular on their face and duly authenticated to be subject to registration. *May v. May*, 57 Ark. App. 215, 944 S.W.2d 550 (1997). Once a decree or judgment is accepted as proper for registration, then it becomes, in effect, an Arkansas judgment, and will remain on the judgment books to be enforced by Arkansas in the future. *See Dodson v. Taylor*, 346 Ark. 443, 57 S.W.3d 710 (2001). Additionally, under the terms of the Act, the foreign judgment is subject to the same procedures, defenses, and proceedings for reopening or vacating a judgment as a judgment rendered by an Arkansas court. *See* Ark. Code Ann. § 16-66-602. Therefore, a motion seeking to vacate or set aside the Kansas judgment is a proper method to attack the Kansas judgment.

In cases involving an appeal of the grant or denial of a motion to set aside a default judgment, our standard of review depends on the grounds upon which the appellant is claiming the default judgment should be set aside. Ordinarily, this court applies an abuse-of-discretion standard; however, in cases where the appellant claims that the default judgment is void, the matter is a question of law, which we review de novo and give no deference to the circuit court's ruling. *Nationwide Ins. Enter. v. Ibanez*, 368 Ark. 432, 246 S.W.3d 883 (2007) (citing *Nucor Corp. v. Kilman*, 358 Ark. 107, 186 S.W.3d 720 (2004)).

Ellzey first argues that he lacked the requisite "minimum contacts" with Kansas that due process requires. The argument is without merit.

The Kansas long-arm statute, Kansas Statute Annotated section 60-308(b), is to be liberally construed to assert personal jurisdiction over nonresident defendants to the full extent permitted by the Due Process Clause of the United States Constitution. *Kluin v. American Suzuki Motor Corp.*, 56 P.3d 829 (Kan. 2002).

There are two bases under the Kansas statute that allowed the Kansas court to exercise jurisdiction over Ellzey. Section 60-308(b)(1)(A) provides that any person who transacts any business within Kansas submits to the jurisdiction of the Kansas courts. Section 60-308(b)(1)(E) provides for jurisdiction over any person who enters into a contract, by mail or otherwise, with a resident of Kansas to be performed in whole or in part within Kansas. Ellzey testified that he did not transact business in Kansas. However, as a member of the limited-liability company, he leased real property located in Kansas. The performance of that lease would occur in Kansas. Brookhollow's cause of action against Ellzey relates directly to that contract. It is certainly reasonable to expect to be haled into a Kansas court if one is a party to a lease of Kansas real property and there is a default in the payment under the lease. Therefore, we cannot say that the circuit court erred in finding that Ellzey had sufficient "minimum contacts" with Kansas. *See Caring Hearts Pers. Home Servs. v. Hobley*, 130 P.3d 1215 (Kan. App. 2006).

Ellzey's second point is that he was not properly served with process in the Kansas action and, therefore, the resulting judgment against him is void. Kansas Statute Annotated

section 60-304(a) provides as follows:

> Service by return receipt delivery shall be addressed to an individual at the individual's dwelling house or usual place of abode and to an authorized agent at the agent's usual or designated address. If service by return receipt delivery to the individual's dwelling house or usual place of abode is refused or unclaimed, the sheriff, party or party's attorney seeking service may complete service by certified mail, restricted delivery, by serving the individual at a business address after filing a return on service stating the return receipt delivery to the individual at such individual's dwelling house or usual place of abode has been refused or unclaimed and a business address is known for such individual.

This statute has been interpreted as not requiring service to be by restricted delivery. *Beck v. Atlantic Contracting Co.*, 157 F.R.D. 61 (D. Kan. 1994). Ellzey attempts to argue that *Beck* is distinguishable from the present case because the service in *Beck* was upon the secretary of a corporation's registered agent. However, the *Beck* court's rationale that service was proper because the employee receiving the mail would likely turn the certified mail over to the agent is equally applicable in the present case because it is highly likely that a spouse receiving a certified letter addressed to the other spouse would turn the certified mail over to the intended spouse to prepare a proper response.

In the present case, the summons and certified mail show that they were properly addressed to Ellzey at his residence of 4340 Arbor Vine Drive, Conway. The *return* on the summons erroneously lists Ellzey's address as 4340 Vine Arbor Drive. The return also does not show the name of the person who received the certified mail. Ellzey's argument is that the return of service of process in the Kansas action was defective because Brookhollow did not show to whom the certified mail was delivered or at what address. The argument is without merit and confuses service of process with the return showing such service.

The Kansas courts have held that a technical defect in the return of service, which does not impair the substantial rights of a defendant, should not defeat that service. *Cook v. Freeman*, 825 P.2d 1185 (Kan. App. 1992). *Cook* involved a return of service that was not made within ten days after service as required by the Kansas statutes. The court held that the defendant was properly served and was not prejudiced by the failure to make the timely return of service. In the present case, Ellzey does not argue that he was prejudiced by Brookhollow's failure to strictly comply with the Kansas statutory requirements for service. Instead, he merely argues that Brookhollow did not follow the statutory requirements. Ellzey's testimony that he contacted Brookhollow's Kansas attorney shows that he was not prejudiced by the return because it shows that he had the timely opportunity to defend the Kansas action.

It is that fact of service that confers jurisdiction, not the proof of that service. *Cook*, *supra*. The purpose of a return of service is to provide evidence that service has been made. *Kinsch v. Missouri-Kansas-Texas R.R.*, 310 P.2d 903 (Kan. 1957). Ellzey's argument also ignores Kansas Statute Annotated section 60-204, which, unlike Arkansas law, only requires substantial compliance with the service requirements.[1] The circuit court did not err in finding that Ellzey had been properly served in the Kansas action.

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[1]Section 60-204 provides as follows:

> Process, generally. The methods of serving process as set forth in article 3 of this chapter shall constitute sufficient service of process in all civil actions and special proceedings. . . . In any method of serving process, substantial compliance therewith shall effect valid service of process if the court finds that, notwithstanding some irregularity or omission, the party served was made aware that an action or proceeding was pending in a specified court in which his or her person, status or property were subject to being affected.

For his third and final point on appeal, Ellzey argues that the Kansas judgment was obtained by fraud. Under this point, Ellzey makes two arguments for his allegation of fraud: (1) that the assignment and assumption of the lease was extended without his permission or consent and (2) that he advised Brookhollow's Kansas attorney that he did not have any interest in the limited-liability company operated by his son.

Ellzey should have presented the first point to the Kansas courts because it is an impermissible attempt to attack the underlying merits of the Kansas judgment. Under the United States Constitution, foreign judgments and decrees are conclusive on collateral attack except for the defense of fraud in the procurement of the judgment or want of jurisdiction in rendering it. *Strick Lease, Inc. v. Juels*, 30 Ark. App. 15, 780 S.W.2d 594 (1989). Furthermore, a judgment entered by default is entitled to full faith and credit and is as conclusive against collateral attack as any other judgment. *Purser v. Corpus Christi State Nat'l Bank*, 256 Ark. 452, 508 S.W.2d 549 (1974).

Ellzey's other argument under this point is that Brookhollow's Kansas attorney prevented him from defending the action on the merits. This allegation is the type of fraud in the procurement of the judgment that could be the basis for setting aside a judgment. *See Alexander v. Alexander*, 217 Ark. 230, 229 S.W.2d 234 (1950). However, Ellzey has not met his burden of proving such an allegation. He testified that he contacted Brookhollow's attorney in Kansas and sent an affidavit stating that he did not have any interest in the limited-liability company. However, Ellzey did not testify that counsel led him to believe that the matter would be resolved upon receipt of that affidavit. That is the inference that he wants

this court to draw from his testimony. The party seeking to set a judgment aside for fraud has the burden of proving fraud by clear, cogent, and convincing evidence or, as our courts have sometimes said, clear, strong, and satisfactory proof. *Grubbs v. Hall*, 67 Ark. App. 329, 999 S.W.2d 693 (1999). We cannot say that Ellzey has met this burden.

Affirmed.

HART and KINARD, JJ., agree.