FILED
JUN 15 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF STAMATINA S. BACULIS
AND GEORGE J. BACULIS

Upon the Petition of	)	
STAMATINA S. BACULIS,	)	19
Petitioner,	)	
And Concerning	)	
GEORGE J. BACULIS,	)	
Respondent,	)	
DENNIS CURRELL,	)	
Appellant.	)	8-636 88-438
DENNIS CURRELL,	)	
Plaintiff-Appellant,	)	
vs.	)	
STAMATINA S. BACULIS,	)	
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Johnson County (No 88-438), August F. Honsell, Judge.

The district court denied the attorney's application to condemn funds and issued a stay of execution, and the attorney appeals. **REVERSED AND REMANDED.**

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for plaintiff-appellant Currell.

James L. Chipokas of Chipokas & Flitz, Cedar Rapids, for respondent-appellee Stamatina Baculis.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ

DONIELSON, J. 21

An attorney obtained a confession of judgment from a client for attorney's fees. Two years later when the client failed to pay for legal services, the attorney obtained an attorney's lien for amounts owing before and since the confession of judgment. The attorney sought to execute upon the confession of judgment and lien against a judgment the client owned which was in the hands of the Clerk of Court. When the sheriff returned the execution unsatisfied, the attorney filed an application to condemn funds. The client filed an application to stay execution. The trial court denied the attorney's application and granted plaintiff's stay. The attorney appeals, claiming the court had no authority to issue a stay when he was executing pursuant to a two-year-old judgment.

Plaintiff, attorney Dennis Currell, represented Stamatina Baculis (client) in a dissolution of marriage proceeding, No. DM5561. Plaintiff obtained a confession of judgment from the client in June 1985 for $18,000, the amount owing for legal services and costs and expenses advanced in her dissolution proceeding.

This DM5561 judgment was filed in the matter of Dennis Currell vs. Stamatina S. Baculis, Case No. 3784.

Two years later, in May 1987, when the client failed to pay for legal services, plaintiff filed a notice of attorney's fee lien in Case No. DM5561 for $37,486.88, the

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amount owing for legal fees and costs and expenses advanced to date. Plaintiff filed a request for writ of general execution upon the lien September 14, 1987. On that same day, he filed a dictation to sheriff directing him to levy upon money in the possession of the Clerk of Court which had been paid by the client's former husband in satisfaction of the judgment she obtained against her former husband in the divorce proceeding. Plaintiff claims in his brief he recalled that execution, but we find no evidence of such in the record. However, no return of execution was filed by the sheriff.

On September 15, 1987, the same day plaintiff allegedly recalled the levy and execution upon the lien, plaintiff filed a praecipe in Case No. 3784 ordering the Clerk of Court to issue an execution on the confession of judgment in the sum of $22,050 ($18,000 judgment plus interest). Plaintiff also filed, on September 17, 1987, a dictation to sheriff which requested levy under a writ of general execution upon money in the possession of the Clerk of Court under the client's judgment in Case No. DM5561. The levy was requested pursuant to Iowa Code sections 626.50, 626.87, and 626.22. The sheriff filed an unsatisfied sheriff's return upon the execution.

The client filed an application for stay of section 626 levy and execution in Case No. DM5561, alleging the sum claimed ($22,050) by plaintiff was incorrect. No such

application was filed on behalf of the client in Case No. 3784. The district court set hearing on client's application for October 5, 1987.

Plaintiff filed, in Case No. 3784, an application for order directing payment pursuant to the levy upon the confession of judgment (an application to condemn funds) in Case No. 3784. Plaintiff claimed the Clerk of Court possessed sufficient funds to satisfy the execution. This application was set for hearing at the same time as the client's application for stay. This joint hearing was resumed October 28, 1987.

On December 31, 1987, plaintiff filed a brief in resistance to the application to stay. Plaintiff asserted he was levying pursuant to a final judgment in Case No. 3784. Plaintiff pointed out no statutory authority exists for granting a stay of execution upon a judgment when the time for objecting to the final judgment had passed. Additionally, no application for stay nor resistance to the application for condemnation of funds was ever filed in Case No. 3784.

The district court entered a ruling in Case No. 3784 on December 31, 1987, denying plaintiff's application for order directing payment. The court noted that plaintiff had the burden of proof and that the client resisted the application claiming the confession of judgment was fraudulently obtained. We find no such resistance in the record.

The court also entered a ruling in Case No. DM5561 on December 31, 1987, granting the client's application for stay. The court found that plaintiff was seeking to enforce a charging lien and therefore he had the burden of establishing he had not been paid. The client claimed credit was not given for amounts paid, and the court apparently determined plaintiff had not met his burden on the matter. The stay was issued until such time as plaintiff enforces the lien by reducing it to judgment.

Plaintiff filed a motion for findings, conclusions of law, and to amend the ruling on January 11, 1988, in Case No. DM5561. The court overruled plaintiff's motion on February 17, 1988, and plaintiff appealed.

Plaintiff filed an identical motion for findings, conclusions of law, and to amend the ruling on January 11, 1988, in Case No. 3784. The court, on February 17, 1988, overruled this motion for reasons stated in the resistance. Plaintiff then filed a notice of appeal, stating he was appealing the stay of levy upon execution on the confession of judgment. On April 1, 1988, the district court issued a nunc pro tunc order pointing out that the resistance alluded to in the order filed February 17, 1988, had not been filed. The court proceeded to overrule plaintiff's motion for the reasons stated in the December ruling.

These two cases were consolidated for appeal.[25] Our review of the record indicates great confusion existed among both the parties and the district court regarding the matters before this court. We determine plaintiff's application for order was improperly denied and defendant's application for stay was improperly granted.

I. Scope of Review. The trial court heard the client's application for stay in equity. Consequently, our review of this matter is de novo. Iowa R. App. P. 4. Plaintiff's application for order was at law. Accordingly, our review of the trial court's ruling in Case No. 3784 is on errors. Iowa R. App. P. 4.

II. Stay of Execution. Plaintiff originally attempted to execute upon his attorney fee lien for $37,486.88 in Case No. DM5561. He apparently recalled this execution and instead chose to execute upon a confession of judgment for $22,050 in Case No. 3784. Nonetheless, the client filed an application for stay of section 626 execution in Case No. DM5561. The client obviously meant to stay execution in Case No. 3784 because 1) in her application she alleged plaintiff was attempting to execute in the amount of $22,000, and 2) the sheriff attempted to execute only upon the confession of judgment as the plaintiff had recalled the attempted execution upon his lien.

The client did not file anything in Case No. 3784. Plaintiff, in his resistance brief, pointed out to the

trial court that the issue was not properly before the court because he was not executing upon the lien in Case No. DM5561. Despite there not being an execution issued in the matter of Case No. DM5561, the trial court granted the stay of execution.

The trial court clearly intended the stay to apply in Case No. DM5561, as it determined plaintiff was attempting to enforce a changing lien for $37,486.88 against funds paid into court. The ruling held such stay is effective until plaintiff takes action to enforce the attorney's fee lien by reducing it to judgment.

Plaintiff filed a motion for findings, conclusions of law, and to amend ruling in which he again pointed out there was no outstanding levy under the attorney's fee lien in Case No. DM5561 to stay. The trial court overruled this motion. Plaintiff appeals, claiming the stay has the effect of preventing him from executing upon his two-year-old confession of judgment. We disagree. The stay of execution only prevents plaintiff from executing upon his attorney fee lien in Case No. DM5561 until he reduces it to judgment. Nevertheless, the stay was improperly issued as there was no underlying action (writ of execution) at issue in Case No. DM5561. Accordingly, the issuance of the stay of execution is reversed.

III. **Order Directing Payment of Funds**. Plaintiff directed the sheriff to execute upon the two-year-old

confession of judgment in Case No. 3784 against funds held by the Clerk of Court which were owned by the client. The sheriff returned the execution unsatisfied. Plaintiff, claiming the Clerk of Court had such funds available, filed an application for an order directing payment of those funds pursuant to levy upon the judgment (application for condemnation of funds). The district court denied plaintiff's application despite the fact there was no resistance filed in this matter (No. 3784).

Plaintiff had a two-year-old confession of judgment against the client. This judgment was properly enforced by execution. Iowa Code §§ 621.1, 676.4 (1989). Plaintiff demanded the Clerk of Court to issue a writ of execution pursuant to Iowa Code section 676.6 (1989). The writ having been issued in this case, the sheriff was bound to execute the writ by levying on the property designated by plaintiff. Iowa R. Civ. P. 258; Iowa Code § 626.50 (1989).

Plaintiff directed the sheriff to levy upon a judgment owned by the client which was in the possession of the Clerk of Court. Judgments are properly subject to levy under Iowa Code section 626.21 (1989). The Clerk of Court either failed or refused to remit sums from the client's fund in the Clerk's possession to satisfy the levy.

The funds plaintiff seeks to levy upon may be reached by garnishment. Iowa Code § 626.26 (1989). Plaintiff must comply with the notice provisions pursuant to Iowa Code

section 642.14 (1989) to garnish the funds. Apparently plaintiff chose to garnish the funds as he filed an application for an order to condemn the funds.

There is no record that the client ever challenged the validity of the confession of judgment in Case No. 3784. Neither is there any record that the client ever resisted the execution upon that judgment. There is also, however, no record that the client received notice of garnishment of the funds in the possession of the Clerk of Court.

The trial court's order denying plaintiff's application to condemn funds does not state any factual or legal authority for doing so. The ruling does cite authority for considering an application for stay order. However, that application was not the issue in Case No. 3784. Additionally, the court pointed out that defendant resisted plaintiff's application. We find no record of this resistance.

We reverse the trial court's ruling in Case No. 3784 and remand to the district court for findings of fact and conclusions of law or for an order granting plaintiff's application to condemn funds.

REVERSED AND REMANDED.

Oxberger, C.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I respectfully dissent. I would affirm the trial court.