STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2318

Thomas Paun,
Appellant,

vs.

Dolphin Pools, Inc., et al.,
Defendants,

Corrie D. Nelson, et al.,
Respondents

Filed January 8, 2008
Affirmed in part and reversed in part
Stoneburner, Judge

Hennepin County District Court
File No. 27CV03016549

Paul W. Chamberlain, Chamberlain Law Firm, 1907 Wayzata Boulevard, Suite 130, Wayzata, MN 55391 (for appellant)

Jaren L. Johnson, Kimberly A. Chapman, The BenePartum Law Group, 860 Blue Gentian Road, Suite 295, Eagan, MN 55121 (for respondents)

Considered and decided by Stoneburner, Presiding Judge; Halbrooks, Judge; and Minge, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges the district court's order (1) declaring that his $780,434.57 judgment entered jointly and severally against respondents and defendant corporations

was satisfied when he acquired respondents' interests in the corporations at a sheriff's sale for $10,000; (2) releasing respondents from personal liability on all of the corporate accounts; and (3) making appellant responsible for all corporate debts. By notice of review, respondents challenge the district court's denial of their motion for return of excess levy amounts. We affirm in part and reverse in part.

FACTS

In 2001, appellant Thomas Paun and respondents Corrie Nelson and Presley Walker became shareholders of Dolphin Pools, Inc. (DPI), and in 2003 also became shareholders of Minnesota Pools, Inc. (MPI). In September 2003, Nelson, the majority shareholder in both corporations, terminated Paun's employment with DPI, told him he was no longer a partner in either business, and changed the locks at the corporate offices.

Paun sued DPI and MPI requesting judicial intervention under Minn. Stat. § 302A.751 (2002), and sued Nelson and Walker for breach of fiduciary duties and the covenant of good faith and fair dealing, usurpation of corporate opportunities, and interference with reasonable employment expectations. Nelson and Walker moved the district court to compel arbitration pursuant to the parties' shareholder agreement. The district court granted their motion.

In December 2005, following a contested arbitration hearing, the arbitrator found that Nelson had usurped DPI's corporate opportunities on two occasions, and that Nelson willfully and maliciously fired Paun, which interfered with Paun's reasonable expectation of employment and constituted an arbitrary, vexatious, and bad faith breach of Nelson's and Walker's fiduciary duties to Paun. The arbitrator found that Nelson and Walker

further breached their fiduciary duties to Paun by fraudulently using corporate credit cards for personal expenses and taking cash payments of over $93,000 from DPI customers without reporting or accounting for these funds.

The arbitrator awarded Paun 25% of the 2003 valuation of DPI and MPI, and imposed a constructive trust on 25% of each of the two limited liability corporations (the LLCs) that Nelson set up to usurp DPI's corporate opportunities. The arbitrator also awarded Paun back pay, attorney fees and costs, and required that Nelson and Walker hold Paun harmless from all corporate debts and "cause the guarantees by Paun to be released by the creditors." The award was made against DPI, MPI, Nelson, and Walker, jointly and severally. The arbitrator ordered that all cash-flow distributions from the LLCs be distributed pro-rata and simultaneously to Paun. The district court affirmed the arbitration award and docketed a judgment against DPI, MPI, Nelson, and Walker in the amount of $780,434.57 on February 14, 2006.

Subsequently, Paun obtained a writ of execution to collect the judgment. Paun also obtained a temporary restraining order excluding Nelson and Walker from DPI, MPI, and the LLCs upon execution of the writ. The sheriff served the writ on February 24, 2006, and seized Nelson's and Walker's shares of DPI and MPI and their interests in the LLCs. The district court then granted a temporary injunction, confirming the temporary restraining order. In March 2006, Nelson and Walker filed for bankruptcy on behalf of DPI and MPI, but the action was dismissed because they had no corporate authority.

At a sheriff's sale held in May 2006, Paun purchased Nelson's and Walker's interests in DPI, MPI, and the LLCs for $10,000. Nelson and Walker were represented

by counsel at the sale, but did not bid on the seized property. Just prior to the sale, in April 2006, Nelson and Walker initiated a separate lawsuit against Paun, DPI, and MPI, asserting that Paun (1) wrongfully levied against Nelson's and Walker's ownership interests in DPI and MPI; (2) wrongfully terminated their employment with DPI and MPI; (3) levied on real and personal property in excess of the judgment amount; (4) was unjustly enriched by taking and detaining such property; (5) violated Minn. Stat. § 181.13 (2006), by failing to pay wages and other compensation Nelson and Walker claimed they were entitled to; (6) violated Minn. Stat. § 550.10 (2006), by improperly levying and seizing Nelson's and Walker's exempt assets; (7) violated Minn. Stat. § 322B.32 (2006), by using a remedy other than a charging order to satisfy his judgment; and (8) violated Minn. Stat. § 316.05 (2006), by seizing control of DPI and MPI prior to the sale of Nelson's and Walker's stock and by failing to satisfy the judgment from the seized property. In August 2006, Nelson and Walker dismissed their lawsuit with prejudice, apparently in response to Paun's motion for rule 11 sanctions.

In September 2006, Nelson and Walker moved the district court for an order requiring Paun to return claimed excess levy amounts, declaring that Paun's judgment was satisfied by his purchase of assets at the sheriff's sale, removing Paun's attorney as counsel for DPI and MPI, and prohibiting the attorney from any future representation of the LLCs. In their memorandum supporting the motion, Nelson and Walker asserted that because Paun now controlled all corporate accounts, they "must be removed from personal liability on all of these accounts." Paun opposed the motion on the merits and

on the ground that Nelson and Walker's claims were barred by the doctrine of res judicata.

After a hearing, the district court issued an order (1) holding that Paun's judgment against DPI, MPI, Nelson, and Walker was satisfied and ordering him to file a satisfaction of judgment within five days of the order; (2) denying Nelson and Walker's motion for return of excess levy amounts; (3) removing Nelson and Walker from personal liability on all DPI and MPI accounts as of February 24, 2006; (4) ordering Paun responsible for all corporate liabilities of DPI and MPI after February 24, 2006; and (5) determining that the motion to remove Paun's attorney as counsel for DPI, MPI, and the LLCs was moot.

Paun appeals from this order, arguing that the district court erred by failing to apply res judicata to bar all of the claims raised in Nelson and Walker's motion, erred in deeming the judgment satisfied, erred by discharging Nelson and Walker for corporate debts for which they are contractually obligated, and erred by making Paun responsible for all corporate debts. Nelson and Walker filed a notice of review challenging the district court's denial of their motion to return assets they claim were levied in excess of the judgment.

D E C I S I O N

I. Res judicata

Paun argues that the district court erred by failing to apply res judicata to the claims that Nelson and Walker asserted in their motion because they are the same claims Nelson and Walker made in the lawsuit that was dismissed with prejudice. The

application of res judicata is a question of law, which we review de novo. *State v. Joseph*, 636 N.W.2d 322, 326 (Minn. 2001).

Res judicata is a finality doctrine designed to ensure an end to litigation. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). Under the doctrine of res judicata, a final judgment on the merits is an absolute bar to a second suit for the same cause of action and is conclusive, not only as to every matter actually litigated, but also as to every matter that might have been litigated. *Paulos v. Johnson*, 597 N.W.2d 316, 319 (Minn. App. 1999), *review denied* (Minn. Sept. 28, 1999). A dismissal with prejudice, even if based on nonsubstantive grounds, is an adjudication on the merits and can form a basis for res judicata. *Johnson v. Hunter*, 447 N.W.2d 871, 873 (Minn. 1989).

When determining whether two suits involve the same claims, we inquire whether both claims "arise from the same operative nucleus of facts." *Nitz v. Nitz*, 456 N.W.2d 450, 451 (Minn. App. 1990) (quotation omitted). In the lawsuit that they dismissed with prejudice, Nelson and Walker repeatedly claimed that Paun had levied on assets that exceeded the amount of his judgment and sought return of the excess value. In the motion at issue in the present case, Nelson and Walker again asserted that Paun took assets that exceeded the amount of the judgment and again sought return of the excess value. However, because Nelson and Walker's lawsuit was filed prior to the sheriff's sale, it did not include a claim that the judgment should be declared satisfied. But the sheriff's sale occurred before their lawsuit was dismissed with prejudice and therefore Nelson and Walker could have amended their complaint to include the claim. Because the claims asserted in the motion arise out of the same operative nucleus of facts asserted

in the dismissed lawsuit, we conclude that the doctrine of res judicata applies to Nelson and Walker's claims that Paun levied on assets that exceeded the amount of his judgment and their claims for the return of any excess. We therefore decline to consider Nelson and Walker's assertion that the district court erred by failing to order return of excess assets.[1]

We also conclude, however, that the district court did not err in considering Nelson and Walker's claims that Paun's judgment was satisfied by the levy, even though res judicata could apply to that claim. Res judicata should not be rigidly applied, and may be qualified or rejected when its application would contravene public policy. *AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984) (holding that administrative determinations arising solely under one statute are not automatically binding when a similar question arises under a different statute). A judgment may be satisfied by "an order of the court, made on motion, requiring the execution of a certificate of satisfaction, or directing satisfaction to be entered without it." Minn. Stat. § 548.15, subd. 1(4) (2006). Because Nelson and Walker sought specific relief in their motion that was not claimed in their dismissed lawsuit, and because Minnesota law provides for such relief, the district court did not err in considering the motion to declare the judgment satisfied.

[1] Even if we were to reach the merits of this issue, we would affirm the district court because, as discussed below, Nelson and Walker failed to prove that Paun levied on assets in excess of the judgment.

II. Satisfaction of the judgment

Paun argues that the district court erred by finding that his judgment against Nelson, Walker, DPI, and MPI was satisfied, where it was only partially satisfied by the $10,000 proceeds from the sheriff's sale. A district court's "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous." Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). "If there is reasonable evidence to support the district court's findings, we will not disturb them." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

Here, the district court found that it was impossible to determine the exact value of DPI and MPI at the time of the sheriff's sale, and the record supports this finding. Nelson and Walker provided financial documents to the district court that do not corroborate the values argued in their motion. At oral argument on appeal, counsel for Nelson and Walker conceded that they failed to consider the liabilities of DPI and MPI in arguing value in the district court. The district court noted that Nelson and Walker, who filed for bankruptcy on behalf of both corporations, had varied their assessment of the value of DPI and MPI to suit their own purposes. The district court correctly determined that Nelson and Walker had failed to prove the value of DPI and MPI at the time of the sheriff's sale.

Nonetheless, the district court went on to find that the judgment was satisfied by Paun's purchase at the sheriff's sale, a finding that implies that DPI and MPI and other assets Paun acquired through the sale had value at least equal to the judgment amount. This finding is not supported by any evidence in the record.

Nelson and Walker rely on *First Nat'l Bank of Hastings v. William K. Rogers*, 13 Minn. 407 (1868), for the proposition that Paun's retention of DPI and MPI satisfies Paun's judgment regardless of the price paid for the corporations at the sheriff's sale. *First Nat'l Bank of Hastings* holds that where a judgment-debtor proves levy on sufficient property to satisfy a debt, and where the property is undisposed of after a reasonable time, the judgment-creditor has the burden to rebut a conclusion that the judgment is satisfied. *Id.* at 410. But the evidence in that case clearly established that the bank levied on assets worth $10,153 to satisfy a debt of $5,380.50. *Id.* at 408.

Here, the only evidence in the record as to the fair market value of DPI, MPI, and other assets Paun purchased is that they were sold at the sheriff's sale for $10,000. Nelson and Walker were represented at the sale and could have bid on the property, but chose not to do so. The district court's implied finding that the value of the property Paun purchased at the sheriff's sale is at least equal to the judgment amount is clearly erroneous. The fact that Paun elected to retain the corporations is immaterial to the determination of whether his judgment has been satisfied, the judgment-debtors have not been able to establish that the value exceeded the amount Paun paid. Paun's judgment has only been partially satisfied in the amount of $10,000. We therefore reverse the

district court's order declaring the debt satisfied and requiring Paun to file a satisfaction of judgment.

III. Liability for corporate debts

Without explanation, the district court ordered that "Nelson and Walker are removed from personal liability on all DPI and MPI accounts as of February 24, 2006" and that Paun is "responsible for all corporate liabilities of DPI and MPI after Februray 24, 2006." The district court made no findings to support its jurisdiction over corporate creditors who are affected by these orders and did not cite any authority for relieving Nelson and Walker from any individual liability they may have to corporate creditors as guarantors or co-signors on corporate obligations. Likewise, no pleadings, findings, or authority support an order making Paun personally responsible for corporate debts. Entry of these orders modified the final arbitration award and was clearly erroneous. These provisions in the district court's order are therefore reversed and vacated.

IV. Removal of Paun's counsel from representing DPI and MPI

In their notice of review, Nelson and Walker did not challenge the district court's determination that the issue of Paun's attorney's alleged conflict of interest in representing DPI and MPI was moot. Nelson and Walker nonetheless argued on appeal that this court should hold, as a matter of law, that Paun's attorney is barred from representing Paun, DPI, and MPI.

Because we have concluded that the district court erred in declaring the judgment satisfied, the district court's conclusion that the issue is moot is no longer valid. But we

conclude that Nelson and Walker lack standing to raise this issue. The Minnesota Rules of Professional Conduct state that "[t]he fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule." Minn. R. Prof. Conduct, Scope. And, even if Nelson and Walker have standing, they have failed to establish that any conflict of interest has not been waived or that they have been prejudiced by counsel's representation of Paun and the corporations which Paun now solely owns. We therefore decline to address this issue.

Affirmed in part, reversed in part.