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Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001021-MR

JOSEPH L. COMPTON — APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 99-CI-000864

INSTANT AUTO CREDIT, INC.; AND
MICKEY NEWTON d/b/a
NEWTON'S TIRE & AUTO — APPELLEES

AND NO. 2003-CA-002039-MR

MICKEY NEWTON d/b/a NEWTON'S TIRE AND AUTO — APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 99-CI-000864

INSTANT AUTO CREDIT, INC.;
MARY L. COMPTON; AND
JOSEPH L. COMPTON — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DYCHE AND McANULTY, JUDGES; EMBERTON, SENIOR JUDGE.[1]

McANULTY, JUDGE: In this debt collection and garnishment action, the debtor and the garnishee-employer appeal separate judgments issued against each of them. The debtor argues that venue was improper so the default judgment issued against him was void. He brings this appeal in spite of the fact that the underlying debt was later discharged in bankruptcy. The employer argues that the creditor did not strictly comply with the garnishment statutes, and the debtor's bankruptcy prevents the creditor from continuing the garnishment proceedings against the employer. We conclude that venue in the underlying debt collection action was proper. Further, we conclude that the creditor complied with Kentucky's garnishment statutes, and the debtor's bankruptcy did not prevent the creditor from prosecuting the employer for failing to comply with the garnishment statutes. Thus, we affirm.

Facts

a.) The underlying debt to Instant Auto Credit, Inc.

On August 11, 1994, Mary R. Compton and her son, Joseph L. Compton, entered into a retail installment contract (the Contract) with U.S. Auto Sales for the purchase of a 1986

[1] Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Chevrolet Cavalier. That same day, U.S. Auto Sales assigned the Contract to Instant Auto Credit, Inc. (Instant Auto).

Under the terms of the Contract, U.S. Auto Sales financed the purchase; and the Comptons gave U.S. Auto Sales a security interest in the vehicle. The amount financed was $7,117.50 at an annual percentage rate of 25.96 percent.

At the time the parties signed the contract, the Comptons were both residents of Leitchfield, Grayson County, Kentucky. U.S. Auto Sales was located in Louisville, Jefferson County, Kentucky. And Jefferson County is where the Comptons signed the Contract.

At some point, the Comptons stopped making the required payments under the contract. So in February of 1999, Instant Auto filed a complaint against Mary and Joseph Compton in Jefferson Circuit Court to collect the amount owed -- $4,778.85 plus interest at the contract rate of 25.96% per annum from February 7, 1995.

Neither Mary nor Joseph Compton filed an answer. The trial court issued a default judgment against them on April 1, 1999, jointly and severally. The judgment awarded Instant Auto the sum of $4,778.85 plus interest at the contract rate of 25.96% per annum, from February 7, 1995, until paid, plus Instant Auto’s court costs.

Almost four years to the day after the trial court issued the default judgment, Joseph Compton moved to vacate the judgment on the basis that the debt collection action was transitory. And because it was transitory, under KRS 452.480, Instant Auto should have brought the action in Grayson County, the county in which both defendants reside, instead of Jefferson County, the county where the contract was formed.

The trial court denied Joseph Compton's motion on April 16, 2003, precipitating appeal number 2003-CA-001021-MR. Joseph Compton's mother and co-defendant, Mary R. Compton, did not file an appeal.

b.) The garnishment proceedings

Meanwhile, three years after obtaining the judgment against Joseph Compton, on July 29, 2002, Instant Auto served a garnishment order on Joseph Compton's employer, Newton's Tire & Auto (Newton's Tire). Newton's Tire is a sole proprietorship owned by Mickey Newton and located in Grayson County, Kentucky. Newton's Tire did not file an answer and made no payments under the garnishment order.

On March 20, 2003, seven months after Newton's Tire failed to timely respond to the garnishment order, Instant Auto made a motion under KRS 425.511(2) to hold Mickey Newton, individually and d/b/a Newton's Tire, in contempt of court. The basis of the contempt motion was Newton's willful failure to

answer and properly respond to the wage garnishment order. The trial court was prepared to hear the motion on March 31, 2003, however, neither Mickey Newton nor an attorney on his behalf appeared at the hearing. So the trial court granted Instant Auto's motion to hold Mickey Newton, individually and d/b/a Newton's Tire, in contempt of court. And it awarded Instant Auto the amount of the judgment against Compton -- $4,778.85 plus interest at the rate of 25.96% per annum from February 7, 1995, until paid plus costs.

Almost three months after the trial court found Newton in contempt of court, Newton made a motion to (1) transfer the case to the Grayson Circuit Court; (2) vacate the judgment for lack of personal jurisdiction; and (3) vacate the judgment because the underlying debt was discharged in bankruptcy. The trial court denied Newton's motion on September 3, 2003, precipitating appeal number 2003-CA-002039-MR.

c.) Joseph's bankruptcy filing

On October 30, 2002, both Joseph and Mary Compton filed Chapter 7 bankruptcy petitions. The default judgment granted in the Instant Auto action was among those debts discharged in bankruptcy. The debt was discharged in bankruptcy by order dated February 4, 2003.

Questions presented on appeal

Joseph Compton and Newton present three questions in this consolidated appeal:

(1) Was the default judgment issued against Joseph Compton void because Instant Auto did not bring the action in Grayson County, Kentucky, the county in which both defendants reside? (Appeal number 2003-CA-001021-MR)

(2) Did the trial court err in refusing to vacate the judgment against the employer-garnishee on the basis that it lacked personal jurisdiction over the employer-garnishee? (Appeal number 2003-CA-002039-MR)

(3) May a trial court issue a judgment against an employer-garnishee in a contempt proceeding for failing to answer a garnishment order when the debtor has filed a petition in bankruptcy and there is an automatic stay pursuant to 11 U.S.C.A. § 362? (Appeal number 2003-CA-002039-MR)

Why the default judgment issued against Joseph Compton in Jefferson Circuit Court was proper

Joseph Compton argues that the original action filed against him was a transitory action. Under KRS 452.480 and

452.485, the action should have been brought in Grayson County, the county in which both defendants reside. Thus, the default judgment rendered against him in Jefferson Circuit Court was void. Finally, because the trial court issued a default judgment against Joseph Compton, it is of no consequence that he did not plead the defense of improper venue as required by CR 12.08.

Instant Auto contends that since the underlying debt has been discharged in bankruptcy, the issue is now moot. In spite of the fact that the issue is moot, Instant Auto maintains that venue of the debt collection action was proper under the venue provisions of the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C.A. § 1692i. Finally, Joseph Compton waived any objections to venue in this case because he did not timely raise the defense of improper venue as required by CR 12.08(l).

Joseph Compton is correct in arguing that he did not waive the defense of improper venue because this is a default judgment. See Cash v. E'town Furniture Co., Inc., 363 S.W.2d 102, 103 (Ky. 1962). But we agree with Instant Auto that the issue is moot. It is moot because the ultimate and desired effect of the debt being discharged in bankruptcy was the issuance of a discharge order. The discharge order extinguishes the debtor's personal liability with respect to creditor's

claims; voids any judgment to the extent of the debtor's liability for a discharged debt; and enjoins the commencement or continuation of a civil suit against the debtor personally to recover any discharged debt. See Hurley v. Bredehorn, 44 Cal. App. 4th 1700, 1703 (Cal.App. 1996) (citing 11 U.S.C.A. § 524(a) and Johnson v. Home State Bank, 501 U.S. 78, 84, fn. 5, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991)). In other words, the relief sought by Joseph Compton in this appeal -- for this Court to void the default judgment -- is of no benefit to either him or Instant Auto in that a controversy no longer exists because the debt was discharged in bankruptcy. See Sharp v. Robinson, 388 S.W.2d 121 (Ky. 1965).

Notwithstanding our conclusion that the issue is moot, we note that KRS 452.480 is inconsistent with the venue provision of the FDCPA (15 U.S.C.A. § 1692i) because it does not afford greater protection to the consumer. See 15 U.S.C.A. § 1692n. We believe KRS 452.480 provides different protection to a consumer, but certainly no greater protection. Under KRS 452.480, an action may be brought in "any county in which the defendant, or in which one (1) of several defendants, who may be properly joined as such in the action, resides ***or is summoned***." (emphasis ours). Under 15 U.S.C.A. § 1692i an action may be brought in the judicial district "(A) in which such consumer signed the contract sued upon; or (B) in which such consumer

resides at the commencement of the action." So, while the state provision does not allow suit in the county in which the contract was signed (unless, of course, the defendant is properly served with process there), it does allow suit in any of Kentucky's 120 counties as long as the defendant is summoned there. By contrast, the federal provision only allows suit in two Kentucky forums -- where the debtor signed the contract or resided at the commencement of the action. If a state law is inconsistent with the FDCPA, the FDCPA applies. See 15 U.S.C.A. § 1692n. And under the FDCPA, venue was proper in Jefferson County, the county in which the parties signed the contract.

Why the trial court did not err in refusing to vacate the judgment against the employer-garnishee on the basis that it lacked personal jurisdiction over the employer-garnishee

Newton argues that Instant Auto did not strictly comply with Kentucky's statutory provisions governing garnishment actions, KRS 425.501 et. seq. First, under KRS 425.526, Instant Auto should have filed a petition or amended petition and issued a summons after Newton failed to comply with the order of garnishment. Second, under KRS 425.511(2), Instant Auto should have required Newton to appear before the Commissioner of the Jefferson Circuit Court before issuing a judgment against him, not after issuing a judgment against him. Third, in addition to not complying with state statutory provisions, Instant Auto did not comply with local rule 403 of

the Jefferson Circuit Court governing motions for default judgment.

Since Newton made his motion to vacate under CR 60.02, we review the trial court's denial of the motion for an abuse of discretion. See Fortney v. Mahan, 302 S.W.2d 842, 843 (Ky. 1957). After reviewing the record relating to the garnishment proceedings in this case, we hold that the trial court did not abuse its discretion in denying Newton's motion to vacate the judgment.

After receiving the order of wage garnishment, for whatever reason, Newton failed to answer or otherwise respond to the order. See KRS 425.511(2). Under KRS 425.511(2), Instant Auto was permitted to move the court to compel Mickey Newton, individually and d/b/a Newton's Tire to appear by process because he was in contempt of the court's garnishment order. See Smith v. Gower, 60 Ky. 171 (Ky.App. 1860) (construing the predecessor to KRS 425.511 and holding that compelling the garnishee's appearance by process is one of several remedies afforded a plaintiff in cases in which a garnishee fails to answer a garnishment order). Although he was provided with notice, Newton did not appear on the hearing date scheduled for the contempt motion.

As a result of Newton's failure to answer the garnishment order and failure to defend his inaction at the

hearing, the trial court found him in contempt of court and sanctioned him the full amount of the judgment that had been entered against Joseph Compton. Contrary to Newton's characterization on appeal, the trial court did not enter a default judgment against him. It found him in contempt of court and sanctioned him for his failure to answer and respond to court orders. Such a sanction was entirely within the court's power. See White v. Sullivan, 667 S.W.2d 385, 387 (Ky.App. 1983) (holding that circumstances of the case and defendant's misconduct warranted a fine payable to the aggrieved party).

Why the automatic stay provisions of 11 U.S.C.A. § 362 did not prevent the trial court from issuing a judgment against Newton for failing to answer the garnishment order

Newton argues that an action to enforce a garnishment order cannot be maintained when the underlying judgment upon which the garnishment order is based has been discharged in bankruptcy. Newton cites a United States Bankruptcy Court case from the Middle District of Tennessee, In re Richardson, 52 B.R. 237 (Bankr.M.D. Tenn. 1985), in support of this argument. But we believe that a later case decided by the Eastern District of Tennessee, In re Kanipe, 293 B.R. 750 (Bankr.E.D.Tenn. 2002) is factually similar and representative of the majority view on this issue.

The Kanipe bankruptcy court held that a judgment creditor's post-petition actions in prosecuting a conditional

judgment against a debtor's employer for failure to honor a pre-petition garnishment did not violate the discharge injunction (or automatic stay). See id. at 758. In so holding, the court reasoned that the prosecution was solely against the employer-garnishee for its failure to answer or otherwise respond to the garnishment. See id. No property of the bankruptcy estate or the debtor was involved, and the outcome did not directly or indirectly affect his discharge rights. See id. at 759. Likewise, in this case, the prosecution was solely against Newton for his contempt in failing to answer or otherwise respond to the garnishment order. It does not affect Compton at all. The trial court did not abuse its discretion in denying Newton's motion to vacate on the grounds of the automatic stay.

For the reasons enumerated above, the default judgment against Joseph Compton is affirmed. And the order of contempt and judgment against Mickey Newton, individually and d/b/a Newton's Tire, is also affirmed.

ALL CONCUR.

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