IN THE COURT OF APPEALS OF IOWA

No. 1999-537 (9-798) / 98-2019
Filed May 31, 2000

DONALD C. HAACKE,
Plaintiff-Appellant,

vs.

MINNESOTA DEPARTMENT OF REVENUE,
An Instrumentality of the State of Minnesota,
JN FAUVER CO., and
MINNESOTA COLLECTION ENTERPRISE,
Defendants-Appellees.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge.

Donald Haacke appeals the district court's order finding that Minnesota had jurisdiction enforce a child support judgment and assess penalties against him under Minnesota law. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Mike Hatch, Attorney General, Sarah Walter, Assistant Attorney General, State of Minnesota, for appellees.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

SACKETT, C.J.

Donald Haacke appeals the decision of the district court which upheld a Minnesota judgment against him for unpaid child support. He claims (1) the court erred by imposing collection fees against him under Minnesota law, where Minnesota law was neither pled nor proven; (2) the judgment was improper because Minnesota did not have personal jurisdiction over him; and (3) he was not given notice and an opportunity to be heard concerning the imposition of a collection fee. We affirm in part, reverse in part and remand.

Donald Haacke and Kim Donth, formerly known as Kim Haacke, were married in South Dakota. They have three children. Donald and Kim were divorced in the State of South Dakota in October 1977. The decree provided Donald pay monthly child support of $85.00 a month and hospital, medical and dental expenses of the children.

On January 9, 1992, the South Dakota divorce decree was registered in Rock County, Minnesota. At the time it was registered it showed that Donald was sent a copy of the registration at a street address in Newton, Iowa, and advised he had twenty days to object to the registration. Donald, represented by a South Dakota attorney, objected to the registration, but his objection was not sustained and the Minnesota court ordered the decree registered.

On March 16, 1993, Donald was notified by the State of Minnesota of their intent to enter judgment for $26,163.00 in child support arrears. On April 14, 1993, the court administrator, on a finding Donald had been notified, entered a judgment against him in that amount. The notice of entry of judgment was sent to Donald in Newton.

On July 9, 1998, an affidavit was made by an employee of the Minnesota Collection Enterprise (Enterprise)[1] contending placed in its system for collection was a debt of Donald's in the amount of $22,108, and that upon referral of the debt a fifteen percent fee was added in accordance with Minnesota Statutes. The fee was $3316.19 making the total owed $25,424.11. A lien against Donald was filed by Enterprise in Ramsey County district court. The affidavit continued that because a lien was filed the fee was increased to twenty-five percent, adding an additional $2210.79 to what was owed, making a total debt, subtracting some payments made, of $27,634.91.

On April 23, 1998, Donald filed a petition in Iowa against the Minnesota Department of Revenue, his employer, and Enterprise pursuant to the Uniform Interstate Family Support Act, Iowa Code section 252K.506(1) (1997).[2] Donald claimed the Minnesota judgment should not be enforced against him in Iowa because Minnesota did not have personal jurisdiction over him. He sought a determination of the exact amount of his child support arrearage, claiming the collection fee had been improperly assessed.

The district court concluded the Minnesota judgment was valid. The court found Minnesota courts had personal jurisdiction over Donald. The court determined that because Minnesota law applied, the fees required by Minnesota Statute sections 16D.11 and 256.9792(6) were properly assessed. As of

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[1] The Minnesota Collection Enterprise is a unit of the Minnesota Department of Revenue established specifically to collect debts owed to or through the State of Minnesota.

[2] Section 252K.506(1) provides:

> An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 252K.604 applies to the contest.

September 21, 1998, the amount Donald owed Enterprise, including fees, was $27,514.29.

This case was tried in equity. Our scope of review in this matter is de novo. *See State ex rel. Dep't of Human Services v. Antle,* 433 N.W.2d 43, 43 (Iowa App. 1988). We give weight to the fact-findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

The district court determined Minnesota law should apply under Iowa Code section 252K.604. Donald does not dispute Minnesota law should apply, but he claims defendants did not sufficiently plead and prove the specific Minnesota laws to be applied in this case.

Defendants assert they were under no obligation to plead and prove Minnesota law because the collection fee was properly assessed in Minnesota, and under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. section 1738B (1994), Iowa must enforce the judgment against Donald.

Under the Supremacy Clause of the United States Constitution, the provisions of the Full Faith and Credit for Child Support Orders Act are binding on all states and supercede any inconsistent provisions of state law. *In re Marriage of Zahnd,* 567 N.W.2d 684, 687 (Iowa App. 1997). Congress passed the act because some states were refusing to give full faith and credit to other states' orders concerning child support. *In re Marriage of Carrier,* 576 N.W.2d 97, 98 (Iowa 1998).

The act provides that a child support order is made consistently with the full faith and credit act if:

> (1) a court that makes the order, pursuant to the laws of the state in which the court is located . . .
>
> > (A) has subject matter jurisdiction to hear the matter and enter such an order; and
> > (B) has personal jurisdiction over the contestants; and
>
> (2) reasonable notice and an opportunity to be heard is given to the contestants.

28 U.S.C. § 1738B(c).

Donald does not challenge the Minnesota courts' subject matter jurisdiction to enter the 1993 judgment against him for unpaid child support. He contends the Minnesota courts did not have personal jurisdiction over him because he did not have sufficient minimum contacts with the state for the judgment to be valid.

Donald voluntarily submitted to the jurisdiction of the Minnesota courts, and thereby waived any further objection to personal jurisdiction. *See Fisher v. Keller Indus., Inc.*, 485 N.W.2d 626, 628 (Iowa 1992) (personal jurisdiction may be obtained by a party's voluntary appearance and submission).

Donald concedes he received reasonable notice of the 1993 judgment against him for child support. However, he asserts he did not receive notice the child support judgment could be increased by collection fees. Throughout the case he has resisted defendants' efforts to increase the amount of the judgment by collection fees.

The 1993 judgment does not include collection fees. In August 1997, Donald received a demand letter after the fifteen percent fee had already been imposed. The letter did not inform him a fifteen percent collection fee had

already been assessed against him or that the fee could be increased to twenty-five percent if Enterprise was required to take further action to collect the debt. The letter did not inform Donald of his statutory remedies to contest the imposition of the collection fee. Donald sent a letter to the Minnesota Department of Revenue in December 1997, stating he had repeatedly asked for an accounting as to how his child support judgment had increased, but had not yet received an answer.

Under Minnesota law, Donald should have received notice of the collection fee. See Minn. Stat. §§ 16D.11(1) and 256.9792(4)(b). There is no evidence notice was sent to him before the collection fee was imposed.

In considering the Full Faith and Credit for Child Support Orders Act, a New Jersey court noted that whether it is fraud, notice of the suit, or lack of jurisdiction over the person or the subject matter, the United States Supreme Court has indicated full faith and credit need not be given if a party has not received "notice of the proceedings and an opportunity to be heard." *Bednarsh v. Bednarsh,* 660 A.2d 575, 580 (N.J. Super. 1995) (quoting *Milliken v. Meyer,* 311 U.S. 457, 463, 61 S. Ct. 339, 343, 85 L. Ed. 2d 278, 283 (1940)).

Donald did not receive notice of the collection fee, nor was he given an opportunity to contest the application of the fee. For these reasons, we do not give full faith and credit in Iowa to the ordered collection fee.

The judgment against Donald for child support should be affirmed. The portion of the judgment which represents collection fees should be reversed. Donald did not receive reasonable notice a collection fee could be imposed on the judgment. The case is remanded for a determination of what portion of the

judgment represents collection fees. Costs of this appeal are assessed one-half to Donald and one-half to the Minnesota Department of Revenue.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.