

[Cite as *Grand Harbour Condominium Owners Assn., Inc. v. Grogg*, 2016-Ohio-1386.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103463

**GRAND HARBOUR CONDOMINIUM
OWNERS ASSOCIATION, INC.**

APPELLEE

vs.

GENE R. GROGG, ET AL.

APPELLANTS

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. JL-14-678379

BEFORE: Boyle, J., Kilbane, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: March 31, 2016

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MARY J. BOYLE, J.:

{¶1} Appellants-debtors, Gene and Nancy Grogg (collectively “the Groggs”) appeal from a garnishment order entered in proceedings commenced by appellee-creditor, Grand Harbour Condominium Owners Association, Inc. (“Grand Harbour”). They raise the following sole assignment of error:

The court erred by releasing the garnished funds to the [appellee-creditor] after the [appellants-debtors’] debt was discharged by bankruptcy.

{¶2} Finding no merit to the appeal, we affirm.

A. Procedural History and Facts

{¶3} On July 19, 2013, Grand Harbour obtained a judgment in Erie County Common Pleas Court for \$45,458.86, plus interest, against the Groggs. On May 7, 2014, Grand Harbour transferred the judgment to Cuyahoga County Court of Common Pleas by filing a certificate of judgment for lien upon lands and tenements for transfer. On July 31, 2014, Grand Harbour filed an “affidavit, order and notice of garnishment of property other than personal earnings,” seeking to recover funds belonging to the Groggs and being held by ten identified banks.

{¶4} On August 6, 2014, Mechanics Bank, a named garnishee, deposited funds in the amount of \$21,066.09 with the Cuyahoga County Clerk of Courts. On this same day, the Groggs filed a request for hearing, disputing Grand Harbour’s right to garnish the property on the grounds that the funds were exempt as social security and pension

proceeds. The Groggs further challenged the trial court's jurisdiction and venue. The trial court set the matter for hearing on August 26, 2014, but the Groggs failed to appear.

{¶5} On August 14, 2014, two other named garnishee banks deposited funds totalling \$2,845.88 with the Cuyahoga County Clerk of Courts. According to the parties' briefs, these funds were immediately delivered to Grand Harbour, who held the checks in escrow until the trial court's final order authorizing their release.

{¶6} On August 27, 2014, the Groggs filed a suggestion of stay, notifying the trial court that they had filed a petition for bankruptcy on August 25, 2014. On September 24, 2014, the court stayed execution on the judgment pending further motion to the court.

{¶7} On January 26, 2015, the Groggs filed a "motion to return funds to debtors," arguing that their underlying debt to Grand Harbour "has been discharged" in their bankruptcy proceedings. The Groggs attached an order from a United States bankruptcy judge, Northern District of Ohio, stating that the Groggs, the debtors, were granted a discharge in their Chapter 7 bankruptcy filing. Grand Harbour opposed the motion, arguing that the funds had been attached on August 6, 2014 and August 14, 2014, prior to the Groggs' Chapter 7 bankruptcy filing. Grand Harbour further argued that the bankruptcy trustee — not the debtor — is the only party with authority to "avoid" any transfers within 90 days of a bankruptcy filing, and because the bankruptcy trustee did not seek recovery of the funds, Grand Harbour is entitled to the funds. Grand

Harbour additionally disputed that these funds are exempt, noting that the Groggs have failed to present any evidence to support their assertion.

{¶8} Although the trial court set the matter for a hearing, the Groggs moved for a continuance and then ultimately agreed to waive the hearing and have the matter decided on the briefs submitted. The trial court additionally granted the parties leave to file a reply brief and surreply briefs.

{¶9} In their brief, the Groggs reiterated their position that the garnishment was not complete prior to their bankruptcy filing, and therefore, they were entitled to the return of the funds after their debt to Grand Harbour was discharged. In contrast, Grand Harbour argued that the funds had attached prior to the bankruptcy filing, and although the bankruptcy trustee had the authority to avoid the transfer, the trustee chose not to make the funds part of the bankruptcy estate.

{¶10} The trial court ultimately denied the Groggs' motion to return funds to debtors and ordered that the garnishment funds be released to Grand Harbour.¹

{¶11} The instant appeal follows.

B. Bankruptcy Filing

¹ We note that this court has previously recognized that the failure to obtain a stay of the trial court's judgment, resulting in the execution of the judgment, renders an appeal of the garnishment order moot. *See Francis David Corp. v. MAC Auto Mart, Inc.*, 8th Dist. Cuyahoga No. 93951, 2010-Ohio-1215. Because the record is not clear whether the judgment was executed prior to appeal, and no party raised the issue, we refrain from applying this case and will address the arguments on the merits.

{¶12} In their sole assignment of error, the Groggs argue that the trial court should have returned the funds to them because the bankruptcy court had discharged their debt to Grand Harbour. We find their argument unpersuasive.

{¶13} “Garnishment is a procedure whereby a creditor can obtain property of his debtor which is in the possession of a third party.” *Beneficial Ohio, Inc. v. Beckett*, 5th Dist. Knox No. 09CA000017, 2010-Ohio-453, citing R.C. 2716.01(B). R.C. 2716.11 provides as follows:

A proceeding for garnishment of property, other than personal earnings, may be commenced after a judgment has been obtained by a judgment creditor by the filing of an affidavit in writing made by the judgment creditor or the judgment creditor’s attorney setting forth all of the following: (A) the name of the judgment debtor whose property, the judgment creditor seeks to garnish; (B) A description of the property; (C) The name and address of the garnishee who may have in the garnishee’s hands or control money, property, or credits, other than personal earnings, of the judgment debtor.

{¶14} Upon the filing of a proceeding for garnishment pursuant to R.C. 2716.11, the court must schedule a hearing, issue an order to the garnishee to answer, and issue a notice and hearing request form to the judgment debtor. *Beckett* at ¶ 11, citing R.C. 2716.13(A) and 2716.13(C)(1). If the judgment debtor disputes the judgment creditor’s right to garnish his property, he or she must file the request for hearing form. *Id.*, citing

R.C. 2716.13(C)(2). If he or she does not file the request for hearing form, “the hearing scheduled pursuant to division (A) of this section shall be canceled,” R.C. 2716.13(C)(2), and the court shall issue an order to the garnishee to pay “based on the answer of the garnishee.” R.C. 2716.13(C)(5).

{¶15} Based on the record before us, we find that the trial court properly ordered the release of the garnished funds to Grand Harbour. Here, the Groggs do not dispute that they filed bankruptcy *after* the garnishee banks deposited funds with the clerk of court. Nor do they raise any challenge with respect to Grand Harbour’s compliance with the statutory provisions for obtaining a garnishment. And despite initially challenging Grand Harbour’s authority to garnish these funds, the Groggs failed to offer any evidence that the funds were exempt from garnishment. Indeed, the Groggs further abandoned their desire to have a hearing on the garnishment. Moreover, aside from their stated argument, the record contains no evidence of the matters addressed in the Groggs’ bankruptcy case, including whether the discharge order even addresses Grand Harbour’s judgment lien.

{¶16} Although the Groggs point to statutes relevant to garnishment proceedings, none of these statutes stand for the proposition that the Groggs advocate. We find no basis to conclude that the Groggs are entitled to a return of funds deposited with the clerk of court because they subsequently filed for bankruptcy and obtained a discharge. Nor do the Groggs provide any authority in support of their claim. See App.R. 16(A)(7).

{¶17} The sole assignment of error is overruled.

{¶18} Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR