

IN THE UTAH COURT OF APPEALS

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Jayson Orvis,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20041040-CA
v.)	
)	
Jamis M. Johnson,)	F I L E D
)	(July 13, 2006)
)	
Defendant and Appellant.)	2006 UT App 296

Third District, Salt Lake Department, 020904919
The Honorable Tyrone Medley

Attorneys: Jamis M. Johnson, Salt Lake City, Appellant Pro Se
Peggy A. Tomsic, Salt Lake City, for Appellee

Before Judges Bench, Davis, and Thorne.

THORNE, Judge:

Jamis M. Johnson appeals the trial court's ruling granting Jayson Orvis's motion for summary judgment. Johnson also appeals the trial court's ruling denying his motion to strike and motion for rule 11 sanctions, and awarding attorney fees that Orvis incurred in obtaining a protective order on a discovery issue. We affirm.

On April 5, 1995, Pamela Belding obtained a judgment against Johnson. Belding assigned her interest in the judgment to All Star, L.L.C., a dissolved corporation, which then transferred the judgment to Orvis. On June 7, 2002, Orvis filed a complaint to renew and extend the judgment. Later, Orvis filed a motion for summary judgment, which the trial court granted.

Johnson argues that genuine issues of material fact exist, precluding summary judgment. Specifically, Johnson asserts that a partnership between Johnson and Orvis existed, that the partnership was the owner of the judgment because partnership funds were misappropriated and used to purchase the judgment, and that the judgment should be deemed satisfied due to monies Orvis withheld from Johnson. The trial court held that the issues raised pertaining to the partnership are immaterial to the renewal of the judgment. We review a trial court's grant of

summary judgment for correctness, affording no deference to the trial court. See Ford v. American Express Fin. Advisors, 2004 UT 70, ¶21, 98 P.3d 15. A party is entitled to summary judgment if there is no genuine issue of material fact and "the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). "[W]e view the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." Carrier v. Salt Lake County, 2004 UT 98, ¶3, 104 P.3d 1208.

An action to renew or extend a judgment is implied by Utah Code section 78-12-22. Section 78-12-22 establishes an eight-year limitations period for actions brought "upon a judgment." Utah Code Ann. § 78-12-22 (2002); see also Mason v. Mason, 597 P.2d 1322, 1323-24 (Utah 1979). "With respect to a judgment, . . . [t]he owner of [a] cause of action has already resorted to the court to preserve it; and unless he can bring another action on the judgment within the eight-year period, he has no way of preventing the loss of his justly adjudicated claim." Mason, 597 P.2d at 1324. Thus, the elements of an action to renew or extend a judgment are merely the existence of an original judgment and ownership of the judgment by the renewal action plaintiff, subject to the statutory limitations period. The issues Johnson raised with respect to the partnership, however, address the enforceability of the judgment, are largely irrelevant to the elements of Orvis's renewal action, and do not create a genuine issue of material fact relevant to the elements of that action. Therefore, the trial court correctly ruled that no genuine issue of material fact exists to preclude summary judgment.

Johnson's only argument that reaches the elements of a renewal action is his challenge to Orvis's ownership of the judgment. Johnson contends that a dissolved company has limited powers that may only be used to wind up and liquidate its business, and that All Star, as a dissolved corporation, lacked the capacity to transfer the judgment to Orvis, making the assignment void. See Utah Code Ann. §§ 48-2c-1203, -1302 (2002). However, Utah law suggests that a contract entered into by a dissolved corporation is, at most, merely voidable by the party who entered into the contract with the dissolved corporation. See Miller v. Celebration Mining Co., 2001 UT 64, ¶10, 29 P.3d 1231 (holding that a contract entered into by president of a dissolved corporation was voidable by the other party due to the president's misrepresentation of corporate status). Therefore, assuming that the transfer of the judgment from All Star is voidable at Orvis's option, Orvis has not opted to void the transfer and Johnson may not invalidate the transfer himself because he was not a party to the contract. Thus, for purposes of this action the transfer of the judgment from All Star to Orvis is valid and Orvis is the owner of the judgment.

Johnson next argues that the court erred and abused its discretion in denying his motion to strike and motion for rule 11 sanctions, and in awarding attorney fees when granting Orvis's motion for protective order. Johnson asserts that the affidavit submitted by Orvis should have been stricken because it was irrelevant. The court stated that there was no utility in granting the motion to strike because it did not rely on the matter to be stricken in rendering its decision. Even assuming the affidavit is inadmissible, Johnson was not harmed by its admission because the trial court did not rely on the affidavit. See GNS P'ship v. Fullmer, 873 P.2d 1157, 1165 (Utah Ct. App. 1994). Thus, we affirm the trial court's denial of the motion to strike the affidavit because its admission was not prejudicial. See id.; see also Broadwater v. Old Republic Sur., 854 P.2d 527, 533 (Utah 1993) (finding admission of hearsay evidence harmless where the fact asserted through hearsay was undisputed).

Johnson contends that his motion for rule 11 sanctions should have been granted because Orvis submitted an irrelevant and malicious affidavit for an improper purpose and engaged an unlicensed private investigator to perform surveillance of Johnson's home, extracting evidence from his minor children. A trial court's legal conclusions supporting the denial or imposition of rule 11 sanctions are reviewed under the correction of error standard. See Morse v. Packer, 2000 UT 86, ¶16, 15 P.3d 1021. The affidavit of the unlicensed private investigator submitted by Orvis was in response to allegations made by Johnson that were equitable in nature. Although the affidavit contained irrelevant material, it was not submitted for an improper purpose such as to harass or cause unnecessary delay or needlessly increase the cost of litigation. See Utah R. Civ. P. 11. Therefore, the trial court properly denied Johnson's motion for rule 11 sanctions.

Finally, Johnson argues on appeal that he had a valid basis for his discovery actions and that the trial court abused its discretion in awarding attorney fees pursuant to Orvis's motion for protective order.¹ Rule 26 expressly provides for an award of attorney fees incurred in relation to a motion for protective order. See Utah R. Civ. P. 26. In general, the court shall, after an opportunity for a hearing, require the party whose conduct necessitated the motion to pay attorney fees to the moving party, unless the court finds that the opposing party's response or other circumstances make an award of expenses unjust. See Utah R. Civ. P. 26(c), 37(a)(4)(A). Johnson does not argue

¹Johnson does not appeal the trial court's ruling granting the protective order. Therefore, we address only whether the court abused its discretion in awarding attorney fees.

that he was denied a hearing, nor did he identify any circumstance to the trial court that would make an award of expenses unjust. Therefore, under the circumstances, we will not disturb the trial court's order.

The judgment is affirmed.

William A. Thorne Jr., Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge