

RENDERED: JULY 15, 2016; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000387-MR

JOHN DAVID LEE; AND
ACCELERIS, LLC

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DONNA DELAHANTY, JUDGE
ACTION NO. 08-CI-504095

JILL LEE (NOW STANLEY); AND
LOUIS WATERMAN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, DIXON, AND STUMBO, JUDGES.

DIXON, JUDGE: Appellants, John David Lee and Acceleris, LLC, appeal an order of the Jefferson Circuit Court denying John's motion to quash a garnishment order issued on behalf the Appellees, John's former wife, Jill Lee (now Stanley), and her attorney, Louis Waterman. Finding no error, we affirm.

John and Jill divorced in 2009; thereafter, Appellees obtained a common law judgment against John for attorney's fees in the amount of \$70,000.00 plus interest. In December 2011, the trial court entered an order finding John's company, Lee Development Group d/b/a/ Acceleris IT, jointly and severally liable for the common law judgment. In March 2012, an order of garnishment was issued for the bank account of Acceleris IT. In May 2012, John formed a new company, Acceleris, LLC. Appellees learned of John's new business in December 2012, and they subsequently obtained an order of garnishment for the bank account of Acceleris, LLC. Appellants filed a motion to quash the garnishment, contending it was improper because Appellees had not obtained a common law judgment against Acceleris, LLC. Appellees filed a motion to interplead Acceleris LLC, contending that John had created Acceleris, LLC, for the purpose of fraudulently transferring assets to prevent Appellees from collecting on the judgment. At a hearing in February 2013, Appellees argued that the garnishment of Acceleris, LLC, was premised on their belief the company was John's "alter ego." Appellees also advised the court they were not going to pursue the fraudulent conveyance theory; consequently, the court did not rule on the motion to interplead.¹ Appellants contended the family court lacked jurisdiction

¹ During the hearing, Appellees explained the fraudulent transfer theory had been based on documents John had provided indicating he was dissolving Lee Development Group, d/b/a/ Acceleris IT; however, they subsequently learned John never filed the paperwork with the Secretary of State. As a result, Appellees abandoned the fraudulent transfer theory.

because Appellees had raised an allegation of fraud and that they were obligated to file an original action in circuit court to obtain a judgment against Acceleris, LLC. The court ultimately denied John’s motion to quash the garnishment, concluding Acceleris, LLC, was John’s “alter ego.” This appeal followed.

On appellate review, “[f]indings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” CR 52.01. A “trial court's legal conclusions are reviewed *de novo* as an issue of law.” *Smith v. Smith*, 450 S.W.3d 729, 734 (Ky. App. 2014).

On appeal, the Appellants do not challenge any of the court’s factual findings regarding “alter ego” liability;² rather, they contend the garnishment order was void *ab initio* because Appellees did not have a final judgment against Acceleris, LLC, before obtaining the order of garnishment.

KRS 425.501 addresses garnishment orders. The statute states, in relevant part:

(1) Any person in whose favor a final judgment in personam has been entered in any court of record of this state may, upon the filing of an affidavit by him or his agent or attorney in the office of the clerk of the court in

² In *Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC*, 360 S.W.3d 152, 155 (Ky. 2012), our Supreme Court explained: “Piercing the corporate veil is an equitable doctrine invoked by courts to allow a creditor recourse against the shareholders of a corporation. In short, the limited liability which is the hallmark of a corporation is disregarded and the debt of the pierced entity becomes enforceable against those who have exercised dominion over the corporation to the point that it has no real separate existence. A successful veil-piercing claim requires both this element of domination and circumstances in which continued recognition of the corporation as a separate entity would sanction a fraud or promote injustice.”

which the judgment was entered, and in the same cause in which said judgment was obtained showing the date of the judgment and the amount due thereon, and that one (1) or more named persons hold property belonging to, or are indebted to, the judgment debtor, obtain an order of garnishment to be served in accordance with the Rules of Civil Procedure.

...

(4) The judgment debtor may appear and claim the exemption of any property or debt that is exempt from execution, and on proof of exemption the garnishment shall be discharged as to the exempt property or debt.

(5) If the court finds that the garnishee was, at the time of service of the order upon him, possessed of any property of the judgment debtor, or was indebted to him, and the property or debt is not exempt from execution, the court shall order the property or the proceeds of the debt applied upon the judgment.

After careful review, we believe the trial court properly followed the directives of KRS 425.501. It is undisputed Appellees obtained a judgment against John, along with a separate final judgment that found John's company, Lee Development Group d/b/a/ Acceleris IT, jointly and severally liable for the common law judgment. Pursuant to KRS 425.501(1), Appellees subsequently obtained an order of garnishment against the bank account of Acceleris, LLC, alleging Acceleris, LLC, was a judgment debtor in its capacity as an "alter ego" of John. Appellants objected to the garnishment pursuant to KRS 425.501(4), contending Acceleris, LLC, was not a judgment debtor in the action before the family court. The court then held a hearing pursuant to KRS 425.501(5) to address

the objections to the garnishment raised by Appellants. Based on the testimony presented, the court concluded Acceleris, LLC, was a judgment debtor in its capacity as an “alter ego” of John. In its findings of fact, the court stated, in relevant part:

Mr. Lee testified that he was the sole member of Acceleris, LLC, and that he alone made all the managerial decisions.

Mr. Lee acknowledged that he used money from Acceleris, LLC, to pay personal debt. Introduced as an Exhibit is a copy of a check on an Acceleris, LLC, account made payable to the Internal Revenue Service, which he acknowledged was used to pay his personal back taxes. Mr. Lee also testified that he used Acceleris, LLC, funds to fund his son’s baseball team. Mr. Lee contended that Acceleris, LLC, funds that were used to pay personal debt was salary. He further acknowledged that funds from Acceleris, LLC, were used to pay his personal providers.

Mr. Lee acknowledged that he opened a checking account with a bank located in Indiana. When questioned as to whether he opened the account to avoid garnishment, he stated that he did business with his business associates. As to the Acceleris, LLC, bank account, Mr. Lee testified that he used his personal social security number to identify the account even though Acceleris, LLC, has its own Federal ID number.

Despite Appellants’ argument to the contrary, we are not persuaded the garnishment order was void *ab initio*.³ We find no error in the trial court’s

³ Appellants also briefly argue the affidavit for the writ of garnishment filed by Appellees was defective because it was not notarized. The record reveals this argument was never ruled upon by the trial court; consequently, it was not preserved for appellate review. *Regional Jail Authority v. Tackett*, 770 S.W.2d 225, 228 (Ky. 1989).

conclusion that Acceleris, LLC, was a judgment debtor in its capacity as an “alter ego” of John.

Finally, Appellants also contend the trial court erred by granting the motion to interplead Acceleris, LLC. This argument is without merit, as the record clearly reflects the court never ruled upon the motion to interplead because Appellees advised the court they were no longer pursuing the motion.

For the reasons stated herein, we affirm the order of the Jefferson Circuit Court.

ALL CONCUR

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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