

[Cite as *Rak-Ree Ents., Inc. v. Timmons*, 2011-Ohio-1090.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Rak-Ree Enterprises, Inc.,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	Nos. 10AP-476
	:	and 10AP-556
John Caldwell Timmons,	:	(Prob. No. 436557A)
	:	
Defendant-Appellant,	:	
	:	(REGULAR CALENDAR)
and	:	
	:	
The Estate of Elizabeth Caldwell Timmons,	:	
Ann T. Root, Executor,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on March 10, 2011

Joseph W. Hull, for appellee.

John Caldwell Timmons, pro se.

APPEAL from the Franklin County Court of Common Pleas,
Probate Division.

FRENCH, J.

{¶1} Defendant-appellant, John Caldwell Timmons, appeals the judgment of the Franklin County Court of Common Pleas, Probate Division, which granted summary

judgment in favor of plaintiff-appellee, Rak-Ree Enterprises, Inc ("Rak-Ree"). For the following reasons, we affirm.

{¶2} Rak-Ree filed a complaint in the probate court for a creditor's bill in equity on September 17, 2009. Rak-Ree alleged that it holds a 1994 judgment rendered by the Pickaway County Court of Common Pleas against Timmons in the amount of \$45,000, plus interest. Rak-Ree also alleged that its judgment was revived in the Pickaway County Court of Common Pleas in 2009 in the amount of \$57,551.01. Rak-Ree alleged that Timmons has no assets by which to satisfy the judgment. It asked the probate court to attach Timmons' interest in the estate of his mother, Elizabeth Caldwell Timmons, and to order the executor of the estate to distribute to it enough of Timmons' interest to satisfy the judgment. Rak-Ree moved for summary judgment in its favor.

{¶3} Timmons moved to dismiss the complaint for improper venue. He also moved for summary judgment in his favor.

{¶4} The probate court denied Timmons' motion to dismiss. The court also granted Rak-Ree's motion for summary judgment and denied Timmons' opposing motion.

{¶5} Timmons filed a timely appeal and raises the following assignments of error:

1. The Court failed to recognize that the deficiency judgment was generated from a mortgage foreclosure that entitles the creditor to a lien on land and tenements in possession of the debtor. This lien is not a writ of execution and it would not entitle the lien holder the right to garnishee, attach bank accounts, or to attach unencumbered assets of the individual.

2. The court failed to recognize that transfer of judgments would be from a court of general jurisdiction to the court of common pleas of the transfer county pursuant to R.C. § 2329.02. A probate court is part of the court of common pleas but is not recognized as a court of general jurisdiction and therefore would not have jurisdiction to rule on the validity of judgments nor issue writs of execution for attachment or garnishment.

3. The court failed to recognize that the judgment for RAK REE was derived from a bankruptcy court's order establishing RAK REE's claim in bankruptcy court and would therefore be invalid or void in an Ohio Court of Common Pleas pursuant to R.C. § 2329.02 and Civil Rule 58(A); a deficiency judgment founded upon this order would likewise be void.

{¶6} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶7} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate

only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶8} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. Once the moving party meets its initial burden, the non-movant must set forth specific facts demonstrating a genuine issue for trial. *Id.* at 293. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359, 1992-Ohio-95, quoting *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶9} In his first assignment of error, Timmons contends that the trial court erred in granting summary judgment because the Pickaway County judgments only entitle Rak-Ree to a lien on land and tenements and do not entitle Rak-Ree to attach unencumbered assets, such as his interest in his mother's estate. Timmons' contention is directly contrary to applicable law.

{¶10} We note, first, that there remains no question of material fact concerning the existence of a valid judgment against Timmons. The 1994 and 2009 judgments are final and not subject to further appeal.

{¶11} R.C. 2333.01 provides that, "[w]hen a judgment debtor does not have sufficient personal or real property subject to levy on execution to satisfy the judgment, any equitable interest" the debtor has in real estate, a business, contracts, claims due to him, judgments, money, goods or effects "shall be subject to the payment of the judgment by action." The Supreme Court of Ohio has determined that a legatee's interest in an estate is equitable and attachable by a creditor's bill up until the time the probate court makes an order of distribution or the fiduciary holds a definite amount ready to distribute to the legatee. *In re Estate of Mason*, 109 Ohio St.3d 532, 2006-Ohio-3256, ¶22.

{¶12} Here, there is no dispute that Timmons holds an equitable interest in the estate. Nor is there evidence that the probate court has made an order of distribution or that the fiduciary holds a definite amount ready for distribution. Therefore, pursuant to *In re Estate of Mason*, a creditor's bill is proper.

{¶13} Timmons' contentions that the Pickaway County judgments arise from a sheriff's sale do not require a different result. R.C. 2333.01 makes no such distinction. Rak-Ree's entitlement arises from Timmons' interest in the estate, not from the character of its original judgments. Therefore, we overrule Timmons' first assignment of error.

{¶14} In his second assignment of error, Timmons contends that the probate court lacked jurisdiction to issue its judgment. As *In re Estate of Mason* makes clear, however, a debtor's interest in an estate is subject to a creditor's bill, and a probate court has jurisdiction to grant relief, as long as the estate remains unsettled.

{¶15} Timmons' citation to R.C. 2329.02 and 2716.01 does not change this result. R.C. 2329.02 provides that a judgment rendered by any court of general jurisdiction operates as "a lien upon lands and tenements of each judgment debtor" once a certificate of judgment is filed. R.C. 2716.01 prescribes a process for garnishing personal earnings or property of a judgment debtor. The availability of those remedies to a judgment creditor, however, does not change the availability of a creditor's bill as a remedy for recovery on the judgment. By its terms, R.C. 2333.01 applies when a debtor has insufficient "personal or real property subject to levy." Therefore, we overrule Timmons' second assignment of error.

{¶16} In his third assignment of error, Timmons attacks the validity of the 1994 and 2009 Pickaway County judgments. Principles of res judicata preclude these collateral attacks on valid judgments. See *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 1995-Ohio-331, quoting *Norwood v. McDonald* (1943), 142 Ohio St. 299, paragraph one of the syllabus (" 'A final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction * * * is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them' "). Therefore, we overrule Timmons' third assignment of error.

{¶17} In conclusion, we overrule Timmons' first, second, and third assignments of error. We affirm the judgment of the Franklin County Court of Common Pleas, Probate Division.

Judgment affirmed.

BRYANT, P.J., and CONNOR, J., concur.
