STATE OF MINNESOTA
IN COURT OF APPEALS
A10-46

Philip L. Potter,
Respondent,

vs.

Twin City Technical Castings, Inc.,
Defendant,
Terence P. Durkin,
Appellant.

Filed August 31, 2010
Affirmed
Stauber, Judge

Ramsey County District Court
File No. 62CV095595; 62C098000532

Joel E. Abrahamson, Jeffrey A. Ehrich, Leonard, Street and Deinard, P.A., Minneapolis, Minnesota; and

Charles G. McCarthy, Jr., Law Offices of Charles G. McCarthy, Jr., Oak Brook, Illinois (for respondent)

Terence P. Durkin, Spokane, Washington (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Peterson, Judge.

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

STAUBER, Judge

Appellant argues that the district court erred in allowing respondent to renew an unsatisfied judgment before the ten-year statute of limitations expired. We affirm.

FACTS

In 1986, appellant and respondent became equal business partners in a company. By late 1991, they were at odds, and in 1996, the company went out of business. Respondent subsequently brought a lawsuit to recover damages. Between May 10, 1999, and October 5, 2000, the district court entered three judgments against appellant and two judgments against the company. However, as of April 27, 2009, appellant had failed to pay the judgments. Before expiration of the ten-year statute of limitations under Minn. Stat. § 541.04 (2008), respondent filed an action to renew the unsatisfied judgments.

In accordance with Ramsey County's policy on actions to renew judgments, respondent served and filed four separate complaints; which were then consolidated into one action before the district court. Both parties filed rule 12.03 motions for judgment on the pleadings. Following a hearing, the district court granted judgment in favor of respondent against appellant for $299,514.70, which included the amount of the original judgments, judgment interest, and the interest which had accrued between April 27, 2009, and the date of the entry of the renewed judgment.[1] The district court denied

[1] Judgment against the company was not granted as there was an issue relating to its corporate existence. Later, the complaint against the company was voluntarily dismissed.

respondent's motion for judgment on the pleadings against the company and denied appellant's motion for judgment on the pleadings. This appeal followed.

D E C I S I O N

The facts are not in dispute, and review is de novo. *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 623 (Minn. 2007). The appellate court need only determine "whether the complaint sets forth a legally sufficient claim for relief." *Williams v. Bd. of Regents*, 763 N.W.2d 646, 651 (Minn. App. 2009) (quoting *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997)). Appellant argues that respondent has no valid claim and the district court erred in relying on this court's decision in *Shamrock Dev. Inc. v. Smith*, 737 N.W.2d 372 (Minn. App. 2007) (*Shamrock I*), *rev'd on other grounds*; 754 N.W.2d 377 (Minn. 2008) (*Shamrock II*) to determine that respondent had a right to renew the judgments. Appellant further argues that respondent has no common-law right to renew because the Minnesota Legislature has established specific limits on judgment creditors' rights to enforce a judgment, with an exception only for child-support judgments.[2]

I.

In *Shamrock I*, this court recognized that "[t]he procedure for renewing a judgment is not specifically prescribed by statute, but caselaw indicates that actions are routinely brought to renew judgments so that the judgments extend beyond the initial ten-year period" and "that a party may bring an action to renew a judgment, provided that (1) the action is commenced within ten years after entry of the original judgment and (2) the

[2] *See* Minn. Stat. § 548.091, subd. 3b (2008) (establishing the process for child-support judgment administrative renewals).

party complies with all the requirements for commencing a civil action." 737 N.W.2d at 376. The supreme court noted in *Shamrock II*:

> Judgment creditors sometimes seek to renew an existing judgment by commencing a new civil action within the 10-year limitations period and obtain a new judgment . . . For purposes of this opinion, we assume without deciding that a civil judgment may be renewed by the entry of judgment in a new civil action commenced within the statutory limitations period for enforcement of the original judgment.

754 N.W.2d at 380 n.2 (Minn. 2008). *See e.g.*, *Tharp v. Tharp*, 228 Minn. 23, 27, 36 N.W.2d 1, 4 (1949) (prohibiting an amendment to a summons that would "breathe life into a cause of action [to renew a judgment] which had expired"); *Brennan v. Friedell*, 215 Minn. 499, 500, 10 N.W.2d 355, 356 (1943) (recognizing an action to renew a personal judgment where the issue of renewal was not in dispute); *Dole v. Wilson*, 39 Minn. 330, 333, 40 N.W. 161, 163 (1888) (finding "no reason why" a judgment creditor could not recover on a renewed judgment); *Newell v. Dart*, 28 Minn. 243, 249–50, 9 N.W. 732, 733 (1881) (recognizing that a proper action by a judgment creditor against a judgment debtor would be considered a cause of action to obtain a new judgment); *Cf.*, *Dahlin v. Kroening*, _ N.W.2d _, _ (Minn. App. July 6, 2010) (affirming an action to renew a previously renewed spousal-maintenance judgment); *Haas v. Brandvold*, 418 N.W.2d 511, 512 (Minn. App. 1988) (recognizing an action to renew a judgment commenced prior to the expiration of the ten-year statute of limitations); *In re Dahl*, 2009 WL 3164756 *2 (D. Minn. 2009) (recognizing 'renewal-of-judgment actions'); and, *In re Sitarz*, 150 B.R. 710 (Bankr. D. Minn. 1993) (recognizing a judgment may be

renewed by an action initiated within the ten-year period). *See generally*, 50 C.J.S. *Judgments* § 860 (2009).[3] This court, in *Shamrock I*, set forth no new test or standard that would change the statue of limitations set by the legislature; rather, it was only observing common-law principles, routine legal practice, and following a plain reading of the law. 737 N.W.2d at 376.

II.

Next, we consider whether it was the intent of the legislature to limit the enforceability of judgments for a finite period. "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded." Minn. Stat. § 645.16 (2008); *First Nat'l Bank of the North v. Auto. Finance Corp.*, 661 N.W.2d 668, 670 (Minn. App. 2003), *review denied* (Minn. May 27, 2003) (if the wording of a statute is plain, courts will interpret that as a manifestation of the legislature's intent).

Applicable law on judgments states: "No action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment." Minn. Stat. § 541.04 (2008). "The judgment survives, and the lien continues, for ten years after its entry. . . ." Minn. Stat. § 548.09, subd. 1 (2008). "The party in whose favor a judgment is given, or the assignee of such judgment, may proceed to enforce the same, at any time within ten

[3] "All judgments within the terms of statutes authorizing revival may be revived, and ordinarily it is required that the judgments be valid, final, and for a definite sum that has not been fully paid or satisfied." 50 C.J.S. Judgments § 860 (2009) (Right to Revive—Judgments that may be revived).

years after the entry thereof, in the manner provided by law." Minn. Stat. § 550.01 (2008).

Appellant contends that any variance from the ten-year time period is prohibited as the courts do not have the power to extend the statute of limitations established by the legislature. Cases cited by appellant in support of his argument involve disputes over whether the actions are considered timely for purposes of filing a proper cause of action. *See DeMars v. Robinson King Floors, Inc.*, 256 N.W.2d 501 (Minn. 1977) (finding an employee's claim for worker's compensation was barred by the statute of limitations); *Miernicki v. Duluth Curling Club*, 699 N.W.2d 787 (Minn. App. 2005), *review denied* (Minn. July 5, 2005) (finding a dram-shop action not properly commenced within the two year statute-of-limitations period). However, in the case before us, the facts are not in dispute, and respondent properly filed his renewal action within the ten-year period set by statute.

Next, appellant argues that if it was the legislature's intent to permit renewal of judgments, the law would expressly allow for renewals, as it did in Minn. Stat. § 548.091, subd. 3b (2008): "Child support judgments may be renewed multiple times until paid." Appellant also points to Minn. Stat. §550.366, subd. 2 (2008), which establishes a three-year limit for enforcement of judgments on agricultural debt as another example of the legislature's intent to impose finite restrictions on judgments. But, unlike the general statute of limitations on judgments, Minn. Stat. § 548.091 has a specific purpose: to make collection of child-support judgments easier to renew by establishing an administrative procedure without any additional filing fee. Similarly, Minn. Stat. § 550.366 was enacted

to address the debilitating effects of farm foreclosures. *Glacial Plains Co-op v. Hughes*, 705 N.W.2d 195, 198 (Minn. App. 2005). The legislature carved out special provisions for both child-support and farm-debt judgments in order to establish policies to address unique circumstances. This case involves neither.

III.

At common law, there is no set time period within which to enforce a judgment. *Jones v. Arnold*, 963 P.2d 1269, 1271 (Mont. 1998) (recognizing the common law procedural mechanism to revive a judgment and the current practice allowing the renewal of judgments within the state's ten-year statute of limitations[4]). "[I]f a statute abrogates the common law, the abrogation must be by express wording or necessary implication." *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000). Appellant argues that since the legislature set the statute of limitations at ten years from the entry of judgment without mentioning renewal, only child-support judgments with express language to that effect may be renewed. Minnesota law on judgments does not contain express wording which would abrogate the common-law right to renew a judgment. In the absence of an express statutory exception, the supreme court was reluctant to alter fundamental common-law principles, recognizing that:

[4] A writ of *scire facias* "you are to make known, show cause" was issued at common law requiring the person against whom it was issued to show cause why a dormant judgment against that person should not be revived. Black's Law Dictionary, 1347 (7th ed. 1999). While the merger of the courts of law and equity eliminated this ancient form of pleading, the cause of action was nonetheless continued under Montana's earliest codified versions of the rules of civil procedure, which also codified a ten-year period on the life of a judgment which, prior to expiration, may be renewed. 963 P.2d 1269, 1271 (Mont. 1998).

> There is a presumption that a statute is consistent with the common law, and therefore a statute creating a new remedy or method of enforcing a right which existed before is regarded as cumulative rather than exclusive of the previous remedies. An existing common-law remedy is not to be taken away by a statute except by express wording or necessary implication.

In re Shetsky, 239 Minn. 463, 469, 60 N.W.2d 40, 45 (1953). More recently, in determining whether a statute superseded or abrogated common law, the supreme court stated in *Brekke v. THM Biomedical*, 683 N.W.2d 771 (Minn. 2004): "we have repeatedly held that statutes will be presumed to not eliminate equitable remedies and are to be strictly construed so as to not supplant or restrict 'equity's normal function as an aid to complete justice.'" *Id*. at 776 (quoting, *Swogger v. Taylor*, 243 Minn. 458, 465, 68 N.W.2d 376, 382 (1955)).

Appellant cites to *State v Bies*, 258 Minn. 139, 103 N.W.2d 228 (1960)[5] to support his argument that there can be no exceptions to statutes of limitations unless expressly stated, even if the result is inequitable. Although the facts in *Bies* are entirely different than this case, it is significant and relevant regarding a distinction that the supreme court made between ordinary statutes of limitation and those statutes that give and limit the remedy (for example, the Income Tax Act). *See id.* at 147, 103 N.W.2d at 235. In *Bies*, the court was careful to point out that it was not reviewing a case "dealing with a debt or claim founded on contract which may be renewed or revived in so far [sic] as the general statute of limitation is concerned by an admission of indebtedness such as would

[5] In *Bies*, the supreme court found the state's action, based on the closing agreement statute, was insufficient for purposes of reviving a tax claim barred by the Income Tax Act statute of limitations. *Id.* at 151, 103 N.W.2d at 237.

reasonably raise the inference that the debtor intended to renew his promise to pay." *Id*. at 236. Here, appellant admits that he has refused to pay any portion of the judgment, and there is no express wording in the statutes to abrogate the common-law right to renew a judgment. Respondent properly commenced his actions within the ten-year statute of limitations under Minn. Stat. § 541.04. We therefore find the district court did not err in allowing respondent to renew his judgments.

Affirmed.