

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

Thomas M. Briggs

Appellant

v.

GLA Water Management, et al.

Appellees

Court of Appeals Nos. WD-12-062
WD-12-063

Trial Court Nos. 2011CV0495
2011CV0434

DECISION AND JUDGMENT

Decided: May 23, 2014

* * * * *

Thomas Dillon and Rebecca E. Shope, for appellant.

Robert J. Bahret, Christine M. Gaynor and Andrew J. Ayers,
for appellees.

* * * * *

OSOWIK, J.

{¶ 1} In our decision, dated April 11, 2014, we disposed of appellate case No. 2012-WD-062. *See Briggs v. GLA Water Mgt.*, 6th Dist. Wood Nos. WD-12-062, WD- 62-063, 2014-Ohio-1551. However, case No. WD-12-062 was only one of two appeals that were consolidated by this court on July 9, 2013. Accordingly, the court hereby issues the following determination as to appellate case No. 2012-WD-063:

{¶ 2} This is an appeal from a judgment of the Wood County Court of Common Pleas, in which the trial court denied a motion for contempt filed by appellant, Thomas M. Briggs, and stayed the obligation of appellee, GLA Water Management, Inc. (“GLA”), to garnish the wages of appellee, Charles D. Hamrick. The relevant facts are as follows.

{¶ 3} This case arose out of the sale of a business known as GLA Water Management, Inc. (“GLA”) by appellant, Thomas Briggs, to appellee, Charles D. Hamrick, in November 1999. As part of the sale, Hamrick agreed to make monthly payments to Briggs for 15 years for rent of GLA’s business premises, and Briggs promised not to compete with GLA’s business interests for 15 years. Ten years later, on February 17, 2009, Hamrick executed a cognovit promissory note in favor of Briggs, in exchange for a personal loan of \$128,764.39.

{¶ 4} On May 18, 2011, Briggs filed a complaint in the trial court, case No. 2011CV0434, in which he alleged that Hamrick was in default on the promissory note. On May 31, 2011, the trial court filed a judgment entry in which it found that Hamrick was in default and ordered Hamrick to pay Briggs \$156,728.94, plus interest. Hamrick failed to make timely payments and, on October 13, 2011, the trial court journalized an order of garnishment for Hamrick’s personal earnings.

{¶ 5} On June 8, 2011, while the garnishment proceedings were pending, Briggs filed a second complaint, case No. 2011CV0495, in which he alleged that GLA and Hamrick breached the terms of the parties’ lease and non-compete agreement. On

June 16, 2011, GLA and Hamrick filed an answer and a counterclaim in which they alleged it was Briggs who breached the terms of the non-compete agreement. Ultimately, in case No. 2011CV0495, the jury found that GLA and Hamrick violated the commercial lease and awarded Briggs \$188,750 in compensation. In addition, the jury found that Briggs violated the terms of the non-compete and awarded GLA \$353,500 in damages, for a total off-set amount of \$234,250 owed by appellant Briggs.

{¶ 6} On September 21, 2012, Briggs filed a “Motion for Order of Contempt to Show Cause; Request for Sanctions,” in which he alleged that, although GLA initially garnished Hamrick’s wages and made payments to Briggs, the payments eventually ceased. GLA filed a brief in opposition on October 9, 2012, in which GLA argued that it should not be held in contempt because, in case No. 2011CV0495, the jury found that Briggs owes GLA an amount that exceeds Hamrick’s personal obligation to Briggs in case No. 2011CV0434. Briggs responded that GLA and Hamrick are separate legal entities, and Hamrick’s personal obligation to Briggs should not be eliminated by the jury award in favor of GLA. Briggs further argued that he has been, and continues to be, prejudiced by GLA’s refusal to garnish Hamrick’s wages because he depends on the proceeds from the sale of GLA for his livelihood.

{¶ 7} On November 1, 2012, the trial court denied Briggs’ motion for contempt and stayed the garnishment proceedings in the contempt action, pending the outcome of all appeals in case No. 2011CV0495. A notice of appeal from the judgment in case No. 2011CV0495 was filed on November 29, 2012 (appellate case No. WD-12-062). A

notice of appeal from the judgment denying appellant's motion for contempt in case No. 2011CV0434 was filed on November 30, 2012 (case No. WD-12-063). On July 9, 2013, this court, acting sua sponte, consolidated the two cases for purposes of appeal.

{¶ 8} On April 11, 2014, we upheld the jury's conclusion that Briggs violated the non-compete agreement in trial court case No. 2011CV0495. However, we found that the jury's \$353,500 award to GLA for breach of the non-compete was unsupported by the evidence, and vacated that part of the judgment. *See Briggs v. GLA Water Mgt.*, 6th Dist. Wood Nos. WD-12-062, WD-12-063, 2014-Ohio-1551. Having resolved the issues on appeal in case No. 2012-WD-062, we now turn to the issue of whether the judgment issued in case No. 2011CV0434 is final and appealable.

{¶ 9} Generally, pursuant to R.C. 2505.02(B), a final, appealable order is one:

that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

An order that affects a substantial right in an action that in effect determines the action and prevents a judgment; * * *.

As to whether the dismissal of a contempt action is final and appealable, Ohio courts generally have held that "there is no right of appeal from the dismissal of a contempt motion when the party making the motion is not prejudiced by the dismissal."

Denovchek v. Bd. of Trumbull Cty. Commrs., 36 Ohio St.3d 14, 17, 520 N.E.2d 1362 (1988).

{¶ 10} In the judgment on appeal in this case, the trial court stated that the underlying garnishment action in case No. 2011CV0434 was still in effect, however, it was stayed pending the outcome of litigation in case No. 2011CV0495. In addition, the record shows that on November 15, 2012, Briggs filed a motion to stay execution of judgment in case No. 2011CV0495. In support, Briggs stated that:

[T]his Court previously stayed execution with respect to a judgment obtained by Plaintiff [Briggs] in a related case, Case No. 2011-CV-0434.

Plaintiff [Briggs], therefore, requests that the Court similarly stay execution in this action * * *.

On December 12, 2012, the trial court granted Briggs' request for a stay in case No. 2011CV0495.

{¶ 11} Based on the foregoing, we find that Briggs has not demonstrated either that he was irreparably prejudiced by the denial of his motion for contempt, or that the trial court's order prevented him from ultimately collecting the full amount due from Hamrick, plus interest, in case No. 2011CV0434. This appeal, No. 2012-WD-063, is hereby dismissed due to lack of a final, appealable order.

{¶ 12} Appellant Briggs is ordered to pay costs in case No. 2012-WD-063 pursuant to App.R. 24.

Appeal dismissed.

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

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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:
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