COURT OF APPEALS OF NORTH CAROLINA

State Employees' Credit Union, Inc. v. Gentry, 75 N.C. App. 260

330 S.E.2d 645 (1985) · No. 841OSC1035 · Decided June 18, 1985

SUMMARY

The North Carolina Court of Appeals held that Interstate Securities Corporation did not have a statutory right to intervene as an attaching creditor because it had not complied with the statutory attachment procedures. The court also held that Interstate's motion to intervene under North Carolina Rule of Civil Procedure 24 was untimely because it was filed after entry of default, and that the garnishee's motion to join attaching creditors was moot.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Wells, Judge; Becton; Eagles; Wells
JURISDICTION	North Carolina
DECIDED	June 18, 1985
DOCKET	841OSC1035
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interstate Securities Corporation appealed orders denying its motion to intervene in an attachment and garnishment proceeding and declaring Dean Witter Reynolds's motion to join all attaching creditors moot.
STANDARD OF REVIEW	The timeliness of a motion to intervene is reviewed under the trial court's sound discretion. Statutory interpretation and the determination whether the asserted statutory intervention right applies are addressed by examining the governing statutory requirements.
PRECEDENTIAL VALUE	Published North Carolina Court of Appeals opinion
PARTIES	Interstate Securities Corporation

TOPICS

intervention · default · mootness · statutory interpretation · civil procedure

PRACTICE AREAS

civil procedure · appellate procedure · commercial litigation · remedies

QUESTIONS PRESENTED

1. Whether Interstate Securities Corporation had a statutory right to intervene as an attaching creditor under N.C. Gen. Stat. § 1-440.33(g).
2. Whether Interstate had a right to intervene under North Carolina Rule of Civil Procedure 24(a)(2).
3. Whether Interstate's motion to intervene was timely when filed after entry of default and whether its failure to timely file the required pleading under Rule 24(c) affected intervention.
4. Whether Dean Witter Reynolds's motion to join all attaching creditors was moot and whether any lien-superiority issue remained.

HOLDINGS

1. Interstate did not have a statutory right to intervene because it was not an attaching creditor. Its notice of levy was insufficient process, and it had not complied with the statutory procedures necessary to establish an attachment lien or interest in the attached property.
2. Interstate's motion to intervene under Rule 24(a)(2) was untimely.
3. The trial court correctly determined that Dean Witter's motion to join all attaching creditors was moot because Interstate had no lien on the property and was the only attaching creditor in the action.

KEY QUOTATIONS

> "*Timeliness is the threshold question to be considered in any motion for intervention.*" (648)

> "*We therefore conclude that Interstate's motion to intervene after entry of default was untimely.*" (649)

FACTUAL BACKGROUND

State Employees' Credit Union pursued attachment and garnishment proceedings against William M. Gentry, with Dean Witter Reynolds holding personal property of the debtor. Interstate Securities Corporation served Dean Witter with a notice of levy but did not obtain an order of attachment, serve the required attachment process, or file a proper claim establishing an attachment lien or interest in the property. Interstate moved to intervene after entry of default against Gentry, and its required pleading was not filed until eleven days after default judgment.

PROCEDURAL HISTORY

State Employees' Credit Union obtained entry of default against William M. Gentry and pursued attachment and garnishment proceedings involving property held by Dean Witter Reynolds. Interstate Securities Corporation attempted to intervene after entry of default, asserting a statutory right and a right under North Carolina Rule of Civil Procedure 24(a)(2). The trial court denied intervention and found Dean Witter's motion to join all attaching creditors moot; the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Corley v. Jackson Police Dept., 755 F.2d 1207 (5th Cir. 1985)
- Spring Constr. Co., Inc. v. Harris, 614 F.2d 374 (4th Cir. 1980)
- NAACP v. New York, 413 U.S. 345, 93 S. Ct. 2591, 37 L. Ed. 2d 648 (1973)
- South v. Rowe, 102 F.R.D. 152 (N.D. Ill. 1984), aff'd in part, rev'd in part, 759 F.2d 610 (7th Cir. 1985)
- U.S. v. Associated Milk Producers, Inc., 534 F.2d 113 (8th Cir.), cert. denied, National Farmers' Organization, Inc. v. U.S., 429 U.S. 940, 97 S. Ct. 355, 50 L. Ed. 2d 309 (1976)
- Black v. Central Motor Lines, Inc., 500 F.2d 407 (4th Cir. 1974)
- Berta v. Highway Comm., 36 N.C. App. 749, 245 S.E.2d 409 (1978)
- Battle v. Clanton, 27 N.C. App. 616, 220 S.E.2d 97 (1975), disc. rev. denied, 289 N.C. 613, 223 S.E.2d 391 (1976)
- Bell v. Martin, 299 N.C. 715, 264 S.E.2d 101 (1980), reh'g denied, 300 N.C. 380
- Kahan v. Longiotti, 45 N.C. App. 367, 263 S.E.2d 345 (1980)
- Love v. Moore, 305 N.C. 575, 291 S.E.2d 141 (1982)