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**IN THE
COURT OF APPEALS OF INDIANA**

DIGITAL LIFESTYLES,)

Appellant-Defendant,)

vs.)

No. 22A05-0812-CV-689

ROBERT LYNN,)

Appellee-Plaintiff.)

APPEAL FROM THE FLOYD CIRCUIT COURT
The Honorable J. Terrence Cody, Judge
Cause No. 22C01-0802-MI-125

SEPTEMBER 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Digital Lifestyles, LLC, appeals the trial court's refusal to enforce Digital's Kentucky judgment against Robert Lynn.

We reverse and remand.

The sole issue for our review is whether the trial court erred in refusing to enforce Digital's Kentucky judgment against Lynn.

In December 2002, Digital, a Louisville, Kentucky, corporation, and Lynn entered into a sales contract for the design and installation of a home entertainment system for Lynn's home in New Albany, Indiana. The contract price was \$255,971.72. When Lynn stopped making payments on the contract, Digital filed a breach of contract action against Lynn in Jefferson County, Kentucky. Before trial, Lynn filed a summary judgment motion wherein he argued that the trial court lacked personal and subject matter jurisdiction. The trial court denied the motion, finding that Kentucky's long arm statute provided for personal jurisdiction and that because the cause of action arose from in-state activities, there was subject matter jurisdiction as well. In August 2007, following a bench trial, the Kentucky court entered an \$86,635.25 judgment plus interest in favor of Digital. Lynn appealed the denial of his summary judgment motion to the Kentucky Court of Appeals.

In February 2008, during the pendency of its Kentucky appeal, Digital filed a "Notice of Filing of Foreign Judgment and Affidavit in Support" in the Floyd Circuit Court in Indiana wherein Digital asked the court to enforce the Kentucky judgment against Lynn. The affidavit did not include an affirmation which would have subjected

the affiant to the penalty of perjury if facts in the affidavit were later discovered to be false. Lynn responded with a “Notice of Defenses and Objections to Filing and Enforcement of Foreign Judgment” wherein he argued, among other things, that the Kentucky judgment was not enforceable because the Kentucky trial court did not have jurisdiction. The Floyd Circuit Court held a hearing on July 1, 2008, to determine whether Digital could begin to execute on the Kentucky judgment since Lynn did not post a supersedeas bond in Kentucky or Indiana. Two days later, on July 3, 2008, Digital tendered an amended affidavit, which included an affirmation under penalty of perjury that the statements in the affidavit were true and correct to the best of the affiant’s information and belief.

In August 2008, the Indiana trial court concluded that the Kentucky judgment would not be enforced because 1) the Kentucky trial court lacked jurisdiction and the foreign judgment was therefore void; and 2) Digital failed to comply with Indiana statutory requirements for service of process when it filed its foreign judgment. The court also struck Digital’s amended affidavit as untimely filed. Digital appeals.¹

Digital argues that the trial court erred in refusing to enforce its Kentucky judgment. Specifically, Digital contends that the trial court erred when it 1) concluded that the Kentucky trial court lacked jurisdiction; 2) concluded that Digital failed to

¹ During the pendency of this appeal, in November 2008, the Kentucky Court of Appeals affirmed the trial court’s denial of Lynn’s summary judgment motion in an unpublished opinion. *See Lynn v. Digital Lifestyles, LLC*, 2008 WL 4889642 (November 4, 2008). Specifically, the court found that based on the facts and circumstances in the case, the trial court had both personal and subject matter jurisdiction. *Id.*

comply with the Indiana statutory service of process requirement; and 3) struck Digital's amended affidavit as untimely filed. We address each of its contentions in turn.

Digital first contends that the trial court erred when it found that Digital's Kentucky judgment was void because the Kentucky trial court lacked jurisdiction. This case concerns settled constitutional principles governing the preclusive effect to be accorded a judgment rendered by the courts of another state. The Full Faith and Credit Clause of the United States Constitution mandates that "[f]ull faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." U.S. CONST. art. IV § 1. This constitutional provision is implemented by an Indiana statute making explicit that records and judicial proceedings from courts in other states "shall have full faith and credit given to them in any court within this state, as by law or usage they have in the courts whence taken." Ind. Code § 34-39-4-3(b). Full faith and credit has long meant that "the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced." *Underwriters Nat'l Assurance Co. v. North Carolina Life and Accident and Health Ins. Guar. Ass'n*, 455 U.S. 691, 704 (1982) (internal quotation marks omitted) (citing *Hampton v. McConnel*, 16 U.S. (3 Wheat) 234, 235 (1818)).

It is true that before a court is bound by the judgment rendered in another state, the court may inquire into the jurisdictional basis of the foreign court's degree. *Northern Indiana Commuter Transp. Dist. v. Chicago SouthShore and South Bend, R.R.*, 685 N.E.2d 680, 685 (Ind. 1997). If that court did not have jurisdiction over the subject

matter or the relevant parties, full faith and credit need not be given. *Id.* However, this scope of review is a limited one that does not entail de novo review of the jurisdictional issue by the second court. *Id.* Rather, the general rule is that a judgment is entitled to full faith and credit, including as to questions of jurisdiction, when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court that rendered the original judgment. *Id.* at 685-86. In other words, if jurisdiction was "fully considered" and "finally determined" in the first state, that generally is the end of the matter. *Id.* at 686 (quoting *Underwriters Nat'l Assurance Co.*, 455 U.S. at 714).

Here, Lynn raised the jurisdictional issue to the trial court when he filed a summary judgment motion that alleged the trial court lacked both personal and subject matter jurisdiction. The trial court reviewed the facts of the case and concluded that Kentucky's long arm statute provided for personal jurisdiction and that because the cause of action arose from in-state activities, there was subject matter jurisdiction as well. Clearly, the Kentucky trial court fully considered and finally determined the jurisdictional issue. Under these circumstances, the trial court in this case erred in concluding that the Kentucky trial court lacked jurisdiction over Lynn and that the foreign judgment was therefore void.

Digital also argues that the trial court erred in finding that Digital failed to comply with statutory service of process requirements, which resulted in insufficient service of process of Digital's "Notice of Filing of Foreign Judgment." We need not, however,

address this issue. The law is well settled that a person taking any action in a case that amounts to an appearance confers jurisdiction over his person so as to authorize a personal judgment against him, regardless of whether he was served with process. *Anderson Federal Sav. And Loan Ass'n v. Guardianship of Davidson*, 364 N.E.2d 781, 784 (Ind. Ct. App. 1977). Here, Digital filed its "Notice of Filing of Foreign Judgment and Affidavit of Support" on February 19, 2008. Two weeks later, on March 7, 2008, Lynn filed his notice of defense and objections to Digital's filing. Lynn then attended the court hearing with his attorney in July 2008. When Lynn appeared in the case, he waived his right to challenge the trial court's jurisdiction. The trial court erred when it found that the Kentucky judgment was unenforceable because Digital failed to comply with statutory requirements for service of process when it filed its foreign judgment.

Lastly, Digital contends that the trial court erred in striking its amended affidavit as untimely filed. This court addressed a similar issue regarding the timeliness of an amended affidavit in *Mills v. Berrios*, 851 N.E.2d 1066 (Ind. Ct. App. 2006). There, Mills' initial affidavit failed to include language that would submit her to the penalties of perjury if the facts in the affidavit were later discovered to be false. Following a summary judgment hearing, Mills filed a motion to amend the affidavit to include appropriate language that would subject her to the penalties of perjury. The trial court, however, denied Mills' motion.

Although this court did not reach Mills' claim that the trial court erred in denying her motion to amend, we noted that the interests of justice and fairness would have been

served had the trial court granted Mills' motion to amend. *Id.* at 1072, n. 7. Specifically, we failed to discern how the appellee would have been prejudiced given that the substance of Mills' affidavit had been known to the appellee for years and the time needed to amend the affidavit would not have resulted in any significant delay. *Id.*

Here, as in *Mills*, we note that the interests of justice and fairness would have also been served had the trial court not stricken Digital's amended affidavit. We fail to discern how Lynn was prejudiced by the amendment given that Lynn was already familiar with the substance of the affidavit, which included only the date of the filing of the breach of contract action, the date of the bench trial, the date of the trial court's order, the name and address of the creditor, and the name and address of the debtor. Further, Digital amended the affidavit in two days, and the only addition to the amendment was the affirmation under penalty of perjury. The trial court erred in striking Digital's amended affidavit.

Reversed and remanded.

DARDEN, J., and ROBB, J., concur.