

[Cite as *Stone Creek Fin., Inc. v. Thompson*, 2013-Ohio-2975.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STONE CREEK FINANCIAL, INC.

Plaintiff-Appellee

-vs-

CHARLES THOMPSON

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2012 CA 00205

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Canton Municipal
Court, Case No. 2007 CVF 9840

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

July 8, 2013

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant Charles Thompson appeals the decision of the Canton Municipal Court, Stark County, which granted a motion to reconsider a prior decision vacating an attachment of appellant's bank account initiated by Appellee Stone Creek Financial, Inc. The relevant facts leading to this appeal are as follows.

{¶2} In February 2008, Huntington National Bank obtained a default judgment against Appellant Charles Thompson in the amount of \$4,473.24. In March 2008, Huntington filed a garnishment against appellant's bank account, resulting in a partial sum being applied to the aforesaid judgment.

{¶3} In October 2011, appellee was substituted for Huntington as the party-plaintiff. On April 23, 2012, appellee filed for an attachment of appellant's account at FirstMerit Bank. At appellant's request, the matter proceeded to a hearing before a magistrate on May 2, 2012. On May 3, 2012, the magistrate determined that the attachment should be vacated pursuant to the time limits of R.C. 2329.08. The trial court approved and adopted the decision of the magistrate, and no appeal was taken.

{¶4} On September 7, 2012, appellee again filed for an attachment of appellant's account at FirstMerit Bank. The matter likewise proceeded to a hearing before a magistrate on September 19, 2012. Via a "report of the magistrate" filed September 19, 2012, the magistrate determined that the attachment should be vacated on the basis of res judicata. No objections were filed. The trial court "approved and confirmed" the decision of the magistrate on September 20, 2012. Once again, no appeal was taken.

{¶5} On October 17, 2012, appellee filed a motion to reconsider the aforesaid judgment entry of September 20, 2012. The trial court granted the motion to reconsider on October 22, 2012.

{¶6} On November 8, 2012, appellant filed a notice of appeal. He herein raises the following two Assignments of Error:

{¶7} “I. THE TRIAL COURT WAS IN ERROR IN GRANTING THE PLAINTIFF’S MOTION AS A MOTION FOR RECONSIDERATION IS NOT PROVIDED FOR UNDER THE CIVIL RULES, AND IS A NULLITY.

{¶8} “II. THE FINDING THAT THE MAY 2, 2012 REPORT OF THE REFEREE WAS INCORRECT [AND] WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

I., II.

{¶9} In his First and Second Assignments of Error, appellant challenges the trial court’s granting of appellee’s motion to reconsider. However, on June 13, 2013, appellant and appellee filed a joint motion to dismiss the present appeal. See App.R. 28. As an appellate court, we are not required to issue an advisory or merely academic ruling. See, e.g., *In re Merryman/Wilson Children*, Stark App.Nos. 2004 CA 00056 and 2004 CA 00071, 2004-Ohio-3174, ¶ 59, citing *State v. Bistricky* (1990), 66 Ohio App.3d 395, 584 N.E.2d 75.¹

{¶10} We therefore will not reach the merits of appellant's Assignments of Error.

¹ Ordinarily, we would not issue a dismissal decision of this nature in a memorandum opinion. See App.R. 12(A). However, in this instance the written request to dismiss was not filed until approximately three weeks after the oral argument heard by this Court on May 21, 2013.

{¶11} For the reasons stated in the foregoing opinion, the appeal of the decision of the Canton Municipal Court, Stark County, Ohio, is hereby dismissed.

By: Wise, J.

Hoffman, P. J., and

Delaney, J., concur.

JUDGES

JWW/d 0617

