

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

William P. Bringman Co., LPA,	:	
Plaintiff-Appellant,	:	
v.	:	No. 14AP-946 (C.P.C. No. 09EX-315)
David Michael Blubaugh,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 25, 2015

William P. Bringman, for appellant.

Ron O'Brien, Prosecuting Attorney, and *Scott O. Sheets*, for appellee *Maryellen O'Shaughnessy*, Clerk of the Franklin County Court of Common Pleas.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, William P. Bringman Co., LPA ("Bringman"), appeals a judgment of the Franklin County Court of Common Pleas that denied Bringman's motion for amercement. For the following reasons, we affirm that judgment.

{¶ 2} On April 23, 2009, Bringman obtained a judgment against David M. Blubaugh in the amount of \$32,400.38. Within five days of receiving that judgment, Bringman initiated the instant action by filing a praecipe requesting that the Franklin County Clerk of Courts issue a writ of execution to the Richland County sheriff to levy on certain specified personal property Blubaugh owned. On June 3, 2009, Bringman filed two more praecipes with the clerk. One sought a writ of execution directing the Knox County sheriff to levy on seven oil and gas wells Blubaugh owned; the other sought a writ

of execution directing the Holmes County sheriff to levy on three other oil and gas wells Blubaugh owned. Finally, on June 18, 2009, Bringman filed a praecipe asking for a writ of execution requiring the Richland County sheriff to levy on the same three oil and gas wells named in the Holmes County praecipe.

{¶ 3} The clerk issued the writs as requested in the praecipes. However, none of the writs issued indicated that Bringman had deposited funds for the execution of the writs.¹ Recognizing this deficiency, Bringman moved for the issuance of alias writs of execution that included the necessary language.² The court granted that motion.

{¶ 4} On May 19, 2010, Bringman filed three new praecipes directing the clerk to issue alias writs of execution to the sheriffs of Richland, Knox, and Holmes counties. Bringman attached to each new praecipe the corresponding original praecipe. Bringman did not specifically identify the property to be levied on in the new praecipes. Rather, he merely directed that the sheriffs levy on the assets that the original praecipes described.

{¶ 5} The clerk issued the alias writs of execution on May 20, 2010. The writs commanded execution on Blubaugh's assets, but relied on the attached praecipes for the description of the particular assets to be levied on. When the clerk issued the alias writ to the Richland County sheriff, she attached the new praecipe to the writ, but she did not include the original praecipe with the writ. The new praecipe merely requested that the sheriff "complete the same execution process as ordered in the original execution on the assets located in Richland County, the assets being described in the original execution herein, a copy of which is attached hereto and made a part hereof."³ (R. 31.) Thus, without the original praecipe, the writ contained no description of the personal property the Richland County sheriff was to levy on.

¹ Pursuant to R.C. 2303.16, a "clerk of the court of common pleas shall not issue a writ in a civil action to another county until the party requiring the issuing thereof has deposited with him sufficient funds to pay the officer to whom it is directed for executing it, and the clerk shall indorse thereon the words, 'Funds deposited to pay for the execution of this writ.' " Moreover, R.C. 2707.03 gives immunity to an officer who receives a writ from another county and fails to execute that writ due to the absence of language indicating that funds are on deposit to pay for the execution of the writ. *Ryan v. Carter*, 67 Ohio St.3d 568, 570 (1993).

² An "alias writ" is "[a]n additional writ issued after another writ of the same kind in the same case." *Black's Law Dictionary* (10th Ed. 2014).

³ The "original execution" referred to in the new praecipe is the April 28, 2009 praecipe, not the June 18, 2009 praecipe.

{¶ 6} Upon receipt of the alias writ, the Richland County sheriff surmised that he was to levy on particular assets owned by Blubaugh, but he did not know which assets. The sheriff simply served Blubaugh with the writ and filed a return of service on June 10, 2010. The sheriff did not levy on or sell any of Blubaugh's property.

{¶ 7} On November 14, 2011, Bringman moved for an order amercing the Richland County sheriff for failing to execute the alias writ. Bringman maintained that, pursuant to R.C. 2707.01, the sheriff was liable in the amount of underlying judgment, including costs and ten percent interest, for his failure to levy on and sell the property designated in the alias writ.

{¶ 8} At the conclusion of the motion, Bringman instructed the clerk to serve the Richland County sheriff with the motion by certified mail. The clerk did so, but she recorded the proof and completion of service on the docket for the underlying civil action, not the instant action. The sheriff did not respond to the motion. When the trial court reviewed the docket for the instant action, it saw no entries showing service of the motion, so it dismissed the motion.

{¶ 9} Ultimately, the dismissal of Bringman's motion for amercement led to an appeal to this court. We concluded that no final, appealable order existed, and we dismissed the appeal for lack of jurisdiction. *William P. Bringman Co., LPA v. Blubaugh*, 10th Dist. No. 12AP-360 (Jan. 24, 2013) (memorandum decision).

{¶ 10} Bringman then moved again for amercement of the Richland County sheriff. The trial court denied that motion in a judgment entered April 12, 2013. The trial court found that the sheriff acted appropriately in just serving the alias writ, as the instruction to serve was the only unambiguous instruction in the writ. The sheriff could not fully execute the alias writ because the writ failed to describe the property that Bringman intended the sheriff to levy on and sell.

{¶ 11} Bringman appealed the April 12, 2013 judgment to this court. We overruled Bringman's assignment of error and affirmed the trial court's judgment. *William P. Bringman Co., LPA v. Blubaugh*, 10th Dist. No. 13AP-340, 2013-Ohio-4672 ("*Bringman II*").

{¶ 12} After receiving our decision, Bringman moved to amerce the Franklin County Clerk of Courts pursuant to R.C. 2707.01. Bringman claimed entitlement to

amercement because the clerk: (1) failed to include in the original writs language indicating that funds were on deposit with the clerk for execution of the writs; (2) failed to attach the original praecipe to the alias writ directed to the Richland County sheriff, which resulted in the sheriff receiving no description of the assets on which Bringman intended the sheriff to levy on; and (3) recorded the service of the original motion for amercement of the Richland County sheriff in the docket of the underlying civil action, rather than the instant action, which led the trial court to conclude that no service had occurred. In a judgment entered November 2, 2014, the trial court denied Bringman's motion.

{¶ 13} Bringman now appeals the November 2, 2014 judgment, and it assigns the following error:

The trial court erred in its judgment of November 2, 2014 denying Appellant's motion for amercement of Maryellen O'Shaughnessy, Franklin County Clerk of Courts, filed in the trial court on January 14, 2014.

{¶ 14} To amerce is to punish. *Ryan v. Carter*, 67 Ohio St.3d 568, 569 (1993). R.C. Chapter 2701 allows the amercement of certain governmental officials if they fail to perform specified actions. Bringman seeks to amerce the Franklin County Clerk of Courts pursuant to R.C. 2707.01, which states:

If an execution or order of sale directed to an officer comes to his hands to be executed, and he neglects or refuses to execute it; or if he neglects or refuses to sell property of any kind which, by a writ or order, he is directed to sell; or fails to call an inquest, or to return to the clerk's office a copy of the certificate of appraisement made by the inquest; or neglects to return to the proper court an execution or order of sale to him directed on or before the return day thereof; or neglects to return a correct inventory of personal property taken on execution unless he returns that the amount of the judgment, including costs, has been paid to him; or neglects, on demand, to pay to the person entitled thereto money by him collected or received for the use of such person; or neglects or refuses, on demand, to pay the judgment debtor all money by him received on a sale made, beyond what is sufficient to satisfy the writ or order of sale, with interest and costs, on motion in court, and notice thereof, in writing, as provided in section 2707.02 of the Revised Code, such officer shall be amerced in the amount of such judgment, including costs, with ten percent thereon, to and for the use of the plaintiff or defendant.

{¶ 15} Bringman does not argue that the clerk committed any of the misfeasance or nonfeasance punishable under R.C. 2707.01. Had Bringman asserted such an argument, it would have failed. None of the clerk's alleged failings constitute a circumstance that, under R.C. 2707.01, exposes an officer to amercement.

{¶ 16} Rather than rely on the words of R.C. 2707.01, Bringman cites a paragraph of *Bringman II* as the basis for amercement of the clerk. In *Bringman II*, we stated:

Finally, we note that amercement is a remedy for "official delinquency." *Moore [v. McClief]*, 16 Ohio St. 50, 53 (1864)]. It appears upon the facts of this case that the delinquency at issue was that of the clerk, or other responsible government officer, who failed to attach to the writ a copy of "the assets being described in the original execution herein." The trial court did not err by not penalizing Sheriff Sheldon for the same.⁴

Bringman II at ¶ 11. Bringman maintains that, in this paragraph, we concluded that the clerk was subject to amercement under R.C. 2707.01.

{¶ 17} We disagree with Bringman's interpretation of paragraph 11. In that paragraph, we stated that amercement is a remedy for official delinquency, and we implied that the clerk (not the sheriff) was the delinquent party. We did not, however, then conclude that the clerk's apparent delinquency made her liable for amercement under R.C. 2707.01. Indeed, that issue was not before us.

{¶ 18} Moreover, one cannot deduce from paragraph 11 that the clerk's apparent delinquency renders her liable for amercement under R.C. 2707.01. Paragraph 11 states that amercement is a remedy for official delinquency; it does *not* state that amercement remedies *all* official delinquency. We refrained from such a broad statement because it would have contravened R.C. 2707.01, which delimits the types of official delinquency that can serve as a ground for amercement. Our decision in *Bringman II* did not expand, nor could it expand, R.C. 2707.01 to cover unenumerated official delinquency. *See In re Estate of Roberts*, 94 Ohio St.3d 311, 317 (2002) (holding that courts do not have the authority to add to, enlarge, supply, expend, extend, or improve the provisions of a statute to meet a situation not provided for).

⁴ Sheriff Sheldon is the sheriff of Richland County.

{¶ 19} Because the clerk's failings in the case at bar do not fit within R.C. 2707.01, the clerk may not be amerced under that statute. Accordingly, we conclude that the trial court did not err in denying Bringman's motion to amerce the clerk.

{¶ 20} For the foregoing reasons, we overrule the assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and HORTON, JJ., concur.
