

FILED
MAY 14, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

AARON SURINA,)	No. 36696-1-III
)	
Appellant,)	
)	
v.)	UNPUBLISHED OPINION
)	
SIRINYA POLARJ (SURINA),)	
)	
Respondent.)	

LAWRENCE-BERREY, J. — Aaron Surina appeals after the trial court dismissed his action to register a Thailand child custody order and imposed CR 11 sanctions against him. We affirm the trial court and impose sanctions against Mr. Surina for a frivolous appeal.

FACTS

In August 2017, one of the parties commenced a dissolution action against the other in Spokane County Superior Court. The trial court entered a temporary child support order and a temporary parenting plan. Mr. Surina litigated issues of child abuse and spousal abuse in that action. He never challenged the court’s jurisdiction. At some point, the court set a trial date of June 10, 2019.

No. 36696-1-III
Surina v. Polarj

Around March 2018, Mr. Surina traveled to Thailand and filed an action for dissolution and child custody. The Thailand court entered a default judgment against Sirinya Polarj and gave Mr. Surina custody of the parties' children. Mr. Surina returned to Washington and commenced this action to register the Thailand child custody order.

On February 5, 2019, Ms. Polarj moved to dismiss the newly filed action. In her declaration, Ms. Polarj stated she and her children are American citizens and she had no notice from the Thailand court of the action. Ms. Polarj argued the Spokane County Superior Court had exclusive jurisdiction over the dissolution and child placement proceedings. She also requested sanctions against Mr. Surina under CR 11 for filing a frivolous action.

Mr. Surina responded by asserting Ms. Polarj had notice of the Thailand proceedings, Thailand laws are superior to any other laws, and he filed the Thailand action to prevent an international abduction of his children. As evidence Ms. Polarj received notice, Mr. Surina attached a June 6, 2018 e-mail from a Thailand attorney. In that e-mail, the attorney wrote:

Dear [Mr. Surina],

The officer told me that they ask your ex-wife to come on 19 June. I could not confirm that she will come to the Juvenile Division or not.

But I will check with the officer again after 19 June that she come or no and I will tell you.

Clerk's Papers (CP) at 17.

The trial court found that Ms. Polarj met her burden to show the Thailand court did not have jurisdiction, and she did not receive proper legal notice before the Thailand order was issued. The trial court, therefore, granted Ms. Polarj's motion to dismiss this action.

The trial court also entered the following findings with respect to Ms. Polarj's request for CR 11 sanctions:

1. Aaron Surina's allegations asserted in the Thailand divorce and Custody pleadings, including but not limited to child abuse and spousal abuse, were litigated in the Spokane County Superior Court, Case No. 17-3-01817-0.^[1]
2. The Thailand custody order was obtained without formal legal notice to Respondent, Sirinya [Polarj].
3. Mr. Surina cites no legal authority supporting his assertion that Thailand's orders supersede the Washington State Superior [Court] Orders that were in effect when he traveled to Thailand to obtain the orders.
4. There is no basis to enforce the Thailand orders. The filing of this notice is a frivolous and vexatious action . . . without basis in law or fact and solely for the purpose of harassing the Respondent.

¹ Mr. Surina devotes much of his briefing in an attempt to relitigate issues of abuse. These issues were already litigated, are not in front of us, and we will not consider them.

CP at 107 (third alteration in original). Based on these findings, the trial court granted Ms. Polarj's request for CR 11 sanctions.

Mr. Surina timely appealed both orders.

ANALYSIS

DISMISSAL OF THE THAILAND CHILD CUSTODY ORDER

Mr. Surina contends the trial court erred by dismissing his action to register the Thailand child custody order. We disagree.²

A party can register an out-of-state child custody order in the State of Washington under RCW 26.27.441. The other party can contest the entry of the out-of-state custody order. RCW 26.27.441(4). If this occurs, the trial court holds a hearing and must confirm the registered determination unless the party contesting it demonstrates that:

- (a) The issuing court did not have jurisdiction under Article 2;
- (b) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2; or
- (c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of RCW 26.27.081, in the proceedings before the court that issued the determination for which registration is sought.

² Mr. Surina has not assigned error to the trial court's findings of fact; therefore, they are verities on appeal. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

RCW 26.27.441(4). A challenger need only prove one of the above defenses to block registration of an out-of-state custody order. Ms. Polarj asserted subsections (a) and (c) as defenses. Because we conclude below that the Thailand court did not have jurisdiction, we do not reach the question of whether there was adequate notice.

RCW 26.27.211(1) provides, in relevant part:

[A] court of this state that has made a child custody determination consistent with RCW 26.27.201 or 26.27.221 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

Here, the trial court made an initial child custody determination pursuant to RCW 26.27.201. There is no evidence the trial court lost jurisdiction, as provided in RCW 26.27.211(1)(a) or (b). Therefore, Ms. Polarj established the trial court had exclusive and continuing jurisdiction over the parties' dissolution action, and the Thailand court was without jurisdiction to enter its child custody order. We conclude the trial court did not err by dismissing Mr. Surina's action to register the Thailand order.

CR 11 SANCTIONS

Mr. Surina contends the trial court erred when it imposed CR 11 sanctions against him. We disagree.

CR 11 sanctions aim to prevent baseless filings, filings made for improper purposes, and abuses of the judicial system. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994). If a party engages in the aforementioned conduct, the trial court can impose an appropriate sanction, including a reasonable attorney fee. CR 11(a).

We review a trial court's decision to impose CR 11 sanctions for an abuse of discretion. *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707 (2004). "An abuse of discretion occurs only when the decision of the court is 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *State v. McCormick*, 166 Wn.2d 689, 706, 213 P.3d 32 (2009) (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

The trial court did not abuse its discretion by imposing CR 11 sanctions against Mr. Surina. The record amply supports the trial court's findings that Mr. Surina did not provide proper notice of the Thailand action to Ms. Polarj, Mr. Surina provided no legal authority for his argument the Thailand order superseded the Washington temporary orders, and there was no legal basis to enforce the Thailand order. Mr. Surina's filing of

this action was factually and legally baseless. We conclude the trial court did not err by imposing CR 11 sanctions.

ATTORNEY FEES ON APPEAL

Ms. Polarj requests attorney fees and costs under RAP 18.9. RAP 18.9 authorizes an award of attorney fee sanctions if an appeal is frivolous. When determining whether an appeal is frivolous, the court will consider the following factors:

“(1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.”

Espinoza v. Am. Commerce Ins. Co., 184 Wn. App. 176, 202, 336 P.3d 115 (2014)

(internal quotation marks omitted) (quoting *Griffin v. Draper*, 32 Wn. App. 611, 616, 649 P.2d 123 (1982)).

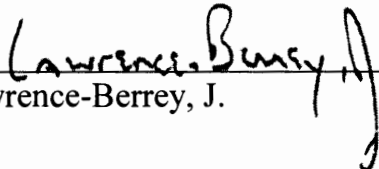
Given these standards, we determine Mr. Surina’s appeal is frivolous. The record confirms there are no debatable issues of fact or law and the appeal is so totally devoid of merit there is no reasonable possibility for reversal. Also, Mr. Surina never cited the record, he never cited legal authority, and his numerous assertions are so muddled they

No. 36696-1-III
Surina v. Polarj

inhibit basic appellate review. Subject to Ms. Polarj's compliance with RAP 18.1(d), we grant her request for reasonable attorney fee sanctions against Mr. Surina.

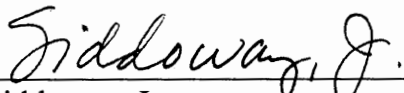
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.




Lawrence-Berrey, J.

WE CONCUR:



Siddoway, J.



Fearing, J.