

CASE NO. A06-1409

**State of Minnesota
In Court of Appeals**

CHRISTINA JENSEN,

Plaintiff/Respondent,

vs.

DAVID FHIMA,

Defendant/Appellant.

APPELLANT'S BRIEF AND APPENDIX

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Statement of Legal Issues

1. Whether the District Court improperly denied Appellant's Motion for Stay of the Docketing/Enforcement of the Foreign Judgment by misinterpreting the statute to require Appellant's sworn affidavit (rather than his attorney's) and the posting of security before the motion to stay was decided?

The District Court denied Appellant's Motion to Stay of the Docketing/Enforcement of the Foreign Judgment, finding that the Motion failed procedurally because Appellant failed to support his motion with his own sworn affidavit testimony and failed to provide security pursuant to Minn. Stat. § 548.29, subd. 2.

Minn. Stat. § 548.29, subd. 2
Matson v. Matson, 310 N.W.2d 502 (Minn. 1981).

2. Whether the District Court improperly made findings on the merits of Appellant's legal grounds for the stay?

The District Court made findings on Appellant's anticipated motion to vacate the foreign default judgment by concluding that: (1) while Minnesota does not extend full faith and credit to judgments that entered beyond ten years, Respondent had validly renewed her California judgment against the Defendant on two occasions; (2) because Fhima did not object to the renewal in California within thirty days, Fhima also waived his right to contest the renewal in Minnesota.

Minn. Stat. § 548.29, subd. 2.
Matson v. Matson, 310 N.W.2d 502 (Minn. 1981).

Statement of the Case

Appellant David Fhima ("Fhima") commenced this litigation on July 5, 2006, and obtained an emergency judicial assignment in order to bring a Motion to Stay the Docketing/Enforcement of the Foreign Judgment filed in Hennepin County District Court on May 26, 2006, pursuant to the Uniform Enforcement of Foreign Judgments Act ("Act"), found at Minn. Stat. §§ 548.26-548.33. *A 1.* The Notice of Filing of a Foreign Judgment was based upon a default judgment entered against Fhima and in favor of Respondent Christina Jensen ("Respondent") in the Superior Court of California, Los Angeles County, over twelve years ago on February 8, 1994. *A 2.*

Fhima moved the district court for a ninety-day stay of the docketing/enforcement of the judgment, pursuant to Minn. Stat. § 548.29, subd. 2, on the grounds that the California judgment had expired and was no longer enforceable against Fhima in Minnesota pursuant to the ten-year statute of limitations on the enforcement of judgments contained in Minn. Stat. § 541.04. Fhima's Motion to Stay was supported by the Affidavit of one of his attorneys, Anthony Gabor. *A 3-6.* Fhima's motion was heard by the Honorable Marilyn J. Kaman on July 6, 2006. *A 7.*

At the hearing, Fhima's counsel argued that he should be granted a ninety-day temporary stay in order to maintain the status quo while he brought a motion to vacate the foreign judgment pursuant to Minn. Stat. § 541.04. *A 15-16.* The stay would allow both parties to properly brief the Court on the statute of limitations issue. *Id.* Fhima's counsel argued that a violation of the statute of limitations is a justifiable legal ground for a temporary stay because Respondent's judgment had been entered in California over twelve years ago. *Id.*

The District Court denied the motion, finding that Fhima failed to procedurally comply with Minn. Stat. § 548.29, subd 2 by not supporting his motion through a personally sworn affidavit. *A 8*. The District Court also denied the motion because Fhima did not provide security under the statute before the motion was decided.

The District Court's Order denying the motion was filed on July 7, 2006. *A 80*. This appeal followed.

Statement of Facts

In September 1991, Respondent brought an action against Fhima in the Superior Court of California, Los Angeles County. *A 12*. Fhima was personally served with the Summons and Complaint on October 13, 1991. *A 12-13*. On February 8, 1994, the Superior Court of California, Los Angeles County entered a default judgment in favor of Respondent and against Fhima. *A 2*.

On October 12, 1999, Respondent renewed her judgment against Fhima by filing an application for renewal pursuant to Cal. Civ. Proc. § 683.140. *A 28-29*. Based upon the address shown for David Fhima on this Application for Renewal, Respondent knew that Fhima was no longer living in California and had become a resident of Minnesota. *Id.* Respondent renewed her judgment a second time on August 1, 2005. *A 30-3*. Respondent had made no attempt to collect on her judgment before renewing it in 2005. *A 19*. Respondent then filed the twelve-year old California judgment with the Hennepin County District Court on May 26, 2006. *A 32*.

On July 5, 2006, Fhima sought and received an emergency judicial assignment in order to bring a Motion to Stay the Docketing/Enforcement of the Foreign Judgment. *A 1*. On July 6, 2006, Fhima's Motion to Stay was heard before the Honorable Marilyn J. Kaman. *A 7*. Fhima's motion was also supported by his attorney's affidavit. *A 5-6*.

At the hearing, Fhima argued, through his counsel, that a ninety-day temporary stay of the docketing/enforcement was appropriate pursuant to Minn. Stat. § 548.29, subd. 2. *A 13*. Fhima argued a stay of entry of the judgment was warranted because Respondent's foreign judgment had been entered in California over twelve years ago, and pursuant to Minn. Stat. § 541.04, it had expired and was no longer enforceable against Fhima in Minnesota. *A 13-15*.

Fhima further noted that while Respondent apparently renewed her judgment twice in accordance with Cal. Civ. Proc. § 683.140, this method for renewal used by Respondent did not create a new judgment, but only extended the period of enforceability in California. *Id.*

The District Court denied Fhima's motion, finding that the motion failed procedurally because Fhima himself did not provide sworn affidavit testimony in support of his motion. *A 8.* The District Court also found that because Fhima had not yet provided any security, he procedurally failed to comply with the statute. *Id.*

Argument

A. **The Appropriate Standard of Review for the Interpretation and Construction of a Statute is De Novo Review.**

“Statutory construction is a question of law, which the court of appeals reviews de novo.” *Schmidt v. City of Columbia Heights*, 696 N.W.2d 413, 415 (Minn. App. 2005). “No deference is given to a lower court on questions of law”. *Modrow v. JP Foodservice, Inc* , 656 N.W.2d 389, 393 (Minn. 2003) (citing *Frost-Benco Elec Ass’n v. Minn. Pub Utils Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984)).

B. **The District Court’s Interpretation and Application of Minn. Stat. § 548.29, Subd. 2 Requiring a Personally Sworn Affidavit from the Judgment Debtor Resulted in an Unreasonable and Absurd Outcome.**

The District Court denied Fhima’s Motion to Stay the Docketing/Enforcement of the Foreign Judgment, in part, because Fhima did not personally provide a sworn affidavit in support of the stay. The District Court also denied the motion because Fhima had not yet posted a security bond. However, the statute does not require the judgment debtor himself to provide a sworn affidavit nor does it require him to provide security prior to seeking a motion to stay.

Minn. Stat § 548.29, subd. 2, provides:

If the judgment debtor at any time shows the district court any ground upon which enforcement of a judgment of any district court or the court appeals or the supreme court of this state would be stayed, the court *shall* stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

Minn. Stat. § 548.29, subd 2 (Emphasis Added)

On its face, Minn. Stat. § 548.29 subd. 2, does not make it mandatory that the judgment debtor provide a personally sworn affidavit in order to be entitled to a stay.

Despite the absence of any statutory requirement, the district court in this case refused to grant Fhima's motion because counsel, and not Fhima himself, presented the grounds in support of his motion for a stay. Fhima's counsel presented the grounds, which was based on a purely legal argument on which Fhima was not competent to testify. Regardless, the district court determined that Fhima failed to comply with the statute.

The district court's interpretation and construction of Minn. Stat. § 548.29, subd. 2 results in both an unreasonable and absurd outcome. "The court will not construe a statute to lead to injustice or an absurd result if the language will reasonably permit another construction." *In re Estate of Ablan*, 591 N.W.2d 725, 727 (Minn. App. 1999). "When interpreting a statute, our function is to ascertain and effectuate the intention of the legislature. If the statute is free from all ambiguity, we look only to its plain language. When, however, the literal meaning of the words of this statute would produce an absurd result, we have recognized our obligation to look beyond the statutory language to other indicia of legislative intent." *Olson v Ford Motor Company*, 558 N.W.2d 491, 494 (Minn. 1997)

The court's analysis in the above-referenced cases relies heavily upon Minn. Stat. § 645.17, which serves as an aid to Minnesota courts in interpreting statutes and ascertaining legislative intent.

Minn. Stat. § 645.17, concerning the court's presumption in ascertaining legislative intent, provides:

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

- (1) The legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
- (2) The legislature intends the entire statute to be effective and certain;
- (3) The legislature does not intend to violate the constitution of the United States or of this state;
- (4) When a court of last resort has construed the language of the law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and
- (5) The legislature intends to favor the public interest as against any private interest.

In this case, the plain language of Minn. Stat. § 548.29, subd. 2, does not require a sworn affidavit from the judgment debtor to prevail on a motion for a stay. The district court's interpretation and application of the statute produced an absurd and unreasonable result. The Uniform Enforcement of Foreign Judgments Act ("Act") does not state that the judgment debtor must provide his own sworn affidavit testimony to support his motion. The Act only requires that the judgment debtor show the district court any grounds for a stay. It does not specify or limit the judgment debtor to any one particular method of showing the district court entitlement to a stay.

To the extent the statute is open to interpretation, and therefore ambiguous, it would still produce an absurd and unreasonable result if a judgment debtor is not allowed to make purely legal arguments through his counsel. "A statute is ambiguous when it is susceptible to more than one reasonable interpretation." *Molloy v. Meier*, 679 N.W.2d 711, 723 (Minn. 2004). "When, however, the literal meaning of the words of a statute would produce an absurd result, we have

recognized our obligation to look beyond the statutory language to other indicia of legislative intent.” *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn 1997).

Minn. Stat. § 548.29, subd. 2, is part of the Act as adopted by the Minnesota legislature in 1977. It was originally drafted in 1964 by the National Conference of Commissioners on Uniform State Laws. *A 33-38* In its prefatory note, the commissioners state:

The Act provides the enacting state with a speedy and economical method of doing that which it is required to do by the Constitution of the United States. It also relieves creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of the foreign judgment. This act offers the states a chance to achieve uniformity in a field where uniformity is highly desirable. *A 35*

Minnesota also adopted the commissioners’ reasoning that the Act should be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subjects of sections 548.26 to 548.33 among those states which enact it. Minn. Stat § 548.32. Similarly, prior to recommending the Act for passage in Minnesota, the Minnesota Senate Judiciary Committee Meeting minutes and a Committee memorandum indicate that the intent of the bill is to provide to foreign judgment holders the same rights and remedies available to the holder of a domestic judgment. *A 39-42*.

The procedure followed by Fhima in bringing his motion for a stay coincides with the Act’s general purpose and intent. Even though the Act seeks to effectuate the speedy and economical enforcement of foreign judgments and to give foreign judgment holders the same rights and remedies as domestic judgment holders, it obviously provides for the possibility that a judgment debtor will have appropriate and viable grounds for a stay in order to dispute the enforcement of a foreign judgment. As noted above, “[t]he court will not construe a statute to

lead to injustice or an absurd result if the language will reasonably permit another construction.”

In re Estate of Ablan, 591 N.W.2d 725, 727 (Minn. App. 1999)

While there may be occasions when a judgment debtor should provide sworn affidavit testimony in support of a motion to stay, the judgment debtor is not always competent to prove his own motion. Here, the judgment debtor is not making factual representations, but instead, is presenting the district court with a legal issue that can only be competently argued through his attorney.

In pertinent part, the Minn. Stat. § 548.29, subd. 2, states that the district court shall grant a stay on a foreign judgment if it is shown “any ground upon which enforcement of a judgment of any district court or the court of appeals or supreme court *of this state* would be stayed. . .” (Emphasis Added). Accordingly, there must be some legal analysis and a determination of what would constitute grounds for a stay in Minnesota

The Minnesota Supreme Court in *Matson v. Matson*, 333 N.W.2d 862 (Minn. 1983), (“*Matson II*”), set forth the grounds for vacating a foreign judgment that has been filed pursuant to the Act. “After a foreign judgment has been duly filed, the grounds for reopening or vacating it are limited to lack of personal jurisdiction of the rendering court, fraud in procurement, satisfaction, lack of due process, **or other grounds that make a judgment invalid or unenforceable.**” *Matson II*, 333 N.W.2d at 867 (citing *Morris v Jones*, 329 U.S. 545, 67 S. Ct. 451, 91 L. Ed. 488 (1946)) (emphasis added). All of the above grounds, including the statute of limitations, constitute legal issues. If the statute of limitations contained in Minn. Stat. § 541.04 applies, then Respondent’s foreign judgment is invalid and unenforceable against Fhima in Minnesota.

By reasonably construing this section of the Act to allow a judgment debtor's counsel to present the district court with the grounds for a stay, this Court will not come into conflict with the Act's legislative intent. The involvement of a judgment debtor's counsel in the presentation of a judgment debtor's grounds for a stay does not impede or preclude a foreign judgment holder from attaining the same rights and remedies as a domestic judgment holder. If the foreign judgment holder complies with the Act's requirements and holds a foreign judgment that is valid and enforceable in Minnesota, the legislative intent will be properly carried out.

Conversely, to interpret this section of the Act in such a way so that only the judgment debtor himself can present the district court with the grounds for a stay of the enforcement of the foreign judgment would result in an unreasonable and absurd outcome especially when the grounds for the stay is purely legal.

Here, Fhima's counsel appeared in court on Fhima's behalf to present Fhima's legal grounds for a temporary stay. Fhima's counsel did not seek to offer any factual testimony as to the underlying matter, but rather presented a sufficient legal argument warranting the preservation of the status quo for an appropriate of time to allow the parties to brief and argue Fhima's grounds for vacating the foreign judgment.

C. The Judgment Debtor is not Required to Provide Security Prior to Seeking a Motion for a Stay of the Foreign Judgment.

The District Court also misconstrued Minn Stat § 548.29, subd. 2 to require Fhima to provide security before the district court had decided the Motion to Stay the Docketing/Enforcement of the Foreign Judgment. The district court denied Fhima's motion to stay failed because he had not yet provided security under Minn. Stat. 548.29, subd. 2. A 8.

However, the clear and plain language of the statute states that the security under the Act is only required if the district court is going to grant the judgment debtor's motion for a stay: "...the court shall stay enforcement of the foreign judgment for an appropriate period, *upon requiring the same security for satisfaction of the judgment which is required in this state.*" Minn. Stat. § 548.29, subd. 2. (emphasis added). The plain language in the Act does not require the judgment debtor to provide security prior to *seeking* the motion to stay. Rather, the requirement to post security only arises upon the district court's decision to stay enforcement of the foreign judgment.

Furthermore, even though the language in Minn. Stat. § 548.29, subd. 2 seems to make the providing of security mandatory, it is not. The Minnesota Supreme Court has made this clear when it held that despite the language in Minn. Stat. 548.29, subd. 2 "the district court retains its discretion under the rules of civil procedure to stay the enforcement of a foreign judgment upon conditions it deems proper for the security of the adverse party." *Matson v. Matson*, 310 N.W.2d 502, 507-508 (Minn. 1981) ("*Matson I*"). The district court has the discretion to order a stay of the foreign judgment upon the judgment debtor providing whatever security the district court deems proper for the security for the adverse party.

Here, the District Court clearly misconstrued Minn. Stat. § 548.29, subd. 2 in denying the motion to stay because Fhima had not yet provided security. Accordingly, Fhima respectfully requests that this Court reverse the District Court's Order, grant Fhima's motion for a stay, and remand the matter to the District Court to determine any amount of appropriate security required, if any

D. The District Court Should Have Granted Fhima's Motion to Stay.

Minn. Stat § 548 29, subd. 2, clearly and plainly states that if the judgment debtor shows the district court any grounds for a stay, the court shall grant a stay. The only condition is that the judgment debtor may be required to provide appropriate security.

There is no language in the Act that requires the judgment debtor to argue or prove the merits of any grounds he presents. Nor is there any requirement or indication that the district court shall make any findings or determination with regard to the merits of the judgment debtor's anticipated future motion to vacate the judgment

The Act evidences a clear intent that upon a showing of viable grounds, a district court shall stay enforcement of a foreign judgment to allow the judgment debtor an appropriate period of time to fully brief the district court to determine whether the judgment debtor's grounds should preclude enforcement of the foreign judgment.

In *Matson I*, 310 N W 2d at 503, Charles and Dorothy Matson were married on October 25, 1941, in Milwaukee. They continued to reside in Wisconsin until their divorce in 1961. *Id.* The divorce judgment awarded Dorothy Matson custody of the children and Charles Matson was ordered to pay \$60 a week for their support and \$10 a week as alimony *Id.* at 504. Charles Matson moved from Wisconsin in 1961 and established residence in Minnesota in 1964. *Id.* He has lived there ever since. *Id.*

On January 7, 1980, Charles Matson was personally served in Minnesota with his ex-wife's motion for an order seeking a money judgment for alleged arrearages in child support and alimony, which was brought in Milwaukee County Circuit Court. *Id.* Charles Matson did not appear. *Id.*

The Wisconsin court made findings that it had both personal and subject matter jurisdiction over Charles Matson and the matters raised in Plaintiff's motion and that Charles Matson was in arrears on the payment of alimony in the amount of \$48,682.00. *Id.* The Wisconsin court entered default judgment against Charles Matson for the arrears. *Id.*

On June 4, 1980, the Wisconsin judgment was filed in Minnesota under the Uniform Enforcement of Foreign Judgment Act. *Id.* Notice of filing of the judgment was mailed to Charles Matson pursuant to Minn. Stat. § 548.28. *Id.* Charles Matson moved the district court for a stay of execution pending the determination of the jurisdictional issues pursuant to Minn. Stat. § 548.29, subd. 2. *Id.* at 504, 508. The district court granted a stay for six months, conditioned on posting of a bond by Charles Matson in the sum of \$97,364.00 pursuant to Minn. Stat. § 550.36.¹ *Id.* at 504. Charles Matson then brought a motion to vacate the Wisconsin judgment on the grounds that it was void for lack of personal jurisdiction and subject matter jurisdiction. *Matson I* at 504.

The facts in *Matson I* are similar to this matter. In *Matson I*, Charles Matson challenged the validity of the judgment entered against him in Minnesota. He asked the court for a stay to give him the opportunity to properly challenge the entry of judgment against him. The court granted a six-month stay to determine the jurisdictional issues he raised.

In this case, Fhima challenged the validity and enforceability of the judgment entered against him, raising a statute of limitations argument. The sole issue before the district court was whether he should be granted a ninety-day stay to afford him the opportunity to bring his motion

¹ The Minnesota Supreme Court later in the case held that under Minn. Stat. § 550.36, the district court was not obligated to issue a bond for twice the amount of the judgment, but retained discretion to require security in an amount it deemed appropriate, if any

to vacate the judgment, before the Respondent would be allowed to collect against him Pursuant to *Matson I*, the district court should have afforded him that opportunity

Based upon the foregoing, the district court improperly denied Fhima's motion for a stay, and therefore he respectfully requests that this Court reverse the district court's Order and Order a ninety-day stay so that Fhima may bring a motion to vacate the foreign judgment pursuant to Minn. Stat. § 541.04.

E. **The District Court Exceeded the Scope of the Motion to Stay by Making a Finding on the Merits of Fhima's Statute of Limitations Argument.**

The District Court also exceeded the scope of Fhima's Motion to Stay the Docketing/Enforcement of Respondent's Foreign Judgment by making findings on the merits of his grounds for the stay. In its Order, the District Court made findings on the merits of Fhima's anticipated motion to vacate, which had not yet been briefed or argued. The district court made the following findings on the merits: (1) while Minnesota does not extend full faith and credit to judgments that entered beyond ten years, Respondent had validly renewed her judgment in California against on two occasions; and (2) because Fhima did not object to the renewal in California within thirty days, he waived his right to contest the renewal. *A 8*

Indeed, the purpose for bringing the motion for the stay was to maintain the status quo and stay enforcement proceedings pending the outcome of Fhima's proposed motion to vacate the foreign judgment. Fhima only sought an opportunity to properly brief and argue the statute

of limitation issue. It was improper for the District Court to make findings with regard to this issue before Fhima brought his motion to vacate the foreign judgment.²

In *Matson I*, the district court granted a stay of the enforcement of the foreign judgment for a period of six months pending the outcome of defendant's jurisdictional arguments. *Matson I*, 310 N.W.2d at 504. In this case, Fhima's counsel similarly moved the district court for a stay of the enforcement of Respondent's foreign judgment. He presented the district court with grounds for the stay and requested an opportunity to bring a motion to vacate the foreign judgment based upon those grounds. There is no language in the Act that requires a judgment debtor to prevail on the merits of the grounds he or she presents to the district court for a stay of enforcement of a foreign judgment. Consequently, it was improper for the district court to make findings regarding the merits of Fhima's proposed motion before it was brought.

Conclusion

The district court improperly denied Fhima's motion for a stay of the enforcement of the foreign judgment. The plain language of the Act requires only that judgment debtor show the district court any ground upon which the judgment should be stayed, which is what Fhima did.

Further, the district court misinterpreted and misconstrued Minn. Stat. § 548.29, subd. 2, of the Act by finding that Fhima was required to support his motion for a stay with a personally

² Fhima did not bring his Motion to Stay to contest the renewal of Respondent's judgment. Rather, he brought the motion to stay the docketing/enforcement of the foreign judgment in Minnesota. Also, in finding that Respondent renewed her 1994 judgment, the District Court seems to suggest that Minn. Stat. § 541.04 would not apply because the judgment has been renewed. The District Court seemingly failed to consider Fhima's argument that the Law Revision Committee Comments immediately following Cal. Civ. Proc. § 683.120 made clear that renewal under this article does not result in the entry of a new judgment. As a result, the original date of entry of the default judgment on February 8, 1994, should be the trigger for the statute of limitations.

sworn affidavit testimony. The district court also erred in denying Fhima's motion because he had not yet provided security for his requested stay.

Finally, it was improper for the district court to make findings regarding the merits of Fhima's proposed motion before it was brought. The Act does not require the judgment debtor to argue and prevail on the merits of the grounds he or she presents to the district court when he is simply moving the district court for stay in order bring a motion on those very grounds.

For these reasons, Fhima respectfully requests that this Court reverse the District Court's Order, grant Fhima's motion and order a ninety-day temporary stay, and remand the case to the district court to determine any appropriate security required, if any.

Respectfully submitted,

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Dated: September 11, 2006.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).