

[Cite as *Thompson v. Bayer*, 2009-Ohio-4955.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LEE A. THOMPSON
Plaintiff-Appellee

-vs-

SCOTT BAYER DBA BAYER
PLUMBING & HEATING
Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case No. 08-CA-89

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Court of
Common Pleas, Case No. 96CV128

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

September 16, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Plaintiff-appellant Lee A. Thompson appeals the December 2, 2008 Judgment Entry of the Fairfield County Court of Common Pleas granting Defendant-appellee Scott Bayer dba Bayer Plumbing and Heating's motion for reconsideration of the court's October 31, 2008 entry in favor of Appellant Thompson.

STATEMENT OF THE CASE

{¶2} On March 20, 1996, Appellant Lee Thompson filed a complaint in the Fairfield County Court of Common Pleas against Appellee Scott Bayer dba Bayer Plumbing and Heating (hereinafter "Bayer") relating to plumbing services performed by Bayer.

{¶3} On September 19, 1996, the trial court granted default judgment in favor of Thompson. A certificate of judgment was filed on September 26, 1996.

{¶4} A second certificate of judgment was filed on October 3, 2002

{¶5} On September 9, 2008, Thompson filed an action for revivor of the judgment with the trial court, pursuant to R.C. 2325.15.

{¶6} On October 31, 2008, the trial court granted Thompson's motion for revivor of the judgment against Bayer. The trial court directed Thompson to submit an entry to the trial court within seven days of its October 31, 2008 decision. Thompson did not submit said entry.

{¶7} Bayer then filed a motion for reconsideration of the October 31, 2008 Judgment Entry prior to filing a notice of appeal on November 26, 2008. On December 2, 2008, the trial court issued a decision sustaining Bayer's motion for reconsideration

finding its October 31, 2008 decision was not a final appealable order, and nullifying its previous decision reviving the judgment against Bayer.

{¶18} It is from the December 2, 2008 Judgment Entry, Appellant prosecutes this appeal assigning as error:

{¶19} “I. THE TRIAL COURT ERRED IN GRANTING A MOTION FOR RECONSIDERATION WHEN IT HAD NO BASIS OR JURISDICTION TO DO SO.

{¶10} “II. THE TRIAL COURT ERRED IN VACATING THE COURT’S CONDITIONAL ORDER OF REVIVOR.”

I.

{¶11} In the first assignment of error, Thompson argues the trial court was divested of jurisdiction to rule on Bayer’s motion for reconsideration of the trial court’s October 31, 2008 Entry after Bayer filed a notice of appeal from the October 31, 2008 entry.

{¶12} As set forth in the statement of the case, supra, on October 31, 2008, the trial court granted Thompson motion for revivor of the judgment against Bayer. The trial court directed Thompson to “submit an Entry for the Court’s signature within seven (7) days of the filing of this Entry.” Thompson failed to do so. Bayer then moved the trial court for reconsideration of its October 31, 2008 decision, which was granted on December 2, 2008.

{¶13} Upon review, we find the October 31, 2008 decision of the trial court was not a final appealable order as the trial court directed Thompson to submit an entry to the trial court for signature. Accordingly, Bayer’s premature notice of appeal did not

divest the trial court of jurisdiction to rule upon Appellant's motion for reconsideration.

Ohio App. R. 4; State ex rel. Everhart v. McIntosh, Judge (2007), 115 Ohio St.3d 195.

{¶14} Thompson's first assignment of error is overruled.

II.

{¶15} In the second assignment of error, Thompson maintains the trial court erred in denying his motion for revivor of the judgment.

{¶16} R.C. 2329.07 provides:

{¶17} "(A)(1) If neither execution on a judgment rendered in a court of record or certified to the clerk of the court of common pleas in the county in which the judgment was rendered is issued, nor a certificate of judgment for obtaining a lien upon lands and tenements is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within five years from the date of the judgment or within five years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later, then, unless the judgment is in favor of the state, the judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor."

{¶18} R.C. 2325.18 reads, in pertinent part:

{¶19} "(A) An action to revive a judgment can only be brought within ten years from the time it became dormant, unless the party entitled to bring that action, at the time the judgment became dormant, was within the age of minority, of unsound mind, or imprisoned, in which cases the action may be brought within ten years after the disability is removed."

{¶20} Thompson filed a certificate of judgment against Bayer on September 26, 1996. According to the statute set forth above, on September 26, 2001 the judgment became dormant despite the issuance of a second certificate of judgment. Pursuant to R.C. 2325.18, Thompson had until September 26, 2011, or ten years from the date the judgment was rendered dormant, to file an action for revivor. Therefore, Appellant's motion for revivor was timely filed under the statute, and should have been considered by the trial court on the merits thereof.

{¶21} For the foregoing reason, Thompson's second assignment of error is sustained, and the matter remanded to the trial court for further proceedings on the merits of the action for revivor.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

