

IN THE SUPREME COURT OF OHIO

11-0910

THE HUNTINGTON NATIONAL BANK :

Appellant/Cross-Appellee, :

v. :

STEVEN WINTER. :

Appellee/Cross-Appellant. :

**Appeal from the Hamilton County
Court of Appeals, First Appellate
District**

Court of Appeals Case No. C090482

**CROSS-APPELLEE'S RESPONSE TO CROSS-APPELLANT'S MEMORANDUM IN
SUPPORT OF JURISDICTION**

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AMENDED STATEMENT OF THE CASE AND THE FACTS

Cross-Appellee Steven Winter (“Winter”) claims that the trial court did not allow for due process of Cross-Appellant Huntington National Bank’s (“Huntington”) execution against \$144,000 that Winter had fraudulently transferred into whole life insurance accounts with Prudential in November 2007. Winter claims that after he received a copy of Huntington’s writ of execution, he filed a *pro se* request for an exemption hearing. However, the request was not made *pro se* and, instead, Winter’s attorney Thomas E. Jacobs made the request on his behalf. A hearing was scheduled before Magistrate Bachman in the Hamilton County Court of Common Pleas. Winter was given notice of the hearing and attended without his attorney on March 25, 2009. Winter knew going into the hearing that he had transferred \$144,000 into the Prudential accounts and Huntington sought to execute against those funds.

Winter made arguments on his own behalf and even submitted case law to Magistrate Bachman which he believed supported his argument that the \$144,000 was exempt from execution. Winter did not present any evidence at the hearing before Magistrate Bachman supporting his request for an exemption to the execution. Magistrate Bachman overruled Winter’s request for an exemption. *See Huntington National Bank, et al. v. Winter, et al.*, 2011-Ohio-1751 at ¶ 5. Winter filed objections to the Magistrate’s decision which were fully briefed by the parties. Judge Ruehlman held a hearing on Winter’s objections on July 13, 2009 and took additional evidence from Winter. Winter presented the testimony of John Hakemoller, the Prudential insurance agent who accepted payment of \$144,000 from Winter. Judge Ruehlman overruled Winter’s objections to the Magistrate’s decision and ordered that Huntington could execute against the \$144,000. *See id.*

Winter appealed Judge Ruchlman's decision to the First District Court of Appeals. *See id.* However, Winter did not seek a stay of the execution with the trial court or post a bond. Winter's request for a stay from the First District Court of Appeals was denied. *See Entry Overruling Motion for Preliminary Injunction Staying Enforcement of Judgment Pending Appeal*, August 31, 2009, First District Court of Appeals Case No. C-090482. Accordingly, Huntington intended to enforce the execution against the \$144,000. However, instead of the execution being enforced and the monies being paid to the Clerk of Court of Hamilton County, Ohio, Winter and Huntington agreed that Winter would be permitted to allow his father-in-law to place more monies in the accounts so that Winter could obtain loans totaling \$144,000 against the accounts. *See Affidavit of Louis C. Schneider*, May 20, 2011, First District Court of Appeals Case No. C-090482. Winter voluntarily paid Huntington (and another creditor who had obtained an execution against the life insurance accounts, Merchants Bank) a total of \$144,000 in monies Winter received from the loans. *See id.*

Now, Winter is still claiming that he was denied due process by the Court of Common Pleas of Hamilton County despite his two court appearances and numerous briefs that were filed and considered by that Court. Winter claims that there were "procedural irregularities in the noticing and granting of the motion to set aside a fraudulent transfer" and that the "First District Court of Appeals incorrectly held that Winter had committed fraud on Huntington by transferring monies into the Winter Family Trust and then paying \$144,000 towards premiums on his term and whole life insurance policies with Prudential." Winter's arguments are without merit, and there was substantial process afforded him in the trial court and Court of Appeals. Winter's request for jurisdiction from this Court on this issue should be denied as he cannot

show that there is a matter of public and great general interest in his claim that he was denied due process by the lower courts.

ARGUMENTS IN RESPONSE TO CROSS-APPELLANT'S PROPOSITION OF LAW

Cross- Appellant's Proposition of Law No. 1

This matter is of public and great general interest because the First District's decision ignores the protection afforded by the procedural rules to prevent error and fraud and to mitigate unfair dealings against individual debtors by stronger and better funded banks.

This Proposition of Law is without merit. Winter received adequate due process in the trial court. Winter received notice of Huntington's December 15, 2008 execution against his life insurance accounts. Winter's attorney then filed a request for an exemption hearing with the trial court on December 30, 2008. Winter knew that Huntington was seeking to obtain the monies in his life insurance accounts. Winter also knew that he had paid \$144,000 into those accounts in fraud of Huntington in November 2007. Amazingly, Winter now claims that he did not have sufficient notice that Huntington was seeking to recover \$144,000 that Winter had fraudulently kept from his creditors.

The Court of Appeals properly found that Winter knew or should have known that Huntington was seeking to recover \$144,000 that Winter had concealed through fraud. *See Huntington National Bank, et al. v. Winter, et al.*, 2011-Ohio-1751 at ¶ 7. The Court of Appeals found that a separate motion was not required to be filed by Huntington when it was requesting that the court allow execution on the monies in the life insurance accounts. *See id.* Also, the Court of Appeals found that even if Huntington was required to file a motion claiming Winter defrauded his creditors, "Winter was not prejudiced in the absence of a separate motion." *See id.*

Here, Huntington was not required to file a separate motion under Ohio R. Civ. P. 6 or Hamilton County Local Rule 14. Huntington properly filed a praecipe for a writ of execution

with the Hamilton County Clerk of Courts on December 15, 2008. Huntington sought to execute on Winter's Prudential accounts which contained \$144,000 in monies that Winter had fraudulently transferred away from his creditors. The same day, the Hamilton County Clerk of Courts issued a writ of execution requiring that the monies in the Prudential accounts be used to satisfy Huntington's judgment. On December 30, 2008, Winter filed a request with the Clerk of Courts that his life insurance accounts be exempt from execution. The request was initially denied by Magistrate Bachman and ultimately denied by Judge Ruehlman in the trial court. Based on the evidence presented by both parties, Judge Ruehlman concluded that the exemption in R.C. 3911.10 did not apply.

At no point was Huntington required to file a motion asking the trial court to find that Winter had committed fraud on Huntington by funneling \$144,000 into life insurance accounts instead of paying his creditors. Instead, the trial court could consider evidence of the fact that Winter had fraudulently transferred the \$144,000 in determining whether the exception to the exemption contained in R.C. 3911.10 applied. The trial court properly did so, and the Court of Appeals correctly affirmed the trial court's decision to consider Winter's fraud.

Most importantly, however, Winter was never deprived of any property by the state of Ohio or the Court of Common Pleas of Hamilton County, Ohio. After losing his request for an exemption in the trial court and failing to obtain a stay, Winter negotiated an agreement with Huntington to voluntarily pay \$144,000 to satisfy the execution. Winter obtained loans against the monies in his life insurance accounts and voluntarily paid the monies received from those loans to Huntington and another creditor. *See Affidavit of Louis C. Schneider*, May 20, 2011, First District Court of Appeals Case No. C-090482. Winter is complaining that his due process rights were violated and, essentially, that the state deprived him of his rights. However, Winter's

complaints are without substance as he voluntarily paid Huntington and the execution was not performed. Accordingly, this Court should deny Winter's request for jurisdiction as he has failed to present this Court with a matter of public or great general interest.

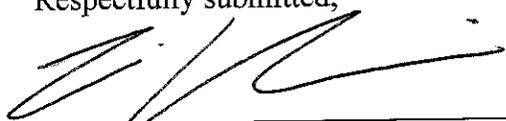
Lastly, Winter claims in his Memorandum supporting his Cross-Appeal that “[i]n this economic and political climate, when significant problems with banks and their foreclosure processes are coming to light, see attached news articles, the procedural protections offered by the rule, which require written motions and specific notice, and by due process, should not be taken lightly by the magistrates and trial judges of this state.” Winter then attaches several news articles and blog posts describing recent issues with foreclosure problems by large banks. There is no connection between these articles and Huntington. Also, despite his baseless allegations that the lower courts failed to abide by the rules, Winter failed to follow this Court's own rule for submitting a Memorandum of Jurisdiction. S.Ct. R. III, § 4(A) states that “[e]xcept as otherwise provided by this section, the combined memorandum [both in response to appellant/cross-appellee's memorandum and in support of jurisdiction for the cross appeal] shall comply with all of the requirements of Sections 1 and 2 of this rule.” S.Ct. R. III, § 1(D), in addition to requiring the opinion of the court of appeals to be attached to the memorandum, allows an appellant (or cross-appellant) to “attach any other judgment entires or opinions issued in the case, if relevant to the appeal.” However, Section 1(D)(3) specifically states that “[t]he memorandum shall not include any other attachments.”

Winter violated S.Ct. R. III, § 1(D) when he attached several superfluous and irrelevant news articles and blogs to his Memorandum. This Court should not consider the articles as they have no bearing on the instant case and were improperly submitted by Winter.

CONCLUSION

For the foregoing reasons, Winter's proposition of law has no merit. Huntington respectfully requests that this Court deny jurisdiction on Winter's appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 26th day of July, 2011, via regular mail upon the following:

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