

RENDERED: May 5, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000713-MR

LATONDRA EVANS; KENNETH  
EVANS; and LEONARD EVANS, JR

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DENISE CLAYTON, JUDGE  
ACTION NO. 04-CI-007670

PRIMUS AUTOMOTIVE FINANCIAL  
SERVICES

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: TACKETT AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

EMBERTON, SENIOR JUDGE: At issue in this appeal is the continuing validity of a judgment lien after the death of the judgment debtor. Appellants argue that the trial court erred in enforcing the lien, which they contend is time-barred for failure to present the lien as a claim upon the debtor's estate; that it is otherwise unenforceable by virtue of KRS 396.135 and KRS 396.205; and that it is invalid due to appellee's failure to

---

<sup>1</sup> 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.

revive it against the personal representative under KRS 426.555. Finding no error in the enforcement of the judgment lien by the trial court, we affirm.

The facts are neither complex nor in dispute. On November 28, 2000, appellee Primus Automotive Financial Services obtained a default judgment against Leonard Evans, Sr. in the amount of \$8,417.00, exclusive of interest and costs. The judgment was filed as a lien pursuant to KRS 426.720 in the office of the Jefferson County Clerk on December 20, 2000. Leonard Evans Sr. died intestate on October 10, 2001, and his daughter LaTondra Evans, was appointed administratrix of his estate. The primary asset of the estate was a residence located at 4408 Exeter Road in Louisville, Kentucky. After payment of known claims, the estate was closed by order of Jefferson District Court entered on August 26, 2002, and the Exeter Road property passed to appellants by operation of law. In the course of attempting to close on a sale of that property in March 2004, appellants discovered the existence of appellee's judgment lien.

Appellants then filed an action seeking a declaration that the judgment lien was no longer valid. In enforcing the lien, the trial judge determined that the judgment lien fell within the exceptions to the time-limitations of KRS 396.011 as a proceeding to enforce "any mortgage, lien or other security

interest securing an obligation of the decedent or from the property of the estate . . . ." On this basis the trial judge determined that, while appellee could have presented the lien as a claim against the estate, it was not required to do so and that the lien against the property would remain until satisfied. Thus, the trial judge ordered that prior to the release of funds from the sale of the Exeter Road property, the lien was required to be paid by the closing company. The appeal followed.

Appellants first argue that the trial judge erred in concluding that the judgment lien fell within the following exception to the time requirements for presenting against an estate set out in KRS 396.011:

- 2) Nothing in this section shall affect or prevent:
  - (a) To the extent of the security only, any proceeding to enforce any mortgage, pledge, lien or other security interest securing an obligation of the decedent or upon property of the estate;<sup>2</sup>

In the appellants' analysis of this provision, they maintain that the section is inapplicable to appellee's judgment lien because it is not a security interest. We are convinced that not only is appellant's construction erroneous, it is entirely at odds with a cogent and consistent statutory framework allowing for the enforcement of similar encumbrances property in the hands of personal representatives.

---

<sup>2</sup> KRS 396.011(2), emphasis added.

Appellants argue that the lien cannot be construed to be a security interest within the contemplation of KRS 396.011 because it is non-consensual, it does not induce performance and it occurs after the fact. However, we find instructive the following language in State Bank of Southern Utah v. Rushton, in which the court had occasion to address the nature of a judicial lien in the context of a bankruptcy proceeding:

. . . the judicial lien thus created on property which was not pledged as collateral for the loan nevertheless was involuntary and nonconsensual. Accordingly, this court rules that the judicial lien concerning the nonmortgaged property was not created by or through the "agreement" between the creditor and the debtor, but by operation of law. This kind of secured claim does not require the consent of the debtor. *Ron Pair*, 489 U.S. at 240, 109 S.Ct. at 1029-30.<sup>3</sup>

We are convinced that as the Rushton case makes clear, the ordinary characteristics of a security interest are not requisites of a statutorily created lien. The broad authority of the legislature to fashion a framework to ensure the payment of judgments through the imposition of a judgment lien is concisely stated in the following analysis by the Illinois Court of Appeals in Temesvary v. Houdek:<sup>4</sup>

The legislature has the power, subject to constitutional limitations, to provide for liens to secure the payment of debts and other obligations, and legislative authority

---

<sup>3</sup> 207 B.R. 721, 727-28 (D.Utah,1997)(emphasis added).

<sup>4</sup> 703 N.E.3d 613, 616 (2<sup>nd</sup> Dist. 1998)(citations omitted).

exists to create by statute a right of lien where no such right existed at common law. Lien laws are liberally construed to effect the purpose intended by the legislature. In construing a statute, courts should look to the language of the statute as the best indication of legislative intent, giving the terms of the statute their ordinary meaning. A statute must be read as a whole, and no word should be interpreted so as to be rendered meaningless.

We are of the opinion that the construction appellants seek to impose upon KRS 396.011 is a reading that would render meaningless the statutory protections of KRS 426.720 and, as such, cannot be sanctioned by this Court.

Furthermore, as noted by appellee, that construction is plainly out of sync with other statutory provisions addressing the payment of encumbrances on estate property. For example, KRS 396.135 specifically provides that "this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding." KRS 396.155 authorizes the payment of any encumbrance in the form of a mortgage, pledge, lien, or secured interest, "whether or not the holder of the encumbrance has presented a claim . . . ." Thus, construing KRS 396.011(2) in the context of this statutory framework, it is clear that the trial judge properly concluded that appellee's judgment lien was enforceable against the proceeds of the sale of the Exeter Road property.

Next, appellants argue that enforcement of the judgment lien is barred by application of KRS 396.205, which provides in pertinent part:

Notwithstanding any other statute to the contrary, no cause of action on any claim not otherwise barred by the provisions of KRS 396.011 and KRS 396.055(1), or any other applicable statute of limitations, shall be brought against the personal representative or against any distributee after the expiration of two (2) years from the date of the order of discharge of the personal representative.

The fallacy in this argument lies in the very essence of the judgment lien as an attachment on the debtor's real property. A proceeding to enforce a judgment lien is not an action against the personal representative or any of the distributees; it is merely the assertion of an encumbrance against the proceeds of the sale of the property on which the lien attached, purely and simply an in rem action. This view fully comports with the explanation of the nature of lien enforcement proceedings set out in City of Jenkins v. Cury:<sup>5</sup>

The lien given by the statute and ordinances results from a proceeding in rem. The lien attaches to the thing itself and the condition of ownership or title is of no significance. The fact that the title to the property is in the process of being divested from one owner and transferred of another does not resist the attachment of the lien. The property is there and the

---

<sup>5</sup> 347 S.W.2d 85, 87 (Ky. 1961).

lien, if valid, attaches to it. A personal judgment does not result.

Next, we agree with the trial judge that appellee was not required to revive the action against the personal representative under KRS 426.555. Relying upon Holeman's Ex'r v. Holeman's Heirs and Company,<sup>6</sup> the trial judge correctly concluded that the death of an execution defendant does not discharge a lien upon his real property which was created by a levy made thereon prior to his death. Appellee did not attempt to enforce its lien by sale prior to Mr. Evans' death; rather it sought to enforce its lien by claiming an interest in the proceeds from the sale of the property which had been undertaken by his heirs. The propriety of this means of enforcing the lien is confirmed by the holding of the court in Burge's Adm'r and Company v. Brown and Company:<sup>7</sup>

It is the duty of the administrator of insolvent decedents to take such legal measures as will marshal the legal and equitable assets, and have a legal distribution thereof among the creditors. The execution creditors, by their levy in decedent's lifetime, obtained a legal lien on the house and lot, which was not destroyed by his death, and, therefore, have priority on it, but nothing more. They could not sell it without a revivor against the decedent's heirs, and such sale did not convey the legal title, which is yet in them. It is not only the privilege, but the duty, however, of the administrator, to have

---

<sup>6</sup> 2 Bush 514, 65 Ky.514 (Ky. 1866).

<sup>7</sup> 5 Bush 535, 68 Ky. 535 (Ky. 1869).

this cloud cleared away, that the property may sell for its value, unencumbered by this sheriff's sale.

Because the right to enforce the encumbrance survived the death of Mr. Evans, appellee was not required to take steps to revive its claim to a portion of the proceeds from the sale instituted by appellants.

A final procedural matter must be addressed.

Appellants suggest that the failure to join G.S. Closings, with whom appellants escrowed sufficient funds to satisfy the judgment lien, as a party to appellant's declaratory judgment action deprives the trial court of the ability to order payment of the lien from the escrowed funds. Apparently, however, appellee filed a third-party complaint against G.S. Closings but withheld service due to the pendency of this appeal. We agree with appellee that its properly recorded lien attached to the proceeds of the sale of the real estate and it was not required to file a counterclaim in appellants' declaratory judgment action to preserve its claim to the funds. Compliance with KRS 426.720 constitutes sufficient notice to parties dealing with the property or the proceeds therefrom as to the existence of appellee's lien.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kirk Hoskins  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Thomas L. Canary, Jr.  
Louisville, Kentucky