06/15/84 JOE W. TIPTON AND WIFE ELSIE L. TIPTON

1984 | Cited 0 times | Court of Appeals of Tennessee | June 15, 1984

Goddard, J.

In this action the Plaintiffs-Appellants, Tiptons, Appeal the judgment of the lower Court which refused to enjoin the garnishment of an account held jointly by Mr. Tipton and Mrs. Tipton pursuant to an earlier judgment against Mrs. Tipton alone.

The evidence showed that Mr. and Mrs. Tipton opened a joint savings account with the right of survivorship at Home Federal Savings and Loan Association in Knoxville in March 1974 in the amount of $15,000. This account originated when a $15,000 check drawn upon Hamilton National Bank payable to Home Federal and signed by Mrs. Tipton alone was deposited at Home Federal. The signature card executed at Home Federal expressly states:

Joe W. Tipton and Mrs. Joe W. Tipton as joint tenants with right of survivorship and not as tenants in common, and not as tenants by the entirety,... hereby apply for membership and a savings account in the Home Federal Savings and Loan Association of Knoxville and for issuance of evidence thereof in their joint names described as aforesaid.

On September 15, 1978, a judgment was entered against Mrs. Tipton only in the amount of $10,620.78 in favor of Paul Parrott's Shoes, Inc., for whom Mrs. Tipton had been a bookkeeper. On June 29, 1981, Mrs. Tipton borrowed $5000 from Home Federal, pledging the joint account as security for the loan.

On May 11, 1982, Paul Parrott's Shoes, Inc., Defendant-Appellee, applied for a levy of execution upon this judgment to Home Federal and the Tiptons filed this suit requesting injunctive relief from the execution. The Tiptons maintained that the nature of the account and their marital status made the account exempt from execution under Tennessee law. Mrs. Tipton testified that only $5000 of the $15,000 in the account was contributed by her, the rest belonging to her husband. Mr. Tipton, though a party the the action, did not appear at the hearing and did not testify in any way. The Chancellor held that the account was subject to Paul Parrott's levy because it was owned as a joint tenancy with right of survivorship. The Chancellor stated in his memorandum opinion that although Mrs. Tipton testified she owned only $5000 of the $15,000 account, "such documentary evidence as there is does not necessarily support her claim." The Chancellor also found that Paul Parrott's levy of execution was subject to the prior claim of Home Federal. The Chancellor reaffirmed his findings upon the Tiptons' motion to reconsider and denied the motion in an order entered July 14, 1983.

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The Tiptons maintain on appeal that despite the language of the signature card that the account is held as tenants by the entirety by virtue of their marital status. We disagree.

In Tennessee and account held as tenants by the entirety is immune from garnishment by a debtor of only one party. Griffin v. Prince, 632 S.W.2d 532 (1982). However, a married couple is free to hold property in any manner they choose, including as joint tenants with right of survivorship. Griffin v. Prince, supra. In Lowry v. Lowry, 541 S.W.2d 128 (Tenn.1976), an intent to create a joint tenancy with right of survivorship was evidenced by a signature card which specifically stated that it created a joint tenancy with right of survivorship and that the parties did not hold as tenants by the entirety. [1] The Griffin Court, supra, noted that such a statement on a signature card would be sufficient to show creation of a joint tenancy with right of survivorship.

Both parties agree, as do we, that in Tennessee a creditor of one who holds an account in joint tenancy with right of survivorship may garnish that portion of the debtor's share of the funds in the account. Jones v. Richardson, 99 Tenn. 614, 42 S.W. 440 (1897); McCain v. Hill, 3 Tenn.Cases (Shannon,), 654 (1875). However, the Tiptons maintain that absent proof to the contrary the funds are presumed to be held by the depositors equally. Paul Parrott's maintains, however, that the entire amount is subject to the creditor absent proof by the holders of the account to the contrary. The Tiptons base their argument on dicta contained in Griffin, supra. However, in that case the Supreme Court never adopted or formulated this rule. Rather, the lower courts and parties had accepted this as the law and the Supreme Court did not pass on it but reversed on other grounds. Paul Parrott's relies on the view taken by many courts in this country as collected in 11 A.L.R.3d 1465, 1476, exemplified by the Arkansas Supreme Court case of Hayden v. Gardner, 381 S.W.2d 752 (Ark.1964). In that case the Court said that placing the burden of proof on the joint account depositor is "the fair and reasonable rule because the depositors are in a much better position than the judgment creditor to know the pertinent facts."

Recognizing that jurisdictions are not in harmony on this issue, we find that the most fair alternative in keeping with Tennessee law is the one taken by the Arkansas Supreme Court which places the burden on the depositors to prove which of the funds, if any, are not those of the debtor.

Applying the above rule to these facts, we note that only Mrs. Tipton testified as to what portion of the funds were hers and that Mr. Tipton did not even appear. In Wolfe v. City of Knoxville, an unreported opinion of this Court filed in Knoxville December 27, 1974, we stated that in Tennessee civil cases it is a well-settled rule of evidence that when a party has the ability to offer evidence to rebut proof fixing liability on him and he fails to do so, the inference arises that his evidence would support the case against him rather than rebut it. See also Doughty v. Grills, 37 Tenn. App. 63, 260 S.W.2d 379 (1952). We believe this rule applies equally to plaintiffs and defendants. A similar rule applies to a witness under the control of one party. National Life & Accident Ins. Co. v. Eddings, 188 Tenn. 512, 221 S.W.2d 695 (1949). Against this inference we have the testimony of Mrs. Tipton that she owned only $5000 of the $15,000 in the account despite the fact that the entire amount

contributed was by a check signed by Mrs. Tipton alone. We note that the Chancellor questioned Mrs. Tipton's testimony in saying that the documentary evidence did not necessarily support her claim. In view of this and all the evidence, including the fact that Mrs. Tipton's debt arose as a result of embezzlement, we find that the Tiptons did not satisfy their burden of proof in regard to the amount of the account held by Mr. Tipton and, therefore, the entire account is subject to Paul Parrott's levy, excepting the previously-noted priority of Home Federal's security interest.

The judgment of the Chancellor is affirmed. Costs of appeal are adJudged against the Tiptons and their surety.

CONCUR: Clifford E. Sanders, J., Herschel P. Franks, J.

1. We note that as the parties in Lowry were not married they could not create a tenancy by the entirety.