1997 WL 35436322
Only the Westlaw citation is currently available.

Court of Appeals of Kansas.

In the MATTER OF the MARRIAGE OF Manijeh ZANDI, Appellee,
AND
Homayoun NIK-KHAH, Appellant.

No. 77,353
|
Opinion filed October 17, 1997.

Appeal from Douglas District Court; MICHAEL J. MALONE, judge.

Attorneys and Law Firms

Homayoun Nik-Khah, appellant pro se.

David J. Berkowitz, of Oyler, Salyer, Warren & Berkowitz, L.L.C., of Lawrence, for appellee.

Before PIERRON, P.J., ELLIOTT, J., and DAVID W. KENNEDY, District Judge, assigned.

MEMORANDUM OPINION

Per Curiam:

***1** Homayoun Nik-Khah appeals the trial court's denial of his K.S.A. 60-260(b) motion for relief from judgment and the trial court's order to quiet title to property in favor of Manijeh Zandi.

We affirm.

Appellant raises numerous arguments on appeal; we reject them all.

In 1991, appellee sued for divorce in Douglas County; some 8 months later, a default divorce decree was entered. In that decree, the trial court awarded the house in Douglas County to appellee, along with other property.

Later, appellee's quiet title suit regarding the couple's home was granted. In 1995, appellant moved for relief from judgment; in denying the motion, the trial court made several findings and rulings: Appellant was personally in front of the court on August 1, 1991, in a protection from abuse case; shortly thereafter, appellant left the country for more than 2 years and, thus, avoided service of process; appellee attempted to serve appellant in Iran by mail but the address was not correct; the Iranian divorce decree was not granted comity because appellee was not afforded notice of that action even though appellant knew appellee's address; the Iranian divorce decree did not purport to divide any property in Kansas; and the purported premarital agreement in Iran did not purport to cover any after-acquired property located in Kansas.

Appellant argues the trial court erred in denying his motion for relief from judgment, in which he asked the trial court to vacate the 4-year-old Kansas divorce decree, which had been entered by default. K.S.A. 60-309 provides an extended time frame to reopen a default judgment when service was accomplished through publication, but that statute only allows a 2-year window.

Generally, a trial court is vested with discretion in ruling on a motion for relief from judgment, and on appeal, the trial court's rulings will not be disturbed absent a showing of abuse of judicial discretion. *Bethany Medical Center v. Niyazi*, 18 Kan. App. 2d 80, 81, 847 P.2d 1341 (1993).

Appellant claims the trial court erred in failing to grant full faith and credit/comity to the prior Iranian divorce decree. While the full faith and credit clause requires courts to recognize valid judgments from other states, it does not apply to judgments from foreign countries. Foreign country judgments are governed by principles of

comity. See *Hilton v. Guyot*, 159 U.S. 113, 164, 40 L. Ed. 95, 16 S. Ct. 139 (1895); *Boyce v. Boyce*, 13 Kan. App. 2d 585, 587, 776 P.2d 1204, *rev. denied* 245 Kan. 782 (1989); 50 C.J.S., Judgments § 1033.

Normally, courts will extend comity to a foreign judgment when the foreign court had proper jurisdiction and local enforcement does not prejudice rights of a local citizen or violate domestic public policy. *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713 (2d Cir. 1987).

Here, the trial court chose not to grant comity to the Iranian decree, finding appellee's due process rights were violated. The trial court found that appellee was not given notice of the Iranian action and that appellant knew at the time how to contact appellee. On appeal, appellant does not challenge the trial court's finding that appellee was deprived of notice of the foreign action and that appellee was not present at the time the Iranian judgment was entered.

***2** In this regard, the trial court did not abuse its discretion. See 50 C.J.S., Judgments § 1033.

Appellant also argues the trial court erred in allowing service by publication. K.S.A. 60-307(c) requires that a party filing an affidavit for publication service not reasonably know the residence or mailing address of the party to be served. Appellant does not state any facts to support his contention appellee knew his correct address, nor does he provide a record on appeal to support his allegation. See *D.M. Ward Constr. Co. v. Electric Corp. of Kansas City*, 15 Kan. App. 2d 114, 121, 803 P.2d 593 (1990), *rev. denied* 248 Kan. 994 (1991). We, therefore, must assume appellant's assertions are without support. See *Kenyon v. Kansas Power & Light Co.*, 17 Kan. App. 2d 205, Syl. ¶ 2, 836 P.2d 1193 (1992). Further, the documents which appellant relies on in his appendix are dated a year after judgment was rendered in the divorce case.

Appellant also argues a laundry list of some dozen instances where the trial court allegedly abused its discretion.

Judicial discretion is abused only when no reasonable person would take the view adopted by the trial court, and appellant has the burden of establishing an abuse of judicial discretion. *Simon v. Simon*, 260 Kan. 731, Syl. ¶ 2, 924 P.2d 1255 (1996); see *State v. Harris*, 263 Kan. 778, Syl. ¶¶ 4, 5, 942 P.2d 31 (1997).

Appellant has failed to meet his burden to establish an abuse of judicial discretion. He fails to cite any legal authority in support of his contentions, fails to cite to the record to document his factual allegations, and fails to provide us with transcripts of the hearings of which he complains.

Appellant next complains his due process rights were violated because he could not hear the proceedings. Once again, he has failed to make explicit references to the record, cites only to the appendices attached to his brief, and fails to provide a transcript of the hearing of which complaint is made. There is nothing for us to review. See *Enlow v. Sears, Roebuck & Co.*, 249 Kan. 732, 744, 822 P.2d 617 (1991).

Appellant next argues the trial court erred in refusing to find a valid premarital contract existed which disposed of all property located in Kansas. The trial court did not rule a valid premarital agreement did not exist; the trial court held that the agreement did not purport to dispose of any property located in Kansas. The trial court stated: "Respondent [appellant] has presented a purported premarital agreement entered into by the parties in Iran but the Court specifically finds said agreement does not cover any after [acquired] property or property located in Douglas County, Kansas at the time the divorce entered herein."

Appellant's four arguments based on the Kansas Uniform Premarital Agreement Act, K.S.A. 23-801 *et seq.*, must fail because the Act applies only to agreements executed after July 1, 1988. The marriage contract here involved was executed in July 1974. Frankly, we do not understand precisely what appellant's arguments are with regard to whether a valid marriage contract existed. Suffice it to say, in Kansas, a court's inquiry into the validity of a premarital agreement does not stop with principles of contract law; Kansas courts make a further inquiry to determine whether the agreement is fair, equitable, and not contrary to public policy. See *Ranney v. Ranney*, 219 Kan. 428, 432-33, 548 P.2d 734 (1976).

***3** Appellant's final arguments are not before us. We are limited to reviewing the trial court's discretion in denying his motion for relief from judgment; we cannot review the underlying substantive rulings made in the divorce case. See *Miotic v. Rudy*, 4 Kan. App. 2d 296, 298, 605 P.2d 587, *rev. denied* 227 Kan. 927 (1980). Here, appellant

cannot benefit from K.S.A. 60-260(b)(2) or (b)(3) since those subsections can only be used within 1 year from the date of judgment.

Affirmed.

All Citations

Not Reported in Pac. Rptr., 1997 WL 35436322

End of Document