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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RONALD CLAMPITT and GINA)	
CLAMPITT,)	
)	
Appellants,)	
)	
v.)	Case No. 2D19-1588
)	
MARIE WICK, as assignee of JERRY)	
MASTRANGELO; A-ACTION)	
MORTGAGE COMPANY; and AMERICAN)	
EQUITY MORTGAGE, INC.,)	
)	
Appellees.)	
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Opinion filed April 9, 2021.

Appeal from the Circuit Court for Pinellas
County; Jack R. St. Arnold, Judge.

Jennifer Erin Jones of McIntyre,
Thanasides, Bringgold, Elliott, Grimaldi,
Guito & Matthews, P.A., Tampa, for
Appellants.

Benjamin E. Hilliard, Amy E. Cuykendall
and Alexander R. Allred of Hillard,
Cuykendall & Allred, P.A., Largo, for
Appellee Marie Wick.

No appearance for remaining Appellees.

SILBERMAN, Judge.

Ronald and Gina Clampitt seek review of a final summary judgment in favor of judgment creditor Marie Wick (Creditor Wick) in proceedings supplementary. The trial court determined that Mrs. Clampitt's failure to post a bond precluded her from opposing the proceedings supplementary. The court further found that Mr. Clampitt transferred some interest in various life insurance policies and real properties to Mrs. Clampitt during the course of the underlying litigation. The court ruled that Mrs. Clampitt failed to establish that the transfers were not done with the intent to delay, hinder, or defraud Creditor Wick. Therefore, the transfers were fraudulent, and the assets could be taken to satisfy the execution. In so finding, the court rejected the Clampitts' defenses that the property was exempt from legal process on various bases. We conclude that the court erred in ruling that Mrs. Clampitt was precluded from opposing the proceedings supplementary, in rejecting two of the Clampitts' claimed exemptions, and in determining that Creditor Wick was entitled to relief as a matter of law. Accordingly, we reverse.

In 2000 Creditor Wick filed suit, and in 2007 she obtained a \$4.1 million judgment against Mr. Clampitt. She initiated these proceedings supplementary in 2017. Creditor Wick sought to apply the following property toward satisfaction of the 2007 judgment: (1) part of the cash surrender value of four life insurance policies insuring Mr. Clampitt's children that Mr. Clampitt transferred to Mrs. Clampitt in 2016, (2) part of the cash surrender value of a life insurance policy insuring Mr. Clampitt for the benefit of Mrs. Clampitt, and (3) five real properties that Mr. Clampitt transferred to himself and Mrs. Clampitt jointly in 2006. Creditor Wick asserted that she was entitled to an interest

in the property under section 56.29(3)(b), Florida Statutes (2017), which subjects property to levy and sale under execution "[w]hen any gift, transfer, assignment or other conveyance of personal property has been made or contrived by the judgment debtor to delay, hinder, or defraud creditors."

The Clampitts argued that the cash surrender values of the life insurance policies were protected from "attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured" under section 222.14, Florida Statutes (2017). They also argued that all of the real properties but the Colorado property were protected from legal process as tenancies by the entireties (TBEs). And they denied that any of the transfers were made "to delay, hinder, or defraud creditors" as required by section 56.29(3)(b).

To safeguard her rights, Creditor Wick obtained temporary injunctions that precluded the transfer of any of the property while the proceedings supplementary were pending. Creditor Wick subsequently filed three separate motions for summary judgment: one for the children's life insurance policies, one for Mr. Clampitt's life insurance policy, and one for the real properties.

Mrs. Clampitt filed an affidavit in opposition to summary judgment in which she asserted that she "paid reasonably equivalent value for the interests [she] received" in the real properties. Mrs. Clampitt detailed those expenses she paid on each property and provided documentation supporting the payments. Mrs. Clampitt also asserted that she loaned funds to Mr. Clampitt to pay his expenses, including significant medical and legal bills, and that the transfer of the real property interests was a form of repayment of the loans. She provided calculations regarding the valuation of the properties and the

corresponding values of her transferred interests. Furthermore, Mrs. Clampitt asserted that she had been paying the premiums on each of the life insurance policies at issue since 2009 or 2010. Mr. Clampitt submitted an affidavit in which he averred that he transferred an interest in the real properties to Mrs. Clampitt in consideration of the expenses she paid for his medical and legal care and support.

The trial court entered one final summary judgment granting all three motions on the following bases. First, the court found that Mrs. Clampitt's failure to post a bond precluded her from opposing the proceedings supplementary. As to the life insurance policies, the court found that the cash surrender values are not generally protected from legal process by section 222.14 because that section only protects accounts in which the insured and beneficiaries are the same person. As to the real properties, the court found that the properties are not protected as TBEs because they fail to meet the unity of time criteria. Finally, the court found that as to both the insurance policies and the real properties Mrs. Clampitt did not meet her burden under section 56.29(3)(a) of establishing that the transfers of the properties were not made to delay, hinder, or defraud creditors. We take each finding in turn.

I. The trial court erred in finding that Mrs. Clampitt's failure to post a bond precluded her from opposing the proceedings supplementary.

In finding that a bond was required, the trial court looked to the Notice to Appear form issued to the Clampitts. See Fla. R. Civ. Pro. Form 1.914(b). The applicable portion of Form 1.914(b) is taken from section 56.16, which provides as follows:

If any person, including a person to whom a Notice to Appear has been issued pursuant to s. 56.29(2), other than the judgment debtor claims any property levied on, he or she

may obtain possession of the property by filing with the officer having the execution an affidavit by the claimant, or the claimant's agent or attorney, that the property claimed belongs to the claimant and by furnishing the officer a bond with surety to be approved by the officer in favor of the judgment creditor in double the value of the goods claimed as the value is fixed by the officer and conditioned to deliver said property on demand of said officer if it is adjudged to be the property of the judgment debtor and to pay the judgment creditor all damages found against the claimant if it appears that the claim was interposed for the purpose of delay.

(Emphasis added.) Under its plain language, section 56.16 provides a process for a person who "claims any property levied on" to "obtain possession of the property." Id. That person must execute an affidavit and furnish a bond. Id. "On receipt of the bond and affidavit the officer shall deliver the property to the claimant and desist from any further proceedings under the execution until the right of property is tried." § 56.17.

Thus, Form 1.914(b) simply alerts persons who have been issued a Notice to Appear and whose property has been levied on that they have the right to regain possession by filing a bond as provided in section 56.16. There is no indication in chapter 56 that a bond is required simply to object to a Notice to Appear. Indeed, section 56.29(2) provides that "[t]he Notice to Appear shall direct such person to file an affidavit" and makes no mention of a bond.

In this case, Mrs. Clampitt was not seeking possession of any property while the proceedings supplementary took place. While the injunction issued by the trial court prevented Mrs. Clampitt from transferring the properties during the course of the proceedings supplementary, it did not divest her of possession of the properties. Accordingly, the trial court erred by finding that Mrs. Clampitt's failure to post a bond precluded her from opposing the proceedings supplementary.

II. The trial court erred in holding that Mr. Clampitt's life insurance policy is not generally exempt from execution under section 222.14.

Section 222.14 provides as follows:

The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

(Emphasis added.)

This provision protects against "legal process in favor of any creditor of the person whose life is so insured." Id. It has been interpreted to only protect policies in which the owner is also the insured. In re Lowery, 272 B.R. 317, 320 (Bankr. M.D. Fla. 2001); In re Allen, 203 B.R. 786, 795 (Bankr. M.D. Fla. 1996). Mr. Clampitt is both the owner and the insured of his policy. Thus, Mr. Clampitt's policy is generally exempt from legal process under section 222.14.¹ Notably, because the owner and the insureds are different for the children's policies and the children are the insureds, the cash surrender values of those policies are not generally protected from legal process by section 222.14.

III. The trial court erred in determining that the jointly-owned properties are not protected as TBEs because they fail to meet the unity of time criteria.

Under the Uniform Fraudulent Transfer Act, recoverable "assets" do not include "[a]n interest in property held in tenancy by the entireties to the extent it is not

¹Mr. Clampitt's insurance policy may be subject to Creditor Wick's claims if Mr. Clampitt converted his policy to an exempt asset "with the intent to hinder, delay, or defraud the creditor." § 222.30(2), (3).

subject to process by a creditor holding a claim against only one tenant." § 726.102(2)(c), Fla. Stat. (2017).

Property held as a tenancy by the entireties possesses six characteristics: (1) unity of possession (joint ownership and control); (2) unity of interest (the interests in the account must be identical); (3) unity of title (the interests must have originated in the same instrument); (4) unity of time (the interests must have commenced simultaneously); (5) survivorship; and (6) unity of marriage (the parties must be married at the time the property became titled in their joint names).

Beal Bank, SSB v. Almand & Assocs., 780 So. 2d 45, 52 (Fla. 2001) (footnote omitted).

In this case, the trial court concluded that the Clampitts did not establish the unity of time because the couple's interest in the properties did not begin at the same time.

However, Mr. Clampitt created a tenancy by the entireties when he conveyed the property from his sole ownership to Mr. and Mrs. Clampitt jointly. See § 689.11(1)(b), Fla. Stat. (2017); Clemons v. Thornton, 993 So. 2d 1054, 1055 (Fla. 1st DCA 2008).

Under common law, an owner of real property could not execute a deed conveying real property to oneself and one's spouse as tenants by the entireties because the unities of time and title would not be satisfied. Typically, in order to satisfy these requirements, the owner would transfer the property to a third party (a "straw person") who would then immediately transfer the property back to the original owner and her or his spouse as tenants by the entireties. Florida statutorily eliminated the need to use a straw person to satisfy the unities of time and title when creating tenancies by the entireties as to real property with the amendment of F.S. 689.11(1). Ch. 71-54, § 1, Laws of Fla.

Jeffrey A. Baskies, et al., Joint Ownership, in Basic Estate Planning in Florida, § 7.3(A) (Fla. Bar. CLE 10th ed. 2020). Accordingly, the trial court erred in determining that the Clampitts did not hold title to the four jointly-titled properties as tenants by the entireties.

IV. The trial court erred in concluding that section 56.29(3)(a) applies to real property.

Section 56.29(3)(a) provides for a shifting of the burden of proof from the judgment creditor to the judgment debtor as follows:

When, within 1 year before the service of process on the judgment debtor in the original proceeding or action, the judgment debtor has had title to, or paid the purchase price of, any personal property to which the judgment debtor's spouse, any relative, or any person on confidential terms with the judgment debtor claims title and right of possession, the judgment debtor has the burden of proof to establish that such transfer or gift was not made to delay, hinder, or defraud creditors.

(Emphasis added.) The judgment creditor bears the initial burden of proving that the transfer at issue brings the case within its ambit. Treated Timber Prods., Inc. v. S & A Assocs., 488 So. 2d 159, 160 (Fla. 1st DCA 1986). When the judgment creditor meets this burden, then the burden shifts to the judgment debtor and the impleaded defendants to prove that the transfer "was not made to delay, hinder, or defraud creditors." Id. (quoting § 56.29(6)(a), Fla. Stat. (1983)); see also RREF SNV-FL SSL, LLC v. Shamrock Storage, LLC, 178 So. 3d 90, 91 (Fla. 1st DCA 2015); Morton v. Cord Realty, Inc., 677 So. 2d 1322, 1324 (Fla. 4th DCA 1996).

The Clampitts argue, and we agree, that the plain language of section 56.29(3)(a) limits its application to personal property. See Estey v. Sharp Elecs. Corp., 409 So. 2d 217, 218 (Fla. 4th DCA 1982) (holding that section 56.29(6)(a), a prior version of section 56.29(3)(a), "specifically provides that a defendant has the burden of proving a resulting trust only when 'personal property' is at issue"); In re Hinton, 378 B.R. 371, 383 (Bankr. M.D. Fla. 2007) ("[T]he court's powers to help a judgment creditor obtain transferred property expressly apply only to personal property and not to real

property."). Thus, the trial court erred in concluding that section 56.29(3)(a) applies to real property.

V. The court erred in determining that Mrs. Clampitt did not meet her burden under section 56.29(3)(a) of establishing that the transfers of the properties were not made to delay, hinder, or defraud creditors.

A party in proceedings supplementary may be entitled to summary judgment if the evidence shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(c);² see also Gorrin v. Poker Run Acquis., Inc., 237 So. 3d 1149, 1153 (Fla. 3d DCA 2018). In determining whether summary judgment is proper, the trial court should construe the evidence "in the light most favorable to the non-moving party" and should construe any inferences in favor of the nonmoving party. Gorrin, 237 So. 3d at 1153 (quoting Moradiellos v. Gerelco Traffic Controls, Inc., 176 So. 3d 329, 334-35 (Fla. 3d DCA 2015)).

"But a motion for summary judgment is not a trial by affidavit or deposition. Summary judgment is not intended to weigh and resolve genuine issues of material fact, but only identify whether such issues exist." Id. (quoting Perez-Gurri Corp. v. McLeod, 238 So. 3d 347, 350 (Fla. 3d DCA 2017)). Thus, summary judgment must be denied if the evidence on an issue of material fact is disputed. Id.

Here, the Clampitts provided evidence, particularly Mrs. Clampitt's affidavit, that at least facially creates issues of fact regarding whether Mr. Clampitt

²We note that since the trial court entered final summary judgment the Florida Supreme Court has rejected the summary judgment standard that applied at the time of the hearing in favor of the federal summary judgment standard. See In re Amendments to Fla. R. Civ. P. 1.510, 309 So. 3d 192, 194-95 (Fla. 2020). This amendment is effective May 1, 2021. Id.

transferred the property with the intent to delay, hinder, or defraud Creditor Wick. It may not be conclusive proof to win at trial, but for summary judgment it creates a factual question as to the underlying source of the payments of certain expenses as well as Mr. Clampitt's intent. It appears that the court's decision that Mrs. Clampitt's affidavit was insufficient to meet her burden was driven by its professed belief that the circumstances are inequitable. However, the court impermissibly weighed the evidence and determined issues of credibility. See id. at 1155.

In summary, we conclude that the court erred in ruling that Mrs. Clampitt was precluded from opposing the proceedings supplementary, in rejecting two of the Clampitts' claimed exemptions to legal process, and in determining that Creditor Wick was entitled to relief under section 56.29(3) as a matter of law. Accordingly, we reverse the final summary judgment and remand for further proceedings.

Reversed and remanded.

LaROSE and SMITH, JJ., Concur.