

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002069-MR

HENRY K. JARRETT, III

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM, JR., JUDGE
ACTION NO. 08-CI-000384

WILLIAM DENNIS SIMS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, STUMBO, AND WINE, JUDGES.

STUMBO, JUDGE: Henry K. Jarrett appeals from a Summary Judgment rendered by the Jefferson Circuit Court in favor of William Dennis Sims. Attorney Sims represented Jarrett's former wife in a dissolution of marriage proceeding in Jefferson Circuit Court. After Sims garnished Jarrett's bank account to recover attorney fees made payable to Sims by Order of the Jefferson Circuit Court, Jarrett

filed the instant action alleging wrongful garnishment, abuse of process, and negligence. Sims' motion for Summary Judgment on all issues was sustained, and this appeal followed. For the foregoing reasons, we affirm the Summary Judgment.

Attorney Sims represented Jarrett's former wife in a dissolution of marriage proceeding filed in Jefferson Circuit Court in 2003. Sims provided representation to Jarrett's former wife for several years, resulting in an award of attorney fees of \$17,500.00 entered against Jarrett and in favor of Sims. That award consisted of two interlocutory awards of \$7,500.00 and \$10,000.00, respectively. Thereafter, a motion to alter, amend or vacate the judgment was filed, whereupon the trial court amended its award to \$22,500.00. Jarrett then prosecuted a direct appeal to this Court on several issues. A panel of this Court rendered an opinion on August 31, 2007, wherein it set aside the additional \$5,000.00 award made when considering the motion to alter, amend or vacate, and directed that the original Judgment of \$17,500.00 be reinstated.

During the course of the litigation, Jarrett made one or more partial payments toward the attorney fee award. When it became apparent to Sims that Jarrett was not going to satisfy the balance of the award, Sims filed non-wage garnishments with Stock Yards Bank, Stifel Nicolaus and Community Bank. Stock Yards Bank was the first institution to respond to the garnishment, and on January 24, 2008, Sims received \$12,987.15, representing the balance of the

\$17,500.00 award. After receiving notice of the garnishment, the Jefferson Circuit Court rendered an Order of Satisfaction on February 1, 2008.

Thereafter, Jarrett filed the instant action in Jefferson Circuit Court alleging that Sims improperly and without justification garnished Jarrett's assets. As a basis for the action, Jarrett claimed that the trial court never rendered an attorney fee award in favor of Sims, as the Kentucky Court of Appeals so directed when it reversed the original \$22,500.00 award. Jarrett also maintained that the property sought to be seized was not the property of Jarrett in his individual capacity, but was that of the Henry K. Jarrett, III Trust. Jarrett further maintained that the garnishment constituted libel/slander and negligence, and resulted in Jarrett sustaining emotional and mental pain and suffering, as well as embarrassment and humiliation.

The action proceeded in Jefferson Circuit Court, whereupon both parties filed motions for Summary Judgment. After reviewing the record, the Court granted Sims' motion and denied that of Jarrett. This appeal followed.

Jarrett now argues that the Jefferson Circuit Court committed reversible error in granting Sims' motion for Summary Judgment because genuine issues of material fact remain for adjudication. Jarrett first contends that the garnishment was improper because Sims failed to base the garnishment on a judgment. That is to say, Jarrett maintains that when this Court reversed the \$22,500.00 award, it was incumbent upon the trial court to render a \$17,500.00 judgment in accordance with the Court of Appeals' directive to the trial court to do

so. Since the trial court never rendered a judgment subsequent to that Opinion, Jarrett contends that there is no judgment to enforce, and no basis for the garnishment. In contrast, Sims argues that when the panel of this Court reinstated the original award of \$17,500.00, the Family Court's two prior Orders (for \$7,500.00 and \$10,000.00) were enforceable and self-executing. That is to say, Sims contends that the effect of the Court of Appeals' Opinion was simply to resurrect the original \$17,500.00 award, and that he properly enforced it by way of garnishment.

Jarrett's claim of improper garnishment is based on KRS 425.501(1).

It states that,

Any person in whose favor a final judgment in personam has been entered in any court of record of this state may, upon the filing of an affidavit by him or his agent or attorney in the office of the clerk of the court in which the judgment was entered, and in the same cause in which said judgment was obtained showing the date of the judgment and the amount due thereon, and that one (1) or more named persons hold property belonging to, or are indebted to, the judgment debtor, obtain an order of garnishment to be served in accordance with the Rules of Civil Procedure.

KRS 425.501(1) states in no uncertain terms that a garnishment is executable only by a "person in whose favor a final judgment in personam has been entered" The dispositive question, then, is whether there exists in the record an executable "final judgment" in favor of Sims. We must answer that question in the affirmative. The Court of Appeals' Opinion rendered on August 31, 2007, states that, "the trial court abused its

discretion by awarding Cynthia's attorney an additional \$5,000.00 in fees after entry of the initial judgment. Consequently, we must set aside *that award* and we direct the trial court to reinstate its original award of \$17,500.00." (Emphasis added).

We are not persuaded by Jarrett's contention that no judgment exists to support the garnishment. The original attorney fee award was rendered in the amount of \$17,500.00 and entered of record. By its own terms, the Opinion of this Court set aside only the subsequent award of "an additional \$5,000.00 in fees after entry of the initial judgment." It cannot reasonably be argued that Jarrett did not owe to Sims \$17,500.00 in attorney fees, as these fees were memorialized by way of two interlocutory orders awarding \$7,500.00 and \$10,000.00 fees. Sims properly relied on the original \$17,500.00 Family Court judgment, as well as the August 31, 2007, Opinion of this Court directing the Family Court to reinstate that award. As such, we find no error on this issue. For the same reason, we are not persuaded by Jarrett's subsequent argument that Sims' motion for Summary Judgment asserting collateral estoppel / res judicata was not supported by the law.

Jarrett next argues that the garnishment was excessive. He notes that the garnishment affidavit alleged an amount due of \$17,500.00, when in fact the amount due was \$10,912.33. We find no error on this issue. While the underlying judgment was for \$17,500.00, Sims garnished

\$12,987.15 representing the judgment amount minus attorney fees paid by Jarrett, plus interest. Jarrett appears not to argue that Sims garnished funds in excess of what he was owed, but rather that the garnishment was procedurally defective because the affidavit alleged that the amount due was \$17,500.00. We do not find this argument persuasive, because the Order of Non-Wage Garnishment and Affidavit for Writ of Garnishment sought \$17,500, plus interest and costs, *less any payments made*. Jarrett has not demonstrated that the garnishment was procedurally defective, nor that Sims received funds in excess of those represented by the judgment, plus interest and costs, minus payments received. Accordingly we find no error on this issue.

Jarrett's final argument is that the dismissal of his claims for malicious prosecution, abuse of process, false light and defamation were erroneous as a matter of law. He contends that because there was no final judgment in support of the garnishment, he is entitled to prevail as a matter of law on the aforementioned claims. Having determined that the garnishment was properly based on the reinstated Judgment of the Family Court in the amount of \$17,500.00, we find no error.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law.” [CR 56.03](#). “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” [Steevest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 \(Ky. 1991\)](#). “Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact.” *Id.* Finally, “[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” [Scifres v. Kraft, 916 S.W.2d 779, 781 \(Ky. App. 1996\)](#).

When viewing the record in a light most favorable to Jarrett and resolving all doubts in his favor, we find no error in the Jefferson Circuit Court’s entry of Summary Judgment. For the foregoing reasons, we affirm the Summary Judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Leonard Rosenberg
Louisville, Kentucky

Henry K. Jarrett, III
Louisville, Kentucky

BRIEF FOR APPELLEE:

Wm. Dennis Sims
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