IN THE COURT OF APPEALS OF IOWA

FILED
AUG 26 1987
CLERK SUPREME COURT

Filed August 26, 1987

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JOHN D. REMINGTON,)

Plaintiff-Appellant,)

vs.)

CARLA D. REMINGTON,)

Defendant-Appellee.)

7-109
86-356

Appeal from the Iowa District Court for Linn County (No. LA 13397), L. Vern Robinson, Judge.

Plaintiff appeals from the trial court's order which vacated the writ of attachment plaintiff had obtained for proceeds that were to be distributed to defendant from plaintiff's bankruptcy estate. **AFFIRMED.**

Peter C. Riley of the Tom Riley Law Firm, P.C., Cedar Rapids, for plaintiff-appellant.

James W. Affeldt of Eels, Blackstock, Affeldt & Harms, Cedar Rapids, for defendant-appellee.

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

OXBERGER, C.J.

The plaintiff, John Remington, appeals from a judgment vacating his writ of attachment obtained to attach the bankruptcy proceeds that were to be distributed to the defendant, Carla Remington. John argues that Carla is required to contribute one-half of the amount owing to the Veteran's Administration. He has filed suit for contribution, but that suit was undecided when the writ issued. He also argues the writ is necessary because Carla will defraud him by spending the bankruptcy proceeds immediately upon receipt. We affirm.

This case was tried at law to the court. The trial court's findings of fact have the force of a special verdict and are binding if supported by substantial evidence. Iowa R. App. P. 14(f)(1); Blunt, Ellis & Loewi, Inc. v. Igram, 319 N.W.2d 189, 192 (Iowa 1982). The evidence reviewed for its substantiality is to be viewed in the light most favorable to the judgment. Id. We review for correction of errors at law. Iowa R. App. P. 4.

The principles governing this case are found in Iowa Code § 639.9 (1985). Under this section,

> The property of a debtor may be attached on debts not due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition, in addition to that fact states one or more of the following grounds:
>
> 1. That the defendant is about to dispose of the defendant's property with intent to defraud the defendant's creditors.

Iowa Code § 639.9(1) (1985). John has alleged that Carla will immediately dispose of the bankruptcy proceeds and this action will defraud him in the collection of his yet to be decided contribution claim. He claims Carla is financially irresponsible and that she "spends money when she gets it." The trial court found that John had not provided any evidence showing Carla's intent to defraud as required by the statute. We agree.

A review of the record reveals that John knows little about Carla's current financial habits. He does not know anything about her creditors or amount of monthly payments. He offered no evidence as to her current spending practices. His evidence was based solely on observations he made during their now defunct marriage. The record is otherwise devoid of any evidence supporting his allegations. We hold, therefore, that the trial court properly vacated the writ.

Because we have found Carla had no intent to defraud John, it is unnecessary to determine whether their was a debt in existence as John alleges. The question of whether Carla is required to contribute to the Veteran's Administration claim is properly left for the trial court having jurisdiction of the action.

Carla has asked that she be awarded additional attorneys fees for this appeal. Attorney fees are recoverable in wrongful attachment actions if the party resisting the attachment can show the attachment "was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true." Iowa Code § 639.14 (1985). Furthermore, the supreme court in Davis v. Rudolph, 243 Iowa 744, 754, 52 N.W.2d 15, 20 (1952), held that appellate attorneys fees are also recoverable in a wrongful attachment action, citing time spent on appellate work as justifying fee award.

We concur with the trial court's finding that an award of attorney fees to Carla is warranted because there was no reasonable cause for the issuance of the writ. However, the attorney's stated account for appellate fees does not list number of hours worked nor per hour charge. We therefore limit our award of attorney fees to $500.00 for appellate services.

AFFIRMED.