

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 07-14181
)
MELVIN FINCH and) Chapter 7
BARBARA FINCH,)
)
Debtors.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**

Creditor Ronald Henderson filed a “Motion for Barbara Finch and her attorney to appear and show cause why they should not be held in contempt for violation of the agreed judgment entry; or in the alternative motion for the court to issue an order nunc pro tunc to reflect the parties discussions at side bar and in the court’s chambers that lead to the agreed judgment entry issued by the court on June 23, 2008.”¹ The debtor Barbara Finch and her attorney, Thomas Pavlik, oppose the motion.² For the reasons stated below, the motion is denied.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

BACKGROUND

This motion arises out of a long-running dispute between attorney Ronald Henderson and his former clients, Barbara Finch and Melvin Finch, over unpaid legal fees. Mr. Henderson

¹ Docket 88. *See also* docket 92, 93, 94, and 95.

² Docket 91.

obtained a state court judgment against both Barbara and Melvin Finch for those fees. The Finches then filed a chapter 7 bankruptcy case seeking, primarily, to discharge that debt. As part of the bankruptcy case, Mr. Henderson filed a complaint asking that both debtors be denied a discharge. After trial, the court entered a memorandum of opinion and order finding that Barbara Finch was denied a discharge, but that Melvin Finch would receive a discharge.³ As a result, Mrs. Finch is still liable to Mr. Henderson for the state court judgment.

Mr. Henderson tried to execute on the state court judgment by filing a garnishment action against Mrs. Finch in the Cleveland Municipal Court. The subject of the garnishment is annuity contracts held in Mrs. Finch's name. To condense what appears to have happened in the Municipal Court, Mrs. Finch seems to have claimed that those annuities are exempt from execution under Ohio law, while Mr. Henderson believes that Mrs. Finch agreed in the bankruptcy case that the annuities were not exempt under Ohio law. Statements allegedly made by Mrs. Finch and Mr. Pavlik to the Cleveland Municipal Court on that issue are the basis for this motion.

THE POSITIONS OF THE PARTIES

Mr. Henderson argues that an order should be entered requiring Mrs. Finch and Mr. Pavlik to appear and show cause why they should not be held in contempt because the positions they have taken in the Cleveland Municipal Court are contrary to the terms of an agreed judgment entry filed in this court. The June 12, 2008 order that Mr. Henderson relies on reads:⁴

³ Adv. P. 08-1020, docket 132, 133.

⁴ Docket 75.

This cause came on to be heard on the *Amended Objection to Debtors' Claim of Exemptions* filed by creditor, **Ronald E. Henderson**.

The court finds, that by agreement of the parties, the Debtors' exemption of their security deposits with utilities, landlords, and others, under O.R.C. § 2329.66(A)(18), shall be reduced from \$800.00 to \$400.00.

IT IS THEREFORE ORDERED, adjudged and decreed that the creditor's *Amended Objection to Debtors' Claim of Exemptions* is granted in part and the Debtors' exemptions for security deposits, under O.R.C. § 2329.66(A)(18), shall be reduced from \$800.00 to \$400.00.

Approved:

/s/ Ronald Henderson

/s/ Thomas C. Pavlik

Mr. Pavlik, for himself and for Mrs. Finch, responds:⁵

. . . the original bankruptcy filing did not include Barbara Finch's two ING annuity contracts as [I] did not believe they were property of the estate as they were specifically identified in § 541 of the Bankruptcy Code as not being property of the estate. The movant herein objected to the exclusion of these annuities and [I] subsequently amended the schedules to include the annuities indicating that if they were not property of the estate, they would be exempt under ORC 2329.66(a)(10).

CONTEMPT

Contempt sanctions "may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard." *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 820 (1994). The court's contempt powers derive from bankruptcy code § 105 and the inherent power of a court to enforce its orders. *In re Walker*, 257 B.R. 493, 496 (Bankr. N.D. Ohio 2001); *see also* FED. R. BANKR. P. 9020. In addressing a request to hold a party in contempt, the court must consider three issues: (1) did the alleged contemnor receive appropriate notice; (2) did the alleged contemnor's acts or failures to act amount to contempt of court; and (3) if so, what is the

⁵ Docket 91.

appropriate consequence. Mr. Pavlik and his client do not challenge that they have had appropriate notice. The next, and determining, issue is whether Mrs. Finch's and Mr. Pavlik's acts in the Cleveland Municipal Court amount to contempt of court. The party seeking a contempt finding must show by clear and convincing evidence that the alleged contemnors violated a specific and definite court order which required the performance or nonperformance of an act. *Id.* at 497.

While it is clear that Mr. Henderson, on the one hand, and Mrs. Finch and Mr. Pavlik, on the other hand, have a significant dispute, it is also clear that the dispute cannot be resolved through this motion. There is nothing in the June 12, 2008 order relied on by Mr. Henderson that requires either alleged contemnor to act or prohibits them from acting. Whatever Mrs. Finch and Mr. Pavlik have said or done in the Cleveland Municipal Court is not in derogation of this court's order. Mr. Henderson did not, therefore, prove by clear and convincing evidence that Mr. Pavlik or Mrs. Finch violated a specific order issued by this court.

Mr. Henderson, alternatively, moves for this court to amend the June 12, 2008 order *nunc pro tunc* to include language addressing the annuities at issue. He does not cite any law in support of this request or explain why this is an appropriate action for this court to take, particularly given that the issue of whether the annuities are exempt from garnishment is presently, and properly, before the Cleveland Municipal Court. This part of the motion is, therefore, also denied.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge