NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PNC BANK, N.A. AND NEIL E. CASS, ESQUIRE TRUSTEES OF THE ESTATE OF ROBERT L. MONTGOMERY, JR. Appellee v. BARBARA APPLEGATE AND H. BEATTY CHADWICK APPEAL OF: H. BEATTY CHADWICK Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 929 EDA 2012

Appeal from the Order Entered March 14, 2012
In the Court of Common Pleas of Delaware County
Civil Division at No(s): 09-3900

BEFORE: LAZARUS, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J. **FILED MAY 07, 2013**

H. Beatty Chadwick ("Chadwick") appeals from the order entered on March 14, 2012, in the Court of Common Pleas of Delaware County granting summary judgment in favor of Trustees and directing Trustees to continue payments to Barbara Applegate until Chadwick's spousal support obligations have been fulfilled. Chadwick raises three claims on appeal; (1) the trial court erred in determining Trustees were obligated to make payments to Applegate when Trustees were never a party to the divorce action, (2) the trial court erred in determining payments made to Applegate were made

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* Retired Senior Judge assigned to the Superior Court.

absent an order binding Chadwick, and (3) the trial court erred in determining the amount of alimony *pendente lite* ("APL") owed. Following a thorough review of the submissions by the parties, the certified record, and relevant law, we affirm.[1]

Relevant to this appeal, Chadwick is the beneficiary of two spendthrift trusts, Trusts No. 6 and No. 7, from the Estate of Robert L. Montgomery, Jr. Chadwick and Applegate were married in 1977 and separated in 1992. A Complaint in Divorce was filed in November 1992. The trial court summed up the extensive history of this matter in its Pa.R.A.P. 1925(a) opinion.

> In February of 1993 this Court [Delaware County Court of Common Pleas] ordered Beatty Chadwick (hereinafter "Mr. Chadwick"), Defendant-Appellant, to pay alimony *pendente lite* ("APL") to Defendant Barbara Applegate (hereinafter "Ms. Applegate") in the amount of $5,500 per month. Subsequently, this Court took further action on October 21, 1994, assuming jurisdiction and attaching Mr. Chadwick's interest in unitrust payments from Trusts No. 6 and No. 7. Furthermore, this Court ordered all payments from Trusts No. 6 and No. 7 to be paid to Albert Momjian, Esquire (hereinafter "escrow agent") Ms. Applegate's attorney, to satisfy the spousal support owed by Mr. Chadwick to Ms. Applegate. Additionally, the Orphans' Court of Montgomery County, in June 2007, held that this Court had proper jurisdiction to issue orders governing the disposition of income from Trusts No. 6 and No. 7.
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> The Plaintiff Trustees (hereinafter "Trustees") brought suit filing the instant complaint on March 25, 2009. Mr. Chadwick filed preliminary objections on April 16, 2009, to which the Trustees

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[1] This appeal involves review of questions of law. Therefore, our scope of review is plenary and our standard of review is *de novo*. ***Ralston v. Ralston***, 55 A.3d 736 (Pa. Super. 2012).

> responded on May 6, 2009. Ms. Applegate filed an answer to the complaint on May 20, 2009. July 8, 2009, this Court, upon consideration of the preliminary objections filed by Mr. Chadwick, overruled said preliminary objections and ordered Mr. Chadwick to file an answer to Trustees' complaint within twenty (20) days of the date of notice of the order.
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> On January 13, 2011, the Trustees filed a motion for partial summary judgment, which this Court granted on September 8, 2011. Subsequently, on March 14, 2012, this Court, upon consideration of the Court's order from September 8, 2011, ordered and decreed judgment in favor of the Trustees as follows: (1) The Trustees' historical practice of making income payments to the escrow agent was proper and consistent with the orders of this Court; (2) The income payments have been applied to (a) spousal support in the form of APL, and past-due APL owed by Mr. Chadwick to Ms. Applegate; (b) Ms. Applegate's attorney fees incident to this divorce action, and (c) other Court-authorized purposes; (3) The Trustees have paid $393,840.93 as of January 1, 2009, to the escrow agent in satisfaction of spousal support owed by Mr. Chadwick to Ms. Applegate, including payments totaling $302,801.31 for the period from January 27, 1993, to October 27, 2004, and $91,039.62 for the period from October 27, 2004, to the present; and (4) Having been notified that Ms. Applegate does not wish to pursue any additional claims in this case, the Trustees are directed to continue to make income payments otherwise due to Mr. Chadwick to the escrow agent until the remaining amount of APL arrearage, $34,780.38, owed by Mr. Chadwick to Ms. Applegate is satisfied.

Pa.R.A.P. 1925(a) Opinion, 8/13/12, at 1-2.

Chadwick attempted to appeal previous orders directing Trustees to make distributions to Applegate. However, all prior appeals were quashed.

In his first issue, Chadwick claims the trial court erred in approving the payments from the Trust to Applegate because the Trustees were never made a party to the divorce action and a non-party to an action cannot be held responsible for a judgment. While Chadwick has provided a correct statement of law, it is not relevant to this factual situation. The judgment

for support and related obligations is against Chadwick. The Trustees are not parties to the divorce, but the Trust is a source of income available for Chadwick. After he failed to comply with multiple orders, the income distributions from Trusts No. 6 and No. 7 were attached to satisfy his obligation to Applegate.

The law allows the attachment of present or future distributions by a judgment creditor, unless there is a spendthrift provision. ***See*** 20 Pa.C.S. § 7741. However, the spendthrift provision is unenforceable against a person who has a judgment order against the beneficiary for support or maintenance. ***See*** 20 Pa.C.S. § 7743(b)(2). Chadwick has provided no law or authority to support his contention that before a court can enforce such an attachment, the Trust or Trustees must be named in the underlying action. Just as an employer is not required to be a named defendant when wages are being attached to make payment of a judgment, the Trustees need not have been named in order to properly attach and redirect regularly scheduled income distributions.

Therefore, the trial court in this matter has not abused its discretion in confirming that the Trustees have been properly following a court order to distribute income payments to the escrow agent rather than to Chadwick.

Next, Chadwick argues the trial court erred in concluding the Trustees acted properly in distributing funds to Applegate in the absence of a valid

support order binding against him.[2] However, in his argument section, Chadwick amends the question slightly to a claim that the trial court erred in determining payments to someone other than the designated beneficiary were allowable. This claim is largely based upon the assertion that APL is not properly considered as support.

Although the questions raised in his brief are not identical, both aspects of the question were raised in Chadwick's Pa.R.A.P. 1925(b) statement. Therefore, we will address both arguments.

First, our review of the certified record shows there is a valid order for support, which Chadwick has ignored for decades. On February 26, 1993, Chadwick was ordered to pay $5,500 per month for APL to Applegate. The APL obligation was made retroactive to January 27, 1993. This amount was reiterated in a court order of January 5, 1994. On October 27, 2004, another order was entered that acknowledged Chadwick's prior APL payments of more than $300,000 and set his arrearage for failure to pay at $125,820.00. This order also noted Chadwick owed Applegate more than $1.6 million in attorney's fees. The record demonstrates valid court orders against Chadwick.[3]

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[2] This is how Chadwick frames the question in his initial Statement of Questions, see Appellant's Brief at 8.

[3] We have identified six prior orders to which Chadwick filed an appeal: Docket Nos. 1413 EDA 2001, appeal from order of 5/1/01 by Judge Clouse; 1855 EDA 2001, appeal from order of 6/26/01 by Judge Clouse; 3271 EDA
(Footnote Continued Next Page)

Chadwick also argues that even if there have been orders entered regarding APL, APL is not support, therefore, distributions from a spendthrift trust for APL are not allowable.

He is correct that the initial purpose of APL was to enable the financially dependent spouse to "maintain or defend against an action for divorce," ***see Oswald v. Oswald***, 397 A.2d 7, 8 (Pa. Super. 1979). However, the purpose and definition of APL have not remained static through the years.

The statutory definition of APL is "An order for temporary support granted to a spouse during the pendency of a divorce or annulment proceeding." 23 Pa.C.S. § 3103. This definition was enacted in 1990 and is applicable to the order at issue.[4] Therefore, the Legislature recognizes APL as a form of support.

Multiple decisions from our Court have recognized the statutory definition of APL as support. ***See Busse v. Busse***, 921 A.2d 1248, 1251 (Pa. Super. 2007); ***Costlow v. Costlow***, 914 A.2d 440, 441 (Pa. Super. 2006); and ***Schenk v. Schenk,*** 880 A.2d 633, 644-45 (Pa. Super. 2005).

(Footnote Continued) ———————————

2004, appeal from order of 10/29/04 by Judge Kenney; 1384 EDA 2005, appeal from order of 5/16/05 by Judge Clouse; 2910 EDA 2005, appeal from order of 10/10/05 by Judge Kenney; and 637 EDA 2006 appeal from order of 2/22/06 by Judge Kenney. We believe these appeals were associated with the divorce action. All appeals were quashed.

[4] The only post-1990 amendment to the definitions is not relevant to this matter.

In addition to the ability to participate equally in the divorce proceedings, APL has also been described as applicable where there is a "need for maintenance during the pendency of proceedings." ***Jayne v. Jayne***, 663 A.2d 669, 678-79 (Pa. Super. 1995). In 2002, a panel of our Court determined a son who had received marital assets could not be compelled to help provide APL because only a spouse can be required to provide support. ***See Dalessio v. Dalessio***, 805 A.2d 1250, 1253 (Pa. Super. 2002). In ***Saunders v. Saunders***, 908 A.2d 356, 358 (Pa. Super. 2006), *citing* ***Mascaro v. Mascaro***, 803 A.2d 1186 (Pa. 2002), another panel of our Court stated APL and support were to be calculated by the same methods. This would not be necessary if APL was not a form of support and was only to provide for divorce costs. Chadwick asks this Court to accept an outdated definition of APL, rather than the currently accepted view. We see no reason to regress on this issue. Chadwick is not entitled to relief on this argument.

Finally, Chadwick claims the trial court erred in determining the amount of APL he owed. He claims the October 24, 2004 order set the total amount of APL owed to Applegate at $125,820.00. He argues he has already paid more than $300,000.00, so he is owed money rather than owing. We find no error in the trial court's interpretation of that order.

Chadwick is correct that the order in question sets his arrearage at $125,820.00. The trial court interpreted this to mean that Chadwick still owed that amount. In the conclusions of law of the October 24, 2004 order, Paragraph 19 stated in relevant part: "Defendant [Chadwick] is, therefore,

liable to Plaintiff [Applegate] for unpaid alimony pendent lite in the amount of $165,820, less $40,000, or a remaining balance of $125,820." Conclusions of Law, 10/24/04, ¶ 19. This conclusion of law is clear and we see no other interpretation of "Defendant … liable to Plaintiff" and "remaining balance" than the plain meaning of "money still owed" by Chadwick to Applegate.

We also note that a prior panel of our Court stated that even if Chadwick were entitled to a refund of money paid by the Trustee to the escrow agent, he would not be able to collect that overpayment until he had fulfilled his other obligations to Applegate by revealing the location of and producing the funds he has hidden.[5] He has not fulfilled those obligations. Therefore, we agree with the prior decision that Chadwick would not be currently entitled to a refund even if he had overpaid, which he has not.

Order Affirmed.

Judgment Entered.

Prothonotary

Date: 5/7/2013

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[5] ***See Barbara Crowther Chadwick v. H. Beatty Chadwick***, 1855 EDA 2001, 1413 EDA 2001, 4/4/02, at 6.