



In the Missouri Court of Appeals Eastern District

DIVISION ONE

UNIFUND CCR PARTNERS, ASSIGNEE)	
OF CITIBANK (SOUTH DAKOTA) N.A.,)	ED106082
)	
Plaintiff/Appellant,)	Appeal from the Circuit Court
)	of Ralls County
v.)	
)	
WILLIAM O. ABRIGHT,)	Honorable David C. Mobley
)	
Defendant/Respondent.)	Filed: June 12, 2018

Introduction

Unifund CCR Partners, Assignee of Citibank (South Dakota) N.A. (Appellant) appeals from the trial court's judgment denying its Motion for Revival of Judgment. We affirm.

Factual and Procedural Background

On June 28, 2005, a judgment in default was entered in favor of Appellant and against William O. Abright (Respondent) for \$18,143.41 plus interest at the contract rate 23.990% from and after the date of judgment. Subsequently, Appellant requested garnishments against Respondent. Respondent's employer, the Missouri Department of Transportation (MoDOT), withheld money pursuant to the garnishments. The first payment by garnishment was January 4, 2006; and the last payment was July 31, 2007. On July 17, 2017, Appellant filed a Motion for Revival of Judgment. On July 25, 2017, Respondent was served with the motion and the trial court issued an Order to Show Cause. On August 24, 2017, the parties appeared and the Motion

for Revival of Judgment was called, heard, and denied as untimely filed. On September 15, 2017, Appellant filed a Motion to Set Aside Denial of [Appellant's] Motion for Revival of Judgment. On October 2, 2017, the parties appeared and the motion was called, heard, and denied again as untimely filed. This appeal follows.

Points on Appeal

In its first point, Appellant claims the trial court erred in denying its Motion for Revival of Judgment because Appellant satisfied all of the factors required for a revival of judgment.

In its second point, Appellant asserts the trial court erred in denying its Motion for Revival of Judgment because Respondent did not show cause why the judgment should not be revived.

Standard of Review

Whether the trial court properly applied the law governing motions to revive judgments is a purely legal question of which our review is *de novo*. Dummett v. Koster, 446 S.W.3d 732, 734 (Mo.App. E.D. 2014).

Discussion

Rule 74.09¹ provides:

(a) When and by Whom. A judgment may be revived by order of the court that entered it pursuant to a motion for revival filed by a judgment creditor within ten years after entry of the judgment or the last prior revival of the judgment.

(b) Order to Show Cause. Upon the filing of a motion of revival of a judgment, an order shall issue to the judgment debtor to show cause on a day certain why such judgment should not be revived. The order to show cause shall be served pursuant to Rule 54 on the judgment debtor, his successors in interest, or his legal representatives.

(c) Judgment of Revival. If the judgment debtor, his successors in interest, or legal representatives fail to appear and show cause why the judgment should not be revived, the court shall enter an order reviving the judgment.

¹ All rule references are to Mo. R. Civ. P. 2017, unless otherwise indicated.

A party seeking revival of judgment need do no more than file a motion for revival within ten years of either the date the judgment was rendered or the date of the last revival. Dummett, 446 S.W.3d at 734-35. Appellant filed its motion for revival of the June 28, 2005 judgment on July 17, 2017, which was not within the ten-year time period in Rule 74.09(a).

Appellant maintains it filed its motion for revival within ten years of Respondent's last payment, as it argues is contemplated in Section 516.350.1,² titled "Judgments presumed to be paid, when – presumption, how rebutted – records," and providing in pertinent part:

Every judgment ... shall be presumed to be paid and satisfied after the expiration of ten years from the date of the original rendition thereof, or if the same has been revived upon personal service duly had upon the defendant or defendants therein, then after ten years from and after such revival, or in case a payment has been made on such judgment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years from the date of the original rendition or revival upon personal service, or from the date of the last payment, such judgment shall be conclusively presumed to be paid....

Appellant claims the garnished wages from Respondent's employer MoDOT are considered a payment, and thus under Section 516.350.1, Appellant had ten years from Respondent's last payment, which in this case was July 31, 2007. Therefore, Appellant maintains its Motion for Revival of Judgment, filed July 17, 2017, was timely and the trial court abused its discretion in denying its motion as untimely filed.

We disagree. Appellant misreads Section 516.350.1 because within it is a presumption an initial motion for revival of judgment has been filed within ten years of the original judgment in order to use a subsequent payment by the judgment debtor as a revival benchmark date. Here, Appellant filed its initial motion for revival of the June 28, 2005 judgment on July 17, 2017, which was outside the ten-year time period in Rule 74.09(a). Accordingly, Appellant is not

² All statutory references are to RSMo 2000, unless otherwise noted.

permitted to use a payment date as a revival benchmark date. Moreover, Rule 74.09 itself does not provide for a payment to be considered at all in the calculation of a time for a revival of judgment, to-wit: “A judgment may be revived by order of the court that entered it pursuant to a motion for revival filed by a judgment creditor within ten years after entry of the judgment or the last prior revival of the judgment.” Rule 74.09(a).

The trial court did not abuse its discretion in denying Appellant’s Motion for Revival of Judgment as untimely. Therefore, there was cause why the June 28, 2005 judgment should not be revived. Points I and II are denied.

Conclusion

The judgment of the trial court is affirmed.



SHERRI B. SULLIVAN, J.

Robert G. Dowd, Jr., P.J., and
Kurt S. Odenwald, J., concur.