

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000715-MR

TAMMY SUE DOCKERY, f/k/a
TAMMY SUE WEBB

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 11-CI-01723

ESTATE TREE SERVICE, LLC;
GREGORY ALLEN DEMPSEY;
and MICHAEL ERNEST WEBB

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT, MAZE, AND MOORE, JUDGES.

MOORE, JUDGE: Tammy Sue Dockery, f/k/a Tammy Sue Webb, appeals an order of summary judgment dismissing her various civil claims against the above-captioned appellees. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The circuit court aptly summarized the factual and procedural history of this case in its order of summary judgment, in relevant part, as follows:

Plaintiff Tammy Sue Dockery (hereinafter “Tammy”) was formerly married to Defendant Michael Ernest Webb (hereinafter “Michael”). The couple divorced by decree in the Oldham Circuit Court on November 25, 2002 and entered into a settlement agreement. An integral part of the agreement, which was incorporated into the divorce decree, related to back taxes and penalties. The two agreed Michael would be responsible for paying those taxes and any associated penalties. However, Michael failed to pay the taxes and the Internal Revenue Service (IRS) sought payment from Tammy. To avoid further involvement of the IRS, Tammy paid the entirety of their debt in May 2007, which totaled \$47,802.13. Thereafter, Tammy informed Michael of the payment and that she expected to be reimbursed.

In March 2010, Michael was hired as the foreman for Defendant Estate Tree Service, LLC (hereinafter “Estate Tree”), which was started by Michael’s cousin, Defendant Gregory Allen Dempsey (hereinafter “Dempsey”). Estate Tree was formed shortly before Michael’s hiring and he was injured while working not long after beginning employment. Michael pursued a claim for Worker’s Compensation benefits and received a settlement of \$110,937.59 in June 2011. After paying attorney’s fees, Michael received a check for \$100,649 and indorsed it to Dempsey. The check was deposited in Dempsey’s account at the Kentucky Employees Credit Union in Frankfort in part because Michael was worried about the money being removed from his own account by the IRS and state. However, Michael also claims the money was a loan to Dempsey and the business. Additionally, Michael did not have direct access to the account and Dempsey claims the account only contained Michael’s finances.

The funds in Dempsey's account were depleted rather quickly through numerous withdrawals referred to as "loans" between Michael and Dempsey. According to Michael, the account experienced debits totaling \$75,100 from April to November of 2011 and were given for the purpose of continuing Estate Tree. However, Tammy claims the transfers were done with the intent to fraudulently conceal Michael's money from his creditors and filed a motion on September 13, 2011 in the Oldham Circuit Court requesting reimbursement for paying the tax debt owed by Michael. A judgment against Michael for \$53,538.83 was thereafter entered on November 3, 2011. Tammy now claims the conveyances between Michael, Dempsey, and Estate Tree^[1] were done so fraudulently under KRS [Kentucky Revised Statute] 378.010 and KRS 378.020[.]

In response to Tammy's claims, Michael, Dempsey, and Estate Tree asserted in their answer and later in a motion for summary judgment that the transfers at issue could not have deprived Tammy of any kind of right or otherwise defrauded her because the money that was the subject of the transfers (*i.e.*, Michael's workers' compensation settlement proceeds) was exempt from being used to satisfy Tammy's judgment against Michael, per KRS 342.180. Thereafter, the circuit court entered summary judgment in favor of the appellees on that basis. This appeal followed.

STANDARD OF REVIEW

Summary judgment serves to terminate litigation where "the pleadings, depositions, answers to interrogatories, stipulations, and admissions on

¹ Dempsey represented that Michael had loaned him the workers' compensation settlement proceeds. But, Dempsey's accountant memorialized the transfer as a direct loan to Estate Tree. Tammy apparently joined both Dempsey and Estate Tree as defendants because of the confusion regarding who, between these two individuals, actually received the proceeds.

file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rule of Civil Procedure (CR) 56.03. Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Summary judgment “is proper where the movant shows that the adverse party could not prevail under any circumstances.” *Id.* (citing *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985)).

On appeal, we must consider whether the circuit court correctly determined that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky. App. 1996). Because summary judgment involves only questions of law and not the resolution of disputed material facts, an appellate court does not defer to the circuit court’s decision. *Goldsmith v. Allied Building Components, Inc.*, 833 S.W.2d 378 (Ky. 1992). Our review is *de novo*.

ANALYSIS

Tammy's appellate brief is dedicated to arguing that when otherwise exempt monies are not deposited into a bank account and instead change form into investment property (such as real estate, for example), the investment property to some extent may be attached by creditors. Precedent lends support to this argument. *See, e.g., Matthews v. Lewis*, 617 S.W.2d 43 (Ky. 1981). But, even assuming that Michael's no-interest loan to his cousin could be considered an "investment" and a consequent change in form, this argument misses the point. To be clear, Tammy never agreed that a valid loan existed between Michael, Estate Tree, and Dempsey; nor, for that matter, was she seeking to satisfy her judgment against Michael by attaching or executing upon any loan repayments that Estate Tree or Dempsey might have made to Michael or might make to him in the future.²

Indeed, the claims Tammy asserted in this matter were directed to the proposition that Michael never parted with the proceeds of his workers' compensation settlement, and that those proceeds accordingly never changed form. The first claim Tammy asserted in her complaint was that she had a legal right to satisfy the entirety of her judgment against Michael directly from the proceeds of his workers' compensation settlement; that Michael had intended to delay, hinder, or defraud her by transferring those proceeds to Dempsey or Estate Tree; that Dempsey or Estate Tree had notice of what Tammy alleged was Michael's

² Nothing of record demonstrates that any loan repayments have occurred or are likely to occur.

fraudulent intent; and, that she was accordingly entitled to *void* Michael's transfer to Dempsey or Estate Tree to the extent of what Michael owed her. *See* KRS 378.010.³ Likewise, her second claim asserted that Michael's transfer of his workers' compensation proceeds to Dempsey or Estate Tree was *void*, to the extent of her prior interest in those funds, because she was one of Michael's existing creditors at the time that he made the transfer to Dempsey or Estate Tree, and his transfer was without consideration. *See* KRS 378.020.⁴

As the above would indicate, the purpose of utilizing KRS 378.010 or KRS 378.020 is to have the law declare that a certain transaction never occurred, and that the funds or property that were the subject of the transaction effectively never left the possession and ownership of the ostensible transferor or grantor, because the transaction in question interfered with a creditor's known right. *See, e.g., Mattingly v. Gentry*, 419 S.W.2d 745, 747 (Ky. 1967) ("Since the purpose of

³ KRS 378.010, which Tammy premised this claim upon, provides:

Every gift, conveyance, assignment or transfer of, or charge upon, any estate, real or personal, or right or thing in action, or any rent or profit thereof, made with the intent to delay, hinder or defraud creditors, purchasers or other persons, and every bond or other evidence of debt given, action commenced or judgment suffered, with like intent, shall be void as against such creditors, purchasers and other persons. This section shall not affect the title of a purchaser for a valuable consideration, unless it appears that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

⁴ KRS 378.020, which Tammy premised her second claim upon, provides:

Every gift, conveyance, assignment, transfer or charge made by a debtor, of or upon any of his estate without valuable consideration therefor, shall be void as to all his then existing creditors, but shall not, on that account alone, be void as to creditors whose claims are thereafter contracted, nor as to purchasers from the debtor with notice of the voluntary alienation or charge.

KRS 378.020 is to put the creditors back in the same position they would have enjoyed immediately prior to the voidable conveyance . . . the creditor can get today only what he could have gotten then.” (Internal citations omitted)).

Tammy’s prayer for relief relating to her claims was also consistent with the relief available under both statutes. She sought, as she phrased it in her complaint, “a judgment declaring the conveyance void, restoring the funds conveyed to Webb, and granting [her] a lien on the funds in the amount of \$53,538.13, plus accumulated post-judgment interest at 12% per annum.”⁵

However, Tammy’s claims were legally untenable *because* they were premised upon her assertion of a right to satisfy her judgment against Michael with the proceeds of Michael’s workers’ compensation settlement, and *because* the object of her suit was to have the law declare that Michael had effectively never parted with those proceeds, irrespective of where or to whom Michael had purported to transfer them. KRS 342.180, which the circuit court relied upon in dismissing Tammy’s claims, provides:

No claim for compensation under this chapter shall be assignable, except court or administratively-ordered child support pursuant to KRS 403.212. *All compensation and claims therefor, except child support obligations, shall be exempt from all claims of creditors.*

(Emphasis added.)

⁵ Tammy also asked for compensatory and punitive damages for fraud, jointly and severally against each of the three appellees, premised upon what she perceived was the appellees’ interference with her right to have her judgment against Michael paid directly from his workers’ compensation settlement funds. As discussed further below, however, Tammy had no such right; thus, no such recovery was warranted.

In short, if Michael had never parted with his workers' compensation settlement proceeds, which was precisely what Tammy was asking the circuit court to declare as a matter of law and equity, Tammy would not have had any right to use those proceeds to satisfy her judgment. Here, Michael was entitled to the exemption when he transferred the proceeds to Dempsey or Estate Tree. Consequently, his transfer was not fraudulent as to Tammy or any of his other creditors, though he may have intended to defeat the collection of their claims by his act, because their rights were not affected and because the transfer did not operate to their prejudice. Thus, Tammy's claims against Michael, Dempsey, and Estate Tree fail as a matter of law, and the circuit court's summary judgment in favor of the appellees was not, therefore, in error.⁶

CONCLUSION

In light of the foregoing, we AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edward L. Lasley
Richard M. Sullivan
Bradley R. Palmer
Louisville, Kentucky

BRIEF FOR APPELLEES:

Jack W. Flynn
Frankfort, Kentucky

⁶ For parity of reasoning in the related context of a conveyance of a homestead exemption, see *Paintsville Nat. Bank v. Conley*, 257 Ky. 425, 78 S.W.2d 313, 314 (1935).