

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Duane J. Tillimon

Court of Appeals No. L-11-1094

Appellant

Trial Court No. CVH-10-15311

v.

John Harris, et al.

DECISION AND JUDGMENT

Appellees

Decided: March 30, 2012

* * * * *

Duane J. Tillimon, pro se.

David R. Mayo and Kristen M. Cady, for appellees Comdata
Network, Inc. and Sharlean Graybill.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Plaintiff-appellant, Duane J. Tillimon, appeals the March 24, 2011 judgment of the Toledo Municipal Court affirming the magistrate’s January 4, 2011 decision finding that defendant-appellee, Comdata Network, Inc. (“Comdata”), was not in

contempt of court for its delay in responding to appellant's garnishment order. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} The relevant and largely undisputed facts of this case are as follows. On April 14, 2008, appellant obtained a judgment against appellee, John Harris, for \$28,648.26 plus interest at the rate of 12 percent per annum. Comdata is an electronic funds processing company serving the trucking industry. Harris, a driver for Crete Carrier Corporation, had the use of two debit card accounts with Comdata.

{¶ 3} On August 17, 2010, the action was transferred from the Lucas County Court of Common Pleas to Toledo Municipal Court. Appellant then issued a garnishment order naming Comdata as garnishee. The order listed Harris' name, address, last four digits of his social security number as well as the last four digits of each Comdata account. The order was served on September 9, 2010. On September 24, Comdata answered the order requesting the full account numbers and Harris' employer's name and address in order to "perform a search." Appellant complied with the request on the same day and further requested that Comdata be liable for any monies released to Harris after September 9.

{¶ 4} On October 14, 2010, appellant filed a motion to show cause as to why Comdata should not be held in contempt for failing to respond to the garnishment order. Appellant also filed notices to conduct an examination of Harris and Comdata's representative, Sharlean Graybill, at the December 17, 2010 hearing the court ordered on

the contempt motion. Appellant also requested that Comdata bring its file on John Harris, including all 2010 monthly statements.

{¶ 5} On October 25, 2010, Comdata responded to the order and submitted \$379 to the court. Comdata indicated that Harris had cancelled his accounts with Comdata and that no further funds would be delivered. Thereafter, Comdata responded to the contempt motion arguing that their response was delayed because Crete Trucking, and not Harris, was their actual customer and they needed the additional information to locate him. Comdata stated that they responded to the order “as soon as was practicable.” Regarding the examination notice of Graybill, Comdata argued that because their principal place of business is in Tennessee, their representative should not be required to travel to Ohio. Further, that the relevant statute, R.C. 2716.21(E), provides that Graybill may be examined where the garnishee resides. Comdata’s attorney appeared at the December 17, 2011 hearing and no testimony was presented.

{¶ 6} On January 4, 2011, the magistrate issued her findings of fact and conclusions of law. The magistrate found that Comdata was a proper party to the garnishment proceeding and was properly served. The magistrate also agreed that appellant was entitled to examine Graybill to investigate his claim of bad faith. The magistrate then noted that R.C. 2716.21(E)’s provision that a garnishee examination “may” be “conducted in the county in which the garnishee resides” is “indeterminate” as to whether Comdata could be compelled to appear at the December 17 hearing. The magistrate then determined that due to Comdata’s minimum contacts with Ohio, it would

be inequitable to compel Graybill to testify in Toledo. The court concluded that appellant failed to demonstrate contempt or bad faith on the part of Comdata.

{¶ 7} Thereafter, appellant filed objections to the magistrate's decision. Appellant argued that the magistrate improperly placed the burden on him to show why Comdata was in contempt of the garnishment order. Appellant also disputed the magistrate's finding that Comdata had only "minimum contacts" with Ohio and could not be compelled to come to Ohio and testify.

{¶ 8} On March 24, 2011, the trial court denied appellant's objections. The court found that appellant was not entitled to an examination of Comdata or Graybill under R.C. 2716.21(F), because a merely unsatisfactory answer does not entitle a judgment creditor to a hearing. After the court denied appellant's motion for relief from judgment he commenced the instant appeal.

{¶ 9} Appellant, pro se, raises the following assignment of error for our review:

The trial court committed reversible error by not finding Comdata Network, Inc. in contempt of the garnishment order and by not ordering Comdata Network, Inc. to produce account records of John Harris that would have proved the amount of money in Harris' two debit card accounts with Comdata Network, Inc.

{¶ 10} We note that a trial court's contempt finding is reviewed pursuant to an abuse of discretion standard. *First Bank of Marietta v. Mascrete, Inc.*, 125 Ohio App.3d 257, 263, 708 N.E.2d 262 (4th Dist.1998). An abuse of discretion requires that the

court's conduct be arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 11} Appellant raises multiple arguments in support of his sole assignment of error. We will examine them in the order presented in appellant's merit brief. Appellant first contends that the court erroneously shifted the burden on him to prove Comdata's contempt. Appellant argues that a finding of bad faith is not required to establish civil contempt.

{¶ 12} R.C. 2716.21(F)(2) provides that "[a] garnishee who acts, or attempts to act, in accordance with Chapter 2716. of the Revised Code is not liable for damages in any civil action for any action taken pursuant to that chapter in good faith or any omission made in good faith." The magistrate's decision found that Comdata's explanation for the delay was reasonable and that there was no evidence to suggest that Comdata deliberately delayed responding in order to aid debtor, Harris.

{¶ 13} Appellant next argues that because Comdata failed to properly defend the motion to show cause, he should be awarded judgment. Appellant argues that the letters and affidavits submitted by Comdata were inadmissible and insufficient to support the court's decision in its favor.

{¶ 14} We first note that the magistrate's decision specifically found that Graybill was not required to appear at the hearing. We cannot say that this was erroneous. Thus, Graybill's affidavit was properly before the court.

{¶ 15} Appellant further contends that the trial court erred by not ordering Comdata to produce the statements on Harris' two debit card accounts. Discovery rulings are reviewed under an abuse of discretion standard. See *Manofsky v. Goodyear Tire & Rubber Co.*, 69 Ohio App.3d 663, 668, 591 N.E.2d 752 (9th Dist.1990).

{¶ 16} Upon review, it is apparent that the court was satisfied with Comdata's explanation for the delay in responding to the garnishment order. Further, we cannot say that the court abused its discretion in failing to order that the documents be provided.

{¶ 17} Appellant's final argument relates to the trial court's comment regarding the lack of a contempt hearing transcript. Specifically, in ruling on the objections to the magistrate's decision the court noted that it dismissed any "factual objections" because appellant failed to provide "a transcript of all the evidence submitted to the magistrate relevant to that fact." The court then stated that it had reviewed the magistrate's decision.

{¶ 18} We note that in appellant's January 6, 2011 objections to the magistrate's decision, appellant specifically stated that he agreed with the magistrate's findings of fact. Thus, the court's affirmance of the magistrate's findings had no material bearing on the outcome of the court's ruling.

{¶ 19} Based on the foregoing, we find that the trial court did not abuse its discretion when it denied appellant's motion to show cause to hold Comdata in contempt of the garnishment order. Appellant's assignment of error is not well-taken.

{¶ 20} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Toledo Municipal Court is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
