

[Cite as *Brown v. Ford Motor Co.*, 2003-Ohio-5641.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

DON BROWN, SR.,	:	
	:	COURT OF APPEALS
Plaintiff-Appellant	:	NO. 82359
	:	LOWER COURT NO. CV-483976
vs.	:	COMMON PLEAS COURT
	:	
FORD MOTOR COMPANY, ET AL.	:	
	:	MOTION NO. 26417
Defendants-Appellees	:	
	:	
	:	
DATE: <u>OCTOBER 21, 2003</u>	:	

JOURNAL ENTRY

{¶1} The journal entry and opinion of this court in this case, released on September 18, 2003, [2003-Ohio-4944](#) contained an error on page two, paragraph two. In the third sentence, "R.C. 2721.01, et seq." is hereby corrected to read "R.C. 2716.01, et seq." as follows:

{¶2} "Brown is an employee of Ford Motor Company ("Ford"). Brown argues in his pro se complaint and pro se appeal that Ford violated Ohio garnishment laws, pursuant to R.C. 2716.01, et seq. Ford garnished Brown's wages in compliance with a Notice of Levy issued by the Internal Revenue Service ("IRS") on January 22, 2002. Brown claims that Ford withheld more than 60 percent of his wages, acting in compliance with the IRS Notice of Levy, which violated the maximum 25 percent withholding allowed by Ohio law."

{¶3} It is hereby ordered that said journal entry and opinion of September 18, 2003 be amended *nunc pro tunc* to correct the error on page two, paragraph two, third sentence, as stated above.

{¶4} It is further ordered that, as so amended, said journal entry and opinion of September 18, 2003 shall stand in full force and effect in all its particulars.

{¶5} The corrected entry is attached.

FRANK D. CELEBREZZE, JR.
PRESIDING JUDGE

COLLEEN CONWAY COONEY, J., AND

ANTHONY O. CALABRESE, JR., J., CONCUR.

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 82359

DON BROWN, SR.	:	
	:	JOURNAL ENTRY
Plaintiff-Appellant	:	
	:	AND
vs.	:	
	:	OPINION
FORD MOTOR COMPANY, ET AL.	:	
	:	
Defendants-Appellees	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	<u>SEPTEMBER 18, 2003</u>
	:	
CHARACTER OF PROCEEDINGS	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. CV-483976
	:	
JUDGMENT	:	AFFIRMED.

DATE OF JOURNALIZATION :

APPEARANCES:

For plaintiff-appellant: DON BROWN, SR., pro se
21460 Sheldon Road
Apt. C-44
Brook Park, Ohio 44142

For defendants-appellees: ELIZABETH A. McNELLIE, ESQ.
Baker & Hostetler
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

FRANK D. CELEBREZZE, JR., J.:

The appellant, Don Brown, Sr., appeals the trial court's dismissal of his suit with prejudice for failure to state a claim against Ford Motor Company, appellee, regarding a Notice of Levy issued by the Internal Revenue Service.

Brown is an employee of Ford Motor Company ("Ford"). Brown argues in his pro se complaint and pro se appeal that Ford violated Ohio garnishment laws, pursuant to R.C. 2716.01, et seq.

Ford garnished Brown's wages in compliance with a Notice of Levy issued by the Internal Revenue Service ("IRS") on January 22, 2002. Brown claims that Ford withheld more than 60 percent of his wages, acting in compliance with the IRS Notice of Levy, which violated the maximum 25 percent withholding allowed by Ohio law.

On October 11, 2002, Brown filed a complaint against Ford alleging a breach of his employment contract, conversion, intentional infliction of emotional distress, and violations of the due process clauses of the United States and Ohio

constitutions. Brown sought the recovery of \$8,404 paid to the Internal Revenue Service, plus 10 percent interest, attorney fees and court costs, and \$1.65 million in compensatory and punitive damages.

On December 19, 2002, the trial court granted Ford's motion to dismiss for failure to state a claim. The trial court held that Ohio garnishment law does not apply to an IRS levy, and pursuant to 26 U.S.C. 6332(E), Ford is discharged from any obligation or liability to the taxpayer (Brown) for surrendering such property pursuant to the levy. For the following reasons, we affirm.

The appellant presents the following assignment of error for review:

"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT DISMISSED THE ACTION AGAINST THE APPELLANT WHEN HE STATED A CLAIM PER THE FACTS SET FORTH IN THE COMPLAINT & FURTHER DENIED SUMMARY JUDGMENT TO THE APPELLANT."

A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* (1992), 65 Ohio St.3d 545. It is well settled that "when a party files a motion to dismiss for failure to state a claim, all factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving

party." *Byrd v. Faber* (1991), 57 Ohio St.3d 56, 60, citing *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192.

While the factual allegations of the complaint are taken as true, "[u]nsupported conclusions of a complaint are not considered admitted *** and are not sufficient to withstand a motion to dismiss." *State ex rel. Hickman v. Capots* (1989), 45 Ohio St.3d 324. In light of these guidelines, in order for a court to grant a motion to dismiss for failure to state a claim, it must appear "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242, 245. See, also, *Spalding v. Coulson* (1993), 104 Ohio App.3d 62.

Since factual allegations in the complaint are presumed true, only the legal issues are presented, and an entry of dismissal on the pleadings will be reviewed de novo. *Hunt v. Marksman Prod., Div. of S/R Indus., Inc.* (1995), 101 Ohio App. 3d 760, 762.

Appellant claims that Ford violated Ohio garnishment laws when it complied with an IRS levy issued against appellant's wages; therefore, Ford should be liable for the amount(s) deducted from his paycheck. Appellant's argument is not well taken.

In collecting delinquent taxes of a municipal employee, the IRS could follow procedures provided by the Internal Revenue Code and is not required to comply with state laws. *Hoye v. United States* (C.A.9, 1958), 169 F.Supp. 474, affirmed in part and

dismissed in part, 277 F.2d 116. Ohio garnishment laws do not apply to levies instituted on an employee's wages; IRS garnishments are governed by the provisions provided in the Internal Revenue Code, 26 U.S.C.S. 6331 et seq.

Furthermore, an employer is immune from liability to an employee for complying with levies issued by authority of 26 U.S.C.S. 6331 and 16 U.S.C.S. 6332. *Burroughs v. Wallingford* (C.A.5, 1986), 780 F.2d 502. If an employer refuses to honor an IRS levy on an employee's wages, the employer is liable for the amount equal to the employee's taxes, plus a penalty of 50 percent; an employee making monthly payments to IRS does not excuse failure of an employer to comply with the levy. *United States v. Leonard, Inc.* (C.A.6, 1993), 13 F.3d 189. Therefore, Ford is given immunity when complying with the terms of an IRS levy.

The appellant has not raised the issue that Ford did not comply with the Internal Revenue Code or the terms of the IRS levy, nor has he challenged the validity of the IRS levy set against him. Any issue relating to the sufficiency of such a levy is a matter of federal, not state law. *Division of Labor Law Enforcement v. U.S.* (C.A.9, 1962), 301 F.2d 82, 85. Ford need not comply with Ohio garnishment laws when complying with an IRS levy and is further granted immunity for compliance. Therefore, as a

matter of law, dismissal of the appellant's claims by the trial court was proper.

Judgment affirmed.

It is ordered that appellees recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR.
PRESIDING JUDGE

COLLEEN CONWAY COONEY, J., AND

ANTHONY O. CALABRESE, JR., J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with

supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

KEY WORDS:

#82395 ; *Don Brown Sr. v. Ford Motor Company, et al.*

DISMISSAL, PREJUDICE, FAILURE TO STATE A CLAIM, 12(B)(6), NOTICE OF LEVY, I.R.S., INTERNAL REVENUE SERVICE, EMPLOYER, EMPLOYEE, OHIO GARNISHMENT LAWS, R.C. 2721.01, COMPLIANCE, 26 U.S.C.S. 6332(E), LIABILITY, TAXPAYER, IMMUNITY, 26 U.S.C.S. 6331, 16 U.S.C.S. 6332.