

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

**ADVANTA BUSINESS SERVICES CORPORATION, v. RAYMOND
McPHERSON, ET AL.**

**Interlocutory Appeal from the Chancery Court for Shelby County
No. 109746-1 Walter L. Evans, Chancellor**

No. W1999-02682-COA-R9-CV - Decided April 11, 2000

This case involves the enforcement of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act. The judgment debtor was served with a summons for a hearing on the judgment, and failed to respond. The trial court clerk refused to issue execution on the foreign judgment until the judgment creditor obtained a default judgment from the trial court. The judgment creditor filed a petition for a writ of mandamus to require the clerk to issue the execution without a default judgment. The trial court denied the petition, and granted permission for this interlocutory appeal. We reverse, holding under the facts of this case that the judgment creditor is entitled to enforce the judgment without first obtaining a default judgment.

Tenn. R. App. P. 9; Judgment of the Chancery Court is Reversed and Remanded.

LILLARD, J., delivered the opinion of the court, in which CRAWFORD, P.J., W.S., and HIGHERS, J., joined.

Christopher W. Conner, Knoxville, Tennessee, for the appellant, Advanta Business Services Corporation.

Donnie E. Wilson and Thomas E. Williams, Memphis, Tennessee, for the respondent, Kenny W. Armstrong.

OPINION

This case involves the enforcement of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act (“UEFJA”). On November 30, 1995, Plaintiff/Appellant, Advanta Business Services Corporation (“Advanta”), obtained a default judgment against Defendant/Appellee, Raymond McPherson (“McPherson”), in the Superior Court of Camden County, New Jersey. On July 8, 1997, Advanta filed a notice of registration of the judgment in the Chancery Court of Shelby County, Tennessee, in order to obtain execution on the judgment in Tennessee. Along with the notice, Advanta filed an affidavit which included McPherson’s name and last known address and a proposed order issuing execution on the judgment. On July 10, 1997,

McPherson was served with a summons demanding that he appear at a hearing on the judgment. McPherson never responded to the summons.

On July 11, 1997, Advanta received a letter from the Shelby County Court Clerk and Master (“Clerk and Master”) stating that the case had been assigned to a judge. Approximately thirty days after McPherson was served with the summons, Advanta contacted the Clerk and Master to request execution on the judgment. The Clerk and Master refused to issue execution until Advanta filed for and obtained a default judgment from the trial court.

Advanta then filed a petition for a writ of mandamus in the trial court asking that the Clerk and Master be ordered to issue the execution without a default judgment. After a hearing on the petition, the trial court denied the writ of mandamus. In a written order, the trial court stated that it had a duty to “take reasonable steps and means to establish that [a] foreign judgment is in fact a valid judgment entitled to full faith and credit. . . .” The trial court stated that it could, in its discretion, take different approaches to determine a judgment’s validity. At a minimum, the trial court found, Advanta should obtain “a default judgment against the judgment debtor for his failure to appear pursuant to the civil procedure rules and the local rules of Court.” Consequently, the trial court ordered that execution could issue only after Advanta set the cause on the trial court’s motion docket and obtained a default judgment “or as otherwise allowed under the local rules.” The local rule to which the trial court referred was not specified. The trial court subsequently granted permission to Advanta to file an interlocutory appeal. Advanta then appealed the trial court’s order denying the writ of mandamus.

On appeal, Advanta argues that the trial court erred in refusing to grant a writ of mandamus ordering the Clerk and Master to issue execution on Advanta’s foreign judgment. Advanta asserts that the terms of the UEFJA clearly indicate that execution will issue thirty days after the summons is served on the judgment debtor, with no further action required of the trial court or of the judgment creditor. Advanta maintains that it complied with all of the requirements of the UEFJA and that it is, therefore, entitled to execution on the judgment.

Advanta asserts that the trial court erroneously concluded that the summons required under the UEFJA was issued pursuant to Tennessee Rules of Civil Procedure Rule 4. It contends that a judgment creditor proceeding under the UEFJA should not be forced to obtain a default judgment under Rule 55 of the Tennessee Rules of Civil Procedure because of the judgment debtor’s failure to answer the UEFJA summons. Advanta notes that requiring a judgment creditor to obtain a default judgment triggers additional procedural mechanisms, such as an appeal of the default judgment to this Court. These additional procedures would complicate and delay the judgment creditor’s satisfaction of its judgment.

The Clerk and Master argues that the trial court has the discretion to take additional steps to ensure the validity of a foreign judgment before issuing execution. He contends that, even within the context of the UEFJA, the issuance of a summons falls under Tennessee Rules of Civil Procedure Rule 4. The Clerk and Master asserts that a judgment debtor’s failure to respond to the summons requires the judgment creditor to file a motion for a default judgment. He also maintains that the trial

court's power to grant relief from judgments under Rule 60 demonstrates the trial court's discretion to ensure the validity of judgments.

The issue presented in this case is a question of law. Consequently, the scope of review is *de novo* with no presumption of correctness in the trial court's decision. *See State v. Levandowski*, 955 S.W.2d 603, 604 (Tenn. 1997); *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

For an act to be enforced by a writ of mandamus, the act must be purely "ministerial." *See Hackett v. Smith County*, 807 S.W.2d 695, 698 (Tenn. Ct. App. 1990) (citing *Peerless Construction Co. v. Bass*, 14 S.W.2d 732 (Tenn. 1929)). If the right to have the act performed is doubtful, the right must first be established in some other form of action. *See Hackett* at 698. Mandamus is a summary remedy, extraordinary in its nature, and is to be applied only when a right has been clearly established. *See id.* The writ of mandamus will not lie to control official judgment or discretion, but it is the proper remedy where the proven facts show a clear and specific legal right to be enforced, or a duty which ought to be and can be performed. *See State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988) (citing *State ex rel. Ragsdale v. Sandefur*, 389 S.W.2d 266, 269 (Tenn. 1965)).

The UEFJA allows a judgment creditor to enforce the judgment of a foreign jurisdiction in Tennessee. *See* Tenn. Code Ann. §§ 26-6-101 to 26-6-107 (1980). A judgment creditor seeking to enforce a judgment under the UEFJA may file in the office of the clerk of any circuit or chancery court in Tennessee a copy of an authenticated foreign judgment and an affidavit setting forth the names and last known addresses of both the judgment debtor and the judgment creditor. *See* Tenn. Code Ann. §§ 26-6-104(a) and -105(a). The court clerk must treat the foreign judgment "in the same manner as a judgment of a court of record in this state." Tenn. Code Ann. § 26-6-104(a) and (b). The judgment creditor retains the right to bring an action to enforce the foreign judgment instead of proceeding under the UEFJA. *See* Tenn. Code Ann. § 26-6-107.

Under the UEFJA, Tennessee Code Annotated § 26-6-105 requires that a summons be issued to the judgment debtor once the copy of the foreign judgment and the affidavit are filed. *See id.* No execution or other process for enforcement may issue until thirty days after the date the summons is served. *See* Tenn. Code Ann. § 26-6-105(c).

In *McCall v. Johnson*, No. 01A01-9408-CH-00392, 1995 WL 138898 (Tenn. Ct. App. 1995), this Court addressed the procedure that a judgment creditor must follow when seeking execution on a foreign judgment under the UEFJA. *Id.* at *2. The Court stated:

T.C.A. § 26-6-105 simply requires that, when the foreign judgment is filed, the judgment creditor or lawyer shall also file an affidavit setting forth the name and last known post office address of the judgment debtor and the judgment creditor. No other formal paperwork is required. Summons is then served in the regular manner. No execution or other process for enforcement of a foreign judgment shall issue until thirty days after the date the summons has

been served on the judgment debtor. *If no response is made after service, a judgment creditor may seek enforcement or satisfaction by any method permitted by law. No further order of the court is needed under the Act.*

Id. (citation and footnote omitted) (emphasis added).

Ordinarily, a properly filed foreign judgment is entitled to full faith and credit in Tennessee. *See Biogen Distributors, Inc. v. Tanner*, 842 S.W.2d 253, 256 (Tenn. Ct. App. 1992). Once filed, without proof to the contrary, the Tennessee court must presume that the foreign judgment is valid. *See Four Seasons Gardening and Landscaping v. Crouch*, 688 S.W.2d 439, 442 (Tenn. Ct. App. 1984). However, a foreign judgment is subject to the same defenses and may be reopened, vacated, or stayed, just as a Tennessee judgment, under the grounds and procedures contained in Tennessee Rules of Civil Procedure Rule 60.02. *See* Tenn. Code Ann. § 26-6-104(c); *see also Biogen Distributors*, 842 S.W.2d at 256.

The Tennessee Rules of Civil Procedure apply to a proceeding under the UEFJA. *See Witt v. Tennessee Farmers Mut. Ins. Co.*, No. 03A01-9709-CH-00400, 1998 WL 102104, at *3 (Tenn. Ct. App. 1998). Rule 4.02 requires that a summons notify the defendant in a civil action that a default judgment will be rendered against him for the relief demanded in the complaint if he fails to appear and defend in the case. *See id.* The judgment debtor may then contest the validity of the foreign judgment by a trial on the merits. Rule 60.01 allows the trial court to correct clerical mistakes in judgments and orders at any time on its own initiative. *See id.* Rule 60.02 allows a court, upon motion and upon such terms as are just, to relieve a party from a final judgment, order or proceeding for a variety of reasons. *See id.* Relief under Rule 60.02 is considered an exceptional remedy. *See Fiedler v. Lakesite Enter., Inc.*, 871 S.W.2d 157, 159 (Tenn. Ct. App. 1993) (citing *Nails v. Aetna Ins. Co.*, 834 S.W.2d 289, 294 (Tenn. 1994)).

In this case, Advanta filed its notice of registration of its foreign judgment in the trial court along with an authenticated copy of the judgment and an affidavit setting forth McPherson's name and last known address. McPherson was served with a summons, but he failed to respond. Advanta waited thirty days after the date the summons was served before requesting the Clerk and Master to issue an execution on the judgment. Advanta clearly complied with the procedures set out under the UEFJA. At this point, the judgment debtor had raised no issue regarding the validity of the foreign judgment against him, and the foreign judgment should have been presumed valid by the trial court. *See Four Seasons*, 688 S.W.2d at 441-42. While the Clerk and Master argues that the trial court had the discretion to inquire into the validity of the foreign judgment even in the absence of any action by the judgment debtor, the record contains no indication that the foreign judgment in this case was remotely questionable. Rather, the trial court appears to have fashioned a standard procedure to be applied routinely to foreign judgments in addition to those set forth in the UEFJA, namely, the requirement that every foreign creditor obtain a default judgment in addition to compliance with the UEFJA. In the absence of any reason to question the validity of the foreign judgment, the trial court may not routinely subject judgment creditors holding a foreign judgment to procedures in addition to those set forth in the UEFJA. Such procedures would be inconsistent with the purpose of the

UEFJA, namely, the fair and prompt enforcement of foreign judgments. *See* Uniform Enforcement of Foreign Judgments Act, 1964 Revised Act, Commissioners' Prefatory Note, 13 U.L.A. 173-174 (1964) (stating that UEFJA "provides the enacting state with a speedy and economical method" of recognizing judgments while relieving "creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of the foreign judgment"); *Rion v. Mom and Dad's Equipment Sales and Rentals, Inc.*, 687 N.E.2d 311, 313 (Ohio Ct. App. 1996); *Nobel Well Service, Inc. v. Penn Energy, Inc.*, 502 A.2d 200, 204-205 (Pa. Super. Ct. 1985); *Seaboard Surety Co. v. Waterbury*, 451 A.2d 291, 294 n. 4 (Conn. Super. Ct. 1982); *see also Pettus v. Hurst*, 882 S.W.2d 783, 786 (Tenn. Ct. App. 1993) (local rules adopted by trial courts may not conflict with other applicable statutes).

The Clerk and Master argues that the Tennessee Rules of Civil Procedure require the judgment creditor in this case to obtain a default judgment in Tennessee, in addition to the notice required under the UEFJA, in order to execute on his foreign judgment. To do so, however, would be contrary to the UEFJA's requirement that a foreign judgment be treated "in the same manner as a judgment of a court of record in this state." Tenn. Code Ann. § 26-6-104(a) and (b). Indeed, it would require the foreign judgment creditor to obtain another judgment in Tennessee. This argument is without merit.

We do not address the situation in which, even in the absence of a response from the judgment debtor, the trial court has reason to question the validity of the foreign judgment. In this case, the record does not indicate that the trial court had reason to question the validity of Advanta's foreign judgment against McPherson, so the issue is not presented in this appeal.

Consequently, we hold that the trial court erred in denying Advanta's petition for a writ of mandamus, under the circumstances of this case. We reverse the decision of the trial court and remand for entry of an order requiring the Clerk and Master to issue execution on Advanta's judgment against McPherson.

The decision of the trial court is reversed and the cause is remanded for further proceedings consistent with this Opinion. Costs are assessed against Respondent, Kenny W. Armstrong, Clerk and Master, for which execution may issue if necessary.