
IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO.: 1D06-4806

CARL DORÉLIEN,

Appellant,

vs.

MARIE JEANNE JEAN,

Appellee.

ON APPEAL FROM A NON-FINAL ORDER OF THE
SECOND CIRCUIT COURT
IN AND FOR LEON COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE MARIE JEANNE JEAN

HOLLAND & KNIGHT LLP

Dwayne Edward Williams
701 Brickell Ave., Suite 300
Miami, FL 33131
Telephone: (305) 374-8500
Facsimile: (305) 789-7799

Attorney for Appellee Marie Jeanne Jean

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF CITATIONS..... ii

STATEMENT OF CASE AND FACTS 1

SUMMARY OF ARGUMENT 4

ARGUMENT 6

I. THE JULY 18, 2005 NOTICE OF APPEAL DIVESTED THE TRIAL COURT OF JURISDICTION TO GRANT APPELLANT'S JULY 18, 2005 MOTION FOR RELIEF FROM JUDGMENT. 6

II. APPELLANT WAIVED ANY ARGUMENTS REGARDING THE MERITS OF THE DECEMBER 3, 2004 ORDERS AND THE AUGUST 2006 ORDER GRANTING THE RENEWED MOTION TO ENFORCE THE DOMESTICATED HAITIAN JUDGMENT. 8

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT. 8

CONCLUSION 11

CERTIFICATE OF SERVICE 12

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS 13

TABLE OF CITATIONS

CASES:

<i>Applegate v. Barnett Bank of Tallahassee</i> , 377 So. 2d 1150 (Fla. 1979).....	10
<i>Bland v. Mitchell</i> , 245 So. 2d 47 (Fla. 1970)	9
<i>Chabert v. Bacquie</i> , 694 So. 2d 805 (Fla. 4th DCA 1997)	8
<i>City of Pembroke Pines v. Villasenor</i> , 894 So. 2d 991 (Fla. 1st DCA 2005).....	8
<i>Dade County School Bd. v. Radio Station WQBA</i> , 731 So. 2d 638 (Fla. 1999)	7
<i>Elledge v. State</i> , 911 So. 2d 57 (Fla. 2005)	11
<i>First Union Nat'l Bank of Florida v. Yost</i> , 622 So. 2d 111 (Fla. 1st DCA 1993)	6, 7
<i>FMS Mgmt. Sys. Inc. v IDS Mortgage Corp.</i> , 402 So. 2d 474 (Fla. 4th DCA 1981)	7
<i>Georges v. Ins. Technicians, Inc.</i> , 486 So. 2d 700 (Fla. 4th DCA 1986).....	7
<i>Gonzalez v. Gonzalez</i> , 861 So. 2d 109 (Fla. 1st DCA 2003).....	10
<i>In the Interest of T.D.</i> , 623 So. 2d 851 (Fla. 1st DCA 1993)	8
<i>Jacobsen v. Ross Stores</i> , 882 So. 2d 431 (Fla. 1st DCA 2004).....	6

<i>LLP Mortgage Ltd. v. Bank of America, N.A.</i> , 862 So. 2d 426 (Fla. 3d DCA 2002)	9
<i>Lyon v. Sanford</i> , 911 So. 2d 806 (Fla. 1st DCA 2005).....	9
<i>Manning v. Tunnell</i> , 943 So. 2d 1018 (Fla. 1st DCA 2006).....	7
<i>McDuffie v. City of Jacksonville</i> , 763 So. 2d 1201 (Fla. 1st DCA 2000).....	6
<i>Parsons v. Whitaker Plumbing of Boca Raton</i> , 730 So. 2d 839 (Fla. 4th DCA 1999)	7
<i>Polk County v. Sofka</i> , 702 So. 2d 1243 (Fla. 1997).....	6
<i>Robertson v. State</i> , 829 So. 2d 901 (Fla. 2002)	7
<i>Solmo v. Friedman</i> , 909 So. 2d 560 (Fla. 4th DCA 2005)	9
<i>State v. Mitchell</i> , 719 So. 2d 1245 (Fla. 1st DCA 1998)	8
<i>State v. Town of Sweetwater</i> , 112 So. 2d 852 (Fla. 1959)	8
<i>Steele v. Steele</i> , 558 So. 2d 526 (Fla. 1st DCA 1990)	7
<i>Troiano v. Tizon</i> , 632 So. 2d 251 (Fla. 3d DCA 1994)	9
<i>Underwood v. Columbia County</i> , 868 So. 2d 1225 (Fla. 1st DCA 2004).....	10
<i>West 132 Feet v. City of Orlando</i> , 86 So. 197 (Fla. 1920)	6

STATUTES:

§ 55.601, Fla. Stat. (2004), <i>et seq.</i>	1
---	---

§ 55.604(4), Fla. Stat. (2004) 1

RULES:

Fla. R. App. P. 9.030(b)(1)(A) 8

Fla. R. App. P. 9.110(b) 8

STATEMENT OF CASE AND FACTS

This case concerns the domestication of a Haitian judgment by Appellee Marie Jeanne Jean ("Jean"), acting pursuant to Florida's Uniform Out-of-Country Foreign Money-Judgment Recognition Act, § 55.601, Fla. Stat. (2004), *et. seq.* The "Haitian Judgment" is a Haitian money judgment in the amount of one billion (1,000,000,000) Haitian *gourdes* against Appellant Carl Dorélien ("Appellant").

[A.3.]¹ As set forth below, Appellant has repeatedly challenged the domestication of the Haitian Judgment and the trial court's refusal to grant him relief from the judgment, at the trial and appellate levels. Accordingly, for purposes of clarity, Jean must summarize much of this procedural history for the Court.

Jean recorded the Haitian Judgment with the trial court on June 21, 2004. [A.3.] On September 8, 2004, the Clerk of the Leon County Circuit Court issued a certificate pursuant to Section 55.604(4), Florida Statutes (2004), stating that no objections to recognition of the Haitian Judgment had been filed within the 30-day period prescribed by the statute. [A.4.]² Based on the Clerk's certificate, on

¹ Appellant did not direct the Clerk of the Circuit Court to transmit the record to this Court. Accordingly, Jean has filed an Appendix containing copies of the dockets in the consolidated cases, and the pertinent motions, orders, notices, and other documents filed in the trial court. Citations to the Appendix are referenced as A.# (# references the tab number).

² There is a discrepancy between the Certificate and the docket. The Certificate is signed and stamped on September 8, 2004. [A.4.] However, the docket records

September 10, 2004, Jean filed her Motion for Order as to Foreign Judgment, wherein she requested an Order recognizing the Haitian Judgment. [A.5.] Some weeks later, on October 1, 2004, Appellant filed a Motion for Relief from Judgment, Leave to File Objections. [A.6.]

On December 3, 2004, the trial court signed two orders ("the December 3, 2004 Orders") that denied Appellant's Motion for Relief from Judgment, Leave to File Objections [A.7.] and granted Jean's motion for recognition of the Haitian Judgment as an enforceable Florida judgment [A.8.].³ In its order denying Appellant's Motion for Relief from Judgment, Leave to File Objections, the trial court found Appellant's counsel had notice of the domestication proceedings by July 8, 2004, so his objections were untimely. [A.7.]

Appellant filed a Motion for Rehearing, Amendment of Judgment and Relief from Judgment on December 13, 2004. [A.9.] In turn, Jean filed a motion to enforce the domesticated judgment on April 7, 2005. [A.10.]⁴ Both motions were denied on June 27, 2005 ("the June 27, 2005 Order"). [A.11.] However, the trial court granted Appellant forty-five (45) days to present evidence that an appeal of

the Certificate as having been filed on September 2, 2004. [A.2.]

³ The December 3, 2004 Orders were entered on the trial court's docket on December 6, 2004. [A.2.]

⁴ There is a discrepancy between the motion and the docket. The motion is stamped as having been filed on April 7, 2005. [A.10.] The docket records the motion as having been filed a day earlier, on April 6, 2007. [A.2.]

the Haitian Judgment affected its continued viability against Appellant. [A.11.] Jean's motion to enforce the judgment was denied with leave to renew the motion if Appellant did not present the evidence required by the order.⁵ [A.11.]

On July 18, 2005, Appellant appealed the June 27, 2005 Order and the December 3, 2004 Orders (Case No. 1D05-3546 or "the July 2005 Appeal").⁶ [A.12.] The same day, Appellant filed a Motion for Relief from Judgment in the trial court. [A.13.] Jean filed a Renewed Motion for enforcement of the judgment on August 18, 2005, while the July 2005 Appeal was pending. [A.14.]

One year later on August 17, 2006, after an evidentiary hearing, the trial court granted Jean's Renewed Motion for enforcement of the judgment and denied Appellant's Motion for Relief from Judgment ("the August 17, 2006 Order"). [A.15.] At the evidentiary hearing, held on July 12, 2006, the trial court heard testimony from two Haitian lawyers who were qualified as expert witnesses for the parties. Mr. Camille LeBlanc testified for Jean and Mr. Joseph DuPlan testified for Appellant concerning the authenticity and validity of documents proffered by Appellant as Haitian court orders vacating the Haitian judgment. [A.15.] The trial court found Mr. Leblanc to a credible and competent expert on Haitian law, and

⁵ Jean timely appealed this decision (Case 1D05-3705), and that appeal was dismissed as moot by this Court on January 30, 2007. [A.17.]

⁶ The July 2005 Appeal was subsequently dismissed on January 19, 2007. [A.18.]

found his testimony to be persuasive as to the lack of effect of the documents proffered by Appellant. [A.15.] The court disagreed with Mr. Duplan and found his testimony concerning the effectiveness of the documents to be unpersuasive. [A.15.] Based on the expert testimony, the trial court found that the documents proffered by Appellant did not render the Haitian Judgment void. [A.15.] In particular, the court found that: (1) a purported decision of the Haitian Supreme Court did not apply to Appellant; (2) a purported decision of the Court of First Instance of Gonaïves was "most irregular" and did not effect Appellant's liability to pay money damages pursuant to the Haitian Judgment; and (3) a purported certificate from the clerk of the Court of First Instance was similarly ineffective. [A.15.]

Thereafter, on September 12, 2006, Appellant filed his Notice of Appeal in this case, purporting to appeal: the August 17, 2006 Order granting Marie Jeanne Jean's Renewed Motion for enforcement of the judgment and denying Appellant's Motion for Relief from Judgment; and the December 3, 2004 Orders recognizing the Haitian Judgment and denying Defendant's Motion for Relief from Judgment, Leave to File Objections ("the September 2006 Appeal"). [A.16.]

SUMMARY OF ARGUMENT

In his Notice of Appeal, Appellant purports to appeal three orders rendered by the Circuit Court in Case No.: 04-CA-001525:

- the December 3, 2004 Order formally recognizing the Haitian Judgment as a Florida judgment enforceable as such in this State;
- the December 3, 2004 Order denying Defendant's Motion for Relief from Judgment, Leave to File Objections; and
- the August 17, 2006 Order granting Marie Jeanne Jean's Renewed Motion for Enforcement of Money Judgment and denying Appellant's Motion for Relief from Judgment.

[A.16.] Appellant's Initial Brief, however, addresses only one of these issues – whether the trial court abused its discretion in denying Appellant's July 2005 Motion for Relief from Judgment. Therefore, Appellant has waived any arguments regarding the trial court's December 3, 2004 Orders, recognizing the Haitian Judgment and denying Appellant's Motion for Relief from Judgment, Leave to File Objections *and* any arguments regarding the trial court's August 17, 2006 Order granting Jean's Renewed Motion for Enforcement of Money Judgment.

With regard to the trial court's August 17, 2006 Order denying Appellant's Motion for Relief from Judgment, the trial court was without jurisdiction to *grant* the motion because it was filed after the July 18, 2005 Appeal, which divested the trial court of jurisdiction to decide the motion on the merits. If this Court were inclined to consider this Order, the trial court's decision denying Appellant relief from judgment should nonetheless be affirmed. Appellant has not made a

transcript of the trial court's evidentiary proceedings a part of the record. Therefore, he has not shown and cannot show that the trial court abused, much less grossly abused, its discretion when it denied his Motion for Relief from Judgment.

For these reasons the trial court's orders should be affirmed.

ARGUMENT

I. THE JULY 18, 2005 NOTICE OF APPEAL DIVESTED THE TRIAL COURT OF JURISDICTION TO GRANT APPELLANT'S JULY 18, 2005 MOTION FOR RELIEF FROM JUDGMENT.

Standard Of Review Is *De Novo*.

Whether a court has subject matter jurisdiction is a question of law that is reviewed *de novo*. See *Jacobsen v. Ross Stores*, 882 So. 2d 431, 432 (Fla. 1st DCA 2004). See also, *Polk County v. Sofka*, 702 So. 2d 1243, 1245 (Fla. 1997) ("Courts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order.") (quoting *West 132 Feet v. City of Orlando*, 86 So. 197, 198-99 (Fla. 1920)).

The Trial Court Had No Jurisdiction to Grant Appellant's Motion for Relief from Judgment.

When Appellant filed his July 2005 Appeal, he divested the trial court of jurisdiction to grant his Motion for Relief from Judgment. See *McDuffie v. City of Jacksonville*, 763 So. 2d 1201 (Fla. 1st DCA 2000) (once appellate jurisdiction was

invoked trial court lost jurisdiction to vacate final summary judgment of foreclosure to correct mistake in legal description of property) (citing *First Union Nat'l Bank of Florida v. Yost*, 622 So. 2d 111 (Fla. 1st DCA 1993) (relief from judgment due to mistake, newly discovered evidence, and so on, may not be obtained if appellate jurisdiction has been invoked); *Georges v. Ins. Technicians, Inc.*, 486 So. 2d 700 (Fla. 4th DCA 1986) (pendency of appeal from final judgment removed trial court's jurisdiction to grant motion to vacate a judgment)).⁷

Accordingly, the trial court's August 17, 2006 Order denying Appellant's Motion for Relief from Judgment should be affirmed on the grounds that it was without jurisdiction to grant the motion. *See Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002) (recognizing "the 'tipsy coachman' doctrine, allow[ing] an appellate court to affirm a trial court that 'reaches the right result, but for the wrong reasons' so long as 'there is any basis which would support the judgment in the record.'" (quoting *Dade County School Bd. v. Radio Station WQBA*, 731 So. 2d

⁷ Appellant's July 2005 Notice of Appeal did not, however, divest the trial court of its jurisdiction to grant Jean's Renewed Motion for Enforcement of Money Judgment. *See, e.g., Parsons v. Whitaker Plumbing of Boca Raton*, 730 So. 2d 839, 841 (Fla. 4th DCA 1999) ("absent a stay or bond, the filing of a notice of appeal does not divest the trial court of jurisdiction to enforce a final order.") (citing *FMS Mgmt. Sys., Inc. v. IDS Mortgage Corp.*, 402 So. 2d 474 (Fla. 4th DCA 1981)); *Steele v. Steele*, 558 So. 2d 526, 528 (Fla. 1st DCA 1990) (where appellant failed to post supersedeas bond, circuit court retained jurisdiction to enter orders enforcing final judgment) (citing *FMS Mgmt. Sys, Inc.*)).

638, 644-45) (Fla. 1999)); *Manning v. Tunnell*, 943 So. 2d 1018, 1020 (Fla. 1st DCA 2006) (same) (citing *Robertson*)).

II. APPELLANT WAIVED ANY ARGUMENTS REGARDING THE MERITS OF THE DECEMBER 3, 2004 ORDERS AND THE AUGUST 2006 ORDER GRANTING THE RENEWED MOTION TO ENFORCE THE DOMESTICATED HAITIAN JUDGMENT.

Appellant does not make any arguments addressing the merits of the December 3, 2004 Orders or the August 2006 Order granting Jean's Renewed Motion for Enforcement of Judgment. Consequently, as a matter of law, he has waived any challenge to these orders.⁸ See *City of Pembroke Pines v. Villasenor*, 894 So.2d 991, 995 n.2 (Fla. 1st DCA 2005) (finding that the failure to brief an issue raised in the notice of appeal constitutes a waiver of that issue (citing *State v. Town of Sweetwater*, 112 So. 2d 852, 854 (Fla. 1959); *State v. Mitchell*, 719 So. 2d 1245, 1247 (Fla. 1st DCA 1998))).

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT.

Standard of Review Is Gross Abuse of Discretion.

⁸ Moreover, this Court lacks jurisdiction to consider the merits of the December 3, 2004 Order recognizing the Haitian judgment, which was not timely appealed in this appeal. See *Chabert v. Bacquie*, 694 So. 2d 805, 807-808 (Fla. 4th DCA 1997) (order recognizing that foreign money judgment is a final judgment); Fla. R. App. P. 9.030(b)(1)(A), and 9.110(b); *In the Interest of T.D.*, 623 So. 2d 851, 852 (Fla. 1st DCA 1993) (appellate court lacks jurisdiction where notice of appeal is not filed within 30 days of rendition of order appealed from).

Assuming *arguendo* this Court is inclined to consider Appellant's argument regarding the trial court's August 17, 2006 Order denying his Motion for Relief from Judgment, the trial court's order should not be disturbed absent a *gross* abuse of discretion. *See Lyon v. Sanford*, 911 So. 2d 806, 807 (Fla. 1st DCA 2005) ("Whether relief should be granted pursuant to Rule 1.540 is a fact specific question and the trial court's ruling should not be disturbed on appeal absent a gross abuse of discretion.") (quoting *LLP Mortgage Ltd. v. Bank of America, N.A.*, 826 So. 2d 462, 463-64 (Fla. 3d DCA 2002)); *Solmo v. Friedman*, 909 So. 2d 560, 564 (Fla. 4th DCA 2005) (same).

Additionally, the trial court's decision to deny Appellant's Motion for Relief from Judgment does not open the door to consideration of the merits of the December 3, 2004 Orders recognizing the Haitian judgment and denying Appellant's Motion for Relief from Judgment, Leave to File Objections. An appellate court's review of an order denying a motion for relief from judgment pursuant to Rule 1.540 is confined to whether the court abused its discretion in denying the motion for relief from judgment. The appellate court may not review the merits of the orders from which relief was sought. *See Troiano v. Tizon*, 632 So. 2d 251, 252-53 (Fla. 3d DCA 1994) (appeal from order denying motion to vacate does not encompass the merits of the order appellant sought to have

vacated; inquiry is confined to determining whether trial court abused its discretion in denying motion) (citing *Bland v. Mitchell*, 245 So. 2d 47 (Fla. 1970)).

Appellant Has Not Shown, And Cannot Show, the Trial Court Abused Its Discretion in Denying Appellant's Motion for Relief From Judgment.

The trial court's findings of fact based on its assessment of the expert witnesses' expertise and credibility should not be disturbed on the incomplete record before the appellate court. Neither the record on appeal nor Appellant's Appendix includes a transcript of the experts' testimony from the July 12, 2006 hearing. Appellant's failure to include this transcript in the record (much less in his Appendix) precludes the review of the trial court's exercise of discretion. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979) ("Without a record of the trial proceedings, the appellate court can not properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory. . . . The trial court should have been affirmed because the record brought forward by the appellant is inadequate to demonstrate reversible error."); *Underwood v. Columbia County*, 868 So. 2d 1225, 1226-27 (Fla. 1st DCA 2004) (appellant's failure to file transcript of trial precluded appellate review) (citing *Applegate*); *Gonzalez v. Gonzalez*, 861 So. 2d 109 (Fla. 1st DCA 2003) (same).

Nonetheless, the trial court, after hearing and weighing the testimony of the expert witnesses, found Mr. Leblanc to a credible and competent expert on Haitian law and found his testimony to be persuasive as to the lack of effect of the documents proffered by Appellant. [A.15.] In contrast, the court found Mr. Duplan's testimony concerning the effectiveness of the documents to be unpersuasive. [A.15.] "[T]he law entrusts the finder of fact to properly weigh expert testimony" *Elledge v. State*, 911 So. 2d 57, 73 (Fla. 2005). Thus, the trial court's finding should not be disturbed.

CONCLUSION

Based on the foregoing, Jean respectfully requests that the orders of the trial court, which are the subject of this appeal, be affirmed.

Dated this 6th day of April, 2007

Respectfully submitted,

HOLLAND & KNIGHT LLP

Dwayne Edward Williams
Florida Bar No. 0125199
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
(305) 789-7786 (telephone)
(305) 789-7799 (facsimile)

Attorney for Appellee Marie Jeanne Jean

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 6, 2007, a true and correct copy of the foregoing has been furnished by U.S. mail to: Kurt R. Klaus, Jr., Esq., Law Offices of Kurt R. Klaus, Jr., Suite 120, South Dade 2, 10720 Caribbean Boulevard, Miami, Florida 33189, and Christian N. Scholin, Esq., Mollica & Scholin, P.A., 505 South Flagler Drive, Suite 400, West Palm Beach, Florida 33401, attorneys for Appellant Carl Dorélien; Scott M. Behren, Esq., The Law Offices of Freedland, Farmer, Russo, Behren & Sheller, 2843 Executive Park Drive, Weston, Florida 33331-3656, attorneys for Lump Sum Capital, LLC; Louisa H. Warren, Esq., 250 Marriott Drive, Tallahassee, Florida 32301, attorney for the Florida Lottery; and Matthew J. Eisenbrandt, Esq., The Center for Justice and Accountability, 870 Market Street, Suite 684, San Francisco, California 94102, John Andres Thornton, Esq., 9 Island Avenue, Suite 2005, Miami Beach, Florida 33139, and Thomas E. Bishop, Esq., Tanner Bishop, One Independent Drive, Suite 1700, Jacksonville, Florida 32202, attorneys for Appellee Marie Jeanne Jean.

Dwayne E. Williams

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210, Florida Rules of Appellate Procedure.

Dwayne E. Williams

4458521_v3