

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002254-MR

SHAUNA VOGES AND MARK VOGES

APPELLANTS

v. APPEAL FROM OWEN CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 07-CI-00099

TIMOTHY FULMER, EXECUTOR
OF THE ESTATE OF MARY ANN
FULMER, DECEASED.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON AND LAMBERT, JUDGES; HENRY,¹ SENIOR JUDGE.

CLAYTON, JUDGE: This is an appeal of a decision of the Owen Circuit Court finding appellant Mark Voges's removal of money from an account owned jointly

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

with his spouse, appellant Shauna Voges, was in violation of KRS 378.010. For the reasons that follow, we affirm the decision of the trial court.

BACKGROUND INFORMATION

This action began with a complaint filed against Shauna by the appellee. By amended complaint, Mark was added as a party. The original claim was tried on March 4, 2009, and resulted in a judgment against Shauna in the amount of \$22,500.00 plus interests and costs.

Shauna and Mark owned a joint checking account at the Bank of Kentucky in Dry Ridge, Kentucky. Two days prior to the March 4th trial, Mark withdrew \$12,483.92 from the account. On the day of trial, Shauna withdrew the remaining \$245.75 from the account. The couple thereafter deposited most of the funds into a new account at a bank located in Carrollton, Kentucky.

After the judgment against Shauna, the appellees asserted that Mark and Shauna violated KRS 378.010 in the withdrawal of the monies from the joint account. Mark contends that as a joint account holder, he was entitled to remove the funds and that he was not a debtor under the judgment received by the appellee.

STANDARD OF REVIEW

Finding of fact by a trial court are reviewed under a clearly erroneous standard. *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003). Conclusions of law made by the trial court, however, are reviewed under a *de novo* standard. *Gosney v.*

Glenn, 163 S.W.3d 894 (Ky. App. 2005). With these standards in mind, we examine the findings and conclusions of the trial court.

DISCUSSION

KRS 378.010 provides, in relevant part, as follows:

Every gift, conveyance, assignment or transfer of, or charge upon, any estate, real or personal, or right or thing in action . . . made with the intent to delay, hinder or defraud creditors, purchasers, or other persons, . . . or . . . evidence of debt given, action commenced or judgment suffered, with like intent, shall be void against such creditors[.]

KRS 378.020 has similar wording, but is reserved to actions of debtors. In this action the judgment entered was against Shauna, not Mark. The trial court found that the transfers by the appellants were fraudulent within the meaning of this statute. In making its finding, the trial court found that Mark had the right to remove the funds in their entirety as a joint account holder, but that Mark's withdrawal was with the intent to avoid a judgment and, as such, was fraudulent. We agree with the findings of the trial court.

Pursuant to *Barton v. Hudson*, 560 S.W.2d 20 (Ky. App. 1977), a joint account holder has the right to withdraw all funds in a joint account. A creditor also has the right to attach all funds in a joint account even if it has obtained the judgment against only one of the account holders. Thus, Mark had the right to withdraw the funds. The trial court then went on to hold that Mark's withdrawal was fraudulent. We agree.

In *Campbell v. First Nat. Bank of Barbourville*, 234 Ky. 697, 27 S.W.2d 975 (Ky. App. 1930), Kentucky's highest court held that a transaction made with intent to hinder or defraud someone was fraudulent conduct. In the present case, Mark did not rebut the inferences of fraud and sustain bona fides of conveyance as required by *Campbell*. *Id.* at 977. Instead, Mark candidly stated that he moved the money because he needed to use the money for existing creditors and that he feared a judgment against Shauna would allow the appellee access to the funds. This is the type of conduct held by both case and statutory law within this Commonwealth to be fraudulent. Thus, we affirm the decision of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Stephen T. McMurtry
Fort Mitchell, Kentucky

BRIEF FOR APPELLEE:

Steven Joseph Megerle
Covington, Kentucky