IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-922

No. COA22-81

Filed 29 December 2022

Guilford County, No. 16 CVD 5358

EVE GYGER, Plaintiff,

v.

QUINTIN CLEMENT, Defendant.

Appeal by Plaintiff from order entered 3 September 2021 by Judge K. Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 8 June 2022.

George Daly for plaintiff-appellant.

Connell & Gelb PLLC, by Michelle D. Connell, for defendant-appellee.

MURPHY, Judge.

¶ 1 This is the second appeal in an international child support action between Plaintiff Eve Gyger ("Mother"), a resident of Switzerland, and Defendant Quintin Clement ("Father"), a resident of North Carolina. In accordance with the mandate of the North Carolina Supreme Court in the previous appeal, the trial court reconsidered Mother's Rule 60(b) motion in light of evidence it had previously deemed inadmissible. The trial court, for the second time and despite the admission of the

new evidence, denied the motion on the basis that the foreign tribunal lacked personal jurisdiction over Father. Mother appeals from the denial of her motion; however, as the trial court's findings of fact adequately supported its determination that the foreign tribunal lacked personal jurisdiction over Father and it did not otherwise abuse its discretion in ruling on the motion, we uphold the denial.

BACKGROUND

¶ 2 Much of the background of this case was described by our Supreme Court in an opinion resolving the previous appeal:

> Between 1997 and 1999, [Mother] and [Father] were involved in a romantic relationship in North Carolina. In 2000, the parties had two children who were born in Geneva, Switzerland. In October 2007, [Mother] initiated an action in the Court of First Instance, Third Chamber, Republic and Canton of Geneva against [Father] to establish paternity and child support. [Father] did not appear, and the Swiss court entered judgment against [Father] on both counts.
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> In May 2014, the Swiss Central Authority for International Maintenance Matters applied to register and enforce the Swiss support order with the North Carolina Department of Health and Human Services, Office of Child Support and Enforcement. The Guilford County Clerk of Court registered the Swiss support order for enforcement on 13 June 2016. [Father] was served with a Notice of Registration of Foreign Support Order on 20 June 2016. On 1 July 2016, [Father] filed a Request for Hearing to, among other things, vacate the registration of the foreign support order. After a hearing in District Court, Guilford County, the trial court vacated the registration of the foreign support order under N.C.G.S. §§ 52C-6-607(a)(1)

> and 52C[-]7-706(b)(3) and dismissed the action, finding that the court file lacked any evidence that [Father] had been provided with proper notice of the Swiss proceedings.

Gyger v. Clement, 375 N.C. 80, 81-82 (2020) ("*Gyger I*").

¶ 3 The full text of the trial court's 27 September 2016 order vacating the registration of the Swiss child support order and dismissing the action, discussed above by our Supreme Court in *Gyger I*, is as follows:

> THIS ACTION is coming before [t]he Honorable Lawrence McSwain, District Court Judge Presiding during the [2 September 2016] Civil Session of District Court for Guilford County in Greensboro, North Carolina, and being heard on [2 September 2016]; this matter is before the Court regarding the Notice of Registration of Foreign Support Order filed by [t]he Clerk of Superior Court of Guilford County and the Request for Hearing filed by [Father]; present in Court for the hearing are Shannon Peterson, on behalf of the Agency; [Father], represented by his attorney, Melanie Y. Crenshaw; and the Court, having considered the contents of the Court file and the arguments of counsel, makes the following Findings of Fact:
>
> 1. The Clerk of Superior Court of Guilford County filed a Notice of Registration of Foreign Support Order on [13 June 2016] and [Father] was served with the Notice on [20 June 2016].
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> 2. [Father] filed a Request for Hearing on [1 July 2016], challenging the registration of the foreign support order.
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> 3. [Mother] filed an action in Switzerland to establish paternity and child support on behalf of the minor children[] . . . . A Ruling of the [Court of First Instance, Third Chamber, Republic and Canton of Geneva] was entered in that action on [14 December 2009] and

registered in Switzerland on [15 January 2010]. [Father] did not appear in the proceedings in Switzerland.

4. There is an International Agreement between the U.S. and Switzerland with regard to child support that requires the Requesting Party (here Switzerland) to demonstrate that notice had been given and the opportunity to be heard had been satisfied in a way to satisfy the standards of the Requested Party (here the U. S.). The contents of the court file do not contain evidence that [Father] was ever served with the Swiss complaint in accordance with the requirements of[] [N.C.G.S.] § 52C-7-706(b)(3), the International Agreement between the U.S. and Switzerland, and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

5. The record only contains a finding of fact in the [14 December 2009] [r]uling that [Father] was summoned to proceedings in Geneva, Switzerland, but there is no finding as to whether and when [Father] was served with notice and afforded an opportunity to be heard prior to entry of the [14 December 2009] [r]uling, as required by [N.C.G.S.] § 52C-7-706(b)(3).

6. Findings of Fact in the [14 December 2009] [r]uling indicate that the minor children were conceived when [Mother] resided in the U.S. and were born out of wedlock to the parties in Switzerland. The minor children were conceived when [Mother] and [Father] were in a romantic relationship in Charlotte, North Carolina. Prior to the minor children's births, [Mother] returned to live in Switzerland.

7. [Father] visited the minor children in Switzerland, but he never resided in Switzerland with the minor children.

8. [Mother's] Petition to Register the Foreign Support Order should be denied pursuant to [N.C.G.S.] § 52C-6-

> 607(1) and [N.C.G.S.] § 52C-7-706(b)(3), as the contents of the file are devoid of any evidence that [Father] had proper notice of the proceedings in Switzerland and an opportunity to be heard and [Father] did not submit himself to the jurisdiction of Switzerland.
>
> Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:
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> 1. [Mother's] Petition to Register the Foreign Support Order should be denied pursuant to [N.C.G.S.] § 52C-6-607(1) and [N.C.G.S.] § 52C-7-706(b)(3), as the contents of the file are devoid of any evidence that [Father] had proper notice of the proceedings in Switzerland and an opportunity to be heard and [Father] did not submit himself to the jurisdiction of Switzerland.
>
> 2. [Father's] Motion to Vacate the Registration of the Foreign Support Order should be allowed.
>
> BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED AND DECREED that [Father's] Motion to Vacate the Registration of the Foreign Support Order should be allowed, and [Mother's] Petition to Register the Foreign Support Order shall be and is hereby dismissed.

¶ 4 In *Gyger I*, our Supreme Court held that a non-notarized affidavit submitted to the trial court by Mother was admissible pursuant to N.C.G.S. § 52C-3-315(b), reversing and remanding for further proceedings exclusively on that basis. *See generally id.* On remand, the trial court considered a motion for a new hearing pursuant to Rule 60(b) of our Rules of Civil Procedure on Mother's motion to vacate the registration, now with Mother's affidavit in evidence. The trial court, however,

denied the motion in an order dated 3 September 2021. The new order provided as follows:

> THIS ACTION is coming on to be heard before [t]he Honorable K. Michelle Fletcher, District Court Judge Presiding during the [14 April 2021] and [21 June 2021] (conducted via Zoom and recorded by the Guilford County Clerk of Court), Civil Session of District Court for Guilford County in Greensboro, North Carolina; this matter is before the Court regarding [Mother's] Third Amended Motion for Relief [f]rom Final Order; and based upon the evidence presented, arguments of counsel for each party, and the record in the action, the Court makes the following FINDINGS OF FACT:
>
> 1. [Mother] was not present in Court on [14 April 2021] nor via Zoom on [21 June 2021] and was represented by her attorney, George Daly. [Father] was present in Court on [14 April 2021] and via Zoom on [21 June 2021] and was represented by his attorney, Wendy Enochs. Guilford County Child Support Enforcement was represented by attorney Shannon Peterson.
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> 2. [Mother] is a citizen and resident of Switzerland.
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> 3. [Father] is a citizen and resident of North Carolina, United States of America.
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> 4. [Mother] and [Father] were never married to one another.
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> 5. [Mother] and [Father] resided together in Charlotte, Mecklenburg County, North Carolina for approximately eight months in 1999. [Mother] and [Father] were in a romantic relationship for a portion of this time and had sexual relations on numerous occasions.

6. [Mother] moved to Switzerland in the Fall of 1999. Neither [Mother] nor [Father] knew that [Mother] was pregnant when [Mother] relocated to Switzerland. Prior to living in North Carolina, [Mother] was a resident of Switzerland. [Mother] has relatives in Switzerland. [Mother] voluntarily returned to live in Switzerland.

7. Subsequently, [Mother] informed [Father] of her pregnancy and the birth of the parties' minor children[] . . . .

8. [Father] visited [Mother] and the minor children in Switzerland for one week in 2001 and for two weeks in the years 2002, 2003, 2004 and 2005. [Father] purchased round trip airline tickets each time he visited [Mother] and the minor children. [Father] stayed in the home with [Mother] and the minor children during each of his visits to Switzerland.

9. [Father] voluntarily sent money to [Mother] for the support of the minor children in varying amounts, usually between $500.00 and $1,000.00 a month.

10. [Father] is not a citizen of Switzerland. [Father] has never lived in Switzerland. [Father] has never been employed in Switzerland. [Father] has never owned property in Switzerland. [Father] has never had a driver's license issued in Switzerland. [Father] has never rented a car in Switzerland. [Father] has never received mail in Switzerland.

11. On [24 October 2007], [Mother] filed an action against [Father] in Geneva, Switzerland (Case number C/23280/2007-3) to establish paternity and child support for the minor children . . . .

12. [Father] was never personally served with the Summons and Complaint within Switzerland.

13. On [7 March 2008], [Father] signed a Certified Mail Return Receipt from the Swiss Court.

14. [Father] never filed a responsive document with the Court in Geneva, Switzerland in Case number C/23280/2007-3. [Father] never appeared before the Court in Geneva, Switzerland in Case number C/23280/2007-3. [Father] never made a general appearance in Geneva, Switzerland in Case number C/23280/2007-3.

15. On [14 December 2009], the Swiss Court entered a judgment against [Father] establishing paternity and child support in Case number C/23280/2007-3 (hereafter referred to as "Swiss Order .")

16. In May 2014, the Swiss Central Authority for International Maintenance Matters applied to register and enforce the Swiss Order with the North Carolina Department of Health and Human Services, Office of Child Support Enforcement.

17. On [13 June 2016], the Guilford County Clerk of Court registered the Swiss Order for enforcement. On [20 June 2016], [Father] was served with a Notice of Registration of Foreign Support Order.

18. On [1 July 2016], [Father], by and through counsel, filed a Request to Vacate the Registration pursuant to [N.C.G.S.] § 52C-6-606. Said Motion states: "The issuing tribunal of Switzerland did not have personal jurisdiction over [Father] to establish child support."

19. On [27 September 2016], the Honorable Lawrence C. McSwain entered an Order vacating the Registration, finding that [Father] had never resided in Switzerland, the contents of the file contained no evidence that [Father] had proper notice and opportunity to [be] heard, and [Father] did not submit himself to the jurisdiction of Switzerland.

20. On [13 July 2017], [Mother], by and through counsel, filed a Motion for Relief from Final Order pursuant to [N.C.G.S.] § lA-1, Rule 60 of the North Carolina Rules of Civil Procedure.

21. On [25 September 2017], [Mother], by and through counsel, filed an Amended Motion for Relief from Final Order.

22. On [6 October 2017], a hearing on the Amended Motion for Relief was held before the Honorable Lora C. Cubbage in which Judge Cubbage denied admission of [Mother's] Affidavit because [Mother's] signature was not notarized.

23. On [2 January 2018], an Order was entered by the Honorable Lora C. Cubbage denying [Mother's] Amended Motion for Relief.

24. [Mother] appealed Judge Cubbage's Order.

25. The North Carolina Court of Appeals affirmed Judge Cubbage's Order denying [Mother's] Amended Motion for Relief in a unanimous decision. *Gyger v. Clement,* 263 N.C. App. 118[] . . . (2018).

26. [Mother] petitioned the North Carolina Supreme Court for discretionary review, and the Court allowed review as to the issue of whether [N.C.G.S.] § 52C-3-315(b) requires affidavits issued under the penalty of perjury to be notarized.

27. On [14 August 2020], the Supreme Court of North Carolina reversed the lower court and remanded this case, ruling that an affidavit under [N.C.G.S.] § 52C-3-315(b) issued under the penalty of perjury is admissible into evidence without notarization. *Gyger v Clement,* [375 NC] 80[] . . . (2020).

28. The Honorable Lora C. Cubbage began serving a term as Superior Court Judge on [1 January 2019]; and therefore, was unable to hear this matter on remand. The Honorable Teresa H. Vincent, Chief District Court Judge of Guilford County, assigned the Honorable K. Michelle Fletcher to hear this matter on remand.

29. At the hearing before the undersigned Judge, [Mother's] Affidavit and Supplemental Affidavit, which were signed "under the penalty of perjury[,]" were admitted into evidence. Said Affidavits and the attachments thereto indicate that [Father] received a Summons from the Court in Switzerland in [C/23280/2007-3] which was sent by Certified Mail. [Father] signed for said summons while [Father] was present in North Carolina.

30. [Mother] had informed [Father] that [Mother] was initiating a child support action against [Father] prior to [Father] having signed the documentation submitted to him by the Court in Switzerland.

31. [Mother] has no meritorious defense to [Father's] Request to Vacate Registration of the Foreign Support Order, in that the issuing tribunal (Switzerland) lacked personal jurisdiction over [Father]. [Father] was never served with a summons and complaint within Switzerland. [Father] did not submit to the jurisdiction of Switzerland in a record, by entering an appearance, or by filing a responsive document having the effect of waiving jurisdiction. [Father] never resided in Switzerland with the minor children. [Father] never resided in Switzerland and provided prenatal expense for the minor children. The children do not reside in Switzerland at [Father's] direction. The minor children were not conceived in Switzerland. No other basis consistent with the constitution of North Carolina and the United States exists.

32. [Father's] visits with [Mother] and the minor children in Switzerland do not amount to minimum contacts with Switzerland such that the maintenance of the suit against [Father] does not offend the traditional notions of fair play and substantial justice.

33. [Father] did not submit himself to the jurisdiction of the Court of Switzerland.

34. Switzerland did not have personal jurisdiction over [Father] when the Court of Switzerland entered the Order/Judgment requiring [Father] to pay child support; therefore, [Father's] Request to Vacate the Foreign Support Order registered on [13 June 2016] should stand as ordered by the Honorable Lawrence McSwain on [27 September 2016].

35. [N.C.G.S.] § 52C-3-301 allows for an individual or support enforcement agency to file a petition or comparable pleading directly in a tribunal of another state or foreign country which has jurisdiction over the respondent. [Mother] elected not to pursue this remedy.

36. Based on the evidence presented, including [Mother's] two Affidavits, and the record of this matter, [Mother's] Motion for Relief from Final Order should be denied.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT CONCLUDES AS A MATTER OF LAW:

1. The parties are properly before the Court, and this Court has jurisdiction over the parties and subject matter of this action.

2. [Father] did not submit himself to the jurisdiction of the Court of Switzerland.

3. Switzerland did not have personal jurisdiction over [Father] when the Court of Switzerland entered the

> Order/Judgment requiring [Father] to pay child support; therefore, [Father's] Request to Vacate the Foreign Support Order registered on [13 June 2016] should stand as ordered by the Honorable Lawrence McSwain on [27 September 2016].
>
> 4. [Mother's] Motion for [R]elief from Final Order should be denied.
>
> 5. The above stated Findings of Fact are hereby incorporated as Conclusions of Law.
>
> BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED AND DECREED as follows:
>
> [Mother's] Third Amended Motion for Relief from Final Order is hereby denied. The [27 September 2016] Order Vacating the [R]egistration of Foreign Support Order is not set aside.

Mother timely appealed from the 3 September 2021 order.

ANALYSIS

¶ 5 On appeal, Mother presents us with two arguments: (A) the trial court erred in determining the Swiss court lacked personal jurisdiction over Father; and (B) the trial court otherwise erred in denying her Rule 60(b) motion because

> (1) the notice of hearing for trial was not sent to [Mother's] last known address, (2) it gave notice of the wrong hearing, (3) [Father] had been served with Swiss process, (4) a second official translation of the Swiss judgment showed that [Father] had been 'correctly' served, (5) the trial court failed to call [Father] as its witness, and (6) the trial court failed to request further documents from Switzerland[.]

However, for the reasons discussed below, the trial court erred in neither respect.[1]

A. Personal Jurisdiction

¶ 6 Mother first argues the trial court erred in its ruling that the Swiss court lacked personal jurisdiction over Father. "Our standard of review of an order determining personal jurisdiction is whether the findings of fact by the trial court are supported by competent evidence in the [R]ecord; if so, this Court must affirm the order of the trial court." *Barnes v. Wells*, 165 N.C. App. 575, 584 (2004) (marks omitted).

¶ 7 Under N.C.G.S. § 52C-6-601, "[a] support order or income-withholding order issued in another state or a foreign support order may be registered in this State for

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[1] Mother also argues, despite the trial court's ruling for Father on the issue of personal jurisdiction in the 27 September 2016 order, that Father's "failure to raise the defense [of personal jurisdiction] in this Court [in the previous appeal] abandoned the issue" in the current appeal. While it is possible for a defendant to waive the issue of personal jurisdiction if he or she fails to raise it in a responsive pleading at trial, there is no equivalent rule that an appellee's failure to affirmatively raise an issue *on which he has already prevailed at trial* on appeal waives the issue. *See* N.C.G.S. § 1A-1, Rule 12(h)(1)(ii) ("A defense of lack of jurisdiction over the person[] . . . is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course."). To hold as much would be a patent absurdity; it would require us to hold that the issue of personal jurisdiction at trial can be *retroactively* waived on appeal without discussion and by a party who did not even seek our review in the first instance. And *Stunzi v. Medlin Motors, Inc.*, the case Mother cites for this proposition, states nothing of the sort, as that case dealt with an appellee's failure to challenge the *absence* of a ruling on personal jurisdiction in a motion to dismiss as a cross-appellant. 214 N.C. App. 332, 336-37 (2011).

To be clear, it is emphatically the duty of the *appellant* to challenge issues on appeal. *See generally* N.C. R. App. P. 28 (2022). Rulings of the trial court are not simply vacated because the party who prevailed before the trial court did not, on its on initiative and without a contrary ruling of an appellate court, fail to justify the result below.

enforcement." N.C.G.S. § 52C-6-601 (2021). "On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of another state or a foreign support order, together with one copy of the documents and information, regardless of their form." N.C.G.S. § 52C-6-602(b) (2021). Once registered, "[t]he nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears" by contending, *inter alia*, that "[t]he issuing tribunal lacked personal jurisdiction over the contesting party[.]" N.C.G.S. § 52C-6-606(a) (2021); N.C.G.S. § 52C-6-607(a)(1) (2021).

¶ 8 The Unites States Supreme Court has made clear that generally applicable inquiries concerning personal jurisdiction—specifically, whether there are minimum contacts in the issuing jurisdiction—still apply in the case of child support orders:

> The Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants. It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant. The existence of personal jurisdiction, in turn, depends upon the presence of reasonable notice to the defendant that an action has been brought and a sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum.

Kulko v. Super. Ct. of Cal., 436 U.S. 84, 91, 56 L. Ed. 2d 132, 140-41 (citations omitted), *reh'g denied*, 438 U.S. 908, 57 L. Ed. 2d 1150 (1978). In North Carolina, N.C.G.S. § 52C-2-201 operates as a general-purpose long-arm statute for child support orders—one reciprocated by every other jurisdiction implementing the Uniform Interstate Family Support Act, the statutory scheme of which N.C.G.S. § 52C-2-201 is a part. N.C.G.S. § 52C-2-201 (2021). However, when the issuing jurisdiction is a foreign nation and the nonregistering party contests personal jurisdiction, the comments to N.C.G.S. § 52C-2-201 describe the resulting procedure as follows:

> If the facts of a case warrant, whether in an interstate or an international context, a state tribunal shall apply long-arm jurisdiction to establish a support order without regard to the physical location or residence of a party outside the United States. Interestingly, under certain fact situations involving a request to recognize and enforce or modify a foreign support order, a state tribunal may be called upon to determine the applicability of long-arm jurisdiction under UIFSA to the facts of the case in order to decide the enforceability of the foreign support order.
>
> For example, a challenge to a request for enforcement of a foreign support order may be made by a respondent based on an allegation that the foreign issuing tribunal lacked personal jurisdiction over the respondent. A respondent may acknowledge that the obligee or the child resides in France, and that a French tribunal issued a support order. But, in the *Kulko* decision[,] the [United States Supreme] Court accepted the respondent's allegation that under the state law then available there was no nexus between himself and California and therefore no personal

jurisdiction over him as required by the opinion. From the perspective of the French tribunal under the facts above, an asserted lack of personal jurisdiction is of no consequence. Under the law of France, like the law of virtually all other foreign nations, the child-based jurisdiction stemming from the residence of the obligee or child is sufficient to sustain a child-support order against the noncustodial parent. But, meshing the world-wide system of child-based jurisdiction with the U.S. requirement of in personam jurisdiction presented an easily resolved challenge to the drafters of the new Hague Maintenance Convention.

Thus, under the Convention, a state tribunal may be called upon to determine whether the facts underlying the support order would have provided the issuing foreign tribunal with personal jurisdiction over the respondent under the standards of this section. In effect, the question is whether the foreign tribunal would have been able to exercise jurisdiction in accordance with Section 201. The foregoing fact situation illustrates that it is for the state tribunal to determine if the order of the French tribunal would have complied with UIFSA Section 201 on the facts of the case. If so, the foreign support order is entitled to recognition and enforcement. For example, the facts of the case may show that the father lived with the child in France, supported the mother or child in France, or perhaps was responsible for, or agreed to the movement of the child to France.

On the other hand, if the issuing French tribunal would have lacked personal jurisdiction over the respondent if Section 201 had been applicable, the support order cannot be enforced because there was no nexus between France and the respondent. The United States will make a reservation to Convention article 20, declining to recognize or enforce a foreign support order on child-based jurisdiction founded solely on the location or residence of the obligee or the child in the foreign country.

N.C.G.S. § 52C-2-201 off. cmt. (2021).

¶ 9 In reviewing the trial court's order with respect to whether the Swiss tribunal had personal jurisdiction over Father, we hold there was competent evidence on the Record supporting the trial court's determination that personal jurisdiction was nonexistent in Switzerland. *Barnes*, 165 N.C. App. at 584. In *Miller v. Kite*, our Supreme Court held that personal jurisdiction did not exist where a defendant's connection to the forum was caused by the decision of the custodial parent rather than a volitional connection by the defendant:

> In the instant case the child's presence in North Carolina was not caused by the defendant's acquiescence. Instead, it was solely the result of the plaintiff's decision as the custodial parent to live here with the child. As previously noted, the Supreme Court has expressly stated that unilateral acts by the party claiming a relationship with a non-resident defendant may not, without more, satisfy due process requirements. We conclude that *Kulko* compels a finding that this defendant did not purposefully avail himself of the benefits and protections of the laws of this State. A contrary conclusion would discourage voluntary child custody agreements and subject a non-custodial parent to suit in any jurisdiction where the custodial parent chose to reside.
>
> The fact that the defendant in the instant case visited the child in North Carolina approximately six times between 1973 and 1981 is also insufficient to establish *in personam* jurisdiction over him. As stated by the Supreme Court in *Kulko,* "To hold such temporary visits to a State a basis for the assertion of in personam jurisdiction over unrelated actions arising in the future would make a

> mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment." The father's visits to California in *Kulko* were fewer and more distant in time from the litigation than were the visits in this case. The visits by this defendant to North Carolina, however, were no less temporary than those in *Kulko* and were so unrelated to this action that he could not have reasonably anticipated being subjected to suit here.
>
> Our conclusion is also guided by the realization that a contrary result could prevent the exercise of the visitation privileges of non-custodial parents. If the minimum contacts standard were satisfied by visiting the child in the forum state, a parent would be faced with the dilemma of visiting the child and subjecting himself to the jurisdiction of the forum state or refraining from such contacts with the child due to the fear of being forced to litigate there.

Miller v. Kite, 313 N.C. 474, 479-80 (1985) (citations omitted).

¶ 10 Here, the trial court's findings of fact contain ample support on the Record from which the trial court could correctly conclude the Swiss tribunal lacked personal jurisdiction over Father under *Miller*. Father's contacts with Switzerland were limited to short trips consisting of visiting with Mother and the children and some light tourism, plus calls with the children and coordination with Mother to arrange his informal support for the children—behaviors entirely consistent with that of the defendant in *Miller*. And Mother, for her part, does not actually contest the sufficiency of the evidentiary support for the trial court's findings of fact or the legal

conclusions that follow from those facts under *Miller*.[2] Accordingly, we uphold the trial court's determination that the Swiss tribunal lacked personal jurisdiction over Father.

B. Rule 60(b) Motion

¶ 11 Mother next argues the trial court otherwise erred in denying her Rule 60(b) motion. Specifically, she argues the trial court abused its discretion in denying her Rule 60(b) motion because

> (1) the notice of hearing for trial was not sent to [Mother's] last known address, (2) it gave notice of the wrong hearing, (3) [Father] had been served with Swiss process, (4) a second official translation of the Swiss judgment showed that [Father] had been 'correctly' served, (5) the trial court failed to call [Father] as its witness, and (6) the trial court failed to request further documents from Switzerland,

each of which she frames as "showing mistake, excusable neglect, and a meritorious case[.]" She also argues "[(7)] the notice of hearing for trial was not sent to [Mother's] last known address and [(8)] it gave notice of the wrong hearing," both of which she claims demonstrate "extraordinary circumstances for which justice demands a remedy" under Rule 60(b)(6).

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[2] Indeed, Mother cites the findings of fact in the trial court's order as the authority for the factual background of the case in her brief and acknowledges *Miller* is controlling. Much of her argument is predicated on academic criticism of *Miller* rather than contrary legal authority.

¶ 12 However, our previous opinion addressed several of these arguments, and most of them appear to be repetitions of arguments she used with respect to the order at issue in the previous appeal.[3] With respect to the addresses to which Mother's notices were sent, we said the following in our *Gyger I*:

> Concerning []Mother's contention that the notice of hearing was sent to the wrong location, the trial court found:
>
> > [Mother] contends the [27 September 2016] Order is void because she did not receive proper notice prior to the [2 September 2016] hearing. *No credible evidence supports this contention*. [Father's] evidence shows and the Court finds that the policy and procedures of the North Carolina Guilford County Child Support Enforcement agency in an interstate case are to send correspondence to a plaintiff to the same agency that initiated the action on behalf of the plaintiff. The Court further finds that [Mother] signed a power of attorney to give the agency authority to work on [Mother's] behalf to obtain child support for the minor children. A Notice of Hearing was sent to [Mother] on [12 July 2016] to Eve Gyger c/o SZ Section for Private Int Law, Central Authority for Maintenance Matter, Bundesrain 20, Bern Switzerland. SZ Section

[3] We note that not all of Mother's arguments even translate effectively to the current order. For example, Mother fails to explain how proper service of process by the Swiss court upon Father impacts our assessment of the trial court's ruling on her Rule 60(b) motion given that the current order, unlike the order in the previous appeal, is based exclusively on minimum contacts and not service of process. This argument was more cogent with respect to the order at issue in *Gyger I*, which expressly concerned the sufficiency of the Swiss process; here, however, it makes little sense.

> for Private Int Law is the agency that initiated the action on behalf of [Mother].
>
> . . . .
>
> [Mother] received proper notice of the hearing scheduled for [2 September 2016]. The [27 September 2016] Order of the Honorable Judge Lawrence McSwain is not void.

(Emphasis added).

Our statutes provide that "[i]f the party has no attorney of record, service shall be made upon the party . . . [b]y mailing a copy to the party at the party's last known address or, if no address is known, by filing it with the clerk of court." [N.C.G.S.] § 1A-1, Rule 5(b)(2)b (2016). However, []Mother was not an unrepresented party. This action, as the trial court correctly noted, was initiated by the Swiss Central Authority, and []Mother executed a limited power of attorney granting the North Carolina Child Support Enforcement Agency the authority "to represent [her] in dealings with all authorities and before all courts[.]"[]

A IV-D agent of the Guilford County Child Support Enforcement Agency testified that it was her office's policy in international child support cases to send all communications and correspondence directly to the agency initiating the support request. The IV-D attorney informed []Mother, in accordance with federal and state agency policy, of the scheduled hearing to contest the registration of the foreign support order by mailing the notice of hearing to the Swiss Central Authority in Bern, Switzerland. *See* A Caseworker's Guide to Processing Cases with Switzerland, Office of Child Support Enforcement, 8 (2009), [https://perma.cc/VK97-4XBC] ("All correspondence to Switzerland must be sent to the Swiss Central Authority in Bern[ ] . . . ."); Child Support Services Manual: Intergovernmental, N.C. Dep't of Health and Human Serv.,

41, [https://perma.cc/W96L-8L3N] ("When a hearing [contesting the registration of a foreign support order] is scheduled, notice of the date, time, and location of the hearing must be provided to the initiating state immediately.").

"Correspondence" is the "[i]nterchange of written communications." *Correspondence*, *Black's Law Dictionary* (5th ed. 1979). [Mother's] counsel argues that this "correspondence" should have been served directly on the party in accordance with Rule 5 of the Rules of Civil Procedure, which provides for service upon an unrepresented party by delivering or mailing a copy to the party. [N.C.G.S.] § 1A-1, Rule 5(b)(2). In this case, we are bound to follow federal law.

The governments of the United States and Switzerland entered into a treaty concerning the registration and enforcement of foreign support orders between our two countries. A treaty is federal law and "equivalent to an act of [Congress]." *Foster v. Neilson,* 27 U.S. 253, 314, 7 L. Ed. 415, 436 (1829), *overruled on other grounds by United States v. Percheman*, 32 U.S. 51, 8 L. Ed. 604 (1833). Federal law is "the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl: 2. Whenever state and federal law conflict, "state law is naturally preempted to the extent of any conflict with a federal statute." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372, 147 L. Ed. 2d 352, 361 (2000).

North Carolina is bound to follow the Agreement between the United States and Switzerland. The Agreement provides that documents should be sent to the "Central Authority or other designated public body" of each party. *See* Agreement, art. 4, cl. 3. Both the U.S. Office of Child Support Enforcement and the North Carolina Department of Health and Human Services provide that

> correspondence in international foreign support cases should be sent to the respective country or state agency, not sent directly to the individual parties. Accordingly, the trial court did not abuse its discretion in making the determination that the notice of hearing was sent to the correct location, and that [Mother] received proper notice, and thus we affirm that finding.

Gyger I, 263 N.C. App. at 126-28.

¶ 13 While the order at issue in this case is different than in *Gyger I* and our previous reasoning is therefore not the law of the case,[4] the analytically relevant features are the same. The Record reflects that, as in the last appeal, "[t]his action[] . . . was initiated by the Swiss Central Authority, and []Mother executed a limited power of attorney granting the North Carolina Child Support Enforcement Agency the authority to represent her in dealings with all authorities and before all courts." *Id.* at 127. As the reasoning in our previous opinion is still sound and the relevant facts have not changed, we find it persuasive and adopt it here. The trial court did not abuse its discretion on this basis.

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[4] "Under the law-of-the-case doctrine, when an appellate court passes on a question and remands the cause for further proceedings, the questions there settled become the law of the case, both in subsequent proceedings in the trial court and on subsequent appeal, provided the same facts and the same questions which were determined in the previous appeal are involved in the second appeal." *Spoor ex rel. JR Int'l Holdings, LLC v. Barth*, 257 N.C. App. 721, 728-29 (2018) (citing *Hayes v. City of Wilmington*, 243 N.C. 525, 536 (1956)). As "[t]he law of the case applies only to what is actually decided[,]" our holding with respect to a different order in which Mother's affidavit had not been in evidence does not qualify. *In re IBM Credit Corp.*, 222 N.C. App. 418, 424 (marks omitted), *disc. rev. denied*, 366 N.C. 400 (2012).

¶ 14 There remain two bases for Mother's Rule 60(b) argument: (1) that the notices were "of the wrong hearing[s]"; (2) that the trial court failed to, *sua sponte*, call Father as a witness and request further documents from Switzerland, both of which she characterizes as showing "[m]istake, inadvertence, surprise, or excusable neglect" under Rule 60(b)(1). N.C.G.S. § 1A-1, Rule 60(b)(1) (2021). Neither of these contentions have merit. "To rescind a judgment due to mistake of fact, there must be a mutual mistake of fact. A unilateral mistake, unaccompanied by fraud, imposition, undue influence, or like oppressive circumstances, is not sufficient . . . ." *Goodwin v. Cashwell*, 102 N.C. App. 275, 277 (1991) (quoting *Marriott Fin. Servs. v. Capitol Funds, Inc.,* 288 N.C. 122, 136 (1975)). Furthermore, it is the moving party's burden to demonstrate the merits of a Rule 60(b)(1) motion. *Elliott v. Elliott*, 200 N.C. App. 259, 262 (2009) (emphasis added) ("To set aside a judgment on the grounds of excusable neglect under Rule 60(b), *the moving party must show* that the judgment rendered against him was due to his excusable neglect and that he has a meritorious defense."); *see also Briley v. Farabow*, 348 N.C. 537, 540-41 (1998) (emphasis added) (marks omitted) ("Under Rule 60(b)(1), relief from a prior order or judgment may be granted *if the party establishes* that the order or judgment was mistakenly entered due to the party's mistake, inadvertence, surprise, or excusable neglect.").

¶ 15 First, as to the notice being of the wrong hearing, Mother argues that the trial court should have granted her Rule 60(b) motion on the basis that "[t]he [n]otice of

[h]earing mistakenly gave notice of a 'Hearing to *Register* Foreign Support Order," but "[t]he *registration* . . . had already occurred[.]" This statement, while technically true, is seemingly based on the mislabeling of a hearing rather than any allegation that an actual participant in the trial was operating under a mistake of fact, much less a mutual one. *See Goodwin*, 102 N.C. App. at 277. Accordingly, this argument fails.

¶ 16 Second, Mother argues that the trial court's failure to, *sua sponte*, call Father as a witness and seek further documents from Switzerland warrants our reversal on appeal. However, this argument ignores the fact that *movants* under Rule 60(b)(6) have the burden, not the nonmoving party or the trial court. *Elliott*, 200 N.C. App. at 262; *Briley*, 348 N.C. at 540-41. If documents from the Swiss court or Father's testimony were instrumental in establishing the merits of her motion, Mother had the duty and opportunity to ensure the trial court could consider them before issuing its order.

¶ 17 For these reasons, the trial court did not abuse its discretion in denying Mother's Rule 60(b) motion.

CONCLUSION

¶ 18 The trial court's findings of fact amply supported its determination that the Swiss tribunal lacked personal jurisdiction over Father, and Mother has not

otherwise established that the trial court erred in denying her Rule 60(b) motion. The trial court did not, therefore, abuse its discretion in denying the motion.

AFFIRMED.

Judges DIETZ and WOOD concur.

Report per Rule 30(e).