[Cite as *New Falls Corp. v. Leister*, 2013-Ohio-4954.]

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

New Falls Corporation

Appellee

v.

Reginald Leister

Appellant

Court of Appeals No. L-12-1367

Trial Court No. CVF-04-02889

DECISION AND JUDGMENT

Decided: November 8, 2013

* * * * *

Joseph D. Datchuk, for appellee.

Jeffery M. Lublin, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶1} Defendant-appellant, Reginald Leister, appeals the November 30, 2012 and December 17, 2012 judgments of the Toledo Municipal Court enforcing the garnishment order and denying his objections to the order. Upon review, we affirm.

{¶2} This case originated with the February 17, 2004 filing of a complaint by creditor Fifth Third Bank, NA, to recover money due on an account. A certificate of judgment for $5,117.42, plus accrued and future interest, was entered on April 15, 2004. On September 21, 2006, the judgment was assigned to appellee, New Falls Corporation.

{¶3} On February 2, 2012, the parties appeared in court and the garnishment order was stayed based upon appellant's agreement to make direct payments to appellee. On September 6, 2012, appellee sent a letter to appellant, via his post office box, with an attached "Notice of Court Proceedings to Collect Debt."

{¶4} On October 17, 2012, appellant appeared in court and requested a hearing on the wage garnishment. The hearing was held on November 20, 2012. At the hearing, appellant's counsel contested the garnishment order based on insufficient service of process. Specifically, counsel stated that, pursuant to R.C. 2716.02(A), the notice was required to be sent to the judgment debtor's last known residence, not a post office box.

{¶5} On November 30, 2012, the magistrate recommended enforcement of the wage garnishment. The magistrate noted that appellant "appeared for the February garnishment hearing and reached an agreement with the judgment creditor to suspend the garnishment, but did not comply with his end of the agreement." The magistrate found that although personal service was not effectuated in this case, "[t]he law does not require the doing of a vain thing." The magistrate concluded that because appellant did not argue

failure to receive notice or that notice to appellant's last known residence would have resulted in better notice, any error in the manner of service was harmless.

{¶6} Appellant filed objections to the magistrate's decision and, on December 17, 2012, the trial court summarily denied the motion. Appellant now raises the following assignment of error for our review:

> The trial court erred by enforcing a garnishment of a person's wages when the garnishor failed to serve the statutory notice that is a pre-requisite to a valid garnishment according to any of the methods of service authorized by statute.

{¶7} The statute at issue in this case, R.C. 2716.02, provides, in part:

> (A) Any person seeking an order of garnishment of personal earnings, after obtaining a judgment, shall make the following demand in writing for the excess of the amount of the judgment over the amount of personal earnings that may be exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, or for so much of the excess as will satisfy the judgment. The demand shall be made after the judgment is obtained and at least fifteen days and not more than forty-five days before the order is sought by delivering it to the judgment debtor by personal service by the court, by sending it to the judgment debtor by certified mail, return receipt requested, or by sending it to the judgment

debtor by regular mail evidenced by a properly completed and stamped certificate of mailing by regular mail, addressed to the judgment debtor's last known place of residence.

{¶8} In his sole assignment of error, appellant contends that the statutory service requirement was clear and unambiguous and that the court erroneously placed the burden on appellant to show that he did not receive service. Conversely, although appellee agrees that service was not perfected according to statute, it claims that the error was harmless.

{¶9} As cited by appellee, in a foreclosure case this court held that the failure to properly serve notice of the sheriff's sale was harmless where the debtor appeared at the sheriff's sale and placed a bid. *First Fed. Bank of the Midwest v. Laskey*, 6th Dist. Wood Nos. WD-10-028, WD-10-046, WD-10-055, 2011-Ohio-1395, ¶ 38. We reasoned that because the debtor appeared at the sale, he was not deprived of his substantial right to notice under R.C. 2329.26. *Id.*

{¶10} In the present case, the original judgment was entered in 2004. Appellant, as recently as 2012, appeared in court and the parties indicated that an agreement had been reached to avoid garnishment. It was only after appellant failed to make the promised payments that appellee again pursued wage garnishment. Based on the foregoing, we cannot find that appellant was denied his right to statutory notice as

contemplated under the statute and, thus, the error was harmless. *See* Civ.R. 61 and App.R. 12.

{¶11} 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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____

Thomas J. Osowik, J. _____ JUDGE
CONCUR.

_____
JUDGE