

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001487-MR

MANUEL GARCIA

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 03-CI-00810

KENTUCKY EMPLOYERS MUTUAL
INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND NICKELL, JUDGES; LAMBERT,¹ SENIOR JUDGE.

KELLER, JUDGE: This appeal arises from the decision of the Fayette Circuit Court which denied appellant, Manuel Garcia (hereinafter Garcia), an exemption to a lien placed upon Garcia's property by Kentucky Employers' Mutual Insurance Company ("KEMI").

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

FACTS

Garcia was sued by KEMI for non-payment of Workers' Compensation insurance premiums in the amount of \$10, 217.99 and interest. A default judgment was entered by the trial court in favor of KEMI in April 2003. KEMI then filed a judgment lien against Garcia.

Garcia owned two mobile homes: one in which he resided and the other he used to store personal property. The mobile home park where they were located was sold, and Garcia was given a notice to vacate. Following settlement of a lawsuit regarding the sale, the homeowners in the park were paid the fair market value for their mobile homes. Garcia received \$2,869.00 for one of the mobile homes and \$1,181.00 for the other. The mobile homes were then destroyed. Thereafter, Garcia filed a motion to allow his attorney to disburse funds received from the settlement.

Prior to the destruction, Garcia notified KEMI requesting that the lien be released and that he be allowed to receive the money from the settlement. KEMI refused. In court, Garcia argued that the monies were exempt from collection pursuant to Kentucky Revised Statutes (KRS) 427.060, which contains a homestead exemption, and KRS 427.010, which contains a personal property exemption. The trial court ruled that the exemptions were not applicable, as Garcia had purchased the homes subsequent to the entry of the judgment and because the homes were not personal property. Garcia appealed to this Court.

STANDARD OF REVIEW

As this matter required the lower court to determine an application of the statutory framework of the enforcement of judgments and exemptions, it constitutes a question of law subject to this Court's *de novo* review. *Holman v. Holman*, 84 S.W.3d 903, 905 (Ky. 2002); *Hardin County Schools v. Foster*, 40 S.W.3d 865 (Ky. 2001) (opining that questions of statutory interpretation are questions of law and that the standard of review involves examining plain meaning and legislative intent); *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116 (Ky. 1991) (holding that on questions of law a reviewing court has greater liberty to discern whether conclusions were supported by evidence).

ANALYSIS

Garcia argues that he was entitled to claim the homestead exemption contained in KRS 427.060 and cites several cases that stand for the proposition that the homestead exemption should receive a liberal interpretation in favor of the homestead claimant. We agree. However, we cannot agree to ignore the plain language of the statute. KRS 427.060 states:

In addition to any exemption of personal property, an individual debtor's aggregate interest, not to exceed five thousand dollars (\$5,000) in value, in real or personal property that such debtor or a dependent of such debtor uses as a permanent residence in this state, or in a burial plot for such debtor or a dependent of such debtor is exempt from sale under execution, attachment or judgment, except to foreclose a mortgage given by the owner of a homestead or for purchase money due thereon. *This exemption shall not apply if the debt or*

liability existed prior to the purchase of the property or the erection of the improvements thereon.

(Emphasis added). The plain language of the statute excludes any interpretation to the contrary. Garcia acknowledges that he purchased the mobile homes after the debt existed and after the judgment was entered. Therefore, the trial court correctly found that the exemption did not apply.

Garcia next argues that he is entitled to the \$1,181.00 for the second mobile home as he did not reside in that structure and mainly used it for the storage of personal property. Garcia asserts that the law allows a debtor to sell or dispose of exempt property without infringing upon the exercise of his right to claim an exemption. In furtherance of his argument he cites to *Nicholson's Trustee v. Nicholson*, 125 Ky. 629, 101 S.W. 985 (1907), which states in pertinent part:

In *Wallace v. Mason*, 38 S.W. 887, 100 Ky. 560, (1897) this court said: "If a debtor owns just such personal property as the law exempts from the payment of his debts, why should he not be permitted to sell it and invest it in land, occupy it with his family, and hold it as a homestead exempt from the payment of his debts? Where is the difference in principle between the case where the proceeds of exempt realty and those of exempt personalty are invested in a homestead? The creditor is injured no more in the one than the other case."

Id. at 986.

We agree that assets received from a statutorily exempted source and then deposited into a bank checking account do not lose their exempt status. The law extends protection to the deposits so long as those deposits can be identified as or traced to payments of exempt funds. *Matthews v. Lewis*, 617 S.W.2d 43, 46

(Ky. 1981). In this case, Garcia did not trace the funds used to purchase the mobile home to exempt funds. Nor do we find persuasive the argument that Garcia did not reside in the mobile home, thus transforming it into personal property. The property was purchased after the debt and it retains the characteristic of a homestead, regardless of Garcia's election to use it primarily for storage.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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