

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

MRC Receivables Corporation

Court of Appeals No. H-12-004

Appellee

Trial Court No. CVH 20071012

v.

George Bissell

DECISION AND JUDGMENT

Appellant

Decided: November 2, 2012

* * * * *

Eric S. Peterson, for appellee.

Reese M. Wineman, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals the judgment of the Huron County Court of Common Pleas, overruling his objection to disbursement of garnished funds. Because we conclude the trial court's finding that appellant failed to establish an exemption to garnishment was proper, we affirm.

{¶ 2} Appellee, MRC Receivables Corporation, is successor in interest to the issuer of a credit card to appellant, George Bissell. On September 17, 2007, appellee sued appellant on the account for \$2,128.37, plus interest. Appellee received a default judgment on January 31, 2008. On October 7, 2011, appellee executed a non-wage garnishment on a First Merit Bank account owned by appellant. The garnishment returned \$4,423.93, the amount of the initial judgment plus interest and costs.

{¶ 3} While appellee moved for disbursement of the proceeds, appellant filed a dispute of the garnishment and requested a hearing. On October 17, 2011, the matter was heard before a magistrate. Appellee did not appear. Appellant appeared pro se.

{¶ 4} In his testimony, appellant told the magistrate “the money that was secured from me, was Social Security benefits that I draw for disablement. * * * I haven’t had a job, nothing until I did get my disability * * *.” Appellant offered no other witnesses and presented no documentation of his claim.

{¶ 5} On October 19, 2011, the magistrate issued a written decision finding that appellant had failed to demonstrate that the money in his account was exempt from garnishment. Over appellant’s objection, the trial court adopted the magistrate’s decision and ordered disbursement of the funds. From this judgment, appellant now brings this appeal. Appellant sets forth a single assignment of error:

I. The trial court below erred in not recognizing the legal significance of the undisputed evidence that the funds seized by the

plaintiff/appellee in the garnishment action were exempt pursuant to § 5115.06 and § 2329.66 of the Ohio Revised Code.

{¶ 6} In its reply brief, appellee asserts that, because it filed a notice of satisfaction in this matter, this appeal is moot. It cites several cases in support, all of which are inapposite to the present appeal.

{¶ 7} Appellant would like to posture the issue on appeal as a failure of the trial court to appreciate the statutory exemption to garnishment for Social Security, R.C. 2329.66(A), and certain disability benefits. R.C. 5155.06. This is clearly not the case, as the magistrate in his decision expressly recognizes these exemptions.

{¶ 8} The burden is on a judgment debtor to prove the applicability of a statutory exemption to garnishment. *State v. Cipriano*, 5th Dist. No. 03CA000032, 2005-Ohio-249, ¶ 10. This is, for the most part, a question of fact. At issue is whether appellant met his burden to demonstrate that the money seized through garnishment was within one of the exempt categories.

{¶ 9} The trier of fact is the sole judge of the weight of the evidence and the credibility of witnesses, and “may believe or disbelieve any witness or accept part of what a witness says and reject the rest.” *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964). There is a presumption that the findings of a trier of fact are correct. When a party is charged with the burden of proving his or her claim, the presumption is all the more rigorous and that party can hardly complain if the trier of fact chooses not to believe

some or all of his or her proofs. *In re Scott*, 111 Ohio App.3d 273, 276, 675 N.E.2d 1350 (6th Dist.1996).

{¶ 10} In this matter, the magistrate found that appellant’s testimony alone, without any documentary evidence or other witnesses in support, failed to demonstrate “that the funds on deposit with financial institution are [exempt.]” Absent overwhelming evidence to the contrary, which we do not find here, this finding must stand. Accordingly, appellant’s sole assignment of error is not well-taken.

{¶ 11} On consideration whereof, the judgment of the Huron County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
