[Cite as *Campbell v. Cuyahoga Cty. Child Support Enforcement Agency*, 2009-Ohio-3091.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92659

SHERAE D. CAMPBELL

PLAINTIFF-APPELLANT

vs.

CUYAHOGA COUNTY CHILD SUPPORT ENFORCEMENT AGENCY, ET AL.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-651228

BEFORE: Dyke, J., McMonagle, P.J., and Stewart, J.

RELEASED: June 25, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment

and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

ANN DYKE, J.:

{¶ 1} Plaintiff-appellant, Sherae D. Campbell ("plaintiff"), appeals the trial court's entry of summary judgment in favor of defendant-appellee, Cuyahoga County Child Support Enforcement Agency ("CSEA"). For the reasons set forth below, we affirm.

{¶ 2} On February 12, 2008, CSEA issued an access restriction, pursuant to R.C. 3123.032, 3123.04 or 3123.05, to Third Federal Savings & Loan Association of Cleveland ("Third Federal"), where William D. Campbell ("Campbell") maintained an interest-bearing checking account. CSEA issued an access restriction because Campbell was in arrears in the amount of $34,279.75 for a child support obligation issued under Cuyahoga County Court of Common Pleas, Juvenile Division, Case No. SU 97773532. A copy of the access restriction was sent to Campbell as well as "Freddy Ellis," an individual identified by the Ohio Department of Job and Family Services as having an ownership interest in the account.[1] Both Campbell and Ellis

[1]It was later determined that the Ohio Department of Job and Family Services erroneously listed Ellis as having an ownership interest.

failed to object to the withdrawal of the funds by filing a written request for an administrative appeal within 10 days as required by R.C. 3123.31.

{¶ 3} On February 19, 2008, plaintiff, the daughter of Campbell, filed a complaint for declaratory judgment, as well as a motion for a temporary restraining order against CSEA and Third Federal. She claimed that she and her mother deposited $35,000 into Campbell's Third Federal bank account for her education. Thus, plaintiff maintained CSEA could not withdraw the $25,000[2] remaining in the account that belonged to her and her mother. The trial court granted plaintiff's motion for temporary restraining order on February 19, 2008 and precluded Third Federal from transferring funds from William D. Campbell's bank account to CSEA.

{¶ 4} On February 28, 2008, Third Federal filed its answer and, one day later, CSEA filed a motion to dismiss, or in the alternative, a motion for summary judgment. The trial court granted CSEA summary judgment on December 12, 2008.[3]

{¶ 5} On January 9, 2009, plaintiff filed a motion to stay with the trial court as well as this appeal. She now presents two assignments of error for our review. Her first assignment of error states:

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[2]In Campbell's affidavit attached to plaintiff's memorandum contra to motion to dismiss/summary judgment, he states that $10,000 of the original $35,000 was spent, leaving $25,000 left in the Third Federal account.

[3]The dismissal against CSEA rendered moot the claim against Third Federal. See *Wise v. Gursky* (1981), 66 Ohio St.2d 241, 421 N.E.2d 150.

{¶ 6} "The trial court erred in granting appellee, Cuyahoga County Child Support Enforcement Agency, summary judgment when material issues of fact clearly exist."

{¶ 7} Here, plaintiff asserts that the trial court erred in granting summary judgment in favor of CSEA because there existed genuine issues of material fact. She maintains that CSEA should be precluded from withdrawing $25,000 from Campbell's Third Federal bank account because she and her mother deposited said amount. We find plaintiff's argument without merit.

{¶ 8} With regard to procedure, we note that we employ a de novo review in determining whether summary judgment was properly granted. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241; *Zemcik v. La Pine Truck Sales & Equip. Co.* (1997), 124 Ohio App.3d 581, 585, 706 N.E.2d 860.

{¶ 9} A trial court may not grant a motion for summary judgment unless the evidence before the court demonstrates that: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. See, e.g., *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 429-430, 1997-Ohio-259, 674 N.E.2d 1164, 1171.

{¶ 10} The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment. Id., citing

Harless v. Willis Day Warehousing Co. (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46, 47. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Vahila v. Hall*, supra.

{¶ 11} In responding to a motion for summary judgment, the nonmoving party may not rest on "unsupported allegations in the pleadings." Civ.R. 56(E); *Harless v. Willis Day Warehousing Co.*, supra. Rather, Civ.R. 56 requires the nonmoving party to respond with competent evidence that demonstrates the existence of a genuine issue of material fact for trial. *Vahila v. Hall*, supra. Summary judgment, if appropriate, shall be entered against the nonmoving party. *Jackson v. Alert Fire & Safety Equip., Inc.* (1991), 58 Ohio St.3d 48, 52, 567 N.E.2d 1027, 1031.

{¶ 12} With these principles in mind, we proceed to consider whether the trial court properly granted CSEA summary judgment.

{¶ 13} There is no dispute that the only name on the Third Federal Account is William D. Campbell. Thus, it is irrelevant whether $25,000 in the account is the property of plaintiff and her mother.

{¶ 14} In *Dovi Interests, Ltd. v. Somerset Point Limited Partnership*, Cuyahoga App. No. 82788, 2004-Ohio-636, the court, keeping in line with consistent precedent of the state of Ohio, held that "non-ownership of attached property is not a valid defense to garnishment or attachment proceedings." In so finding, the court provided the following reasoning:

{¶ 15} "* * * [E]ven though the deposits are legally the property of the tenants, it is the name on the account that determines whose creditor may attach the funds in the account. By following the procedures delineated in Chapter 2716 of the Revised Code, a judgment creditor may garnish the property of the judgment debtor, even if that property is in the possession of a third party, such as a bank. R.C. 2716.01(B). When a bank receives a garnishment notice, it looks to the name on the account to determine whether garnishment of that account is proper. 'If the judgment debtor has a contractual right to demand payment of the funds, then those funds held for the benefit of the judgment debtor may be subject to garnishment.' *Leman v. Fryman*, Hamilton App. No. C-010056, 2002-Ohio-191, at ¶15. Thus in garnishment proceedings, the court is not concerned with who actually owns the property subject to garnishment as it is with who possesses it. 'A court will not ordinarily entertain favorably a motion to discharge an attachment on the claim that the attached property does not belong to the moving party, particularly where the authenticity of such claim is questionable.' *Rice v. Wheeling Dollar Savings & Trust Co.* (1951), 155 Ohio St. 391, 99 N.E.2d 301, paragraph four of the syllabus. The *Rice* court noted that because the debtor does not own the property, he will not be injured by the seizure of it." Id.

{¶ 16} Applying the foregoing to the case at hand, we find that even if the $25,000 was the legal property of plaintiff, the name on the account determines whose creditor may attach the funds in the account. Therefore, because plaintiff's or her mother's name was not on the account, plaintiff possessed no recognizable legal

ownership interest to the funds in Mr. Campbell's bank account. Furthermore, we note that plaintiff presented no evidence establishing a trust or escrow account existed with respect to these claimed funds. Accordingly, the trial court did not err in granting CSEA summary judgment in this case.

{¶ 17} Plaintiff's second assignment of error states:

{¶ 18} "The trial court erred in dismissing appellant's complaint for summary judgment without a hearing."

{¶ 19} We also find that the trial court was not required to hold an oral hearing prior to granting summary judgment in this case. See *Hooten v. Safe Auto Ins. Co.*, 100 Ohio St.3d 8, 11, 2003-Ohio-4829, 795 N.E.2d 648. "The 'hearing' contemplated by Civ.R. 56(C) may be either a formal, oral hearing (in which the trial court entertains oral arguments from counsel on a scheduled date preceded by the parties' filings of memoranda and Civ.R. 56 evidentiary materials) or a 'nonoral,' informal one. Whether to grant a party's request for oral hearing is a decision within the trial court's discretion." Id. (internal citations omitted). Hence, plaintiff's second assignment of error is overruled and the trial court's grant of summary judgment is upheld.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

CHRISTINE T. MCMONAGLE, P.J., CONCURS;
MELODY J. STEWART, J., CONCURS IN JUDGMENT ONLY