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NOT FOR OFFICIAL PUBLICATION

ORIGINAL

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DWIGHT J. BAUM, as Trustee for the)
Dwight C. and Hildagarde E. Baum Trust,)
Plaintiff/Appellee,)
vs.)
WILLIAM C. MILKS,)
Defendant/Appellant.)

MAR 23 2021

JOHN D. HADDEN
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Case No. 118,062

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APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE WILLIAM D. LaFORTUNE, TRIAL JUDGE

REVERSED AND REMANDED

John M. Dunn,
THE LAW OFFICES OF
JOHN M. DUNN, PLLC,
Tulsa, Oklahoma,

For Defendant/Appellant,

Charles Greenough,
Emalie L. Rott,
MCAFEE & TAFT, P.C.,
Tulsa, Oklahoma,

For Plaintiff/Appellee.

Opinion by B.J. Goree, Presiding Judge:

¶1 William Milks, Appellant and Judgment Debtor, appeals the trial court's denial of his motion to vacate a foreign judgment filed in Oklahoma. Dwight Baum, as trustee of the Dwight C. and Hildagarde E. Baum Trust, Appellee and Judgment Creditor, filed an authenticated copy of a Nevada judgment (Judgment) as prescribed by the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §719 et. seq. In the underlying Nevada suit, claimants, including Baum as trustee, brought suit against respondents, including Milks, for various causes of action related to a business venture. The Judgment awarded Baum (and other claimants) attorney fees and costs to be paid by respondents (Milks and other respondents). The attorney fees and costs were the joint and several liability of Milks and the other respondents.

¶2 The Nevada Judgment was filed in Oklahoma in order to enforce it against Milks individually. Baum's affidavit claimed the Judgment was valid and enforceable. He also contended Milks had exhausted his appeal rights in Nevada. Milks filed a motion to vacate the foreign Judgment in Oklahoma claiming it was void as to him because the Nevada court did not have personal jurisdiction over him in his individual capacity. The motion was denied and Milks appealed.

¶3 After this appeal was commenced, both Baum and Milks filed notices which, taken together, suggest to this court that the Supreme Court of Nevada has determined the Nevada trial court lacked personal jurisdiction over Milks individually. The Nevada proceedings occurred after the Oklahoma district court filed the appealed order. Thus, the Nevada Supreme Court proceedings are not part of the record on appeal and were not considered by the Oklahoma district court.

¶4 Appellate courts will not make first-instance decisions of disputed law or fact issues; this is the function of the trial court. *Evers v. FSF Overlake Associates*, 2003 OK 53, ¶18, 77 P.3d 581, *Bivens v. State of Oklahoma, ex rel. Oklahoma Memorial Hospital, et al.*, 1996 OK 5, ¶19, 917 P.2d 456. Furthermore, The Uniform Enforcement of Foreign Judgments Act was not intended to apply in situations where the foreign judgment is a non-final order. See 12 O.S. §723 (an Oklahoma district court should stay enforcement of a foreign judgment until an appeal of the foreign judgment is concluded).

¶5 The legal effect of post-appeal filings and decisions of the foreign court on collection efforts in Oklahoma has not been considered by the trial court. Because this legal issue was neither raised nor assessed below, we decline to make an initial decision on this untried question and then direct that it be

followed on remand. See *Bivens*, ¶19. The question must first be tendered to the trial court. *Id.*

¶6 In summary, it appears the Nevada Supreme Court may not have finally determined the personal jurisdiction questions until after the Oklahoma District Court made its ruling. Nor does it appear the Oklahoma court was made aware that Nevada had not finally determined the issues. As such, the order on the motion to vacate is reversed and the case is remanded for further proceedings. **REVERSED AND REMANDED.**

MITCHELL, J., and PEMBERTON, J., (sitting by designation) concur.