

[Cite as *Ponzi v. Trimboli*, 2016-Ohio-7000.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

LOUIS D. PONZI, JR.,)	
)	
PLAINTIFF-APPELLANT,)	
)	CASE NO. 15 MA 0205
V.)	
)	OPINION
DOMINIC TRIMBOLI,)	
)	
DEFENDANT-APPELLEE.)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 09 CV 4169
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JUDGMENT:	Affirmed
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APPEARANCES:	
For Plaintiff-Appellant	Louis Ponzi, Jr. Pro-se #544332 ACI 5B 130T P.O. Box 4501 Lima, Ohio 45802

For Defendant-Appellee	No brief filed
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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: September 21, 2016

[Cite as *Ponzi v. Trimboli*, 2016-Ohio-7000.]
DONOFRIO, P.J.

{¶1} Plaintiff-appellant, Louis D. Ponzi, Jr., pro se, appeals the decision of the Mahoning County Common Pleas Court denying his motion for an order of execution upon the person of Defendant-appellee, Dominic Trimboli, pursuant to R.C. 2331.02.

{¶2} Appellant obtained a judgment against Appellee in the amount of \$12,177.62. *Ponzi v. Trimboli*, 7th Dist. No. 13 MA 0043, 2014-Ohio-2600. Before filing his motion for an order of execution upon the person of Appellee on June 8, 2015, which gives rise to this appeal, Appellant attempted a number of other remedies to collect the debt owed him. By way of background, these efforts are discussed first.

{¶3} On February 18, 2015, Appellant filed a “motion for attachment of property.” In a decision filed February 27, 2015, the trial court’s magistrate denied the motion indicating Appellant cited statutes for pre-judgment attachments. There is an error in the magistrate’s decision suggesting that Appellee (defendant/debtor) cited the statutes for pre-judgment attachments rather than Appellant. On March 16, 2015, Appellant filed objections to the magistrate’s decision. Appellant’s objections seem to be motivated by the error in the magistrate’s decision suggesting that it was Appellee (defendant/debtor) rather than Appellant who cited the inappropriate statutes in Appellant’s “motion for attachment of property.” On May 22, 2015, the trial court considered Appellant’s objections and corrected the error of the magistrate. The trial court then adopted the magistrate’s decision and denied Appellant’s motion. No appeal was filed.

{¶4} On February 19, 2015, Appellant filed an affidavit. The affidavit appears to be an attempt to garnish wages and/or attach certain items of real property. On April 7, 2015, Appellant filed a “motion of garnishment to amendment of affidavit” which appears to be intended as a motion to garnish wages to which the February 19, 2015, affidavit should have been attached.

{¶5} On March 12, 2015, Appellant filed a “motion of discovery” seeking all evidence “pertaining and submitted” by Appellee with regard to statutes for pre-

judgement attachments. This motion also appears to be motivated by the error in the magistrate's decision noted above.

{¶16} On May 1, 2015, Appellant filed a "motion to amendment judgment entry" which seems to be a request that Appellee be ordered to begin paying some rate of interest on the judgment debt since Appellee had made no payments on the debt. The trial court denied this motion in its judgment entry filed May 22, 2015, (the same entry that denied the above "motion for attachment of property"). No appeal was taken from this judgment entry.

{¶17} On May 11, 2015, Appellant filed a praecipe for certificate of judgment. A Certificate for Judgment Lien Upon Lands and Tenements was filed and docketed on May 11, 2015.

{¶18} On June 8, 2015, Appellant filed the motion for order of execution against Appellee pursuant to R.C. 2331.02(A)(B)(C)(D), which gives rise to this appeal. Appellant asserted that Appellee removed real property out of the jurisdiction of the court by executing a quit claim deed transferring the real property into the name of his spouse so a lien could not attach. Further, Appellant asserted that Appellee was concealing assets. Appellant asked the court to order the property returned to the name of Appellee.

{¶19} The motion was first heard by the trial court's magistrate. On September 8, 2015, the magistrate denied the motion. In his order, the magistrate indicated that, after reviewing the records of the Mahoning County Recorder and the Mahoning County Probate Court, he was able to determine the following facts, which are not contested by Appellant.

{¶110} On June 19, 2008, certain real property was conveyed to the spouse of Appellee from her father. When her father passed away, the property was transferred by certificate of transfer out of her father's estate to Appellee's spouse and her four siblings. This occurred, according to the magistrate, on June 10, 2011. Appellee's spouse's siblings then transferred their interest in the property to Appellee and his spouse. This transfer occurred on January 16, 2014. On March 17, 2014, Appellee

transferred any interest he had in the property to his spouse. The magistrate concluded that the March 17, 2014, transfer was not an attempt to remove property out of the jurisdiction of the court since the property was owned by Appellee's spouse since 2008 and she was not the judgment debtor. The magistrate noted that R.C. 2331.02 creates an extraordinary remedy for a judgment creditor to cause the arrest and imprisonment of a person for debt and, based on the foregoing facts, denied Appellant's motion for an order of execution against the person of Appellee.

{¶11} Appellant filed an objection to the magistrate's decision on September 29, 2015. In his objection, he argued that "everything changed" on January 16, 2014, when the property was transferred into the name of Appellee and his spouse. Appellant cites sections of Title 31 of the Revised Code relating to domestic relations to argue that the real property became marital property and that the division of marital property must be equal. Based on this, Appellant argues that the transfer of March 17, 2014, was a fraudulent transfer per R.C. 1336.04(A)(1) as it was with actual intent to hinder or defraud a creditor. Attached to Appellant's objection is a printout of what appears to be a tax detail page from the internet posted by the Mahoning County Auditor's Office which seems to confirm the transfers of this real estate as explained in the magistrate's decision. Appellant does not contest the facts as set forth in the magistrate's decision.

{¶12} On October 15, 2015, the trial court conducted an independent review of the objected matters regarding the magistrate's decision filed September 8, 2015. The trial court concluded that the magistrate properly determined the factual issues and appropriately applied the law. Thus, the trial court adopted the magistrate's decision and made it the order of the court.

{¶13} Appellant filed a timely notice of appeal on November 13, 2015. Appellant asserts three assignments of error.

{¶14} Appellant's first assignment of error is:

A ERROR BY THE TRAIL [sic] COURT NOT TO PUT THE DEBTOR'S
(DOMINIC TRIMBOLI), NAME BACK ONTO THE DEED.

{¶15} Appellant does not set forth any reasons or otherwise explain why he believes the trial court erred when it denied his motion to execute upon the person of Appellee. Instead, Appellant asserts that the transfer on January 16, 2014, to Appellee and his spouse made them co-owners of the real property. Appellant asserts that, as a result, the property became marital property which the trial court failed to recognize. Appellant asserts that an equitable distribution should result. He seems to imply, based on his stated assignment of error, that his motion should have caused the trial court to place Appellee's name back on the deed for the real estate.

{¶16} The only issue in this appeal is whether the trial court erred in failing to issue an order of execution upon the person of Appellee pursuant to R.C. 2331.02(A)(B)(C)(D). Thus, even if all of the statements made by Appellant are accurate, he has nonetheless failed to offer any law or reason as to how the trial court erred in denying his motion.

{¶17} Appellant's first assignment of error is without merit and is overruled.

{¶18} Appellant's second assignment of error is:

ERROR OF COURTS NOT ENFORCING THE MOTION OF
EXCUTION [sic] AGAINST THE DEBTOR.

{¶19} Again, as with his first assignment of error, Appellant fails to explain how, or cite any legal authority to demonstrate why, the trial court erred in denying his motion for execution on the person of Appellee. Rather, he asserts that Appellee is attempting to conceal the subject real property by transferring any interest Appellee had in the real estate to his spouse and that this act makes Appellee's spouse "an insider" in this matter. He claims that the transfer was illegal and that Appellee's spouse is now "a general partner of the debt" and now "becomes equally responsible." He asserts, citing a section of the Revised Code relating to probate matters, that the suspected person should be compelled to appear before the court to be examined. Although there may be proceedings in aid of execution that allow Appellant to accomplish such an inquiry, this is not the subject of the trial court's

order which Appellant appeals to this court. Appellant does not explain how any of his assertions establish that the trial court erred in denying his motion to execute upon the person of Appellee.

{¶20} R.C. 2331.02, the basis of Appellant's motion to the trial court, provides:

An execution against the person of a debtor may be issued upon any judgment for the payment of money:

(A) When the judgment debtor has removed, or begun to remove, any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment;

(B) When the judgment debtor has property, rights in action, evidences of debt, or interest or stock in a corporation or company, which he fraudulently conceals with like intent;

(C) When the judgment debtor has assigned or disposed of any of his property or rights in action, or has converted them into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution;

(D) When the judgment debtor fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered;

(E) When the judgment was rendered for money, or other valuable thing, lost by playing at any game or by means of any bet or wager;

(F) When the judgment debtor was arrested on an order before judgment and has not been discharged as an insolvent debtor, or the order has not been set aside.

Thus, this section allows for the arrest of debtors in civil actions. As a general rule, the arrest of debtors in civil actions is frowned upon. Indeed, the Ohio Constitution states:

No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

Ohio Constitution, Article I, Section 15.

{¶21} The statute invoked by Appellant applies only to fraudulent acts intended to frustrate collection of judgments. *Kovach v. Lazzano*, 11th Dist. No. 1225, 1985 WL 9958, *1 (Sept. 20, 1985). The statute states that the trial court “may” issue such an execution. Thus, whether or not to grant Appellant’s motion is a matter of discretion for the trial court. *Bero v. John Cooper Construction Co.*, 5th Dist. No. CA-3091, 1985 WL 9241, *2 (May 31, 1985). As such, our standard of review is abuse of discretion. *Id.* “The term ‘abuse of discretion’ connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142 (1983). Here, the trial court considered the fact that this type of execution is an extraordinary remedy; that the property belonged to Appellee’s spouse since 2008, six years before Appellant secured his judgment against Appellee; that upon the death of the father of Appellee’s spouse the property was conveyed by way of certificate of transfer out of the estate to all of the deceased’s children who in turn transferred the property to Appellee and his spouse; and Appellee then transferred his interest back to his spouse. The trial court concluded that this was not an attempt to remove property from the jurisdiction of the court. Under this set of facts, it does not appear that the trial court acted unreasonably, arbitrarily, or unconscionably in denying Appellant’s motion requesting the extraordinary remedy of a civil arrest of Appellee.

{¶22} Appellant’s second assignment of error is without merit and is overruled.

{¶23} Appellant’s third assignment of error is:

THE MOTION TO AMEND JUDGMENT ENTRY TO AMEND BY
ADDING A INTEREST RATE WAS NEVER OBJECTED TO BY THE

APPELLEE'S ATTORNEY, YET WAS DENIED.

{¶24} In his third assignment of error, Appellant claims that his motion to add an interest rate to the judgment owed him is appropriate because of delays created by the Appellee; because no payments have been made on the debt; because Appellee's attorney never objected to any of Appellant's motions; and because Appellant sent many certified letters to Appellee which remain unanswered.

{¶25} Appellant's request to have interest paid on the debt owed apparently was the subject of Appellant's motion filed on May 1, 2015, captioned as a "motion to amendment judgment entry." This motion was denied via the trial court's judgment entry filed May 22, 2015. No appeal was filed from that order. Here, Appellant has appealed only the judgment entry filed October 15, 2015, which does not address the issue of interest. Thus, this issue is not properly before this court.

{¶26} Appellant's third assignment of error is without merit and is overruled.

{¶27} For the reasons stated above, the judgment of the trial court is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.