

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001613-MR

WILLIAM B. HUNTER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. McKAY CHAUVIN, JUDGE
ACTION NO. 09-CI-009200

UNIVERSITY OF LOUISVILLE

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, COMBS, AND THOMPSON, JUDGES.

COMBS, JUDGE: This is an appeal from a dismissal granted by the Jefferson Circuit Court in an action involving a federal notice of levy. The appellant, William B. Hunter, contends that the trial court erred by concluding that his employer, University of Louisville, was immune from liability for the actions

that it undertook in order to comply with the administrative levy on his wages or salary. After our review, we affirm.

In June 2006, the U.S. Department of the Treasury, Internal Revenue Service, served a notice of levy on the University of Louisville's payroll department. The notice indicated that Hunter was a delinquent taxpayer and directed the university to surrender to the IRS Hunter's wages and salary until such time as the levy was released. The university immediately notified Hunter that it would comply with the notice.

On September 8, 2009, Hunter filed an action against the university alleging that it had wrongfully diverted wages owed to him, had breached its contract with him, and had violated his rights under provisions of the Kentucky Constitution. The university filed a motion to dismiss the complaint against it for failure to state a claim which can be granted pursuant to Kentucky Rule[s] of Civil Procedure (CR) 12.02. By order entered on August 6, 2010, the trial court granted the university's motion and dismissed the action. This appeal followed.

In addressing the university's motion to dismiss the complaint for failure to state a claim, the trial court was required to assume that the allegations contained in the complaint were true. The university had to show only that Hunter would not be entitled to relief **under any set of circumstances** that could be proved in support of his claims in order for the trial court to grant its motion to dismiss. The trial court was not required to make any factual determinations; the question was purely a matter of law. Therefore, our review is *de novo*.

Assuming that Hunter's allegations against the university are true, we conclude that he has not stated a claim upon which relief can be granted. The trial court did not err by granting the motion to dismiss the action.

Under the Internal Revenue Code, the federal government may collect taxes of a delinquent taxpayer "by levy upon all property and rights to property . . . belonging to such person." 26 U.S.C. Section 6331(a). This administrative levy does not require judicial intervention. *United States v. Rodgers*, 461 U.S. 677, 103 S.Ct. 2131, 76 L.Ed.2d 236 (1983). Treasury regulations provide that the means by which the IRS makes such a demand on a third party is through a "notice of levy." 26 C.F.R. Section 301.6331-1(a)(1).

The Code simply provides that "any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary [of the Treasury or his delegate], surrender such property or rights . . . to the Secretary. . . ." 26 U.S.C. Section 6332(a).

Anyone who fails or refuses to surrender any property subject to levy upon demand by the Secretary can be held personally liable for the value of the property not surrendered. 26 U.S.C. Section 6332(d)(1). Additionally, if the property is withheld from the Treasury without reasonable cause, a penalty equal to 50 percent of the value of the property not surrendered can be imposed. 26 U.S.C. Section 6332(d)(2). However, most pertinent to the issue before the court is 26 U.S.C. Section 6332(e), which provides as follows:

Effect of honoring levy. – Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1)) **shall be discharged from any obligation or liability to the delinquent taxpayer and any other person** with respect to such property or rights to property arising from such surrender or payment. (Emphasis added.)

The immunity provided by Section 6332(e) has been broadly interpreted. *See Weissman v. U.S. Postal Service*, 19 F.Supp.2d 254 (D.N.J. 1998). Even where a levy is determined to be invalid, the custodian of the property is still immune from liability from actions arising from its compliance with the levy. *Id.*

Each of Hunter's claims against the university arises from its surrender of his wages and salary pursuant to the notice of levy. However, Hunter does not dispute that the money paid by the university to the IRS was his property or that the university paid the money to the IRS pursuant to a levy. It is clear from the provisions of Section 6332(e) that the university can have no liability to Hunter under these circumstances.

The order of the Jefferson Circuit Court dismissing Hunter's action is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William B. Hunter, *pro se*
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BRIEF FOR APPELLEE:

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