STATE OF MICHIGAN

COURT OF APPEALS

DONALD F. COX, SR.,

Plaintiff-Appellee,

v

ADAM F. PONTE,

Defendant-Appellant.

UNPUBLISHED
May 11, 2001

No. 214860
Oakland Circuit Court
LC No. 97-546123-CZ

Before: Bandstra, C.J., and Wilder and Collins, JJ.

PER CURIAM.

Defendant appeals as of right the dismissal of his counterclaim to renew a contempt order in which he was awarded $190,854.32. We affirm.

Defendant sought to renew the contempt order pursuant to MCL 600.5809(3); MSA 27A.5809(3), which provides:

> Except as provided in subsection (4), the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state, or in a court of record of the United States or of another state of the United States, from the time of the rendition of the judgment or decree. The period of limitations is 6 years for an action founded upon a judgment or decree rendered in a court not of record of this state, or of another state, from the time of the rendition of the judgment or decree. A judgment entered in the district court of this state before May 25, 1973, is a judgment of a court not of record. A judgment entered in the district court of this state on or after May 25, 1973, except a judgment entered in the small claims division of the district court, is a judgment of a court of record. *Within the applicable period of limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree*. The new judgment or decree is subject to this subsection. [Emphasis added.]

The circuit court ruled that the contempt order was not a "judgment or decree" within the meaning of the statute and, therefore, granted plaintiff's motion for summary disposition.

Defendant argues that the court erred in determining that the order was not a "judgment or decree" and thus not subject to renewal under the statute. Defendant asserts that "[t]he '1989 Order Adjudging Damages for Contempt' was the final order in the case, and as such, it was the functional equivalent of a 'judgment.'" We disagree.

We are not persuaded that the contempt order was the "functional equivalent" of a judgment. The order on which defendant relies provides as follows:

> IT IS FURTHER ORDERED AND ADJUDGED that all provisions of the Court's Judgment entered November 9, 1983 not expressly herein modified remain in effect. *The Court retains jurisdiction to determine any future damages that may arise from the said Defendant's [Cox's] wrongful retention of horses listed in the Judgment*. [Emphasis added.]

The language in the order plainly indicates that it was not intended to be final order and thus the "functional equivalent" of a judgment.

The first rule of statutory construction requires that we give effect to the Legislature's intent. *Tryc v Michigan Veterans' Facility*, 451 Mich 129; 135; 545 NW2d 642 (1996). If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Id*. Defendant has offered no persuasive reason for departing from the plain meaning of the statute. Accordingly, we agree with the circuit court that plaintiff was entitled to summary disposition pursuant to MCR 2.116(C)(8).[1]

Affirmed.

/s/ Richard A. Bandstra
/s/ Kurtis T. Wilder
/s/ Jeffrey G. Collins

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[1] We note that defendant submitted supplemental authority that he contends supports an inference that a contempt order that is compensatory in nature is not subject to the ten-year statute of limitations in MCL 600.5809; MSA 27A.5809, but remains subject to enforcement until the contempt is either purged or vacated. However, defendant's counterclaim simply requested that the contempt order be renewed under MCL 600.5809(3); MSA 27A.5809(3), and the court's ruling was limited to that issue. Review of the question whether a contempt order awarding money damages is subject to a period of limitation would be inappropriate because the question was not raised in and decided by the circuit court, and it is not raised in the statement of questions presented on appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999); *Ottaco, Inc v Kalport Development Co, Inc*, 239 Mich App 88, 97; 607 NW2d 403 (2000).