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ATTORNEY FOR APPELLANT:

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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER WEST,)

Appellant-Defendant,)

vs.)

No. 49A04-1012-CC-747

EILEEN MARY FLAHERTY,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robyn L. Moberly, Judge
Cause No. 49D05-0903-CC-014960

October 5, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Eileen Mary Flaherty sued former co-worker Christopher West for, among other things, sexual battery and assault in California state court. A \$750,000 default judgment was entered against West because he claimed he did not have \$300 to file an answer. When Flaherty attempted to domesticate the judgment in Indiana state court, the parties, represented by counsel, entered into an agreed judgment instead. West then obtained new counsel and filed a motion to declare the California judgment void and to vacate the agreed judgment, arguing that Flaherty used an old summons form when serving him in the California case, which failed to inform him that he could seek a waiver of filing fees. The trial court denied West's motion and his follow-up motion to correct errors. We find that West has failed to prove that the California judgment is void because of the summons form and therefore affirm the trial court in all respects.

Facts and Procedural History

In 2002, West worked at an art gallery in San Francisco, California. Flaherty was his co-worker. When Flaherty made rape allegations against West in late 2002, he retained a defense attorney. Criminal charges were never brought against West. In January 2003, West moved to his home state of Indiana to live with his brother.

In November 2003, Flaherty filed a civil lawsuit against West in the Superior Court of California, County of San Francisco. On January 14, 2004, the trial court had to reissue the summons because the original was lost. *See Appellant's Amended App.* p. 47-48. On February 27, 2004, West, living in Indiana, was served with the summons (the

summons form was dated January 1, 1984) and complaint in the California case.¹ West tried to file papers in the California case and called the Clerk of the Court's office several times, but the Clerk rejected West's filings because he did not pay the required filing fees.² West said the Clerk's Office never told him that he could seek a fee waiver for the filing fees. A new summons form went into effect on January 1, 2004, but Flaherty apparently did not use this form because she filed her lawsuit in November 2003.³ This new summons form includes the following language: "If you cannot pay the filing fee, ask the court clerk for a fee waiver form." *Id.* at 44.⁴ West said it "was nearly impossible for [him] to pay almost \$300 to file a document." *Id.* at 60. According to West, the "last time [he] called the clerk's office in California was in early 2005. [He] spoke with a staff member there, who told [him] that there was a settlement and the case was over." *Id.* In August 2006, the California court entered a default judgment against West in the amount of \$750,000. *Id.* at 11-12.

On March 31, 2009, Flaherty filed a complaint in Marion Superior Court to enforce the California judgment. *Id.* at 9. West claims this is the first time he learned of the California judgment. *Id.* at 60. On July 30, 2009, West, represented by Indiana

¹ Because the summons had to be reissued, West's argument on appeal that the California trial court did not have personal jurisdiction over him because he was not timely served has no merit.

² California has a fee schedule for filing most documents in its trial courts, such as complaints, answers, amendments to complaints, motions for summary judgments, etc. In an effort to provide for uniform fees throughout all its counties, California adopted statewide legislation in the late 1800s. *See Hogoboom v. Superior Court*, 51 Cal. App. 4th 653, 666 (Cal. Ct. App. 1996). The current fee schedule can be found on California's website. *See* Superior Court of California Statewide Civil Fee Schedule, <http://www.courts.ca.gov/documents/filingfees.pdf>

³ West does not argue that there was an intervening summons form in between 1984 and 2004.

⁴ The current version of the summons form, SUM-100, is July 1, 2009. *See* Summons, <http://www.courts.ca.gov/documents/sum100.pdf>

attorney Mark Dutton, and Flaherty, represented by Indiana attorney Christine Hayes Hickey, entered into an Agreed Judgment. The Agreed Judgment provides as follows:

Come now the parties, by counsel, and agree that judgment be rendered for plaintiff and against defendant, CHRISTOPHER WEST, and that plaintiff recover of and from defendant the sum of \$963,698.63, including interest, together with the costs of this action.

The Court having reviewed all pleadings and the return on the summons issued in this matter finds:

(1) The [Marion Superior] Court has jurisdiction over the parties by reason of the filing of the complaint herein and the service of the summons and complaint on the defendant herein, and by reason of the appearance of the defendant herein and defendant's failure to object to the Court's jurisdiction.

(2) The Court has jurisdiction over the subject matter of plaintiff's complaint.

(3) The issues concern all matters raised in plaintiff's complaint, specifically including domestication of a foreign judgment entered in the State of California based upon a complaint for sexual battery, assault, battery, intentional infliction of emotional distress, negligent infliction of emotional distress and false imprisonment.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED by the Court that plaintiff have and recover of and from defendant, CHRISTOPHER WEST, the sum of \$963,698.63, including interest, together with costs which now total \$149.00.

Id. at 13-14. As of July 12, 2010, the amount of the judgment had grown to \$1,025,244.59. *Id.* at 15. At the time, West was paying Flaherty \$100 per month toward the judgment. *Id.* at 61.

In late July 2010, West hired a new Indiana attorney, Hamid Kashani. It was at this point that West alleged that he learned, for the first time, that California allowed waivers for filing fees. On July 30, 2010, West filed a Motion to Declare Foreign

Judgment Void and to Vacate the Agreed Judgment. Specifically, West asked the Marion Superior Court to declare the California court's default judgment void pursuant to Trial Rule 60(B)(6) and to vacate the agreed judgment pursuant to Trial Rule 60(B)(7) and/or contract law. West submitted his affidavit in support. Essentially, West argued that the California court never acquired personal jurisdiction over him because Flaherty used an old summons form which failed to inform him that he could have obtained a waiver for filing fees and had he known about the fee waiver, he would have sought such a waiver and filed his answer; accordingly, the trial court never would have entered a default judgment. Flaherty filed a response. The trial court denied West's motion. West then filed a motion to correct errors, to which Flaherty did not respond. The trial court denied West's motion to correct errors.

West now appeals.

Discussion and Decision

At the outset we note that Flaherty did not file an appellee's brief. Under that circumstance, we do not undertake to develop the appellee's arguments. *Branham v. Varble*, No. 62S01-1103-SC-141, 2011 WL 3808103, at *2 (Ind. Aug. 30, 2011). Rather, we will reverse upon an appellant's prima facie showing of reversible error. *Id.*

West raises several issues on appeal. However, every issue that West raises hinges on the California judgment being void. Accordingly, we address only that issue.

West contends that the California trial court never acquired personal jurisdiction over him because Flaherty used an old summons form and therefore the California judgment is void.

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. Full faith and credit means 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.” *Gardner v. Pierce*, 838 N.E.2d 546, 550 (Ind. Ct. App. 2005) (quotation omitted); *see also* Ind. Code § 34-39-4-3.

A foreign judgment, however, is open to collateral attack for want of jurisdiction. *Gardner*, 838 N.E.2d at 550. Before an Indiana court is bound by a foreign judgment, it may inquire into the jurisdictional basis for that judgment; if the first court did not have jurisdiction over the subject matter or relevant parties, full faith and credit need not be given. *Id.* Thus, we do not give full faith and credit to orders entered by a court without subject matter or personal jurisdiction. *Id.* When reviewing subject matter jurisdiction, the scope of review is a “limited” one that does not entail de novo review of the jurisdictional issue by the second court. *Id.* We apply the law of the state where the judgment was rendered to determine whether that state had both personal and subject matter jurisdiction. *Id.*

On appeal, West argues that the California judgment is void for lack of personal jurisdiction because Flaherty used an old summons form which failed to inform him that he could have applied for a waiver of filing fees. West asserts that void judgments may be attacked “anywhere and at any time.” Appellant’s Br. p. 10; *see also Stidham v. Whelchel*, 698 N.E.2d 1152, 1156 (Ind. 1998) (“[A] judgment that is void for lack of

personal jurisdiction may be collaterally attacked at any time and . . . the ‘reasonable time’ limitation under Rule 60(B)(6) means no time limit.”).

In support, West claims that the summons form that went into effect on January 1, 2004, was “mandatory.” He highlights that the bottom of the 2004 summons form provides, “Form Adopted for Mandatory Use.” Appellant’s Amended App. p. 44. Indeed, under California law, forms adopted for mandatory use must be used by all parties. Cal. Rules of Court, rule 1.31(a); Cal. Gov’t Code § 68511.

Even if this form was mandatory for use beginning January 1, 2004, we question whether the wrong summons form was used in *this* case. Flaherty filed her complaint against West in November 2003, which was before the 2004 summons form became effective. But because the original summons was lost, Flaherty asked the trial court in December 2003 to reissue the summons. The trial court reissued the summons on January 14, 2004, which was shortly after the 2004 summons form became effective. West was then served in February 2004. The summons with which West was served contained the information that the California Code of Civil Procedure required. The current version of California Code of Civil Procedure Section 412.20 provides:

(a) Except as otherwise required by statute, a summons shall be directed to the defendant, signed by the clerk and issued under the seal of the court in which the action is pending, and it shall contain:

- (1) The title of the court in which the action is pending.
- (2) The names of the parties to the action.
- (3) A direction that the defendant file with the court a written pleading in response to the complaint within 30 days after summons is served on him or her.

(4) A notice that, unless the defendant so responds, his or her default will be entered upon application by the plaintiff, and the plaintiff may apply to the court for the relief demanded in the complaint, which could result in garnishment of wages, taking of money or property, or other relief.

(5) The following statement in boldface type: “You may seek the advice of an attorney in any matter connected with the complaint or this summons. Such attorney should be consulted promptly so that your pleading may be filed or entered within the time required by this summons.”

(6) The following introductory legend at the top of the summons above all other matter, in boldface type, in English and Spanish: “Notice! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read information below.”

(b) Each county may, by ordinance, require that the legend contained in paragraph (6) of subdivision (a) be set forth in every summons issued out of the courts of that county in any additional foreign language, if the legend in the additional foreign language is set forth in the summons in the same manner as required in that paragraph.

(c) A summons in a form approved by the Judicial Council is deemed to comply with this section.

Notably, the fee waiver language is not required. The Judicial Council Comments to this section provide:

These requirements are mandatory, but the rule of liberal construction is followed and *minor variations of form are not fatal*. (*Clark v. Palmer* (1891) 90 Cal. 504, 506, 27 P. 375.) Printed forms of summons in which the formal matters are stated are furnished by the court clerks.

Cal. Code Civ. Proc. § 412.20 (emphasis added).

Because the California Code of Civil Procedure does not require the fee waiver language and minor variations are allowed for the things that *are* required, then it is

highly likely that West was properly served with the summons in February 2004 which did not inform him that he could apply for a fee waiver.

In any event, West fails to cite any cases that provide that the California trial court did not acquire personal jurisdiction over him because Flaherty did not use a summons form which informed him that he had the right to apply for a fee waiver. *See* Appellant's Br. p. 16 ("We have exhaustively searched the case law and have not found a case on point."). The cases that West cites are simply not on point. For example, West cites *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980), but that case addresses whether a nonresident defendant has established minimum contacts in the forum state such that personal jurisdiction has been established. At the time of the underlying events in this case, West lived in California; therefore, minimum contacts are not an issue.

West then cites *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). *Mullane*, however, concerns the very narrow issue of the adequacy of statutory notice to beneficiaries of certain trusts in accordance with New York banking laws. *Id.* at 309. Specifically, notice was given to the beneficiaries by publication in a local newspaper. *Id.* The appellant argued that the notice was inadequate under the Fourteenth Amendment and therefore the court was without jurisdiction. *Id.* at 311. The United States Supreme Court held that notice by newspaper publication was insufficient for *known* beneficiaries and therefore reversed. *Id.* at 320. Again, *Mullane* does not support West's position because West does not contest that he received notice of Flaherty's California lawsuit.

Finally, West cites *Swaim v. Moltan Co.*, 73 F.3d 711, 720 (7th Cir. 1996), but in that case, the issue was whether Moltan was properly served. There were three attempts at serving Moltan, but none of them were successful. *Id.* at 721. The Seventh Circuit held that the attempts were sufficient to confer jurisdiction because Moltan attempted to evade service. *Id.* Once again, *Swaim* does not support West's position because West was actually served with the California summons and complaint.

This then brings us to the next issue. Although West concedes he was apprised of Flaherty's California lawsuit against him, he claims he had no opportunity to respond to it because he did not have \$300 to file an answer in California court.⁵ The implication of West's argument is that if the 2004 summons form had been used, (1) he would have known about the availability of fee waivers and applied for one, (2) the trial court would have granted it, (3) he would have filed an answer, and (4) the trial court never would have entered the default judgment. But West must prove that he could not pay the \$300 filing fee required for the answer and the California court would have granted the fee waiver. The only evidence West has submitted to prove that he could not pay the \$300 is his affidavit which states that in January 2003 he moved to Indiana to live with his brother. Appellant's Amended App. p. 59. Flaherty filed her complaint in November

⁵ West makes the argument that in some cases, actual service is not good enough. He cites *Honda Motor Co. v. Superior Court*, 10 Cal. App. 4th 1043 (Cal. Ct. App. 1992), *rev. denied*, in support. In that case, Opperwall served Honda Motor Co. by sending the summons and complaint by certified mail to Japan without a Japanese translation. *Id.* at 1045. Honda admitted receipt of the papers. *Id.* Because the service was in violation of The Hague Convention, Honda moved to quash service. *Id.* The court stated, "The Treaty, an international treaty, control[led] the issue." *Id.* The court held that the Treaty was violated because certified mail was used and there was no Japanese translation. *Id.* at 1049. The court noted that it did not matter that Honda actually received the complaint and summons because of the violation of the Treaty. *Id.* This case has very limited applicability because of The Hague Convention. West cites other cases where service was defective, but here service was not defective. We therefore do not spend time distinguishing those cases.

2003. West then states, “By early 2004, my debts were approximately \$35,000.00, and I was working as a waiter. I spent most of my income on paying toward my debts, including my credit card debts, but could not bring my financial disaster under control.” *Id.* Notably, West does not state what his salary was when Flaherty filed her complaint. Although West’s affidavit provides that he filed Chapter 7 bankruptcy, that was not until March 2007, long after Flaherty filed the complaint in California in November 2003. *Id.* And notably, West does not reference California’s requirements to obtain a fee waiver.⁶ This is hardly the showing that needs to be made.

In sum, West has failed to prove that the California court lacked personal jurisdiction over him and that the default judgment is void. Because the remainder of West’s arguments are contingent on the California judgment being void, we do not address them.⁷ We therefore affirm the trial court in all respects.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.

⁶ A current version of California’s fee waiver form, FW-001, is available on its website. Request to Waive Court Fees, <http://www.courts.ca.gov/documents/fw001.pdf>

⁷ West does make one argument that is not contingent on the California judgment being void. He argues that the trial court erred in not declaring the agreed judgment unenforceable because it lacks consideration.

To constitute consideration, there must be a benefit accruing to the promisor or a detriment accruing to the promisee. *Ind. Dep’t of State Rev. v. Belterra Resort Ind., LLC*, 935 N.E.2d 174, 179 (Ind. 2010), *modified on reh’g in part*, 942 N.E.2d 796 (Ind. 2011). The concept of consideration encompasses any benefit – however slight – accruing to the promisor or any detriment – however slight – borne by the promisee. *Id.*

Here, the consideration, though admittedly slight, was that West avoided the risk of incurring additional expenses in challenging Flaherty’s domestication of the California judgment in Indiana. By agreeing to the California default judgment immediately, West minimized his expenses. West’s consideration argument thus fails.