IN THE SUPREME COURT OF THE STATE OF NEVADA

HARVEY N. FREIDSON, AN INDIVIDUAL AND TRUSTEE OF THE FREIDSON FAMILY TRUST,
Appellant/Cross-Respondent,
vs.
CAMBRIDGE ENTERPRISES, INC.,
Respondent/Cross-Appellant,
and
MICHAEL BASH,
Respondent.

No. 46860

FILED

FEB 26 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING IN PART AND AFFIRMING IN PART

This is an appeal and cross-appeal from a district court order striking a domesticated foreign judgment and denying a motion for attorney fees. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

This case arises from a 1997 judgment that appellant Harvey Freidson obtained in California against respondent Michael Bash. Freidson domesticated the foreign judgment in Nevada in 1997. In 2002, Freidson amended the domesticated judgment in Nevada by adding Adama Land Corporation, Inc., as a judgment debtor. In October 2005, Freidson attempted to amend the judgment in Nevada again. Freidson alleged Cambridge Enterprises, Inc., as the alter ego of Bash and attempted to add Cambridge as a judgment debtor. In November 2005, Bash moved to dismiss all actions for enforcement of the judgment on the ground that it had expired under Nevada's six-year limitation period for enforcement of judgments. The district court granted the motion. Three days later, Freidson filed a new notice of filing foreign judgment, seeking

to redomesticate the judgment, which was still valid under California's ten-year limitation period. Bash moved to strike the judgment or permanently stay enforcement of it, and Cambridge joined in the motion. In January 2006, the district court granted respondent's motion to strike the filing of foreign judgment, denied Freidson's request for rehearing, and denied Cambridge's request for attorney fees. Freidson initially appealed this district court order.

In August 2008, we asked Freidson to show cause why his appeal should not be dismissed for lack of jurisdiction. We noted that no statute or rule appeared to authorize an appeal from an order denying a motion for rehearing, or granting a motion to strike or a permanent stay of enforcement. We also stated that the January 25, 2006 district court order did not appear to qualify as a special order after final judgment because it did not affect rights incorporated in the judgment.

We reinstated briefing in February 2009, ordering the parties to address whether Freidson's refiled foreign judgment constituted a valid final judgment, making the January 2006 order an appealable special order after final judgment. The issue of whether a foreign judgment could be refiled and whether the refiling constitutes a valid final judgment are issues intimately intertwined with the issues raised on appeal.

Freidson now appeals, arguing that: (1) a valid foreign judgment may properly be refiled and redomesticated in Nevada, even after the limitation period has expired on the original domestication, per this court's holding in Bianchi v. Bank of America, 124 Nev. ___, 186 P.3d 890 (2008); and (2) his November 2005 refiled foreign judgment constitutes a final judgment, so that the district court's January 2006 order granting Cambridge's motion to strike constitutes an appealable

special order after final judgment. Cambridge cross-appeals, arguing that the district court abused its discretion in denying it attorney fees for Freidson's frivolous actions.

We conclude that: (1) our holding in Bianchi does not dispose of this case and we decline to extend that holding to this appeal; and (2) because Freidson's refiled foreign judgment is invalid, the district court's January 2006 order is not appealable, either by statute or as a special order after final judgment. We also conclude that the district court did not abuse its discretion in denying Cambridge attorney fees.

The parties are familiar with the facts and procedural history of the appeal and we do not recount them further except as is necessary for our disposition.

DISCUSSION

I. Freidson could not validly redomesticate an unrenewed foreign judgment

Freidson argues that because his California judgment remained valid under California's ten-year limitation period, he could refile that judgment in Nevada and have that judgment redomesticated, despite its dormancy under Nevada's six-year limitation period. See Cal. Civ. Proc. Code § 683.020(a) (West 2009); NRS 11.190(1)(a). Freidson claims that Bianchi explicitly supports this position. While Bianchi involved a similar issue to the one Freidson presents, it is not entirely dispositive. Therefore we decline to extend Bianchi's holding to this case.

A. Bianchi v. Bank of America

Bianchi arose from a dispute between Bianchi and Bank of America over a loan Bank of America provided to assist Bianchi in producing military clothing for a series of government contracts. 124 Nev.

at ___, 186 P.3d at 891. After Bianchi defaulted on his loans, Bank of America ultimately received a jury verdict in California in its favor. Id. The bank registered the judgment in Nevada under the Uniform Enforcement of Foreign Judgments Act (UEFJA). Id.; see NRS 17.330-17.400. The district court in Nevada domesticated the foreign judgment, but the bank took no further action within Nevada's six-year limitation period for enforcement of judgments. Bianchi, 124 Nev. at ___, 186 P.3d at 891.

Before California's ten-year limitation period ended, Bank of America petitioned the California court to renew the judgment. Id. After obtaining a valid renewed judgment in California, the bank again domesticated the judgment in Nevada. Id. The district court denied Bianchi's motion to vacate the judgment and he appealed. Id.

In Bianchi, we considered whether a judgment creditor could domesticate a valid renewed foreign judgment in Nevada after the six-year limitation period had run on the original domesticated judgment. Id. at ___, 186 P.3d at 892. We concluded "that the bank's second domesticated foreign judgment was based on a valid and enforceable foreign judgment." Id. In considering whether Nevada's version of the UEFJA allowed a foreign judgment to be filed again, this court decided "that the running of Nevada's limitation period for the enforcement of judgments on the original domesticated foreign judgment did not preclude the bank from domesticating a renewed foreign judgment in Nevada when the underlying foreign judgment was valid and enforceable." Id. at ___, 186 P.3d at 893.

B. Bianchi does not support Freidson's position

Freidson argues that our holding in Bianchi supports his redomestication of the California judgment against respondents. He

asserts this because we decided that foreign judgments can be redomesticated in Nevada, even after Nevada's limitation period has expired, as long as the underlying judgment remains valid and enforceable. Id. But, in Bianchi, Bank of America renewed its California judgment prior to its attempt to redomesticate that judgment in Nevada. Id. at ___, 186 P.3d at 891. While Freidson contends that this court's decision in Bianchi did not turn on Bank of America's renewal of its California judgment, we conclude that the renewal of the foreign judgment in its issuing state does differentiate Bianchi from this appeal.

In Bianchi, we relied upon Yorkshire West Capital, Inc. v. Rodman, 149 P.3d 1088 (Okla. Civ. App. 2006), which also involved creditors who had renewed their judgments in the issuing state before attempting to redomesticate them. In Yorkshire West Capital, the court stated that "although the original filing of the judgment in Oklahoma was dormant five years after 1996, Yorkshire could refile its renewed judgment as a new Oklahoma judgment so long as it remained valid and enforceable in Texas." Id. at 1093.

A forum state is not constitutionally required to enforce a sister-state judgment if the enforcement is sought after the expiration of that state's statute of limitation on judgments. Watkins v. Conway, 385 U.S. 188, 189 (1966). Although in Bianchi we decided that those seeking to redomesticate a valid foreign judgment in Nevada may do so even after the limitation period on judgments has expired, we decline to extend this holding to foreign judgments that have not been renewed prior to redomestication in Nevada, despite their validity under the issuing state's limitation period. Therefore, Freidson's refiled judgment was invalid.

II. Freidson's refiled foreign judgment is not a final judgment and the 2006 district court order granting respondent's motion to strike is not appealable as a special order after final judgment

Freidson argues that his November 2005 refiled foreign judgment constitutes a final judgment. Extending this line of reasoning, Freidson argues that the district court's January 2006 order granting respondent's motion to strike the refiled judgment is an appealable special order after final judgment pursuant to NRAP 3A(b)(8).[1] We disagree with both contentions.

A. Freidson's refiled foreign judgment is not a final judgment

A "final judgment in an action or proceeding commenced in the court in which the judgment is rendered" is appealable. NRAP 3A(b)(1). "This court determines the finality of an order or judgment by looking to what the order or judgment actually does, not what it is called." Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). An appealable final judgment is "'one that disposes of the issues presented in the case . . . and leaves nothing for the future consideration of the court.'" Id. (quoting Alper v. Posin, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961), abrogated by Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)).

The district court's November 2005 order granting respondent's motion to dismiss all actions for enforcement of judgment is the final judgment. This order disposed of the issues in the case. Nevada's

[1]Former NRAP 3A(b)(2) allowed for an appeal from a special order after final judgment. That provision is now NRAP 3A(b)(8). Because it does not affect the outcome of this appeal, we refer to the provision as NRAP 3A(b)(8).

six-year limitation period on judgments had expired, and Freidson did not renew his judgment in California before he attempted to redomesticate the dormant judgment in Nevada. The district court properly deemed such action barred and dismissed all actions for enforcement. Because we decline to extend our holding in Bianchi to Freidson's facts, the November 2005 refiling of his California judgment cannot be a valid final judgment.

B. The district court's January 2006 order is not appealable

This court is one of limited appellate jurisdiction and only has jurisdiction to entertain an appeal where authorized by statute or court rule. Valley Bank of Nevada, 110 Nev. at 444, 874 P.2d at 732. No statute or rule appears to authorize an appeal from an order granting a motion to strike or granting a permanent stay of enforcement. See Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 419, 404 P.2d 902, 905 (1965) (an order granting a stay of proceedings is not an appealable order).

NRAP 3A(b)(8) authorizes an appeal of a special order after final judgment. This court has stated that "to be appealable . . . a special order made after final judgment must be an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment." Gumm v. Mainor, 118 Nev. 912, 914, 59 P.3d 1220, 1221 (2002).

The January 2006 order granting respondent's motion to strike or stay enforcement does not substantively affect the rights of a party arising out of the final judgment. Instead, it enforces what the order from November 2005 already purported to do: dismiss actions for enforcement due to expiration of Nevada's six-year limitation period on the domesticated California judgment. Therefore, this court lacks jurisdiction over Freidson's appeal of the January 2006 order.

Accordingly, we dismiss Freidson's appeal from the portion of the district court's order striking his refiled judgment.

III. The district court did not abuse its discretion in denying Cambridge attorney fees

Cambridge argues that the district court abused its discretion when it denied attorney fees without explanation. Cambridge contends that Freidson's actions to add it as a judgment debtor and to obtain an ex parte restraining order in October 2005 were frivolous, when Nevada's limitation period on judgments rendered Freidson's foreign judgment dormant in 2003.[2] Cambridge claims that the district court should have awarded attorney fees pursuant to NRS 18.010(2)(b). We disagree.

A. Standard of review

NRS 18.010(2)(b) allows a court to award attorney fees when it finds the opposing party brought or maintained a claim without reasonable ground, or to harass. The statute also states that the Legislature intends to punish and deter frivolous claims that overburden the judicial resources of the state, hinder the timely resolution of valid claims, and increase the costs of litigation to the public. Id.

"The decision whether to award attorney's fees is within the sound discretion of the district court." Allianz Ins. Co. v. Gagnon, 109

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[2]Freidson moved to amend the foreign judgment to add Cambridge as a judgment debtor, alleging the corporation as the alter ego of Michael Bash in October 2005. We have since held that a motion to amend a judgment is not the correct procedure to allege an alter ego claim and violates due process when that new debtor was not part of the original complaint. Callie v. Bowling, 123 Nev. 181, 185, 160 P.3d 878, 880-81 (2007).

Nev. 990, 995, 860 P.2d 720, 724 (1993). Where a district court disregards guiding legal principles in exercising its discretion, this may constitute abuse. Id.

B. Freidson's actions were not frivolous

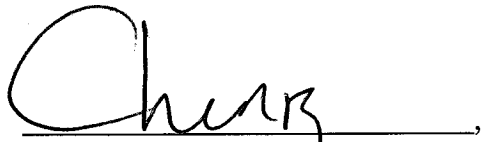
Pursuant to NRS 18.010(2)(b), "a claim is frivolous or groundless if there is no credible evidence to support it." Rodriguez v. Primadonna Company, 125 Nev. ___, ___, 216 P.3d 793, 800 (2009).

In justifying his actions, Freidson cites California law stating that the calculation of California's ten-year renewal period during which a judgment creditor must renew a judgment commences upon entry of an amended judgment. Iliff v. Dustrud, 132 Cal. Rptr. 2d 848, 852 (Ct. App. 2003). The limitation period would then re-start on the date of entry of an amended judgment. Freidson imports this reasoning to presume that Nevada's statutory limit of six years would re-start when he amended the foreign judgment in Nevada to include Adama in 2002. Freidson argued that this would make the addition of Cambridge as a judgment debtor valid in October 2005 because the statutory clock would have re-started in 2002 when Freidson added Adama, not in 1997, when he originally domesticated the judgment in Nevada. The district court disagreed with this line of reasoning in its November 2005 order granting respondent's motion to dismiss all claims of enforcement.

While there is no reason to presume that California's caselaw interpreting its statute would be the same in Nevada simply because our statute is based on California's statute, Freidson's actions are not groundless, given an absence of Nevada caselaw interpreting the statute. Given the evidence submitted by Freidson, his actions to add Cambridge as a judgment debtor do not seem motivated by harassment. We conclude

that the district court did not abuse its discretion when it declined to award attorney fees to Cambridge. Accordingly, we affirm the portion of the district court's order that denied attorney fees.

It is so ORDERED.



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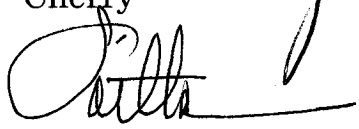
Cherry



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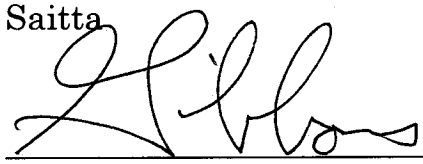

_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 8, District Judge
Lansford W. Levitt, Settlement Judge
Cotkin & Collins/Las Vegas
Cotkin & Collins/Los Angeles
Kehoe & Associates
McCullough, Perez & Associates, Ltd.
Liner Yankelevitz Sunshine & Regenstreif, LLP
Eighth District Court Clerk