

Circuit Court for Anne Arundel County
Case No. 02-C-12-171247

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1649

September Term, 2016

WILLIAM A. SHUE III

v.

GEMMA E. MCAULEY

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: September 15, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

At an American father’s request, a British court entered an order for the return of a child under the Hague Convention on the Civil Aspects of International Child Abduction. Among other things, the order required the child’s British mother to return the child to the United States.

The mother registered the order in the Circuit Court for Anne Arundel County as a child custody determination. The father filed a timely objection to registration, but later withdrew the objection. The circuit court confirmed the registration of the British order.

One year after confirmation of the registered order, the father sought to contest its registration by claiming that it was incomplete without the inclusion of a transcript of the proceedings. The circuit court denied the father’s petition.

The father appealed. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Gemma McAuley (“Mother”) and William Shue III (“Father”) are the divorced parents of a son (“Son”), who was born in 2009. In July 2014, Mother absconded with Son at the end of a vacation in the United Kingdom. Father sought Son’s return to Maryland. To that end, he instituted proceedings, in Great Britain, under the Hague Convention on the Civil Aspects of International Child Abduction.

On November 27, 2014, the High Court of Justice, Family Division, in London, determined that Son should be returned to Maryland. Within one week after the hearing, on December 3, 2014, the British court entered an order that, among other things, directed the return of Son to Maryland.

On March 9, 2015, Mother filed a request to register the British court’s order in the Circuit Court for Anne Arundel County pursuant to the Maryland Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), which is codified in Md. Code (1984, 2012 Repl. Vol.), §§ 9.5-101 *et seq.* of the Family Law Article (“FL”). Mother asserted that the British order was a child custody determination, as defined by FL § 9.5-101(d).¹ Mother further asserted that the British order: (i) was issued by a court that had jurisdiction; (ii) had not been vacated, stayed, or modified; and (iii) was issued after providing notice to Father. In pursuing the registration of the British order, Mother may have been motivated by a desire to enforce a provision in which Father undertook to facilitate contact between Mother and Son by Skype, Facetime, or telephone.

On March 13, 2015, the circuit court issued and served on Father a “Notice of Registration of Foreign Child Custody Determination” pursuant to FL § 9.5-305(b)(2). The notice included the language required by FL § 9.5-305(c):

The attached child custody determination issued by a court of another state has been registered in this Court. As required by Maryland Annotated Code, Family Law Article, Section 9.5-305, you are hereby served notice that:

1. the registered child custody determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;
2. any request for a hearing to contest the validity of the registered determination shall be made within 20 days after the service of this notice; and

¹ A “child custody determination,” according to FL § 9.5-101(d) is a “judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child.”

3. failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed by operation of law.

On March 23, 2015, ten days after service of the notice, Father, representing himself, filed a response, contesting the confirmation of the order. Father argued that the British order was not a child custody determination as defined by the UCCJEA and that it should not be registered as a foreign child custody determination in Maryland. The circuit court set a hearing on the contested registration for April 30, 2015.

On April 22, 2015, however, Father withdrew his objection to the registration of the British order and his request for a hearing. On the following day, the circuit court confirmed the registration of the British order and cancelled the hearing set for April 30, 2015.

Meanwhile, each party, through counsel, had filed requests to modify custody. At a *pendente lite* hearing in the custody-modification case on September 2, 2015, Father stipulated to the admission of the British order. Later in the hearing, Father moved to admit a transcript of the oral remarks that the British judge had made in announcing her judgment, but Mother objected on hearsay grounds. The court sustained Mother's objection, observing that Father had not authenticated the document or laid a foundation for its admission. The transcript was not admitted into evidence.

On April 1, 2016, Father filed what he characterized as a "Petition for Registration/Completion of Foreign Child Custody Determination." He asserted that the

transcript of the British judge’s remarks, which he referred to as the “Judgment,” was “part of the child custody determination.” He sought to “register forthwith and/or complete” the registration of the British court order by adding the transcript of the proceedings, including the British judge’s remarks.

On April 19, 2016, before the court had issued the notice of registration of a foreign judgment that is required under FL § 9.5-305(b)(2), Mother filed her opposition. After the court issued the formal notice of registration on July 12, 2016, Mother filed a supplemental opposition and requested a hearing.

In the meantime, on April 20, 2016, Father and Mother had entered into a consent order to resolve their disputes about custody, visitation, and child support. Under the consent order, Father obtained sole legal and primary physical custody of Son. Mother had periodic access to Son, including unfettered access by Skype in accordance with a regular schedule.

At the end of a hearing on September 12, 2016, the court denied Father’s petition. On September 19, 2016, the court entered a written order that reflected its ruling. The order stated that the transcript “shall not be confirmed as a registered child custody determination.”

Father noted this timely appeal.

QUESTIONS PRESENTED

Father presents four questions for review, which we quote:

1. Did the Circuit Court, appropriately apply Maryland Family Law Article § 9.5-305 when denying the Appellant’s petition to complete the registration of a

- Foreign Child Custody Determination, when the same rule was used as operation of law by the Circuit Court to register an incomplete determination?
2. Did the Circuit Court err when registering a written order from England’s High Court, as a Foreign Child Custody Determination considering the order was partial/incomplete at the time of the petition for its registration?
 3. Did the Circuit Court err by not applying the same level of judicial scrutiny when registering a written order from England’s High Court and subsequently not completing the registration when petitioned to include an apostille^[2] copy of the oral judgment from which the written order was authored with the previously registered written order?
 4. Do the Maryland rules, or any authorities (laws, statutes, case law, ordinances, legislation, etc.), including the UCCJEA, or similar federal authorities under which the Circuit Court may be authorized to operate, prohibit the Circuit Court, from completing the registration of a Foreign Child Custody Determination as was petitioned by the Appellant?

The first and fourth questions challenge the circuit court’s decision not to allow Father to “complete” the registration of the British order by registering the transcript of the British judge’s oral remarks. The second and third questions challenge the circuit court’s registration of the order that Mother submitted for registration.

For the reasons discussed below, we hold that the court did not err in declining to register the transcript of the British judge’s oral remarks.

² “Apostille” is the French term for a footnote or marginal note. Under the Hague Convention, an “apostille” is a certificate attesting that the signatures, seals, or stamps are authentic on a public document used in a foreign country. BLACK’S LAW DICTIONARY 117 (10th ed. 2014).

DISCUSSION

“Because this case turns on the interpretation and application” of the UCCJEA, this Court conducts a de novo review to determine whether the circuit court’s conclusions were legally correct. *Garba v. Ndiaye*, 227 Md. App. 162, 169, *cert. denied*, 448 Md. 30 (2016).

FL § 9.5-305(a) permits the registration of a “child custody determination issued by a court of another state,” which includes the United Kingdom. *See* FL § 9.5-104. FL § 9.5-101(d)(1) defines the term “child custody determination” as “a judgment, decree, or other order of court providing for the legal custody, physical custody, or visitation with respect to a child.”

On its face, the transcript of the British proceedings is not a “judgment, decree, or other order of court,” much less a judgment, decree, or other order “providing for the legal custody, physical custody, or visitation with respect to a child.” The transcript records the British judge’s (thoughtful and eloquent) rationale for her order, but the order itself is contained in a separate document – the document that Mother registered. The circuit court did not err in declining to register a document that fails to satisfy the definition of a “child custody determination.”³

Even if the transcript could qualify as a “child custody determination,” Father waived the right to “complete” the registration by including the transcript with the British

³ It is debatable whether the British order itself could count as a “child custody determination,” as it principally serves to compel the child’s return to the United States, and not to decide issues of custody or visitation. But Father abandoned that argument when he consented to the registration of the English order.

order. Under FL § 9.5-305(d)(1), “A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice.” But although Father initially requested a hearing to contest the validity of the British order, he withdrew his request when he withdrew his objection on April 22, 2015. Nearly a year later, on April 1, 2016, Father requested a hearing on his motion to “complete” the registration by including the British transcript. His motion was untimely under FL § 9.5-305(d)(1), because it contested the validity of the British order by asserting that the order was incomplete without the transcript.

Finally, under FL § 9.5-305(f), the “[c]onfirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.” The registration of the British order was confirmed by operation of law after Father withdrew his initial objection and request for a hearing on April 22, 2015. *See* FL § 9.5-305(e) (“[i]f a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law”). Because Father presumably knew or should have known of the British transcript when Mother registered the British order some four months after the British proceeding had occurred, FL § 9.5-305(f) precludes him from contesting the British order by arguing that it is incomplete without the transcript. It makes no difference that Father claims not to have had an apostille copy of the transcript when Mother requested the registration of the British order: nothing in the UCCJEA requires the submission of an apostille copy. *See* FL § 9.5-305(a)(2) (requiring

that a request for registration include “two copies, including one certified copy, of the determination sought to be registered”).

In summary, Father had no right to register the British transcript, because it is not a child custody determination. But even if it were, Father waived his right to challenge the initial registration of the British order and is now precluded from contending that the order is “incomplete” without the transcript. The circuit court therefore did not err in declining to register the transcript as a child custody determination.⁴

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁴ Although neither party argues the point, it appears that the British order and transcript may be largely, if not completely, moot, at least insofar as they concern issues of custody, visitation, and telephone access, because on April 20, 2016, the parties entered into a consent order that covers those issues.