

STATE OF MICHIGAN
COURT OF APPEALS

RIKE ZEHENDER,

Plaintiff-Appellant,

v

ERIK ZEHENDER,

Defendant-Appellee.

UNPUBLISHED
December 18, 2012

No. 305691
Leelanau Circuit Court
LC No. 2010-008379-DM

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order denying entry of a German judgment resulting from a divorce proceeding which was sought by plaintiff for the purpose of enforcing its property provisions. We reverse and remand for proceedings consistent with this opinion.

Plaintiff is a German citizen, defendant has dual American and German citizenship, and their son has dual citizenship as well. The parties were married in Germany. In 2002, the parties were divorced in Germany through a negotiated settlement which included their agreed terms.¹ Thereafter, defendant returned to Michigan, but the parties' child remained in Germany with plaintiff. It appears that the divorce was amicable until plaintiff remarried in 2007. It also appears that defendant was current on his financial obligations arising from the judgment until 2008 when allegedly a dispute arose about visitation and parenting time.

In 2010, plaintiff sought entry of the German judgment for the purpose of enforcing its financial provisions against defendant. Defendant objected, arguing that the judgment did not reflect an accurate account of his financial obligation and that the court did not have jurisdiction to enforce the judgment. During hearings on the matter, the trial court noted that it would not recognize certain provisions of the judgment, namely the financial provisions, unless plaintiff submitted to the court's jurisdiction with regard to enforcement of "custody and parenting time." Plaintiff's counsel explained, however, that plaintiff was seeking only to determine, through a creditor's examination, whether defendant had property or funds with which to satisfy a

¹ The settlement document sets forth specific terms which follow the words: "The parties are now agreeing to the following."

judgment that he promised to pay but was not paying. However, consistent with the court's expressed inclination, the court entered an order denying entry of the foreign judgment "for the reason that Plaintiff will not consent to the jurisdiction of this Court as to the child related provisions of the parties' Judgment of Divorce." This appeal followed.

Plaintiff argues that the trial court improperly denied entry of the German judgment on the erroneous ground that she would not consent to the court's jurisdiction regarding its "child related provisions." We agree.

Whether to enforce a foreign judgment as a matter of comity is generally reviewed de novo. *Hare v Starr Commonwealth Corp*, 291 Mich App 206, 214; 813 NW2d 752 (2011).

Money judgments from foreign countries are recognized in Michigan according to the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA). MCL 691.1131 *et seq.* The UFMJRA, however, does not apply to a foreign judgment if the judgment is one "for divorce, support, or maintenance or other judgment rendered in connection with domestic relations." MCL 691.1133(2)(c).

When the UFCMJRA does not apply, the issue whether a foreign country's judgment is entitled to full faith and credit can be decided under the principle of comity. *Dart v Dart*, 460 Mich 573, 574-575 n 1; 597 NW2d 82 (1999). "Comity is the recognition of a judicial or legislative act of another nation that permits foreign judgments to be recognized in this country." *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 156; 677 NW2d 874 (2003).

In *Dart*, our Supreme Court held that comity mandated the enforcement of a foreign divorce judgment's support and property distribution provisions because the parties were accorded due process, actively participated, and were represented by counsel in a court of competent jurisdiction, "under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting[.]" *Dart*, 460 Mich at 581; quoting *Hilton v Guyot*, 159 US 113, 202-203; 16 S Ct 139; 40 L Ed 95 (1895). Other cases have also held that support provisions in foreign divorce judgments are enforceable under general principles of comity. See, e.g., *Jeong Suk Bang v Joon Hong Park*, 116 Mich 34, 40; 321 NW2d 831 (1982); *Grove v Grove*, 2 Mich App 25, 35; 138 NW2d 537 (1965).

In this case, it is undisputed that both parties were represented by counsel in Germany, the process was fair, the terms of the divorce settlement were negotiated between the parties, those negotiations culminated in an agreement and, thereafter, a judgment. Accordingly, principles of comity mandate that this foreign judgment be given force and effect.

However, the trial court refused entry of the foreign judgment on the ground that plaintiff would "not consent to the jurisdiction of this Court as to the child related provisions of the parties' Judgment of Divorce." Although the German judgment includes some child support provisions, it does not include any provision related to child custody or parenting time. And child custody and parenting time were not issues properly before the trial court. Apparently, as

argued by plaintiff, another German judgment exists which sets forth the parties' settlement terms pertaining to child custody and parenting time and that judgment was not before the trial court. The issue before the court was whether the judgment actually presented to the court could be enforced.

Further, under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.*, a foreign country is treated as a state of the United States for purposes of the statute's general and jurisdictional provisions. MCL 722.1105(1). "Once an initial child-custody determination occurs, exclusive, continuing jurisdiction generally remains with the decreeing court." *Atchison v Atchison*, 256 Mich App 531, 538; 664 NW2d 249 (2003), quoting MCL 722.1202. Thus, the court that has exclusive and continuing jurisdiction over child custody and parenting time disputes is the German court which presided over that matter. Accordingly, the trial court's refusal to enter the foreign judgment on the ground that plaintiff would "not consent to the jurisdiction of this Court as to the child related provisions of the parties' Judgment of Divorce" was erroneous.

Further, we reject defendant's claim that this Court lacks subject-matter jurisdiction over this appeal. MCR 7.203(A)(1) provides this Court with jurisdiction over an appeal from a final order of the circuit court as defined in MCR 7.202(6)(a). The trial court's order denying entry of the foreign judgment was a final order under MCR 7.202(6)(a)(i) which disposed of this matter and plaintiff's appeal was timely filed. Accordingly, this Court has jurisdiction over this appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro