

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

D'ANNA WELSH,

Appellant,

v.

WILLIAM V. MARTINEZ, JR.,

Appellee.

No. 2D21-4019

November 9, 2022

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Collier County; Elizabeth V. Krier, Judge.

Kenneth E. Chase of Chase Law & Associates, P.A., Miami Beach, for Appellant.

Brian D. Zinn of ZinnLaw, PLLC, Fort Myers, for Appellee.

SMITH, Judge.

In this action to enforce a foreign contempt order, D'Anna Welsh appeals a nonfinal order that concluded that a Connecticut contempt order was nonfinal and not enforceable under Florida's

Enforcement of Foreign Judgments Act (FEFJA), sections 55.501–.509, Florida Statutes (2021).¹ Because the Connecticut contempt order and the resulting *capias* are entitled to full faith and credit under FEFJA, we reverse and remand to the trial court.

In 2012, a Connecticut jury returned a verdict in favor of Ms. Welsh and against William V. Martinez, Jr., for over two million dollars in damages, including punitive damages.² Soon after the verdict, the trial court granted Ms. Welsh's motion to prevent the fraudulent transfer of Mr. Martinez's assets and entered an asset standstill order. Mr. Martinez did not comply and found himself subject to contempt on more than one occasion after he transferred

¹ Ms. Welsh also argues the trial court erred when it found Mr. Martinez's retirement account was exempt from garnishment under section 222.21, Florida Statutes (2021). We affirm without comment the trial court's order finding that the garnished retirement account was exempt from creditors.

² *See Welsh v. Martinez*, 114 A.3d 1231 (Conn. App. 2015) (affirming jury verdict and damages on all counts—for invasion of privacy, negligence per se, intentional infliction of emotional distress, and negligent misrepresentation—based upon Mr. Martinez's unlawful installation of spy equipment in the home and on the computer and vehicle of Ms. Welsh).

over two million dollars to his then-wife over the course of almost four years between 2012 and 2016.³

The Connecticut contempt order at issue in this appeal was issued on December 23, 2020 (the Connecticut contempt order), after Mr. Martinez violated a prior contempt order issued on August 14, 2020, requiring him to make monthly payments beginning on September 15, 2020, in the amount of \$25,000 towards a previously ordered two million dollar contempt fine. In the Connecticut contempt order, the Connecticut court found that Mr. Martinez had the present ability to pay but failed to make the requisite monthly payments for October, November, and December 2020 and also failed to provide the financial disclosures ordered in the August 14, 2020, contempt order. For these reasons, the Connecticut court issued a *capias* for Mr. Martinez's arrest and set the bond for \$75,000—the amount due for the deficient three months owed by Mr. Martinez. The *capias* provided that Mr. Martinez could purge his contempt by paying the overdue \$75,000

³ Mr. Martinez admitted to transferring over two million dollars to his then-wife's account in order to prevent collection of those monies by Ms. Welsh.

and turning over the ordered financial records. Mr. Martinez remains in contempt and does not argue otherwise.

On February 9, 2021, Ms. Welsh sought to domesticate the Connecticut contempt order and *capias*⁴ by filing an Action to Enforce Foreign Judgment and Notice of Recording Foreign Judgment in Collier County. Included in these filings was a certified copy of the contempt order and *capias*, an affidavit from Ms. Welsh pursuant to section 55.505, and copies of the recorded Connecticut contempt order and *capias* recorded in the Collier County Official Records Book 5886 at Page 2577. On February 10, 2021, the Collier County Clerk of the Circuit Court issued a Notice of Recording Foreign Judgment certifying that Mr. Martinez was served with "Recorded copies of the Foreign Judgment and Affidavit of [Ms. Welsh]" via certified mail with return receipt. Mr. Martinez never filed an objection to the notice.

⁴ Ms. Welsh also sought to domesticate the final money judgment arising from the two million dollar jury verdict in another case number 2021-CA-000365, Twentieth Judicial Circuit, Collier County, Florida. This appeal only concerns the Connecticut contempt order and *capias*.

In May 2021, a writ of garnishment was served on Charles Schwab for the garnishment of Mr. Martinez's retirement account. This time, Mr. Martinez filed an objection to the writ based upon his claimed exemption under section 222.21, Florida Statutes (2021), which exempts pension money and certain tax-exempt funds or account from garnishment. A hearing was held on the exemption. At the hearing, Mr. Martinez also challenged the validity and enforceability of the Connecticut contempt order, arguing that the order was a nonfinal order and therefore unenforceable. The trial court agreed with Mr. Martinez and entered the order on appeal.

We address the finality issue—whether the Connecticut contempt order and *capias* are entitled to full faith and credit—as this issue is likely to arise again.

FEFJA allows a creditor to domesticate a "foreign judgment" without the necessity of filing a lawsuit. § 55.503; *Fazzini v. Davis*, 98 So. 3d 98, 102 (Fla. 2d DCA 2012) ("When a foreign judgment is domesticated, it becomes enforceable as a Florida judgment."), *disapproved on other grounds by Ledoux-Nottingham v. Downs*, 210 So. 3d 1217, 1218 (Fla. 2017). The statute defines "foreign judgment" as "a judgment, decree, or order of a court of any other

state . . . if such judgment, decree, or order is entitled to full faith and credit in this state." § 55.502(1). Foreign contempt orders fit within the framework of FEFJA. *See Weiss v. Weiss*, 100 So. 3d 1220, 1225 (Fla. 2d DCA 2012) (holding husband's obligations under divorce decree and contempt orders were entitled to full faith and credit); *see also Roosa v. Roosa*, 519 So. 2d 1108, 1109 (Fla. 4th DCA 1988) ("A foreign order of contempt is entitled to full faith and credit in Florida if it is valid in the state in which it was issued." (citing *Robinson v. Robinson*, 487 So. 2d 67, 68 (Fla. 1st DCA 1986))). On the other hand, orders that are nonfinal and modifiable are not entitled to full faith and credit. *West v. West*, 301 So. 2d 823, 826–27 (Fla. 2d DCA 1974).

We determine the finality of these orders under the laws of the foreign state of Connecticut. *See Turner v. Temple*, 625 So. 2d 101, 101 (Fla. 2d DCA 1993). Ms. Welsh argues that the Connecticut contempt order and *capias* both meet the test governing finality as set forth in *State v. Curcio*, 463 A.2d 566, 569–70 (Conn. 1983).⁵

⁵ Ms. Welsh also argues in her brief that Mr. Martinez has waived his right to object to the garnishment of his retirement account because he failed to object to the domestication of the two orders. We can find no case or mechanism under FEFJA

Mr. Martinez, on the other hand, focuses on particular statements made by the Connecticut court—that the Connecticut court would continue to monitor the case—suggesting that the orders were nonfinal and subject to modification.

Although neither party cites to it, we find section 52-400d, Connecticut General Statutes, is determinative on the issue of finality. Section 52-400d governs the appeals of certain court decisions, such as the contempt order before us. Section 52-400d(a) provides: "Any court decision on a determination of interest in property under section 52-356c, or on an exemption claim, or on a contempt proceeding, or on any stay ordered pursuant to an installment payment order, shall be a final decision for the purpose of appeal." Emphasis added.)

precluding a judgment debtor from collaterally attacking a foreign judgment based upon that judgment debtor's failure to object to the domestication of the foreign judgment. There is a thirty-day requirement under section 55.509(1) for a debtor to file an action contesting jurisdiction or the validity of the foreign judgment, but that statute applies only to the issuance of a stay of enforcement. *Whipple v. JSZ Fin. Co.*, 885 So. 2d 933, 937 (Fla. 4th DCA 2004) (explaining that section 55.509(1) "does not require that a collateral attack be instituted within thirty days or be forever barred").

This section is found in chapter 906 of the "Postjudgment Procedures" of the Connecticut General Statutes and applies to various postjudgment procedures, such as the one before the Connecticut trial court, available to creditors in seeking enforcement of money judgments, including compliance orders. *See N.D.R. Liuzzi, Inc. v. Lighthouse Litho, LLC*, 75 A.3d 694, 698 (Conn. App. Ct. 2013) ("[W]e interpret the language of [section] 52-400d (a), providing that 'any court decision . . . on a contempt proceeding . . . shall be a final judgment for the purpose of appeal,' as referring to those violations for which a court may commit a party for contempt under that chapter." (emphasis omitted)).

To the extent that the *Curcio* test has application here, the Connecticut contempt order and *capias* satisfy the *Curcio* finality test, which holds that a final order is one that "terminates a separate distinct proceeding." *See Curcio*, 463 A.2d at 569. Connecticut courts recognize contempt proceedings as separate distinct proceedings. *See Pease v. Charlotte Hungerford Hosp.* 157 A.3d 1125, 1128 (Conn. 2017) (holding that an order that contemnor incur a cost or take specific action is a final order); *Johnson v. Clark*, 967 A.2d 1222, 1225 (Conn. App. Ct. 2009) ("A

finding on a motion for contempt is a final judgment subject to review on appeal."); *see also Bryant v. Bryant*, 637 A.2d 1111, 1114 (Conn. 1994) (explaining that a contempt order is a final appealable order when the order "so substantially resolves the rights and duties of the parties that further proceedings relating to the judgment of contempt cannot affect them").

We are not persuaded by Mr. Martinez's argument that the order is nonfinal simply because the Connecticut court may later modify the order. *See Khan v. Hillyer*, 49 A.3d 996, 1001–02 (Conn. 2012) (acknowledging that the mere fact that a court has the power to modify does not make that order a nonfinal order). The orders before us meet the finality requirement under *Curcio* because they terminated a contempt proceeding by determining the monetary sanction—the bond that was equal to the three months in arrears coupled with the coercive requirement to produce the belated financial records.

Accordingly, the trial court erred in holding that the Connecticut contempt order and *capias* were nonfinal and, thus, not entitled to full faith and credit under FEFJA. Therefore, we

reverse and remand for the trial court to enter such other orders consistent with this opinion.

Reversed and remanded.

VILLANTI and SLEET, JJ., Concur.

Opinion subject to revision prior to official publication.