

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NO. 39719-6-II

CLARK COUNTY SUPERIOR COURT

Case No. 09 2 00506 4

RALLA KLEPAK,

Plaintiff,

v.

THORSTEN LUNDSGAARDE,

Respondent.

COURT OF APPEALS
DIVISION II
09/11/10 11:10
STATE OF WASHINGTON
BY _____



BRIEF OF RESPONDENT/PLAINTIFF

Diana C. Tehrani
Attorney for Plaintiff
1409 Franklin Street, Suite 200
Vancouver, WA 98660
360 695-3200

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INTRODUCTION

This case reviews whether an Illinois Order is entitled to full faith and credit within the State of Washington.

The Superior Court in Clark County Washington (Trial Court), conducted a series of evidentiary hearings beginning in February of 2009. After conducting these evidentiary hearings the Trial Court determined that a March 14, 2006 Agreed Order (Order) was valid and enforceable within the State of Illinois.

Appellant, Thorsten Lundsgaarde, originated a dissolution proceeding in Cook County, Illinois versus Anna Benjakul. Respondent, Ralla Klepak, was appointed as a child representative in this matter. It is uncontroverted that on March 14, 2006 an agreement was reached in Cook County Illinois between Lundsgaarde, Benjakul and their respective attorneys regarding a parenting plan. This agreed parenting plan was signed by Appellant and his Counsel as well as other interested parties and a Cook County Illinois Judge. A copy of that signature page is attached as appendix 1.

The signature page of the parenting plan contained a provision for attorney fees for the child representative. This provision read as follows:

16. ATTORNEYS' FEES. Each party shall be responsible for his/her own attorney fees that he/she has incurred to date. As of March 12, 2006, the remaining fees for the Child Representative are \$31,652.44, as per separate orders entered concurrently.

An Agreed Order was prepared and entered on the same day as the parenting plan which reflected the total fee agreement for payment of the child advocate. This Order was stamped with Judge Elizabeth Loreda Rivera's stamp and Entered by Dorothy Brown, Clerk of the Circuit Court of Cook County that same day, March 14, 2006. The resulting Order is the subject of the present dispute before this Court.

The Agreed Order divides the \$31,652.44 agreed to within the parenting plan by fifty percent reflecting Appellant's share of the agreed fee, or \$15,826.22. The Order also includes a negotiated concession which eliminates statutory interest if the agreed amount was paid by August 31, 2006. A copy of the Agreed Order is attached as appendix 2.

The Order was not paid as agreed and a certified copy of the Order was entered in Clark County Washington in February of 2009.

Litigation continued in Illinois after entry of the March 14, 2006 Order. As a result, additional fees were generated by the child representative. A separate order for payment resulted for work subsequent to the March 14, 2009 Order. Appellant references this second Order in favor of the child representative in his appellate brief. The second Order noted by the Appellant and attached to the Appellant's brief is not yet ripe for review.

The Trial Court conducted a series of evidentiary hearings surrounding the validity of the Order. The Order contained the stamp of Cook County Circuit Court Clerk Dorothy Brown, and confirmed entry on March 14, 2006, contemporaneous with the agreed parenting plan. The Order contained a raised seal of certification from Illinois on the back of the document.

Appellant Lundsgaarde claimed no knowledge of the Order, declaring within his affidavit that the Order "appear(s) to be ex parte". The Trial Court responded to Appellant Lundsgaarde's controversion of the Order by requesting proof from the court of original jurisdiction that the Order was valid and enforceable within Illinois. Respondent Klepak produced Memoranda of Judgment in Illinois, filed a motion to have this heard on April 2, 2009, and notified parties, including Appellant Lundsgaarde, of the Motion for entry of Memoranda of Judgment. The resulting affidavit of delivery and Memorandum of Judgment are attached as appendix 3. Appellant Lundsgaarde claimed in his

declaration that no notice of this hearing was given to him. Appellant's declaration is attached as appendix 4.

After receiving the Memorandum of Judgment, the Trial Court requested an additional evidentiary hearing to review evidence that the Illinois court had conducted a review of the record surrounding the Order and had found it to be valid and enforceable within Illinois. Respondent Klepak submitted a Motion, Order, and Affidavit to the Illinois court and noted the hearing for May 22, 2009. These are attached as appendix 5. In response Appellant submitted a five page Motion to the Illinois court. A copy of the transcript of this hearing is attached as appendix 6. The Illinois court made a review of the record and held that the March 14, 2006 Order was agreed, the Order was valid, and that no claim had been made in Illinois regarding the validity of the Order.

Evidence from the May 22, 2009 review of the record and verification of the Order was submitted to the Trial Court. Based on this and prior evidentiary hearings, the Trial Court held that the March 14, 2006 Order was valid, thus entitled to full faith and credit within the State of Washington.

Agreed findings of fact were produced by Appellant and are attached as appendix 7. Unchallenged findings of fact are verities on appeal, Dep't. of Labor & Ind. v. Kantor, 94 Wn.App.764 (1999), thus the judgment's entry and enforceability has been agreed and settled.

ISSUES BEFORE THE APPELLATE COURT

The present issues are:

- 1) Whether the Trial Court abused its discretion when it held that the March 14, 2006 was valid and enforceable within the State of Illinois.
- 2) Whether the March 14, 2006 judgment is entitled to full faith and credit within the State of Washington.

Standard of Review and Burden of Proof:

Issues of fact are reviewed for abuse of discretion by the Trial Court. The Trial Court conducted a series of evidentiary hearings regarding the validity of the March 14, 2006 Illinois Order. The Trial Court's holding that the Order was valid and enforceable within the court of original jurisdiction was based upon the factual evidence submitted, thus entitled to a review under an abuse of discretion standard.

Once the trial court completed evidentiary hearings, it addressed the second issue for review: whether the Order was entitled to full faith and credit. This is a legal determination. Questions of law are reviewed de novo.

Evidentiary hearings occurred which were appropriate to the issue before the court, this was not a summary judgment decision.

Unchallenged findings of fact are verities on appeal. Dep't. of Labor & Indus., supra. On August 18, 2009 the trial court made the following uncontroverted findings of fact regarding the March 14, 2006 Illinois Order:

1. On March 14, 2006 a Judgment was entered in an amount totaling \$15,826.22 in favor of Ralla Klepak and against Dr. Thorsten Lundsgaarde in a Cook County, Illinois Court of law;
2. No final ruling is being entered regarding the August 27, 2007 Cook County, Illinois award and further evidentiary proceedings are required to adjudicate that matter.
3. As there are multiple claims involved (i.e. two awards), judgment is directed as to the March 14, 2006 Cook County, Illinois award to Ralla Klepak in the principal sum of \$15,826.22 (the first award);
4. This Judgment was entered and is enforceable within the State of Illinois.

5. The defendant now resides in Clark County Washington.

These unchallenged findings of fact are verities on appeal, thus Appellant has conceded that the March 14, 2006 Order is valid and enforceable within the State of Illinois in favor of Respondent. A copy of these findings together with the Trial Court's Order for Enforcement of Foreign Judgment is attached as appendix 7.

The burden of proof is on Appellant to show why a valid Illinois judgment should not be afforded full faith and credit within the State of Washington.

ARGUMENT

1) Full Faith and Credit Applies:

Both the Federal Constitution and the Constitution of the State of Washington require full faith and credit be given to the judicial proceedings of sister states. Article 4, Section 1 of the United States Constitution states: Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.

The full faith and credit provision requires that where a state court has jurisdiction of the parties and subject matter, its judgment controls in other states to the same extent as it does in the state where rendered. A judgment rendered by a court of one state, if valid, is entitled to recognition in the courts of another state by virtue of the full faith and credit clause. In re Marriage of Effert, 45 Wn.App.12 (1986). The Trial Court rightly limited its review to an inquiry regarding the validity of the Illinois judgment. Once the Trial Court held that the Order was valid it rightly determined that the Order was entitled to full faith and credit.

If a foreign court had jurisdiction over the parties and of the subject matter, and the foreign judgment is valid where it was rendered, a court of this state must give full faith and credit to the

foreign judgment and regard the issues thereby adjudged to be precluded in a Washington proceeding.

In re Estate of Wagner, 50 Wn.App. 162, (1987).

This constitutional provision has been codified by both Congress, 28 U.S. C. section 1738 (1994), and the Washington Legislature, RCW 6.36.025.

It is uncontroverted that the Illinois court had jurisdiction over the subject matter and the Appellant. Appellant initiated the original action for dissolution in Cook County, Illinois. Any objection to the underlying case, including a due process claim, should have been brought in Illinois. The action before the Court in Washington is limited to the validity and enforceability of the judgment.

The court has consistently recognized that, in order to fulfill this constitutional mandate, “the judgment of a State Court should have the same credit, validity, and effect, in every other Court of the United States, which it had in the State where it was pronounced.” Riley v. New York Trust Co., 315 U.S. 343,(1942).

2) Finality of Litigation:

The full faith and credit clause provides a means for ending litigation by putting to rest matters previously decided between adverse parties in any state or territory of the United States. Were it not for this constitutional provision, adversaries could wage again their legal battles whenever they met in other jurisdictions. Riley, supra as quoted In re Estate of Tolson, 89, Wn.App. 21, (1997).

If a litigant were allowed to move and re-litigate when he or she was not satisfied with a result, finality of litigation would never be reached. The full faith and credit clause provides a means for ending litigation by putting to rest matters previously decided between adverse parties in any state or territory of the United States. In re Estate of Tolson, supra.

3) Burden of Proof:

A valid foreign judgment may be collaterally attacked only if the court lacked jurisdiction or constitutional violations were involved. Absent these grounds, a court of this state must give full faith and credit to the foreign judgment and regard the issues thereby adjudged to be precluded in a Washington proceeding. State v. Berry 141, Wn.2d 121 (2000), quoting in re Estate of Wagner, supra.

As the Appellant, Thorsten Lundsgaarde bears the burden of proof to show that the Illinois Order is not entitled to full faith and credit within Washington State. State v. Berry, supra, held that absent jurisdictional or constitutional grounds, a foreign judgment cannot be collaterally attacked. No jurisdictional grounds have been raised on appeal. Appellant relies upon an alleged constitutional violation.

Appellant writes in page one of his brief that in regards to the March 14, 2006 Order, "it was entered without notice to him in violation of his due process rights under the Constitution."

The facts in evidence controvert this allegation. A parenting plan addressing payment of fees was signed by Appellant and his attorney concurrent with production and entry of the Order. The signed parenting plan indicates that Appellant was aware of his obligation to Ms. Klepak, and agreed to pay his fifty percent share of her fees.

Appellant also agreed with finding of facts entered by the trial court on August 18, 2009 which admit that a valid and enforceable Illinois judgment was entered against him on March 14, 2006.

Appellant has not met his burden of proof regarding entry of the Order being a violation of his constitutional rights.

4) Narrow Exception Distinguished:

Full faith and credit is given to judgments issued within sister states. Only a few narrow exceptions will prevent a foreign judgment from being enforceable. Appellant relies upon R.R. Gable, Inc. v. Burrows, 32 Wn.App. 749, (1982). In R.R. Gable a default judgment was taken after the defendant attempted to appear, but did not appear, due to clerical error.

R.R. Gable is distinguished from the present matter in that Appellant's judgment was not taken by default. Appellant not only appeared in, but initiated, the action which gave rise to the Order he now attempts to avoid. The March 14, 2006 Order comports with agreements made in a parenting plan signed and entered that same day. A May 22, 2009 review of the Illinois record signed by Associate Judge Nancy J. Katz supports Appellant's full participation in the Illinois litigation which gave rise to the Order.

5) Application of the Uniform Enforcement of Foreign Judgments Act

Washington has adopted the Uniform Enforcement of Foreign Judgments Act (UEFJA). RCW

6.36.010 Definitions reads:

As used in this chapter: (1) "Foreign judgment" means any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state.

(4) "Judgment debtor" means the party against whom a foreign judgment has been rendered.

The March 14, 2006 Agreed Order is an Order of the court meeting the definition found within 6.36.010 and entitled to the application of the UEFJA. Appellant alleges that the Agreed Order, stamped and certified by Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois and entered contemporaneously with the agreed parenting plan, does not meet Illinois criteria as a valid and enforceable judgment within the State of Illinois. This assertion is controverted by the Order itself which bears the Judge's stamp as entered, and the raised seal of certification within Illinois, the

Memorandum of Judgment signed by Associate Judge Nancy J. Katz on April 2, 2009 which verified Ralla Klepak is owed the sum of \$15,826.22 by Thorsten Lundsgaarde arising from a judgment entered in Cook County Illinois Court on March 14, 2006, and the May 22, 2009 Order signed by Associate Judge Nancy J. Katz attesting to the validity and enforceability of the Order within Illinois.

Appellant Lundsgaarde is a party against whom the foreign judgment has been rendered, so is a Judgment debtor under RCW 6.36. The statute does not define "Judgment Creditor" but Black's Law Dictionary defines "Judgment Creditor" as:

A person against whom a money judgment has been entered but not yet satisfied.

Child representative Klepak meets this definition.

The March 14, 2006 Agreed Order entered in Illinois meets the definition under RCW 6.36 of a foreign judgment, thus is entitled to the protections afforded under the UEFJA.

RCW 6.36.045 provides for a stay of enforcement if a debtor demonstrates that an appeal on the foreign judgment is pending or will be taken, or that a stay of execution has been granted. The May 22, 2009 signed review of the record recites that "No claim presently exists challenging the validity of these orders within the original jurisdiction of Cook County Illinois", and that "Thorsten Lundsgaarde and Ralla Klepak agreed to an Order entered on March 14, 2006 in which Thorsten Lundsgaarde agreed to pay to Ralla Klepak the stipulated and reduced amount of \$15,826.22."

The intent of UEFJA adoption was to provide for the streamlined enforcement of foreign judgments throughout the land. Historically a party seeking to enforce in a sister state had to bring a separate action in that state. Mike Smith Pontiac GMC Inc. v. Mercedes-Benz of N. America, Inc., 356 Md.542,(1999). The UEFJA merely provided a streamlined procedure for enforcement.

Under the UEFJA if a judgment is valid and enforceable within a sister state, it should be enforced within the State of Washington as though it were in the issuing state.

Appellant asserts that because child advocate Klepak was not listed in the caption of the original Illinois case, she is not a creditor entitled to UEFJA protections. No authority has been provided for this assertion. Appellant meets the definition under UEFJA of a “judgment debtor” and child representative Klepak meets the definition within Black’s Law Dictionary of a “judgment creditor”.

The statute is intended to make uniform the laws of those states which enact it, and is to be interpreted and construed as to effectuate its general purpose. RCW 6.36.900, Construction. The requirement for application of RCW 6.36 is that the seeker holds a judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state. Child representative Klepak is such a person, thus entitled to enforcement under the UEFJA.

CONCLUSION

The Trial Court did not error in holding that the March 14, 2006 Order which is valid and enforceable within the State of Illinois.

The Trial Court did not error in holding that the Illinois order is entitled to full faith and credit within the State of Washington.

The August 18, 2009 Judgment of the Trial Court in Washington should be upheld on appeal.

Respondent is entitled to recover the Judgment amount, statutory interest from the date of entry, costs and attorney fees on appeal.

RESPECTFULLY SUBMITTED this 3rd day of November, 2009.



Diana C. Tehrani, WSBA#40123
Of Attorneys for Respondent

APPENDIX

1. Parenting Plan signature page, March 14, 2006.
2. Agreed Order, March 14, 2006.
3. Affidavit of Delivery and Memorandum of Judgment, April 2, 2009.
4. Declaration of Appellant Thorsten Lundsgaarde, April 21, 2009.
5. Motion, Order, Affidavit of Ralla Klepak, May 22, 2009.
6. Transcript of May 22, 2009 Illinois hearing.
7. Trial Court Order re Enforceability of Foreign Judgment, August 18, 2009.

matter's taken off call.
EXCEPT for her claim v. Anna

15. **DAYCARE EXPENSES.** Thorsten's obligation to pay daycare expenses

is terminated *instanter*.

16. **ATTORNEYS' FEES.** Each party shall be responsible for his/her own

attorneys' fees that he/she has incurred to date. As of March 2, 2006, the remaining fees

for the Child's Representative are ~~\$21,522.41~~ ^{\$} 31,652.44, as per separate *orders entered concurrently.*

17. Each party shall pay ~~of~~ ^{of} the fees for the Child's Representative that ~~have been incurred to date.~~ ^{with the fees yet paying \$24,213 and ANNA paying \$7,444} This Order supersedes all other modifications of the

parenting schedule and child support, but, the Final Divorce Decree remains in full force and effect to the extent it does not conflict with the terms herein. - *above portion of Judgment Pages 3, 4, 5-14, part of 5, 16-19, 20-23, paid*

18. *The Child representative is discharged.*

[Signature]
Thorsten Lundsgaarde, Petitioner

[Signature]
Anna Benjakul, Respondent

[Signature]
Audrey L. Gaynor
Attorney for Thorsten Lundsgaarde

[Signature]
Joy Feinberg
Attorney for Anna Benjakul

[Signature]
Ralla Klepak
Child's Representative

19. *In the event Thorsten cancels a holiday visit with Alex, there shall be no make up time provided to him.*

Audrey L. Gaynor & Associates, P.C.
Attorneys for Thorsten Lundsgaarde
20 S. Clark Street, Suite 1620
Chicago, Illinois 60603
312-201-0030
Attorney No. 36410

ENTERED
JUDGE ELIZABETH MOREDO RIVERA - 1745
MAR 14 2006
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
DEPUTY CLERK
JUDGE

20. *All pending Petitions are hereby dismissed.*

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

1 RMD

Thorsen Lundsgaard

v.

Auna Benzalud

No. 00 01729

**AGREED
ORDER**

This cause coming on to be heard on the Final Fee award
Kella Klepal as Child Representative and ~~Respondent~~ ^{Petitioner} and Kella
Klepal reaching an agreement & the Court being advised in
Remise

IT IS ORDERED AS FOLLOWS:

1 Thorsen Lundsgaard shall pay to Kella Klepal as
for Final Fees the amount of \$15,826.22 and judgment in
that amount is entered concurrent with the entry of ~~presenting~~
Order of same date.

2 In the event Petitioner makes payment to Kella Klepal in lump
sum in the amount of \$15,826.22 on or before 8/31/06, then upon receipt

Atty. No.: 25521

Name: Kella Klepal

Atty. for: Child Representative

Address: 5158 N. Ashland Ave

City/State/Zip: Chicago IL 60640

Telephone: 773 861 6578

ENTERED: on said judgment shall be
released and satisfied by no other
and unless

Dated: _____

ENTERED
JUDGE ELIZABETH LOREDO RIVERA, 1765
MAR 14 2006
JUDGE DOROTHY BROWN
CLERK OF THE CIRCUIT
OF COOK COUNTY

DOROTHY BROWN, CLERK OF THE COURT

5

I hereby certify that the document to which this certification is affixed is a true copy.

Date

4/21/09 Dorothy Brown

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL



2871 - Certificate of Mailing Filed

NOV 17 10 01 CDR 0005

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

WHERE THE MARRIAGE CUSTODY
 SUPPORT OF: ORDER OF PROTECTION
 PARENTAGE OTHER _____

NO. 00 D 17293

THORSTEN LUNDSGAARDE
PETITIONER

AND

CALENDAR: 21

ANNA BENJAKUL
RESPONDENT

NOTICE OF MOTION

To: Dr. Thorsen Lundsgaarde 400 West 24th Vancouver, WA 98660
Anita Alvarez SA, Eric Garcia ASA 28 N. Clark St. 3rd Fl Chicago IL 60606
Anna Benjakul 323 W. Schiller 2E Chicago IL 60610

On April 2 2009 at 10 :00A. m., or as soon thereafter as course
may be heard, I shall appear before the Honorable JUDGE KATZ,
or any judge sitting in his/her stead, in courtroom number 1902
in Richard J. Daley Center, Chicago, IL ~~OR~~ the courthouse located at _____

and present the attached pleading requesting:

MOTION FOR ENTRY OF MEMORANDA OF JUDGMENT

Atty.No. 25521
Name: Ralla Klepak
Corney for: Child Representative
Address: 5158 North Ashland Avenue
City/State/Zip: Chicago IL 60640
Telephone: 773-561-6569

Atty. Signature: *Ralla Klepak*

CERTIFICATE AND AFFIDAVIT OF DELIVERY PERSONALLY, BY MAIL, OR BY FACSIMILE

The undersigned hereby certifies under penalties of perjury as provided by law pursuant to
35 ILCS 5/1-109, that the above notice and any attached pleadings were placed in the U.S. Mail at
5158 North Ashland Chicago, with first class postage prepaid and directed to all parties of record at the address(es) :
to be delivered before 5:00 p.m. on March 26, 2009

Ralla Klepak
(Signature)

RALLA KLEPAK
(Print Name)

(4/27/99) CCG 0015

Memorandum of Judgment

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

RALLA KLEPAK

v.

THORSTEN LUNDSGAARDE

Recorder's Stamp

No. 00 D 17293

MEMORANDUM OF JUDGMENT

On MARCH 14, 2006, judgment was entered in this court
in favor of the plaintiff RALLA KLEPAK

and against defendant THORSTEN LUNDSGAARDE

whose address is 400 WEST 24TH VANCOUVER WA 98660

in the amount of \$ 15,826.22.

Atty. No.: 25521

Name: RALLA KLEPAK

Atty. for: CHILD REPRESENTATIVE

Address: 5158 NORTH ASHLAND AVENUE

City/Zip: CHICAGO IL 60640

Telephone: (773) 561-6568

Judge

Judge's No.

ASSOC. JUDGE NANCY J. KATZ

APR 02 2009

CIRCUIT COURT - 1796

I hereby certify that the document to which this
certification is affixed is a true copy.

Date

04.02.09

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL



Dorothy Brown

SCANNED

FILED

2009 APR 22 PM 4: 04

Sherry W. Parker, Clerk
Clark County

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

Ralla Klepak

Case No: 09-2-00506-4

v.

DECLARATION OF THORSTEN
LUNDSGAARDE IN OPPOSITION TO
EXECUTION OF FOREIGN JUDGMENT

Thorsten Lundsgaarde

I am defendant in this matter and I make this declaration on personal knowledge.

I have reviewed the Judgment Summary filed in this court by Ralla Klepak. The court should note that she is not a judgment creditor as she claims. Indeed, as is plain by the pleadings in the Illinois case, she was not even a party to that action. The parties were my ex-wife, Anna Benjakul and me. There has never been a judgment entered against me in any proceeding Klepak v. Lundsgaarde.

With regard to due process considerations in the Illinois matter, the "judgments" for Ralla Klepak were not agreed orders. Neither I nor my Illinois attorney, Audrey Gaynor, signed the "Agreed" orders. On its face, they appear to be ex parte documents prepared by Ms. Klepak and not signed by the judge.

With respect to the memorandum of judgments entered apparently on April 2, I did not have notice these were being applied for or an opportunity to be heard prior to their entry. Indeed,

1 the caption in that case was not even one that existed in the Illinois proceedings. I have never been
2 a party to litigation with Ms. Klepak.

3 When I was served with the order to appear at judgment debtor examination, I did not have
4 the opportunity to retain counsel. I thought that the order was valid. Had I known that the order
5 was void for failure to comply with Washington law, I would not have attended the exam nor
6 disclosed personal financial information on a voluntary basis.

7 I declare under penalty of perjury under the laws of the State of Washington that the
8 foregoing is true and correct.

9
10
11
12 DATED this 21st day of April 2009 at Vancouver, Washington.

13
14 
15 _____
16 Thorsten Lundsgaarde

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – DOMESTIC RELATIONS DIVISION

IR RE THE MARIAGE OF)
)
THORSTEN LUNDSGAARDE,) No. 00 D 17293
Petitioner,)
)
and)
)
ANNA BENJAKUL,)
Respondent.)

RALLA KLEPAK,)
)
Judgment Creditor,)
vs.)
)
THORSTEN LUNDSGAARDE.)
Judgment Debtor.)
)

MOTION

Ralla Klepak hereby moves the Court for entry of an order supporting the circumstances surrounding and validity of two judgments entered in her favor versus Thorsten Lundsgaarde, MD for services provided as a Child Representative in a child custody action. This Motion is based on the Memorandum below, the Court file in this matter, and the declarations of Ralla Klepak and Jonathan Shimberg, attached hereto. A proposed form of Order is attached.

Dated this 1st day of May, 2009.

RALLA KLEPAK AND ASSOCIATES
By: Ralla Klepak
Ralla Klepak

MEMORANDUM

Summary of Argument.

Both Cook County Orders are valid Judgments under the laws of the State of Illinois. Both were signed by the Judge, stamped by the Clerk of court and bear the seal of the Clerk, and signature by the Clerk attesting to their validity. Both Cook County Orders have been validly entered within Cook County, Illinois, the original jurisdiction for the action giving rise to the Orders. Both Cook County Orders are entitled to Full Faith and Credit under the United States Constitution. No action is currently pending within Cook County regarding the validity of these Orders and the Judgments they give rise to.

FACTS

On March 14, 2006 and August 26, 2007 judgments were entered in an amount totaling \$27,733.09 in favor of Ralla Klepak, Child Representative and Judgment Creditor and against Thorsten Lundsgaarde Plaintiff and Judgment Debtor. These Orders were made and entered in the above matters to compensate the Judgment Creditor for services provided as a Child Representative in a modification of child custody cause of action filed in the Circuit Court of Cook County, Illinois, Case Number 00D 17293

These judgments were properly signed by the Judge, attested to by the Clerk, and entered within the State of Illinois. Each judgment is presently enforceable, not being time barred within their original jurisdiction of Illinois for the period of seven years. Interest has been calculated at the Illinois statutory rate of 9% per annum.

The first order in the amount of \$15,826.22 entered March 14, 2006 was signed concurrent with an agreed custody plan providing for payment of the Child Representative. Thorsten Lundsgaarde and his Counsel both agreed to and signed the custody plan.

Subsequently Dr. Lundsgaarde was held in contempt of Court for failing to comply with Orders entered by the Judge presiding. Dr. Lundsgaarde left the jurisdiction and has failed to make any payments to the Child Representative in satisfaction of the Orders entered against him.

Judgment Creditor, Ralla Klepak, seeks enforcement of these two valid judgments in Judgment Debtor's new jurisdiction of Clark County Washington. The purpose of this Motion is to provide supplemental information for the Judge within Dr. Lundsgaarde's current jurisdiction of Clark County, Washington supporting each and both Cook County Judgments to afford them Full Faith and Credit.

Judgment Summary

Judgment Creditor

Ralla Klepak

Judgment Debtor

Thorsten Lundsgaarde

Principal Judgment Amount \$27,733.09

Interest to date on Judgment at Illinois rate of 9% \$5,672.60

Costs (filing and service) \$300.00

Principal Judgment shall bear interest at Judgment rate per anum 9%

Judgment Expiration Dates: Judgment #1 \$15,826.22 expires March 13, 2013

Judgment #2 \$11,906.87 expires August 26, 2014

ARGUMENT

Both Orders create valid Judgments in Illinois entitled to Full Faith and Credit.

Each Order complies with Illinois requirements. Proper filing of each Order occurred. The proper entry of each Order create valid Judgments versus Dr. Lundsgaarde. Each and both Orders contain the signature of the Judge and the stamp of the Clerk.. Each and both Orders contain the seal, stamp, and attesting signature of the Clerk. Each and both Judgments is/are presently enforceable within the State of Illinois. Each and both Judgments is/are entitled to Full Faith and Credit within other jurisdictions.

Neither Order and Judgment was obtained ex-parte.

The March 14, 2006 Order was not ex-parte. Both Dr. Lundsgaarde and his then Counsel were present and agreed to the Order. Both Dr. Lundsgaarde and his Counsel signed the agreed custody plan concurrent with the creation and entry of the Order. This agreed custody plan provided for payment of fees to the Child Representative. The second Order of August 26, 2007 was not ex-parte. Dr. Lundsgaarde was an active participant in those proceedings, having sought leave of the Court to be allowed to participate in matters then pending before the Court subsequent to the 2006 settlement via telephone conference with a court reporter present during telephone conference hearings. Each of these conferences were specially set at a time and date certain wherein the Court, Counsel, and the court reporter conducted formal hearings with Dr. Lundsgaarde on a speaker phone in the chambers of Judge Nancy Katz. The hearings were conducted pursuant to the same rules of civil practice as if Dr. Lundsgaarde were before the Court in person.

Each of the two Orders signed by the Judge and stamped, sealed, and signed by the Clerk represent authenticated documents in compliance with Illinois statutes.

Within the Circuit Court of Illinois, an Order bearing the signature of the Judge, the

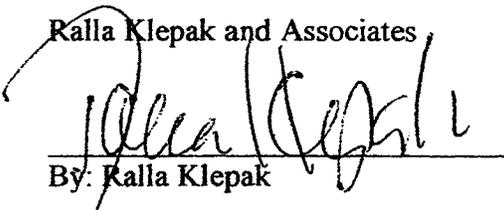
stamp, seal, and signature of the Clerk, and filed thereafter are valid Illinois Judgments. The two Orders attached hereto are two such valid Illinois Orders entitled to Full Faith and Credit within sister states.

Within the State of Illinois Ralla Klepak is a Judgment Creditor and Dr. Lundsgaarde is a Judgment Debtor with respect to the two Orders that are the subject of this Memorandum.

No requirement exists that a creditor be present in the caption on the underlying suit which gives rise to the debt. The Child Representative in this case received valid Orders for payment, thus became a Judgment Creditor entitled to payment. The filing of an additional suit where valid Orders for payment already existed would be redundant and improper under Illinois law.

This 1st day of May, 2009.

Ralla Klepak and Associates


By: Ralla Klepak

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – DOMESTIC RELATIONS DIVISION

IR RE THE MARIAGE OF)
)
THORSTEN LUNDSGAARDE,) No. 00 D 17293
Petitioner,)
)
and)
)
ANNA BENJAKUL,)
Respondent.)

RALLA KLEPAK,)
)
Judgment Creditor,)
vs.)
)
THORSTEN LUNDSGAARDE.)
Judgment Debtor.)
)

ORDER

This matter comes before the undersigned on motion of Ralla Klepak, Judgment Creditor, the parties having been given due notice, and the Court having heard argument of counsel and having reviewed the records and files herein, makes the following;

FINDINGS OF FACT

1. There is a Cook County proceeding entitled In re the Marriage of Thorsten Lundsgaarde and Anna Benjakul, 00 D 17293 in which Ralla Klepak was appointed Child Representative for the minor child of the parties..
2. Two Orders resulted in favor of Ralla Klepak and against Thorsten Lundsgaarde ordering payment of services for the Child Representative, Ralla Klepak.
3. That Thorsten Lundsgaarde and Ralla Klepak agreed to an Order entered on March 14, 2006 in which Thorsten Lundsgaarde agreed to pay to Ralla Klepak the stipulated and reduced amount of \$15,826.22.

PROPOSED ORDER

4. The additional Order for \$11,906.87 resulted based upon proceedings where Thorsten Lundagaarde had received proper notice under Illinois law, ~~in which Thorsten Lundsgaarde had participated in by telephone conference.~~
5. Both Orders were duly entered by the Court and are presently valid within the State of Illinois.
6. No claim presently exists challenging the validity of these orders within the original jurisdiction of Cook County Illinois.

CONCLUSIONS OF LAW

1. The Cook County Circuit Court Orders of March 14, 2006 and August 26, 2007 are valid Judgments under Illinois law.
2. Both Orders are entitled to Full Faith and Credit within sister-states.
3. Both Judgments are presently enforceable under Illinois law.
4. That this Court has previously signed Memorandum of judgment as to each judgment.

Done in Open Court this _____ day of May, 2009.



JUDGE NANCY KATZ, Circuit Court Judge

ASSOC. JUDGE NANCY J. KATZ

MAY 22 2009

CIRCUIT COURT-1796 

Presented by:

Ralla Klepak,
Judgment Creditor
5158 North Ashland Avenue
Chicago IL 60640
773-561-6568
Attorney No 25521

PROPOSED ORDER

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I hereby certify that the document to which this
affidavit is affixed is a true copy.

5-22-09 *Deborah Beam*

Clerk of the Circuit Court
of Cook County, IL



STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

AFFIDAVIT OF RALLA KLEPAK

RALLA KLEPAK, Affiant, being first duly sworn, under oath states as follows:

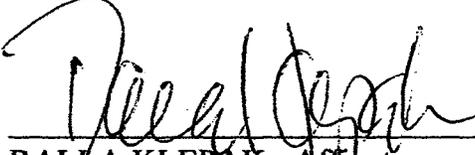
1. My name is RALLA KLEPAK; date of birth 12/20/36 and I am licensed to practice law in the State of Illinois since 1964 and before the United States Supreme Court since October 20, 1980.
2. I maintain professional offices at 5158 N. Ashland Avenue, Chicago, Il. 60640
3. I am an adjunct Professor in the LL.M Program of Chicago-Kent College of Law, currently teaching CHILDREN AND THE LAW, and in prior years, having taught FORENSIC PSYCHOLOGY and ADVANCED PRINCIPLES OF FAMILY LAW for six years last past.
4. I was appointed to represent the minor child of Thorsten Lundsgaarde and Anna Benjakul in a modification of child custody cause of action filed in the Circuit Court of Cook County, Illinois, in Case Number 00D 17293 which was post-judgment in nature, filed after the Judgment for Dissolution of Marriage was entered, wherein.
5. Each party was represented by counsel in the modification of custody contested trial before Hon. Elizabeth Rivera and said trial commenced and was heard over multiple trial dates, until on March 14, 2006, whereupon, the parties and all counsel entered into an Agreed Order to terminate the trial and

to reach an agreement as to all contested issues before the Court.

6. Attached hereto as EXHIBIT A, is a true and correct copy of the Order prepared by Thorsten Lundsgaard's lawyer, Audrey Gaynor, and signed and assented to by the litigants, Lundsgaarde and Benjakul, the Child's representative, Affiant (Ralla Klepak), the attorney for the mother, Joy Feinberg, and approved and entered by the Court.
7. The Order of March 14, 2006, attached hereto , was signed by the parties in open Court, in each other's presence, when the Order was executed and entered.
8. Paragraph 16 of said March 14, 2006 Order recites a separate order entered concurrently herein each party shall pay the fees for the Child Representative; and on March 14, 2006, Thorsten Lundsgaarde
Concurrently signed an agreed order to pay Affiant, Ralla Klepak, \$15,826.22, a copy of which is attached as EXHIBIT B.
9. I personally witnessed Thorsten Lundsgaarde sign Exhibit A and Exhibit B, in my presence and in open Court, in the presence of his counsel, Audrey Gaynor; and then, he s well as his ex-spouse, Anna Benjakul, testified before the Court affirming that the contents of Exhibits A and B were agreed upon of their own volition and asked the Court to approve their agreements and to enter the orders.
10. Thorsten Lundsgaarde has failed to make any payment to Affiant since March

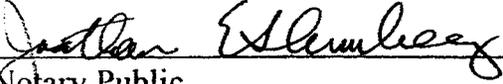
14, 2006.

Affiant sayeth further naught



RALLA KLEPAK., Affiant

Signed and sworn to before me
this 27th day of April, 2009



Notary Public

RALLA KLEPAK, NO. 25521
Attorney at Law
5158 N. ASHLAND AVE.
CHICAGO, IL. 60602
(773) 561-6568



1 THE CLERK: Lundsgaarde.

2 MR. SHIMBERG: Good morning, your Honor. For the
3 record, this is In Re: The Marriage of Thorsten Lundsgaarde
4 and Anna Benjakul, 00-D-017293. Jonathan Shimberg appearing
5 on behalf of Ralla Klepak, who is the former child's
6 representative, on our motion filed May 6th, 2009, with
7 respect to two fee orders previously entered in favor of Ms.
8 Klepak and against the petitioner, Thorsten Lundsgaarde.

9 Judge, I don't know -- we received a facsimile
10 yesterday which, as an officer of the court, I have to advise
11 you of. I don't know if you received it.

12 THE COURT: I have not. Thank you.

13 MR. SHIMBERG: This is what he styles a limited
14 appearance, which I don't think exists under Illinois law,
15 and he also requests -- "I'm again requesting participation
16 in this matter via telephone pursuant to Supreme Court
17 Rule 185. I have arranged for a court reporter to be
18 present," which is obvious. And he provides a phone number
19 in the letter. Judge, I think --

20 THE COURT: One second. Let me just take a moment
21 to read the items you have tendered to me.

22 Okay. I have had an opportunity to review
23 carefully Dr. Lundsgaarde's affidavit. One second, though.
24 Give me another moment.

1 Okay. The Court has had an opportunity to review
2 Dr. Lundsgaarde's filing. First of all, I'm not sure exactly
3 what he means. I think you raised it by the limited
4 appearance. But, obviously, his motion, which is a five-page
5 motion, ten paragraphs, lists citations, indicates he's had
6 an opportunity to review your pleading and has had ample time
7 to prepare a response. So I'm going to deny his request for
8 additional time to prepare a response. He's had time. He's
9 obviously had notice. And he's prepared a response. The
10 request is not very different from preparing a record for an
11 appeal. It's just a recitation of the proceedings that
12 occurred before this Court. And I am going to proceed. I am
13 going to deny his request for a telephonic presentation. I
14 believe there's still an outstanding body attachment.

15 MR. SHIMBERG: There is, your Honor.

16 THE COURT: And I believe he is attempting to
17 evade this jurisdiction's authority, and allowing him to
18 participate by telephone will further allow that. I am going
19 to deny his request to participate telephonically.

20 I have reviewed your order. It comports with the
21 record of proceedings, with the one exception, which is
22 paragraph 4 of your proposed order.

23 MR. SHIMBERG: It is unclear --

24 THE COURT: Excuse me. So I am going to reword

1 it. Paragraph 4 of the findings shall say that the
2 additional order for \$11,906.87 resulted based upon
3 proceedings where Thorsten Lundsgaarde had received proper
4 notice under Illinois law, period. So the remaining
5 paragraphs are accurate, as far as this court has knowledge.

6 MR. SHIMBERG: I would just like to say, for the
7 record, that Doctor -- not on the day of the awarding of the
8 fees, but previously during that proceeding, Dr. Lundsgaarde
9 had in fact participated by telephone conference and that is
10 what I intended.

11 THE COURT: Okay. He did participate at times by
12 telephone conference but not --

13 MR. SHIMBERG: Not on that day.

14 THE COURT: -- that day. And in fact, this court
15 did foreclose and deny several of his requests to participate
16 by phone, and I don't want the record to indicate otherwise.

17 Let's talk about paragraph 6, though. When you
18 say, "No claim presently exists challenging the validity of
19 these orders within the original jurisdiction," do you mean
20 with the exception of any claims that Dr. Lundsgaarde had
21 previously made?

22 MR. SHIMBERG: I'm saying right now there are
23 presently -- he has never filed any motion to vacate or
24 attack those judgments. In fact, more than two years have

1 arisen since the 2006 order and under 2-1401 in fact it's
2 foreclosed.

3 THE COURT: Okay. I agree with your paragraph 6.
4 Prepare the order and I will sign it.

5 MR. SHIMBERG: If I could have two originals,
6 Judge, so I can send a signed copy to Washington.

7 THE COURT: Very good.

8 MR. SHIMBERG: Thank you, your Honor.

9 (Which were all the proceedings
10 had in the above-entitled matter
11 on May 22, 2009.)

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY
4 COUNTY DEPARTMENT-DOMESTIC RELATIONS DIVISION

5 I, MARIE K. KOPPERS, an Official Court
6 Reporter for the Circuit Court of Cook County, County
7 Department-Domestic Relations Division, do hereby certify
8 that I reported in shorthand the proceedings had on the
9 hearing in the above-entitled cause; that I, thereafter,
10 caused the foregoing to be transcribed into typewriting,
11 which I hereby certify to be a true and accurate transcript
12 of the proceedings had before the HONORABLE NANCY J. KATZ,
13 Judge of said court.

14
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16 
17 MARIE K. KOPPERS

18
19 Dated this 24th day of June, 2009.

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**COPY
ORIGINAL FILED**

AUG 18 2009

Sherry W. Parker, Clerk, Clark Co.

**SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY**

RALLA KLEPAK,)	
)	NO. 09-2-00506-4
Plaintiff,)	
vs.)	
)	
THORSTEN LUNDSGAARDE.)	ORDER
Respondent.)	FOR ENFORCEMENT OF
)	FOREIGN JUDGMENT
)	
)	
)	
)	
)	
)	

I. JUDGMENT SUMMARY

Judgment Creditor	Ralla Klepak
Judgment Debtor	Thorsten Lundsgaarde
Principal Judgment Amount	\$15,826.22
Interest pursuant to Illinois law	
Costs	\$305.00
Attorney for Judgment Creditor	Diana C. Tehrani
Attorney for Judgment Debtor	Gideon D. Caron

Judgment Expiration Date: Judgment expires March 13, 2013

II. FINDINGS OF FACT

THIS MATTER having come before the Court with respect to a March 14, 2006 Cook County, Illinois Judgment awarded to Ralla Klepak in the principal sum of \$15,826.22 as well as an August 27, 2007 Cook County, Illinois award to Ralla Klepak in the principal sum of \$11,906.86;

The Court Orders as follows:

1. On March 14, 2006 a Judgment was entered in an amount totaling \$15,826.22 in favor of Ralla Klepak and against Dr. Thorsten Lundsgaarde in a Cook County, Illinois Court of law;
2. ~~The August 27, 2007, Cook County, Illinois award to Ralla Klepak in the principal sum of \$11,906.86 (the second award) may have violated Thorsten Lundsgaarde's due process rights such as to be unenforceable in Washington.~~ No final ruling is being entered regarding ^{the August 27, 2007 Cook County, Illinois award} that matter at this time, and further evidentiary proceedings are required to adjudicate that matter. DT
gk
3. As there are multiple claims involved (i.e. two awards), judgment is directed as to the March 14, 2006 Cook County, Illinois award to Ralla Klepak in the principal sum of \$15,826.22 (the first award);
4. This Judgment was entered and is enforceable within the State of Illinois.
5. The defendant now resides in Clark County Washington.

Based on the foregoing, the Court enters the following:

III. CONCLUSIONS OF LAW

ORDER
FOR ENFORCEMENT OF
FOREIGN JUDGMENT
Page 2 of 4

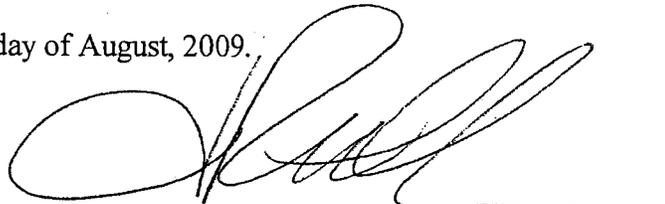
1. The Illinois Judgment dated March 14, 2006 is entitled to Full Faith and Credit within the State of Washington.
2. The judgment summary reflects the Illinois judgment which plaintiff is entitled to enforce in Washington; to wit: \$15,826.22 together with interest pursuant to applicable Illinois law and taxable costs in the sum of \$305.00.

VI. JUDGMENT

Having set forth the above Findings of Fact and Conclusions of Law, the Court hereby Orders, Adjudges and Decrees as follows:

1. That the Illinois Judgment dated March 14, 2006 is entitled to full faith and credit within the State of Washington;
2. That Plaintiff is entitled to interest on the Judgment pursuant to Illinois law;
3. That Plaintiff is entitled to taxable costs totaling \$305.00;
4. Pursuant to CR 54(b), the court finds that there is no just reason for delay as to entry of final judgment with respect to the first award.

Done in Open Court this 18th day of August, 2009.



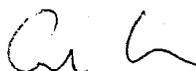
Honorable Superior Court Judge Wulle

Presented by:



Diana C. Tehrani, WSBA #40123
Of Attorneys for Plaintiff

Approved for entry:



Gideon D. Caron WSB #18707
Of Attorneys for Defendant

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CERTIFICATE OF SERVICE

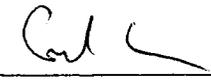
I hereby certify that I served the foregoing on the following named person(s) on the date indicated below by:

- [XXX] mailing with postage prepaid;
- [] hand delivery;
- [] facsimile transmission;
- [] overnight delivery

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at their last-known address(es) indicated below:

Diane Tehrani
1409 Franklin
Vancouver, WA 98660

DATED this 18 day of Aug, 2009.



Gideon Caron

Notice of Appeal

CARON, COLVEN, ROBISON & SHAFTON, P.S.
900 Washington, Suite 1000
Vancouver, Washington 98660
(360) 699-3001
Portland: (503) 222-0275
Fax (360) 699-3012

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NO. 39719-6-II

CLARK COUNTY SUPERIOR COURT Case No. 09 2 00506 4

RALLA KLEPAK,

Plaintiff,

v.

THORSTEN LUNDSGAARDE,

Respondent.

CERTIFICATE OF SERVICE

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
COPIED - 3
APR 11 2009
BY [Signature]

Diana C. Tehrani
Attorney for Plaintiff Ralla Klepak
1409 Franklin Street, Suite 200
Vancouver, WA 98660
360 695-3200

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of Brief of Respondent on the following named person on November 3, 2009, by mailing with postage prepaid; to said person a true copy thereof, contained in a sealed envelope, addressed to said person at their last known address indicated below:

Gideon Caron
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660



Diana C. Tehrani