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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAMES MICHAEL HARM et al.,

Plaintiffs and Respondents,

v.

WAYNE T. HETMAN,

Defendant and Appellant.

G044700

(Super. Ct. No. 06CC03911)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gregory Munoz, Judge. Affirmed.

Law Offices of M. Candice Bryner and M. Candice Bryner for Defendant and Appellant.

Law Offices of Foroozandeh and Majid Foroozandeh for Plaintiffs and Respondents.

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The parties, very unhappy neighbors, now come before us for the fifth time.<sup>1</sup> In the lawsuit underlying this appeal, James Michael Harm and Soraya Maria Harm filed a complaint against Wayne T. Hetman for quiet title, slander of title, nuisance, negligence, intentional infliction of emotional distress, declaratory relief and injunctive relief. Hetman filed a cross-complaint. The Harms obtained a money judgment against Hetman. The present appeal has to do with the Harms's efforts to collect on that judgment.

Hetman claimed a bank account upon which the Harms had levied was exempt from levy under Code of Civil Procedure section 704.160, concerning workers' compensation awards. The court denied his claim of exemption. Hetman appeals. We affirm. Substantial evidence supports the trial court's finding that Hetman failed to meet his burden to trace the purported workers' compensation settlement proceeds to the bank account in question.

## I

### FACTS

The Harms levied on Hetman's account at U.S. Bank. Hetman asserted a claim of exemption. The court denied the claim, stating: "As to the claim under [Code of Civil Procedure section] 704.160 (Workers' Comp. Claims), Hetman failed to establish that this was truly a workers' comp. case (as opposed to a 3rd party case) or to sufficiently trace a specific amount of the alleged workers' compensation settlement funds to an account at U.S. Bank." Hetman appeals.

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<sup>1</sup> This court notified the parties of its intention to take judicial notice of the opinions filed in *Harm v. Hetman* (Jun. 25, 2009, G039955) [nonpub. opn.], *Harm v. Hetman* (Jun. 25, 2009, G040454) [nonpub. opn.], *Harm v. Hetman* (Mar. 16, 2011, G043206) [nonpub. opn.], and *Hetman v. Harm* (Feb. 03, 2012, G044633) [nonpub. opn.], and gave them an opportunity to object. No party having objected, we took notice of those opinions by order filed March 21, 2012. (Evid. Code, §§ 452, subd. (d), 459.)

## II DISCUSSION

### *A. Introduction:*

Hetman contends the court made three errors: (1) it abused its discretion in considering the declaration of Attorney Richard Quintilone to find that the settlement monies Hetman received from the Santa Ana Unified School District (SAUSD) were not exempt; (2) it disregarded Hetman's unequivocal evidence showing that the SAUSD paid him \$170,625 to settle four workers' compensation claims; and (3) it erred in finding Hetman did not succeed in tracing the settlement proceeds to his U.S. Bank account. We address the last contention first.

### *B. Tracing:*

#### *(1) Code of Civil Procedure sections 704.160 and 703.080—*

Generally speaking, workers' compensation awards are exempt from levy. (Code Civ. Proc., § 704.160, subd. (a).) Furthermore, "a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent." (Code Civ. Proc., § 703.080, subd. (a).) "The exemption claimant has the burden of tracing an exempt fund." (Code Civ. Proc., § 703.080, subd. (b).)

#### *(2) Hetman's Evidence—*

Hetman submitted a declaration dated May 18, 2010 wherein he laid out his evidence in support of his claim of exemption. He said that he had been employed by the SAUSD and had filed four workers' compensation claims. He settled those claims on October 9, 2007, and the SAUSD issued him a check in the amount of \$170,625. In support of his declaration, Hetman attached copies of four workers' compensation claims, a Joint Compromise and Release dated October 9, 2007, and a check from the SAUSD dated October 24, 2007, in the amount of \$170,625.

With regard to tracing, Hetman said he “deposited this check into bank number one upon receipt.” He then set up a trust entitled the “Advance Medical Trust” and opened up a trust “account with bank number two.” Later, Hetman moved the money to Colonial Bank, which was offering better interest rates. Later still, he withdrew \$76,022.93 from the account and put it in a new Colonial Bank account, with school teacher Janice K. Colella listed as trustee of the Advance Medical Trust account. Colonial Bank was subsequently acquired by U.S. Bank. In his May 20, 2010 supplemental brief supporting his exemption claim, Hetman asserted that this last-described U.S. Bank account contained the proceeds of his workers’ compensation settlement and was thus exempt from levy.

In support of his declaration, Hetman also provided eight items bearing upon banking issues. The first was a solitary piece of paper reflecting a deposit of \$170,625 on October 30, 2007, but not containing any lettering or numbering at all identifying a financial institution, an account number, or an account holder. The second was another singular page, reflecting \$170,654.33 on hand as of November 5, 2007, an interest payment of \$333.71, and a November 26, 2007 wire transfer in the amount of \$170,988.04. Following the letters “WT,” part of a line was redacted, then the words “advance medical trust” appeared, followed by more redaction. The page contained no lettering or numbering identifying a financial institution, an account number, or an account holder.

The third item Hetman provided was a page containing the words “CHECKING ACCOUNT” at the top. “Wayne T. Hetman Advance Medical Trust UTD November 9, 2007” followed immediately thereafter. Below that appeared the words “Money Market Account Number,” but no account number was shown. The name of a financial institution did not appear anywhere on the page. The page reflected a credit for a wire transfer in the amount of \$170,998.04 on November 26, 2007. The page also said, “Statement Dates 11/19/07 thru 12/02/07.”

The fourth item Hetman provided was a page similar in appearance to the third item. However, Hetman's name did not appear on it anywhere. Under the title "CHECKING ACCOUNT," appeared the words "Advance Medical Trust UTD November 9, 2007." Following the words "Money Market Comm Account Number," no account number was listed. The page contained the wording "Statement Dates 11/03/08 thru 11/30/08." It showed a balance of \$75,451.77 as of November 3, 2008, a posting of accrued interest in the amount of \$27.27 on November 14, 2008, a withdrawal in the amount of \$75,479.04 on November 14, 2008, and an account closing as of that date.

Next, Hetman provided a copy of a Colonial Bank advantage money market account statement showing a deposit in the amount of \$75,479.04 on November 24, 2008, to an account in the name of "Wayne T Hetman Adv Med Tr UTAD 11/09/07 by Wayne Teofil Hetman trustee." (Capitalization omitted.) No account number was shown on the statement.

Sixth, Hetman provided a copy of a Colonial Bank "Secure Access Personal MMDA" account statement in the name of "Advance Medical Trust by Wayne Teofil Hetman trustee." (Capitalization omitted.) No account number was shown. The statement was for the period December 20, 2008 to January 23, 2009. It showed a previous balance of \$76,022.93 and a withdrawal in that amount on December 22, 2008.

Following that, Hetman provided a copy of a Colonial Bank "Secure Access Personal MMDA" statement for an account No. 8052706010, held by "Advance Med Tr UTAD 11/09/07 by Janice K. Colella trustee." (Capitalization omitted.) The statement period was December 22, 2008 to January 23, 2009. It showed an opening balance of zero and a deposit in the amount of \$76,022.93 on December 22, 2008.

Finally, Hetman provided a copy of a January 7, 2010 letter from U.S. Bank regarding the "transition from Colonial Bank to U.S. Bank."

(3) *Analysis*—

“A judgment or order of the trial court is presumed correct, and must be upheld if it is supported by substantial evidence, no matter how slight it may be. [Citation.] Further, all evidence must be viewed in the light most favorable to the prevailing party, and all conflicts in evidence or in inferences must be resolved in favor of upholding the trial court’s judgment or order. [Citations.] Where sufficiency of the evidence is questioned, the duty of an appellate court begins and ends with a determination that there is in the record evidence legally sufficient to support the judgment or order. [Citation.]” (*Schwartzman v. Wilshinsky* (1996) 50 Cal.App.4th 619, 626.)

Here, we consider the evidence in the light most favorable to the Harms. For reasons we shall discuss, we determine that substantial evidence supports the trial court’s finding that Hetman failed to meet his burden to provide sufficient evidence to trace the proceeds of his alleged workers’ compensation settlement to the U.S. Bank account in question.

Looking at the purported financial records, we start with the first two items, which are pieces of paper that do not bear the name of a financial institution, the name of an account holder, or an account number. They are merely sheets of paper reflecting dates and dollar amounts consistent with Hetman’s representations. The third item is little better, but at least it bears the words “CHECKING ACCOUNT” and “Money Market Account Number,” so one would have reason to believe that it was a financial institution account. And, that third item at least has Hetman’s name on it. The third item would suggest that Hetman had \$170,998.04 on deposit in a financial institution account somewhere as of November 26, 2007.

But the next thing we have is another page, a purported financial institution statement for the period November 3, 2008 through November 30, 2008, showing a

balance on hand of \$75,451.77 as of November 3, 2008. There is a gap of about one year in time and a disparity of nearly \$100,000 in dollar amount.

Moreover, the documents Hetman provided to demonstrate the required tracing were unauthenticated and highly redacted. As to that, Hetman declared that he used white out or black out to redact account information for privacy reasons. He represented that he had not phoned up documents and he had been prepared to show the original bank statements to the court in camera.

However, even assuming an in camera review would have shown that the documents were what Hetman represented them to be—copies of bank account statements correctly reflecting deposits and transfers—the documents nonetheless could not and did not show that the \$76,022.93 on hand in account No. 8052706010 on December 22, 2008 was the remainder of the \$170,625 in purported workers' compensation proceeds Hetman received in October 2007. All they could or did show was that Hetman received \$170,625 in October 2007, he still had approximately that same amount of money on hand the following month, and there was \$76,022.93 in account No. 8052706010 more than a year later. Hetman did not provide sufficient evidence to link up the two amounts of money, deposited into admittedly unrelated bank accounts.

His best explanation for the one-year gap in tracing was contained in his August 6, 2010 supplemental declaration. In that declaration he said simply: "About a year later, after payments being made from the trust, the remaining funds were [transferred] from Bank Two, to Colonial Bank where they offered a better rate of interest." But the evidence simply did not support his claim. The trial court gave Hetman multiple opportunities to provide evidence to close up the one-year gap. In its minute orders, it specified that further evidence was necessary to demonstrate tracing and it continued the hearing on Hetman's claim of exemption more than once to give him an

opportunity to provide further evidence. Nonetheless, Hetman failed to come through with evidence to show what went on in the one-year gap period to link up the accounts.

“When, as here, ‘the evidence gives rise to conflicting reasonable inferences, one of which supports the findings of the trial court, the trial court’s finding is conclusive on appeal. [Citations.]’ [Citation.]” (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 623.) One reasonable inference from the evidence Hetman presented is that the \$76,022.93 on deposit in account No. 8052706010 as of December 22, 2008 is unrelated to the \$170,625 Hetman received in October 2007—that there is no link between the accounts and the monies contained therein. Since this inference supports the finding of the trial court, that finding is conclusive on appeal.

*C. Conclusion:*

In sum, we conclude that substantial evidence supports the trial court’s finding that Hetman failed to meet his burden to trace the SAUSD settlement proceeds to the U.S. Bank account he seeks to protect. Consequently, we need not address Hetman’s contentions that the court erred in concluding he failed to show that the SAUSD settlement resolved only workers’ compensation claims and in considering the declaration of his prior attorney, Richard Quintilone, as bearing upon that issue.

In making our determination, we have considered only the evidence of tracing Hetman himself provided and we have found that the evidence falls short. We have not considered the Application for Waiver of Court Fees and Costs that Hetman filed in the Superior Court in *Hetman v. Harm* (Super. Ct. Orange County, 2011, No. 30-2008-00112106) on September 17, 2008. It is completely unnecessary to a resolution of the matter before us.

However, in that application, which Hetman signed under penalty of perjury on September 8, 2008, he declared that he had only \$38 in cash and \$750 in credit union and bank accounts. Yet at the same time, he did, in sum, declare before the trial

court in the matter before us that he deposited \$170,625 into the bank in October 2007, and kept that money less expenditures in the bank until at least January 2009, when he still had over \$75,000 on hand. These declarations appear to be completely irreconcilable. Faced with a record that reflects these inconsistencies, we must refer the matter to the presiding judge of the Orange County Superior Court for consideration, including consideration of whether to refer the matter to the Orange County District Attorney.

### III

#### DISPOSITION

The order is affirmed. The Harms shall recover their costs on appeal. The clerk of this court is directed to provide a copy of this opinion to the presiding judge of the Orange County Superior Court.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.