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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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JUN 14 2013
S.C. Supreme Court

Case No. 2011-CP-23-5359
Appellate Case No. 2011-204246

Sue Taylor Colson Widenhouse . . . . Respondent,

v.

Tammy Batson Colson. . . . . .Appellant.

BRIEF OF AMICUS CURIAE STATE OF SOUTH CAROLINA

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Whether this case may be decided without reaching the issue of whether South Carolina's public policy exception in S.C. Code Ann. §15-35-960 to the enforcement of foreign judgments is constitutional under the Full Faith and Credit Clause

STATEMENT OF THE CASE

By Order dated June 5, 2013, the Supreme Court granted the Motion of the State of South Carolina for Leave to File an Amicus Curiae Brief in this case. The Case has been briefed and oral argument was held on May 14, 2013.

ARGUMENT

THIS COURT MAY DECIDE THIS CASE WITHOUT REACHING THE ISSUE OF THE CONSTITUTIONALITY OF THE PUBLIC POLICY EXCEPTION IN §15-35-960 UNDER THE FULL FAITH AND CREDIT CLAUSE

This Court has a "firm policy of declining to reach constitutional issues unless necessary to the resolution of the appeal before [the Court]." *Morris v. Anderson Cnty.*, 349 S.C. 607, 611, 564 S.E.2d 649, 651 (2002). Reaching the Constitutional issue in the instant case does not appear to be necessary.

The Constitutional issue appears to be whether South Carolina's public policy exception in §15-35-960 in the Enforcement of Foreign Judgments Act is unconstitutional under the Full Faith and Credit Clause, U.S. Const. art. IV, §1, if it would block the enforcement of a North Carolina judgment based on criminal conversation and alienation of affections. The statute states as follows: "the provisions of this article do not apply to foreign judgments based on claims which are contrary to the

public policies of this State." S.C. Code Ann. § 15-35-960. The Appellant contends the statute is valid and the North Carolina judgment should not be enforced in our state because our tort law is different. Our Supreme Court abolished the cause of action for alienation of affections (*Russo v. Sutton*, 310 S.C. 200, 205, 422 S.E.2d 750, 754 (1992)), and the legislature abolished the cause of action for criminal conversation (S.C.Code Ann. § 15–3–150). The Respondent contends that United States Supreme Court jurisprudence dictates that the Supreme Court should decline to recognize a public policy exception to the full faith and credit clause and find that the statute is unconstitutional.

Rather than addressing the Constitutional issue, another approach appears possible by determining that the elimination of the torts at issue in this State is not a statement of public policy forbidding the enforcement of a North Carolina monetary judgment based upon similar torts. This approach that the public policy exception of §15-35-960 does not apply in this instance may be supported by North Carolina, Tennessee and other authority discussed below.

Although Tennessee apparently does not have an enforcement of foreign judgments statute with an express public policy exemption, its Courts have said "that . . . courts will refuse to give full faith and credit to a foreign judgment . . .when enforcing the judgment would be contrary to Tennessee's public policy." *Marcus v. Marcus*, W2001-00906-COA-R3CV, 2002 WL 1838140 (Tenn. Ct. App. July 30, 2002). Under this authority, mere differences in law with another forum do not necessarily bar enforcement of judgment from that other forum. In *Marcus,* the Court affirmed the enrollment of a North Carolina judgment for the repayment of alimony although the Court found that Tennessee does not have a procedure similar to that of North Carolina for reimbursing

pendente lite alimony. *Marcus* concluded that the North Carolina statute was not repugnant to Tennessee public policy and cited *Four Seasons Gardening & Landscaping, Inc.*, 688 S.W.2d 439, 445 (TN Ct. of App. 1985) for the proposition that "the judgment of the court of another state does not necessarily violate the public policy of this State merely because the law upon which it is based is different from our law."

In a case very similar to the instant case and cited in *Marcus*, the Tennessee Court of Appeals recognized "that causes of action sounding in tort vary widely from state to state as to what acts constitute a cause of action and as to elements of damages" and "conclude[d] [that] the mere fact that [Tennessee] has abolished the cause of action based upon alienation of affections is not a basis to deny full faith and credit to a [monetary] judgment of a sister state [NC] based upon that cause of action" *Francis v. Francis*, 945 S.W.2d 752, 753 (Tenn. Ct. App. 1996). *Francis* noted that "[w]hile there is a clear difference between the substantive laws of Tennessee and North Carolina, there was no expression of a public policy by either the legislature or the Supreme Court, in the act or case abolishing the cause of action, proscribing the enforcement of a sister state's judgment based on this tort. 945 S.W.2d at 753. [footnote omitted].

Although *Russo, supra,* stated that "[w]e discern that the public policy of this State is consistent with the modern course of the law moving away from 'heart balm' causes of action" (422 S.E.2d at 753), as in *Francis, supra,* "there was no expression of a public policy by either the[South Carolina] legislature or the Supreme Court, in the act or case abolishing the cause[s] of action, proscribing the enforcement of a sister state's judgment based on" the torts of alienation of affections and criminal conversation.(Emphasis added). Therefore, if the Tennessee authority were followed in

this state, neither *Russo* nor §15-3-150 would appear to bar enforcement of the North Carolina judgment because the statute and opinion eliminating those torts did not bar the enforcement of monetary judgments from other states based upon those torts.

Similar results may be obtained under North Carolina authority due to the monetary nature of the judgment at issue. Our sister state has a statute virtually identical to §15-35-960 which is N.C. Gen. Stat. Ann. §1C-1708 (West)("The provisions of this Article shall not apply to foreign judgments based on claims which are contrary to the public policies of North Carolina."). *Pieper v. Pieper*, 108 N.C. App. 722, 425 S.E.2d 435 (1993) found that the statute permits the enforcement of foreign judgments as to child support beyond the age of 18 although a North Carolina statute generally terminated support obligations then. Similarly, *MGM Desert Inn, Inc. v. Holz*, 104 N.C. App. 717, 722-23, 411 S.E.2d 399, 402-03 (1991) found that the North Carolina foreign judgments statute could not bar the enforcement of a Nevada monetary judgment based on a gambling debt although North Carolina law did not permit a gambling debt cause of action.

As stated in *MGM Grand,* "[i]n general, [the North Carolina Courts are] bound by the Full Faith and Credit Clause to recognize and enforce a valid judgment for the payment of money rendered in a sister state." 411 S.E. 2d at 401, quoting *FMS Management Systems v. Thomas*, 65 N.C.App. 561, 563-64, 309 S.E.2d 697, 699 (1983), aff'd per curiam, 310 N.C. 742, 314 S.E.2d 545 (1984). *Pieper* quoted the following from *MGM Desert Inn*

> A cause of action on a judgment is different from that upon which the judgment was entered. In a suit upon a money judgment for a civil cause of action the validity of the claim upon which it was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right

> which gave rise to it, the judgment is an obligation to pay money in the nature of a debt upon a specialty.' *Id.* at 721, 411 S.E.2d at 401 (quoting *Milwaukee County v. White Co.*, 296 U.S. 268, 275-76 (1935))."

425 S.E.2d at 437; *see also, Burdick v. Nicholson*, 100 Nev. 284, 286, 680 P.2d 589 (1984) ("action to enforce the [North Carolina alienation of affections] judgment [in Nevada] is an action to enforce a debt, not the underlying cause of action [which is not permitted in Nevada]"; *Parker v. Hoefer*, 2 N.Y.2d 612, 617, 142 N.E.2d 194, 197 (1957) ("[P]laintiff is not attempting to enforce in the courts of New York an action for alienation of affections and criminal conversation, which have been abolished in New York but, rather, to enforce a judgment [for the debt] rendered in Vermont as between these parties, which was final and conclusive on the rights litigated."). *Pieper* recognized that the North Carolina "Court made it clear in *MGM Desert Inn* . . . that public policy is an extremely narrow exception to the granting of full faith and credit." 425 S.E.2d 437.

Under the above authority, this Court could conclude that the mere elimination of the adultery related torts in South Carolina is not a statement of public policy against enforcement of the North Carolina alienation of affections monetary judgment. The suggested approach would avoid a ruling on the Constitutional statute and would also avoid construing the public policy exception more narrowly than necessary to reach a decision in this case.

The State of South Carolina does not take a position on the merits of this case, except that it respectfully urges this Court to decide this case without ruling on the constitutionality of §15-35-960 for the reasons set forth above. The State also respectfully urges this Court to decide the case on the narrowest grounds so as not to close the door on public policy arguments in other contexts including monetary

judgments that might involve legislation "proscribing the enforcement of a sister state's judgment." *Francis, supra.*

CONCLUSION

For the foregoing reasons, the State of South Carolina respectfully requests that this Court consider the approach suggested by this Amicus Brief and not rule on the constitutionality of the statute at issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the State's Amicus Brief upon counsel for the other parties by mailing copies to them at the addresses below via the United States Mail this June 14, 2013:

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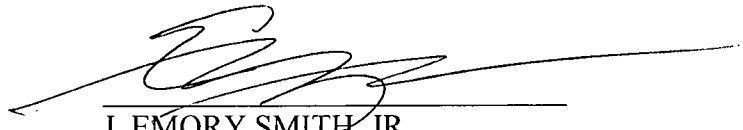

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