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Division II
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No. 51011-1 II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

RONALD R. BRETT,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL &
HEALTH SERVICES,

Respondent

BRIEF OF APPELLANT

Appeal from the Superior Court of Lewis County,
No. 16-2-00869-21
The Honorable Joely O'Rourke, Presiding

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ASSIGNMENTS OF ERROR

1. THE LOWER COURT ERRED WHEN IT ALLOWED ENFORCEMENT OF THE CANADIAN SPOUSAL MAINTENANCE ONLY ORDER FROM 1983 AGAINST PUBLIC POLICY.

2. THE LOWER COURT ERRED WHEN IT ALLOWED ENFORCEMENT OF THE CANADIAN SPOUSAL MAINTENANCE ONLY ORDER GIVEN THAT PART OF THE JUDGMENT IS NON-COLLECTABLE DUE TO THE PASSING OF A PORTION OF THE STATUTE OF LIMITATIONS.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. WHETHER RECOGNITION AND ENFORCEMENT OF A 1983 SPOUSAL MAINTENANCE ONLY CANADIAN JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON STATE PUBLIC POLICY WHEN THE FORMER SPOUSE WAS REMARRIED IN 1987 AND DIVORCED FROM THE SECOND SPOUSE IN 2001 AND THE SUPPORT ORDER DID NOT ADDRESS THE EFFECT OF REMARRIAGE REGARDING ONGOING SPOUSAL MAINTENANCE?

2. WHETHER RECOGNITION AND ENFORCEMENT OF A CANADIAN SPOUSAL SUPPORT JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON PUBLIC POLICY WHEN THE ORIGINAL STATUTE OF LIMITATIONS AS TO SOME OF THE SUPPORT EXPIRED BUT THEN WAS LATER

RESURRECTED WITH PASSAGE OF A NEW STATUTE OF LIMITATIONS IN CANADA?

3. WHETHER THE PRIOR STATUTE OF LIMITATIONS EXISTING AT THE TIME THAT THE CANADIAN SPOUSAL MAINTENANCE WAS ORDERED HAD EXPIRED AS TO SOME OF THE ALLEGED ARREARAGES AND WHETHER THAT PRECLUDES ENFORCEMENT OF SOME OF THE ALLEGED ARREARAGES AND JUSTIFIES THE COURT IN NOT REGISTERING SOME OR ALL OF THE CANADIAN SPOUSAL MAINTENANCE?

CHALLENGED FINDING OF FACT

1. THE OFFICE OF ADMINISTRATIVE HEARING FINDINGS 4.14 IS HEREBY CHALLENGED AS BEING UNSUPPORTED BY THE RECORD WHERE IT INDICATES THAT THERE WAS A DETERMINATION THAT APPELLANT DIDN'T ESTABLISH A DEFENSE UNDER RCW 26.21A.530(1). APPELLANT CHALLENGES FINDING 4.14 AS NOT BEING SUPPORTED BY THE RECORD, PARTICULARLY AS IT RELATES TO THE STATUTE OF LIMITATIONS ISSUES AND THE ISSUES WITH REGARD TO WHETHER MAINTENANCE SHOULD NOT BE ENFORCED GIVEN THE REMARRIAGE OF THE FORMER SPOUSE.

STATEMENT OF FACTS

On October 14, 1983, the Supreme Court of Ontario, Canada, entered a judgment in relevant part for \$1,300 Canadian dollars per month in support which included child support, but beginning in 1986 was to be reduced to \$800 Canadian dollars per month which at that point would no longer include child support and only spousal maintenance. The payments were to continue until the death of the wife or further Court order. Nothing at any relevant time addressed the effect of re-marriage on the spousal maintenance obligation. OAH Exh. P. 19, Bate stamp P. 17.

The former spouse made absolutely no effort to collect the support owed for a period of 24 years. OAH, Exh. Bate stamp P. 38.

Upon receipt of the request from Canada, Washington State DSHS sent a notice of support debt and demand for payment for \$873.54 American dollars per month which included a claim for \$128,089.89 for past due support. OAH Exh. P. 438.

Appellant objected to the State's notice and an OAH Conference Board Decision was filed on April 27, 2012. In the Decision, OAH Exh 23 (Bate stamped PP. 82-84), it sets forth on Page 2 in relevant part that the State is now seeking \$289,200.00 Canadian dollars from January 1, 1986 through April 30, 2012, with a remaining balance of \$287,900.00, given a prior payment in September 1983. Further, the Decision sets forth:

DCS uses the statute of limitations of this state or the issuing state whichever is longer. See generally, RCW

26.21A.515. The Ontario Limitations Acts provides that for maintenance arrears there is no longer a limitation period. The prior act had a twenty year limitation period. The current Ontario Limitations Act came into force on January 1, 2004. As such, if as of January 1, 2004, the arrears were not statute barred due to the passage of the limitation period, those arrears would still be enforceable.

The Decision further sets forth on the same page, down a few paragraphs:

Washington law provides that, unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance. See RCW 26.19.170(2). . .

In the record below, it was documented that appellant is currently being garnished from Canada in the amount total of \$206.79 Canadian.

OAH, Exh. 103 (Bate stamp Page 163).

Despite having the conference board, DSHS did not at that time register the Canadian Order in Washington State. OAH Exh. 460 (Bate stamp Page 520).

The Final Order from OAH addressing whether to register the Canadian support order was mailed on or about July 21, 2016. In that Decision, the ALJ addressed that the former spouse had been remarried on November 20, 1987, and divorced on September 12, 2001. This was established in Finding 4.13. OAH Bate Stamp PP. 45-46

In Finding 4.14, which is hereby challenged as being unsupported by the record, the ALJ determined that the appellant did not establish a defense under RCW 26.21A.530(1). OAH Bate Stamp P. 46.

Appellant subsequently timely filed a request for reconsideration which was denied on August 16, 2016. OAH Bate stamp PP. 1-2.

Appellant timely filed an appeal of the OAH Decision to Lewis County Superior Court. CP. 27-28.

A subsequent trial occurred and the lower Court affirmed the OAH Decision. CP. 189-196.

At trial, the State's witness acknowledged that this was not in any way a child support collection case. RP 93.

Although the transcript misindicates that it is Judge Mowrey speaking, it was actually appellant speaking about the Williams case involving the remarriage of a spouse ending spousal maintenance issue. RP 99.

The former spouse acknowledged in testimony that appellant is being garnished for his Canadian pensions in Canada. RP 123.

The Honorable Judge Mowrey clarified that the former spouse had been remarried on November 20, 1987, and divorced on September 12, 2001. RP 125.

This timely appeal follows. CP 197-209.

LAW AND ARGUMENT

1. WHETHER RECOGNITION AND ENFORCEMENT OF A 1983 SPOUSAL MAINTENANCE ONLY CANADIAN JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON STATE PUBLIC POLICY WHEN THE FORMER SPOUSE WAS REMARRIED IN 1987 AND DIVORCED FROM THE SECOND SPOUSE IN 2001 AND THE SUPPORT ORDER DID NOT ADDRESS THE EFFECT OF REMARRIAGE REGARDING ONGOING SPOUSAL MAINTENANCE?

RCW 26.21A.623 in relevant part sets forth that one basis to not recognize or enforce a foreign support obligation is if:

(4a) “ recognition and enforcement of the payment is manifestly incompatible with public policy.”

In this case, the State asks to first enforce a Canadian spousal maintenance order when the support order itself says nothing about the effect of remarriage on the obligation. This flies in the face of Washington public policy.

Marriage of Williams, 115 Wn.2d. 202, 796 P.2d. 421 (1990), established that spousal maintenance terminates upon remarriage absent specific language to the contrary in the decree. This has been a relatively longstanding public policy in the State of Washington.

The Canadian decree didn't even address the effect of remarriage. Here, the former spouse remarried four years after the decree was entered and was divorced from her other spouse about 18 years after the decree had been entered in Canada in this case and she had been divorced to husband number 2 for over a decade (and divorced from Appellant for about three decades) before seeking to have Washington enforce her Canadian spousal maintenance judgment against her first husband.

This flies in the face, again, of Washington law. Washington State should not be in the business of enforcing spousal maintenance where there is a former spouse, when the order doesn't have any specific

language that would uphold spousal maintenance despite a remarriage, particularly here where Appellant isn't even the most recent spouse.

2. WHETHER RECOGNITION AND ENFORCEMENT OF A CANADIAN SPOUSAL SUPPORT JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON PUBLIC POLICY WHEN THE ORIGINAL STATUTE OF LIMITATIONS AS TO SOME OF THE SUPPORT HAS EXPIRED BUT THEN WAS LATER RESURRECTED WITH PASSAGE OF A NEW STATUTE OF LIMITATIONS IN CANADA?

It was accurately expressed by the original Conference Board Decision that the statute of limitations for an Ontario, Canada spousal maintenance obligation, when it was entered in 1983, was for 20 years. Canada subsequently passed a new law which ended any statute of limitations for spousal maintenance in 2004.

It certainly flies in the face against public policy to assert a resurrection of spousal maintenance which would have been expired. Granted, this maintenance is an ongoing obligation, but as to spousal maintenance that was incurred prior to the new law eliminating the statute of limitations in Canada, Washington State should not be enforcing a resurrection of the statute of limitations, particularly as to the maintenance from before 2004. This is manifestly incompatible with public policy especially as to the spousal maintenance that was incurred prior to the expiration of the statute of limitations.

Under RCW 26.21A.623(4)(a), Washington State should not be enforcing this Canadian judgment or alternatively, certainly it shouldn't be as to any amounts that were incurred prior to the new law taking affect,

where the benefits have or should have expired under the prior statute of limitations that were in effect for decades of the relevant timeframe.

3. WHETHER THE PRIOR STATUTE OF LIMITATIONS EXISTING AT THE TIME THAT THE CANADIAN SPOUSAL MAINTENANCE WAS ORDERED HAD EXPIRED AS TO SOME OF THE ALLEGED ARREARAGES AND WHETHER THAT PRECLUDES ENFORCEMENT OF SOME OF THE ALLEGED ARREARAGES AND JUSTIFIES THE COURT IN NOT REGISTERING SOME OR ALL OF THE CANADIAN SPOUSAL MAINTENANCE?

RCW 26.21A.530(1)(g) sets forth a defense to registration of a foreign spousal maintenance obligation when:

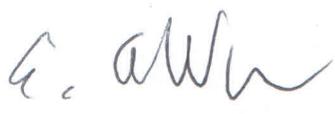
The statute of limitations under RCW 26.21A.515 precludes enforcement of some or all of the alleged arrears.

RCW 26.21A.515, is the choice of law statute which essentially defers in our case to the foreign country's statute of limitations as to maintenance arrears. Under subsection (g), above, the statute of limitations was 20 years in Canada until the law was changed in 2004. The original judgment took effect in 1983. More than 20 years have expired since the judgment was originally entered. Thus, the statute of limitations from Canada that existed when the judgment was entered has resulted (as to the pre-2004 obligation) in the expiration of some of the alleged arrears, and this is a statutory basis for Washington State to not enforce at least in part, if not fully, the Canadian support obligation.

CONCLUSION

For the reasons set forth, the decision allowing the registration and enforcement of the Canadian spousal support order should be vacated.

Respectfully submitted this 30th January, 2018.



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