No. 125,672

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

M & I MARSHALL & ILSLEY BANK,
Appellee,

v.

KEVIN HIGDON (AND GRETCHEN HIGDON),
Appellants,

and

EQUITY BANK,
Appellee.

SYLLABUS BY THE COURT

An action on a judgment is an original cause of action, while garnishment is not an original cause of action, but is ancillary to the original action seeking judgment. Another state's substantive laws cannot provide a de facto exemption from Kansas' garnishment statutes.

Appeal from Johnson District Court; PAUL C. GURNEY, judge. Opinion filed September 15, 2023. Affirmed.

Kristopher C. Kuckelman, of Payne & Jones, Chartered, of Overland Park, for appellants.

Louis J. Wade, of McDowell Rice Smith & Buchanan, P.C., of Kansas City, Missouri, for appellee M & I Marshall & Ilsley Bank.

Before COBLE, P.J., GARDNER and CLINE, JJ.

GARDNER, J.: In 2010, M & I Marshall & Ilsley Bank (M & I Bank) got a judgment against Kevin Higdon from the circuit court in Jackson County, Missouri. M & I Bank later registered its judgment in Johnson County, Kansas, and had a garnishment order entered by the Johnson County District Court. This order was served on Equity Bank in Kansas, where Kevin and his wife, Gretchen Higdon, held an account, and the entire balance of the account was garnished. The couple challenged the garnishment, arguing that Missouri law should apply because they had opened their bank account in Missouri, and under Missouri law the account was not subject to garnishment. The district court disagreed, applied Kansas law, and ordered that Gretchen's half of the account was owed to her and Kevin's half of the account was owed to M & I Bank. The Higdons appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Kevin and Gretchen married in 2009 and remain married. Since 2009 they have continuously resided in Missouri. In 2009 or 2010, they opened an account at Adams Dairy Bank (the account), which was located solely in Missouri.

To open the account, the Higdons signed an account agreement in Missouri. That agreement identified Kevin or Gretchen as the account owners with "Joint (Right of Survivorship)." That account agreement remains unchanged, and the parties do not contend that it incorporates a choice-of-law provision. Years later, around 2016, Adams Dairy Bank merged with Equity Bank, the garnishee, which has locations in Kansas.

In October 2010, M & I Bank obtained a judgment against Kevin (and others), but not Gretchen, from the circuit court in Jackson County, Missouri. In April 2017, M & I Bank registered this judgment in Kansas with the Johnson County District Court, then moved for garnishment. As a result, the Johnson County District Court issued an order of

garnishment to attach any account owned by Kevin at Equity Bank. The next day, that order of garnishment was served on Equity Bank at one of its Kansas facilities.

Kevin and Gretchen opposed the garnishment and moved to quash it. While the dispute was pending, the parties stipulated that the garnished funds from the account would be paid into and held by the Clerk of the District Court while the district court resolved the garnishment dispute.

Kevin's motion to quash argued that Missouri substantive law should apply because the Higdons' contract to open the bank account was made in Missouri. And under Missouri law, they argued, their account was owned by them as tenants by the entirety. Because Kevin and Gretchen's ownership interests were indivisible and of the entire account, and Gretchen was not subject to the garnishment order, no portion of the account could be garnished. Alternatively, Kevin argued that if Kansas law applied then only his half of the funds in the account could be garnished.

In response, M & I Bank argued that Kansas law applied because, as a properly registered foreign judgment, under the Full Faith and Credit Clause of the United States Constitution, all enforcement mechanisms under Kansas law are available to M & I Bank. M & I Bank argued that under Kansas law it was entitled to the portion of the bank account owned by Kevin, and Kevin had the burden to show that some or all the property was not subject to garnishment. Kevin's account agreement showed his interest was as joint tenants with right of survivorship, and Kansas has "a rebuttable presumption of equal ownership between tenants of joint tenancy property." *Walnut Valley State Bank v. Stovall*, 223 Kan. 459, Syl. ¶ 2, 574 P.2d 1382 (1978).

The district court heard the arguments and the evidence summarized above, then denied the Higdons' motion to quash in part.

> "Because the foreign judgment i[s] registered in Kansas following the statutory provisions, Kansas procedural law applies rather than Missouri law. It is unclear in Kansas whether the characterization of the property can be attached for a judgment creditor is [a] substantive or procedural matter. . . . [H]owever, relevant Missouri case law indicates that categorization—categorizing property is a procedural matter, and because this case is in Kansas, Missouri procedural law is not applicable.
>
> "Therefore, it is more likely that Kansas procedural law applies, and the garnishment can attach to the Higdons' account. Because a foreign judgment is registered in Kansas, Kansas procedural law will apply. Persuasive case law with similar facts reveals categorizing property for creditor judgment as a procedural matter. Although Mr. and Mrs. Higdon have a joint bank account, the bank can attach the garnishment to the joint account because Kansas law again will classify the account as a joint tenancy with right of survivorship."

The district court judge found that Kansas law does not recognize tenancy by the entirety, and "the subject garnishment can attach to the Higdons' joint bank account because Kansas property classification would find that the bank account held as joint tenants with the right of survivorship rather than tenants in the entirety, and judgment creditors can recover money from joint bank accounts."

The district court left discovery open on ownership of the account and allowed the parties to rebut the presumption of equal ownership that arises under Kansas law. But during discovery, the Higdons and M & I Bank stipulated that the presumption of equal ownership of the account could not be rebutted. Accordingly, the district court found that before the garnishment Kevin owned half of the account and Gretchen owned the other half. The district court then ordered half the garnished funds, which had been paid into court, paid to Gretchen and the other half paid to M & I Bank. Thus, Gretchen and M & I Bank were each paid $194,455.56.

Kevin and Gretchen timely appeal.

ANALYSIS

Before we address the Higdons' substantive issues, we address a procedural issue that impacts our jurisdiction to hear this appeal—M & I Bank's assertion that the Higdons acquiesced in the judgment.

DOES THE DOCTRINE OF ACQUIESCENCE DEPRIVE THIS COURT OF JURISDICTION TO CONSIDER THIS APPEAL?

M & I Bank argues that under the doctrine of acquiescence, this court lacks jurisdiction to consider this appeal. "Because acquiescence involves jurisdiction, the matter raises a question of law subject to unlimited review by this court." *Alliance Mortgage Co. v. Pastine*, 281 Kan. 1266, 1271, 136 P.3d 457 (2006). "Whether a party intends to waive his or her legal rights, however, depends on the facts." *Heartland Presbytery v. Presbyterian Church of Stanley, Inc.*, 53 Kan. App. 2d 622, 636, 390 P.3d 581 (2017) (citing *Varner v. Gulf Ins. Co.*, 254 Kan. 492, 497, 866 P.2d 1044 [1994]).

"The acquiescence doctrine establishes that parties who voluntarily accept the benefit or burden of a judgment lose their right to appeal. *Alliance Mortgage Co. v. Pastine*, 281 Kan. 1266, 1271, 136 P.3d 457 (2006); see *Hemphill v. Ford Motor Co.*, 41 Kan. App. 2d 726, 728, 733, 206 P.3d 1 (2009)." *Heartland Presbytery*, 53 Kan. App. 2d at 635. "'The gist of acquiescence sufficient to cut off a right to appeal is voluntary compliance with the judgment.'" *Varner v. Gulf Ins. Co.*, 254 Kan. 492, 494, 866 P.2d 1044 (1994) (quoting *Younger v. Mitchell*, 245 Kan. 204, Syl. ¶ 1, 777 P.2d 789 [1989]). When a party's actions "'clearly and unmistakably show an inconsistent course of conduct or an unconditional, voluntary and absolute acquiescence,'" the party waives his or her right to appeal. *Uhlmann v. Richardson*, 48 Kan. App. 2d 1, 17, 287 P.3d 287 (2012).

Courts do not generally find an implied waiver from an appellant's postjudgment measures: "[I]t is generally the rule that a waiver is not implied from [postjudgment] measures taken by an appellant in defense of and to protect his [or her] rights or interest." *McDaniel v. Jones*, 235 Kan. 93, 104, 679 P.2d 682 (1984). For acquiescence to cut off the right to appeal, the acceptance of the burdens or benefits of a judgment debtor must be *voluntary*. Whether a payment of a judgment is voluntary depends on the facts of the particular case, and the ultimate issue is whether the payer intended to waive his or her legal rights. *Varner*, 254 Kan. at 497.

"In a . . . garnishment proceeding, whether the appellant has acquiesced to the extent of extinguishing his right to appeal the garnishment depends upon all the facts of the case, including his conduct in response to the garnishment order." *Younger v. Mitchell*, 245 Kan. 204, 207, 777 P.2d 789 (1989). In *Younger*, the Kansas Supreme Court held that Mitchell's actions did not show acquiescence to the garnishment. There, Mitchell's

> "conduct throughout the garnishment proceeding shows that he did not voluntarily comply with this judgment. The bank account balance was paid into court by Farmers State Bank, the garnishee, not by Mitchell. Mitchell contended all along that all of the funds in the account were exempt from garnishment. He filed a reply to the answer of the garnishee, claiming the funds were exempt from garnishment. He participated in the hearing at which the court determined the source of the funds paid into court by the garnishee. He filed a memorandum with the court supporting his claim, citing federal statutes that generally exempt V.A. and social security benefits from garnishment. After the distribution order was issued, he filed a timely notice of appeal." 245 Kan. at 207.

Kevin engaged in similar conduct here. He moved to quash the garnishment, and argued throughout the proceedings that the account was not subject to garnishment under Missouri law, so it was also not subject to garnishment in Kansas. He appeared at the hearing on the motion to quash the garnishment and testified at the evidentiary hearing.

During the litigation, the parties stipulated to pay the money in the Higdons' account into the Johnson County District Court, and a court order granted that stipulation. After the court ruled against Kevin, he timely appealed. And the distribution of the funds held by the district court was by court order, with half the account balance paid to Gretchen and half paid to M & I Bank's counsel. Nothing in the record shows that the bank account balance was paid by Kevin. The actions of record fail to convince us that Kevin acquiesced to the judgment.

M & I Bank also argues that Gretchen's acceptance of the returned funds equates to acquiescence. *Younger* raised a similar issue, and the Kansas Supreme Court rejected the idea that the acceptance of improperly garnished funds after a judgment to distribute the funds to their proper owner constitutes acquiescence to the judgment.

> "Although he accepted a check representing that portion of the garnished account balance which was returned to the Mitchells pursuant to the court's order, that payment cannot be considered a 'benefit of the judgment.' The funds in the account were in the court's custody only as a result of the garnishment order requested by the plaintiff. Mitchell protested garnishment of those funds from the beginning, as he was entitled to do under [the garnishment statutes]. Hence, Mitchell's receipt of part of the account balance cannot be considered the sort of acquiescence that would preclude this appeal." 245 Kan. at 207.

Following *Younger*'s guidance, we hold that Gretchen's acceptance of the distributed garnishment funds was not a benefit of the judgment.

We find the doctrine of acquiescence inapplicable. Because our jurisdiction is proper, we now address the Higdons' substantive issues.

DOES KANSAS OR MISSOURI LAW DETERMINE WHETHER THE ACCOUNT IS SUBJECT TO GARNISHMENT?

The Higdons argue that the district court improperly applied Kansas procedural law to classify the account. They assert that Missouri substantive law applies and, under Missouri law, the funds in the account are not subject to garnishment. See *Hanebrink v. Tower Grove Bank & Trust Co.*, 321 S.W.2d 524, 527 (Mo. App. 1959). Put another way, the Higdons' account (or a portion of it) can be garnished in Kansas, but not in Missouri.

Missouri Law Conflicts with Kansas Law

The ability to garnish the Higdons' account in Kansas but not in Missouri arises from the classification of the account's ownership. In Missouri, despite the account agreement's statement that the account is "Joint (Right of Survivorship)," Kevin and Gretchen's ownership interest in the account would likely be deemed a tenancy by the entirety. This is because a Missouri statute provides that "[a]ny deposit made in the name of two persons or the survivor thereof who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified." Mo. Rev. Stat. § 362.470.5.

Tenancy by the entirety is a "common-law estate in which each spouse is seised of the whole of the property." Black's Law Dictionary 1768 (11th ed. 2019). Under Missouri law, a tenancy by the entirety account is not subject to garnishment when only one party to the account is subject to the garnishment order.

> "It has been held in Missouri for some time that where a husband and wife hold personal property as joint owners they are presumed to be tenants by the entirety. Each is presumed to have an undivided interest in the whole of the property.
>
> "It is also the law in this state that where a judgment and execution are against the husband alone such judgment cannot in any way affect property held by the husband and wife in the entirety. Neither can it affect any supposed separate interest of the

husband, for he has no separate interest. [Citations omitted.]" *Hanebrink*, 321 S.W.2d at 527.

Under Missouri law, because M & I Bank's judgment is against Kevin but not against Gretchen, none of their tenancy by the entirety account can be garnished.

Although the Missouri presumption of tenancy by the entirety is rebuttable, evidence to overcome the presumption must be so strong, clear, positive, unequivocal, and definite as to leave no doubt in the trial judge's mind. *Brown v. Mercantile Bank of Poplar Bluff*, 820 S.W.2d 327, 336 (Mo. App. 1991); see also *Nelson v. Hotchkiss*, 601 S.W.2d 14, 19 (Mo. 1980) (once the presumption of tenancy by entirety arises, party challenging presumption may only rebut it if party can show contrary intention by clear, cogent, and convincing evidence). That is a difficult standard to meet. Even titling the account "Kevin Higdon or Gretchen Higdon, Joint Tenants with Right of Survivorship" is not enough to overcome Missouri's statutory presumption. "[T]o achieve that result, it would be necessary to designate the account 'Joint Tenants with Right of Survivorship *and Not as Tenants by the Entirety*' or words to like effect." *Scott v. Flynn*, 946 S.W.2d 248, 251 (Mo. App. 1997).

Kansas, however, no longer recognizes tenancy by the entirety. See *Stewart v. Thomas*, 64 Kan. 511, 514-15, 68 P. 70 (1902). In Kansas, when two individuals hold property together a tenancy in common is created unless the language used "makes it clear that a joint tenancy was intended to be created." K.S.A. 58-501; see *Kirkpatrick v. Ault*, 177 Kan. 552, 556, 280 P.2d 637 (1955). Our law presumes that tenants in common have equal ownership; that is, the husband and wife each own half of the account. *Walnut Valley State Bank*, 223 Kan. at 462. A joint tenancy "differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share." Black's Law Dictionary 1767 (11th ed. 2019). "When a joint tenant dies, his or her share passes to the

surviving joint tenants." *Estate of Darby v. Bettencourt*, No. 120,247, 2019 WL 4558046, at *3 (Kan. App. 2019) (unpublished opinion).

Under Kansas law, a joint tenant's ownership is severable for meeting the demands of creditors, so Kevin's portion of the joint account that he owns with Gretchen may be garnished. See *Walnut Valley State Bank*, 223 Kan. 459, Syl. ¶ 2. Although the ownership is presumed to be half the account, this presumption is rebuttable by either party by proving the debtor owns more or less than half the account. *In re Estate of Lasater*, 30 Kan. App. 2d 1021, 1024, 54 P.3d 511 (2002). But the parties agreed neither could rebut this presumption here.

Accordingly, the parties contend, and we agree, that a conflict of laws has arisen. "In a conflict of law situation, the determination of which state's law applies is a question of law over which this court has unlimited review." *Foundation Property Investments v. CTP*, 37 Kan. App. 2d 890, Syl. ¶ 3, 894, 159 P.3d 1042 (2007), *aff'd* 286 Kan. 597, 186 P.3d 766 (2008); *Farrar v. Mobil Oil Corp.*, 43 Kan. App. 2d 871, 878, 234 P.3d 19 (2010). And if statutory interpretation is necessary for resolution of this issue, this panel's review is also unlimited. See *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019).

We Apply Kansas' Conflict of Law Rules

When addressing conflict-of-law issues, Kansas appellate courts follow the Restatement (First) of Conflict of Laws (1934). *Brenner v. Oppenheimer & Co.*, 273 Kan. 525, 538, 4 P.3d 364 (2002); *Layne Christensen Co. v. Zurich Canada*, 30 Kan. App. 2d 128, Syl. ¶ 7, 38 P.3d 757 (2002); see *ARY Jewelers v. Krigel*, 277 Kan. 464, 481, 85 P.3d 1151 (2004). Under § 584 of the First Restatement of Conflict of Laws, "'[t]he court at the forum determines according to its own Conflict of Laws rule whether a given question is one of substance or procedure.'" *ARY Jewelers*, 277 Kan. at 481 (quoting

Restatement [First] of Conflict of Laws § 584 [1934]). So we must first determine the nature of the problem. See 16 Am. Jur. 2d, Conflict of Laws § 3. Because Kansas is the forum state, we apply Kansas' conflict of laws rules; they direct us to determine whether the issue (whether the Higdons' account may be garnished) is substantive or procedural. See *ARY Jewelers*, 277 Kan. at 472 ("For the procedural issues, Kansas law applies because suit was filed in a Kansas court.").

The Higdons invite us to characterize this issue as purely a contract dispute. In Kansas, the relationship between a bank and its depositor is generally that of a "debtor-creditor" to be governed by the contractual relationship resulting from the signed signature card. *Cairo Cooperative Exchange v. First Nat'l Bank of Cunningham*, 228 Kan. 613, 618, 620 P.2d 805 (1980).

> "The Restatement (First) contains two general principles for contracts cases. The primary rule, *lex loci contractus*, calls for the application of the law of the state where the contract is made. *Wilkinson v. Shoney's, Inc.*, 269 Kan. 194, 209-10, 4 P.3d 1149 [2000]; Restatement [First] of Conflict of Laws, § 332 [1934]." *Layne Christensen Co.*, 30 Kan. App. 2d at 142.

So if this were a contract case, we would apply Missouri substantive law to interpret the Higdons' contract, which was made in Missouri. See, e.g., *Novak v. Shane*, No. 90,343, 2004 WL 556758, at *3-5 (Kan. App. 2004) (unpublished opinion) (non-garnishment case applying Missouri law to determine whether Missouri checking account was joint account with right of survivorship or whether it was presumptively joint account subject to intent of depositor when administrator of husband's estate challenged surviving spouse's withdrawal of balance of checking account).

But we have no breach of contract claim and the parties are not trying to enforce or avoid a contract. This is not a common-law action to enforce a judgment. See K.S.A. 60-3006 (preserving ability to bring common-law action as alternative to action under

Foreign Judgments Act). Rather, it was filed as a garnishment, and a garnishment is not a typical contract suit. Here, one party (M & I Bank) is trying to enforce a valid foreign judgment and another party (Kevin) is arguing that his contract with a third party (Equity Bank) prohibits enforcement of that judgment. M & I Bank lacks privity with Equity Bank and thus cannot assert the rights of that third party, nor can Kevin defend against M & I Bank's garnishment based on his contract with Equity Bank. A garnishment action alone does not create privity of contract between a garnishee and a garnisher. *Baisch & Skinner, Inc. v. Bair*, 507 S.W.3d 627, 631-32 (Mo. App. 2016) (citing *Walkeen Lewis Millinery Co. v. Johnson*, 130 Mo. App. 325, 109 S.W. 847, 849 [1908] [finding no privity of contract between garnishee bank and plaintiff who had obtained garnishment against defendant with funds located at bank]). So we decline the Higdons' invitation to apply the law of Missouri under the *lex loci contractus* principle to this garnishment proceeding.

A garnishment is not a cause of action which may lead to a judgment but is a remedial procedural statutory vehicle that may be used as an aid to collect a judgment. See K.S.A. 60-731(a); K.S.A. 61-3504(1). In *DeKalb Swine Breeders, Inc. v. Woolwine Supply Co.*, 248 Kan. 673, 680, 809 P.2d 1223 (1991), the court differentiated between an action on a judgment and an execution or garnishment. Although an action on a judgment is an original cause of action, "a garnishment is not considered a cause of action—it is referred to as an ancillary or auxiliary proceeding." 248 Kan. at 680; see *Associated Wholesale Grocers, Inc. v. Americold Corp.*, 293 Kan. 633, 646, 270 P.3d 1074 (2011); *Master Finance Co. of Texas v. Pollard*, 47 Kan. App. 2d 820, 823, 283 P.3d 817 (2012); 6 Am. Jur. 2d, Attachment and Garnishment § 15 ("As a general rule, an attachment or garnishment is not an original action but is ancillary to the original action seeking judgment."); 1 Am. Jur. 2d, Actions § 2 ("A cause of action is distinguishable from a remedy, which is the means or method by which the cause of action is satisfied."). This is an important distinction.

"Although the substantive rights of the parties to an action are often governed by a foreign law—such as the law of the place where the right was acquired or the liability was incurred—the law of the forum, or the law of the jurisdiction in which relief is sought, controls as to all matters pertaining to remedial rights, as distinguished from substantive rights." 15A C.J.S., Conflict of Laws § 105; see *Davis v. Furlong*, 328 N.W.2d 150, 153 (Minn. 1983) (describing "the almost universal rule that matters of procedure and remedies [are] governed by the law of the forum state"); *Weston v. Jones*, 160 Minn. 32, 35, 199 N.W. 431 (1924) (describing as "fundamental [the] principle that remedies are governed by the law of the forum").

The Higdons concede that Kansas procedural rules for garnishments apply, and further agree that Kansas exemption statutes would apply to determine what types of assets are exempt from attachment. See, e.g., K.S.A. 60-2313(a)(2), (a)(7); K.S.A. 60-2308(a), (b) (exempting assets such as public assistance benefits, life insurance policy proceeds, pension benefits, and retirement plans from attachment in Kansas). This is correct. See *Hunt v. Remsberg*, 83 Kan. 665, 672, 112 P. 590 (1911) (Benson, J., concurring) ("[E]xemption laws are not a part of the contract; they are subject to the laws of the forum. *Chicago, Rock Island, etc., Ry. v. Sturm*, 174 U.S. 710, 17 Sup. Ct. 797, 43 L. Ed. 1144; Freeman on Execution, § 209."). In *Sturm*, the United States Supreme Court rejected the view that "'if a debt is exempt from a judicial process in the state where it is created, the exemption will follow the debt, as an incident thereto, into any other state or jurisdiction into which the debt may be supposed to be carried.'" *Chicago, Rock Island, etc., Ry. v. Sturm*, 174 U.S. 710, 717, 17 S. Ct. 797, 43 L. Ed. 1144 (1899). Rather, it held that "[e]xemption laws are not a part of the contract. They are part of the remedy and subject to the law of the forum. [Citations omitted.]" 174 U.S. at 717; see *Master Finance Co. of Texas*, 47 Kan. App. 2d at 824 ("Pollard failed to allege any exemption recognized under Kansas law."); *Nagel v. Westen*, 865 N.W.2d 325, 340-42 (Minn. App. 2015) (finding district court properly applied Minnesota's exemption law rather than law of Texas, based on general rule that exemptions are determined solely by law of the forum);

Hughes v. Prudential Lines, Inc., 425 Pa. Super. 262, 265, 624 A.2d 1063 (1993) ("It is well established in Pennsylvania that the laws pertaining to procedures and exemptions in attachment and garnishment are governed by the law of the forum state."); *Garrett v. Garrett*, 30 Colo. App. 167, 171, 490 P.2d 313 (1971) ("Colorado follows the general rule that exemption laws have no extraterritorial effect."); *Sherwin-Williams Co. v. Morris*, 25 Tenn. App. 272, 156 S.W.2d 350, 352 (1941) ("Questions of exemptions are to be determined solely by the laws of the forum.").

But the Higdons assert that Kansas exemption laws do not apply here—the substantive Missouri tenancy by entirety law is not an exemption, so the body of law about exemptions is irrelevant. We disagree. The substantive Missouri decisional law has the same effect as a statutory garnishment exemption not recognized in Kansas. The account agreement under Missouri law, by creating a tenancy by the entirety, places the subject funds beyond the reach of a Kansas garnishment, working as a de facto exemption. Yet "[t]he procedure for obtaining an order of garnishment is entirely statutory.'" *Master Finance Co. of Texas*, 47 Kan. App. 2d at 822-23 (citing *LSF Franchise REO I v. Emporia Restaurants, Inc.*, 283 Kan. 13, 19, 152 P.3d 34 [2007]). The Higdons are essentially asking us to add Missouri tenancy by the entirety accounts to the list of proceeds our Legislature exempted from garnishment under Kansas law. That we cannot do.

Kevin relies on *Farmers Exchange Bank v. Metro Contracting Services, Inc.*, 107 S.W.3d 381, 395 (Mo. App. W.D. 2003). There, the Missouri court considered a writ of attachment on a note and whether that note was held as tenants by the entirety or tenants in common. The judgment debtors had acquired their interests in the note, while Kansas residents. The *Farmers Exchange Bank* court explained:

> "[T]he conflict of laws question presented is not a question of what classifications of personal property are subject to attachment and execution, which would be governed by

> the laws of the forum state as a matter or procedure, but a question of how the appellant's interest in the Eaton note is classified. And, thus, because issues of one's rights and duties are substantive issues, as opposed to procedural issues which relate to enforcement of those rights and duties, *Mo. Nat'l Educ. Ass'n v. Mo. State Bd. of Educ.*, 34 S.W.3d 266, 284 (Mo. App. 2000), the issue in our case as to whether the Eaton note proceeds were subject to attachment and execution is not a procedural issue controlled by the laws of the forum state, as the appellant contends, but a substantive issue." 107 S.W.3d at 391.

There, the issue was whether the debtor owned the proceeds of a note by the entireties with another, making them not subject to attachment. The court found that the debtor's interest in the note proceeds was properly classified as a property interest so it applied Missouri's conflict of laws doctrines for property under the Restatement (Second) of Conflict of Laws (1971). Under that law, the domicile state at the time movable personal property was acquired was controlling; thus, the court found that Kansas law would apply in determining the bank's interest in the note. 107 S.W.3d at 393-94. Using that same law, Missouri law would apply here, assuming it was the domicile state for the Higdons when they acquired the movable property placed into their bank account.

But Kansas does not apply the Second Restatement and we are thus not persuaded to follow *Farmers Exchange Bank*. The forum state, Kansas, as a matter of procedure, controls which classifications of property are subject to attachment and execution. See 16 Am. Jur. 2d, Conflict of Laws § 128; 6 Am. Jur. 2d, Attachment and Garnishment § 14; 15A C.J.S., Conflict of Laws § 41; see, e.g., *Nagel*, 865 N.W.2d at 340 ("[T]he law of the forum governs the remedy in a proceeding to attach property in satisfaction of a debt."); *Hughes v. Prudential Lines, Inc.*, 624 A.2d 1063, 1065 (Pa. Super. 1993) ("It is well established in Pennsylvania that the laws pertaining to procedures and exemptions in attachment and garnishment are governed by the law of the forum state.").

The Kansas Supreme Court relies on the First Restatement of Conflict of Laws, not the Second. Under § 434 of the First Restatement of Conflict of Laws, absent certain inapplicable events:

> "[A] valid foreign judgment which imposes a duty to pay money will be enforced by an action if:
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> "(a) it is final (see § 435);
> "(b) it is certain in amount (see § 436);
> "(c) it is unconditional (see § 437);
> "(d) it has not been vacated (see § 438);
> "(e) execution has not been superseded in the state which rendered it."

Neither party disputes that M & I Bank's judgment satisfies these requirements.

Enforcement of foreign judgments is required by the Full Faith and Credit Clause in the United States Constitution and congressional act. The United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State." U.S. Const. art. IV, § 1. The Restatement elaborates:

> "This provision is supplemented by an Act of Congress, which provides that the records and judicial proceedings of a State or Territory 'shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.' These provisions require the enforcement of a judgment of a sister State which, imposes a duty to pay money if the judgment complies with the requirements stated in this Section." Restatement (First) of Conflict of Laws § 434, comment d (1934).

See also *Padron v. Lopez*, 289 Kan. 1089, 1096, 220 P.3d 345 (2009) ("[O]nce a copy of an authenticated judgment from another state is filed with a clerk of the district court, the

foreign judgment 'is then treated as a judgment of [this] state and can be executed upon the same.' 1 Elrod and Buchele, Kansas Law & Practice: Kansas Family Law § 9.71, p. 617 [4th ed. 1999]."). Under K.S.A. 60-3002, a properly filed foreign judgment "has the same effect and is subject to the same procedures, defenses and proceedings as a judgment of a district court of this state and may be enforced or satisfied in like manner."

The district court thus correctly held that Kansas law applied, that the Higdons' account is as a joint tenancy rather than a tenancy by entirety, and that Kevin's half was subject to garnishment. And the district court properly ordered the $388,911.12 garnished from the Equity Bank account to be divided equally between Gretchen and M & I Bank. See *Walnut Valley State Bank*, 223 Kan. 459, Syl. ¶ 2. Finding no error, we affirm the district court's denial of the motion to quash the garnishment and its order of distribution of the garnished funds.

Affirmed.