

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 29, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 98-2529

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

OHIO STATE DEPARTMENT OF TAXATION,

PLAINTIFF-RESPONDENT,

V.

RONALD E. SKELTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Reversed and cause remanded with directions.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

¶1 PER CURIAM. Ronald E. Skelton appeals the trial court's judgment registering an Ohio judgment and giving it full faith and credit in

Wisconsin pursuant to WIS. STAT. § 806.24.¹ Skelton, who, by way of a default judgment obtained in Ohio, was required to pay unpaid sales taxes owed to the State of Ohio by Skelton's former employer, argues that the Wisconsin trial court erred in permitting the judgment to be filed. Skelton submits that the Ohio Department of Taxation (the ODT) did not obtain personal jurisdiction over him and violated his due process rights. Upon reviewing the record, we conclude that the trial court failed to determine whether the ODT had obtained personal jurisdiction over Skelton before granting full faith and credit to the foreign judgment. Thus, we remand for a determination of this issue.

I. BACKGROUND.

¶2 The facts surrounding this litigation are complicated. Ronald Skelton, a Wisconsin resident, held the position of vice-president and treasurer of Everything's a Dollar, Inc. (EAD), a Wisconsin corporation that conducted business in the state of Ohio. In December 1993, EAD filed for a Chapter 11 bankruptcy. As a result, EAD failed to pay approximately \$192,000 in sales tax owed to the state of Ohio. In November 1996, an assessment was filed with the Common Pleas Court in Ohio and a judgment was rendered against Skelton, a corporate officer who, it was alleged, had fiscal responsibility for EAD during the time in which the assessments accrued.² He was personally assessed for the taxes because, under Ohio law, a corporate officer with fiscal responsibility is personally liable for the unpaid taxes. By operation of Ohio law, these actions

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² Sometime after the bankruptcy was filed, a new chief financial officer was hired and Skelton was relieved of these duties.

were taken by the ODT before Skelton was aware of the litigation and before Skelton was served with any legal documents. About two days after the judgment was rendered, the ODT sent a notice of assessment to Skelton at his last known address, which was his EAD office in Milwaukee. The notice, consisting of several pages, was sent by certified mail and was signed for on Skelton's behalf by another EAD employee. It was addressed to:

Ronald E. Skelton, Resp Pty
Everythings A Dollar Inc.
ATTN: Tax Department
710 N Plankinton Ave.
Milwaukee, WI 53203-2407

The notice advised Skelton that he was being held personally responsible for EAD's unpaid corporate taxes. The back of the notice contained a statement that informed Skelton that he had thirty days within which to contest the assessment.

¶3 Several months before the certified letter arrived at Skelton's office, Skelton had accepted another full-time job at another corporation. Although he still had use of a conference room, he had given up his office at EAD and his only involvement with the company at the time the notice was delivered was to finish up some loose ends for the company. In his uncontroverted affidavit, Skelton claimed he was not at the office on the day the certified letter arrived. As a consequence, Skelton failed to respond to the assessment within the thirty days provided by statute. He did write to the ODT denying personal responsibility and detailing his defenses; however, his letter was received thirty-seven days after the notice of assessment was delivered. In response, the ODT wrote to Skelton and claimed that the ODT no longer had jurisdiction over the matter when it received his letter, and refused to consider his defenses. The judgment that had been

rendered against Skelton on November 14, 1996, was finally filed on July 22, 1997.

¶4 In January 1998, the ODT sought to record the Ohio judgment in Wisconsin pursuant to WIS. STAT. § 806.24, the Uniform Enforcement of Foreign Judgments Act, by filing in the Milwaukee County Circuit Court a “notice of filing foreign judgment” and serving Skelton with a copy. Skelton opposed the filing of the judgment claiming, *inter alia*, that the ODT never obtained personal jurisdiction over him and that its actions failed to comport with due process. After a hearing, the trial court ordered registration of the judgment and this appeal follows.

II. ANALYSIS.

Standard of Review

¶5 In deciding whether personal jurisdiction has been properly invoked, *Landreman v. Martin*, 191 Wis. 2d 787, 794, 530 N.W.2d 62 (Ct. App. 1995) (citing *Marsh v. Farm Bureau Mut. Ins. Co.*, 179 Wis. 2d 42, 52, 505 N.W.2d 162 (Ct. App. 1993), directs that “[p]ersonal jurisdiction is a question of law, which we review independently on appeal.” Thus, we review the trial court’s decision *de novo*.

¶6 Skelton contends that the trial court erred in determining that the Ohio judgment should be registered in Wisconsin. Skelton submits that while the trial court determined that the procedure utilized by the ODT had passed constitutional muster with the Ohio Supreme Court, the trial court failed to make any findings regarding whether Ohio had personal jurisdiction over him. Consequently, Skelton claims his due process rights have been violated. The ODT

argues that Skelton has waived his right to raise the defenses of lack of personal jurisdiction and lack of due process because he did not include them as defenses in his letter sent in response to the notice of assessment. Further, the ODT contends that because Skelton failed to exhaust his administrative remedies, the trial court “properly rejected his alleged personal jurisdiction defense.”

¶7 The ODT, citing Ohio Civil Rule 12(h)(1), claims that a party who fails to raise a lack of jurisdiction defense, by either motion or in a responsive pleading, waives the defense. We need not reach the waiver issue however, because, as will be discussed next, Skelton was free to raise his personal jurisdiction defense regardless of whether waiver occurred by operation of Ohio law.

¶8 The ODT argues that because Skelton did not pursue the administrative remedies available to him in Ohio, his personal jurisdiction defense should not be entertained. Skelton counters that he has no obligation to exhaust his administrative remedies in Ohio prior to raising a defense of lack of personal jurisdiction in Wisconsin. We agree with Skelton.

¶9 In a factually similar case, *Hansen v. McAndrews*, 49 Wis. 2d 625, 183 N.W.2d 1 (1971), a party obtained a judgment in a Minnesota court against a non-resident of Minnesota and then successfully filed the foreign judgment in a Wisconsin circuit court. In reversing the trial court, our supreme court determined that an aggrieved party who opposed the filing of a foreign judgment under [WIS. STAT. § 806.24]³ was not obligated to seek relief in the Minnesota courts before

³ The Rules of Civil Procedure were renumbered in 1976. See 67 Wis.2d 585, 739 (1976) (promulgating Rules of Civil Procedure and renumbering previous WIS. STAT. § 270.95).

pursuing its personal jurisdiction defense here. *See id.* at 630-31. In permitting a lack of personal jurisdiction defense to be raised in the Wisconsin suit seeking registration of the foreign judgment, the supreme court declared:

The defect alleged in the judgment here involved is that of jurisdiction. This is obviously a legitimate matter of inquiry whenever the enforcement of a foreign judgment is sought. Indeed, this court has stated that this is the first matter to be inquired into. It is well settled that without proper service of process no full faith and credit need be accorded a foreign judgment; in fact, the requirements of due process militate against according such, and the judgment may then be collaterally attacked. Of course, if the jurisdictional issue is fully litigated in the foreign court and is not subject to collateral attack in that state, then the forum court is bound by the judgment rendered as to jurisdiction as well. These general propositions apply to actions in rem and quasi in rem as well as personal judgments, provided due process has been complied with.

Id. at 630 (footnotes omitted). Thus, it is apparent that Skelton was free to raise his personal jurisdiction defense here without exhausting his remedies in Ohio and, since the jurisdictional issue was not “fully litigated,” the waiver argument raised by ODT does not prevent a Wisconsin court from examining the issue.

¶10 Moreover, it is axiomatic that a judgment secured without obtaining personal jurisdiction over a party is void, and a void judgment can be collaterally attacked at any time in any proceeding, state or federal. *See Neylan v. Vorwald*, 124 Wis. 2d 85, 99, 368 N.W.2d 648 (1985). Consequently, we determine that Skelton’s personal jurisdiction defense is ripe for determination.

¶11 Having concluded that Skelton could properly oppose ODT’s motion on jurisdictional grounds, we next explore the record to determine whether the trial court considered Skelton’s contention that the ODT did not have personal jurisdiction over him. As noted in *Hansen*, when personal jurisdiction is raised as

an issue in a suit requesting the filing of a foreign judgment, the trial court must first determine whether proper service of process was obtained. *See Hansen*, 49 Wis. 2d at 630. After reviewing the trial court's decision, we are satisfied that the trial court failed to address the primary issue raised by Skelton; that is, did the ODT have jurisdiction over his person? The trial court's findings are brief and consist of the following:

Well, the Ohio rules of civil procedure, rule 4.1(1) do provide that service may be by certified mail. Evidenced by return receipt signed by any person. Section 57.39.33 of the Ohio statutes define personal liability of a responsible person. The procedure that the State of Ohio must follow is outlined in Section 57.39.13. The notice provisions are, has been stated different [sic] in the State of Wisconsin. Ohio revised code section 57.39.13 allows the commissioner to service notices of assessment by certified mail.

The notice [is] perhaps inadequate by Wisconsin standards, provides information in my view to put Mr. Skelton on notice that either he or the corporation had to respond to Ohio within 30 days. The notice, as has been pointed out, states that the department of taxation has no authority to accept a plan for making installment payments nor hold this assessment in abeyance longer than 30 days awaiting payment. It refers to the statute section 57.39.33 under which the assessment has been made. The Ohio Supreme Court has held that the procedure employed by the statutes are adequate for constitutional due process.

Mr. Skelton could have appealed to the board of tax appeals and thereafter to the Ohio Supreme Court. The defense – the judgment it appears was validly made in the State of Ohio.

The defenses and the arguments made here would probably be better addressed to the Ohio court or could have been. It appears to the Court and the Court finds that the judgment entered by the Ohio State Department of Taxation is proper, and therefore the motion to deny full faith and credit to the Ohio judgment is denied.

¶12 From a reading of the trial court's findings, it is apparent that the trial court concluded that, because the procedure utilized by the ODT has been found to be constitutional by the Ohio Supreme Court, Skelton's arguments failed and the judgment had to be registered. Consequently, the trial court may have felt constrained to register the judgment even though the trial court noted that the notice appeared to be inadequate under Wisconsin standards. Glaringly absent from the trial court's remarks is the trial court's determination as to whether the ODT properly obtained jurisdiction over Skelton, who was a Wisconsin resident who claimed that he had never lived or worked in Ohio, and who was no longer a full-time employee for EAD. Indeed, the trial court made no mention of Skelton's affidavit, in which he set forth his Wisconsin residency and his assertion that he had never lived or worked in Ohio, and stated that the only time he had ever been in the state of Ohio was to change planes. Although the procedure utilized by the ODT may have been found constitutionally adequate by the Ohio Supreme Court, that decision does not answer the question as to whether ODT successfully obtained personal jurisdiction over Skelton. Consequently, we are obligated to remand this matter to the trial court to determine this issue.⁴

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

⁴ Although both parties urge us to independently decide the personal jurisdiction issue, we decline their invitation because the determination of this issue may require findings of fact, a task exclusively given to the trial court. See *State v. Poellinger*, 153 Wis.2d 493, 506, 451 N.W.2d 752 (1990); see also *Wurtz v. Fleischman*, 97 Wis.2d 100, 108, 293 N.W.2d 155 (1980).

