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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0518**

Joe Bailey,  
Respondent,

vs.

Dale Cox,  
Appellant.

**Filed February 3, 2009  
Affirmed; motion denied  
Johnson, Judge**

Clay County District Court  
File No. 14-CV-07-644

Joel A. Flom, Jeffries, Olson & Flom, P.A., P.O. Box 9, Moorhead, MN 56561 (for respondent)

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Considered and decided by Schellhas, Presiding Judge; Johnson, Judge; and Crippen, Judge.\*

**UNPUBLISHED OPINION**

**JOHNSON**, Judge

This appeal is the latest iteration of a contract dispute that first arose nearly 20 years ago. In 1997, Joe Bailey obtained a \$365,000 judgment against Dale Cox in a federal

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\*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

district court in Mississippi. Ten years later, Bailey renewed the judgment in the federal district court and then docketed the renewed judgment in the Clay County District Court. Cox moved to vacate the district court's docketing of the renewed federal judgment. The district court denied the motion. For the reasons stated below, we affirm.

## FACTS

In the late 1980s, Bailey purchased an airplane from Cox and Cox's partner, David L. Zehr. Bailey lived in Mississippi; Cox lived in Minnesota; Zehr lived in Indiana. According to the purchase agreement, Bailey acquired an option to exchange the airplane for a newer one, i.e., to effect a trade-in. Bailey first exercised the trade-in option several months after his purchase, and he exercised it a second time in January 1990. In December 1991, Bailey elected to exercise the option a third time. Cox took possession of Bailey's airplane but never delivered a replacement airplane to Bailey.

In 1996 and 1997, Bailey commenced separate lawsuits against Zehr and Cox. Bailey sought to obtain damages or to recover the airplane that he had returned to Cox. The United States District Court for the Northern District of Mississippi dismissed the case against Zehr for lack of personal jurisdiction, and the dismissal was affirmed on appeal. *See Bailey v. Zehr*, No. 99-60913, 2001 WL 803757, at \*4 (5th Cir. June 14, 2001). Cox defended against Bailey's claims but had default judgment entered against him after he failed to comply with a court order requiring him to serve responses to Bailey's discovery requests.

There are five stages in the procedural history of this dispute that are relevant to this appeal. First, on June 16, 1997, the federal district court entered a default judgment against

Cox in the amount of \$365,027.05. Cox did not appeal from the default judgment to the United States Court of Appeals for the Fifth Circuit, and he did not bring a motion in the federal district court to vacate the default judgment.

Second, on August 19, 1997, Bailey docketed the June 16, 1997, federal judgment in the Clay County District Court.

Third, on April 2, 2007, Bailey filed a motion in the federal district court to renew the June 16, 1997, judgment. The following day, the federal district court granted the motion. The motion to renew was not served on Cox before it was granted. Bailey served Cox with the order renewing the default judgment on June 20, 2007. Cox did not appeal from the renewal of the judgment to the United States Court of Appeals for the Fifth Circuit, and he did not bring a motion in the federal district court to vacate the renewal of the default judgment.

Fourth, on July 16, 2007, Bailey docketed the federal district court's April 3, 2007, renewed judgment in the Clay County District Court.

Fifth, on October 18, 2007, Cox moved to vacate the district court's July 16, 2007, docketing of the federal district court's renewed judgment. On January 23, 2008, the district court denied the motion.

Cox appeals.

## **DECISION**

In the district court, Cox brought his motion to vacate pursuant to rule 60.02(d) of the Minnesota Rules of Civil Procedure, which provides:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:

...

(d) The judgment is void; . . . .

Minn. R. Civ. P. 60.02(d). A district court's denial of a motion to vacate is reviewed for abuse of discretion. *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004); *In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 60 (Minn. App. 2007).

On appeal, Cox makes five arguments as to why the district court erred by denying his motion to vacate. First, Cox argues that the federal district court's June 1997 default judgment is invalid because the federal district court lacked personal jurisdiction over him at the time of Bailey's original action. Second, Cox argues that the federal district court's June 2007 renewal of the default judgment is invalid because the federal district court lacked subject matter jurisdiction over Bailey's motion to renew the judgment. Third, Cox argues that the federal district court's renewal of the default judgment is invalid because the federal district court lacked personal jurisdiction over him at the time of Bailey's motion to renew the judgment. Fourth, Cox argues that the federal district court's renewal of the default judgment was erroneous because the federal district court applied Minnesota law instead of Mississippi law. And fifth, Cox argues that the Clay County District Court's July 2007 docketing of the renewed federal judgment was erroneous.

## I. Federal District Court's Default Judgment

Cox first argues that the district court should have granted his motion to vacate on the ground that the federal district court's default judgment is invalid because the federal district court lacked personal jurisdiction over him at the time of Bailey's original action. In response, Bailey argues that the district court's order denying Cox's motion to vacate is not appealable to the extent that it is a vehicle to attack the judgment that was entered by the federal district court in 1997. Whether an action by a district court is appealable depends on the construction of a procedural rule, which is a question of law that we review de novo. *Kastner v. Star Trails Ass'n*, 646 N.W.2d 235, 238 (Minn. 2002).

Generally, "an order denying a motion to vacate a final judgment is not appealable." *Carlson v. Panuska*, 555 N.W.2d 745, 746 (Minn. 1996). Rather, "[t]he proper appeal from a final judgment is from the underlying judgment itself." *Id.* This rule prevents "an extension of the time to appeal the original judgment by filing a motion to vacate." *Id.* (citing *Lyon Dev. Corp. v. Ricke's, Inc.*, 296 Minn. 75, 79, 207 N.W.2d 273, 275 (1973)).

The Minnesota courts recognize an exception to the general rule of non-appealability if a party seeks to vacate a default judgment entered against that party because of that party's failure to appear. The rationale for the exception is that, if the judgment was entered on an ex parte basis, the losing party's motion to vacate is not a means of circumventing the timing requirements of an appeal. *Carlson*, 555 N.W.2d at 746; see also *Kottkes' Bus Co., Inc. v. Hippie*, 286 Minn. 526, 527, 176 N.W.2d 752, 753 (1970). But this exception does not extend to default judgments entered against a defendant who actually appeared in the action. In such a case, the defendant has "actual notice of the proceedings against him" and

can appeal directly from the judgment. *Carlson*, 555 N.W.2d at 746 (quotations omitted) (quoting *Kottkes' Bus Co.*, 286 Minn. at 527, 176 N.W.2d at 753).

The federal district court entered default judgment against Cox in 1997 because Cox failed to comply with discovery orders. Cox did not fail to appear; he served and filed an answer and engaged in some discovery and motion practice. Thus, the district court's denial of the motion to vacate is not appealable to the extent that Cox seeks review of the 1997 federal default judgment. *See Carlson*, 555 N.W.2d at 746; *Kottkes' Bus Co.*, 286 Minn. at 527, 176 N.W.2d at 753 (holding that order denying motion to vacate default judgment was not appealable where defendants had appeared at motion hearing).

## **II. Federal District Court's Renewal of Default Judgment**

Cox next argues that the district court should have granted his motion to vacate on the ground that the federal district court's grant of Bailey's motion to renew the default judgment is invalid for three reasons: because the federal district court lacked subject matter jurisdiction over the motion, because the federal district court lacked personal jurisdiction over him at the time of the motion to renew the judgment, and because the federal district court applied Minnesota law instead of Mississippi law to the motion to renew the judgment.

It is undisputed that Cox did not appear in the federal district court to contest the renewal proceedings. Because the renewal proceedings were conducted on an ex parte basis, the exception to non-appealability applies. Thus, the district court's denial of the motion to vacate is appealable to the extent that Cox seeks review of the federal district court's renewal of the default judgment in 2007. *See Carlson*, 555 N.W.2d at 746; *Spicer v.*

*Carefree Vacations, Inc.*, 370 N.W.2d 424, 426 (Minn. 1985) (holding that order denying motion to vacate default judgment was appealable because defendant did not appear prior to entry of default judgment).

Before addressing the substance of Cox's appellate arguments, however, it is necessary to determine whether Cox properly preserved his arguments in the district court. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 232 (Minn. 2008) (quoting *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). We have thoroughly reviewed the district court record, and we do not find any written argument by Cox to the district court that attacked either the subject matter jurisdiction of the federal district court in 2007 or the issue of personal jurisdiction during the 2007 proceedings. Rather, Cox's memorandum of law in support of his motion to vacate, to the extent that it attacked the jurisdictional bases of the federal district court's rulings, was exclusively concerned with the original proceeding, which was commenced in 1996 and concluded in 1997.

At the hearing on the motion to vacate, Cox's counsel very briefly referred to the issue of personal jurisdiction for the federal renewal proceedings, arguing that a lack of notice violated his due process rights. But Cox's motion papers did not include any evidence of the alleged lack of notice to which Cox's counsel referred, and his motion memorandum contained no written argument or authorities in support of that contention. In his responsive oral argument, Bailey's counsel stated, "I can't speak to the issue of notice to

Mr. Cox [when] the judgment was renewed in Mississippi. If the court deems that to be an issue, I will check with Mississippi counsel to see what was done in that regard.”

In its written ruling on the motion to vacate, the district court did not consider any jurisdictional challenge to the federal renewal proceedings in 2007. Rather, the district court, in its order and memorandum, confined its discussion of jurisdictional issues to the propriety of the original federal proceeding in 1996 and 1997. In defining the issues presented by Cox’s motion in this way, the district court was well within its discretion. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 478 (Minn. App. 2007). Because Cox failed to preserve his jurisdictional challenges to the federal renewal proceedings by properly including them in his district court papers, and because the district court reasonably construed Cox’s motion to not raise those issues, Cox has waived his jurisdictional challenges to the federal renewal proceedings. *See Hebert*, 744 N.W.2d at 232; *Thiele*, 425 N.W.2d at 582.<sup>1</sup>

Cox did, however, preserve an argument that the federal district court erred when analyzing the substance of Bailey’s renewal motion by applying Minnesota law rather than

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<sup>1</sup>Bailey’s appendix includes two documents issued by the federal district court in connection with the renewal proceedings. Cox has moved to strike the documents on the ground that they were not part of the district court record and, furthermore, has moved to strike the portions of Bailey’s brief that cite the documents. In light of our disposition of Cox’s argument concerning personal jurisdiction, we have no need to refer to the disputed documents and, therefore, deny that part of Cox’s motion as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007). In addition, Cox has moved to strike from Bailey’s appendix the district court’s September 11, 1997, notice of docketing of judgment. In its order denying Cox’s motion to vacate, the district court expressly relied on the notice, which had been issued by the court administrator’s office under a different file number. Thus, we also deny that part of Cox’s motion to strike. As a consequence, we deny Cox’s motion to strike in its entirety.

Mississippi law. The district court reasoned that a defendant who does not appeal from a judgment entered in a foreign jurisdiction cannot collaterally attack the merits of the foreign court's decision. See *Matson v. Matson*, 333 N.W.2d 862, 867 (Minn. 1983); *State Inc. v. Sumpter & Williams*, 553 N.W.2d 719, 722 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996); *United Bank of Skyline v. Fales*, 395 N.W.2d 131, 133 (Minn. App. 1986), *aff'd*, 405 N.W.2d 416 (Minn. 1987). Accordingly, the district court did not review the substantive rulings of the federal district court. Cox later brought a motion to reconsider in which he reasserted his argument that the federal district court erroneously applied Minnesota's ten-year statute of limitations for renewing a judgment rather than Mississippi's seven-year statute. The district court denied the request for permission to file a motion to reconsider on the ground that Cox's argument had been considered and addressed. The district court properly rejected Cox's argument attacking the federal district court's decision to renew the default judgment because "a foreign judgment cannot be collaterally attacked on the merits." *Matson*, 333 N.W.2d at 867; *see also Sumpter & Williams*, 553 N.W.2d at 722; *Fales*, 395 N.W.2d at 133.

### **III. Clay County District Court's Docketing of Renewed Federal Judgment**

Cox last argues that the district court should have granted his motion to vacate on the ground that the district court's docketing of the renewed federal judgment was done in error. There is no indication in the record that Cox appeared in the district court to contest the docketing of the renewed federal judgment or that he had an opportunity to appear. Because the docketing was conducted on an *ex parte* basis, the exception to non-appealability applies. Thus, the district court's denial of the motion to vacate is appealable to the extent

that Cox seeks review of the district court's docketing of the renewed federal judgment in 2007. *See Carlson*, 555 N.W.2d at 746; *Spicer*, 370 N.W.2d at 426.

Cox's argument implicates the Uniform Enforcement of Foreign Judgments Act (UEFJA), which provides that a foreign judgment filed in a Minnesota district court has the same effect as a judgment of a court of this state:

A certified copy of any foreign judgment may be filed in the office of the court administrator of any district court of this state. The court administrator shall treat the foreign judgment in the same manner as a judgment of any district court or the Supreme Court of this state. . . . A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a district court or the Supreme Court of this state, and may be enforced or satisfied in like manner.

Minn. Stat. § 548.27 (2008). This statute applies to the federal district court's renewed judgment because "foreign judgment" is defined to include "any judgment, decree, or order of a court of the United States." Minn. Stat. § 548.26 (2008) (emphasis added); *see also Sumpter & Williams*, 553 N.W.2d at 721-23 (applying UEFJA to prior federal judgment).

Because Cox's challenges to the federal district court's prior judgments are foreclosed for the reasons described above, his only remaining argument is that the district court's docketing of the renewed federal judgment was erroneous because the docketing occurred more than ten years after the original federal judgment was entered. Cox's argument is inconsistent with *Jensen v. Fhima*, 731 N.W.2d 876 (Minn. App. 2007), in which the plaintiff obtained a judgment against the defendant in a California state court and later timely renewed the judgment in the same court. *Id.* at 880. The defendant argued that the docketing of the renewed judgment by the Hennepin County District Court was untimely

because the docketing occurred more than ten years after the California state court entered its original judgment and, thus, defendant argued, the docketing was in violation of Minnesota's ten-year statute of limitations, Minn. Stat. § 550.01 (2006). *Id.* This court rejected the defendant's argument, holding that "a renewed or revived judgment is entitled to full faith and credit," and affirmed the district court's denial of the defendant's motion to stay the docketing of the renewed judgment. *Id.* at 881.

In light of *Jensen*, the district court did not err by docketing Bailey's renewed federal judgment more than ten years after the original federal judgment. Cox has not presented any valid reason why the federal district court's renewed judgment should not have been docketed in this state. Thus, the district court did not err by denying Cox's motion to vacate the docketing of the renewed federal judgment.

Bailey also argues in his responsive brief that (1) Cox has waived the issue of the federal district court's personal jurisdiction over him in the original action, (2) Cox may not assert collateral estoppel by relying on the Fifth Circuit's decision in *Bailey v. Zehr*, (3) Cox's motion to vacate was untimely, and (4) the federal district court properly renewed the judgment by applying Minnesota law. Because we are affirming the district court for the reasons stated above, we need not consider these additional responsive arguments.

In sum, the district court did not abuse its discretion by denying Cox's motion to vacate.

**Affirmed; motion denied.**