

CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

Gilman v. Dalby

Gilman v. Dalby · No. C066930 · Decided March 12, 2021

SUMMARY

The California Court of Appeal considered whether a judgment creditor’s lien under Code of Civil Procedure section 708.410 could attach to money ordered returned to a judgment debtor after reversal of an earlier award. The court held that the lien could potentially attach because the Enforcement of Judgments Law defines “judgment” to include an order, and it remanded for further factual review, including notice-related issues. The court also addressed the effect of the judgment debtor’s voluntary dismissal and the potential liability of parties who paid money subject to the lien.

CASE DETAILS

COURT	California Court of Appeal, Third Appellate District
WRITING FOR THE COURT	BLEASE, Acting P. J.; HULL, J.; KRAUSE, J.
JURISDICTION	California
DECIDED	March 12, 2021
DOCKET	C066930
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Judgment creditors appealed orders denying their motion to enforce a judgment lien against money returned to the judgment debtor pursuant to a restitution order, denying sanctions, and addressing enforcement costs.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo. The court also reviewed the trial court's legal ruling concerning whether the lien could attach to the restitution order de novo; factual notice issues were remanded for initial determination by the trial court.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion, certified for publication except for part IV of the Discussion.
PARTIES	Tammy R. Phillips, Tammy R. Phillips's law firm v. Lena L. Dalby et al., Kevan Harry Gilman, Adam C. Thiel

TOPICS

civil procedure

statutory interpretation

appellate procedure

sanctions

costs

PRACTICE AREAS

judgment enforcement

civil procedure

appellate procedure

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sanctions

QUESTIONS PRESENTED

1. Whether a judgment lien under Code of Civil Procedure section 708.410 can attach to a judgment debtor's right to money payable under a restitution order.
2. Whether the voluntary dismissal was ineffective or subject to being vacated because section 708.440 generally prohibits a judgment debtor from dismissing a pending action without the judgment creditor's consent or court authorization.
3. Whether the matter should be remanded to determine whether the parties had notice of the lien before the restitution payment.
4. Whether sanctions against Gilman and Adam C. Thiel were warranted under Code of Civil Procedure section 128.7.
5. Whether the trial court properly denied the Dalby Respondents' motion to tax costs.

HOLDINGS

1. A judgment creditor's lien under Code of Civil Procedure section 708.410 may attach to a judgment debtor's right to money payable under a restitution order because section 680.230 defines 'judgment' to include a judgment, order, or decree.
2. The court did not decide whether the lien actually entitled the judgment creditors to the \$17,229.27; that issue required remand for the trial court to determine whether the relevant parties had notice of the lien and to resolve related factual issues.
3. A voluntary dismissal entered in violation of section 708.440 may be ineffective, and the trial court retains jurisdiction to vacate an unlawful dismissal and address lien enforcement.
4. The denial of sanctions against Gilman had to be reconsidered on remand because it was premised on the trial court's erroneous conclusion that the lien could not attach to the restitution money.
5. The denial of sanctions against Thiel was affirmed because a procedurally defective dismissal, without more, did not establish that the dismissal was filed primarily for an improper purpose.
6. The order concerning the Dalby Respondents' motion to tax costs was affirmed because the lien claimants had conceded below that they were seeking enforcement costs only from Gilman, not from the Dalby Respondents.

KEY QUOTATIONS

“Applying this definition to section 708.410, we find a judgment creditor may obtain a lien on a judgment debtor’s right “to money under any [order]” in a lawsuit, including the type of order in our case.” (at 2)

“A party who has a notice of a lien and nonetheless attempts to dismiss his or her case in violation of section 708.440’s requirements has achieved, at most, an ineffective dismissal.” (at 14)

“To find sanctions appropriate, Appellants needed to show Thiel filed the dismissal “primarily for an improper purpose” (§ 128.7, subd. (b)(1))—not merely that Thiel’s filing was procedurally flawed.” (at 23)

FACTUAL BACKGROUND

Gilman had sued the Dalby Respondents, and after an appellate reversal of an attorney-fee award, the trial court ordered the Dalby Respondents to return \$17,229.27 to Gilman. Phillips and her law firm held outstanding money judgments against Gilman and had filed a notice of lien under Code of Civil Procedure section 708.410 covering Gilman's rights to money or property under any judgment, order, or settlement in the action. Gilman obtained the restitution order without notifying the lien claimants, received payment, and dismissed the action. The parties disputed whether the lien notice had been served and received before the payment.

PROCEDURAL HISTORY

Gilman sued the Dalby Respondents in 2004. The trial court initially awarded the Dalby Respondents \$17,229.27 in attorney fees and costs, but the Court of Appeal reversed the fee award in 2009. The trial court later ordered the Dalby Respondents to return that amount to Gilman. Phillips and her law firm, who had money judgments against Gilman and had filed a lien notice under Code of Civil Procedure section 708.410, sought to enforce the lien, vacate Gilman's dismissal, recover enforcement costs, and obtain sanctions. The trial court rejected the lien and sanctions claims, and the Court of Appeal reversed the lien ruling and the denial of sanctions against Gilman, while affirming the remaining rulings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

On remand, the trial court must reconsider the denial of Phillips and her firm's motion for satisfaction of lien, determine whether the relevant parties had timely notice of the lien, resolve related factual issues, and reconsider the sanctions ruling against Gilman in light of the lien analysis. The denial of sanctions against Thiel and the rulings concerning the Dalby Respondents' motion to tax costs remain affirmed.

CASES CITED

- Gilman v. Dalby, 176 Cal. App. 4th 606, 610 (2009)
- Gilman v. Dalby, 176 Cal. App. 4th 606, 620 (2009)
- Oldham v. California Capital Fund, Inc., 109 Cal. App. 4th 421, 430 (2003)
- Lucky United Properties Investment, Inc. v. Lee, 185 Cal. App. 4th 125, 131-135, 142-144 (2010)
- Viles v. State, 66 Cal. 2d 24, 32-33 (1967)
- McClearen v. Superior Court, 45 Cal. 2d 852, 856 (1955)
- Schubert v. Bates, 30 Cal. 2d 785, 789-790 (1947)

- Basinger v. Rogers & Wells, 220 Cal. App. 3d 16, 21 (1990)
- Ensher v. Ensher, Alexander & Barsoom, Inc., 187 Cal. App. 2d 407, 410 (1960)
- H.D. Arnaiz, Ltd. v. County of San Joaquin, 96 Cal. App. 4th 1357, 1365 (2002)
- Bear Creek Master Assn. v. Edwards, 130 Cal. App. 4th 1470, 1486 (2005)
- Freeman v. Superior Court, 44 Cal. 2d 533, 537-538 (1955)
- Baxter v. State Teachers' Retirement System, 18 Cal. App. 5th 340, 366 (2017)
- D'Amico v. Board of Medical Examiners, 11 Cal. 3d 1, 19 (1974)
- In re Estate of Westerman, 68 Cal. 2d 267, 279 (1968)
- In re Zeth S., 31 Cal. 4th 396, 413, fn. 11 (2003)
- Willis v. City of Carlsbad, 48 Cal. App. 5th 1104, 1116 (2020)
- Kinney v. Vaccari, 27 Cal. 3d 348, 356 fn. 6 (1980)
- Neighbours v. Buzz Oates Enterprises, 217 Cal. App. 3d 325, 335 fn. 8 (1990)
- Badie v. Bank of America, 67 Cal. App. 4th 779, 784-785 (1998)
- Redevelopment Agency v. Gilmore, 38 Cal. 3d 790, 809 (1985)
- Bel Air Internet, LLC v. Morales, 20 Cal. App. 5th 924, 933 (2018)