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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

1170922

The Elliott Law Group, P.A., and William C. Elliott

v.

Five Star Credit Union

Appeal from Montgomery Circuit Court
(CV-08-900863)

MITCHELL, Justice.

Five Star Credit Union ("Five Star") has attempted for over a decade to collect a debt owed by William C. Elliott. Five Star obtained a judgment against Elliott in 2011, but he never paid. In 2017, Five Star sought to garnish Elliott's

wages by filing a process of garnishment in the Montgomery Circuit Court against Elliott's employer, The Elliott Law Group, P.A. ("ELG"), a law firm that is under Elliott's complete control. ELG opposed the process of garnishment. Following a hearing, the trial court found that the assertions in ELG's opposition were untrue and ordered that Elliott's income from ELG be garnished. Elliott and ELG (hereinafter referred to collectively as "the appellants") now appeal. Because the appellants' arguments lack merit, we affirm the judgment of the trial court.

Facts and Procedural History

This case began more than a decade ago. In August 2008, Five Star sued Elliott alleging breaches of various loan agreements. On February 22, 2011, the trial court entered a judgment for Five Star in the amount of $777,655.98 plus court costs.

On September 25, 2017, following other attempts to collect on the judgment, Five Star filed a process of garnishment against ELG in the amount of $1,011,112.83.[1] On

[1]This amount included the judgment, court costs, and interest, less payments received.

October 28, 2017, ELG filed a garnishment answer in which it stated: "[Elliott] is employed, but [Elliott] is indebted to [ELG] in an amount greater than [Elliott's] wages. [ELG] has right of sett-off [sic] and consensual lien on wages." On December 27, 2017, 60 days after ELG filed its garnishment answer, Five Star filed a verified contest of ELG's answer ("the contest"), in which counsel for Five Star stated (1) that he believed ELG's answer to be untrue and (2) that the parties had agreed to waive the requirement in § 6-6-458, Ala. Code 1975, that contests to a garnishee's answer be filed within 30 days after notice of the filing of the answer.

Following a hearing on the contest, the trial court concluded that ELG's garnishment answer was untrue. The trial court's conclusion was based primarily on the following findings of fact:

- ELG is under Elliott's complete control. Elliott is the president and sole shareholder of ELG.
- Although ELG based its garnishment answer on an employment agreement ("the employment agreement") purportedly dated January 1, 2017, the employment agreement was not executed until September 2017,

after a postjudgment evidentiary hearing and examination of Elliott by Five Star.

- The employment agreement stated that ELG would pay Elliott an annual salary of $48,000 and provide Elliott with a $260,000 line of credit to be repaid annually at 1% of the principal balance and at ELG's discretion. Any failure by Elliott to make a payment to ELG was not a default under the employment agreement.
- The employment agreement purported to give ELG a consensual lien on all of Elliott's income as security for any debt that Elliott owed ELG.
- Elliott does not maintain an individual bank account, and all of his personal and business expenses are paid from an account in ELG's name. The loan agreement between Elliott and ELG was "simply a means of receiving compensation from [ELG] without acknowledging the compensation as salary or wages." No legitimate business purpose existed for the line-of-credit compensation "other than the avoidance of payment of creditors." The employment

> agreement was "simply a means to remove funds from [ELG] and pay the same to [Elliott] without any obligation of repayment except at the sole discretion of" Elliott.

Based on these and other findings of fact, the trial court concluded that ELG's purported consensual lien and setoff rights were unenforceable against Five Star. It ordered Elliott to withhold a portion of his income from ELG and submit the garnished amounts to the clerk of the trial court each month, along with calculations of business and personal expenses as well as bank statements reflecting transactions from ELG's bank accounts. Following the trial court's denial of their postjudgment motions filed under Rule 59(a) and Rule 59(e), Ala. R. Civ. P., the appellants appealed under § 6-6-464, Ala. Code 1975.

Subject-Matter Jurisdiction

The appellants contend, as a threshold matter, that the trial court lacked subject-matter jurisdiction to hold a hearing on the contest. Although the appellants did not raise this issue in their postjudgment motions, subject-matter jurisdiction cannot be waived. Knoedler v. Blinco, 50 So. 3d

1047, 1049 (Ala. 2010). Thus, we consider -- and dispose of -- the appellants' jurisdictional arguments.

Alabama law instructs plaintiffs seeking a writ of garnishment to initiate the process by filing an affidavit "with the clerk of the court in which the action is pending or the judgment was entered." § 6-6-391, Ala. Code 1975. In interpreting a substantively identical predecessor to this law, this Court stated that "[a] writ of garnishment used to enforce a judgment must issue out of and be returnable to the court that renders the judgment." Pepperell Mfg. Co. v. Alabama Nat'l Bank of Montgomery, 261 Ala. 665, 669, 75 So. 2d 665, 669 (1954) (interpreting Alabama Code of 1940, Title 7, § 997). Thus, there can be no serious argument that the trial court, which issued the final judgment against Elliott, lacked subject-matter jurisdiction over the subsequent garnishment proceedings.

The appellants, however, do not contend that trial court never had jurisdiction. Instead, they appear to claim that the trial court somehow lost jurisdiction over the proceeding when Five Star -- relying on the time-requirement waiver to which the parties had stipulated -- took 60 days to contest

ELG's garnishment answer.[2] The appellants' argument appears to be grounded in § 6-6-458, Ala. Code 1975,[3] which provides, in relevant part: "The plaintiff, his agent, or attorney may controvert the answer of the garnishee by making oath within 30 days after the notice of the answer that he believes it to be untrue."[4] According to the appellants, on the 31st day

[2]It is not entirely clear whether the appellants are claiming that the trial court lost jurisdiction over the entire proceeding or only over the contest. It would make little sense to conclude that the trial court retained subject-matter jurisdiction over the proceeding but somehow lost subject-matter jurisdiction over the contest, which is a subset of that proceeding. Thus, we treat the appellants' jurisdictional challenge as an argument that the trial court lost jurisdiction over the entire proceeding.

[3]The appellants purport to ground this argument in § 6-6-450, Ala. Code 1975, which addresses the time limit not for contests, but rather for demands for the oral examination of garnishees. Five Star states that the appellants have mistakenly cited the wrong statute and likely intended to cite § 6-6-458, which prescribes the time limit for contests. Given the facts recited by the appellants in support of their argument, we tend to agree with Five Star that the appellants likely intended to ground their argument in § 6-6-458. Nevertheless, the appellants do appear to make a brief but separate jurisdictional argument under § 6-6-450, which we address in note 4.

[4]The appellants also devote two sentences in their argument to the contention that the trial court lost jurisdiction over the proceeding when Five Star failed to file a written motion for oral examination of ELG. The appellants ground this argument in § 6-6-450, which provides, in relevant part: "Any demand for oral examination required by the plaintiff after filing of written answer by the garnishee must

following ELG's filing of its garnishment answer, "the [t]rial [c]ourt lost jurisdiction" and "all matters heard by the trial court thereafter were void as a matter of law." The appellants assert that this position is supported by Alabama caselaw. It is not.

The appellants summarily cite three cases in support of this jurisdictional argument: Tinnin v. Tinnin, 391 So. 2d 1047 (Ala. Civ. App. 1980); Ex parte State Department of Revenue, 195 So. 3d 280 (Ala. Civ. App. 2015); and Lumpkin v. State, 171 So. 3d 599 (Ala. 2014). Contrary to the Alabama Rules of Appellate Procedure, the appellants do not explain how those cases support their argument; nor do the appellants identify the portions of the cited opinions upon which they rely. See Rule 28(a)(10), Ala. R. App. P. ("Citations [contained in the brief of an appellant] shall reference the specific page number(s) that relate to the proposition for which the case is cited ...."). We are thus under no

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be made by motion filed within 30 days from the date of notice of filing answer." But ELG, the garnishee, did not provide oral testimony. More importantly, a plaintiff's failure to comply with the demand requirements of § 6-6-450 does not strip the trial court of jurisdiction.

obligation to consider those cases.[5] The appellants provide no reason we should accept this jurisdictional argument -- and we therefore reject it.[6]

Standard of Review

The appellants appeal the trial court's denials of their motion for a new trial under Rule 59(a) and their motion to alter, amend, or vacate the judgment under Rule 59(e). "The granting or denial of a motion for new trial is presumed correct and will not be reversed on appeal except for plain

[5]In any event, the cases cited by the appellants have no bearing on this case. Tinnin, though involving a garnishment, does not address jurisdiction at all. Department of Revenue and Lumpkin addressed, respectively, whether a notice-of-appeal service requirement and a bond requirement were jurisdictional requirements on appeals to circuit courts that were governed by specific provisions of the Alabama Tax Code.

[6]The appellants also contend that the trial court lost jurisdiction when it supposedly failed to establish "the issues to be heard during the hearing." See § 6-6-458, Ala. Code 1975 (directing that, upon a plaintiff's controverting of a garnishment answer, "an issue must be made up, under the direction of the court, in which the plaintiff must allege in what respect the answer is untrue"). The appellants argue that the trial court's purported failure to establish the issues "deprived [them] of due process." As evident from the appellants' own words, however, this argument attacks the trial court's process, not its jurisdiction. And because the appellants did not raise this issue with the trial court, the issue is waived. See Allsopp v. Bolding, 86 So. 3d 952, 962 (Ala. 2011) ("An issue may not be raised for the first time on appeal.").

and palpable abuse of discretion." Arata v. Gustin, 410 So. 2d 102, 104 (Ala. Civ. App. 1982). Likewise, "[w]hether to grant relief under Rule 59(e) ... is within the trial court's discretion." Bradley v. Town of Argo, 2 So. 3d 819, 823 (Ala. 2008). Because the trial court heard oral testimony without a jury at the hearing on the contest, we afford a presumption of correctness to the trial court's findings of fact and will not disturb a judgment based on those facts unless the findings are clearly erroneous. See Board of Comm'rs of Mobile Cty. v. Weaver, 99 So. 3d 1210, 1216 (Ala. 2012). We will, however, review questions of law de novo. See Alabama Republican Party v. McGinley, 893 So. 2d 337, 342 (Ala. 2004).

Discussion

The appellants bring two categories of arguments; both are unavailing. First, the appellants challenge a number of factual findings made by the trial court that led the court to determine that ELG's garnishment answer was untrue. Second, the appellants challenge the conduct of the garnishment proceeding as well as certain points made by the trial court in its order. We address both sets of arguments.

A. Challenges to Findings of Fact

The appellants first argue that the trial court erred in determining that no legitimate business reason -- "other than the avoidance of payment to creditors such as [Five Star]" -- existed for the $260,000 line of credit that ELG provided to Elliott. But the trial court had ample evidence from which to make this finding. It is undisputed that the employment agreement providing for the line of credit and consensual lien, though purportedly taking effect January 1, 2017, was executed in September 2017 following a postjudgment examination of Elliott in this case. That, in itself, constitutes sufficient evidence that Elliott had pretextual reasons for establishing the consensual lien. In addition, because (1) the employment agreement gives ELG complete discretion in exercising the lien, (2) ELG is under Elliott's complete control, and (3) a failure by Elliott to make a required payment on any loan is not a default under the employment agreement, Elliott has virtually no incentive to ever pay back loans from ELG, and ELG has virtually no incentive to exercise its consensual lien against Elliott. As

the trial court found, this was not a typical arms-length loan arrangement.

Other evidence presented at the hearing bolsters the inference that loans ELG made to Elliott were never intended to be repaid. Neither Elliott nor ELG maintained records concerning amounts due under the line of credit. Elliott does not maintain an individual bank account, and ELG funds all of his personal and business expenses. And the appellants offer no possible business justification for Elliott's line of credit. Consequently, the trial court did not exceed its discretion in finding that there was no legitimate business purpose for the line of credit and that the line of credit was established to aid Elliott in avoiding creditors.[7]

The appellants also claim that the trial court erred in finding that Elliott owes "some $850,000" to his former law firm, William C. Elliott & Associates. Elliott testified at the hearing that it was his "opinion" that he owed his former

[7]The appellants make a related argument that the trial court erred as a matter of law in concluding that ELG was required to present a legitimate business reason for the line of credit it maintained with Elliott. But nothing in the trial court's order suggests that it imposed such a requirement.

law firm "around" $850,000. Elliott, acting as his own counsel, objected to the question that elicited his response but did not wait for a ruling on his objection before answering. He then qualified his answer by informing the court that he was "just guessing" about the amount of money he owed his former firm. The appellants contend that the trial court thus erred by relying on speculative testimony to reach the $850,000 figure. But the trial court's finding was eminently reasonable. Besides guessing under oath in open court that he owed his former law firm $850,000, Elliott, in a previous portion of the hearing, estimated that, since 2008, he had borrowed $1 million from law firms in which he was the principal. He then estimated that he had borrowed "around probably [$]150[,000]" from ELG. Given such testimony -- as well as a lack of any evidence to the contrary -- it was appropriate for the trial to determine that Elliott owed his former law firm $850,000. More importantly, even if the trial court had exceeded its discretion in making that estimation, the appellants do not attempt to explain why that should affect the trial court's determination that ELG's garnishment answer was untrue.

B. Challenges to the Proceeding and the Trial Court's Order

The appellants challenge the garnishment proceeding itself as well as the trial court's order. First, the appellants contend that the trial court improperly "set aside" the employment agreement without consulting Florida law, which they say governs the employment agreement. The appellants further contend, without citing any authority, that the trial court's "setting aside" of the employment agreement without specifically noticing the matter for a hearing violated principles of due process. But the trial court did not conclude that the employment agreement was invalid.[8] It simply found that the agreement did not support the existence of a legitimate consensual lien.

Second, the appellants point to a portion of the hearing in which Five Star presented Internal Revenue Service ("IRS") guidance that suggested that canceled debt constitutes income. The appellants claim that Elliott's debt to ELG has not been

[8]Although the issue was discussed at the hearing on the contest, the trial court's order does not address whether the employment agreement constituted an assignment of future wages in violation of § 8-5-21, Ala. Code 1975. Five Star raises the issue again in its brief, but we need not address it to resolve this appeal.

canceled and that, therefore, it is not addressed by the IRS guidance. Nothing in the trial court's order, however, suggests that the trial court relied on the IRS guidance when making its conclusions.[9]

Next, the appellants contend that the trial court deprived them of due process by making a "tacit ruling" piercing ELG's corporate veil without noticing that matter for a hearing. The appellants cite no legal authority in support of this argument. Regardless, the trial court's order does not address veil piercing, and the trial court did not need to pierce ELG's corporate veil to conclude that ELG's garnishment answer was untrue.

Finally, the appellants contend -- again, without support -- that the trial court was without authority to order Elliott to submit checking-account records to the clerk of the trial court. Under the circumstances, such a requirement is a reasonable exercise of authority on the part of the trial

[9]The appellants briefly argue that the trial court improperly considered statements by counsel for Five Star as testimony. The appellants do not, however, indicate which statements of counsel the trial court considered. It is thus impossible for this Court to evaluate that argument.

court to assist it in ensuring that the parties adhere to the terms of the garnishment.

Conclusion

The trial court did not exceed its discretion in finding that ELG's garnishment answer was untrue or in entering a judgment for Five Star. Accordingly, that judgment is affirmed.

AFFIRMED.

Sellers and Stewart, JJ., concur.

Parker, C.J., and Shaw and Mendheim, JJ., concur in the result.

Wise, J., recuses herself.