2015 IL App (1st) 140550-U

FIRST DIVISION
March 23, 2015

No. 1-14-0550

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel.* THE ILLINOIS DEPARTMENT OF PUBLIC HEALTH, Plaintiff-Appellant, v. THE WOMEN'S AID CLINIC OF LINCOLNWOOD, INC., Defendant-Appellee. (FIFTH THIRD BANK, Third-Party Citation Respondent, and WOMEN'S AID CENTER, INC., Intervenor).	)	Appeal from the Circuit Court of Cook County. No. 12 L 9696 Honorable Alexander P. White, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** In this post-judgment collection dispute, the trial court did not abuse its discretion when it determined that certain funds belonging to a new corporation were not subject to turnover to pay the judgment debt of a defunct corporation owned by the same sole shareholder as the new corporation.

¶ 2 For many years, the Women's Aid Clinic of Lincolnwood, Inc. (Clinic), operated a medical center licensed by the Illinois Department of Public Health (IDPH). In 2011, one of the Clinic's patients died following a surgical procedure. The IDPH then brought charges against the Clinic on the basis that it had committed several violations of the Ambulatory Surgical Treatment Center Act ("ASTC Act") (210 ILCS 5/1 *et seq.* (West 2010)). The Clinic did not exercise its right to a formal administrative hearing on the charges. Instead, it simply defaulted on the case. The Clinic's sole shareholder, Larisa Rozansky, explained the Clinic "disagreed" with the charges, but chose to ignore the IDPH proceedings because it was shutting down its operations.

¶ 3 The charges eventually resulted in IDPH issuing a final administrative order against the Clinic, which suspended the Clinic's license and imposed a $36,000 fine against it. Because the Clinic did not pay the fine, the State filed this lawsuit on the relation of the IDPH, requesting that the court convert the administrative fine into a collectible judgment. The Clinic again defaulted, and IDPH initiated supplementary proceedings to collect the outstanding money judgment.

¶ 4 The IDPH began its collection efforts by issuing a citation to discover assets to Rozansky and various banks, requiring them to produce financial records relating to the Clinic. Rozansky responded by producing the Clinic's bank statements. Fifth Third Bank, of which the Clinic was a customer, also responded.

¶ 5 Initially, the trial court reviewed these documents and determined that certain "merchant accounts" at Fifth Third Bank were property of the Clinic. In particular, the court found that merchant accounts ending in 2721 and 7595 were Clinic property, and that the proceeds of those

accounts remained Clinic property even after they had been deposited into a Fifth Third Bank checking account ending in 7268. The 2721 and 7595 merchant accounts were established to receive patient payments from Visa/MasterCard and American Express, respectively. The court ordered the Clinic to turn over $37,980 (the original $36,000 judgment plus interest) from its Fifth Third Bank account to the State. The State then issued a third-party citation to discover assets to Fifth Third Bank, requiring it to produce records including those relating to the Women's Aid Center, Inc. ("Center"), a new corporation incorporated by Rozansky in December 2011. Fifth Third stated that the 7268 account and another bank account, ending in 3739, together contained $3,135.19. The State filed a motion for a turnover order of that amount. At this point, the Clinic obtained legal counsel, who sought reconsideration of the earlier proceedings and asserted that the funds at Fifth Third belonged to the Center, not the Clinic.

¶ 6 The trial court held an extensive evidentiary hearing in which it examined the relationship between the Clinic and Center to determine whether IDPH could take any of the Center's assets in satisfaction of the judgment against the Clinic. Both sides were represented by legal counsel at the hearing. The transcript of the hearing extends for over 100 pages. We summarize the evidence most relevant to the issue presented in this appeal.

¶ 7 Rozansky testified that she was the sole shareholder of both the Clinic and the Center, and that the Clinic closed in October 2011. She did not open new bank accounts for the Center, but instead kept the same accounts recaptioned under the new "Center" name, because closing the existing Clinic accounts would cost $2,000 in bank termination fees. The two corporations, however, had different federal tax identification numbers. The Center's IDPH license was less extensive than that of the Clinic, in that the Center was permitted to perform fewer, and less complex, types of procedures than the Clinic. The Center also operated in a different location

than the Clinic. The State elicited some evidence from Rozansky regarding overlapping activities of the Clinic and Center, such as, that the Center's website featured a testimonial from a Clinic patient who had never been to the Center, and that some Clinic activities transpired after the asserted October 2011 closing date. In December 2011, a physician with whom Rozansky was affiliated, and who still saw patients at the Clinic in December 2011, gave the Center a $10,000 check, which Rozansky deposited into the Center's bank account. Rozansky eventually closed the Clinic's Fifth Third account in March 2012, leaving it with a balance of $77.

¶ 8 After hearing this evidence, the trial court did not render formal findings of fact, but instead engaged in a long colloquy with the attorneys for both sides, during which he pressed the State on their contention that some money held by the Center should be used to satisfy the Clinic's debt because there was not a "clean break" between the two corporations. The court expressed doubt that such a "clean break" was necessary, or even always feasible, stating: "I mean there was a lot of evidence apparently that the business that they were in ceased *** but then to get into a new business, things transpired, but they didn't transpire for a while." The trial court found that the State was entitled only to a turnover of the $77 in the Clinic account, and not to the $3,135.19 in the Fifth Third Bank merchant accounts. This appeal followed.

¶ 9 Section 2-1402 of the Code of Civil Procedure (Code) authorizes a citation action and provides a mechanism by which a judgment creditor may initiate supplementary proceedings to discover the assets of a judgment debtor or third party and apply those assets to satisfy the judgment. 735 ILCS 5/2-1402(a) (West 2010). Section 2-1402 is liberally construed, and the burden lies with the creditor to show that the citation respondent possesses assets belonging to the judgment creditor. *Schak v. Blom*, 334 Ill. App. 3d 129, 133 (2002). Before a judgment creditor may proceed against a third party who is not the judgment debtor, there must be

evidence that the third party possesses assets of the judgment debtor for the court to have jurisdiction to order that party to produce those assets to satisfy the judgment. *Id.* "[T]he only relevant inquiries in supplementary proceedings are (1) whether the judgment debtor is in possession of assets that should be applied to satisfy the judgment or (2) whether a third party is holding assets of the judgment debtor that should be applied to satisfy the judgment." *Id*. Section 2-1402 specifically provides:

> "If it appears that any property *** discovered, or any interest therein, is claimed by any person, the court shall, as in garnishment proceedings, permit or require the claimant to appear and maintain his or her right. The rights of the person cited and the rights of any adverse claimant shall be asserted and determined pursuant to the law relating to garnishment proceedings." 735 ILCS 5/2-1402(g) (West 2012).

¶ 10 When a trial of the issues is conducted in a supplementary proceeding, the trial court's decision of the issues and contested facts is reviewed under the manifest weight of the evidence standard. See *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1999) (when a garnishee's answer is contested, a trial of the issues presented is to be conducted as in all other civil cases, and the judgment is reviewed under the manifest weight of the evidence standard). However, a decision to compel a judgment debtor to deliver up money or property in satisfaction of a judgment is reviewed under an abuse of discretion standard, when, as here, the trial court conducted an evidentiary proceeding, heard testimony, and made findings of fact. *Gonzalez v. Profile Sanding Equipment, Inc.*, 333 Ill. App. 3d 680, 692-93 (2002); *cf. Dowling v. Chicago Option Associates, Inc.*, 226 Ill. 2d 277, 285 (2007) (*de novo* standard applies when the trial court heard no

testimony and based its turnover decision on documentary evidence). Because the trial court did not make formal findings of fact, we will review the decision below under the abuse of discretion standard.

¶ 11 Under this standard, we do not substitute our judgment for that of the circuit court. *Jones v. Searle Laboratories*, 93 Ill. 2d 366, 378 (1982). The question is not whether we would have resolved the issue as the trial court did (*Id.*), or whether it exercised its discretion wisely (*Brummett v. Wepfer Marine, Inc.*, 111 Ill. 2d 495 (1986)). Instead, we determine only whether it abused its discretion. A court abuses its discretion when its resolution of a discretionary issue is clearly against logic, arbitrary, exceeds the bounds of reason or runs contrary to recognized principles of law. *State Farm Fire & Casualty Co. v. Leverton*, 314 Ill. App. 3d 1080, 1083 (2000).

¶ 12 This court has explained the basic principles governing liability of successor corporations:

> "Under the common law and Illinois law, the mere transfer of the assets of one corporation to another corporation does not make the latter liable for the debts or liabilities of the first corporation. This general rule, however, is often subject to several exceptions. Liability is imposed where (1) an express or implied agreement of assumption exists; (2) where the transaction amounts to a merger of the seller into the buyer or a consolidation of the two; (3) where the buyer is a mere continuation of the seller such as when the buyer comes into existence pursuant to a reorganization of the seller; or (4) the transaction is fraudulent in that it was entered into

> to allow the seller to escape its liabilities. *Hoppa v. Schermerhorn & Co.*, 259 Ill. App. 3d 61, 64 (1994) (internal citations omitted).

The State contends that the evidence here showed that the third ("mere continuation") and fourth ("fraudulent" reorganization) exceptions apply.

¶ 13 Essentially, the issue before us is whether the evidence demonstrated that the Center was merely an alter ego of the Clinic, or was a distinct and separate business enterprise. While we appreciate the State's desire to aggressively collect fines owed to it, we must note that there was an extensive hearing below at which significant testimony was elicited to the effect that there was, in fact, enough of a break between the two corporations that the latter cannot be held to pay the debts of the former. In particular, there was little, if any, evidence that any Clinic funds or equipment were ever transferred to the new corporation. The evidence strongly demonstrated that the Clinic was virtually broke when it went out of business. The location and scope of services of the two corporations also differed. Under the applicable lenient standard of review, we cannot conclude that the trial judge's resolution of the account ownership issue was contrary to logic, arbitrary, or that it exceeds the bounds of reason or runs contrary to recognized principles of law. The able trial judge, who has presided over similar collection disputes for many years, did not abuse his discretion in finding that $3,135.19 of Center funds need not be turned over to partially satisfy the judgment against the Clinic.

¶ 14 For these reasons, we affirm the turnover order entered by the trial court. Upon the issuance of our mandate, the stay of that order entered May 7, 2014, by this court's motion panel is dissolved.

¶ 15 Affirmed.