

RENDERED: DECEMBER 12, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002310-MR

COLEMAN AMERICAN COMPANIES, INC.

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 06-CI-01623

HAROLD BROOKS LEASURE, JR.;
ANNA L. LEASURE; NATIONAL CITY
BANK; FIRST UNITED BANK OF HOPKINS
COUNTY, INC.; AFFINITY LAW GROUP, APC;
PRAIRIE LIVESTOCK, L.L.C.; AND AMERICAN
EDUCATION CENTERS, INC.

APPELLEES

OPINION VACATING AND REMANDING

** ** * ** * ** *

BEFORE: MOORE AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR
JUDGE.

VANMETER, JUDGE: A judgment creditor may enforce the execution and sale

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

of one spouse debtor's interest in property held by a tenancy by the entirety, but may not compel the sale of the land itself. The primary issue we must resolve is whether the Christian Circuit Court properly dismissed the complaint of Coleman American Companies, Inc. seeking the sale of land which Harold Brooks Leasure, Jr. ("Leasure"), owned jointly with his wife, Anna L. Leasure, with right of survivorship. As we hold that the trial court erred, we vacate its order of dismissal and remand this matter for further proceedings.

This action has its roots in a 1999 business transaction between Leasure and Coleman American, and subsequent litigation over that transaction. *See Leasure v. Coleman American Cos.*, 2006-CA-001673-MR, 2008 WL 2065235 (Ky.App. May 16, 2008); *Leasure v. Coleman American Cos.*, 2001-CA-002274-MR, 2003-CA-001023-MR, 2004 WL 2316659 (Ky.App. Oct. 15, 2004). The facts of those proceedings are not particularly germane to this proceeding except insofar as they gave rise to the three judgment liens against Leasure which were filed in the Christian County Clerk's office, in July 2000, November 2001, and July 2006. By their terms, these liens were "upon all real estate in [the] county, in which the judgment debtor has any ownership interest."

Coleman American filed this action to enforce the liens with respect to three parcels of property in which Leasure allegedly had an ownership interest: Hammond Plaza Parcel I, Hammond Plaza Parcel II, and Concord Lane.² The

² The detailed legal descriptions of the parcels which appear in the record are omitted as unmeaningful to this opinion or our decision.

Hammond Plaza parcels are owned by Leasure and Anna L. Leasure with right of survivorship. Although the Concord Lane parcel was originally owned by Leasure and Anna Leasure, after the filing of the July 2000 judgment lien in favor of Hammond Pennyrile Moving and Storage, Inc. (Hammond Pennyrile), the Leasures deeded the property to Alan C. Stout, as trustee, who reconveyed the property to Anna Leasure.³

The trial court dismissed the enforcement action on the theory that since the subject property is owned either by Anna Leasure individually, or by Leasure and Anna Leasure as tenants by the entirety, Coleman American, as a judgment creditor of Leasure alone, could not compel the sale of the property. The court relied upon *Hoffman v. Newell*, 249 Ky. 270, 60 S.W.2d 607 (1933) in making its decision. Coleman American appeals.

In *Hoffman*, the court held that while a creditor cannot force a sale of property owned by husband and wife as tenants by the entirety with right of survivorship, the debtor spouse's expectant interest can be sold. 249 Ky. at 285, 60 S.W.2d at 613. Here, after recognizing this distinction, the trial court held that Coleman American was not entitled to relief, since its complaint had requested the sale of the property itself. We hold the trial court erred in so narrowly reading the

³ We note that the record contains several references that the deed to Anna Leasure recites her status as "a single person." This case has proceeded on the assumption that Leasure and Anna Leasure are, in fact, married. If this assumption is not correct, the case would take on a different posture on remand, since none of the property would be held by Leasure and Anna Leasure as tenants by the entirety. See *Nelson v. Mahurin*, 994 S.W.2d 10, 14 (Ky.App. 1998) (holding that "a decree of dissolution, by operation of law, terminates a tenancy by the entirety and the concomitant right of survivorship to the entire estate").

complaint, as KRS 426.190 broadly provides that “[l]and to which the defendant has a legal or equitable title . . . or in which the defendant has a contingent interest or a contingent remainder or a defeasible fee, may be taken and sold under execution.” Clearly, although the statute purports to mandate the selling of the land itself, on its face it also addresses the selling of a debtor’s interest.

The second point of error concerns Coleman American’s standing to enforce the lien held by Hammond Pennyrile. The trial court expressed concerns about this issue since no “documentary proof” existed that the lien had been assigned to Coleman American. We hold that the trial court improperly dismissed the action on this basis. “Under CR⁴ 12.02 a court should not dismiss for failure to state a claim unless the pleading party appears not to be entitled to relief under any state of facts which could be proved in support of his claim.” *Weller v. McCauley*, 383 S.W.2d 356, 357 (Ky. 1964). In this instance, Coleman American alleged that it “is the holder of three judgment liens” and that “[t]he first is a Judgment Lien in favor of Hammond Pennyrile[.]” Our view is that the pleading is sufficiently broad to encompass an assignment made prior to the dissolution of Hammond Pennyrile, and that Coleman American may be successful in proving this claim. Thus, dismissal for lack of standing was improper.

The third point of error concerns the property which was held solely by Anna Leasure. The record indicates that Leasure and Anna Leasure owned this property as tenants by the entirety, and they transferred it to Anna Leasure in

⁴ Kentucky Rules of Civil Procedure.

September 2001, after the first judgment lien was filed and only shortly before the second judgment lien was filed. Coleman American argues that the Leasures' conveyance subjects the entire property to its judgment lien. We agree.

In *Hoffman*, 249 Ky. at 273, 60 S.W.2d at 609, the trial court held that the spouses could “sell and convey [the] real estate and vest the purchaser with a good title, free from any and all claims” of the husband’s creditor. However, Kentucky’s highest court discussed the nature of tenancy by the entirety, and then overruled the trial court. The Court of Appeals stated that the trial court erred “in holding that the lien . . . was subject to further defeasance, by [the spouses’] later action in jointly selling the property, held by them by entirety, to another, free from the lien . . . upon the husband’s expectant interest[.]” 247 Ky. at 284-85, 60 S.W.2d at 613; *see also* Louise Everett Graham & James E. Keller, 15 KY. PRACTICE, *Domestic Relations Law* §4:7 (2008). In other words, upon the joint conveyance of the property, the “purchaser” takes subject to the creditor’s interest.

The Christian Circuit Court’s order is vacated, and this matter is remanded to that court for further proceedings.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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