

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0985

September Term, 2015

SILVIA MARIA ABULARACH

v.

CARY BRUCE SCHMELZER

Meredith,
Nazarian,
Arthur,

JJ.

Opinion by Meredith, J.

Filed: April 11, 2016

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Silvia Maria Abularach, appellant, has filed this appeal concerning the efforts of her former husband, Cary Bruce Schmelzer, appellee, to register in the Circuit Court for Montgomery County certain child custody rulings made by a court in Singapore. Mr. Schmelzer filed his requests to register the foreign court's child custody determinations in Maryland pursuant to the Maryland Uniform Child Custody Jurisdiction and Enforcement Act (sometimes referred to as "MUCCJEA"), codified in Maryland Code (1984, 2012 Replacement Volume), Family Law Article ("FL"), §§ 9.5-101 *et seq.* Dr. Abularach has opposed the requests. In the brief she filed in this interlocutory appeal, she asks us to consider the following questions:

- I. Have the orders that Schmelzer sought to have registered and enforced been properly registered and are they now the orders of the Circuit Court for Montgomery County?
- II. Should this case be remanded if the trial court's orders are fundamentally inaccurate because they are premised upon the mistaken foundation that the case before the trial court involved identical issues as decided by the Court of Special Appeals in *Abularach v. Schmelzer*, Case Number 205, September Term, 2014 ([filed unreported] January 26, 2015)?

Because the record from the circuit court does not reflect rulings that expressly address outstanding objections Dr. Abularach raised in response to the notices of registration of the foreign judgments, and the record from the circuit court does not contain any order or docket entry or other notice that the registration of the foreign judgments has been confirmed by the circuit court, we detect no appealable judgment in this case, and we shall dismiss the appeal on our own initiative pursuant to Maryland Rule 8-602(a)(1).

BACKGROUND

The Maryland Uniform Child Custody Jurisdiction and Enforcement Act (sometimes referred to as “MUCCJEA”) provides that “[a] child custody determination issued by a court of another state [or country] may be registered in this State, with or without a simultaneous request for enforcement, by sending the appropriate court in this State” the documents and information required by FL § 9.5-305(a). Section 9.5-104(a) of the MUCCJEA specifies that “[a] court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Subtitles 1 [General Provisions] and 2 [Jurisdiction] of this title,” and FL § 9.5-104(b) and (c) provide that “a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this title must be recognized and enforced under Subtitle 3 [Enforcement] of this title,” unless “the child custody law of a foreign country violates fundamental principles of human rights.”¹

On May 19, 2014, Mr. Schmelzer filed a paper (designated Docket Number 1, or DE1 by the clerk of court) captioned “Request for Registration of a [sic] Foreign Child Custody

¹The Comment to Section 105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) [“UCCJEA”] states, in pertinent part: “Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of this Act.” The Comment further provides: “A court of this State may refuse to apply this Act when the child custody law of the other country violates basic principles relating to the protection of human rights and fundamental freedoms. . . . In applying subsection (c), the court’s scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.”

and Access Orders and Foreign Judgments.” Attached to the request were orders of court from the Subordinate Courts of the Republic of Singapore.

Section 9.5-305(b) of the MUCCJEA explains in detail the action to be taken by the registering court following receipt of a request to register a child custody determination made by another state’s court:

On receipt of the documents required by subsection (a) of this section, the registering court shall:

- (1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
- (2) serve notice upon the persons named in subsection (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.

In accordance with FL § 9.5-305(b), on May 27, 2014, the Clerk of the Circuit Court for Montgomery County, Maryland, issued and mailed to Dr. Abularach a document, captioned Notice of Registration of Foreign Custody Determination (DE4). The notice included language required by FL § 9.5-305(c), and stated:

The attached child custody determination issued by a court of another state has been registered in this Court. As required by Maryland Annotated Code, Family Law Article, Section 9.5-305, you are hereby served notice that:

1. the registered child custody determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;
2. any request for a hearing to contest the validity of the registered determination shall be made within **20** days after the service of this notice; and

3. failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed by operation of law.^[2]

Through counsel, on July 1, 2014, Dr. Abularach filed her request for a hearing and her objections to Mr. Schmelzer’s request for registration. Dr. Abularach captioned her response: “Defendant’s Motion to Dismiss and Opposition to Plaintiff’s Request for Registration of a [sic] Foreign Child Custody and Access Orders and Foreign Judgments.” Although both the motion to dismiss and the opposition to the request for registration were set forth in a single document, the clerk assigned two distinct docket numbers, and designated the motion to dismiss as DE8 and the opposition as “Answer,” DE9. Mr. Schmelzer filed an opposition (DE10) to Dr. Abularach’s motion to dismiss, and the court issued a notice of hearing (DE11) on the motion to dismiss. Docket entry 18 confirms that a hearing was held on August 27, 2014, and the court denied the motion to dismiss. The cross reference in Docket Entry 18 refers to Dr. Abularach’s motion DE8, and the opposition thereto, but makes no mention of DE9, which was Dr. Abularach’s opposition to the request for registration Mr. Schmelzer filed on May 19, 2014. The court’s order dated August 29, 2014, (docketed on September 10, 2014 as DE22), recites that a hearing had been held on

²The three numbered paragraphs of the notice are virtually identical to the language specified in FL § 9.5-305(c). The final, unnumbered paragraph adds language from FL § 9.5-305(e), but omits the final fifteen words of that provision. Section 9.5-305(e) states: “If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.”

Dr. Abularach’s “Motion to Dismiss Plaintiff’s Request for Registration of a Foreign Child Custody Access Order (DE8).” The order further recited that the court had reviewed numerous other documents in the file and case law cited by counsel. It was “ORDERED, that the Defendant, Sylvia Maria Abularach’s Motion to Dismiss the Plaintiff’s Request for Registration of a Foreign Child Custody Access Order be and the same hereby is denied.”

A similar sequence of events took place a second time, commencing on October 3, 2014, when Mr. Schmelzer filed a “Supplemental Request for Registration of Foreign Orders Related to Children and Foreign Judgments” (DE27). Mr. Schmelzer attached an additional package of orders from the Subordinate Courts of the Republic of Singapore to be registered in the Circuit Court for Montgomery County, Maryland. The circuit court’s record does not reflect that the Clerk issued a new notice of registration relative to the supplemental request for registration, but Dr. Abularach nevertheless responded to Mr. Schmelzer’s supplemental request by filing, on October 17, 2014, “Defendant’s Motion to Dismiss and Opposition/Answer to Plaintiff’s Supplemental Request for Registration of Foreign Orders Related to Children and Foreign Judgments.” Although both the motion to dismiss and the opposition to the request were set forth in a single document, the clerk designated the motion to dismiss the supplemental registration request as DE30, and designated the opposition to the request as an answer, DE31. A notice of hearing on Dr. Abularach’s “Motion to Dismiss (#30)” advised the parties that the motion would be heard on December 19, 2014. Docket Entry 39 confirms that a hearing was held on Dr. Abularach’s motion to dismiss “DE#30” on December 19, 2014, at which time the court

took the matter under advisement. Docket Entry 43, entered March 9, 2015, reflects that Dr. Abularach’s motion to dismiss supplemental registration (with a cross reference to DE30) was denied. The court’s order states, in pertinent part, that the “matter came on for hearing on December 19, 2014, . . . upon the Defendant’s Motion to Dismiss Plaintiff’s Supplemental Request for Registration of Foreign Orders Related to Children and Foreign Judgments (DE #30).” With respect to that motion, it was “ORDERED, that Defendant’s Motion to Dismiss Plaintiff’s Supplemental Request for Registration of Foreign Orders Related to Children and Foreign Judgment (DE #30) is DENIED.”

On March 18, 2015, Dr. Abularach filed a “Motion for Reconsideration of Judgment; To Alter or Amend Judgment; To Exercise Advisory [sic] Power Over Judgment and Request for a Further Hearing” (DE44). Mr. Schmelzer opposed the motion (DE46), but asked the court to file an amended order. After further arguments were filed by each party (DE47 and DE48), the court denied Dr. Abularach’s motion for reconsideration (DE49), but filed an Amended Order (docketed May 13, 2015 as DE50). The Amended Order again stated that it was it was “ORDERED, that Defendant’s Motion to Dismiss Plaintiff’s Supplemental Request for Registration of Foreign Orders Related to Children and Foreign Judgment (DE #30) is DENIED.”

On June 11, 2015, Dr. Abularach filed her notice of the present appeal. (DE52)³

³Our review of the docket entries reveals that, while this interlocutory appeal was pending, on January 11, 2016, Mr. Schmelzer filed another supplemental request (DE63) for registration of foreign orders from the Republic of Singapore related to the parties’ children. Dr. Abularach again is opposing the registration of those orders.

DISCUSSION

Although the Uniform Child Custody Jurisdiction and Enforcement Act is nearly two decades old, and has been adopted in all 50 states, there is a dearth of authority addressing the procedure for registering a child custody determination from another state or country. The registration process is described in MUCCJEA in FL § 9.5-305. The Comment to § 305 of the UCCJEA in Uniform Laws Annotated states:

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA [*i.e.*, the Uniform Interstate Family Support Act] for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

On the face of the statute, § 305 plainly contemplates a two-step process in registering an out-of-state child custody determination: (1) the submission of the request for registration and the information required by subsection 305(a); and (2) “confirmation” of the registration either (a) by operation of law if no request for hearing is filed by any party within 20 days after service of notice, or (b) after the court conducts a hearing and confirms that the orders meet the requirements for registration in this State. In cases in which no party files a timely request for a hearing to contest the validity of the out-of-state custody determination, § 305(e) provides for automatic confirmation by operation of law, but also requires that the parties be notified of that confirmation. In Maryland, FL § 9.5-305(e) provides:

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and **the person requesting registration and all persons served shall be notified of the confirmation.**

(Emphasis added.)

In the event the registration is challenged by the timely filing of a request for hearing, FL § 9.5-305(d) provides:

(1) A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice.

(2) At that hearing, **the court shall confirm the registered order unless** the person contesting registration establishes that:

(i) the issuing court did not have jurisdiction under Subtitle 2 of this title;

(ii) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Subtitle 2 of this title; or

(iii) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of § 9.5-107 of this title, in the proceedings before the court that issued the order for which registration is sought.

(Emphasis added.) Although it is not stated expressly in FL § 9.5-305(d)(2), it appears that confirmation would also be denied if the receiving court concluded that registration was not compelled because of the application of FL § 9.5-104(c), which states: “A court of this State need not apply this title if the child custody law of a foreign country violates fundamental principles of human rights.”

Even though FL § 9.5-305(d) does not expressly require any particular notice be given regarding the court’s confirmation at the conclusion of a contest to the validity of the foreign order, the statute does contemplate that the court would either confirm the contested order or explain its reasons for refusing to confirm. In the absence of an explicit ruling by the court with respect to confirmation, the record of the receiving court would not be clear.

Maryland Rule 2-601 provides that a judgment of a circuit court is effective only when it is documented in accordance with the formalities required by Rule 2-601. *See* Rule 2-601(a)(4).⁴

In the present case, the docket entries of the circuit court reflect that timely objections and requests for hearings on those objections were filed by Dr. Abularach. Although the circuit court has twice denied motions to dismiss the requests for registration, the records of the circuit court contain no order or docket entry or other notice that the registration of

⁴In *Friedetzky v. Hsia*, 223 Md. App. 723 (2015), we commented upon “the intersection of the jurisdictional provisions contained in the UCCJEA and UIFSA [codified in FL § 10-301 *et seq.*],” and we recognized that, “[a]lthough each act is distinct, both seek to streamline and synchronize certain family law issues for the benefit of children whose parents and guardians live in different states or countries.” *Id.* at 735. We noted that both statutory schemes “were established to provide systematic and harmonized approaches to urgent family issues in a world in which parents and guardians, who choose to live apart, increasingly live in different states and nations.” *Id.* at 726. Both statutes provide for the registration of orders from a different jurisdiction, directing that such orders, if supported by the proper documentation, be filed by the receiving court as a foreign judgment. *See* FL § 10-341(b) (registration under UIFSA) and FL § 9.5-305(b)(1) (registration under UCCJEA). Both statutes provide that notice of registration be sent to the non-registering party, who must also be notified that the order is enforceable when registered and that, if that party wishes to contest the registration, the objecting party has only twenty days to request a hearing. *See* FL § 10-344 (Notice of Registration of Order under UIFSA) and FL § 9.5-305(b)(2) (UCCJEA). Pursuant to either statute, if no hearing to contest registration of the order is timely requested, “the order is confirmed by operation of law.” *See* FL § 10-345(b) and FL § 9.5-305(e). The UIFSA provides a greater number of grounds for contesting registration, but, under either statute, if the contesting party fails to establish a basis to deny registration, the court is required to issue a ruling confirming the registration. Under MUCCJEA at FL § 9.5-305(d), “the court shall confirm the registered order,” and under UIFSA at FL § 10-346(c), “the registering tribunal *shall issue an order confirming the [challenged] order.*” (Emphasis added.) Although this latter provision is more explicit than the UCCJEA in requiring the issuance of an order of confirmation, Maryland Rule 2-601 requires that judgments of circuit courts must be documented in accordance with the procedures set forth in that rule.

the foreign judgments has been *confirmed* by the court. Therefore, there is no appealable judgment for us to address, and this appeal must be dismissed.

**APPEAL DISMISSED.
COSTS TO BE PAID BY
APPELLANT.**