

[Cite as *JPMorgan Chase Bank, N.A. v. Saedi*, 2011-Ohio-853.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 95539**

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**JPMORGAN CHASE BANK, NA**

PLAINTIFF-APPELLANT

vs.

**MOHAMMAD H. SAEDI, ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-713292

**BEFORE:** Gallagher, J., Stewart, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** February 24, 2011

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SEAN C. GALLAGHER, J.:

{¶ 1} Appellant JPMorgan Chase Bank, NA (“Chase Bank”) appeals the trial court’s decision awarding disability insurance benefits to appellee Mohammad H. Saedi and his estate (collectively referred to as “Saedi”). For the reasons set forth herein, we affirm.

{¶ 2} In June 2004, Saedi was involved in a car accident and suffered a serious head injury. In 2005, the Probate Court of Cuyahoga County found

Saedi incompetent. Saedi's wife, Kathleen, was appointed guardian of his person, and Kathryn Eloff was appointed the guardian of the estate. Presently, Saedi is a ward of the state, and Eloff continues to serve as guardian of the estate.

{¶ 3} In March 2005, Chase Bank obtained a judgment against Saedi and United Wireless, Inc., on two promissory notes issued by United Wireless and guaranteed by Saedi personally. The judgment presently exceeds \$2,000,000.

{¶ 4} In October 2005, a suit was filed on Saedi's and the estate's behalf to recover for the injuries Saedi sustained in the accident. Eloff had authority to settle the matter, and Saedi was awarded \$500,000 on his personal injury claim. Of that amount, Chase Bank received \$186,000. Saedi received \$52,000, after all fees and other costs were paid out of the remaining proceeds.

{¶ 5} Under a disability income insurance policy with Provident Life and Accident Insurance Company ("Provident"), Saedi received monthly benefits in the amount of \$6,090 beginning in September 2004. These monthly payments continued until July 2007, subject to a reservation of rights by Provident. After July 2007, Provident discontinued its payments to Saedi. In May 2009, Saedi filed an action against Provident for accrued and

future disability benefits.<sup>1</sup> Although Provident denied liability, the case was settled for \$400,000, to be paid to Saedi in a lump sum.<sup>2</sup> Of the total settlement, \$101,155 was paid to Saedi's attorneys for their fees and expenses in the action against Provident. The remaining amount is the subject of the case underlying this appeal.

{¶ 6} On December 17, 2009, Chase Bank filed a complaint for creditor's bill against Saedi, alleging that a portion of the settlement monies from Provident represented accrued benefits, which were subject to attachment under R.C. 2333.01. Saedi argued that R.C. 2329.66(A)(6)(e) exempts the settlement monies from attachment, and further that the proceeds are reasonably necessary for his support. The parties agreed to forgo a trial, and instead have the trial court reach the merits on their briefs and stipulated exhibits.

{¶ 7} In its July 14, 2010 judgment entry, the trial court found that "all sums are reasonably necessary for M. Saedi's support and no sums will be awarded [Chase Bank]." It is from this decision that Chase Bank appeals, asserting that the "trial court erred when it failed to award to

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<sup>1</sup> The case was originally filed in the Cuyahoga County Common Pleas Court under Case No. CV-694306; it was later removed to U.S. District Court N.D. Ohio under Case No. 1:09 CV 01541.

<sup>2</sup> Eloff's application for authority to settle breach of contract claim was approved by the probate court on November 18, 2009.

plaintiff/appellant the sum of \$57,645.00 from disability insurance benefits paid to defendant/appellee as non-exempt and therefore subject to attachment under R.C. 2329.66 and 3923.19.”

{¶ 8} The appropriate standard of review prevents us from reversing the trial court’s decision as being against the manifest weight of the evidence if we find that the judgment is supported by some competent, credible evidence in the record. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. Furthermore, in reviewing a bench trial, we presume that the findings of the trier of fact are correct. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 461 N.E.2d 1273.

{¶ 9} R.C. 2329.66(A)(6)(e) states: “Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows: \* \* \* The person’s interest in the portion of benefits under policies of sickness and accident insurance and in lump sum payments for dismemberment and other losses insured under those policies, as exempted by section 3923.19 of the Revised Code.”

{¶ 10} R.C. 3923.19, effective as of September 30, 2008, states: “(A) Benefits under all policies of sickness and accident insurance are not liable to attachment or other process, or to be taken, appropriated, or applied by any legal or equitable process or by operation of law, either before or after

payment of the benefits, to pay any liabilities of the person insured under any such policy to the extent that the benefits are reasonably necessary for the support of the debtor and any dependents of the debtor.”

{¶ 11} Neither party disputes that R.C. 2329.66 and R.C. 3923.19 are applicable to the distribution of Saedi’s settlement proceeds with Provident. The issue before this court is whether the trial court erred when it determined that the lump sum payment did not represent past and future benefits, arguably making past benefits subject to attachment under R.C. 3923.19, as enacted prior to September 30, 2008.

{¶ 12} Chase Bank argues that the Provident settlement should be reconstituted into monthly payments for benefits that accrued prior to the suit filed by Saedi against Provident and a lump sum payment for benefits after September 2008. Under Chase Bank’s theory, former R.C. 3923.19 should apply to accrued benefits. It provides: “The portion of any benefits under all policies of sickness and accident insurance *as does not exceed six hundred dollars for each month during any period of disability covered by the policies*, is not liable to attachment or other process, or to be taken, appropriated, or applied by any legal or equitable process or by operation of law, either before or after payment of the benefits, to pay any liabilities of the person insured under any such policy \* \* \*.” (Emphasis added.)

{¶ 13} Chase Bank reasons that Saedi was entitled to \$6,090 per month between September 2004 and the date of the Provident settlement because he received payments in this monthly amount from September 2004 through July 2007. By reconstituting the settlement proceeds from Provident and continuing under this payment schedule, Saedi would be entitled to \$6,090 from August 2007 through September 2008. If, as Chase Banks argues, a portion of the Provident settlement represents accrued benefits, under former R.C. 3923.19, all but \$600 per month should be subject to attachment by Chase Bank.

{¶ 14} In order for the trial court to have made the determination Chase Bank seeks, it must have found that the Provident settlement constituted two separate payments: one for accrued monthly benefits and one for future benefits. Nothing in the record suggests that the trial court made that finding. Furthermore, nothing in the record suggests it erred by not doing so. The trial court properly found that Provident paid Saedi a lump sum amount of \$400,000 to settle the claim in its entirety.

{¶ 15} Chase Bank relies heavily on Eloff's application for authority to settle breach of contract claim, in which she proposes "a settlement representing past disability payments due for a period from August of 2007 to the present, and a lump sum representing all remaining disability payment under the contract \* \* \*." Defendants' trial brief, exhibit 28. Chase Bank

claims that Eloff's characterization of the settlement as past payments and future payments is dispositive of the issue in its favor. We disagree.

{¶ 16} Regardless of Eloff's characterization of the settlement, the trial court's judgment entry authorizing settlement of the breach of contract claim, dated December 28, 2009, makes no reference whatsoever to the settlement representing two different payment amounts, one for past benefits and one for future benefits. The settlement was a lump sum payment of \$400,000, and was paid in 2009, after the present R.C. 3923.19 was in effect. Furthermore, the trial court's judgment entry in the underlying complaint does not state that it found the settlement proceeds represent past and future benefits. Finally, nothing in the statute itself indicates that payments made after September 30, 2008, which may incorporate accrued benefits, must be reconstituted in order to apply former R.C. 3923.19.

{¶ 17} The trial court determined that Saedi demonstrated the settlement proceeds were reasonably necessary to support him. Beyond suggesting Saedi sell his house and his wife get a better paying job, Chase Bank has not provided any evidence that Saedi is able to support himself financially. Saedi was found incompetent and is a ward of the state, and itemization of his living expenses constitutes competent, credible evidence that the Provident proceeds are reasonably necessary for his support.

{¶ 18} After reviewing the record, we find there is competent, credible evidence to support the trial court's decision that Provident's lump sum payment to Saedi in 2009 is just that: a lump sum, representing settlement of the lawsuit. We also find there is competent, credible evidence that the Provident payment is reasonably necessary to support Saedi, and that Chase Bank is not entitled to any of the funds.

{¶ 19} Chase Bank's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

SEAN C. GALLAGHER, JUDGE

MELODY J. STEWART, P.J., and  
MARY J. BOYLE, J., CONCUR