

Mark Reynolds

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: July 19, 2018

4
5 **NO. A-1-CA-35285**

6 **MAURA SCHMIERER,**

7 **Plaintiff-Appellant,**

8 **v.**

9 **THE TRIBAL TRUST, JIM M. GREEN**
10 **a/k/a BRIGADIER GENERAL JIM M.**
11 **GREEN, LILA GREEN a/k/a BRIGADIER**
12 **GENERAL LILA GREEN, FREE LOVE**
13 **MINISTRIES a/k/a AGGRESSIVE**
14 **CHRISTIANITY MISSION TRAINING**
15 **CORPS., BERNARD BANDARAS a/k/a**
16 **ANDREW EDWARDS, STEVEN**
17 **SCHMIERER a/k/a PHILIP JORDAN,**
18 **and DAVE GANE,**

19 **Defendants-Appellees.**

20 **APPEAL FROM THE DISTRICT COURT OF CIBOLA COUNTY**

21 **Pedro G. Rael, District Judge**

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11 Schmierer, Free Love Ministries

12 and Tribal Trust

1 **OPINION**

2 **BOHNHOFF, Judge.**

3 {1} Plaintiff Maura Schmierer (Schmierer) appeals from the district court's
4 dismissal of her 2004 petition¹ seeking domestication and enforcement of a California
5 state court judgment that she obtained in 1989. Notwithstanding the fact that
6 Schmierer had revived the California judgment in 1999, the district court determined
7 that enforcement of the judgment was time-barred pursuant to NMSA 1978, § 37-1-2
8 (1983), New Mexico's fourteen-year statute of limitations for enforcing judgments.
9 For the reasons discussed below, we hold that the California judgment was not time-
10 barred. We therefore reverse and remand to the district court for further proceedings.

11 **FACTUAL BACKGROUND**

12 {2} This dispute has a lengthy history. According to Schmierer, she and her then-
13 husband, Defendant Steven Schmierer, a/k/a Philip Jordan, became members of
14 Defendant Free Love Ministries, a/k/a Aggressive Christianity Mission Training
15 Corps, sometime in the 1980s. Defendants Jim and Lila Green (the Greens), who are

16 ¹ Schmeierer denominated her pleading as a "petition" as opposed to a
17 complaint, and referred to herself and the adverse parties as "petitioner" and
18 "respondents" as opposed to "plaintiff" and "defendants," respectively. Elsewhere in
19 the record, however, the parties are referred to as "plaintiff" and "defendants." To
20 avoid confusion, we will continue the use of the "plaintiff" and "defendants"
21 terminology.

1 married and are both referred to as "Brigadier Generals," control Free Love
2 Ministries, which Schmierer characterizes as a cult. At some point before 1989,
3 Schmierer fell out of favor with the Greens. Lila Green accused Schmierer of
4 "spiritual adultery," "excommunicated" her, and confined her and two other women
5 to a shed on property the Greens owned in Sacramento, California.

6 {3} Schmierer claims that, after three months of confinement in the shed, she
7 escaped. She subsequently filed suit in the Sacramento County Superior Court in
8 California, claiming false imprisonment. She named as defendants Free Love
9 Ministries, the Greens, Steven Schmierer, and two other Free Love Ministries
10 members, Bernard Bandaras a/k/a Andrew Edwards, and Dave Gane (collectively, the
11 California Defendants). On March 10, 1989, the California court entered a default
12 judgment against the California Defendants in the amount of \$1,020,046.

13 {4} Schmierer claims that, following entry of the California judgment, the
14 California Defendants undertook a series of actions to obstruct her efforts to satisfy
15 the judgment. They first deliberately damaged, to the point of uninhabitability, the
16 Greens' Sacramento property. They then fled to Gridley, California, where the Greens
17 purchased more property. After Schmierer located the California Defendants in
18 Gridley, they fled to Oregon and purchased property under the names of other people
19 and paid for all of the property in cash. Although Schmierer was able to seize the

1 Greens' property in Sacramento and Gridley, the proceeds were not sufficient to
2 satisfy the judgment.

3 {5} Schmierer claims that in 1993, the California Defendants moved to New
4 Mexico, again to frustrate her efforts to satisfy her judgment. In June 1995 they
5 acquired a parcel of property in the vicinity of Fence Lake in Cibola County and titled
6 the parcel in the name of "Confianza Trust." They acquired another, larger parcel in
7 the same vicinity in July 1997 and titled that parcel in the name of "the Tribal Trust,"
8 an entity that they had created earlier that month. On March 22, 2004, after Schmierer
9 had tracked the California Defendants to New Mexico and discovered the Fence Lake
10 real estate transactions, she filed the present suit in the Thirteenth Judicial District
11 Court in Cibola County, naming as defendants the California Defendants as well as
12 the Tribal Trust. The following month, Cassandra M. Cuaron, as trustee of the
13 Confianza Trust, conveyed the first parcel to "River of Life Trust," and the Greens,
14 as trustees of the Tribal Trust, conveyed the second parcel to "Cheptsi-Bah Trust."

15 **PROCEDURAL BACKGROUND**

16 {6} A California statute, Cal. Civ. Proc. Code § 683.020 (West 1982), establishes
17 a ten-year limit for enforcing judgments. However, Cal. Civ. Proc. Code §§ 683.110
18 to .150 (West 1982, as amended through 2013) permit and establish a procedure for
19 "extend[ing] by renewal" a judgment for another ten years. Under California law, the

1 renewal “does not create a new judgment or modify the present judgment, but merely
2 extends the enforceability of the judgment—in effect, it resets the [ten]-year
3 enforcement clock.” *OCM Principal Opportunities Fund v. CIBC World Mkts. Corp.*,
4 85 Cal. Rptr. 3d 350, 353 (Ct. App. 2008) (internal quotation marks and citation
5 omitted).

6 {7} Schmierer had renewed her California judgment on March 9, 1999, extending
7 its enforceability for ten years. As renewed, and after accounting for the amounts
8 recovered in partial satisfaction of the judgment as well as accrued interest, the
9 amount of the judgment was \$1,580,198.26. Thus, Schmeirer could have enforced her
10 judgment in California at any time through March 9, 2009.

11 {8} Schmierer’s 2004 New Mexico petition contained two counts. In Count I, she
12 sought to domesticate the 1989 California judgment, that is, she requested that “full
13 faith and credit [be given] to the judgment pursuant to the laws of the United States
14 of America.” In Count II, Schmierer sought to enforce the judgment. She alleged that
15 the California Defendants had fraudulently transferred their assets in violation of the
16 Uniform Fraudulent Transfer Act, n/k/a the Uniform Voidable Transactions Act
17 (UVTA), NMSA 1978, §§ 56-10-14 to -29 (1989, as amended through 2015), and that
18 the assets had been transferred to entities, including the Tribal Trust, that were the

1 California Defendants' alter egos. She asked that the district court impose a
2 constructive trust on those assets, among other relief.

3 {9} Following service of process on Defendants, Lila Green filed a pro se response
4 to summons that asserted, among other points, that the California judgment was stale
5 under New Mexico law. None of the other Defendants filed any documents that might
6 be characterized as an answer to Schmierer's petition. However, between 2004 and
7 2007, the Greens, Edwards, and the Tribal Trust filed several motions to dismiss,
8 generally arguing that enforcement of Schmierer's judgment was barred by Section
9 37-1-2. Schmierer, in turn, moved for judgment on the pleadings, arguing that her
10 renewed judgment was not untimely and was entitled to be given full faith and credit;
11 Schmierer sought judgment on both counts of her petition. By orders entered on July
12 28, 2004, and April 17, 2007, the district court denied Defendants' motions, granted
13 judgment on Count I of Schmierer's petition, but denied her motion as it related to
14 Count II.

15 {10} Beginning in 2004, Schmierer also sought to take the depositions of the Greens
16 and inspect the Fence Lake properties. Following the Greens' failure to appear for
17 their depositions and Defendants' refusal to permit the inspection of the properties,
18 on December 6, 2006, the district court granted Schmierer's motion to compel the

1 requested discovery. The record reflects, however, that the Greens apparently
2 continued to refuse to appear for depositions and permit inspection of the properties.²

3 {11} The district court held a one-day bench trial on February 1, 2012. None of the
4 individual defendants appeared, although they were represented by counsel.
5 Schmierer presented four witnesses. Schmierer along with Julie Gudino, another
6 former member of Free Love Ministries, and Schmierer's son, Nathan Schmierer, also
7 a former member, essentially corroborated Schmierer's allegations about her
8 experience as a member of Free Love Ministries and Defendants' actions to obstruct
9 collection of the 1989 judgment. Donald Sanchez, an employee of a local title
10 company, testified about the 1997 acquisition of the Fence Lake parcel that was titled
11 in the name of the Tribal Trust. Schmierer testified about her efforts to collect on the
12 judgment in California and Oregon.

13 {12} The district court entered findings of fact and conclusions of law on December
14 30, 2014. The court determined that the 1999 renewal of the 1989 judgment
15 "renew[ed] the effectiveness of the California [j]udgment for an additional period and
16 did not create a new judgment at the time." As a result, "[t]he California judgment is
17 time-barred and is not properly subject to domestication in New Mexico. New

18 ²The record reflects no activity between early 2007 and early 2011. On March
19 9, 2011, the district court dismissed the case for lack of prosecution but then
20 reinstated it on Schmierer's motion.

1 Mexico's fourteen[-]year statute for enforcement of a judgment runs from the date of
2 the California judgment in 1989." Thus, the court effectively reversed its earlier grant
3 of judgment on Count I of the petition. Notwithstanding the dismissal on statute of
4 limitations grounds, the district court nevertheless also made findings that relate to
5 Schmierer's request in Count II of her petition to enforce the judgment. First, the
6 court found that the acquisition of the second Fence Lake property in the name of the
7 Tribal Trust "was accomplished as the alter ego of Jim Green and Lila Green."
8 Second, "Confianza Trust and Cheptsi-Bah Trust have not been joined as defendants
9 and the [c]ourt is without jurisdiction to set aside those transfers." On December 3,
10 2015, the district court entered its judgment, dismissing Schmierer's petition.
11 Schmierer's appeal followed. Defendants have not cross-appealed.

12 **DISCUSSION**

13 {13} On appeal, Schmierer advances the same arguments she made below in rebuttal
14 to Defendants' statute of limitations defense: (1) the court erred in not entering a
15 default judgment against Defendants, or alternatively barring them from asserting the
16 statute of limitations defense, as a sanction for violating their discovery obligations
17 and the court's order compelling discovery; (2) the court erred in not determining that
18 the limitations period was equitably tolled based on Defendants' actions to conceal
19 their assets and otherwise obstruct Schmierer's efforts to satisfy her judgment; (3) the

1 court erred in failing to give full faith and credit to the 1999 renewal of the 1989
2 judgment and, consistent with such action, determine that the 2004 petition was
3 timely under Section 37-1-2. Schmierer also urges that the district court erred in not
4 disregarding Defendants' transfers of real property to fictitious trusts or alternatively
5 voiding the transfers pursuant to the UVTA, and otherwise permitting her to execute
6 her judgment against those assets. Because we conclude that Section 37-1-2 did not
7 bar enforcement of the 1999 renewed judgment, it is unnecessary to address
8 Schmeierer's other arguments pertaining to the statute of limitations affirmative
9 defense or whether Schmeierer preserved her argument that the district court erred in
10 not entering a default judgment against the Defendants for failure to answer and
11 appear for trial.

12 {14} "In cases where the facts relevant to a statute of limitation issue are not in
13 dispute," we review de novo whether the district court correctly applied the law to the
14 facts. *See N.M. Pub. Schs. Ins. Auth. v. Arthur J. Gallagher & Co.*, 2008-NMSC-067,
15 ¶ 12, 145 N.M. 316, 198 P.3d 342; *State v. Kerby*, 2007-NMSC-014, ¶ 11, 141 N.M.
16 413, 156 P.3d 704.

17 {15} Schmeierer's claim against the Defendants involves a request for a New Mexico
18 court to recognize and enforce a California judgment. We therefore look to Article
19 IV, Section 1 of the United States Constitution, commonly known as the Full Faith

1 and Credit Clause, which provides that “Full Faith and Credit shall be given in each
2 State to the . . . judicial Proceedings of every other State.” The clause generally
3 requires that:

4 the judgment of a [s]tate court which had jurisdiction of the parties and
5 the subject-matter in suit, shall be given in the courts of every other
6 [s]tate the same credit, validity and effect which it has in the [s]tate
7 where it was rendered, and be equally conclusive upon the merits; and
8 that only such defenses as would be good to a suit thereon in that [s]tate
9 can be relied on in the courts of any other [s]tate.

10 *Roche v. McDonald*, 275 U.S. 449, 451-52 (1928); *see also Willis v. Willis*, 1986-
11 NMSC-035, ¶ 6, 104 N.M. 233, 719 P.2d 811 (stating that in the absence of a basis
12 for concluding that a foreign judgment is void or not entitled to enforcement in the
13 state in which it is rendered, New Mexico courts must give the judgment full faith and
14 credit).

15 {16} The first step in our full faith and credit analysis is to consider whether
16 application of New Mexico law would bar Schmeirer’s enforcement action. If it
17 would, then, given that California courts have enforced the judgment in that state’s
18 courts in 2004, the second step is to address whether full faith and credit requires a
19 New Mexico court to recognize the judgment notwithstanding the New Mexico law
20 that otherwise would prohibit enforcement.

21 **A. Section 37-1-2**

22 Section 37-1-2 provides:

1 Actions founded upon any judgment of any court of the state may
2 be brought within fourteen years from the date of the judgment, and not
3 afterward. Actions founded upon any judgment of any court of record
4 of any other state or territory of the United States, or of the federal
5 courts, may be brought within the applicable period of limitation within
6 that jurisdiction, *not to exceed fourteen years from the date of the*
7 *judgment*, and not afterward.

8 (Emphasis added.)

9 {17} *Fischhoff v. Tometich*, 1991-NMCA-144, 113 N.M. 271, 824 P.2d 1073,
10 involved revival of a New Mexico judgment. There, the plaintiff obtained a money
11 judgment against the defendant in 1980. Section 37-1-2 had been amended in 1983
12 to extend the limitations period from seven to fourteen years. In 1989, the judgment
13 creditor had obtained a writ of execution from the district court pursuant to NMSA
14 1978, Section 39-1-20, which authorizes execution on a judgment “at any
15 time . . . within seven years after rendition or revival of a judgment.” Our Court
16 reversed. We held that the proceeding whereby the judgment creditor had obtained
17 the writ of execution was not an action founded upon a judgment that was governed
18 by Section 37-1-2, and therefore Section 37-1-20 permitted a judgment creditor to
19 obtain a writ of execution only within seven years after entry of judgment unless the
20 judgment was revived. *Fischhoff*, 1991-NMCA-144, ¶¶ 8-9, 11. However, we also
21 noted that the judgment creditor was free to file a common law action to revive the
22 judgment, which would be governed by Section 37-1-2, within that statute’s fourteen-

1 year limitation period and, following revival, execution could be pursued for another
2 seven years. *Fischhoff*, 1991-NMCA-144, ¶¶ 4, 11, 15, 17.

3 {18} *Walter E. Heller Western, Inc. v. Ditto*, 1998-NMCA-068, 125 N.M. 226, 959
4 P.2d 560, involved a foreign (federal) judgment but not revival. There, the plaintiff
5 had obtained a money judgment against the defendant in federal bankruptcy court on
6 August 18, 1982. On August 13, 1996, the plaintiff filed an action in state district
7 court to revive the judgment. *Id.* ¶ 1. Significantly, the plaintiff did not ask the court
8 to first domesticate the judgment, i.e., convert the judgment into a New Mexico
9 judgment, and instead sought only to “revive[] the bankruptcy court judgment so that
10 it could file a subsequent lawsuit on the revived judgment in the county and state of
11 [Defendant]’s residence to execute on the revived judgment.” *Id.* ¶ 7 (internal
12 quotation marks omitted).

13 {19} We held that the plaintiff “omitted an essential step.” *Id.* ¶ 8. “To enforce a
14 foreign judgment in New Mexico, a judgment creditor must first domesticate the
15 judgment in a New Mexico district court. *Id.* ¶ 4 (citing *Galef v. Buena Vista Dairy*,
16 1994-NMCA-068, ¶¶ 1-7, 117 N.M. 701, 875 P.2d 1132). “[W]hen a foreign
17 judgment is domesticated in a district court in New Mexico, that court has jurisdiction
18 to address and resolve issues concerning the judgment, including revival.” *Heller*
19 *Western, Inc.*, 1998-NMCA-068, ¶ 5. A foreign judgment may be domesticated by
20 complying with the filing requirements of the Foreign Judgments Act, NMSA 1978,

1 §§ 39-4A-1 to -6, or by bringing a common law action to enforce the judgment.
2 *Heller Western, Inc.*, 1998-NMCA-068, ¶ 4. If the judgment creditor pursued the
3 latter course of action, he would have to file an action to both domesticate and revive
4 the bankruptcy court judgment within Section 37-1-2's fourteen-year limitations
5 period:

6 Section 37-1-2 sets the period to revive a New Mexico court judgment
7 at fourteen years from the date of the judgment. It also limits actions to
8 revive judgments of courts of record of other states, United States
9 Territories, and federal courts to the applicable period of limitation
10 within the jurisdiction of the court originating the judgments *so long as*
11 *that period does not exceed fourteen years from the date of the*
12 *judgment.*

13 *Heller Western, Inc.*, 1998-NMCA-068, ¶ 6 (emphasis added).

14 {20} As construed by *Fischhoff* and *Walter E. Heller Western, Inc.*, Section 37-1-2
15 would bar Schmeirer's New Mexico action. The language emphasized above suggests
16 that if under the laws of a sister state revival resulted in a new judgment, that new
17 judgment could be domesticated in New Mexico within fourteen years of the revival
18 date. However, revival under California law resulted only in an extension—beyond
19 fourteen years—of California's limitations period applicable to enforcing a judgment.
20 Therefore, unless full faith and credit mandates a different result given that Schmeirer
21 could have enforced her 1989 judgment in a California court in 2004, *Walter E.*
22 *Heller Western, Inc.* would require that Schmeirer's New Mexico action be brought
23 by no later than 2003.

1 **B. Application of Full Faith and Credit to Revived Judgments**

2 {21} Notwithstanding *Roche v. McDonald*'s facially broad articulation of the scope
3 of full faith and credit set forth above, the clause "does not compel 'a state to
4 substitute the statutes of other states for its own statutes dealing with a subject matter
5 concerning which it is competent to legislate.'" *Sun Oil Co. v. Wortman*, 486 U.S.
6 717, 722 (1988) (quoting *Pac. Emp'rs Ins. Co. v. Indus. Accident Comm'n*, 306 U.S.
7 493, 501 (1939)). In particular, a state may apply its own procedural rules, including
8 statutes of limitations, to actions litigated in its courts without running afoul of the
9 Full Faith and Credit Clause. *See Sun Oil Co.* at 722-29; *McElmoyle ex rel. Bailey v.*
10 *Cohen*, 38 U.S. 312, 327-28 (1839) (holding that a Georgia statute of limitations
11 could be asserted as a defense to a suit filed in that state to enforce a judgment
12 rendered in South Carolina and stating that "the effect intended to be given under our
13 Constitution to judgments, is, that they are conclusive only as regards the merits; the
14 common law principle then applies to suits upon them, that they must be brought
15 within the period prescribed by the local law, the *lex fori*, or the suit will be barred");
16 *Potomac Leasing Co. v. Dasco Tech. Corp.*, 2000 UT 73, ¶9, 10 P.3d 972 (explaining
17 that because statutes of limitations are procedural, the application of the Utah statute
18 of limitations to the enforcement of a foreign judgment does not offend the Full Faith
19 and Credit Clause, even though the judgment would have been enforceable in the
20 rendering state); *In re Marriage of Ulm*, 693 P.2d 181, 183 (Wash. Ct. App. 1984)

1 (same). The question therefore is whether California's authorization for the period of
2 enforceability of its courts' judgments to be extended past fourteen years is properly
3 characterized as procedural or substantive policy.

4 {22} Two United States Supreme Court decisions provide guidance. In *Union*
5 *National Bank v. Lamb*, 337 U.S. 38 (1949), the plaintiff obtained a judgment in a
6 Colorado state court in 1927 and then revived it in that state in 1945. *Id.* at 39.
7 Missouri law limited the life of judgments to ten years after their original rendition
8 or ten years after their revival, and did not allow judgments to be revived after ten
9 years from their rendition. *Id.* Reasoning that the full faith and credit clause did not
10 bar application of the forum state's law governing the limitation of actions, the
11 Missouri Supreme Court concluded that it was not obligated to recognize "Colorado's
12 more lenient policy as respects revival of judgments." *Id.* It therefore refused to
13 enforce the judgment because, under Missouri law, the original judgment could not
14 have been revived after 1937. *Id.* at 39-40.

15 {23} The United States Supreme Court observed that a forum state cannot "defeat
16 the foreign judgment because it was obtained by a procedure hostile to or inconsistent
17 with that of the forum." *Id.* at 42.

18 Any other result would defeat the aim of the Full Faith and Credit
19 Clause It is when a clash of policies between two states emerges
20 that the need of the Clause is the greatest. It and the statute which
21 implements it are indeed designed to resolve such controversies. There
22 is no room for an exception . . . , where the clash of policies relates to

1 revived judgments rather than to the nature of the underlying claim
2 It is the judgment that must be given full faith and credit. In neither case
3 can its integrity be impaired, save for attacks on the jurisdiction of the
4 court that rendered it.

5 Cases of statute of limitations against a cause of action on a judgment
6 involve different considerations[.]

7 *Id.* at 42-43 (citations and footnote omitted). The Court thus effectively distinguished
8 between enforcement of a forum state's statute of limitations governing judgments
9 and its statutes for reviving a judgment. The former are procedural and can be applied
10 to enforcement of the judgment of a sister state, while the latter, which reflect
11 substantive *policy*, cannot. Because the Missouri Supreme Court had applied its
12 revival laws instead of those of Colorado, the United States Supreme Court reversed.

13 *Id.* at 43-45.

14 {24} In doing so, however, the Court noted that the parties had raised the question
15 whether under Colorado law "the 1945 [revived] Colorado judgment is not a new
16 judgment and . . . the revivor did no more than to extend the statutory period in which
17 to enforce the old judgment." *Id.* at 43. The Court declined to resolve the issue,
18 determining instead that it could be addressed on remand. *Id.* at 44. However, the
19 Court observed that the Missouri court's holding that "*whatever the effect of revivor*
20 *under Colorado law*, the Colorado judgment was not entitled to full faith and credit
21 in Missouri . . . cannot stand if . . . the Colorado judgment had the force and effect of
22 a new one." *Id.* at 44-45 (emphasis added). This statement would suggest that

1 enforcement of a revived foreign judgment that is otherwise barred by the forum
2 state's statute of limitations may depend on whether the revival results in a new as
3 opposed to a merely extended judgment under the law of the rendering state.

4 {25} In *Watkins v. Conway*, 385 U.S. 188 (1966) (per curiam), the plaintiff had
5 obtained a money judgment against the defendant in Florida state court in 1955. Five
6 years and one day later, the plaintiff brought suit in Georgia state court to enforce the
7 Florida judgment. *Id.* at 188. At that time, Georgia's statutes of limitations for
8 judgments required that suits on a foreign judgment must be brought within five
9 years, *see id.* at 189-90 (citing Ga. Code Ann. § 3-701 (1855-56) (current version at
10 Ga. Code Ann. § 9-3-20 (1997))), but established a longer limitations period for
11 enforcing domestic judgments. *Watkins*, 385 U.S. at 188-89. The Georgia court
12 dismissed the plaintiff's petition as untimely. On appeal to the United States Supreme
13 Court, the plaintiff argued that Georgia's different limitations periods for domestic
14 and foreign judgments violated the Constitution's Full Faith and Credit Clause.

15 {26} The Court disagreed. It pointed out that, as construed by the Georgia courts,
16 the Georgia statute of limitations for foreign judgments

17 bars suits on foreign judgments *only if the plaintiff cannot revive his*
18 *judgment in the state where it was originally obtained.* For the relevant
19 date in applying § 3-701 is not the date of the original judgment, but
20 rather it is the date of the latest revival of the judgment. In the case at
21 bar, for example, *all appellant need do is return to Florida and revive*
22 *his judgment.* He can then come back to Georgia within five years and
23 file suit free of the limitations of § 3-701.

1 *Watkins*, 385 U.S. at 189-90 (emphases added) (citations omitted). So construed,
2 Georgia's statute did not discriminate against the Florida judgment. Instead,
3 it has focused on the law of [Florida]. If Florida had a statute of
4 limitations of five years or less on its own judgments, the appellant
5 would not be able to recover here. But this disability would flow from
6 the conclusion of the Florida Legislature that suits on Florida judgments
7 should be barred after that period. Georgia's construction of § 3-701
8 would merely honor and give effect to that conclusion. Thus full faith
9 and credit is insured, rather than denied, the law of the judgment [s]tate.

10 *Watkins*, 385 U.S. at 190-91 (footnotes omitted). *Watkins* thus suggests that the
11 question is simply whether the enforceability of the judgment is effectively extended
12 in the rendering state, and not whether the revival results in a new judgment.

13 {27} Legal commentators have disagreed on what lessons can be drawn from *Union*
14 *National Bank* and *Watkins*. Restatement (Second) of Conflicts of Laws § 118 cmt. c
15 (Am. Law Inst. 1971), focuses on the comment in *Union Nat'l Bank* about whether
16 a renewed judgment has the effect of a new or an extended judgment:

17 If under the local law of the [s]tate of rendition the effect of this revival
18 is to create a new judgment, then suit on this judgment may not be held
19 barred under full faith and credit in the sister [s]tate. The contrary will
20 be true, however, if the effect of the revival in the [s]tate of rendition is
21 not to create a new judgment but rather to prolong the effective life of
22 the original judgment.

23 A contrary view is articulated in Peter Hay, Patrick J. Borchers & Symeon C.
24 Symeonides, Conflict of Laws § 24.32, at 1487 (5th ed. 2010), which focuses on the
25 language emphasized above in *Watkins*:

1 Some uncertainty exists whether revival of the original judgment in the
2 state of rendition will serve to overcome the recognizing forum's shorter
3 limitation on the original judgment, assuming that the revived judgment
4 itself is not barred by the limitation. One view [citing the foregoing
5 *Restatement* comment] distinguishes between revival prolonging the
6 original judgment and revival having the effect of creating a new
7 judgment[.] . . . However, the implication in the U.S. Supreme Court's
8 decision in *Watkins* . . . is that any revival of a judgment is entitled to
9 full faith and credit.

10 Hay, *supra*, § 24.32, at 1487 (footnotes omitted).

11 {28} Courts in other jurisdictions that have considered the question note this debate.
12 A majority, however, favor the latter approach. In *Huff v. Pharr*, 748 F.2d 1553 (11th
13 Cir. 1984) (per curiam), the plaintiff had obtained a judgment against the defendant
14 in California state court in 1972. *Id.* at 1554. In 1982 the plaintiff renewed the
15 judgment under California law. *Id.* He then successfully brought suit in federal court
16 in Florida to enforce the renewed judgment. On appeal, the Eleventh Circuit rejected
17 the defendant's argument that the plaintiff could not "evade" Florida's ten-year
18 statute of limitations for domesticating a foreign judgment by renewing his California
19 judgment: "The *Watkins* Court noted that all the plaintiff needed to do was return to
20 the state which entered the original judgment, revive his judgment, and then
21 domesticate the new judgment with the five-year statutory period. This is exactly
22 what the plaintiff in [Hay] has done." *Huff*, 748 F.2d at 1554.

23 {29} In *Durham v. Arkansas Department of Human Services*, 912 S.W.2d 412, 413
24 (Ark. 1995), the plaintiff's ex-wife had obtained a judgment for child support against

1 the plaintiff in Illinois state court in 1975. The judgment was revived under Illinois
2 law in 1992, following which the Arkansas state agency brought proceedings to
3 enforce the judgment against the plaintiff in that state's courts. *Id.* On appeal, a
4 majority of the Arkansas Supreme Court concluded that Arkansas' ten-year statute
5 of limitations for reviving and enforcing judgments did not bar the claim, *id.* at 414-
6 15, notwithstanding the dissent's observation that under Illinois law a revival of a
7 judgment does not create a new judgment but is "merely a continuation of that being
8 revived." *Id.* at 415 (Roaf, J., dissenting) (internal quotation marks and citation
9 omitted).

10 {30} In *Jensen v. Fhima*, 731 N.W.2d 876 (Minn. Ct. App. 2007), the plaintiff had
11 obtained a judgment against the defendant in California state court in 1994. *Id.* at 877.
12 The plaintiff renewed the judgment under California law in 1999 and again in 2005.
13 In 2006, plaintiff sought to enforce the judgment in Minnesota state court. *Id.*
14 Without differentiating between revival that results in a new judgment as opposed to
15 an extended judgment, the Minnesota court held that "a renewed or revived judgment
16 is entitled to full faith and credit[,]", and therefore Minnesota's ten-year statute of
17 limitations for enforcing judgments did not bar the plaintiff's claim. *Id.* at 881. "To
18 conclude otherwise would be inconsistent and against the orderly enforcement of
19 judgments." *Id.*

1 {31} In contrast, in *Tillinghast v. Tillinghast*, 285 F. Supp. 418 (W.D. Tex. 1968),
2 the plaintiff had sought to enforce a 1943 decree that was entered in her California
3 divorce proceeding. *Id.* at 418-19. In 1965 she obtained an order from the California
4 court that execution issue on the 1943 decree. She then brought suit in federal district
5 court in Texas to enforce the 1965 order. *Id.* at 419. Without addressing *Watkins*, the
6 federal court noted that, under *Union National Bank*, “where a judgment has been
7 revived by a decision which, under the law of the state rendering it, is a new
8 judgment, and does not merely extend the statutory period in which to enforce the old
9 judgment, the judgment of revival is entitled to recognition in any other state under
10 the [F]ull [F]aith and [C]redit [C]lause.” *Tillinghast*, 285 F. Supp. at 419. The court
11 determined, however, that the 1965 order “simply extended the statutory period for
12 the enforcement of the judgment which had been entered in 1943, and did not
13 constitute a new judgment entitled to recognition in this state under the [F]ull [F]aith
14 and [C]redit [C]lause.” *Id.* at 420. On this basis, the Court dismissed the enforcement
15 proceeding.

16 {32} We resolve this disagreement consistent with the approach taken by the
17 Eleventh Circuit, the Arkansas Supreme Court, and the Minnesota Court of Appeals.
18 *Watkins* is best understood to teach that, while forum states may apply their own
19 statutes of limitations for the enforcement of judgments, they must treat foreign
20 judgments that are revived in the rendering state in the same manner as the rendering

1 state would treat the revived judgment. Further, *Watkins* does not differentiate
2 between revival procedures that result in new judgments versus those that result in
3 merely extended judgments: “all appellant need do is return to Florida and revive his
4 judgment.” *Watkins* 385 U.S. at 189-190. Thus, if the rendering state will enforce a
5 judgment that has been revived under that state’s laws, then the forum state must do
6 the same.

7 **C. The District Court Erred in Concluding That Schmierer’s 2004 New**
8 **Mexico Action Was Time-Barred**

9 {33} Schmierer’s 1989 judgment was renewed in California in 1999 for a period of
10 ten years. As stated above, under California law the renewal did not “create a new
11 judgment or modify the present judgment, but merely extends the enforceability of
12 the judgment—in effect, it resets the [ten]-year enforcement clock.” *OCM Principal*
13 *Opportunities Fund*, 85 Cal. Rptr. 3d at 353 (Ct. App. 2008) (internal quotation marks
14 and citation omitted). Thus, the judgment remained subject to enforcement in the
15 courts of California. To paraphrase *Watkins*, Schmierer accomplished “all she needed
16 to do” to revive the enforceability of her judgment under California law. Therefore,
17 under the Full Faith and Credit Clause her judgment was entitled to enforcement in
18 New Mexico as well. To comply with the constitutional requirement, the “date of the
19 judgment” as that term is used in the last sentence of Section 37-1-2 must be
20 construed to be 1999, not 1989. Schmierer thus had until 2009, the deadline under

1 California law, to bring an action in New Mexico to enforce her judgment. Therefore,
2 the district court erred in dismissing Schmierer's 2004 petition on the grounds that
3 it was barred by Section 37-1-2.

4 {34} Defendants argue that *Watkins* is distinguishable, because it considered a five-
5 year statute of limitations as opposed to New Mexico's "generous" fourteen-year
6 statute. But nowhere in the opinion is the suggestion made that the analysis hinges
7 on the relative length of the forum state's limitation period for enforcing foreign
8 judgments. Rather, the focus was on giving full faith and credit, that is, upholding,
9 the rendering state's policy decision that underlies its revival statutes. If California
10 permits its judgments upon revival or renewal to be enforced for an additional period
11 of time, then New Mexico must respect that policy and allow the renewed judgment
12 to be enforced within New Mexico's limitation period for enforcing foreign
13 judgments.

14 {35} Defendants also argue that, because Section 37-1-2 does not discriminate
15 between New Mexico and foreign judgments, and instead establishes a fourteen-year
16 limitations period for both, it should be applied as written. Defendants again miss the
17 point of *Watkins*, that for purposes of applying statutes of limitations for the
18 enforcement of judgments, the effective date of a revived judgment is the date of the
19 revival as opposed to the original date of the judgment.

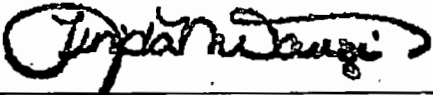
1 **CONCLUSION**

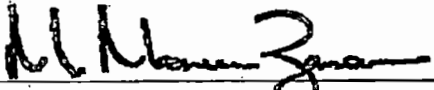
2 (36) We reverse the district court's determination that Schmeirer's petition to
3 domesticate her foreign judgment was untimely and that it lacked jurisdiction to set
4 aside the transfers of property to Confianza Trust and Cheptsi-Bah Trust. We
5 therefore remand this matter to the district court on Schmeirer's claim for
6 enforcement of the California judgment to be decided on the merits.

7 (37) **IT IS SO ORDERED.**

8 
9 _____
HENRY M. BOHNHOFF, Judge

10 **WE CONCUR:**

11 
12 _____
LINDA M. VANZI, Chief Judge

13 
14 _____
M. MONICA ZAMORA, Judge