Cite as 2009 Ark. App. 783

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-164

J.F. VALLEY, APPELLANT V. HELENA NATIONAL BANK, APPELLEE	**Opinion Delivered** 18 NOVEMBER 2009 APPEAL FROM THE PHILLIPS COUNTY CIRCUIT COURT, [NO. CV-2003-163] THE HONORABLE HARVEY L. YATES, JUDGE AFFIRMED

D.P. MARSHALL JR., Judge

This is the sequel to our en banc decision in *Valley v. Helena National Bank*, 99 Ark. App. 270, 259 S.W.3d 461 (2007). There we reversed a default judgment against Valley based on ineffective service. After our mandate issued, the Bank refiled its debt case—the 2007 case—against Valley. But the first case—the 2003 case—had not yet been dismissed. Valley then moved in the 2003 case for return of money that the Bank had collected by garnishment based on the reversed judgment and for dismissal based on our mandate. At the same time, Valley moved to dismiss the 2007 case, citing Rule of Civil Procedure 12(b)(8) and arguing from the continued pendency of the first case.

The circuit court heard argument on both motions in both cases at the same time. It decided that the 2003 case "must be dismissed" under Rule of Civil

Procedure 4(i) and that it could "take no further action in said case." The court also ruled that the Bank "had no other remedy than to file a new suit," and therefore refused to dismiss the 2007 case. The court elaborated that "[a]ny claim for refund or credit for garnishments" by Valley must be made in the 2007 case. Valley appeals the dismissal of the 2003 case. He also challenges the circuit court's refusal to consider in that case his request for return of his money collected on the reversed judgment.

We hold that, on this record, the circuit court made no reversible legal error. The words of Rule of Civil Procedure 4(i) are plain. "If service of the summons is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon motion or upon the court's initiative." There was no valid service on Valley in the 2003 case; that was our holding in the first appeal. The lack of good service meant that the circuit court correctly dismissed the 2003 case pursuant to this court's mandate. *Trusclair v. McGowan Working Partners*, 2009 Ark. 203, at 3–5, ___ S.W.3d ___, ___.

Nor do we see any error in the circuit court's refusal to entertain Valley's refund motion in the 2003 case. The pendency of the 2007 case puts the refund issue in a unique context. Requiring Valley to litigate the refund issue in a second proceeding is neither unfair nor impractical. If the 2007 case did not exist, then Rule 4(i)'s command that a case of failed service "shall be dismissed" might run aground on other

settled law granting a remedy to a party in Valley's circumstances. By statute and precedent, a judgment debtor can recover property lost pursuant to a reversed judgment. Ark. Code Ann. § 16-67-329 (Repl. 2005); *Peek Planting Co., Inc. v. W.H. Kennedy & Sons, Inc.*, 257 Ark. 669, 671–73, 519 S.W.2d 49, 51 (1975); *Mothershead v. Douglas*, 219 Ark. 457, 461, 243 S.W.2d 761, 763 (1951); *Dodson v. Butler*, 101 Ark. 416, 420–21, 142 S.W. 503, 505 (1912). But the pending 2007 case removes any difficult issue as far as this litigation is concerned. The 2007 case provides a new vehicle through which Valley may be made whole.

The Bank's partial collection on the vacated judgment through the garnishments raises other interesting issues. The Bank argued res judicata, laches, and preclusion below, contending that Valley waived the right to get his money back by not challenging the garnishments in the first appeal. We do not decide these issues. They are for the 2007 case, which is not before us. We hold only that the circuit court correctly decided that all the issues remaining between these parties could and should be pursued in an action other than the 2003 case.

Affirmed.

ROBBINS and BAKER, JJ., agree.