

RENDERED: DECEMBER 11, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000278-MR  
AND  
NO. 2014-CA-000512-MR

JULIAN BRAD HAYDON AND  
BARBARA ADAMS

APPELLANTS/CROSS-APPELLEES

APPEAL AND CROSS-APPEAL FROM HARDIN CIRCUIT COURT  
v. HONORABLE KEN M. HOWARD, JUDGE  
ACTION NO. 12-CI-00661

KEN DOZER

APPELLEE/CROSS-APPELLANT

OPINION  
AFFIRMING

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BEFORE: J. LAMBERT, STUMBO AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Julian Brad Haydon and Barbara Adams appeal from an order of the Hardin Circuit Court finding Haydon owned certain property seized during execution of a judgment and was subject to execution by Ken Dozer. Dozer

cross-appeals arguing the trial court erred when it found certain property was owned by Adams and not subject to execution. We affirm.

In September 2013, a jury returned a \$1,150,000 verdict in a defamation action filed by Dozer against Haydon. Following the judgment, Dozer filed a motion for a temporary injunction to prevent Haydon from disposing of real estate, cash assets and other personalty while the judgment remained unsatisfied. On October 8, 2013, the trial court denied the temporary injunction but entered an order nunc pro tunc permitting Dozer to execute on the trial judgment immediately. On the same date, Dozer obtained an order of non-wage garnishment to be served on three banks where Haydon had accounts: Republic Bank, the Cecilian Bank, and Kentucky Neighborhood Bank.

On October 9, 2013, Haydon filed motions for judgment notwithstanding the verdict, a new trial, and to alter, amend or vacate the judgment (JNOV). Two days later, he filed a motion to stay enforcement of the non-wage garnishments served upon the three banks. The trial court took Haydon's motions under submission and, on November 14, 2013, denied the motions.

On November 25, 2013, an execution order was entered and delivered to the Hardin County Sheriff. On December 11, 2013, the Hardin County Sheriff served the execution order on Haydon at his residence. In addition to Haydon, Adams, who also resided at the residence, was present during the execution. Among the personal property seized was \$37,000 in four bundles of one-hundred-dollar bills contained in a yellow Cecilian Bank bag as well as coin collections.

On December 13, 2013, Adams filed a motion to intervene in the libel action to request the return of the seized property she claimed was hers, including the \$37,000 and coin collections. On that same date, Dozer filed a motion for an order for the Hardin County Sheriff to release the seized assets to him. The circuit allowed Adams to intervene as a third-party plaintiff for the limited purpose of asserting her ownership or interest in the seized property.

An agreed order was entered for the return of certain items of personal property belonging to Adams. However, it was not resolved whether Haydon exclusively owned the \$37,000 in cash and the coin collections. A hearing was conducted to resolve the ownership issue.

Adams testified that after her husband's death in 2004, she moved into Haydon's residence where she has resided for nine years. She testified she kept approximately \$60,000 cash in the home so that it would be readily available. She testified she kept the \$37,000 in Haydon's office located on the second floor of the home in the bank bag taped under or behind Haydon's desk.

After her husband died, Adams sold his business but could not recall the amount of money received. The marital residence was sold in 2005, with a net profit of \$91,256.91, but Adams testified none of that money was in the bank bag. However, she testified that some of the money found in the bank bag was money received from her husband's estate and insurance.

Adams also testified that in September 2010, she purchased a certificate of deposit (CD) in the amount of \$33,036.19 from which she withdrew

money on October 2011, March 2012, May 2012, and September 2012. The September withdraw was for \$23,251.53 and closed out the CD. In 2013, she cashed another CD in the amount of \$10,000. None of the \$37,000 found in the bank bag was from those CDs.

Adams also testified that she collected coins in water jars or jugs. She had, on various occasions, taken the coins to the Fort Knox Federal Credit Union and exchanged the coins for cash. She explained that after the coins were placed in a CoinStar machine at the credit union, a receipt would print reflecting the total of the coins and then the receipt was taken to the teller for cash. Adams testified she exchanged the coins for \$100 bills. Adams testified that \$9,000 of the \$37,000 in the bank bag was from the exchange of coins.

She also testified that her husband had coin collections and that she continued the collections. The coin collections were kept in a closet in her bedroom.

Haydon testified that the \$37,000 cash in the bank bag was not his. He testified he had only one checking account with \$5 in it at Kentucky Neighborhood Bank and did not have a savings account or CDs. He testified that he owns three apartment buildings but had only fourteen tenants and averaged \$475 per month in rent for each tenant.

Haydon admitted making the following deposits in his Kentucky Neighborhood Bank account: a \$9,000 deposit in May 2013; a \$4,500 deposit in June 2013; a \$9,000 deposit in July 2013; a \$6,000 deposit in August 2013; and

\$5,700 deposit in September 2013. He verified that immediately after the \$1,150,000 verdict, he had \$22,253.99 in his Kentucky Neighborhood Bank account and \$21,615.66 in that account just prior to filing his motion to stay enforcement of the non-wage garnishments. On November 15, 2013, the day following the denial of Haydon's motion for JNOV, \$1,403.84 was taken from the account by non-wage garnishment but the remainder of the account had been liquidated.

Regarding his checking account at Republic Bank, Haydon verified that \$6,383.84 was in the account on September 30, 2013 and \$5,166.88 on October 16, 2013. On November 14, 2013, he had \$3,081.24 in this account but on November 15, 2013, had only \$296.15 which was sent to Dozer pursuant to the non-wage garnishment. At the time of the hearing, Haydon's Cecilian Bank checking account was closed.

Haydon testified that no deposits were made into any account from November 2013 or December 2013 rental receipts. No deposits were made into the Kentucky Neighborhood Bank checking account from October 2013 rental receipts.

Detective Robert Dover of the Hardin County Sheriff's office assisted in serving the execution order. He testified that while he was downstairs in the home, Haydon and Adams were upstairs. He went upstairs and found Adams in the second floor office. Adams's back was turned to Detective Dover who

requested she turn around. She complied and Detective Dover noticed a large bulge in Adams's shirt. Detective Dover questioned Adams regarding the bulge and Adams told him she had a bag containing approximately \$40,000.

Detective Dover testified that the bank bag contained four stacks of one-hundred-dollar bills wrapped in black tape. Three stacks contained \$10,000 each and one contained \$7,000. Detective Dozer testified that Haydon appeared to have no knowledge of the money.

After hearing the evidence, the trial court issued an order permitting the record to be held open for seven days to give Adams an opportunity to provide additional proof of ownership of the \$37,000. On January 10, 2014, Adams filed documentation from the Fort Knox Federal Credit Union showing four separate transactions in October 2013, totaling \$4,200.90.

The trial court found Adams was entitled to \$4,200.90 of the \$37,000 cash as her personal property. The remaining amount was found to be Haydon's and subject to execution by Dozer. The trial court also found Adams was the exclusive owner of the coin collection seized by the Hardin County's Sheriff's office and not subject to execution. This appeal and cross-appeal followed.

In *Goshorn v. Wilson*, 372 S.W.3d 436, 439 (Ky.App. 2012) (footnote omitted), this Court stated the applicable standard of review:

Because this is an appeal from a bench trial without a jury, the trial court's findings of fact are not to be set aside unless clearly erroneous with due regard being given to the opportunity of the trial judge to consider the credibility of the witnesses. Factual findings are not

considered clearly erroneous if they are supported by substantial evidence. Appellate review of legal determinations and conclusions from a bench trial is *de novo*. [Internal brackets, citations, parenthesis and quotations omitted].

Adams and Haydon contend the trial court was required to presume Adams was the owner of the \$37,000 which could only be overcome by clear and convincing evidence. Because this is a question of law, our review is *de novo*. *Id.*

Although Adams and Haydon's position throughout this dispute concerning the seizure of the \$37,000 has been that the cash was Adams's "sole property," they rely on Kentucky Revised Statutes (KRS) 426.680 providing for the "[p]rocedure for levy on jointly owned property." The fallacy in this contention is that at the time the money was seized, there is no evidence that the sheriff or Dozer believed it was jointly owned by Adams and Haydon. At the time, Adams claimed to be sole owner and Haydon denied any ownership.

Based on the circumstances, the officers reasonably concluded the property was subject to seizure. Although Adams physically took possession of the money by hiding it in her shirt, it was removed from underneath Haydon's computer desk in his home in his second floor office.

In instances where a person asserts ownership of property found in the possession of the execution defendant, "the burden of proof [is] upon the claimant to show the nature of his claim to the property." *Borches v. Bellis*, 110 Ky. 620, 62 S.W. 486, 487 (1901). The general rule is that "the burden of proof rests on the

party holding the affirmative of an issue, especially where the facts are presumptively within his knowledge.” *Id.*

Whether Adams met her burden of establishing the entire \$37,000 belonged to her is a question of fact that will not be set aside unless clearly erroneous. *Goshorn*, 372 S.W.3d at 439. Notably, Adams did not bring any documentation to the hearing verifying ownership of the cash. When given the opportunity to produce such documentation after the hearing, she produced receipts from the Fort Knox Federal Credit Union totaling only \$4,200.90. While Adams and Haydon offered little evidence to establish Adams’s ownership of the cash or explanation as to how she came into possession of the cash, the evidence was undisputed that after the order denying Haydon’s JNOV, Haydon withdrew substantial amounts from his various bank accounts and, for the three months after the jury’s verdict, did not deposit rental receipts into any bank account. We conclude the trial court’s finding was not clearly erroneous.

The same standard of review applicable to Adams’s and Haydon’s claim Adams owned the entire \$37,000 is applicable to Dozer’s argument that the trial court erred in finding Adams owned \$4,200.90 of the \$37,000 and the coin collections seized. Both are factual questions governed by the clearly erroneous standard of review. *Id.*

Adams was able to produce receipts from the Fort Knox Federal Credit Union totaling \$4,200.90. Although as noted by Dozer, the receipts were for



amounts not entirely exchangeable for one-hundred-dollar bills, they nevertheless totaled the amount awarded by the trial court.

Likewise, there was testimony at the hearing that the coin collections were owned by Adams. Dozer asserts Adams's testimony was not credible and should not be believed by this Court. However, this is not a basis for reversal. It is within the trial court's discretion to believe or disbelieve a witness. *Id.* We conclude the trial court's findings that Adams owned \$4,200.90 of the \$37,000 and the coin collections are not clearly erroneous.

For the reasons stated, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR  
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BRIEF FOR APPELLEE/CROSS-  
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