2015 IL App (4th) 140473-U

NO. 4-14-0473

FILED
February 20, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ELIZABETH SCOGGINS,	)	Appeal from
Plaintiff and Counterdefendant-Appellee,	)	Circuit Court of
v.	)	Sangamon County
CHRISTINA SCOGGINS, n/k/a CHRISTINA HOLT,	)	No. 13SC4811
Defendant and Counterplaintiff-Appellant.	)	
	)	Honorable
	)	Rudolph M. Braud,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Pope and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court's judgment granting plaintiff $5,030 plus costs for child-care services provided in 2010 was not against the manifest weight of the evidence, and (2) the trial court properly denied defendant's request for relief on her counterclaim as defendant failed to demonstrate a violation of section 524(a) of the United States Bankruptcy Code (11 U.S.C. § 524(a) (2006)).

¶ 2 In October 2013, plaintiff/counterdefendant, Elizabeth Scoggins, filed a small-claims complaint against defendant/counterplaintiff, Christina Scoggins, n/k/a Christina Holt, seeking an unpaid balance due and owing for child-care services provided in 2010. Defendant filed an answer denying plaintiff's claims and a counterclaim seeking the return of $6,000 previously paid to plaintiff for child-care services provided in 2009. In February 2014, the trial court entered judgment in favor of plaintiff and denied defendant's counterclaim. Defendant filed a

motion for reconsideration, which was thereafter amended. In May 2014, the trial court denied defendant's amended motion. Defendant appealed.

¶ 3 On appeal, defendant requests this court vacate the trial court's judgment finding defendant liable for child-care services provided in 2010 because it is against the manifest weight of the evidence. Defendant further requests this court order plaintiff to repay defendant $6,000 she paid for child-care services provided in 2009 because the trial court erred in concluding defendant's payment to plaintiff, a declared creditor in defendant's bankruptcy action, was voluntary. We affirm the trial court's judgment finding defendant liable for child-care services provided in 2010 as it was not against the manifest weight of the evidence. We further affirm the trial court's denial of defendant's counterclaim as defendant failed to demonstrate a violation of section 524(a) of the United States Bankruptcy Code (Bankruptcy Code) (11 U.S.C. § 524(a) (2006)).

¶ 4 I. BACKGROUND

¶ 5 In October 2013, plaintiff filed a small-claims complaint against defendant, seeking $5,030, interest, and court costs for an unpaid balance due and owing for child-care services provided in 2009 and 2010. (Plaintiff later clarified the $5,030 was solely for services provided in 2010.) Defendant filed an answer denying plaintiff's claims and a counterclaim. The counterclaim sought the return of $6,000 paid to plaintiff for child-care services provided in 2009 because plaintiff violated (1) the "bankruptcy 'automatic stay' *** [by] secur[ing] a debt from defendant through the form of harassment and guilt," and (2) "Illinois Harassment Laws *** [by] target[ing] *** defendant in a means to annoy and torment her to the point of surrender in order to collect a debt that was discharged in April 2010." The counterclaim did not cite any statutory authority.

¶ 6 In January 2014, the trial court conducted a hearing, where exhibits were produced and testimony heard. A verbatim transcript of the testimony rendered was not prepared. Instead, for purposes of appeal, the parties prepared an agreed statement of facts in accordance with Illinois Supreme Court Rule 323(d) (eff. Dec. 13, 2005). The following is a summary of the facts adduced during the hearing as agreed by both plaintiff and defendant.

¶ 7 Plaintiff operated a home day-care center. In 2009, defendant utilized plaintiff's child-care services for her two daughters. Due to the financial difficulties of defendant, plaintiff agreed to accept payment for a full year of child-care services after defendant received her income tax refund in the first few months of the following year. The cost for child-care services provided in 2009 totaled $6,000. In late 2009, defendant discussed with plaintiff her decision to file for bankruptcy protection. Defendant indicated, prior to filing for bankruptcy protection, she would make a full, voluntary payment to plaintiff for services rendered despite the requirement she list plaintiff as a creditor on her bankruptcy petition and schedules. On January 7, 2010, defendant filed for bankruptcy protection. Plaintiff was listed as a creditor for the $6,000 debt owed for child-care services provided in 2009.

¶ 8 Defendant continued to utilize plaintiff's child-care services for her two daughters during the spring term of 2010. The children were in day care Monday through Friday before and after school until June 4, 2010. The parties initially agreed upon a fee of $125 per week. The cost for child-care services provided for the 22 weeks between January and June totaled $2,750. The agreed statement of facts also indicates in 2009 and 2010 plaintiff was charging defendant $150 per week for both children.

¶ 9 "During the bankruptcy proceedings, *** [p]laintiff repeatedly requested payment from *** [d]efendant by telephone, in person, and in writing for the day[-]care services in the

calendar year of 2009." When defendant received her income tax refund for the 2009 calendar year, she paid plaintiff in full for the $6,000 debt for child-care services provided in 2009. Defendant testified she wishes now she had not made the payment. Defendant further testified she made the payment because she was being harassed. Defendant continued to utilize plaintiff's child-care services after making the payment. In April 2011, defendant's $6,000 debt for child-care services provided in 2009 was discharged in bankruptcy.

¶ 10 During the hearing, defendant stated she believed she owed plaintiff for the first 22 weeks of 2010. She further testified she made no payment on the 2010 account. Although defendant entered into the contract with plaintiff for child-care services, defendant testified the father of the children, Joshua Kane, should be required to make payments to plaintiff as it is required through their family case. Defendant also testified Kane made an agreement with plaintiff to pay for the services provided in 2010. Plaintiff denied she made an agreement with Kane.

¶ 11 In addition to seeking payment for the spring term, plaintiff sought payment for the summer of 2010. Plaintiff testified defendant asked her to keep a place open for her children during the summer of 2010 because her husband was looking for work and they might need a child-care provider, despite not needing daily services. Plaintiff further testified, per state regulations, she is only able to have a certain number of children in her care at any given time and therefore it is her policy to charge for a "spot" when a parent asks to be guaranteed the ability to utilize services should the need arise. The agreed statement of facts further indicates defendant "utilized the services of *** [p]laintiff during the summer of 2010."

¶ 12 At the conclusion of the hearing, the parties were granted 21 days to prepare written closing arguments. The trial court indicated it would find, at a minimum, defendant owed

plaintiff for the first 22 weeks of 2010. As to the $6,000 payment, the court further indicated it did not find duress as claimed by defendant.

¶ 13 On February 3, 2014, plaintiff filed her written closing argument. On the same date, the trial court entered judgment in favor of plaintiff for $5,030 plus costs and denied defendant's counterclaim. On February 4, 2014, defendant filed her written closing argument. On February 24, 2014, defendant filed a motion for reconsideration, rehearing, modification of the judgment, to vacate judgment, or for other relief, alleging the trial court entered judgment prior to having the opportunity to review the position of defendant. In March 2014, defendant filed an amended motion. In May 2014, the trial court denied defendant's amended motion.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant requests this court vacate the trial court's judgment finding defendant liable for child-care services provided in 2010 because it is against the manifest weight of the evidence. Defendant further requests this court order plaintiff to repay defendant $6,000 she paid for child-care services provided in 2009 because the trial court erred in concluding defendant's payment to plaintiff, a declared creditor in defendant's bankruptcy action, was voluntary. We address these arguments in turn.

¶ 17 A. Child-Care Services Provided in 2010

¶ 18 Defendant requests this court vacate the trial court's judgment awarding plaintiff $5,030 plus costs because it is against the manifest weight of the evidence. Specifically, defendant argues the trial court erred when it denied her claim she was not responsible for the 22 weeks of child-care services provided between January and June of 2010 because the children's father made an agreement with plaintiff to pay for this period. Therefore, defendant argues the

trial court's judgment finding defendant liable for this period is against the manifest weight of the evidence.

¶ 19 A trial court's findings during a bench trial will not be disturbed unless they are against the manifest weight of the evidence. *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273, 277 (1995). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Bazydlo*, 164 Ill. 2d at 215, 647 N.E.2d at 277. The trial judge, as the trier of fact in a bench trial, "is in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive." *Bazydlo*, 164 Ill. 2d at 214-15, 647 N.E.2d at 276-77. When contradictory testimony that could support conflicting conclusions is given at a bench trial, a reviewing court will not disturb factual findings based on conflicting testimony unless a contrary finding is clearly apparent. *Buckner v. Causey*, 311 Ill. App. 3d 139, 144, 724 N.E.2d 95, 100 (1999).

¶ 20 Defendant limits her argument on appeal to whether the trial court's judgment finding defendant liable for the first 22 weeks of child-care services provided in 2010 was against the manifest weight of the evidence. The agreed statement of facts indicates defendant stated at the hearing she believed she owed plaintiff for the first 22 weeks of 2010. The agreed statement of facts also affirmatively states, "[d]efendant entered into the contract with *** [p]laintiff for child[-]care services." Defendant testified during the hearing her husband, Joshua Kane, made an agreement with plaintiff to pay for the services provided in 2010. Plaintiff denied she made an agreement with Kane. The trial court judge, as the finder of fact, was in the best position to observe the witnesses while testifying, to judge their credibility, and to determine the

weight their testimony should receive. Based on the statements made and the conflicting testimony presented, the trial court's finding was not against the manifest weight of the evidence.

¶ 21 B. Child-Care Services Provided in 2009

¶ 22 Defendant further requests this court order the plaintiff to repay defendant $6,000 she paid for child-care services provided in 2009 because the trial court erred in concluding defendant's payment to plaintiff, a declared creditor in defendant's bankruptcy action, was voluntary. Defendant alleges she was harassed into making the $6,000 payment in violation of section 524(a) of the Bankruptcy Code (11 U.S.C. § 524(a) (2006)).

¶ 23 Section 524(a)(2) mandates that a discharge in bankruptcy operates as an injunction against an act to collect, recover, or offset discharged debt as a personal liability of the debtor. 11 U.S.C. § 524(a)(2) (2006). Sections 524(c) and (d) allow a debtor to repay debts that would otherwise be dischargeable by entering into a formal reaffirmation agreement. These sections lay out in detail the requirements to be a valid reaffirmation agreement. See 11 U.S.C. § 524(c), (d) (2006). Here, the parties agree there was no reaffirmation agreement. Section 524(f) further provides, "[n]othing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt." 11 U.S.C. § 524(f) (2006). The parties focus on the question of whether the payment was "voluntary" under section 524(f).

¶ 24 Defendant argues, although section 524(f) allows debtors to repay their debts voluntarily, the payment was not voluntary because plaintiff harassed defendant into paying. Defendant alleges harassment is evident by plaintiff repeatedly requesting the $6,000 payment during the bankruptcy proceedings by telephone, in person, and in writing. Therefore, defendant contends the trial court's finding was against the manifest weight of the evidence because the

payment was in fact due to harassment and in violation of section 524(a) of the Bankruptcy Code (11 U.S.C. § 524(a) (2006)).

¶ 25 As a primary matter, we must address defendant's reliance on section 524 of the Bankruptcy Code (11 U.S.C. § 524 (2006)) as the authority on which she bases her claim. Subsection 524(a)(2) provides a bankruptcy discharge operates as an injunction against an act to collect any *discharged* debt as a personal liability of the debtor. Defendant's allegation of harassment is based on plaintiff's actions after the petition was filed but prior to discharge. Further, the $6,000 payment was also made after the petition was filed but prior to discharge. Defendant fails to allege actions taken by plaintiff after the debt was discharged in violation of the injunction. Moreover, defendant has failed to present to this court a different section of the Bankruptcy Code that might be applicable. In fact, the cases defendant cites interpreting the concept of "voluntary" repayment under section 524(f) have all addressed this issue when a payment was made *after* discharge. See, *e.g.*, *Van Meter v. American State Bank*, 89 B.R. 32, 33 (Bankr. W.D. Ark. 1988); *In re Bowling*, 116 B.R. 659, 661 (Bankr. S.D. Ind. 1990). As this court has stated, "[A] reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." (Internal quotation marks omitted.) *People v. Clark*, 2014 IL App (4th) 130331, ¶ 17, 15 N.E.3d 539 (quoting *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 74, 996 N.E.2d 1227, quoting *In re Marriage of Baumgartner*, 237 Ill. 2d 468, 474-75, 930 N.E.2d 1024, 1027 (2010)). As defendant fails to present any factual allegations or argument in support of the authority on which she bases her claim, a determination of whether the payment was voluntary is irrelevant. Therefore, the trial court properly denied defendant's counterclaim.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment, concluding (1) the trial court's judgment granting plaintiff $5,030 plus costs for child-care services provided in 2010 was not against the manifest weight of the evidence, and (2) the trial court properly denied defendant's request for relief on her counterclaim as defendant failed to demonstrate a violation of section 524(a) of the Bankruptcy Code (11 U.S.C. § 524(a) (2006)).

¶ 28 Affirmed.