[Cite as *Beneficial Ohio, Inc. v. Beckett,* 2010-Ohio-453.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
BENEFICIAL OHIO, INC.	:	W. Scott Gwin, P.J.
	:	William B. Hoffman, J.
Plaintiff-Appellant	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 09 CA 000017
	:	
	:	
JOSHUA J. BECKETT, et al.,	:	O P I N I O N
Defendants-Appellees		

CHARACTER OF PROCEEDING:	Civil Appeal from Mt. Vernon Municipal Court Case No. 07 CVF 00089
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT ENTRY:	February 9, 2010
APPEARANCES:	
For Plaintiff-Appellant	For Defendant-Appellee
JAMES OH Javitch, Block and Rathbone, PLL 1100 Superior Avenue East, 19th Floor Cleveland, Ohio 44114	JOSHUA J. BECKETT SONDRA M. BECKETT Pro Se Appellees 30422 Rabbit Ridge Road Howard, Ohio 43028

Edwards, J.

{¶1} Plaintiff-appellant, Beneficial Ohio, Inc., appeals from the March 6, 2009, Journal Entry of the Mount Vernon Municipal Court.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 24, 2007, a Consent Judgment Entry was filed in the case sub judice. In the Judgment Entry, the parties agreed that appellant Beneficial Ohio, Inc was entitled to a judgment against appellees Joshua and Sondra Beckett in the amount of $11,937.81 plus interest. The Judgment Entry further stated, in relevant part, as follows: "It is further agreed that no execution will issue, other than the filing of a Judgment Lien, so long as the Defendant(s) make(s) payments of at least $250.00 a month commencing April 18, 2007 and by the same date each month thereafter until this debt is paid in full,…"

{¶3} After appellees failed to make the required payments, appellant commenced garnishment proceedings against appellees, seeking recovery of money from appellees' bank account. On February 17, 2009, appellee Joshua Beckett filed a request for a hearing, claiming that funds garnished from appellees' bank account were unemployment compensation payments, which are statutorily exempt from garnishment.

{¶4} A garnishment hearing was held on March 6, 2009. Appellant submitted an affidavit in lieu of appearing at the hearing.

{¶5} As memorialized in a Journal Entry filed on March 6, 2009, the trial court found that the funds taken from appellees' bank account were unemployment compensation benefits that were exempt from garnishment and ordered the Clerk of Courts to disburse the garnished funds, which were being held by the Clerk, to appellee

Joshua Beckett. The trial court further ordered appellant to reimburse appellees for $35.00 which their bank had deducted from their account "to process the unlawful garnishment" and also assessed costs to appellant.

{¶6} Appellant now raises the following assignments of error on appeal:

{¶7} "I. WHETHER THE TRIAL COURT ERRED IN FINDING PLAINTIFF'S GARNISHMENT ACTION TO BE UNLAWFUL.

{¶8} "II. WHETHER THE TRIAL COURT ERRED IN AWARDING APPELLEES THE REIMBURSEMENT OF A BANK GARNISHMENT FEE."

I, II

{¶9} Appellant, in its first assignment of error, argues that the trial court erred when, in its March 6, 2009, Journal Entry, it characterized appellant's garnishment action as "unlawful." Appellant, in its second assignment of error, argues that the trial court erred in ordering appellant to reimburse appellees for $35.00 which their bank had deducted from their account to process the garnishment.

{¶10} Garnishment is a procedure whereby a creditor can obtain property of his debtor which is in the possession of a third party. R.C. 2716.01(B). R.C. 2716.11 provides: "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."

{¶11} 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. R.C. 2716.13(A); R.C. 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. 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).

{¶12} In the case sub judice, appellant filed the affidavit referred to in R.C. 2716.11 and, after appellee disputed appellant's right to garnish their property and filed a request for a hearing, a hearing was held. As a result of the hearing, the trial court ordered the Clerk of Courts to disburse the garnished funds, which were being held by the Clerk, to appellee Joshua Beckett. While the trial court characterized the garnishment as "unlawful", we find that there was no defect in the garnishment procedure, which was conducted in accordance with the garnishment statutes. No exempt funds were ever disbursed to appellant. Moreover, as noted by appellant, "[b]ecause the garnishment hearing is optional and [it] is incumbent on the debtor's affirmative duty to file the hearing request form, it cannot be the case that a subsequent finding of exempt property of the garnishment hearing renders unlawful the entire garnishment proceeding, as explicitly authorized by R.C. 2716.11."

{¶13} There is no way that appellant could have known whether or not the funds in appellees' bank account were exempt or not. The purpose of the hearing was to determine whether or not such funds were exempt. We agree with appellant, therefore, that the trial court mischaracterized appellant's garnishment as unlawful.

{¶14} Appellant also contends that the trial court erred in ordering appellant to reimburse appellees for the $35.00 deducted from their bank account to process the garnishment.

{¶15} As an initial matter, we note that there is no provision in R.C. Chapter 2716 authorizing the reimbursement of such a fee. Moreover, we find *Hollon v. Hollon* (1996), 117 Ohio App.3d 344, 690 N.E.2d 893, to be instructive. In such case, after Mr. Hollon fell behind in his child support payments, a judgment in the amount of $1,087.50 was entered against him. CSEA [Child Support Enforcement Agency] sought to enforce this judgment when it garnished Mr. Hollon's account at Society Bank in December 1995. CSEA recovered $388.45 on December 22, 1995, and Society Bank charged Mr. Hollon a $25.00 fee for the garnishment. At the subsequent hearing, CSEA and Mr. Hollon agreed that the amount garnished would be applied to the outstanding judgment. The trial court ordered CSEA to prepare an entry reflecting this agreement. However, after CSEA attempted to change the terms of the agreement, another hearing was held. The trial court entered a judgment that essentially followed the parties' earlier agreement. The trial court ordered CSEA to pay the $25.00 garnishment fee assessed to Mr. Hollon by Society Bank.

{¶16} CSEA then appealed. In holding that the trial court had abused its discretion in ordering CSEA to pay the $25.00 fee, the court, in *Hollon*, stated, in

relevant part, as follows: "CSEA's garnishment of Mr. Hollon's Society bank account was not frivolous. Mr. Hollon owed a $1,087.50 judgment to Ms. Hollon, and Ms. Hollon may attempt to collect by garnishment proceedings. CSEA knew that Mr. Hollon had an account with Society Bank due to his child support payments, although CSEA had no way of knowing the amount of money in the account or if it was used exclusively for child support payments. We hold that, under these circumstances, attempting to collect an outstanding judgment from a bank account by garnishment is not frivolous conduct." Id at 350.

{¶17} In the case sub judice, the trial court did not find, nor is there evidence, that appellant acted in a frivolous manner in garnishing appellees' bank account. There is no dispute that appellees owed in excess of $11,000.00 to appellant. It was appellees' failure to pay per the previous agreement of the parties that caused appellants to search for funds of the appellees which could be garnished. Moreover, as is stated above, appellant had no way of knowing the nature of the funds in appellees' account.

{¶18} Based on the foregoing, we find that the trial court erred in ordering appellant to reimburse appellees the $35.00 bank garnishment fee.

{¶19} Appellant's two assignments of error are, therefore, sustained.

{¶20} Accordingly, the judgment of the Mount Vernon Municipal Court is reversed and this matter is remanded to the trial court for further proceedings.

By: Edwards, J.

Gwin, P.J. and

Hoffman, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/William B. Hoffman

JUDGES

JAE/d1203

[Cite as *Beneficial Ohio, Inc. v. Beckett,* 2010-Ohio-453.]

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO

FIFTH APPELLATE DISTRICT

BENEFICIAL OHIO, INC.	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
JOSHUA J. BECKETT, et al.,	:	
Defendants-Appellees	:	CASE NO. 09 CA 000017

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Mt. Vernon Municipal Court is reversed and this matter is remanded to the trial court for further proceedings. Costs assessed to appellees.

s/Julie A. Edwards

s/W. Scott Gwin

s/William B. Hoffman

JUDGES