IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-869

Filed 20 February 2024

Gaston County, No. 21-CVS-4269

MYONG JA JHANG, KATHLEEN BANG WHAN CHUNG, AND DONG IL KIM, Plaintiffs-Judgment Creditors,

v.

TEMPLETON UNIVERSITY f/k/a HENDERSON CHRISTIAN UNIVERSITY, Defendant-Judgment Debtor.

Appeal by defendant from judgment entered 1 June 2022 by Judge Athena Brooks in Gaston County Superior Court. Heard in the Court of Appeals 10 May 2023.

The Culver Firm, P.C., by Robert E. Culver, for the defendant-appellant.

Ward & Smith, P.A., by Thomas C. Wolff, Alexander C. Dale, and Lily Faulconer, for the plaintiffs-appellees.

STADING, Judge.

Defendant Templeton University ("defendant") appeals from an order granting a motion for enforcement of a foreign judgment in favor of plaintiffs Myong Ja Jhang, Kathleen Bang Whan Chung, and Dong Il Kim (collectively "plaintiffs"). For the reasons set forth below, we affirm.

I. Background

Defendant is a nonprofit corporation organized under North Carolina law but suspended operations in 2020. Defendant owns a single parcel of land in Gaston County that contains three buildings: an office, a church, and a fellowship hall. All three buildings are collectively identified as a singular campus. Tax records reveal the office as the primary property address. Also, outside defendant's office is a sign marking the property as "Henderson Church."

Sam Park ("Park") lives at defendant's office and has been connected to defendant since at least 2014. Park worked in various roles on defendant's behalf, including Vice President, Secretary, and Executive Director. In 2015, Park signed board meeting minutes as "Secretary" and, in 2019, verified those minutes as "Vice President" in an Apostille certified by the North Carolina Secretary of State. Park later testified under oath at the criminal trial of Templeton officer Moon Gab Kim about board meeting minutes and academic records—Park testified that he was "Vice President and Executive Director" of the university.

In July 2021, after defendant suspended operations, plaintiffs filed suit in the Philadelphia County Court of Common Pleas in Pennsylvania. Plaintiffs hired a private process server to serve the summons and complaint. After multiple failed attempts, the process server went to defendant's office building and served Park. Park admits to receiving the summons and complaint. However, Park mailed the documents back to the Pennsylvania court, inquiring about what to do with them. As

a result, defendant never appeared in or defended the Pennsylvania lawsuit. With defendant's absence from the Pennsylvania lawsuit, plaintiffs obtained a default judgment for $8.4 million. Thereafter, plaintiffs sought to enforce the judgment in North Carolina in Gaston County Superior Court and filed their notice of default on 25 October 2021. Defendant's board of directors claims that they only learned of the Pennsylvania lawsuit at the North Carolina enforcement stage.

In November 2021, defendant filed a request for relief from the Pennsylvania judgment in the North Carolina trial court, signed by Jong Cheol Jeong, Director of Templeton University ("Director Jeong"). In that request, defendant noted that Park lived in the "house next to the church on behalf of Pastor Cho. . . ." Defendant asserted that "Pastor Cho is not a person who has the role or authority of an employee or agent of Templeton University. He has no affiliation with Templeton University and only runs the church independently." Defendant also claimed that Park refused to deliver the summons and complaint to Pastor Cho. Instead, Park returned them to the Pennsylvania court.

Despite Director Jeong's objection, plaintiffs moved to enforce the Pennsylvania judgment in North Carolina on 3 January 2022. In response, defendant obtained counsel and filed a response in opposition on 28 February 2022. The trial court ruled for plaintiffs, finding that the Pennsylvania judgment was effective, enforceable, and entitled to full faith and credit. Consequently, defendant entered notice of appeal.

II. Jurisdiction

The trial court's extension of full faith and credit to a final foreign judgment in granting plaintiffs' motion to enforce that foreign judgment is properly before us under N.C. Gen. Stat. § 7A-27(b) (2023).

III. Analysis

On appeal, defendant asserts that service was improper because (1) a proper party did not serve it; (2) Park could not accept service as he was not an officer, director, or managing agent for defendant; and (3) service was not made to the appropriate office of an officer, director, or managing agent of defendant. Plaintiffs counter that defendant waived the argument of insufficient process by a proper party because it did not raise this argument to the trial court. Also, plaintiffs refute defendant's notion that service was improper on Park, arguing he was an officer of defendant so service at defendant's office was appropriate.

We review *de novo* extensions of full faith and credit to foreign judgments. *Marlin Leasing Corp. v. Essa*, 263 N.C. App. 498, 502, 823 S.E.2d 659, 662 (2019). Under the United States Constitution's full faith and credit clause, states must recognize and enforce valid judgments rendered in other states. U.S. CONST. art. IV, § 1. In North Carolina, our General Assembly enacted the Uniform Enforcement of Foreign Judgments Act, which aligns with the Constitution's demand and governs the enforcement of foreign judgments entitled to full faith and credit in North Carolina. N.C. Gen. Stat. § 1C–1701 *et seq.* (2023); *Tropic Leisure Corp. v. Hailey*,

251 N.C. App. 915, 917, 796 S.E.2d 129, 131 (2017) (citation and internal quotation marks omitted) (noting that the "Full Faith and Credit Clause requires that the judgment of the court of one state must be given the same effect in a sister state that it has in the state where it was rendered.").

The burden of proving full faith and credit is on the judgment creditor. N.C. Gen. Stat. § 1C–1705(b) (2023). Introducing a properly authenticated copy of the foreign judgment creates a presumption that the judgment is entitled to full faith and credit. *Thomas v. Frosty Morn Meats, Inc.*, 266 N.C. 523, 526, 146 S.E.2d 397, 400 (1966); *Thrasher v. Thrasher*, 4 N.C. App. 534, 540, 167 S.E.2d 549, 553 (1969). The judgment debtor can rebut the presumption by demonstrating, for example, that the rendering court did not have subject-matter jurisdiction or did not have jurisdiction over the parties. N.C. Gen. Stat. § 1C–1708 (2023); *Morris v. Jones*, 329 U.S. 545, 550–51, 67 S. Ct. 451, 455 (1947); *White v. Graham*, 72 N.C. App. 436, 440, 325 S.E.2d 497, 500 (1985); *Webster v. Webster*, 75 N.C. App. 621, 623, 331 S.E.2d 276, 278, *disc. rev. denied*, 315 N.C. 190, 337 S.E.2d 864 (1985).

When a judgment debtor challenges a default judgment based on inadequate notice, "the reviewing court ordinarily must examine the underlying facts in the record to determine if they support the conclusion that the notice given of the original proceeding was adequate." *Boyles v. Boyles*, 308 N.C. 488, 492, 302 S.E.2d 790, 793 (1983) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950)). Here, defendant claims that Pennsylvania did not have jurisdiction over

them due to improper service; we disagree. *See generally Bentley v. Watauga Bldg. Supply, Inc.*, 145 N.C. App. 460, 461, 549 S.E.2d 924, 925 (2001) ("[T]o obtain personal jurisdiction over a defendant, it is well established that the issuance of summons and service of process must comply with one of the statutorily specified methods.").

A. Pennsylvania Service

Pennsylvania's procedural rules show that a party may be served with process "in the manner provided by the law of the jurisdiction in which the service is made for service in an action in any of its courts of general jurisdiction"—which would be North Carolina. Pa. R. Civ. P. 404(3). In light of this rule, plaintiffs served Park at defendant's office address in accordance with North Carolina's Rule 4(j)(6)(a). *See* N.C. Gen. Stat. § 1A-1, Rule 4(j)(6)(a) (2023). At issue is where and to whom service was directed. Defendant, on appeal, alleges service was improper because Park was not its officer and could not accept service on its behalf. Our precedent, however, does not require such a strict standard.

Rule 4(j)(6)(a) provides that our state courts can obtain jurisdiction over corporations, like defendant, by "delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office." *Id.* In *Williams v. Burroughs Wellcome Co.*, we assessed the last portion of Rule 4(j)(6)(a). 46 N.C. App. 459, 265 S.E.2d 633 (1980). In that case, a process server left the summons and complaint with someone

who was purportedly "in charge of the office[.]" *Id.* at 461, 265 S.E. at 634. The corporate defendant moved to dismiss, arguing insufficiency of service of process, and the trial court denied the defendant corporation's motion. *Id.* The corporate defendant appealed, arguing that the summons was defective on its face because it failed to recite in what capacity the individual to whom service was made upon. *Id.* at 462, 265 S.E.2d at 635.

In affirming the trial court, our Court found that "Rule 4(j)(6)(a) does not require that the person upon whom summons is served be in fact in charge of the office of the officer, director or managing agent of the corporation, merely that the person be 'apparently in charge.'" *Id.* at 463, 265 S.E.2d at 636. The Court went on:

> Assuming that this return is incomplete in that it fails to specify in detail the agency of [the served individual] and the manner in which service upon [them] constituted compliance with G.S. 1A–1, Rule 4(j)(6), the significant factor in determining whether the court acquired jurisdiction over the corporate defendant here is whether the manner of service itself, rather than the return of the officer showing such service, complied with the applicable statute. It is the service of summons and not the return of the officer that confers jurisdiction.

Id. at 462, 265 S.E.2d at 635 (internal quotation marks and citation omitted). We also noted that "the question of who may be a 'managing agent' upon whom service of process is authorized depends upon the facts and circumstances of the particular case." *Id.* at 465, 265 S.E.2d at 636. The Court concluded that being named as an employee in a management position was, on its own, insufficient to warrant

"managing agent" status under Rule 4(j)(6)(a). *Id.* (holding "the bare finding here that James Rostar was an employee in a management position cannot support such a conclusion, and for this reason, the case must be remanded.").

Here, the question is whether plaintiffs' service on Park complied with Rule 4(j)(6)(a). The return of service shows that the process server provided copies of the summons and complaint to Park, who resided at defendant's office address. *See* N.C. Gen. Stat. § 1A-1, Rule 4(j)(6)(a) (noting that service on a corporation is proper when the server leaves copies of the summons and complaint "in the office of such officer, director, or managing agent with the person who is apparently in charge of the office."). Defendant's office is listed in the Gaston County tax records as the "Primary Property Address." Defendant also had a sign out front advertising to passersby that the office represented "Henderson Church," which supports that the property is more like an office than a private residence. This information, coupled with the fact that Park lived there and was the caretaker of the property, is sufficient to confer "in charge of the office" status for purposes of Rule 4(j)(6)(a).

Yet our analysis does not stop there because Park's "in charge" status to receive service is solidified by the services he provided to defendant. Defendant, for example, employed Park in numerous capacities, including Vice President, Secretary, and Executive Director. In 2015, Park signed board meeting minutes as "Secretary" later verifying those minutes as "Vice President" in an apostille certified by the North Carolina Secretary of State. Further, referring to himself as "Vice President and

Executive Director" of defendant, Park later testified under oath at the criminal trial of a Templeton officer about board meeting minutes and academic records.

Based on Park's various corporate roles through the years and his residence doubling as defendant's office, we hold Park was "apparently in charge" for Rule 4(j)(6)(a) purposes, and service upon him was proper. *See Williams*, 46 N.C. App. at 463, 265 S.E.2d at 636; *see also Royal Furniture Co. v. Wichita Furniture Co.*, 180 N.C. 531, 105 S.E. 176, 177 (1920) (noting that the determination of "managing agent" "must depend in every case on the kind of business conducted by the corporation, what the general duties of the supposed 'managing agent' are, and whether it can be fairly said that service on such agent would bring notice. . . ."). Defendant cannot use Park to skirt service while also using him to sustain its office and supervise its affairs. *See id*. (finding that a "managing agent" who can be served with process is "one whose position, rank, and duties make it reasonably certain that the corporation will be apprised of the service made; in other words, one who stands in the shoes of the corporation in relation to the particular business managed by him for the corporation.").

We thus find that plaintiffs' service of process on Park in the Pennsylvania lawsuit conferred jurisdiction to the North Carolina trial court. *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706, 102 S. Ct. 1357, 1367 (1982) ("[A] judgment is entitled to full faith and credit—even 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 which rendered the original judgment."); *Williams*, 46 N.C. App. at 462, 265 S.E.2d at 635 ("[T]he significant factor in determining whether the court acquired jurisdiction over the corporate defendant . . . is whether the manner of service itself, rather than the return of the officer showing such service, complied with the applicable statute.").

B. Acting on Defendant's Behalf

No matter what happened in Pennsylvania, defendant failed to respond promptly once the case got to North Carolina. The Uniform Enforcement of Foreign Judgments Act requires that the judgment creditor file with the clerk of superior court a "copy of [the] foreign judgment authenticated in accordance with an act of Congress or the statutes of this State[.]" N.C. Gen. Stat. § 1C–1703(a) (2023). After filing an authenticated copy of the foreign judgment, the judgment creditor must then give notice of the filing to the judgment debtor. N.C. Gen. Stat. § 1C–1704(a) (2023). If the judgment debtor takes no action within thirty days of receipt of the notice to delay enforcement of the judgment, "the judgment will be enforced in this State in the same manner as any judgment of this State." *Id.* § 1C–1704(b). To delay enforcement of the judgment, the judgment debtor may "file a motion for relief from, or notice of defense to," the judgment on grounds permitted under the Act. N.C. Gen. Stat. § 1C–1705(a) (2023). Upon the filing of such motion, enforcement is stayed until the judgment creditor requests "enforcement of the foreign judgment." *Id.* § 1C–1705(b). If the judgment creditor files a motion for enforcement, a hearing will be

held, and the trial court will determine whether the "foreign judgment is entitled to full faith and credit." *Id.*

When plaintiffs obtained a default judgment in Pennsylvania, they sought enforcement by filing a notice of default on 25 October 2021. Defendant received notice thereafter. On 26 November 2021, Director Jeong filed a request for relief from the Pennsylvania judgment and signed it on behalf of defendant. In that response, he contested the service of process in Pennsylvania. While Director Jeong's response on defendant's behalf was sufficient notice to avoid the clerk entering default, it was insufficient to contest the service of process.[1]

With limited exceptions, "a corporation must be represented by a duly admitted and licensed attorney-at-law and cannot proceed pro se. . . ." *LexisNexis, Div. of Reed Elsevier, Inc. v. Travishan Corp.*, 155 N.C. App. 205, 209, 573 S.E.2d 547, 549 (2002).

---

[1] Under Rule 55(b)(1) of our Rules of Civil Procedure, the clerk of superior court may enter a default judgment against a defendant only if the defendant never made an appearance in the action. *N.C.N.B. v. McKee*, 63 N.C. App. 58, 60, 303 S.E.2d 842, 844 (1983) (citation omitted); *see* N.C. Gen. Stat. § 1A-1, Rule 55(b)(1) (2023). "Generally, an appearance requires some presentation or submission to the court." *Cabe v. Worley*, 140 N.C. App. 250, 253, 536 S.E.2d 328, 330 (2000) (internal quotation marks and citation omitted). Nevertheless, "a defendant does not have to respond directly to a complaint in order for his actions to constitute an appearance." *Roland v. Motor Lines*, 32 N.C. App. 288, 289, 231 S.E.2d 685, 687 (1977) (citation omitted). Rather, "an appearance may arise by implication when a defendant takes, seeks, or agrees to some step in the proceedings that is beneficial to himself or detrimental to the plaintiff." *Id.* (citations omitted); *see Coastal Fed. Credit Union v. Falls*, 217 N.C. App. 100, 103–07, 718 S.E.2d 192, 194–96 (2011) (concluding the defendants' negotiations with the plaintiff's law firm regarding a payment plan could qualify as an "appearance," thereby entitling the defendants to notice of the default judgment hearing); *Webb v. James*, 46 N.C. App. 551, 557, 265 S.E.2d 642, 646 (1980) (holding a defendant's negotiation of a continuance constituted an appearance). Here, Director Jeong's filing was an "appearance" and entitled defendant to a default judgment hearing.

Those exceptions are (1) a corporate employee who is not an attorney can prepare legal documents; (2) a corporation need not be represented by an attorney in the Small Claims Division; and (3) a corporation may make an appearance in court through its officer and thereby avoid default. *Id.* at 208, 573 S.E.2d at 549. Our case law distinguishes between making an appearance for a corporation and filing a pleading for one. *See Sheng Yu Ke v. Heng-Qian Zhou*, 256 N.C. App. 485, 490, 808 S.E.2d 458, 462 (2017) ("There is a clear distinction between making an appearance for a corporation and filing an answer for a corporation[.]" (citing *Bodie Island Beach Club Ass'n, Inc. v. Wray*, 215 N.C. App. 283, 289, 716 S.E.2d 67 (2011)).

Because he is not a practicing attorney, Director Jeong's filing was an invalid response. *See id.* ("[E]ven if [the defendant] in fact intended to file his answer on behalf of both himself and his corporation, the answer was not a valid response for his corporation because he was not a licensed attorney."). Defendant, therefore, did not invoke the authority and jurisdiction of the trial court to set aside the Pennsylvania judgment under N.C. Gen. Stat. § 1C-1705. In fact, defendant never used its counsel to move to set aside the judgment. Instead, in their response to plaintiffs' Motion to Enforce Judgment—filed by counsel—occurred four months later, well outside the thirty-day window, and after plaintiffs moved for enforcement. *See Sheng Yu Ke*, 256 N.C. App. at 491, 808 S.E.2d at 462 (holding the trial court did not abuse its discretion when the defendant "did not file its motion to set aside an entry of default until approximately seven months after the default was entered by

the clerk."); *First Citizens Bank & Tr. Co. v. Cannon*, 138 N.C. App. 153, 158, 530 S.E.2d 581, 584 (2000) (The trial court did not abuse its discretion by refusing to set aside an entry of default where the defendant filed her motion to set aside more than five months after the entry of default.); *see also Sec. Credit Leasing, Inc. v. D.J.'s of Salisbury, Inc.*, 140 N.C. App. 521, 527, 537 S.E.2d 227, 231 (2000) ("[W]e hold that as long as defendant-debtor acts before enforcement, defendant-debtor could properly delay enforcement by filing his motion for relief and/or notice of defenses."); *Auto. Equip. Distribs., Inc. v. Petrol. Equip. & Serv., Inc.*, 87 N.C. App. 606, 608, 361 S.E.2d 895, 897 (1987) (requiring consideration of whether the defendant was "diligent in pursuit of [the] matter"). Thus, because Director Jeong's filing was improper, we can affirm the trial court's ruling because defendant failed to act timely to the enforcement notice under N.C. Gen. Stat. § 1C–1704(b). *See* N.C. Gen. Stat. § 1C–1704(b) (noting that if a judgment debtor seeks relief "within that 30 days, the judgment will be enforced in this State in the same manner as any judgment of this State.").

C. Improper Process Server

Defendant also asks us to determine whether the service of process by a private process servicer was sufficient to convey jurisdiction. However, we need not address this issue as defendant failed to present it to the trial court. Rule 10(a)(1) of our appellate procedure provides that to preserve an issue for appellate review, "a party must have presented to the trial court a timely request, objection, or motion, stating

the specific grounds for the ruling the party desired the court to make" and must have "obtain[ed] a ruling upon the party's request, objection, or motion." N.C. R. App. P. 10. "As a general rule, the failure to raise an alleged error in the trial court waives the right to raise it for the first time on appeal." *State v. Johnson*, 204 N.C. App. 259, 266, 693 S.E.2d 711, 716–17 (2010); *see also Cushman v. Cushman*, 244 N.C. App. 555, 562, 781 S.E.2d 499, 504 (2016) ("Our Supreme Court has long held that where a theory argued on appeal was not raised before the trial court, the law does not permit parties to swap horses between courts in order to get a better mount in the appellate courts. . . ."). We conclude that, by failing to raise this issue before the trial court, defendant waived appellate review.

IV. Conclusion

Based on the above, we affirm the trial court's holding because defendant failed to present sufficient evidence to overcome the presumption that the properly filed Pennsylvania judgment is entitled to full faith and credit.

AFFIRMED.

Chief Judge DILLION and Judge COLLINS concur.

Report per Rule 30(e).