12-14-2017

Safaris Unlimited, LLC v. Von Jones Respondent's Brief 3 Dckt. 44914

IN THE SUPREME COURT OF THE STATE OF IDAHO

SAFARIS UNLIMITED, LLC, a Georgia limited liability company,

Plaintiff/Respondent/Cross-appellant,

v.

MIKE VON JONES,

Defendant/Appellant/Cross-respondent.

Supreme Court Docket No. 44914-2017
Twin Falls County Case No. CV-2013-2706

RESPONDENT / CROSS-APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls

Honorable Randy J. Stoker, District Judge, Presiding

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases

Statutes

I. ARGUMENT

Jones's Reply Brief focuses on the issues presented by Safaris Unlimited's cross-appeal. Specifically, Jones argues that 1) given the evidence in the record, the trial court did not need to find the "specific value" of the Sligar Lawsuit in order to find that the consideration obtained by the sheriff's sale was grossly inadequate; 2) the fact that the Sligar Lawsuit is an unliquidated claim of Jones's and the possibility that its sale could cause him harm are sufficient "additional circumstances" to support the trial court's Order setting aside the sheriff's sale; 3) Idaho Code § 11-304 provides an additional basis upon which to affirm the trial court's Order; and 4) the trial court's Order to set the sheriff's sale aside is supported by the "sound public policy" that judgment creditors should not be allowed to execute on unliquidated claims.

Many of these arguments have been addressed, in part, in Safaris Unlimited's revised brief, submitted previously to this Court. In this brief, Safaris Unlimited will further demonstrate why Jones's arguments are without merit.

A. THE TRIAL COURT DID NOT FIND THAT THE SLIGAR LAWSUIT HAD ANY VALUE.

Jones contends that the trial court was not required to find the "specific value of the Sligar Lawsuit," which implies that Safaris Unlimited has argued to the contrary. This is incorrect. Safaris Unlimited has never argued that the trial court must make a finding of the Sligar Lawsuit's "specific value." But, at a minimum, the trial court must be able to finds that the asset has at least *some* value to it. Yet, in this case the trial court was unable to make that finding, stating, "It may be that Mr. Sliger owes Mr. Jones some money, it may be that Mr. Jones owes

Mr. Sliger some money, it may be that neither one of them owes anybody money. Who knows?" Tr Vol. II, p. 38, L. 25–p. 39, L. 3.

The trial court's inability to determine whether the Sligar Lawsuit has any value may be due to several factors. For example, although Jones testified that he contributed in excess of $700,000 to the business and that he estimates that the joint assets are worth approximately $2,000,000, he further testified that his estimate does not take into account the return on his investments throughout the business relationship. R Vol. II, pp. 84–85. The record does not state the amounts that Jones received throughout the relationship as returns on his investments, but it is reasonable to conclude that Jones's share of the joint assets may be significantly less than $2,000,000, even if one only assumes a 50/50 relationship between Jones and Sligar / Overtime Garage, LLC. *See id.* Moreover, Sligar and Overtime Garage, LLC have asserted a number of counterclaims against Jones, which may completely offset or even exceed the amount to which Jones is ultimately found to be entitled. *Id.* at pp. 53–63. The expense associated with litigating Jones's claims in the Sligar Lawsuit also reduces the value of that asset.

The record and the transcript of the hearing do not reveal the extent of the trial court's consideration of these factors. However, as noted above, the trial court did expressly state that it was possible that Jones may be owed nothing on his claims and may even owe Sligar money. Tr Vol. II, p. 38, L. 25–p. 39, L. 3. Given the trial court's inability to find that the Sligar Lawsuit had any value, it could not reasonably conclude that Safaris Unlimited's bid was grossly inadequate. Consequently, the trial court abused its discretion and erred in setting aside the sheriff's sale.

B. THE "ADDITIONAL CIRCUMSTANCE" REQUIRED TO SET A SHERIFF'S SALE ASIDE MUST RELATE TO THE SALE, NOT THE NATURE OF THE PROPERTY BEING SOLD.

As Jones notes in his Brief, this Court recently stated, "Our decisions have uniformly held that there must be some irregularity in the sale or other slight additional circumstance [to set aside a sheriff's sale]." *Phillips v. Blazier-Henry*, 154 Idaho 724, 730, 302 P.3d 349, 355 (2013). The issue before the Court in this case is what constitutes "other slight additional circumstance."

As discussed in Safaris Unlimited's revised brief, nearly all of the cases reviewed and analyzed by the *Phillips* Court involve an irregularity with the conduct of the sheriff's sale. The only case discussed in which there was not an irregularity with the conduct of the sale itself is *Tudor Engineering Co. v. Mouw*, 109 Idaho 573, 709 P.2d 146 (1985), in which the additional circumstance was "the judgment [creditor's failure] to provide any of the interested parties with actual notice of the execution sale." *Phillips*, 154 Idaho at 729, 302 P.3d at 354. Thus, all of the cases cited by *Phillips* in which this Court held that the sale should have been set aside involved circumstances related to the sale. Accordingly, when this Court stated in *Phillips* that there must be an "irregularity in the sale or other slight additional circumstance," it was referring to circumstances surrounding the sale.

Jones nevertheless argues that any additional circumstance is sufficient, provided it results in some harm to the judgment debtor. In support of this argument, Jones references this Court's observation in *Phillips* that in each of the cases to date in which the sheriff's sale was properly set aside or should have been set aside, "the party injured by the grossly inadequate sale price and additional circumstance was the judgment debtor." *Id.* That statement, however, was

not a basis of this Court's holding in *Phillips* or otherwise treated as anything other than a mere observation.

Rather, *Phillips* was decided on the grounds that a party's mistaken understanding of the law or failure to take adequate measures to protect her interests does not constitute an "additional circumstance." *Id.* at 730, 302 P.3d at 355. This Court did not limit that holding to cases where the judgment creditor was the party that made the mistake of law or failed to protect her interests, and there is no reason to believe that the result would have been any different if the mistaken party in that case had instead been the judgment debtor.

As *Phillips* demonstrates, not all things deemed "additional circumstances" by a party are sufficient grounds to set aside a sheriff's sale. This is true even if those additional circumstances may cause harm to the judgment debtor. For example, a judgment debtor's mistaken belief that he was prohibited from attending the sheriff's sale or promoting the sale in order to potentially increase the price at which his property is sold would not be grounds to set the sale aside. The fact that the judgment debtor may be injured as a result of his mistaken understanding is immaterial.

Jones's argument that the Sligar Lawsuit involves an unliquidated claim and, therefore, its sale creates the potential likelihood of harm to Jones is unpersuasive. The only potential harm that Jones may incur is that he will not receive the full value of the asset due to an inadequate purchase price. Thus, the argument that potential financial harm to Jones is an "additional circumstance" is simply another way of asserting that the winning bid was too low. "This Court has not previously held that gross inadequacy of price, standing alone, provides grounds for

setting aside a sheriff's sale. Our decisions have uniformly held that there must be some irregularity in the sale or other slight additional circumstance." *Id.* Therefore, the financial harm that Jones asserts he may incur does not provide an "additional circumstance" necessary to grant relief from the sheriff's sale.

C. IDAHO CODE § 11-304 HAS NO BEARING ON THIS CASE.

Jones makes passing reference to Idaho Code § 11-304 in support of his contention that the unliquidated nature of the Sligar Lawsuit provides the additional circumstance required to set the sale aside. Jones appears to base his argument in this regard on the second sentence of that section, which states, "After sufficient property has been sold to satisfy the execution, no more can be sold." Idaho Code § 11-304. This sentence applies to situations where a sheriff has levied upon multiple items of property, rather than a single item. If the sale of some of those items results in proceeds sufficient to satisfy the judgment, then the sheriff is required to discontinue the sale of the remaining items. Where there is only a single item of property to be sold, however, the requirement is inapplicable. Therefore, Jones's reliance on section 11-304 is entirely misplaced.

D. JONES'S PUBLIC POLICY ARGUMENTS SHOULD BE DIRECTED TO THE LEGISLATURE, AS THEY ADDRESS WHETHER THE SLIGAR LAWSUIT SHOULD BE EXEMPT FROM EXECUTION, NOT WHETHER THE SHERIFF'S SALE SHOULD BE SET ASIDE.

Jones spends significant time in his brief setting forth what he describes as "sound public policy" that supports the trial court's decision "to deny the sale of unliquidated litigation via public auction." Appellant's Reply Br., p. 6. The use of the term "deny the sale" is revealing, as

it shows that Jones's argument, at its core, is not that there were additional circumstances that justified setting aside the sale but rather that the asset should not have been sold at all. Stated differently, Jones's argument is that unliquidated claims should be exempt from execution.

Jones's contention in that regard is better directed toward the Idaho Legislature, as it falls under the Legislature's purview to determine what property is exempt from execution. The Idaho Legislature has determined that all nonexempt property of a judgment debtor is liable to execution. Idaho Code § 11-201. Furthermore, "It is well recognized that a debtor's right to exempt property from the claims of creditors is not a common law right but is dependent upon constitutional or statutory allowance. Thus, the general rule is that assets are not exempt from the claims of creditors unless specifically exempted by statute." *Hooper v. State*, 127 Idaho 945, 950, 908 P.2d 1252, 1257 (Ct. App. 1995) (internal citations omitted).

There is no exemption available to Jones relative to the Sligar Lawsuit under Idaho Code, and Jones has not asserted any such exemption exists. Rather, Jones is asking this Court to create an exemption not provided for by statute, which, with due respect to this Court, would require it to exercise powers that it does not have. As this Court has noted,

> While the statute should be liberally construed, it has been held that construction should not be indulged in to the extent of conferring privileges and benefits by construction which were not intended to be conferred by the Legislature, or to the extent of doing violence to the terms of the statute.

Young v. Wright, 77 Idaho 244, 246, 290 P.2d 1086, 1087 (1955) (quoting *Conlin v. Traeger*, 258 P. 433, 434 (Cal. 1927).

Safaris Unlimited rejects Jones's contention that "sound public policy" requires the recognition of an exemption for unliquidated claims. In any event, however, the validity of those arguments is a decision for the Idaho Legislature to make, not this Court. At this time, the Idaho Legislature has not created an exemption or any other special status for a judgment debtor's unliquidated claims. Thus, under Idaho law, the Sligar Lawsuit is not exempt, and the sheriff's sale should be allowed to stand.

II. CONCLUSION

For the reasons set forth, above, and in its prior brief, Safaris Unlimited respectfully requests that this Court reverse and vacate the trial court's *Order Granting Motion to Set Aside Sheriff's Sale*. Additionally, Safaris Unlimited requests that this Court affirm the Judgment entered by the trial court and award Safaris Unlimited its attorney's fees incurred in connection with this appeal.

DATED this 3rd day of January, 2018.

WORST, FITZGERALD & STOVER, PLLC

By: _____
David W. Gadd
Attorneys for Safaris Unlimited, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2018, I caused a true and correct copy of the foregoing RESPONDENT / CROSS-APPELLANT'S REPLY BRIEF to be served by the method indicated below, and addressed to the following:

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