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Summary of Brooksby v. Nev. State Bank, 129 Nev. Adv. Op. 82

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PROPERTY/CIVIL PROCEDURE

Summary

The Court determined two issues: (1) whether a judgment creditor may garnish a nondebtor's funds in bank accounts held jointly with a judgment debtor; and (2) whether NRS 31.070² imposes an absolute deadline for making a third-party claim, thereby precluding the district court from having jurisdiction.

Disposition

A judgment creditor may not garnish a nondebtor's funds in bank accounts held jointly with the debtor. Furthermore, NRS 31.070³ does not impose an absolute deadline for making a third-party claim, thereby giving the district court jurisdiction.

Factual and Procedural History

Appellants are the children of judgment debtors who owe respondent Nevada State Bank on a post-foreclosure judgment. Nevada State Bank executed on the judgment by levying on the debtors' Wells Fargo bank accounts through writs of execution and garnishment. In the process, respondent levied accounts appellants held jointly with their mother. Appellants contend that the accounts were established when they were minors and held funds that belonged to them solely. Furthermore, appellants were not served with the writs of execution and garnishment.

Appellants petitioned the district court for a hearing and made verified claims for wrongful execution. However, the verified claims were not served on the constable who had served the writs of execution and garnishment and therefore Nevada State Bank objected. One month later, appellants made renewed claims and a petition and served them on the constable. The district court rejected the petition and claims because the pleadings were improper. Shortly thereafter, appellants filed renewed claims and another petition for the return of their funds under NRS 21.120⁴ and NRS 31.070⁵. The district court denied their claims and petition, stating that the claims were untimely. Appellants appealed to the Nevada Supreme Court.

Discussion

Appellants argued that funds held jointly by a judgment debtor and a nondebtor "are subject to levy by a judgment creditor only to the extent that they are owned by the judgment debtor." In agreeing, the Court relied on *Kulik v. Albers, Inc.*⁶ and held that "[o]nly property owned by the judgment debtor is subject to garnishment." Additionally, the Court noted that a

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² NEV. REV. STAT. § 31.070 (2013).

³ *Id.*

⁴ NEV. REV. STAT. § 21.120 (2013).

⁵ *Id.* § 31.070

⁶ 91 Nev. 134, 137, 532 P.2d 603, 605 (1975).

majority of courts have adopted this view. “In line with this ownership rule, a majority of courts, under a variety of theories, have held that a judgment creditor is not entitled to joint bank account funds that truly belong to someone other than the judgment debtor.”

Respondent argued that appellants’ claims were properly denied for being untimely made under NRS 31.070⁷. NRS 31.070⁸ states “if a third-party claim is served upon the sheriff (or constable), the judgment creditor has seven days in which to give the sheriff an undertaking, or else the sheriff must release the property to the third party.” Also, “if no verified third-party claim is served on the sheriff, the sheriff is not liable for taking or keeping the property.”

The Court held that the NRS 31.070⁹ deadlines do not include an “absolute deadline for making a third-party claim to the property before a court, especially when, as here, the third party is not served with notice of the writs of execution and garnishment.” The Court cited *Kulik*¹⁰ in noting “that the undertaking portions of NRS 31.070 provide for interim relief; they do not affect the district court’s jurisdiction.”

The Court noted that the appellants informally sought return of the funds within a few days of their accounts being garnished, and then filed claims and a petition for relief about three months later. Therefore, the Court stated that appellants’ timely sought relief in the district court.

Conclusion

Because the appellants made timely and proper claims regarding the garnished funds, the Nevada Supreme Court reversed the district court and remanded to give the appellants an opportunity to demonstrate that the funds are owned by them and thus are not subject to garnishment.

⁷ *Id.* § 31.070.

⁸ *Id.*

⁹ *Id.*

¹⁰ 91 Nev. at 138, 532 P.2d at 606.