

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

American General Finance,	:	
	:	No. 12AP-1077
Plaintiff-Appellant,	:	(M.C. No. 98CVF-35027)
v.	:	
	:	(ACCELERATED CALENDAR)
Doy Copley,	:	
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 13, 2013

Stephen D. Miles and Vincent A. Lewis, for appellant.

APPEAL from the Franklin County Municipal Court

DORRIAN, J.

{¶ 1} Plaintiff-appellant, American General Finance ("appellant"), appeals from a judgment of the Franklin County Municipal Court denying its motion to revive a dormant judgment. Defendant-appellee, Doy Copley ("appellee"), did not file a brief in the present appeal. Upon reviewing the pertinent statutes and case law, we reverse the judgment and remand the case to the trial court for further proceedings consistent with this decision.

{¶ 2} On December 8, 1998, appellant obtained judgment in the municipal court against appellee. Appellant did not execute upon the judgment and, after five years, the judgment became dormant pursuant to R.C. 2329.07(A)(1) on December 8, 2003.

{¶ 3} On November 5, 2012, appellant filed a motion to revive the dormant judgment. On November 21, 2012, the trial court denied appellant's motion to revive "because [the] statute of limitations has expired."

{¶ 4} Appellant has timely appealed and sets forth the following single assignment of error for our consideration:

The Trial Court erred when it determined that Appellant's motion to revive dormant judgment was barred by the applicable statute of limitations.

{¶ 5} "Revivor of a dormant judgment is a statutory proceeding." *Dillon v. Four Dev. Co.*, 6th Dist. No. L-04-1384, 2005-Ohio-5253, ¶ 16. In *Taber v. Ohio Dept. of Human Servs.*, 125 Ohio App.3d 742, 747 (10th Dist.1998), fn. 5, this court held that "when an appellate court is called upon to review a lower court's interpretation and application of a statute, the appellate court conducts a *de novo* review without deference to the trial court's determination." *See State v. Sufronko*, 105 Ohio App.3d 504, 506 (4th Dist.1995). Because this matter requires our review of the trial court's application of R.C. 2325.18, regarding reviving dormant judgments, we review the trial court's decision *de novo*.

{¶ 6} A municipal court is authorized to revive judgments pursuant to R.C. 1901.13, which states:

(A) In any action or proceeding of which a municipal court has jurisdiction, the court or any judge of the court has the power to do all of the following:

* * *

(2) Issue any necessary orders in any proceedings before and after judgment, for * * * revivor of judgment * * *.

{¶ 7} "Inasmuch as the procedure to revive judgments is not set forth in R.C. 1901.01 to 1901.37, pursuant to R.C. 1901.21(A), the procedure is the same as in the court of common pleas." *Heselden Plumbing Co. v. Justice*, 10th Dist. No. 85AP-733 (Mar. 13, 1986). R.C. 1901.21(A) instructs that "[i]n any civil case or proceeding for which no special provision is made in this chapter, the practice and procedure in the case or proceeding shall be the same as in courts of common pleas. If no practice or procedure for the case or proceeding is provided for in the courts of common pleas, then the practice or procedure of county courts shall apply."

{¶ 8} Generally, there are two types of revivors: (1) revivor of actions where a party dies or becomes incompetent, requiring that another party be substituted in its place, and (2) revivor of judgments becoming dormant pursuant to R.C. 2329.07(A)(1),

requiring no party substitution. Civ.R. 25 governs the procedure for the former type of revivor, whereas R.C. 2329.07, 2325.15, 2325.17 and 2325.18 govern the procedure for the latter type of revivor. It is this latter type of revivor, where a judgment becomes dormant, which is the subject of the present appeal.

{¶ 9} R.C. 2329.07(A)(1) addresses the time in which a judgment becomes dormant:

If neither execution on a judgment rendered in a court of record or certified to the clerk of the court of common pleas in the county in which the judgment was rendered is issued, nor a certificate of judgment for obtaining a lien upon lands and tenements is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within five years from the date of the judgment or within five years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later, then, unless the judgment is in favor of the state, the judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor.

{¶ 10} R.C. 2325.15 addresses the procedures set forth for reviving dormant judgments:

When a judgment, including judgments rendered by a judge of a county court or mayor, a transcript of which has been filed in the court of common pleas for execution, is dormant, or when a finding for money in equitable proceedings remains unpaid in whole or in part, under the order of the court therein made, such judgment may be revived, or such finding made subject to execution as judgments at law are, in the manner prescribed for reviving actions before judgment, or by action in the court in which such judgment was rendered or finding made, or in which transcript of judgment was filed.

{¶ 11} R.C. 2325.18(A) addresses the time period within which a revivor action must be taken:

An action to revive a judgment can only be brought within ten years from the time it became dormant, unless the party entitled to bring that action, at the time the judgment became dormant, was within the age of minority, of unsound mind, or imprisoned, in which cases the action may be brought within ten years after the disability is removed.

{¶ 12} Appellant argues that the former version of R.C. 2325.18(A) applies here because the current version became effective June 2, 2004, and appellant's judgment became dormant on December 8, 2003. The former version permitted a revivor action to be brought within 21 years from the time a judgment became dormant.

{¶ 13} Under either version of the statute, appellant timely filed the revivor action. Therefore, we agree with appellant that the trial court erred when it determined that appellant's motion was barred by the applicable statute of limitations.

{¶ 14} Appellant's assignment of error is sustained.

{¶ 15} Having sustained appellant's sole assignment of error, we reverse the judgment of the Franklin County Municipal Court and remand this cause for further proceedings in accordance with law and consistent with this decision.

*Judgment reversed and
cause remanded.*

BROWN and O'GRADY, JJ., concur.
