19-8068

No. 20-____

ORIGINAL

In The
Supreme Court of the United States

Daniel Boudette,

Petitioner,

v.

Tammy Boudette, n/k/a Tammy Oskerson,

Respondent,

On Petition for a Writ of Certiorari to the
Supreme Court of Montana

PETITION FOR A WRIT OF CERTIORARI

Daniel B. Boudette
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Petitioner *in propria persona*

QUESTIONS PRESENTED

1. Does a state's enforcement of a sister state's judgment beyond the time limit when it is enforceable in the originating state contravene the Full Faith and Credit Clause of the United States Constitution?

2. Is the expiration of the time period for enforcement of a judgment issue in one state a ground to challenge the validity and enforceability in another state where the judgment has been domesticated?

PARTIES TO THE PROCEEDINGS

All parties to these proceeding are set forth in the caption of this petition. Petitioner, Daniel Boudette was the defendant in the Broadwater County District Court civil action and the appellee in the appeal to the Montana Supreme Court. Respondent, Tammy Boudette, now know as Tammy Oskerson, was the plaintiff in the district court and the appellant before the Montana Supreme Court.

RELATED PROCEEDINGS

Montana First Judicial Court

Tammy Boudette v. Daniel Boudette, No. DV-12-49

Montana Supreme Court

Tammy Boudette v. Daniel Boudette, No. DA 19-2019.

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PETITION FOR A WRIT OF CERTIORARI

Daniel Boudette petitions for a writ of certiorari to review the Supreme Court of Montana's judgment in this case.

OPINIONS BELOW

The Supreme Court of Montana's opinion is published at 2019 MT 268. App'x. A. The trial court's finding and order are unpublished. App'x D.

JURISDICTION

The Supreme Court of Montana filed its opinion the 12th of November, 2019; and, the petition for rehearing was denied the 18th of December, 2019. This petition is due the 17th of March, 2020. The Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Article IV § 1 of the United States Constitution provides:

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws

prescribe the Manner in which such Acts, Records and Proceeds shall be proved, and the Effects thereof.

INTRODUCTION

The action below involves a money judgment rendered in one state and then filed in another where it went un-enforced. Respondent obtained the judgment in a dissolution action in the Superior Court of Arizona on the 18th of December, 2009. App'x. H. She domesticated the judgment in the Montana on the 25th of September, 2012. App'x I Respondent took no action to either enforce or renew her judgment in Arizona or Montana; and, under Arizona law, her judgment expired on the 18th of December, 2014.

Under Montana law, a judgment acts as a lien against the personal and real property of the judgment debtor. In order to remove any cloud on the title to his property, Petitioner moved the Montana District Court to extinguish the judgment in December of 2018. App'x F. The premise of his motion was simple. If a judgment was no longer enforceable in the issuing state, it could not be enforced in any other state.

The Montana District Court agreed with Petitioner that the Full Faith and Credit Clause of the U.S. Constitution did not permit that court to recognize the judgment of another state as being enforceable in Montana after it was rendered un-enforceable under the laws of the issuing state and ordered the case dismissed. App'x. D. Respondent appealed and the Montana Supreme Court reversed finding that Arizona's limitation of action to execute upon a money judgment was not a defense based upon the validity or enforceability of a judgment under the Full Faith and Credit Clause or Montana's Uniform Enforcement of Foreign Judgments Act (UEFJA). § 25-9-501 et seq. App'x. A.

TABLE OF AUTHORITIES

U,S, Constitution

U.S. Supreme Court

Montana Supreme Court

U.S. Statutes

State statutes

INDEX TO APPENCICES

Petitioner has found no case from this Court specifically addressing the question raised here. It is an important question. The ability to enforce money judgments was at the forefront of the Framers' consciousness as they drafted the Full Faith and Credit Clause[1]. The very fact that this concern prompted a Constitutional provision connotes its federal importance. It is an issue of importance to both creditors and debtors and needs a definitive and uniform application throughout the nation.

Petitioner finds the reasoning of the Montana Supreme Court in declaring that challenging an expired judgment of another state did not go to the "validity or enforceability of the judgment" to be counterintuitive. If the issuing state holds that its own judgment is no longer enforceable, it is axiomatic that the Full Faith and Credit clause requires all other states to recognize that same status. While the precise questions raised in this Petition have never been specifically answered by this Court, the reasoning of the Montana Supreme Court to reach its decision conflicts with the relevant decisions rendered by this Court over the 225 years it has seamlessly applied the Full Faith and Credit Clause. The questions warrant this Courts oversight and guidance.

STATEMENT OF THE CASE

The Montana Supreme Court made its decision based upon facts which are set forth in paragraphs 2-4 of its opinion. App'x. A. The unembellished facts, material to that decision, are that: (a) Respondent obtained a money judgment in an Arizona dissolution of marriage proceeding on the 18th of December, 2009; (b) Pursuant to Montana's UEFJA[2] Respondent registered her Arizona judgment in the Broadwater County, Montana District Court on the 12th of September, 2012; (c) Respondent took no steps to enforce her judgment; (d) Respondent did not

[1] ***Mills v. Duryee***, 7 Cranch 481, 11 U.S. 481 (1813).
[2] §§ 25-9-501-508 MCA

renew her Arizona judgment by affidavit as required under Arizona law; (e) enforcement of Respondent's money judgment was barred by the limitation of action imposed by Arizona law after the 17th of December, 2004; (f) on the 13th of December, 2018, Petitioner filed a motion in the Montana District Court case to extinguish Respondent's Arizona judgment on ground it was no longer enforceable; (g) the district court found the Arizona judgment was expired and the motion to extinguish was granted and the was case dismissed; and, (h) Respondent appealed. In its decision, filed the 12th of November, 2019, the Montana Supreme Court reversed the district court's order and remanded the case for reinstatement of the registered Arizona judgment. App'x. A, ¶ 19, p. 9. Petitioner filed a petition for rehearing pursuant to M.R.App.P. 20. App'x. B. Rehearing was denied the 17th of December, 2019. App'x. C. Petitioner has no further appeal in Montana.

The issue asked to be reviewed in this Petition was raised in the district court proceedings. Petitioner asserted foreign judgments domesticated in Montana were subject to the same defenses the judgment would be subject to in the issuing state, citing Montana Supreme Court decisions based on the Full Faith and Credit Clause. App'x. A, (Brief in Support of Dft's Motion to Extinguish) p. 3. Respondent cited ***Wells*** [3] in her responsive brief. App'x. B, p. 4. The argument was rebutted. App'x D (Reply Brief) pp. 1-4. The District Court found that the Full Faith and Credit Clause required looking at Arizona law to determine if the foreign judgment was enforceable. App'x. D., (Order, BDC-2012-49) pp. 4-6. On appeal, Respondent cited ***Wells*** as mandating that the forum state use its own statute of limitation for enforcement of foreign judgments in her opening appellate brief. App'x. E p. 7. The Montana Supreme Court adopted ***Wells*** as controlling in its opinion. App'x. A; 2019 MT 268, ¶ 13 (p. 7). And,

[3] ***Wells v, Simmons Abrasive Co.***, 345 U.S. 514 (1953).

Petitioner reargued the Full Faith and Credit Issue in his motion for rehearing. App'x. B. pp. 2-4.

REASONS FOR GRANTING THE PETITION

I. A state court has decided an important question of federal law that had not been, but should be, settled by this Court. Sup.Ct.R. 10(c).

The issue raised in the proceedings below was whether the expiration of the time period for enforcement of a judgment issued in one state is a ground to challenge the validity and enforceability of that judgment in another state where the judgment has been domesticated. It was also asserted that enforcement of a sister state's judgment beyond the time limit when it is enforceable in the originating state would contravene the Full Faith and Credit Clause of the United States Constitution. Neither of these questions has been previously settled by this Court. Petitioner believes it is an important federal issue that should be settled.

The ability to enforce money judgments was at the forefront of the Framers' consciousness as they drafted the Full Faith and Credit Clause. ***Mills v. Duryee***, 7 Cranch 481 (1813). Our present day economy has evolved from having this uniform rule of law throughout the federal union created by the U.S. Constitution. The use of credit and credit reporting by many Americans has magnified the importance of a uniform debtor/creditor relationship; and, the importance of a bright-line delineation of how long debts are collectable is at the core of that relationship.

In the case below, Respondent brought a claim for a portion of the sale proceeds from the sale of real property four years after the sale occurred[4]. She chose to bring that claim in Arizona

[4] Respondent's action was barred by Arizona's three year limitation of acts on oral debts. A.R.S. § 12-543. To circumvent this limitation, Respondent mislead the trial court by concealing that the parties had already separated at the time the sale occurred and falsely claiming that Petitioner's sole and separate real property in Montana was community property in her divorce action.

and obtained an Arizona money judgment on that claim. Both parties were aware of the amount and duration of that money judgment and of Respondent's duties to take action upon it or renew it within five (5) years to keep her judgment alive[5]. Petitioner, in reliance upon the law, including the Full Faith and Credit Clause, conducted his financial affairs accordingly; both parties were aware of when the judgment expired under Arizona law; and, Petitioner took no action to extend or renew her judgment and allowed it to expire. This should have had the *res judicata* effect binding upon both parties, as contemplated by the Full Faith and Credit Clause. That is what the Montana District Court found. However, the Montana Supreme Court chose to upset the accepted debtor/creditor relationship by fashioning a new interpretation of the Full Faith and Credit Clause to allow Respondent to resurrect her expired judgment.

Now, emboldened that decision, Respondent has embarked upon a new effort to extend her expired Arizona judgment for another ten (10) years. She obtained a judgment in the Montana District Court extending her judgment[6]. App'x. [illegible] Now she is attempting to have Petitioner's homestead exemption set aside, based upon a new theory of her claim. If successful, she will render Petitioner homeless and destitute. The effect upon Petitioner by the reversal is devastating; and, it potentially impacts many other persons in a similar position. It is an important question of national significance that that needs to be settled.

II. The decision below conflicts with relevant decisions of this Court. Sup.Ct.R. 10(c).

Petitioner has asserted that this is an import question of federal law that has not been previously settled by this Court; and, the decision of the Montana Supreme Court below was the first Montana decision upon this federal question. To reach its decision, the Montana Supreme

[5] A.R.S. § 12-1551 (2009).

[6] Respondent filed an action to renew her judgment; however, no summons was issued or served; and, the "judgment" was issued 14 days later without hearing or any default proceedings.

Court ignored a number of relevant decisions of this Court and misapplied another decision to reach the conclusions that: (a) the rendering state's laws governing the duration that its judgment was enforceable was not a ground to challenge the validity or enforceability of a judgment; and, (2) that because enforcement measures do not travel, it could apply Montana's limitation period to enforce a money judgment no longer recognized as valid or enforceable by the state that issued it.

Scholarly articles have characterized this Court's decisions on the Full Faith and Credit Clause in the more than 225 years since the first case was decided in 1813 as "seamless application". During that time, certain immutable principles governing the Clause have emerged. First, Article IV § 1 binds the parties as *res judicata* in all other states. ***Mills v. Duryee***, 11 U.S. 481, 483-84 (1813). Preclusive effects travel with the judgment. ***McElmogle ex rel Bailey v. Cohen***, 38 U.S. 312, 339 (1839). A judgment without validity at home is entitled to no credit abroad. ***Thompson v. Whitman***, 85 U.S. 457, 467 (1873). Challenges to the validity of a foreign judgment include pleas of avoidance and satisfaction, and statute of limitations, as well as lack of jurisdiction. ***Thompson***, at 464. And, the judgment of the rendering state is not subject to modification by another state. See e.g. ***Fauntleroy v. Lum***, 210 U.S. 320 (1908)(Missouri judgment for gambling debt required to be recognized in Mississippi where gambling was illegal); ***Baker v. General Motors Corp.***, 522 U.S. 222 (1998)(Art. IV § 1 required Missouri court to recognize non-disclosure clause of Michigan judgment even though it conflicted with Missouri law). And see ***V.L. v. E.L.***, 577 U.S. ___; 136 S.Ct. 1017 (2016)(judgment of Georgia court with general jurisdiction was not subject to review by an Alabama court).

These decisions have given citizens a presumption that once a judgment became final in one state it was no longer subject to change or modification by another state. With this in mind,

Petitioner dealt with the judgment of the Arizona court; and, in reliance of the Full Faith and Credit Clause, when enforcement of that judgment was barred by the state that issued it, he conducted his affairs as if the Arizona money judgment was no longer enforceable. The record of the district court proceedings reflects that this was the general understanding of the law at the time and the Montana District Court judge agreed; however, the panel of the Montana Supreme Court decided to disregard the logic and direction of this Court and, instead, to excerpt dictum of a distinguishable case to rationalize the continued recognition of a judgment which was no longer enforceable in the state where it was obtained. It is Petitioner's position that once a judgment expires in the state that issued that judgment, it offends the Full Faith and Credit Clause for any other state to recognize it as anything other than an expired and unenforceable judgment.

To rationalize its decision, the Montana Supreme Court had to ignore this Court's longstanding position that the Full Faith and Credit Clause does not permit a state where a sister state judgment has been filed to modify, amend, or enhance that judgment. Obviously, to extend the enforceable life of a judgment beyond that giving to it by the issuing state, another state must have the authority to modify, amend, or enhance that judgment. However, instead of looking at the question of how long was the Arizona judgment valid and enforceable, the Montana Supreme Court chose to base its opinion upon dictum extracted from ***Wells v. Simmons Abrasive Co.***, 345 U.S. 514 (1953) as cause to ignore that Respondent's judgment was no longer enforceable in Arizona, where it was issued. App'x A. (Opinion), ¶ 13, p.7. ***Wells*** is distinguishable because it deals with the limitation for bringing an original action on a claim that accrued in another state[7].

[7] The Montana legislature declined the invitation of Wells to impose its own limitation of action on similar cases and enacted § 27-2-503(a) MCA which prescribes that its courts must resolve any conflict of limitation of a claim using the limitation period of the state where the claim arose.

Wells has nothing to do with the enforcement of judgments of one state in another state. Being distinguishable, it does not support Respondent's statement that "[i]n fact, the U.S. Supreme Court's full-faith-and-credit jurisprudence makes clear that the forum state (here Montana) retains control over enforcing the judgment, including the statute of limitations for enforcement." App'x E, p. 7. This issue is too important to be based upon a statement, taken out of context, and then bootstrapped into including enforcement of foreign judgments, which was never at issue.

This Court has also embraced a uniform holding, which has not been repudiated or modified, that the Full Faith and Credit Clause required that certain actions must be governed by the laws of the state creating a statutory liability. See ***Order of United Commerial Travelers of America v. Wolfe***, 331 U.S. 586, 67 S.Ct. 1355 (1947). This Court holds that the Full Faith and Credit Clause abolished, in large measure, the general principle of international law by which local policy is permitted to dominate rules of comity. ***Broderick v. Rosner***; 294 U.S. 629, 647 (1935). And, the purpose of the Full Faith and Credit Clause altered the status of the several states as independent sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as a right, irrespective of its state of origin. ***Milwaukee County v. White Co.***, 296 U.S. 268, 276-77 (1935). In reliance upon these general principles, Petitioner invoked Montana's statute governing conflict of law governing limitation of actions. § 27-2-503 MCA. Because the underlying judgment was based upon statutory liability which was not even recognized under Montana law, Petitioner invoked the statute. The Montana Supreme Court tersely rejected that contention on ground that "[a]nother state court judgment is not a claim". App'x. A (Opinion), ¶¶ 15-17, p. 8. Yet that same court ignored this distinction to adopt ***Wells*** as its controlling authority.

The Montana Supreme Court acknowledged that the validity of a foreign judgment could be challenged for lack of jurisdiction. Opinion, ¶ 14, p. 7. However, it ignored this Court's finding that challenges of the validity of a foreign judgment also include pleas of avoidance and satisfaction and statute of limitations. ***Thompson***, at 464. By the inclusion of "statute of limitation" as a ground to challenge the validity of a foreign judgment, within the context of a case finding that "a judgment without validity at home is entitled to no credit abroad", this Court was certainly referring to the statute of limitation for execution of the judgment in the issuing state. In its opinion the Montana Supreme Court candidly admitted its ten year limitation imposed by § 27-2-201 MCA applies "for enforcing any valid judgment". App'x A, (Opinion) ¶ 9, p. 5 (emphasis added). Yet that court avoided the question of whether a judgment was still valid after it expired under the laws of the state that issued it. It did this by simply lumping limitation of action into the category of "enforcement measures". App'x A, (Opinion) ¶ 14, p.7. Since the duration of any judgment goes to the issue of how long a judgment remains valid and enforceable and this Court's finding that statute of limitation was a ground for challenging the validity of a foreign judgment, the finding of the Montana Supreme Court is contrary to this Court's precedence.

The Montana Supreme Court acknowledged that the domestication of a foreign judgment in Montana does not create a "new" judgment or even a "Montana judgment". ***Robinson v. First Wyoming Bank***, 274 Mont. 307 (1995). However, its practical application here denotes the contrary. Its blind application of Montana's limitation of enforcement without regard to whether a foreign judgment was still a valid and enforceable judgment connotes, for all practical purposes, the conversion of an Arizona judgment into a Montana judgment upon its registration pursuant to Montana's UEFJA. Essentially, the Montana Supreme Court has given itself the authority to

modify the judgment of another state to allow its enforcement beyond the life it enjoyed in the issuing state. Petitioner contends this offends the Full Faith and Credit Clause. This is further shown by Respondent's new Montana "judgment" renewing her Arizona judgment. App'x. I.

III. The questions presented are important.

The legal rights of judgment debtors and creditors are as important today as it was when the Full Faith and Credit Clause was adopted into the U.S. Constitution. This Court has, when necessary, exercised its authority when lower courts sought to change those rights by modifying, amending or enhancing judgments of other states. That is what has happened in the action below. The Montana Supreme Court has devised a way to revive the expired judgment of another state. The implications of this new decision are as important to the whole scheme of federalism as many of the previous Full Faith and Credit decisions rendered by this Court. The litigation in Arizona should have settled, with finality, the amount of the debt and how long the creditor had to take action to collect it. When she took no action and failed to renew her judgment, the matter was settled in Arizona. This should have had a *res judicata* effect on both litigants. That seemed obvious to both the Petitioner and the Montana District Court. Instead, five years after the judgment expired, it was revived by a new decision of the Montana Supreme Court; and, it was subsequently extended for another ten years by another Montana court. The implication that the court of one state can revive an expired judgment of another state and then extend it certainly portends far reaching consequences.

IV. The Court should grant this case.

The questions presented for certiorari in this petition are too important to be predicated upon a cornerstone with no foundation. The Montana Supreme Court adopted an erroneous application of ***Wells*** that expanded that case into the purview of enforcement of the judgments of

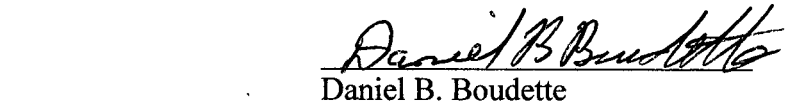
other states. It is a new decision overturning the traditional understanding of the law up to that time. A denial of certiorari allows Montana to continue enforcement of judgments which are no longer recognized to have any validity in the states that rendered them. This effectively overturns longstanding precedence set by this Court in its prior decision and invites other states to follow suit. A state's sovereignty may be vigorously guarded by its own courts, but in cases such as this there is only this Court to keep one state from trespassing upon the sovereignty of another state. Arizona adjudicated a case in its courts and announced its judgment, including, by its laws, how long that judgment was enforceable. Article IV § 1 of the U.S. Constitution required all other state's to give Full Faith and Credit to this. Now, Montana, through its decision in this case, conveys upon itself the authority to resurrect an expired judgment of another state. Such a situation calls for this Court to exercise its supervisory role in enforcing the federal constitution. This case warrants this Court's review and sound reasoning on an issue of such national importance.

CONCLUSION

For these reasons, Petitioner respectfully requests that this Court grant this petition for writ of certiorari to review the judgment of the Montana Supreme Court in this case.

Dated this ___ day of March, 2020.

RESPECTFULLY SUBMITTED



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IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 19-0196

TAMMY MARIE BOUDETTE, n/k/a
TAMMY MARIE OSKERSON,

Plaintiff and Appellant,

v.

DANIEL BRIAN BOUDETTE,

Defendant, Counter-Claimant,
and Appellee.

ORDER

Appellee Daniel Boudette seeks rehearing of this Court's November 12, 2019 Opinion reversing the District Court's ruling that prohibited Appellant Tammy Oskerson from enforcing her Arizona judgment against Boudette in Montana because she had missed the Arizona statute of limitations. 2019 MT 268. Oskerson, through counsel, opposes the petition and seeks an award of attorney fees.

Under M. R. App. P. 20, this Court seldom grants petitions for rehearing. The rule makes clear that this Court will entertain a petition for rehearing on very limited grounds. We will consider a petition for rehearing only if the opinion "overlooked some fact material to the decision," if the opinion missed a question provided by a party or counsel that would have decided the case, or if our decision "conflicts with a statute or controlling decision not addressed" by the Court. M. R. App. P. 20.

Having fully considered Appellant's petition and the response, the Court concludes that rehearing is not warranted under Rule 20. Boudette contends that the Court's Opinion grants greater authority to a foreign judgment than it would receive in the rendering state. We noted, however, that Oskerson had "timely registered" her judgment in Montana in September 2012—within three years after the Arizona decree was entered. Opinion, ¶ 11. At that point, the Arizona judgment could be "enforced or

satisfied" in the same manner as a judgment of a Montana district court. Opinion, ¶ 11 (citing § 25-9-503, MCA). We thus rejected Boudette's argument that full faith and credit required the Court to honor Arizona's limitation period. Opinion, ¶ 14. Though he disagrees with that ruling, Boudette has not demonstrated that the Court overlooked material facts or issues raised by the parties or failed to address a controlling statute or decision that conflicts with the Opinion.

Oskerson requests an award of attorney fees as a sanction for Boudette's appeal and petition for rehearing, which she argues is a frivolous attempt at a second bite of the apple. Under M. R. App. P. 19(5), this Court may award sanctions, including attorney fees or other penalty, to the prevailing party in an appeal if the appeal is "determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial reasonable grounds." M. R. App. P. 19(5). As a general rule, however, "we impose sanctions in cases only where the appeal is entirely unfounded and intended to cause delay, or where [a party's] actions otherwise constitute an abuse of the judicial system." *Rintoul v. Rintoul*, 2014 MT 210, ¶ 19, 376 Mont. 167, 330 P.3d 1203 (quoting *Bi-Lo Foods, Inc. v. Alpine Bank*, 1998 MT 40, ¶ 36, 287 Mont. 367, 955 P.2d 154). Though we did not accept Boudette's arguments on appeal, we did not impose sanctions against him, and we decline to do so on rehearing.

IT IS THEREFORE ORDERED that the petition for rehearing is DENIED.

The Clerk is directed to provide copies of this Order to all parties and counsel of record.

Dated this 17 day of December, 2019.

Chief Justice

Justices

IN THE SUPREME COURT OF THE STATE OF MONTANA
THE OFFICE OF THE CLERK OF SUPREME COURT
HELENA, MONTANA 59620-3003

December 18, 2019

NOTICE OF FILING
Supreme Court No.
DA 19-0196

TAMMY MARIE BOUDETTE,
n/k/a TAMMY MARIE OSKERSON,

Plaintiff and Appellant,

v.

DANIEL BRIAN BOUDETTE,

Defendant, Counter-
Claimant and Appellee.

REMITTITUR for the above-named case has been issued on this date.

Sincerely,

Bowen Greenwood
Clerk of the Supreme Court

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Additional material from this filing is available in the Clerk's Office.