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Court of Appeals
Division II
State of Washington
4/2/2018 3:08 PM

No. 51011-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

RONALD BRETT,
Appellant,

v.

CAROLINE MARTIN, and

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL
AND HEALTH SERVICES,
Respondents.

RESPONSE BRIEF OF
RESPONDENT CAROLINE MARTIN

Megan D. Card
Washington State Bar No. 42904
Attorney for Respondent

Rodgers Kee Card & Strophy, P.S.
324 West Bay Dr NW, Ste. 201
Olympia, WA 98502
(360) 352-8311

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I. INTRODUCTION

This case stems from the Department of Social and Health Services enforcing a valid judgment dated September 30, 1983 from the Supreme Court of Ontario. In pertinent part, this judgment ordered the Appellant, Ronald Brett, to pay his ex-wife Caroline Martin, the Respondent, eight hundred dollars (\$800.00) per month for support and maintenance until her death or until the court otherwise ordered. Despite initiating multiple appeals in Canada, Mr. Brett has never followed through with amending the original judgment from Ontario which remains valid and enforceable to this day. Notably, this judgment continues to accrue each month that Mr. Brett does not return to Canada to amend the original order.

Ms. Martin asserts a preliminary objection to all errors raised for the first time on review by Mr. Brett that were not raised in the trial court pursuant to RAP 2.5(a).

II. ASSIGNMENTS OF ERROR AND RESTATEMENT OF ISSUES

A. Assignments of Error (AOE)

1. Did the trial court err in upholding an administrative decision to enforce a valid support obligation order from a Canadian court?

Short answer: **No.**

2. Did the Court run afoul of any public policy in determining the Canadian support order was properly confirmed? Short answer: **No.**

III. STATEMENT OF THE CASE

A. Procedural History

On October 24, 2011, the British Columbia Family Maintenance Enforcement program requested the Department of Social and Health Services, Division of Child Support (“DCS”) to enforce a child support obligation against the Appellant, Ronald Brett. CP at 3. Mr. Brett was served with a Notice of Support Debt and Registration on March 7, 2016. (CP at 55, AR 63-68.) An administrative hearing determining the validity of the support obligation occurred on June 30, 2016 in front of an Administrative Law Judge (“ALJ”). CP at 3. A final order confirming the validity of the support obligation was issued by the Office of Administrative Hearings on July 21, 2016. CP at 53.

Mr. Brett filed a *Petition for Review* on August 18, 2016 in the Superior Court for Lewis County asking the Court to “[change] the administrative hearing decision” and “[v]acate the Foreign Judgment made in the Supreme Court of Ontario on September 30, 1983 and enforced by the Washington State Department of Child Support.” (Pet. for Rev., 2-3, filed 8/18/2016.) CP at 48. Mr. Brett’s request for a motion to stay

enforcement of the order under RCW 34.05.050 was denied on February 24, 2017. CP at 25-26. On June 29, 2017 an *Order Affirming Administrative Decision* was entered by the Honorable Judge Joely O'Rourke in the Lewis County Superior Court. CP at 189. Mr. Brett now brings this appeal.

B. Factual History

The Appellant, Ronald Brett, and the Respondent, Caroline Martin, were married for over twenty years and have two children together. CP at 10. Mr. Brett filed for dissolution of his marriage in the state of Indiana and a decree was entered on July 19, 1983. CP at 2; CP at 10. The decree stated that the court did not have jurisdiction to enter an order with respect to property or child support as Ms. Martin had never resided in Indiana. *Id.*

In August 1983, a trial was held in the family law division of the Supreme Court of Ontario where the parties had resided during their marriage. CP at 10. During the trial, the parties reached an agreement through their respective counsel. *Id.* The "Minutes of Settlement" were executed by both Mr. Brett and Ms. Martin. *Id.* Notably, the judgment ("Order") stated that Mr. Brett would pay Ms. Martin \$1,300.00 per month for support through December 1985 and beginning in January 1986, Mr. Brett would pay Ms. Martin \$800.00 per month for support

and maintenance. *Id.* This ongoing maintenance obligation was ordered to be paid until Ms. Martin's death or until the court otherwise ordered. *Id.* Ms. Martin is still alive and the judgment dated September 30, 1983 has never been modified. *Id.*

IV. ARGUMENT

A. STANDARD OF REVIEW.

De Novo:

A question of statutory interpretation is a question of law that is reviewed de novo. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). "We review questions of statutory interpretation de novo." *State v. Morales*, 173 Wash.2d 560, 567, 269 P.3d 263 (2012).

Administrative Deference:

Courts "accord deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues, but are not bound by an agency's interpretation of a statute." *Preserve Our Islands v. Shorelines Hearings Bd.*, 133 Wn.App. 503, 528, 137 P.3d 31, 37 (2006).

As articulated in *Overton v. Washington State Econ. Assistance Auth.*, 96 Wn.2d 552, 555, 637 P.2d 652 (1981):

Where an administrative agency is charged with administering a special field of law and endowed with quasi-judicial functions because of its expertise in that field, the agency's construction of statutory words and phrases and legislative intent *should be accorded substantial weight when undergoing judicial review....* (emphasis added).

Review under the Administrative Procedures Act is limited to whether the agency's decision is based on an error of law, not supported by substantial evidence, or is arbitrary and capricious. See RCW 34.05.570(3)(a); CP at 192.

B. MR. BRETT FAILS TO APPROPRIATELY CITE ANY LAW OR STATUTE TO WARRANT REVIEW AND SHOULD THEREFORE BE DENIED AS A FRIVOLOUS ACTION.

When raised on appeal, the court will not consider issues unsupported by citation to authority. *Valente v. Bailey*, 74 Wn.2d 857, 858, 447 P.2d 589 (1968); *Avellaneda v. State*, 167 Wn. App. 474, 485, 273 P.3d 477 (2012). The courts do not consider conclusory arguments. *Joy v. Dep't of Labor & Indus.*, 170 Wn. App. 614, 629, 285 P.3d 187 (2012), *review denied*, 176 Wn.2d 1021, 297 P.3d 708 (2013). Passing treatment of an issue or lack of reasoned argument is insufficient to merit appellate review. *West v. Thurston County*, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012); *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998).

1. No public policy has been articulated or identified and Mr. Brett's assertions are without citation or merit.

Mr. Brett only cites a single case in his appeal, which is not relevant to the current case before the court. *Matter of Marriage of Williams*, 115 Wn.2d 202, 203, 796 P.2d 421, 422 (1990). In *Williams*, the court addressed the effect of a settlement agreement requiring a husband to pay maintenance which was silent to the implications of remarriage. *Id.* This case in no way involved execution of a foreign judgment. *Id.* The term “public policy” does not even appear in this seven page opinion. Rather, the court simply construed the policy behind RCW 26.09.170(2) in a *Washington* dissolution of marriage (and not a Canadian dissolution of marriage). *Id.* at 425. *Williams* is a case interpreting a Washington statute and has no bearing on Mr. Brett's case Order which was rendered from Canadian law where the parties resided during their marriage and which has jurisdiction over their marriage. Mr. Brett has presented no argument or authority demonstrating a Washington statute has the ability to override a valid foreign judgment.

Mr. Brett argues that this Order is not consistent with Washington state laws. CP at 49. Mr. Brett refers to RCW 26.09.170 which states that a spousal maintenance obligation terminates upon remarriage and because Ms. Martin remarried, Mr. Brett believes his obligation should have

terminated. (RP 118:2-10.) Again, the spousal maintenance obligation is not an order of a Washington court; it is a Canadian order from the Supreme Court of Ontario where, to Ms. Martin's knowledge, this law does not exist and the parties agreed to lifetime maintenance. If Mr. Brett seeks relief from the order, he must address this issue in Canada where the order originated. RCW 26.21A.510.

Further, Washington has adopted Uniform Conflict of Laws Limitations Act, which provides that if a claim is substantively based upon the law of another state, the limitation period of that state applies. *Ellis v. Barto*, 82 Wn.App. 454, 918 P.2d 540 (1996). *Barto* involved a Washington resident who was injured in automobile accident which occurred in Idaho. *Id.* at 542. The Plaintiff in *Barto* brought an action against a driver and owner of a second vehicle involved who were both Washington residents. The Superior Court granted summary judgment to defendants based on the Idaho statute of limitations, and the motorist appealed. *Id.* The Court of Appeals held that Idaho law had the most significant relationship to the accident and applied to the accident with respect to rules of the road, contributory negligence, and the statute of limitations. *Id.* at 543. This case establishes that Washington follows the most significant relationship rule pursuant to RCW 4.18.020(1)(a). This case demonstrates Washington often "engages in the business" of

enforcing foreign jurisdictions' statutes of limitations, even when it is a detriment to citizens of Washington state. While the current action does not involve a tort claim, it proves that nothing in Washington's public policy precludes the enforcement of a foreign judgment governed by a foreign jurisdiction's statute of limitations. Mr. Brett has cited no cases whatsoever supporting his challenge to Canada's authority to enforce its statutes of limitation, or why Washington should not abide by the current laws of Canada.

Mr. Brett's argument regarding laches is not persuasive as this is an ongoing maintenance obligation and each and every month is a new due date for the \$800.00 spousal maintenance payment. Mr. Brett admitted he was present when the Canadian order was signed, and he admits that he agreed to those payments for the remainder of Ms. Martin's life. (CP at 195; RP 116:11-13; 115:9-12.) He is now seeking to undo the deal he made, years later. While the Canadian court may be willing to modify or even terminate the spousal maintenance obligation, Ms. Martin believes that it would likely only apply to future payments and not retroactively.

Mr. Brett currently has a case pending in Canada. (RP 114:10-13.) His arguments regarding whether laches should bar enforcement of his obligation to pay spousal support and whether the Canadian order is manifestly incompatible with public policy are best suited for the Canadian

court where the order can be modified or terminated. RCW 26.21A.510. The issue for this court is a review of the agency's decision, i.e. whether the Notice of Support Debt and Registration should be confirmed as a valid, enforceable court order. CP at 193.

2. Mr. Brett does not properly identify or analyze relevant statutory bars to the court's action.

Mr. Brett has failed to articulate any incompatibility between Washington law and Canadian law. It has been definitely determined the Canadian order is 1) valid 2) binding 3) legal 4) made without any claims of duress, and 5) has not been in any way modified by a Canadian court with proper jurisdiction. CP at 54-55; CP at 195-196. Courts in the state of Washington have no authority to override a legal order issued by a Canadian court. CP at 195. Mr. Brett provides no citation whatsoever that establishes their position of incompatibility. Mr. Brett fails to include the controlling provision of RCW 26.21A.623:

- (1) Except as otherwise provided in subsections (3) and (4) of this section, a tribunal of this state *shall recognize and enforce* a foreign support agreement registered in this state. Wash. Rev. Code Ann. § 26.21A.623 (emphasis added).

Again, Mr. Brett has provided no valid exception to this rule. CP 194-196. Therefore the above provision is controlling. In fact, Washington is required to enforce the legitimate Canadian support agreement under the above terms. No case law is provided indicating otherwise. The decree's

failure to address the effect of remarriage is immaterial under the above terms.

Mr. Brett continually asserts, without citation, that enforcement of the underlying support agreement runs afoul of Washington public policy because the Canadian government eliminated the statute of limitations for spousal maintenance. However, Mr. Brett does not cite the underlying law nor does he provide any meaningful analysis to support his claim. The only additional citations provided in the entirety of Mr. Brett's brief are RCW 26.21A.515 and RCW 26.21A.530(1)(g).

RCW 26.21A.530(1)(g) holds in relevant part:

(1) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

...

(g) The Statute of limitation under RCW 26.21A.515 precludes enforcement of some or all of the alleged arrearages.

Wash. Rev. Code Ann. § 26.21A.530.

RCW 26.21A.515(2) holds in relevant part:

(2) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, *whichever is longer*, applies (emphasis added).

Wash. Rev. Code Ann. § 26.21A.515.

In the case at bar, the Mr. Brett has failed to cite a single reason why this court should overrule the lower court's order as it relates to these

statutes. The British Columbia Family Maintenance Enforcement Program has requested that DCS enforce a valid and enforceable support obligation against Mr. Brett. Who knows the statute of limitations better than the agency trying to enforce it? If Mr. Brett believes the Family Maintenance Enforcement Program is violating the Canadian statute of limitations in enforcing this Order, he should return to Canada to address that issue. The burden of demonstrating that the agency erroneously interpreted or applied the law rests with the party asserting the error. *Pres. Our Islands v. Shorelines Hearings Bd.*, 133 Wn. App. 503, 515, 137 P.3d 31, 37 (2006).

3. The rules of comity allow Washington to enforce this action without issue.

The doctrines of American law that mediate the relationship between the United States legal system and those of other nations are nearly all manifestations of international comity. *See Bank of Augusta v. Earle*, 38 U.S. 519, 589 (1839) (“[T]he laws of the one [country], will, by the comity of nations, be recognized and executed in another”). The comity doctrine allows a court, acting within its discretion, to give effect to the law and resulting orders of another jurisdiction out of deference and respect, considering the interests of each jurisdiction. *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 160, 744 P.2d 1032 (1987); *MacKenzie v. Barthol*, 142 Wn. App. 235, 240, 173 P.3d 980 (2007).

Under the Restatement (Second) of Conflict of Laws § 98 (1971 & Supp. 1989) (amended 1988), “[a] valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying claim are concerned.”

To the extent Mr. Brett has alleged any meaningful public policy, this court should invoke the doctrine of comity by enforcing a valid judgment that has never been amended by a Canadian court. CP at 194-196. If Mr. Brett seeks relief from this judgment, he should return to the Canadian court that ordered the judgment.

C. MR. BRETT SHOULD BE DENIED HIS ATTEMPT TO MAKE A FACTUAL CHALLENGE DURING THIS APPEAL.

The trial court will be upheld as long as there is “substantial evidence” in the record to support its decision. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959). An appellate court will not ordinarily substitute its judgment for that of the trial court even though it might have resolved the factual dispute differently. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 73 P.3d 369 (2003). The trial court is generally free to believe or disbelieve a witness in reaching factual determinations. *State v. Chapman*, 78 Wn.2d 160, 469 P.2d 883 (1970). Family law cases are met with a highly deferential standard. *See*,

Marriage of Rideout, 150 Wn.2d 337, 351-52, 77 P.3d 1174 (2003);
Marriage of Winn, 131 Wn. App. 1025 (2006). This deference should be
reinforced by the deference given to administrative agencies generally.
Supra.

At the administrative hearing, Mr. Brett was questioned on the
defenses to enforceability under RCW 26.21A.530. Mr. Brett admitted
(CP at 195) that he does not have any defenses under RCW 26.21A.530
which provides:

- (1) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
 - (a) The issuing tribunal lacked personal jurisdiction over the contesting party;
 - (b) The order was obtained by fraud;
 - (c) The order has been vacated, suspended, or modified by a later order;
 - (d) The issuing tribunal has stayed the order pending appeal;
 - (e) There is a defense under the law of this state to the remedy sought;
 - (f) Full or partial payment has been made;
 - (g) The statute of limitation under RCW 26.21A.515 precludes enforcement of some or all of the alleged arrearages; or
 - (h) The alleged controlling order is not the controlling order.
- (2) If a party presents evidence establishing a full or partial defense under subsection (1) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.
- (3) If the contesting party does not establish a defense under subsection (1) of this section to the validity or enforcement of a

registered support order, the registering tribunal shall issue an order confirming the order.

Specifically, Mr. Brett admitted in his testimony at the administrative hearing on June 30, 2016 that Canada had personal jurisdiction over him at the time the order was entered (CP at 195; RP 116:14-16.); that the order was not obtained by fraud and that he in fact agreed to the order (CP at 185; RP 116:17-22.); that the order had not been vacated, suspended or modified by a later order and that it was the only order at issue (RP 115:5-8.); that the Canadian court has not stayed the order pending appeal and that they are in fact still collecting on his “old age” pension (RP 117:22-23; 118:21-24.); that he had no other valid defenses (RP 117:24-25; 118:1-7.); that while some payments have been made that he should receive credit for he is still in arrears (RP 118:15-18.); that the state of limitations is pursuant to Canadian law, not Washington, and that it is an ongoing maintenance obligation with a new payment due each month (RP 115:13-22.); and that the order is in fact the controlling order (RP 119:8-13).

Because Mr. Brett does not have any defense to contesting the validity or enforcement of this registered support order, the ALJ confirmed registration of the order. CP at 191-192. The validity of the registered support order was again confirmed by the Honorable Judge

Joely O'Rourke of the Lewis County Superior Court. CP at 189-196. Ms. Martin asserts that this judicial review of the agency's action will result in the same conclusion: that Mr. Brett does not have a defense to the enforceability of the registered support order from Canada and that the order should be confirmed.

D. ATTORNEY'S FEES AND COSTS.

In family law cases on appeal, as at issue here, the court also has discretion to order one side to pay the other's attorney fees and costs. See RCW 26.09.140; RAP 18.1. In addition, RAP 18.9 authorizes an award of compensatory damages against a party who files a frivolous appeal. "An appeal is frivolous if there are no debatable issues upon which reasonable minds could differ, and it is so totally devoid of merit that there was reasonable possibility for reversal. *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 443, 730 P.2d 653 (1986). Ms. Martin is entitled to attorney's fees when opposing a frivolous action or defense. RCW 4.84.185. "A lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts." *Skimming v. Boxer*, 119 Wn. App. 748, 756-57, 82 P.3d 707, review denied, 152 Wash.2d 1016, 101 P.3d 108 (2004). (quoting *Tiger Oil Corp. v. Dep't of Licensing*, 88 Wn. App. 925, 938, 946 P.2d 1235 (1997)).

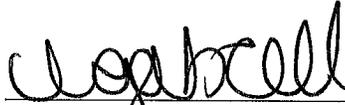
In the case at bar, the Mr. Brett has failed to adequately brief issues on appeal. Mr. Brett has failed to support any rational argument based on the facts of this case or the governing law therein. Frivolous appeals on a summary judgment motion entitle respondent to attorney's fees. RCW 4.84.185. Award of attorney's fees is supported by court rules and case law in this instance. RAP 18.1; *Stiles v. Kearney*, 168 Wn. App. 250, 267, 277 P.3d (2012).

V. CONCLUSION

Mr. Brett seeks to have this court set aside the valid and enforceable judgment from the Supreme Court of Ontario without presenting any legal or articulable basis for doing so. Mr. Brett has continuously sought relief from the courts of Washington State when he should be pursuing his arguments regarding the statute of limitations and equity from the court who issued the judgment in the first place. To agree with Mr. Brett's submission would mean that he's free of the claim for support and maintenance arrears under the Ontario order because he now resides in Washington. To accede to Mr. Brett's argument would invite forum shopping. Ms. Martin respectfully requests that this court deny Mr. Brett's appeal and uphold the June 29, 2017 order affirming the administrative decision from the Lewis County Superior Court. Ms. Martin respectfully requests her attorney's fees.

Respectfully submitted this 2nd day of April, 2018.

RODGERS KEE CARD & STROPHY P.S.



MEGAN D. CARD, WSBA#42904
Attorney for Respondent Caroline Martin

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on the date indicated below, I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

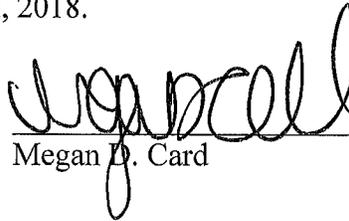
E. Allen Walker
2607 Bridgeport Way West, Ste. 2C
Tacoma, WA 98466-4725
Attorney for Petitioner

via email
awalker@tacomalegal.com

Lianne Malloy
Assistant Attorney General
1125 Washington St. SE
Olympia, WA 98501
Attorney for DSHS

via email
liannem@atg.wa.gov

DATED this 2nd day of April, 2018.



Megan D. Card

RODGERS KEE & CARD, P.S.

April 02, 2018 - 3:08 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51011-1
Appellate Court Case Title: Ronald Brett, Appellant v State of Washington et al, Respondents
Superior Court Case Number: 16-2-00869-9

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