

NO. A06-1409

State of Minnesota
In Court of Appeals

CHRISTINA JENSEN,

Respondent,

vs.

DAVID FHIMA,

Appellant.

RESPONDENT'S BRIEF

FAFINSKI MARK
& JOHNSON, P.A.

Donald Chance Mark, Jr. (#67659)

Connie A. Lahn (#269219)

Anthony Gabor (#032579X)

775 Prairie Center Drive, Suite 400

Eden Prairie, Minnesota 55344

(952) 995-9500

Attorneys for Appellant

GURSTEL, STALOCH
& CHARGO, P.A.

Mitchel C. Chargo (#237565)

Norman I. Taple (#331090)

Todd Murray (#347462)

401 North Third Street, Suite 590

Minneapolis, Minnesota 55401

(612) 664-8200

Attorneys for Respondent

Table of Contents

Table of Authorities.....ii

Statement of the Case.....1

Argument.....1

A. The Proper Standard of Review on Appeal for the Interpretation and Construction of a Statute is De Novo Review.....1

B. The District Court Properly Denied Appellant’s Motion for Stay on Procedural Grounds because Appellant Failed to Personally Provide an Affidavit in Support of the Motion as Required by Minn. Stat. § 548.29, Subd. 2.....2

C. The District Court Properly Denied Appellant’s Motion for Stay on Procedural Grounds because Appellant Failed to Provide Security Required by Minn. Stat. § 548.29, Subd. 2.....5

D. The District Court Properly Denied Appellant’s Motion for Stay on Substantive Grounds because the California Judgment was Properly Renewed.....6

Conclusion.....8

Table of Authorities

Cases:

<i>City of Minneapolis v. Village of Brooklyn Center</i> , 223 Minn. 498, 27 N.W.2d 563, (1947).....	2
<i>Gerber v. Gerber</i> , 714 N.W.2d 702 (Minn. 2006).....	1
<i>Hutchinson Tech., Inc. v. Comm’r of Revenue</i> , 698 N.W.2d 1 (Minn. 2005).....	2, 5
<i>Matson v. Matson</i> , 310 N.W.2d 502 (Minn. 1981).....	5, 6
<i>Olson v. Ford Motor Company</i> , 558 N.W.2d 491 (Minn. 1997).....	3, 4

Statutes and Rules:

Minn. Stat. § 541.04.....	6, 7
Minn. Stat. § 548.26.....	4
Minn. Stat. § 548.27.....	4
Minn. Stat. § 548.28.....	3
Minn. Stat. § 548.29.....	2, 3, 4, 5, 6, 7, 8
Minn. Stat. § 548.30.....	4
Minn. Stat. § 548.31.....	4
Minn. Stat. § 548.32.....	4
Minn. Stat. § 548.33.....	4
Minn. Stat. § 645.16.....	2
Minn. Stat. § 645.17.....	3, 4
CAL. CIV. PROC. CODE § 683.220.....	7

Legislative Reports

LEGISLATIVE COUNCIL OF MINNESOTA, REPORT TO THE SENATE JUDICIARY COMMITTEE OF
1977.....4, 5

Statement of the Case

Appellant brought a motion in Hennepin County District Court on July 5, 2006 seeking a ninety (90) day stay of the docketing and enforcement of a foreign judgment. The foreign judgment was filed on May 26, 2006 by the attorneys for Respondent. The underlying judgment was entered against Appellant by the Superior Court of California, Los Angeles County on February 8, 1994. This judgment was properly renewed under the California Code on October 12, 1999 and again on August 1, 2005. Appellant's motion for stay was heard before the Honorable Marilyn J. Kaman on July 6, 2006.

The District Court denied Appellant's motion, ruling that Appellant failed to procedurally comply with Minn. Stat. § 548.29, subd. 2 by not personally providing a sworn affidavit in support of his motion and by failing to post the required security bond. The District Court further held that Respondent had properly renewed the underlying judgment in 1999 and 2005. Therefore Appellant's purported substantive grounds for the stay was not valid. The Order was filed on July 7, 2006. Thereafter, Appellant initiated this appeal.

Argument

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

On appeal, matters of statutory interpretation are reviewed *de novo*. *Gerber v. Gerber*, 714 N.W.2d 702, 704 (Minn. 2006).

B. The District Court Properly Denied Appellant's Motion for Stay on Procedural Grounds because Appellant Failed to Personally Provide an Affidavit in Support of the Motion as Required by Minn. Stat. § 548.29, Subd. 2.

The first issue raised by Appellant is whether the District Court properly interpreted Minnesota Statute § 548.29, subd. 2 to require Appellant to personally provide a sworn affidavit in support of his motion for stay. The general rule of statutory interpretation is that courts must give effect to the plain meaning of statutory text when it is clear and unambiguous. *See e.g., Hutchinson Tech., Inc. v. Comm'r of Revenue*, 698 N.W.2d 1, 8 (Minn. 2005). A statute is ambiguous only if it is reasonably susceptible to more than one interpretation. *Id.* In addition, the purpose of statutory construction is to remove ambiguity and not to make it. *City of Minneapolis v. Village of Brooklyn Center*, 223 Minn. 498, 501, 27 N.W.2d 563, 565 (1947). Artificial reasoning should not be used to create an ambiguity where none exists. *Id.* Accordingly, when a statute is clearly worded, courts should not consider legislative history. *Hutchinson Tech., Inc.* at 8; *see also* Minn. Stat. § 645.16 (2005).

The clear and unambiguous language of § 548.29, subd. 2 provides that the judgment debtor, *not* the judgment debtor's attorney, show the court the grounds for stay.

Section 548.29, subd. 2 states that:

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 of Appeals or 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 (2005) (*emphasis added*).

In the present matter, Appellant did not personally provide the District Court with an affidavit or similar showing upon which the enforcement of Respondent's judgment should be stayed. Rather, Appellant's attorney offered his own affidavit in support of the motion. The District Court held that this was improper procedurally under § 548.29, subd 2. This holding is strengthened when the language of § 548.29, subd. 2 is compared to the language of Minnesota Statute § 548.28. Section 548.28, subd. 1 distinguishes between the judgment creditor and the judgment creditor's attorney.¹ If the legislature intended such a distinction in § 548.29, they would have included similar language providing that either the judgment debtor or the judgment debtor's attorney must show the court the grounds for stay. Since the legislature included no such language, it is undisputable that § 548.29, subd. 2 requires Appellant to personally provide a sworn affidavit in support of his motion. Accordingly, based on the plain and unambiguous language of § 548.29, subd. 2, this Court should uphold the District Court's decision and deny Appellant's motion for stay based on Appellant's failure to show the District Court any ground for a stay.

Appellant contends that this Court should look beyond the plain language of § 548.29, subd. 2 because the District Court's interpretation of the statute produced an "absurd" result. Appellant cites *Olson v. Ford Motor Company*, 558 N.W.2d 491 (Minn. 1997) and Minn. Stat. § 645.17 in support of this argument. Respondent agrees with

¹ "At the time of the filing of the foreign judgment, the *judgment creditor* or the *creditor's lawyer* shall make and file with the court administrator an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor." Minn. Stat. § 548.28, subd. 1 (2005) (*emphasis added*).

Appellant that *Olson* and § 645.17 stand for the general proposition that a court should look beyond the plain language of a statute if a literal interpretation produces an absurd result. Appellant, however, has failed to explain how the District Court's interpretation of § 548.29, subd. 2 produced an "absurd" result in this case.

In *Olson*, the court stated that "[w]e will only exercise our power to undertake such an expanded inquiry when a party demonstrates that the statute's plain language utterly departs from a clearly expressed goal of the legislature." *Olson v. Ford Motor Company*, 558 N.W.2d 491, 495 (Minn. 1997). The stated purpose of the Uniform Enforcement of Foreign Judgments Act² ("UEFJA") is to effectuate the speedy and economical enforcement of foreign judgments. LEGISLATIVE COUNCIL OF MINNESOTA, REPORT TO THE SENATE JUDICIARY COMMITTEE OF 1977 at 1 (1977). The requirement that Appellant personally provide a sworn affidavit in support of his motion for stay does not "utterly depart" from the expressed goal of the UEFJA. Allowing Appellant's attorney to provide the supporting affidavit would not expedite the process, nor does requiring Appellant to personally provide the affidavit create an excessive burden or produce an unnecessary delay. Thus, there is no "absurd" result in this case and this Court should not indulge Appellant's argument and look beyond the plain language of § 548.29, subd. 2.

² Minnesota adopted the Uniform Enforcement of Foreign Judgments Act in 1977. The provisions of the UEFJA are codified as Minn. Stat. §§ 548.26-548.33.

C. The District Court Properly Denied Appellant's Motion for Stay on Procedural Grounds because Appellant Failed to Provide Security Required by Minn. Stat. § 548.29, Subd. 2.

The second issue raised by Appellant is whether the District Court properly interpreted Minnesota Statute § 548.29, subd. 2 to require Appellant to post a security bond. Again, courts must give effect to the plain meaning of statutory text when it is clear and unambiguous.³ See *Hutchinson Tech.* at 8.

Appellant erroneously suggests to this Court that the District Court has the discretion to order the stay without Appellant having posted the bond required by Minn. Stat. § 548.29, subd. 2. Appellant cites *Matson v. Matson*, 310 N.W.2d 502 (Minn. 1981) in support of this contention. Appellant's reading of *Matson*, however, is a mischaracterization of the court's decision. The issue in *Matson* was not whether the court had the discretion to waive the bond altogether. *Matson v. Matson*, 310 N.W.2d 502, 508 (Minn. 1981). Rather, the issue was whether the Court had the discretion to determine the *amount* of the bond. *Id.*

The present case is distinguishable from *Matson*. In this case, Appellant is not asking this Court to modify the amount of the security required under § 548.29, subd. 2. Rather, Appellant is requesting that this Court waive the posting of a security bond in its

³ The language of the § 548.29, subd. 2 is clear and unambiguous. Section 548.29, subd. 2 states that the District Court shall grant the stay upon the posting of "the same security for satisfaction of the judgment which is required in this state." Minn. Stat. § 548.29, subd. 2 (2005). The plain language of the statute clearly indicates that the stay is contingent upon the posting of the security. This interpretation is consistent with the legislative report on the UEFJA. The Comments to Section 4 of the legislative report state that a judgment debtor *must* provide appropriate security to obtain a stay of enforcement. LEGISLATIVE COUNCIL OF MINNESOTA, REPORT TO THE SENATE JUDICIARY COMMITTEE OF 1977 at 3 (1977).

entirety, a scenario not contemplated by the *Matson* court. Accordingly, this Court should not apply *Matson* to the present case and should uphold the plain language of section 548.29, subd. 2 and deny Appellant's motion for stay based on his failure to post the required security.⁴

D. The District Court Properly Denied Appellant's Motion for Stay on Substantive Grounds because the California Judgment was Properly Renewed.

The third issue raised by Appellant in this appeal is whether Appellant provided the District Court with proper substantive grounds to support a motion for stay. Appellant cites Minnesota Statute § 541.04, which states that “[n]o action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment.” Minn. Stat. § 541.04 (2005). Appellant mistakenly relies on § 541.04 and concludes that the ten-year statute of limitations has tolled because the underlying judgment was entered in 1994. Appellant also suggests that because a statute of limitations defense was merely raised, the District Court was obligated to grant the motion for stay.

While § 548.29, subd. 2 does not require the District Court to determine the merits of Appellant's statute of limitations defense, certainly Appellant must make a showing that its grounds for the requested stay are appropriate and viable. This necessarily involves some legal analysis by the District Court. It would be impossible for

⁴ The underlying purpose of the security bond is to protect the judgment creditor during the stay period. If the security requirement is waived, the judgment debtor has the opportunity to encumber and dispose of assets during the stay period while the judgment creditor is prevented from executing upon the judgment.

the District Court to simply rely on Appellant's assertion of a statute of limitations defense without some preliminary investigation to determine whether such a defense is facially valid. Part and parcel to a preliminary investigation into a statute of limitations defense is an examination of the dates at issue.

In this case, it is undisputed that Respondent properly renewed the underlying foreign judgment on two occasions: first on October 12, 1999 and later on August 1, 2005. Appellant did not contest either of these renewals. Because § 541.04 does not contemplate renewed judgments, Appellant conveniently minimizes the effect of the renewals. However, Section 683.220 of the California Code states that “[i]f a judgment is renewed pursuant to this article, the date of the filing of the application for renewal shall be deemed to be the date that the period for commencing an action on the renewed judgment commences to run” CAL. CIV. PROC. CODE § 683.220 (West 2005). Because Respondent most recently renewed the original judgment in 2005, that is the date which the statute of limitations began to run, not 1994. It was imperative for the District Court to identify the renewals and consider them in order to determine whether the Appellant possessed a proper showing for a stay. Therefore, there is simply no merit to Appellant's statute of limitations defense and the District Court properly denied Appellant's motion for stay.

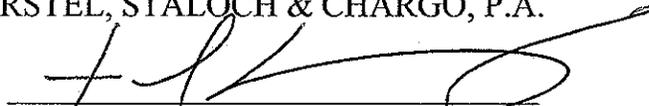
Conclusion

Based upon the plain and unambiguous language of Minn. Stat. § 548.29, subd. 2, this Court should uphold the District Court's decision. Appellant has both failed to provide a personal affidavit in support of his motion and failed to post the required security bond. In addition, this Court should uphold the District Court's decision because Appellant has not demonstrated viable substantive grounds for a successful motion for stay.

Respectfully submitted,

GURSTEL, STALOCH & CHARGO, P.A.

Dated: October 11, 2006

By: 

Mitchel C. Chargo (#237565)

Norman I. Taple (#331090)

Todd Murray (#347462)

Attorneys for Plaintiff

401 North Third Street, Suite 590

Minneapolis, MN 55401

(612) 843-1092