

No. 09-0389

*In the
Supreme Court of Texas*

HOWARD S. GROSSMAN, P.A., PETITIONER

VS.

MARK A. CANTU, RESPONDENT

On Review from the Fourteenth Court of Appeals
No. 14-06-00078-CV

REPLY BRIEF ON THE MERITS

Bobbie G. Bayless
Bayless & Stokes
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

*Attorneys for Petitioner,
Howard S. Grossman, P.A.*

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Cantu's Brief is more significant for what it doesn't say than for what it says. Cantu's entire argument is based upon his claim that the registration of another state's judgment under the Uniform Enforcement of Foreign Judgments Act ("the Uniform Act"), Tex. Civ. Prac. & Rem. Code Ann. §35.001 et seq., is a lawsuit, and that as such the general venue statutes must apply. In order to even make that argument, Cantu must ignore the very nature of a registration under the Uniform Act, which he does without hesitation. But this court should examine carefully the ways in which Cantu's Brief avoids responding to Grossman's arguments, as well as the absence of relevant authorities for Cantu's position.

1. **Cantu presents no Texas authority allowing a venue challenge as a means of attacking a judgment.** Cantu's Brief does not cite a single Texas case, other than the majority opinion below, in which a venue challenge is allowed as a procedure, defense, or proceeding for reopening, vacating, staying, enforcing, or satisfying a judgment, despite the fact that Tex. Civ. Prac. & Rem. Code §35.003(c) allows only such actions in response to a foreign judgment which has been filed under the Uniform Act.

2. **Cantu presents no Texas authority allowing venue challenges after judgment exists.** Nor does Cantu's Brief cite any Texas cases, other than the majority decision below, recognizing a venue challenge in any proceeding in which a judgment has already been entered. Likewise, Cantu's Brief does not cite a single Texas statute to which the general venue statutes have been applied in actions beginning, rather than ending, upon entry of a judgment. Therefore, the 65 statutes which Cantu has so laboriously searched out

are not at all instructive on the issues this court must decide. The statutes Cantu cites instead relate to proceedings in which a judgment or decision is being sought. They are not intended to address judgments which already exist.

3. **Cantu presents no Texas authority to refute the immediate creation of a Texas judgment upon registration.** Cantu's Brief doesn't cite a single Texas case in which a filing under Tex. Civ. Prac. & Rem. Code §35.003 has any effect other than the immediate creation of a Texas Judgment. It is understandable why Cantu would want to somehow make the proceeding a pre-judgment proceeding, because otherwise there is no logic to his arguments. The act clearly prevents that, however, as both Justice Seymore who authored the majority decision below has recognized¹ and this Court has held.² Even the majority opinion below did not suggest a Texas judgment is not the immediate result of a filing such as Grossman's. In essence, Cantu's attempt to argue that the creation of the Texas judgment might not occur immediately upon filing is a concession on Cantu's part that venue will not apply if there is already a judgment.

4. **Cantu does not address the implications of the presence of venue language only in the UFCMJRA.** Despite referring this Court to 65 statutes, Cantu's Brief avoids even discussing the one act which *is* analogous to the Uniform Act, that being the Uniform

¹ *Bancorp South Bank f/k/a Bank of Mississippi v. Prevot*, 256 S.W.3d 719, 722 (Tex. App.–Houston [14th Dist.] 2008, no pet.).

² Cantu even quotes from a case in which this court says just that. *See* Cantu Brief, first sentence on p. 13, citing and quoting *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285,286 (Tex. 1996).

Foreign Country Money Judgment Recognition Act (“UFCMJRA”), Tex. Civ. Prac. & Rem. Code § 36.001 et seq.,³ Cantu apparently hopes this Court will simply ignore the obvious legislative rebuttal to Respondent’s argument.⁴ Cantu argues that the lack of reference to a venue provision in the Uniform Act must mean the legislature intended for the general venue statutes to somehow apply, notwithstanding the fact that they would not apply to a judgment which originated in a Texas court. If Cantu’s argument had any validity, why would the legislature have included venue language in Tex. Civ. Prac. & Rem. Code §36.0041 dealing with the filing of a foreign country judgment by stating:

A copy of a foreign country judgment authenticated in accordance with an act of congress, a statute of this state, or a treaty or other international convention to which the United States is a party *may be filed in the office of the clerk of a court in the county of residence of the party against whom recognition is sought or in any other court of competent jurisdiction as allowed under the Texas venue laws.* (Emphasis added)

³The distinction, of course, between the judgment of another country and a judgment of another state is that foreign country judgments do not enjoy the status of full faith and credit enjoyed by a judgment of another state. U.S. Const. Art. IV, §1; *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 794 (Tex. 1992).

⁴ Even though Grossman pointed this out in his briefing (Grossman Brief on the Merits, p. 12), Cantu still did not address it.

but not have included similar language in the filing requirements in the Uniform Act found at Tex. Civ. Prac. & Rem. Code §35.003(a). That provision instead merely states:

A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.

The difference in the provisions of the two Texas acts, both of which involve the registration of judgments, actually demonstrates the lengths to which the legislature went to place venue requirements within the provision involving judgments from other countries. This was no doubt because the legislature recognized what Cantu refuses to. Unless a venue provision is inserted in a statute concerning registration of a judgment, venue challenges will not be allowed because the proceeding is concerning a judgment, not a new lawsuit with unresolved claims. Thus, the presence of that language in the act relating to judgments from other countries, together with the absence of the same or a similar provision in the act relating to judgments from other states, makes it clear that a venue challenge is allowed under UFCMJRA, but not under the Uniform Act. There is no other explanation. Cantu certainly does not present one.

Instead of addressing the one statute which is similar to the Uniform Act, and, therefore, actually relevant to the issues before the court, Cantu cites 65 statutes involving completely different kinds of proceedings which also contain the language “any court of competent jurisdiction” without accompanying venue language, as if that is meaningful in

this different type of proceeding. Cantu misses the point when he makes such an argument. A statute which involves a proceeding not being initiated after a judgment exists, of course, implicates venue issues, whether it explicitly states so or not. The opposite is true of a statute relating to a proceeding which begins after a judgment is already in existence. Unless the venue language is specifically included in a statute relating to registration of judgments, venue challenges are not applicable because a judgment already exists.

5. **Grossman complied with all the requirements of the Uniform Act.** Cantu's argument is likewise not enhanced by the "red herrings" he raises. Cantu suggests, without any authority for his position or any indication of its applicability to this case, that had the appropriate notices not been provided or had the appropriate fees not been paid, the registration would have not have resulted in a Texas judgment (Cantu Brief, p. 17-18). There is no legal authority given to support that position.⁵ Since there are no such procedural deficiencies with Grossman's filing, however, none of those are issues in this case, and this Court need not even address Cantu's completely unsupported argument. But even if such an argument had been relevant to this case, such procedural flaws would not change the nature of the proceeding from a post-judgment proceeding. Venue challenges are no longer allowed at that stage in a proceeding, even if it is a lawsuit. Had the legislature intended to change

⁵ For Cantu's arguments to be successful, this Court would not only have to apply venue requirements which the legislature has refused to apply, but it would also have to allow those venue requirements to trump full faith and credit (*See* Cantu Brief, p. 17, first complete sentence).

that and make venue a consideration in the Uniform Act cases, it would have included the same venue language found in the UFCMJRA.

6. Cantu is not entitled to impose requirements not imposed by the legislature. Cantu follows the same mistaken path the majority below followed of ignoring the nature and the purpose of the Uniform Act and refusing to recognize it is a post-judgment proceeding. Cantu spends the vast majority of his brief arguing that the Uniform Act creates a lawsuit, rather than acting as a registration of what has already ended a lawsuit. Regardless of what one calls the proceeding, however, there can be no question that from its inception it is a post-judgment proceeding, because a lawsuit in another state has already resulted in a judgment. As previously stated, the attempt by Cantu to avoid the post-judgment nature of the proceeding by arguing that the filing of a foreign judgment does not “instantly” create a Texas judgment unless Cantu’s venue requirement is satisfied (Cantu’s Brief, p. 18), ignores both the language of the Uniform Act⁶ itself and the cases interpreting it. But even in cases in which venue challenges are allowed, a venue problem does not negate the filing of the action. Cantu can not change the Uniform Act by imposing a requirement for the validity of the filing itself which the legislature has not.

Conclusion

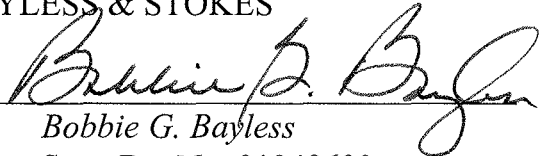
This Court can not allow the majority holding from below to stand without disrupting either the Uniform Act, the Texas venue statute, or both. Grossman’s petition should be

⁶ Tex. Civ. Prac. & Rem. Code §35.003(b) and (c).

granted, the majority decision below should be reversed, and the trial court's rulings should be affirmed.

Respectfully submitted,

BAYLESS & STOKES

By: 

Bobbie G. Bayless

State Bar No. 01940600

2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

bayless@baylessstokes.com

Attorneys for Petitioner,

Howard S. Grossman, P.A.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Certified Mail, Return Receipt Requested, on the 27th day of January, 2010, as follows:

Peter M. Kelly
Moore & Kelly, P.C.
1005 Heights Blvd.
Houston, Texas 77008

Paul Dodson
Huseman Dodson Hummell
555 N. Carancahua, Suite 1160
Corpus Christi, Texas 78478


BOBBIE G. BAYLESS