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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PACKAGING CORPORATION OF
AMERICA,

Plaintiff and Respondent,

v.

JOHN BARRON,

Defendant and Appellant.

G051011

(Super. Ct. No. 30-2013-00649838)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed.

Michael R. Sayer for Defendant and Appellant.

Blakeley & Blakeley, Scott E. Blakeley and Ronald A. Clifford for Plaintiff and Respondent.

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This is an appeal from an order denying defendant John Barron's claims of exemption from a garnishment order. He argued that his circumstances had suddenly and materially changed, resulting in reduced income that rendered him unable to comply with the order. The trial court determined Barron had not carried his burden of proof to prove a decrease in earnings, and questioned the credibility of the information he supplied. Because we conclude the trial court's decision is supported by substantial evidence, and because we do not second-guess credibility determinations on appeal, we affirm.

I FACTS

In 2013, Packaging Corporation of America (PCA) filed a collection action against Barron for breach of contract, breach of personal guaranty, and common counts. In March 2014, the trial court entered judgment in favor of PCA for \$82,643.14, plus attorney fees and costs. After a debtor's examination, PCA served an earnings withholding order on June 12.

Just a few days after the withholding order was served, on June 18, defendant signed a stipulation (the support stipulation) with his wife in their pending divorce case. Barron agreed to provide \$10,000 a month in child support and \$7,400 a month in spousal support.¹

On July 7, Barron filed a claim of exemption and a hearing was set. Barron stated that his monthly gross income was \$20,782.69, and his income after payroll deductions was \$16,902.31. Thus, the support stipulation had Barron paying more than his gross income in child and spousal support. He claimed total savings of \$1,000 and other assets worth \$6,050. Meanwhile, he also alleged \$6,837 a month in expenses in addition to the \$17,400 in support payments.

¹ The stipulation was approved by the family court on June 30, 2014. On September 4, the divorce was finalized pursuant to a stipulated judgment.

On July 30, the trial court denied his claim of exemption, explaining: “That Defendant filed a stipulation for child and spousal support greater than his monthly income just four days after Plaintiff served a wage garnishment order overwhelmingly suggests the stipulation for spousal and child support was nothing more than a sham filing to avoid the wage garnishment order.”

On August 6, Barron again attempted to seek exemption from the withholding order, this time by filing an ex parte application to vacate the July 30 order. In a supporting declaration, Barron claimed the support stipulation was “based on past projections of my personal income,” and was no longer accurate due to reduced income of Primary Capital Corporation, doing business as Primary Packaging Resources, (Primary), the company of which he was president and majority shareholder. The court denied the application on August 7.

On October 7, Barron filed a third claim for exemption. While in July his gross income was \$20,782.69, in the new claim he asserted it was now \$7,100. He argued a “material change” in his circumstances. His attached declaration offered little explanation for the sudden reduction in purported income, simply stating his new salary plus commission produced a gross income of \$7,100 per month. His support obligations were now a total of approximately \$17,500.²

In his reply brief, Barron claimed his change of circumstances was due to the state of Primary. He argued it was “currently operating under a UCC[-]1³ held by The Safety Zone, LLC. The Safety Zone, LLC. also controls and manages the accounts

² Approximately \$12,233 per month was spousal and child support; the remainder consisted of private school, insurance, and other expenses.

³ Generally, a security agreement between two parties is sufficient to create a security interest benefitting the creditor for the specified collateral. A UCC-1 financing statement must be filed, however, to perfect the interest created by the security agreement. (Com. Code, § 9201; *Cassel v. Kolb* (1999) 72 Cal.App.4th 568, 573.)

receivable of [Primary] which in turn pays Barron's salary." In a declaration, Barron claimed his "reduction in income has come as a result of The Safety Zone's control over the revenue of [Primary], in that The Safety Zone is owed \$760,000 in debt by [Primary] and has been using the accounts receivable of [Primary] to pay back the monies owed to The Safety Zone." His declaration attached a copy of the UCC-1 filing recorded by The Safety Zone. His brief also stated he was subject to other creditors and the trial court was not permitted to "summarily reject or ignore" the family court's final decisions in his divorce case.

The trial court denied the claim for exemption and issued a five-page minute order. The court found Barron's argument about The Safety Zone's sudden responsibility for his plummeting income to be unpersuasive. "Attached to Barron's reply brief is a UCC-1 financing statement recorded in Nevada by The Safety Zone against the assets of Primary Capital. . . . The UCC-1 [statement] was filed on 05/09/05, more than nine years before Barron filed his first Claim of Exemption in this Court on 07/09/14. How the existence of a UCC-1 recorded in 2005 constitutes a "changed circumstance" from July 2014 is not explained. [¶] Moreover, Barron fails to specify the date that The Safety Zone purportedly took control of Primary Capital's finances, precluding any finding that it constitutes a change of circumstances since the Court's denial of Barron's first Claim of Exemption three months ago."

The court also found Barron's reliance on the UCC-1 filing "unconvincing. The effect of a UCC-1 financing statement is to perfect a creditor's security interest in a debtor's assets. It does not necessarily transfer control of the day-to-day financial operations of the debtor unless there is a separate agreement between the debtor and the creditor to that effect. If in fact Barron ceded control over his company's finances to The Safety Zone, he has presented no evidence of it."

Next, the court discussed numerous inconsistencies between Barron's declaration and the supporting documents attached to his claim for exemption, and the

documents attached to his initial claim in July 2014, including one document which stated his single debt to The Safety Zone was approximately \$859,000. His current declaration stated a debt of almost \$100,000 less, without explanation for the discrepancy. There were other issues as to whether the debt was owned by Primary or by him personally. The court drew “no conclusions from these inconsistencies other than to note that they raise additional unanswered questions about the credibility of the information supplied by Barron”

The court’s order next rejected the argument its decision “would somehow be impermissibly encroaching on the Family Court’s jurisdiction by denying his Claim is frivolous and does not merit lengthy discussion. Barron entered voluntarily into the stipulation less than a week before filing his first Claim of Exemption . . . and it was his own decision, not the Family Court’s, to pay more in monthly spousal and child support than what he claimed was his disposable income at the time.”

The court continued: “By the time the Family Court adopted the stipulated settlement as its judgment on 09/04/14, Barron could have petitioned the Family Court for a reduction in those obligations based on his alleged reduction in income. However, there is no indication that he did so. [¶] Moreover, whether the Family Court entered the stipulated settlement as its final judgment is irrelevant to this court’s assessment of Barron’s motives for entering into the stipulation only days before filing his Claim of Exemption. Thus, denial of Barron’s latest Claim of Exemption would not be inconsistent with the judgment entered by the Family Court. [¶] . . . [¶] If Barron’s spousal- and child-support obligations are as crushing as he claims they are, his first order of business should have been to petition the Family Court for a reduction in those obligations. Yet there is nothing in the record to suggest that Barron even made the effort.”

Finally, the court noted numerous inconsistencies between Barron’s financial statement and the sworn declaration submitted with his claim, raising “questions

about the trustworthiness of his numbers.” In his reply brief, the court stated Barron acknowledged these but argued they were de minimis or typographical errors. The court found this unpersuasive because the inconsistencies were neither de minimis or reasonably attributable to typographical errors. The court concluded: “In sum, nothing Barron has submitted in the current motion gives the court pause in its previous conclusion that the stipulated spousal and child support orders are a sham designed to thwart payment of the judgment here at issue.” Barron now appeals from this order.

II

DISCUSSION

Material Change in Circumstances

To seek a claim of exemption when there has already been a hearing on a withholding order the judgment debtor must show a material change in circumstances. (Code Civ. Proc., § 706.105, subd. (a)(2).) We review the trial court’s order regarding a claim of exemption under the substantial evidence standard. (*Schwartzman v. Wilshinsky* (1996) 50 Cal.App.4th 619, 626.)

In a one and a half page argument, and without addressing the substantial evidence standard or referencing any relevant case law, Barron argues that his income had decreased, his support obligations had been finalized in his divorce proceeding, and therefore he suffered a material change in circumstances. But the support obligations, which were entirely voluntary and which Barron never asked the family court to revisit, despite his alleged drop in income, were not a “material change” from the time the court denied Barron’s first exemption in July 2014. Indeed, the total amounts due were nearly identical.

As the trial court noted, “The crux of Barron’s ‘changed circumstances’ argument is that the income he receives from his company . . . has plummeted from \$20,782.69 per month to \$7,100 per month since the Court denied his first Claim of

Exemption on 07/30/14.” As the court explained, however, Barron had failed to meet his burden of proof in the trial court. He asserted that his corporation, of which he was president and majority shareholder, had essentially been taken over by another entity, precipitously decreasing his salary. The evidence in support of this claim was a nine-year-old UCC-1 filing and little else. The UCC-1 itself failed to prove The Safety Zone was running the company or dictating compensation. Further, no date of a takeover was provided to demonstrate the change of circumstance since the July 30 order.

In sum, Barron’s assertions were inadequately supported by the evidence in the trial court, and certainly fail to meet the high standard to show a lack of substantial evidence on appeal.

“Sham Stipulation”

Barron’s next argument claims the trial court “disregarded” a stipulation and judgment entered by judges in another matter to which he was a party. This argument, as the trial court pointed out, completely lacks any merit.

In support of his assertion, Barron cites *In re Alberto* (2002) 102 Cal.App.4th 421, in which a second trial judge reconsidered the amount of bail, raising it from \$35,000 to over \$1,000,000. The appellate court reversed, concluding one trial court judge could not vacate or nullify the power of the order of another judge. (*Id.* at pp. 427-428.)

Unfortunately for Barron, nothing of the sort happened here. The trial court’s decision ascribing a particular motive to his choice to enter into a support stipulation that, on its face, he could not possibly afford, did not touch the validity of that order in the family court proceeding. It did not change it, alter it, or call into question the jurisdiction of the court entering the order. The trial court did not “disregard[]” the prior stipulation and judgment; indeed, the minute order reflects the court’s careful consideration. The stipulation and judgment created a question of credibility in the

instant case, and the trial court, within its discretion, drew reasonable conclusions and ruled accordingly. Similar credibility issues were raised by the discrepancies between Barron's financial statement and the sworn declaration, and inconsistencies between his July and October filings. Such credibility determinations are well within the ambit of the finder of fact, and we do not second guess them on appeal.

III

DISPOSITION

The order is affirmed. PCA is entitled to its costs on appeal.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.