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Mona v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 72 (Sept. 29, 2016)

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CIVIL PROCEDURE: SANCTIONS, EXECUTION OF JUDGEMENTS, AND PERSONAL JURISDICTION

Summary

The Court concluded that an individual’s personal assets are not subject to discovery or execution merely because the individual also serves as the managing agent of a judgment debtor in a representative capacity.

Background

Michael and Rhonda Mona (husband and wife) were the co-trustees of the Mona Family Trust. Far West Industries sued the trust and Michael Mona, both individually and in his capacity as trustee. Rhonda Mona was not a party to this law suit.

The California Superior Court found Michael Mona, individually and in his capacity as a co-trustee, guilty of fraud. The trust and Michael (the alter ego of the trust) were liable to Far West in the amount of \$17.8 million.

Far West domesticated the California judgment in Nevada. Prior to the domestication, Michael and Rhonda entered into a post-marital settlement agreement, dividing proceeds from a recent stock sale as their respective separate property. Under NRS 21.270, the Nevada district court ordered Michael to appear for a judgment debtor examination, and provide the necessary documentation. Michael failed to provide the post marital settlement agreement.

Far West then moved to examine Rhonda Mona as a trustee to the Mona Family Trust. During this second judgment debtor examination, the district court ordered the Monas to produce more documents, including Rhonda’s personal financial documents regarding three personal bank accounts. Rhonda did not disclose these documents.

As a result of Michael and Rhonda violation of the Court’s orders, the district court sanctioned both of the Monas under NRCP 37. The district court also found that the post-marital agreement created a fraudulent transfer², and the funds in Rhonda Mona’s personal bank accounts were community property subject to execution.³ Lastly, the court ordered the Mona’s to not dispose of their property.⁴

The Mona’s filed for a writ of mandamus, arguing that Rhonda was not a party to the case and therefore order of execution of Rhonda’s bank accounts were improper.

Discussion

Consideration of the writ petition

¹ By William D. Nobriga.

² NEV. REV. STAT. §112.180.

³ NEV. REV. STAT. §21.320 (stating that a “judge...may order the property of the judgment debtor...in the hands of the debtor or *any other person*,...to be applied toward the satisfaction of the judgment)(emphasis added).

⁴ NEV. REV. STAT. §21.330.

The Court exercised its discretion to consider the writ because Rhonda was not a party to the case below (giving her no standing for appeal), and the petition involved the district court's improper exercise of personal jurisdiction.

Writ relief requested as to Michael

Michael was not entitled to relief because he was a named party in the court below, and therefore the court had jurisdiction. Further, the sanctions for hiding information during the discovery period were neither arbitrary nor capricious.

Writ requested as to Rhonda

The district court erred when sanctioning Rhonda because Far West neither sought a separate action, nor obtained a judgment, against Rhonda before seeking to execute on her personal bank accounts.

Nevada law on execution of judgments

Procedures to execute a judgment under Nevada law are practically unchanged since the birth of the state. NRCP 69(a) allows a judgment creditor limited discovery from third parties.⁵ Further, a third party in possession of the judgment debtor's property may also be "order[ed]...to submit to examination regarding such property."⁶ These procedures, however, do not entitle a judgment creditor to an order requiring a third party to pay unless "such person admits the indebtedness and acknowledges the possession or control of the amount due, or these facts are established by clear and indisputable evidence."⁷

When a third party does not admit that he is indebted to a judgment debtor, but instead claims an adverse interest, "the court cannot order the property to be applied toward the judgment."⁸ Rather, NRS 21.330 requires the judgment creditor to institute a separate action against the third party.⁹

Rhonda, in her individual capacity, is a third party to the collective action

Far West used Rhonda's status as a co-trustee to request discovery, and then demanded personal account information from her. Previously unaddressed in Nevada law was the distinction between a person's representative role as a trustee and a person's individual capacity.

Courts generally distinguish the two different legal capacities (representative and individual) as distinct legal personages.¹⁰ NRS 163.140(4) recognizes a distinction between the two capacities.¹¹ Therefore, Rhonda as a trustee of the Mona Family Trust is a distinct legal person from Rhonda in her personal capacity.

⁵ See *Rock Bay, LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 205, 210, 298 P.3d 441, 445-46 (2013).

⁶ NEV. REV. STAT. §21.300; see also *Greene v. Eighth Jud. Dist. Ct.*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999).

⁷ *Hagerman v. Tong Lee*, 12 Nev. 331, 334-35 (1877).

⁸ *Greene*, 115 Nev. At 395, 990 P.2d at 186.

⁹ *Id.*

¹⁰ *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 543-44 & n.6 (1986).

¹¹ NEV. REV. STAT. §163.140(4) (stating that a trustee is only personally liable for a tort claim if the trustee is personally at fault).

Here, Rhonda's representative capacity as a co-trustee makes her a "managing agent of the party."¹² In her individual capacity, however, she is considered a third party because Far West did not include her in the original suit in California.

The District court erred in ordering Rhonda to produce documents and appear for an examination about her personal accounts and in ordering her bank accounts to be subject to execution pursuant to NRCP 37 and NRS 21.320

The district court improperly conflated Rhonda's individual capacity with her capacity as a co-trustee. As a result, the district court mistakenly allowed for discovery of Rhonda's personal accounts.

As a managing agent of the trust, Rhonda could have been ordered (under NRCP 34 and NRS 21.270) to produce document and answer questions regarding the trust's finances. But, in her individual capacity as a third party to the underlying action, these rules and statues cannot compel her to produce documents or answer questions regarding her personal finances. Rather, Far West must first subpoena her under NRCP 45(a)(1), which rule would also allow Rhonda to object. Far West, however, neither requested the court to subpoena Rhonda as an individual, nor serve her with a writ of garnishment or writ of execution. One of these actions is necessary for the district court to order Rhonda to appear as a third party.

Also, since Rhonda's personal accounts were part of her assets as an individual, the district court could not order execution on those accounts. Therefore, the district court cannot sanction Rhonda for not producing documents involving these accounts.

Lastly, even if the writ of execution had been issued properly the district court did not follow proper procedures to unilaterally seize the third party's funds. Rhonda, as a third party, was entitled to a hearing in which Far West needed to establish "by clear and indisputable evidence" that Rhonda's funds were community property.

Conclusion

The Court denied relief to Michael Mona. The Court granted relief to Rhonda Mona because the district court erred in ordering Rhonda Mona to appear and produce documents without first issuing a subpoena, or without Mona being served a writ of garnishment or execution. Also, the district court erred in sanctioning Mona for not producing personal account information because her personal documents were not subject to discovery. Lastly, the district court erred when it ordered execution on Mona's personal bank account because the personal accounts were not subject to execution. Therefore, the writ of mandamus was granted for Rhonda Mona, but not for Michael Mona.

¹² NEV. R. CIV. PRO. 37.