

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-613

AMY L. PICCIONI

APPELLANT

V.

KEVIN S. PICCIONI

APPELLEE

Opinion Delivered APRIL 6, 2011

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. DR-2010-114]

HONORABLE BOBBY D.
McCALLISTER, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

The Saline County Circuit Court registered a foreign judgment on March 12, 2010, and appellant Amy Piccioni appeals contending that the circuit court erred in doing so. We affirm the registration of the foreign judgment.

Appellant married appellee Kevin Piccioni in 2003, and upon separation they entered into a child-custody and property-settlement agreement. Under the terms of the agreement, appellant was to have primary physical and legal custody of the parties' minor child, who was born on July 11, 2003. On October 11, 2007, in Lonoke County Circuit Court, a divorce decree was entered that adopted the terms of the settlement agreement.

Both parties then moved to Pennsylvania with the child, spending about twenty months residing together there. Appellant then left Pennsylvania with the child and returned

to Arkansas, and appellee sought custody in Pennsylvania. On January 20, 2010, in the Court of Common Pleas of Berks County, Pennsylvania, an order was filed granting appellee sole custody of the minor child and requiring appellant to return the minor child to Berks County “immediately.” Also on January 20, 2010, an order was entered in Lonoke County Circuit Court deferring jurisdiction to the Pennsylvania court and dismissing the pending matters in the Lonoke County Circuit Court. From that order, appellant appealed to this court.

On March 2, 2011, we issued an opinion, *Piccioni v. Piccioni*, 2011 Ark. App. 177, 378 S.W.3d 838, affirming the Lonoke County Circuit Court’s order deferring jurisdiction to the courts in Pennsylvania, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and dismissing any pending matters in the courts in Arkansas. This court reasoned that, based on appellant’s affidavit filed in that matter and our de novo review, the trial court could have reasonably concluded that appellant and the parties’ minor child did not reside in Arkansas.

While that appeal was pending, appellee filed a petition on February 1, 2010, to register the foreign-custody determination in Saline County Circuit Court. In his petition, appellee cited the Pennsylvania court’s January 20, 2010 order granting him custody of the minor child, as well as the Lonoke County Circuit Court’s order of that same date transferring jurisdiction of the case to Pennsylvania. Appellee amended his petition and attached these orders along with a January 22, 2010 Pennsylvania order granting appellee sole custody and permission to retrieve the child from wherever he was residing. Also included was an order

filed in Pennsylvania on January 26, 2010, issuing a warrant directing any law-enforcement officer to take physical custody of the child until appellee could retrieve him.

In response to appellee's petition to register the foreign judgment, appellant filed a motion to dismiss that included a request for a hearing. At the hearing, the trial court heard oral argument by appellant's counsel attacking the petition to register the foreign judgment for failure to adhere to the requirements of Arkansas Code Annotated section 9-19-305 (Repl. 2009). The trial court denied her motion to dismiss based upon the statutory provisions. The trial court stated its in response to her continued arguments that it was not in a position to review the Lonoke court's relinquishment of jurisdiction. The trial court declined to accept emergency jurisdiction because both the Pennsylvania and the Lonoke courts had found that Pennsylvania had jurisdiction.

Appellant's counsel stated that appellant was represented in Pennsylvania by separate counsel and that a hearing was to be held in Pennsylvania "within the next forty-eight hours." After a proffer of evidence by appellant regarding allegations of abuse and alcoholism¹ on appellee's part, the trial court granted the petition to register the foreign judgment, finding sufficient compliance with the registration requirements. This appeal timely followed.

We review issues of statutory construction de novo, as it is for this court to determine what a statute means. *Johnson v. Dawson*, 2010 Ark. 308, 365 S.W.3d 913. In this respect, we

¹Our opinion in *Piccioni v. Piccioni*, 2011 Ark. App. 177, 378 S.W.3d 838, contains a thorough description of the allegations contained in appellant's affidavit attached to her motion to dismiss in the instant matter.

are not bound by the circuit court's decision; however, in the absence of a showing that the circuit court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. *Id.* Even though our standard of review is de novo, we will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Gullahorn v. Gullahorn*, 99 Ark. App. 397, 260 S.W.3d 744 (2007). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that an error has been committed. *Id.* Facts in dispute and determinations of credibility are solely within the province of the fact-finder. *Id.*

Arkansas Code Annotated section 9-19-305 states in pertinent part as follows:

- (a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate circuit court in this state:
 - (1) a letter or other document requesting registration;
 - (2) two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
 - (3) except as otherwise provided in § 9-19-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.
- (b) On receipt of the documents required by subsection (a) of this section, the registering court shall:
 - (1) cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and
 - (2) serve notice upon the persons named pursuant to subdivision (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.
- (c) The notice required by subdivision (b)(2) of this section must state that:

- (1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;
- (2) a hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and
- (3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

- (1) the issuing court did not have jurisdiction under subchapter 2 of this chapter[.]

Ark. Code Ann. § 9-19-305(a),(b),(c), & (d)(1).

Appellant argues that the trial court erred when it registered the foreign judgment because the petition was not in compliance with the statutory requirements recited above. She argues that instead of two copies of the foreign order being attached to the petition as required under section 9-19-305(a)(2), only one copy was attached. She further contends that appellee's petition for registration does not contain a statement under penalty of perjury that to the best of appellee's knowledge, the order had not been modified, as is required under section 9-19-305(a)(2). She claims that appellee's name and address were missing from the petition, which is required under section 9-19-305(a)(3).

Finally, appellant claims that subsections 9-19-305(b) and (c) contain the notice requirements and that she did not receive such notice. She contends that the notice of hearing she received did not contain the information set forth in subsection 305(c)—that a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state; a hearing to contest the validity of the registered

determination must be requested within twenty days after service of notice; and failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted. Appellant argues that statutory-notice requirements require strict compliance, citing *Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P.*, 2010 Ark. 91, 362 S.W.3d 882, and that because the service requirements in the present case were not in compliance, the trial court should have granted the motion to dismiss.

We note that *Pulaski Choice* dealt with statutory publication provisions for the sale of tax-delinquent property. See *Sanders v. Ryles*, 318 Ark. 418, 885 S.W.2d 888 (1994) (stating that, in cases involving redemption of tax-delinquent lands, we have held that strict compliance with the requirement of notice of the tax sales themselves is required before an owner can be deprived of his property). The trial court's finding of substantial compliance with the notice provisions of subsection 305(c) is not clearly erroneous in light of appellant's protracted arguments before it. The provisions set forth in that section ensure that the person entitled to notice has an opportunity to be heard. Appellant received notice of the hearing on registration of the foreign judgment, filed a motion to dismiss, and appeared before the trial court to argue her motion. Thus, any technical deficiencies involving the number of copies attached to the petition, the lack of a statement that the order had not been modified, the lack of appellee's name and address, and that her notice of hearing did not include statements regarding her right to contest the registration of the order at a hearing did not prejudice

appellant's ability to present her case before the Saline County Circuit Court. *See Jennings v. Architectural Prods., Inc.*, 2010 Ark. App. 413, 375 S.W.3d 685 (where this court found no prejudice resulted from the substantial compliance of appellant's notice of appeal).

Further, Arkansas Code Annotated section 9-19-305(d)(1)–(3) provides that

A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

- (1) the issuing court did not have jurisdiction under subchapter 2 of this chapter;
- (2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter; or
- (3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of § 9-19-108, in the proceedings before the court that issued the order for which registration is sought.

At the hearing contesting the validity of the Pennsylvania judgment, which was requested by appellant, she argued before the trial court that Pennsylvania did not have jurisdiction to issue the foreign order. As was established by this court in *Piccioni, supra*, Pennsylvania has jurisdiction pursuant to the Lonoke court's proper relinquishment. Because the remainder of her arguments rest on the premise that Arkansas retains jurisdiction, and we have already determined otherwise, *see Piccioni, supra*, we decline to address them again.

Affirmed.

WYNNE and GLOVER, JJ., agree.