

[Cite as *Aselage v. Lithoprint, Ltd.*, 2009-Ohio-7036.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

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THOMAS ASELAGÉ	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23527
vs.	:	T.C. CASE NO. 08-CVH-9048
	:	(Civil Appeal from
LITHOPRINT LTD.	:	Municipal Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 30th day of December, 2009.

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GRADY, J.:

{¶ 1} Defendant, Lithoprint, Ltd. ("Lithoprint"), appeals from a garnishment order entered in proceedings commenced by Plaintiff, Thomas C. Aselage.

{¶ 2} On October 1, 2007, Aselage commenced an action against

Lithoprint in Montgomery County common pleas court, seeking a judgment for \$37,606.00 on a claim for breach of contract. Lithoprint filed an answer and asserted counterclaims, seeking a judgment for \$362,000 in compensatory damages, plus punitive damages and attorney fees. On October 20, 2008, the common pleas court granted Aselage summary judgment on his claim for relief, plus interest and costs, but overruled Aselage's motion for summary judgment on Lithoprint's counterclaims. The court's October 20, 2008 order did not contain the certification found in Civ.R. 54(B).

{¶ 3} On November 7, 2008, Aselage filed an affidavit and order and notice of garnishment of property other than personal earnings in the Dayton municipal court, pursuant to R.C. Chapter 2716. A Certificate of Judgment For Lien Upon Lands and Tenements was filed in the municipal court on that same day. The certificate was prepared by the clerk of court of the Montgomery County common pleas court and referenced the October 20, 2008 summary judgment in favor of Aselage and against Lithoprint. (Dkt. 1.)

{¶ 4} Lithoprint requested a hearing and moved to dismiss the garnishment action. The magistrate denied Lithoprint's motion to dismiss following a hearing. (Dkt. 11.) Lithoprint filed objections to the magistrate's decision, arguing that the amount sought in garnishment, \$41,349, exceeds the municipal court's monetary jurisdiction, and that the summary judgment on which the

garnishment action was based was not a final judgment as defined in Civ.R. 54. (Dkt. 12.) On June 9, 2009, the municipal court overruled the objections and adopted the magistrate's decision. (Dkt. 13.) Lithoprint filed a notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 5} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT (JUDGMENT DEBTOR) - APPELLANT IN HOLDING THAT R.C. 2329.02 OPERATES TO CONFER JURISDICTION IN THE DAYTON MUNICIPAL COURT TO ISSUE GARNISHMENT PROCESS PURSUANT TO R.C. CHAPTER 2716 AGAINST ASSETS OF APPELLANT TO COLLECT A JUDGMENT AGAINST APPELLANT ISSUED IN AND TRANSFERRED FROM THE MONTGOMERY COUNTY COMMON PLEAS COURT IN THE AMOUNT OF \$37,606.00 PLUS INTEREST WHICH IS AN AMOUNT THAT EXCEEDS THE JURISDICTIONAL AUTHORIZATION AND LIMITATION CONTAINED IN R.C. 1901.18(A)(5) AS APPLICABLE TO CHAPTER 2716 PROCEEDINGS IN THE DAYTON MUNICIPAL COURT."

{¶ 6} Lithoprint's assignment of error relies on R.C. 1901.18(A)(5). That section provides that "subject to the monetary jurisdiction of municipal courts set forth in section 1901.17 of the Revised Code," a municipal court has original jurisdiction "[i]n any action or proceeding to enforce collection of . . . judgments rendered by any court within the territory to which the municipal court has succeeded . . ." R.C. 1901.18(A)(5) is a grant of jurisdiction, subject to the limit of its exercise

that R.C. 1901.17 imposes. The question presented is whether R.C. 1901.17 denies the municipal court jurisdiction to order execution on the relief granted in the certified judgment.

{¶ 7} R.C. 1901.17 states:

{¶ 8} "A municipal court shall have original jurisdiction only in those cases in which the amount claimed by any party, or the appraised value of the personal property sought to be recovered, does not exceed fifteen thousand dollars, except that this limit does not apply to the housing division or environmental division of a municipal court.

{¶ 9} "Judgment may be rendered in excess of the jurisdictional amount, when the excess consists of interest, damages for the detention of personal property, or costs accrued after the commencement of the action.

{¶ 10} "This section does not limit the jurisdiction of a municipal court to appoint trustees to receive and distribute earnings in accordance with section 2329.70 of the Revised Code."

{¶ 11} R.C. Chapter 2329 governs proceedings in execution against property. R.C. 2329.02 provides, in pertinent part:

{¶ 12} "Any judgment or decree rendered by any court of general jurisdiction, including district courts of the United States, within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time there

is filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment, setting forth the court in which the same was rendered, the title and number of the action, the names of the judgment creditors and judgment debtors, the amount of the judgment and costs, the rate of interest, if the judgment provides for interest, and the date from which such interest accrues, the date of rendition of the judgment, and the volume and page of the journal entry thereof.

{¶ 13} ** * *

{¶ 14} "Notwithstanding any other provision of the Revised Code, any judgment issued in a court of record may be transferred to any other court of record. Any proceedings for collection may be had on such judgment the same as if it had been issued by the transferee court."

{¶ 15} Lithoprint objected that because the amount of the execution sought exceeds the monetary jurisdiction of the municipal court, the municipal court lacked jurisdiction to order execution in the original action seeking that relief that Aselage filed. The municipal court overruled Lithoprint's objection, relying on the final paragraph of R.C. 2329.02, quoted above. The court wrote,

{¶ 16} "The plain meaning (of that section) is that despite any other statutory provision, a judgment from any court of record

can be transferred to any other court of record for collection.

The transferee court may then use the same proceedings to collect the transferred judgment as it uses to collect its own judgments."

{¶ 17} Two other appellate districts have held that the authority conferred by R.C. 2329.02 on courts of record to order execution on judgments certified from another court of record does not authorize a municipal court to order execution in an action filed in the municipal court seeking that relief when the monetary amount of the certified judgment exceeds the monetary limit imposed by R.C. 1901.17 on original actions in the municipal courts. *Bowling v. Stafford & Stafford, Co., L.P.A.*, Hamilton App. Nos. C-070606, C-070648, 2008-Ohio-3768; *Transamerica Commercial Finance Corp. v. Mid-America Marine, Inc.* (July 16, 1993), Ashtabula App. No. 92-A-1720.

{¶ 18} We agree with the holdings in *Bowling and Transamerica Commercial Finance Corp.* Though the judgment on which execution was sought had been granted by and certified from another court of record, the action in which that judgment was granted was not transferred to the municipal court. Rather, the request for execution was relief sought in an action originally filed for that purpose in the municipal court, and R.C. 1901.17 expressly limits that court's monetary jurisdiction in original actions.

{¶ 19} R.C. 1.51 states:

{¶ 20} "If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail."

{¶ 21} R.C. 1901.17 and R.C. 2329.02 were both adopted in the same legislative bill in 1953. R.C. 1901.17 is a "special provision," being limited to the municipal courts, while R.C. 2329.02 being applicable to all courts of record, is a "general provision." R.C. 2329.02 contains no manifest intent that it prevail over R.C. 1901.17. Therefore, to the extent that both sections may apply to the issue concerned, and in that respect present an irreconcilable conflict, R.C. 1901.17 prevails.

{¶ 22} The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

{¶ 23} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT (JUDGMENT DEBTOR) - APPELLANT IN FAILING TO HOLD AS A MATTER OF LAW THAT THE DECISION AND ENTRY SUSTAINING IN PART AND OVERRULING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ENTERED OCTOBER 20, 2008 IN THE MONTGOMERY COUNTY COMMON PLEAS COURT WAS NOT FINAL UNDER CIVIL RULE 54(B) AND THEREFORE NOT A JUDGMENT SUFFICIENT

TO CONFER JURISDICTION IN DAYTON MUNICIPAL COURT FOR A GARNISHMENT PROCEEDING AGAINST ASSETS OF APPELLANT UNDER R.C. CHAPTER 2716 AS WAS FALSELY CLAIMED TO THE CONTRARY IN THE GARNISHMENT AFFIDAVIT FILED BY PLAINTIFF (JUDGMENT CREDITOR) - APPELLEE IN THE DAYTON MUNICIPAL COURT."

{¶ 24} Civ.R. 54 provides, in pertinent part:

{¶ 25} "(A) 'Judgment' as used in these rules includes a decree and any order from which an appeal lies as provided in section 2505.02 of the Revised Code. A judgment shall not contain a recital of pleadings, the magistrate's decision in a referred matter, or the record of prior proceedings.

{¶ 26} "(B) When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject

to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”

{¶ 27} The summary judgment the common pleas court granted on Aselage’s claim for relief did not adjudicate the merits of Lithoprint’s counterclaims in the action. The common pleas court did not attach the certification that Civ.R. 54(B) permits to the summary judgment it granted on Aselage’s claim for relief. The summary judgment therefore remained interlocutory, subject to revision by the court until a final judgment is granted on the remaining counterclaims, per Civ.R. 54(B). Being merely interlocutory, the summary judgment is therefore not a final order or judgment for purposes of R.C. 2505.02, and for that reason is likewise not a “judgment” as that term is defined by Civ.R. 54(A).

{¶ 28} R.C. 2329.02 authorizes a court of record to order execution on the relief granted in a judgment issued by another court of record. The common pleas court and the municipal court are both courts of record. However, because the summary judgment the common pleas court granted is not a judgment as defined by Civ.R. 54(A), neither is it a judgment on which the municipal court may order execution pursuant to R.C. 2329.02. “It is axiomatic that a non-final, interlocutory order is not capable of execution.”

Nwabara v. Willacy (April 17, 1997), Cuyahoga App. No. 71122. Indeed, “the execution of all judgments determined upon a single

claim should be stayed pending a final determination of the entire action as to all parties." *Marion Prod. Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265, at paragraph one of the syllabus.

{¶ 29} The October 20, 2008 order of the common pleas court is a non-final, interlocutory order not capable of execution. Therefore, the trial court erred in overruling Lithoprint's motion to dismiss.

{¶ 30} The second assignment of error is sustained.

{¶ 31} The judgment of the trial court will be reversed and Vacated.

DONOVAN, P.J. AND FAIN, J., concur.

Copies mailed to:

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