

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STEPHANIE LAMPE,	:	Case No. 1:03-cv-00162
	:	
Plaintiff,	:	
	:	
vs.	:	OPINION AND ORDER
	:	
	:	
KIRK KASH, et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on Plaintiff’s re-stated Motion to Revive a Dormant Judgment (doc. 86), which Defendant Kirk Kash, appearing pro se, asks to be dismissed with prejudice (doc. 87), and Plaintiff’s response (doc. 88). For the reasons that follow, we hereby GRANT Plaintiff’s motion and DENY Defendant’s motion.

I. Background

This case has a somewhat lengthy history. In short, on August 16, 2004, Plaintiff Stephanie Lampe gave notice of her acceptance of Defendant Kirk Kash’s offer to allow judgment to be taken against him (pursuant to Fed. R. Civ. P. 68(a)) in the amount of \$25,000.00 (doc. 70). The next day, the Clerk entered judgment in favor of Plaintiff and against Defendant (doc. 71). At this time, Defendant, a former Butler County Sheriff’s

Deputy, was incarcerated at the Noble Correctional Institution in Caldwell, Ohio, having been convicted of kidnapping and raping Plaintiff (see docs 59, 70).

On June 8, 2012, represented by different counsel, Plaintiff moved for an order to revive the judgment previously entered against Defendant (docs. 76, 77). In factual support, she noted that Defendant had failed to make a single payment to her toward the amount owed and thus the judgment was fully unsatisfied. In legal support, she maintained that the practice relative to revival of a dormant judgment is to be governed by state law, unless a federal statute provides otherwise, citing Donellan Jerome, Inc. v. Trylon Metals, Inc., 270 F. Supp. 996, 998 (N.D. Ohio 1967), and that, under Ohio Rev. Code § 2329.07(A)(1), a judgment becomes dormant five years from its date of entry. Because more than five years had elapsed, she petitioned the Court, under Ohio Rev. Code § 1907.49, to set a hearing to allow Defendant to show cause why the judgment ought not be revived pursuant to Ohio Rev. Code §§ 2325.15 and 2325.17. Defendant opposed the motion and asked that it be dismissed with prejudice. He stated that Plaintiff had failed to initiate any collection efforts in the previous eight years. Further, he advised the Court that, on May 30, 2012, he was granted a discharge of all his debts under 11 U.S.C. § 727, having listed Plaintiff as a creditor who had failed to appear

at the March 27, 2012 meeting of creditors or to object at any other time during the proceedings (doc. 78).

In an Opinion & Order docketed November 8, 2012, we denied Plaintiff's motion. Our review of the docket of Defendant's 2012 bankruptcy proceeding confirmed that Plaintiff indeed had been listed as a creditor, care of her original attorney of record in this matter, and that there was no evidence of any challenge by her or an attorney on her behalf with regard to the discharge of the debt owed her vis-à-vis the judgment entered by the Clerk August 17, 2004. Inasmuch as all of Defendant's debts, including the debt he owed to Plaintiff by virtue of the August 17 judgment, were discharged by the bankruptcy court on May 30, 2012, we determined that her motion to revive that dormant judgment should be denied. (See doc. 79.)

Plaintiff appealed (doc. 80), and the United States Court of Appeals for the Sixth Circuit reversed our decision. It held that due process entitled Plaintiff to notice and an opportunity for a hearing before the bankruptcy court extinguished her \$25,000.00 judgment, and notice by Defendant to the lawyer who represented her eight years earlier, but who no longer represents her, did not satisfy this requirement. Because Plaintiff "never received the notice she was due, the bankruptcy court could not discharge the debts she was due." Lampe v. Kash, 735 F.3d 942, 942-43, 945 (6th Cir. 2013) (emphasis added).

Therefore, “[t]he discharge does not stand in the way of Lampe’s motion to revive this judgment.” Id. at 945 (emphasis added). The case returned to this Court on remand, and subsequent to a status conference with the parties, Plaintiff was ordered to re-file her motion, with Defendant, of course, being given an opportunity to respond and Plaintiff to reply, all in compliance with Local Rule 7.2(a)(2) (doc. 85). The briefs have been submitted, and this matter is now fully ripe for decision.

II. DISCUSSION

The parties agree that Ohio law applies. Plaintiff urges that the only way Defendant can avoid revival of the judgment is to prove that it has been paid, settled or barred by the statute of limitations. See Cadles of Grassy Meadows, II, LLC v. Kistner, No. L-09-1297, 2010 WL 2024598, 2010-Ohio-2251, ¶ 10 (6th Dist.). Clearly the judgment has not been paid or settled. Ohio law provides that an action to revive a judgment must be brought within ten (10) years from the date it became dormant, which, in this instance is August¹ 17, 2009, five (5) years post the August 17, 2004 entry. See Ohio Rev. Code § 2325.18(A). Therefore, Plaintiff would have until August 17, 2019 to revive

¹In her memorandum in support, Plaintiff states the judgment became dormant on “April” 17, 2009 (see doc. 86 at 3). The Court regards this error as simply a typographical mistake, given review of the docket (see Judgment in a Civil Case, doc. 71) and the fact that Plaintiff lists the correct date of “August” 17, 2009 in her response in opposition to Defendant’s motion for dismissal with prejudice (see doc. 88 at 2).

the judgment entered in her favor, and thus her instant motion is timely filed.

Defendant opposes Plaintiff's motion on a number of grounds. First, he claims that it is barred by the six (6) year statute of limitations set forth in Ohio Rev. Code § 2305.07. Plaintiff correctly points out, though, that Section 2305.07 relates to oral contracts. The matter before us, of course, is a money judgment entered by the Clerk of this Court, not a debt owed with regard to an obligation to which the parties agreed orally. Plainly, the applicable statute of limitations is found at Ohio Rev. Code § 2325.18(A). Second, Defendant argues that there was no reason why Plaintiff could not have attempted to collect on the judgment while he was incarcerated, much in the same way "court ordered Child Support" was sought from him (doc. 87 at 2 ¶ 3). He cites to no authority, however, that required Plaintiff to do so. Finally, Defendant takes issue with Plaintiff's position that it is his obligation to show "just cause" why the judgment should not be revived, and quotes the language of one of the statutory sections to which Plaintiff cites, specifically Ohio Rev. Code § 2325.15 (id. at 2-3 ¶ 5). To this end, the Court refers Defendant to Ohio Rev. Code § 2325.17, which reads "If sufficient cause is not shown to the contrary, the judgment or finding mentioned in section 2325.15 of the Revised Code shall stand revived, and thereafter may be

made to operate as a lien upon the lands and tenements of each judgment debtor for the amount which the court finds to be due and unsatisfied thereon to the same extent and in the same manner as judgments or findings rendered in any other action[]” (emphasis added). Hence, it is indeed Defendant’s burden to show “sufficient cause” why the judgment should not be revived.

Upon consideration, we believe Defendant has not met his burden. Accordingly, the judgment entered in favor of Plaintiff Stephanie Lampe, now known as Stephanie Melton, against Defendant Kirk Kash (see doc. 71)—a judgment that became dormant on August 17, 2009—stands revived.² See Ohio Rev. Code §

²In his motion to dismiss, Defendant asks the Court, “Since Plaintiff has now been properly ‘located and advised’ . . . could [he] file [for] leave from this Court to reopen his bankruptcy with the US Bankruptcy Court Southern District of Ohio so that Plaintiff can now be served properly with notice of intent to discharge this debt? If this would be possible the request to reopen the dormant debt is moot.” (See doc. 87 at 2 ¶ 2.) Such an inquiry suggests that Defendant does not fully appreciate the ruling of the Sixth Circuit and the very clear mandate with which this Court has been charged. Because Defendant (or the counsel that represented him in the bankruptcy court) failed to give Plaintiff notice of the proceedings in the most elementary fashion—by contact at her home address—her debt was not discharged. We quote from the panel’s opinion:

Another way to think about it is to ask how someone ‘desirous of actually informing’ the creditor would go about reaching him. Jones v. Flowers, 547 U.S. 220, 229 (2006). Would he choose the roundabout of notifying a law firm that worked for the creditor eight years ago, hoping it would forward the message? Doubtful, particularly when a more direct option remains untried: looking up the creditor’s address and sending the notice there.

2325.17. The re-stated Motion to Revive a Dormant Judgment by Plaintiff Stephanie Lampe, now known as Stephanie Melton (doc. 86), is therefore GRANTED and the Motion to Dismiss with Prejudice Plaintiff's re-stated Motion by Defendant Kirk Kash (doc. 87) is thus DENIED.

SO ORDERED.

Dated: March 25, 2014 s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge

. . . .

[N]othing in this record suggests that the search for Lampe's address would have imposed an unreasonable burden on Kash. To satisfy Bankruptcy Rule 1007, Kash had to identify the addresses of his other creditors anyway. Why would Lampe's address have been any harder to find?

735 F.3d at 943-44 (emphasis added). The Court of Appeals concludes by expressly holding, "[t]he discharge does not stand in the way of Lampe's motion to revive the judgment." Id. at 945 (emphasis added). On remand, therefore, Defendant's May 30, 2012 Chapter 7 bankruptcy discharge is irrelevant to determining whether Plaintiff's motion should be granted.