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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-395

No. COA20-625

Filed 20 July 2021

Ashe County, No. 16-CVS-233

STEVEN A. WARNER and BLUE RIDGE GOLF CARS & UTILITY VEHICLES,
INC., Plaintiffs,

v.

CRAIG SULLIVAN, Defendant.

Appeal by Defendant and cross-appeal by Plaintiffs from order entered 10 December 2019 by Judge Michael Duncan in Ashe County Superior Court. Heard in the Court of Appeals 12 May 2021.

Capua Law Firm, PA, by Paul A. Capua and Joshua J. Teague, for Plaintiffs-Appellees/Cross-Appellants.

Miller & Johnson, PLLC, by Nathan A. Miller, for Defendant-Appellant/Cross-Appellee.

GRIFFIN, Judge.

¶ 1

Defendant Craig Sullivan appeals from an order granting a petition to enforce an attorney charging lien but denying a motion requesting that 5% of the value recovered be added to the lien for post-judgment collection services. Plaintiffs Steven A. Warner and Blue Ridge Golf Cars & Utility Vehicles, Inc., cross-appeal from the

same order. Defendant argues that the trial court erroneously determined that the attorney charging lien had priority over judgments encumbering the personal property of Steven and Shirley Warner. Plaintiffs argue that the trial court erred by denying the motion requesting that 5% of the amount recovered be added to the charging lien. After careful review, we affirm the trial court's order on both issues.

I. Factual and Procedural Background

¶ 2 On 17 December 2015, a default judgment (“DLL Judgment”) was entered against Blue Ridge Golf Cars & Utility Vehicles, Inc. (“BRGC”), after BRGC defaulted on a financing agreement with DLL Finance. A second judgment (“Club Car Judgment”) was entered against BRGC and Steven Warner on or around 20 October 2014.

¶ 3 On 5 December 2015, BRGC entered a contingent fee agreement with Capua Law Firm, PA, to bring claims against Defendant for breach of contract. The agreement provided that Capua Law was entitled to 40% of the total value of recovery, up to \$1,000,000, and an additional 5% for appellate work or any required post-judgment relief or action in a court proceeding.

¶ 4 On 6 June 2016, Capua Law filed a complaint against Defendant in Ashe County Superior Court on behalf of BRGC, Steven Warner, and Shirley Warner. A jury rendered a unanimous verdict for BRGC. On 8 April 2019, the trial court entered

a judgment, under which (*inter alia*) Defendant was to pay BRGC \$134,000 with post-judgment interest of 8% annually until paid in full.

¶ 5 Defendant then purchased the DLL Judgment, acquiring it by assignment. Defendant filed the assignment on 9 April 2019 in Ashe County. On or about 12 April 2019, Defendant was also assigned the Club Car Judgment. In May 2019, Defendant caused to be issued Writs of Execution against BRGC in regard to both judgments. On 8 May 2019, the Ashe County Sheriff sought to enforce the Writs of Execution and collect the funds held by the Clerk of Court, but the Clerk of Court refused to allow the Sheriff to levy on the funds. The Clerk of Court requested an Order in Aid of Execution before releasing the funds to the Sheriff.

¶ 6 On 8 May 2019, Defendant paid \$134,881.10 (“the Funds”) to the Ashe County Clerk of Superior Court in satisfaction of the 8 April 2019 judgment against Defendant. The next day, Defendant filed a Motion for Order in Aid of Execution in regard to the DLL Judgment.

¶ 7 On 9 May 2019, the court ordered that a hearing be held on Defendant’s motion before release of the Funds. On 18 June 2019, Capua Law’s motion for an attorney charging lien as to 40% (\$53,600) of the Funds recovered was granted and Capua Law’s request for an additional 5% was denied without prejudice. On 10 December 2019, an order was entered that allowed Capua Law’s petition to enforce its attorney charging lien, allowed Defendant’s Motion for Order in Aid of Execution (subject to

Capua Law's attorney charging lien), directed the Clerk of Superior Court for Ashe County to disburse \$53,600 to Capua Law, and denied Capua Law's motion for an additional 5%.

¶ 8 As of the date of the 10 December order, Capua Law had continuously represented BRGC and Steven Warner pursuant to the contingent fee agreement. Both Capua Law and Defendant appeal from the 10 December order.

II. Analysis

¶ 9 The two issues presented on appeal are (1) whether the attorney charging lien held by Capua Law has priority over the two judgments acquired by Defendant and (2) whether Capua Law is entitled to an additional 5% of the Funds pursuant to the contingent fee agreement. We affirm the order of the trial court on both issues.

A. Lien Priority

¶ 10 Defendant appeals from the trial court order allowing Capua Law's petition to enforce the attorney charging lien and making Defendant's Motion for Order in Aid of Execution subject to the attorney charging lien. Defendant contends that the judgments entered against BRGC have priority over the attorney charging lien because the judgments were filed before the attorney charging lien. Capua Law argues that its charging lien has priority over the DLL Judgment and Club Car Judgment because the attorney charging lien attached to the funds on 8 May 2019, when Defendant deposited the funds with the Clerk's office; Defendant had no lien

on the funds he deposited at the time that Capua Law’s charging lien attached; and North Carolina policy favors the enforcement of attorney charging liens.

a. Standard of Review

¶ 11 The trial court’s conclusion prioritizing the attorney charging lien over the judgments acquired by Defendant is a conclusion of law. A trial court’s conclusions of law are reviewed *de novo* by this Court. *Calhoun v. WHA Med. Clinic, PLLC*, 178 N.C. App. 585, 597, 632 S.E.2d 563, 571 (2006).

b. Defendant’s Liens

¶ 12 The trial court did not err in ordering the attorney charging lien to be enforced before Defendant’s liens because Defendant’s liens did not attach to the personal property until the judgments were levied on 9 May 2019.

¶ 13 A lien does not attach to personal property until the judgment has been levied against the judgment debtor. *See* N.C. Gen. Stat. § 1-313(1) (2019); *see also Hassell v. First Pennsylvania Bank, N.A.*, 41 N.C. App. 296, 299, 254 S.E.2d 768, 770 (1979) (holding that liens attach “to personal property [only] upon a levy of execution”).

¶ 14 In *Hassell*, the plaintiff alleged that he had a superior interest in the subject personal property. *Hassell*, 41 N.C. App. at 298, 254 S.E.2d at 769. He argued that the effect of the judgment levy should relate back to the filing date of the financing statement. *Id.* This Court affirmed the trial court’s holding that the defendant’s interest was superior, because “[n]o lien attached as to the personal property by

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reason of the docketing of the judgment” and “[a] lien only attaches to personal property upon levy of execution.” *Id.* at 299, 254 S.E.2d at 770.

¶ 15 Under N.C. Gen. Stat. § 1-313(1), Defendant’s lien did not attach until 9 May 2019, when he filed the Motion for Order in Aid of Execution. N.C. Gen. Stat. § 1-313(1) (2019). Defendant’s liens do not relate back and attach to the judgment on the day that they were filed. *See Hassell*, 41 N.C. App. at 298-99, 254 S.E.2d at 769-70 (rejecting the plaintiff’s argument that his lien related back to lien filing date). In the present case, the liens were filed on 20 October 2014 and 1 July 2016 and were levied on 9 May 2019. The liens attached to the personal property upon levy of execution, which did not occur until 9 May 2019.

¶ 16 Defendant relies on authority that does not support his contention.

¶ 17 First, Defendant incorrectly relies on *Womble v. Battle*, 38 N.C. 182, 3 Ired. Eq. 182 (1844). This case does not support Defendant’s arguments. *Womble* addresses only real property and does not speak to the enforcement of liens against chattel. *See id.*

¶ 18 Second, Defendant incorrectly relies on N.C. Gen. Stat. § 47-18 *et seq.* N.C. Gen. Stat. § 47-18 *et seq.* codifies the pure race system in North Carolina for determining the superiority of liens against real property. N.C. Gen. Stat. § 47-18 *et seq.* (2019). The statute applies to real property only, not personal property. *Id.* Instead, N.C. Gen. Stat. § 1-313 controls when a lien attaches to personal property.

N.C. Gen. Stat. § 1-313 (2019). A lien against personal property does not attach until the judgment is levied against the personal property. *Id.* While Defendant tries to draw the connection that the statute governing liens against real property should extend to personal property, there is no statutory authority or case law to support this contention.

¶ 19 The trial court did not err in ruling that Defendant's liens did not attach to the personal property on the day that they were filed. We agree that Defendant's liens attached to the personal property on the day that they were levied, 9 May 2019, and therefore were subordinate to the attorney charging lien held by Capua Law.

c. Capua Law's Attorney Charging Lien

¶ 20 The trial court did not err in subjecting Defendant's liens to the attorney charging lien of Capua Law. Capua Law's lien was an equitable assignment of the judgment and attached to the judgment when the case was prosecuted to a favorable judgment. *See Clerk of Superior Court v. Guilford Builders Supply Co.*, 87 N.C. App. 386, 388, 361 S.E.2d 115, 117 (1987) (holding that in a contingent fee contract, an attorney's equitable interest in the judgment attaches to the judgment when the case is prosecuted to a favorable judgment by the contracting attorney). Further, Capua Law's lien attached to the money deposited in satisfaction of the judgment at the moment when the money was deposited to the clerk of court. *See Armour Fertilizer Works v. Newbern*, 210 N.C. 9, 17, 185 S.E. 471, 476 (1936).

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¶ 21 North Carolina case law supports the use of contingent fee contracts for compensation of attorneys, *High Point Casket Co. v. Wheeler*, 182 N.C. 459, 109 S.E. 378, 19 A.L.R. 391 (1921), except when the contingent fee contract would be a clear contravention of state public policy, *Thompson v. Thompson*, 70 N.C. App. 147, 157, 319 S.E.2d 315, 322 (1984), *rev'd on other grounds and remanded*, 313 N.C. 313, 328 S.E.2d 288 (1985) (holding that the contingent fee contract could be void if it violated a public policy goal of the state). The court in *High Point Casket Co.* held that a contingent fee contract amounted to “at least[] an equitable assignment of the judgment *pro tanto*, but the attorney’s equitable interest has been held not to attach until the case is ‘prosecuted to a favorable judgment or settled by the contracting attorney.’” *Guilford Builders Supply Co.*, 87 N.C. App. at 388, 361 S.E.2d. at 117 (emphasis omitted) (citation omitted). A contractual lien attaches to personal property “as soon as the assignor or contractor acquires a title thereto[.]” *Armour Fertilizer Works*, 210 N.C. at 17, 185 S.E. at 476.

¶ 22 In *Guilford Builders Supply Co.*, the plaintiff was an attorney. *Guilford Builders Supply Co.*, 87 N.C. App. at 388, 361 S.E.2d. at 116. He claimed that he was owed a portion of a recovery under a contingent fee agreement where he was responsible for collecting outstanding debts. *Id.* at 388, 361 S.E.2d at 117. The plaintiff was entitled to one-third of the debts he recovered under the contingent fee agreement. *Id.* This Court held that “the charging lien [was] an equitable lien which

gives an attorney the right to recover his fees ‘from a fund recovered by his aid’” and that summary judgment against the plaintiff was therefore not appropriate. *Id.* at 391, 361 S.E.2d at 118 (citation omitted).

¶ 23 Here, Capua Law’s lien attached to the judgment on 8 April 2019, when the case was “prosecuted to a favorable judgment.” *Id.* at 388, 361 S.E.2d at 117 (citation omitted). Capua Law’s lien immediately attached to the funds (personal property) when Defendant deposited them with the Clerk of Court on 8 May 2019. *See Armour Fertilizer Works*, 210 N.C. at 17, 185 S.E. at 476. The lien attached at the moment when the money was deposited. That is when BRGC acquired title to the money.

¶ 24 The present case is comparable to *Guilford Builders Supply Co.* In both cases, the contracting attorney was part of a contingent fee agreement and the contracting attorney recovered the funds necessary to earn payment. In *Guilford Builders Supply Co.*, the plaintiff was in a contingent fee agreement where he would be paid one-third of the funds that were recovered from his services. *Guilford Builders Supply Co.*, 87 N.C. App. at 388, 361 S.E.2d at 117. Similarly, Capua Law was in a contingency contract agreement where it would receive 40% of the funds recovered from its services. In both *Guilford Builders Supply Co.* and the present case, the attorneys were responsible for recovery of the funds. Therefore, the attorneys were entitled to receive the portion of the funds which they contracted for in the contingency

agreement. The attorneys were entitled to receive their portion of the total value recovered at the moment when the contracting party acquired title to the property.

¶ 25 The trial court did not err in subordinating Defendant's liens to the attorney charging lien. The attorney charging lien attached to the judgment on the day that the case was litigated to a favorable outcome. The attorney charging lien attached to the personal property at the moment when the funds were deposited to the clerk of court on 8 May 2019 because that was when BRGC obtained title to the money. Defendant's liens had not attached as of 8 May 2019. He did not file the Motion for Order in Aid of Execution until 9 May 2019. Therefore, the trial court correctly found that Capua Law's attorney charging lien has priority over Defendant's liens.

B. Attorney Charging Lien - Additional 5% of Judgment

¶ 26 Capua Law appeals from the trial court's order denying its motion for an additional 5% for services rendered post-judgment. Capua Law relies on *High Point Casket Co v. Wheeler*, 182 N.C. 459, 465, 109 S.E. 378, 382 (1921), and argues that the additional 5% should be included *pro tanto* as part of Capua Law's charging lien because Capua Law has served and continues to serve as counsel for Plaintiffs in the proceedings that followed the initial judgment. The trial court did not err in denying Capua Law's request for an additional 5% of the judgment to be added to the attorney charging lien. Capua Law had rendered no post-judgment services at the time judgment was entered.

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¶ 27 “The charging lien attaches not to the cause of action, but to the judgment at the time it is rendered.” *Covington v. Rhodes*, 38 N.C. App. 61, 67, 247 S.E.2d 305, 309 (1978) (citation omitted). In *Covington*, the plaintiff’s attorney was discharged before the judgment was rendered but filed an attorney charging lien against the judgment. *Id.* at 66, 247 S.E.2d at 309. This Court held that the plaintiff was not permitted to file an attorney charging lien because “[a]t the time when th[e] purported charging lien would have attached, the time of judgment in favor of defendants against the School Board, the judgment was not a fund recovered by [the] plaintiff’s aid, as he had been discharged.” *Id.* at 67, 247 S.E.2d at 309.

¶ 28 The contingent fee agreement in this case provided that “Capua Law is entitled, as for its attorneys’ fees, to forty (40%) percent of any judgment secured by Capua Law in these proceedings, [and] an additional five (5%) percent for services rendered in any post-judgment proceedings.”

¶ 29 At the time the judgment was rendered, appellate proceedings had not commenced and Capua Law had not instituted any post-judgment work. Because there had been no appellate proceedings at the time the judgment was rendered, Capua Law would not have been entitled to the additional 5% of the total recovery value from appellate proceedings.

¶ 30 This case is analogous to *Covington*. In both cases the attorney had no claim to the funds recovered. In *Covington*, the plaintiff had no claim to the funds because

he was discharged by the defendant before the judgment was rendered. *Id.* In the present case, Capua Law has no claim to the additional 5% because there were no appellate proceedings or additional services performed at the time the judgment was rendered.

¶ 31 Accordingly, the terms of the contingent fee agreement entitling Capua Law to an additional 5% of the judgment have not been fulfilled. There were no appellate services rendered at the time when the charging lien attached. The charging lien attached to the judgment and not the cause of action. Capua Law failed to meet the requirements of the contingent fee agreement to obtain the additional 5% for appellate proceedings.

III. Conclusion

¶ 32 We affirm the trial court's order allowing Capua Law's attorney charging lien and denying Capua Law an additional 5% of the judgment.

AFFIRMED.

Judges DILLON and JACKSON concur.

Report per Rule 30(e).