SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3075-20

ANNA MARIA TOTH,

Plaintiff-Respondent,

v.

JOHN TURI,

Defendant-Appellant.

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Argued November 16, 2022 – Decided August 29, 2023

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Somerset County, Docket No. FM-18-0754-18.

Sasha C. Intriago argued the cause for appellant (The Cintron Firm, LLC, attorneys; Mark J. Cintron, of counsel and on the brief).

Laura Guinta Gencarelli argued the cause for respondent (Snyder Sarno D'Aniello Maceri & Da Costa, LLC, attorneys; Angelo Sarno, on the brief).

PER CURIAM

Defendant John Turi appeals from a May 21, 2021 order in favor of plaintiff Anna Maria Toth permitting the sale of defendant's real property to satisfy a $174,020 judgment plaintiff obtained in connection with the parties' 2019 divorce. Finding no infirmity in the order, we affirm.

The essential facts are uncontested and easily summarized. At the conclusion of the trial of the parties' divorce in March 2019, the court entered a judgment of divorce and imposed a constructive trust on certain pre-marital assets belonging to plaintiff, which the court found had been in defendant's "wrongful and inequitable" possession since 2015. The items, specifically identified in the divorce judgment, were valued at $168,500. The judge ordered defendant to return the specifically identified items to plaintiff within thirty days, or she would be permitted to docket a judgment against him for $168,500 and include costs of $5,520. Defendant failed to timely return plaintiff's pre-marital property, and the court on May 24, 2019, entered judgment against him in the total sum of $174,020.

Plaintiff subsequently docketed that judgment, obtaining a writ of execution on November 14, 2019.[1] She directed the sheriff to levy on

[1] Defendant's argument that the October 8, 2019 writ obtained by plaintiff's matrimonial counsel was invalid due to an error in the "whereas" clause on the

defendant's assets, specifically "(1) Ford truck, (1) BMW automobile, (1) large motorcycle, [and] (1) small yacht," and to inventory his possessions. After two prior attempts, the sheriff successfully levied on a 2003 Ford pickup truck and a 2008 Audi A8. The sheriff reported that "as per defendant, BMW is gone, motorcycle is gone, and never was [a] yacht." The sheriff further reported defendant refused to permit the inventory of his household items.

The following January, plaintiff hired counsel to collect the judgment. Counsel served an information subpoena on defendant in March. Defendant responded by identifying one bank account, the 2008 Audi A8, cash on hand of $1,000 and "furniture, appliances, 6-10 years old." He denied receiving any sort of government benefit as well as rental income, pensions, bank interest and stock dividends. While stating he was employed by John Turi Construction, LLC, at a weekly net wage of $631.44, he claimed he'd received

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first page is frivolous. Although the whereas clause states plaintiff had recovered damages of $174,020 and costs of $5,520, the controlling "endorsement" on the second page below the clerk's signature correctly notes the judgment amount of $174,020 and "additional costs" of $14. Moreover, plaintiff, proceeding pro se, obtained a new writ on November 14, 2019, correcting the "error," which she forwarded to the sheriff before the sheriff initially executed on defendant's assets in December 2019. See Borromeo v. DiFlorio, 409 N.J. Super. 124, 142 (App. Div. 2009) (noting the issuance of a new writ begins the execution process anew). There is nothing in the record before us to suggest the sheriff was ever provided a copy of the first writ.

no income from the business in the last twelve months. The only other asset defendant identified was his home purchased in 2005 for $330,000. Defendant claimed the property was encumbered by a first mortgage of $245,000 and a second mortgage of $28,000.

Following receipt of defendant's certified answers, plaintiff's counsel immediately directed the sheriff to levy on defendant's bank account. In July, the sheriff advised that TD Bank had frozen $1,251.53 of defendant's funds on deposit. Counsel immediately moved for a turnover order, which the court granted the following September. Plaintiff's counsel subsequently filed a motion to permit plaintiff to execute on his real property, which the court denied in February 2021 without prejudice — for reasons not clear.[2] It is also not clear whether the motion was opposed.

Plaintiff's counsel re-filed the motion to allow resort to defendant's real property to satisfy her judgment, supported by her counsel's certification detailing the efforts his firm and plaintiff had undertaken to collect the judgment by executing on defendant's personal assets. In his certification, counsel explained that although plaintiff had successfully levied on defendant's

[2] There is a statement of reasons attached to the order, but it appears incomplete, as if one or more pages is missing. There is only a rendition of the facts; there is no analysis of the law or reasons for the decision.

2003 pickup truck and 2008 Audi, she could not proceed to an execution sale because of the COVID-19 restrictions, although she was still responsible for the sheriff's storage fees. Counsel averred plaintiff released the levy on defendant's two vehicles after the sheriff's department advised his office that the sheriff estimated the COVID-19 restrictions would not be lifted for at least another nine months.

Defendant, now represented by counsel, opposed the motion arguing plaintiff had not made a diligent effort to satisfy the judgment from defendant's personal assets as required by N.J.S.A. 2A:17-1 and Rule 4:59-1. Defendant also filed a cross-motion to vacate the writ of execution based on his claim that the October 8, 2019 writ was defective.

In a thorough and thoughtful opinion, Judge Michael J. Rogers granted plaintiff's motion and denied defendant's cross-motion. The judge found plaintiff, after two years of effort and expense, had only been able to collect $1,251.53 on her $174,020 judgment. He found plaintiff had "exhausted all reasonable efforts to locate defendant's personalty" before filing her motion to proceed against defendant's only apparent asset, his real property. Judge Rogers wrote "[t]he test for compliance with N.J.S.A. 2A:17-1 is not whether all possible efforts to locate personalty have been exhausted, but rather

whether the judgment creditor has exerted 'reasonable efforts' constituting a 'good faith attempt' to do so." See Borromeo, 409 N.J. Super. at 137.

The judge found plaintiff "took all reasonable measures to locate and sell" defendant's personal assets under the statute and Rule 4:59-1(d)(1), including levying on defendant's vehicles, and that the restrictions on the sheriff's office "in terms of seizing and selling personal assets during this health crisis should not be held against" her. The judge also denied defendant's cross-motion, reasoning "[t]he precise amount of the judgment and what is included in it can readily be determined" from the face of the November 14, 2019 writ.

Defendant appeals, contending the court erred in permitting the sale of his property to satisfy plaintiff's judgment because she "unilaterally and voluntarily released" the levy on his vehicles and she "failed to seek alternatives," including a wage execution, before resort to his real property. Defendant further argues the court erred in relying on plaintiff's counsel's hearsay statements about the COVID-19 restrictions on execution sales and the sheriff's storage fees, resort to his real property was against the public interest and the writ "should have been vacated" because "the judgment amount set forth in the [October 7, 2019] writ is erroneous."

Having reviewed the record, we reject defendant's arguments as without sufficient merit to warrant discussion in a written opinion, Rule 2:11-3(e)(1)(E), and affirm, essentially for the reasons expressed by Judge Rogers in the statement of reasons accompanying his May 21, 2021 order. We add only the following.

We find no error in the court's finding that plaintiff's release of the levy on defendant's thirteen-year-old car and eighteen-year-old pickup truck because she could not proceed to sale during the pandemic did not undermine her entitlement to relief. Although defendant objects to the court's reliance on plaintiff's counsel's hearsay statements about the restrictions on sheriff's sales during the pandemic, he did not do so in the trial court when plaintiff and the trial court could have addressed his concerns. Defendant offered no evidence to counter plaintiff's contention that the storage fees for nine months would likely exceed what she could recover for the vehicles at auction.

In arguing that plaintiff failed to seek execution against his wages before seeking an order to permit the sale of his real property, defendant ignores his own certified answers to her asset discovery advising he'd had no income from his self-employed business for the prior twelve months. The debtor's denial of possessing any personal assets "alone will ordinarily satisfy the creditor's

obligation to proceed first against personalty before levying upon real estate." Pressler & Verniero, Current N.J. Court Rules cmt. 1.2.2 on R. 4:59-1 (2023) (citing Borromeo, 409 N.J. Super. at 137). Significantly, defendant does not allege that "if an additional inquiry were mounted to find personal assets belonging to [him], or if a writ of execution were issued to direct the sheriff to levy on personal assets, a different result would obtain" and plaintiff could recover the amount of her judgment, or some significant part of it. Pojanowski v. Loscalzo, 127 N.J. 240, 242 (1992).

We have already addressed defendant's argument as to the invalidity of the writ of execution. We find no support in the record for defendant's argument that the order for the sale of his real property was contrary to the public interest.

Affirmed.