

DEWITT BARBER - 5.30.060000001 JUDGMENT

O'Connor v. Midwest Pipe Fabricators Inc., 198 F. Supp. 2d 1275 (2002).

In matters of aiding execution of judgments, the Federal Rules of Civil Procedure defer to the laws of the state in which the federal district court sits. Fed. R. Civ. P. 69(a).

Revival of a dormant judgment is governed by Kan. Stat. Ann. § 60-2404. The statute provides that a dormant judgment may be revived if the holder of the judgment files a motion for revival within two years after the date on which the judgment became dormant. Kan. Stat. Ann. § 60-2404. According to Kan. Stat. Ann. § 60-2403, a judgment becomes dormant five years from the date of the last renewal affidavit filing or five years from the date of the last execution proceedings undertaken on the judgment. When a judgment remains dormant for two years, the judgment is released and may not be revived. Kan. Stat. Ann. § 60-2403.

See Kan. Stat. Ann. § 60-2403(a)(1).

Under Kan. Stat. Ann. §§ 60-2404, 60-2403, a party may, by the issuance of an execution every five years, keep a judgment alive indefinitely. The judgment remains in force without execution for five years, and the plaintiff may **revive** it at any time within two years if it has become dormant thereafter, so that a plaintiff may neglect his judgment for seven years, making a day, and then **revive** it and put it in force for five years more.

60-2403. Judgment, when dormant; release of record.

(a) (1) Except as provided in subsection (d), if a renewal affidavit is not filed or if execution, including any garnishment proceeding, support enforcement proceeding or proceeding in aid of execution, is not issued, within five years from the date of the entry of any judgment in any court of record in this state, including judgments in favor of the state or any municipality in the state, or within five years from the date of any order reviving the judgment or, if five years have intervened between the date of the last renewal affidavit filed or execution proceedings undertaken on the judgment and the time of filing another renewal affidavit or undertaking execution proceedings on it, the judgment, including court costs and fees therein shall become dormant, and shall cease to operate as a lien on the real estate of the judgment debtor. Except as provided in subsection (b), when a judgment becomes and remains dormant for a period of two years, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so.

(2) A "renewal affidavit" is a statement under oath, signed by the judgment creditor or the judgment creditor's attorney, filed in the proceedings in which the judgment was entered and stating the remaining balance due and unpaid on the judgment.

(3) A "support enforcement proceeding" means any civil proceeding to enforce any judgment for payment of child support or maintenance and includes, but is not limited to, any income withholding proceeding under the income withholding act, K.S.A. 23-4,101 through 23-4,115 and amendments thereto, or the interstate income withholding act, K.S.A. 23-4,121 through 23-4,127 and amendments thereto, any contempt proceeding and any civil proceeding under the revised uniform reciprocal enforcement of support act (1968), K.S.A. 23-457 et seq. and amendments thereto.

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