

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO, OHIO BUREAU OF WORKERS' COMPENSATION,
Plaintiff-Appellant,
vs.
FOREST E. MULLINS,
Defendant-Appellee.

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: Case No. 00CA10
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: DECISION AND JUDGMENT ENTRY
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: RELEASED: 11-20-00
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APPEARANCES:

COUNSEL FOR APPELLANT: Charles E. Natkins, Special Counsel for the State of Ohio, Javitch, Block, Eisen & Rathbone, 1300 East Ninth Street, 14th Floor, Cleveland, Ohio 44114-1503

COUNSEL FOR APPELLEE: Jeffrey L. Finley, 417 Second Avenue, P.O. Box 351, Gallipolis, Ohio 45631

ABELE, J.

This is an appeal from a judgment entered by the Gallia County Common Pleas Court dismissing a garnishment proceeding brought by the State of Ohio, Bureau of Workers' Compensation, plaintiff below and appellant herein, against Forest E. Mullins, defendant below and appellee herein. The following "assignment of error" is posited for our review:

"NOW COMES THE PLAINTIFF, STATE OF OHIO, BUREAU OF WORKERS' COMPENSATION, BY AND THROUGH COUNSEL, BEFORE THIS HONORABLE COURT REQUESTING THAT THIS COURT REVERSE THE ORDER OF THE COURT OF COMMON PLEAS DISMISSING THE PLAINTIFF'S GARNISHMENT PROCEEDING AGAINST

THE DEFENDANT. THE PLAINTIFF REQUESTS THAT THIS COURT APPLY THE LAW AS STATED IN THE MATTER OF IN RE SUBURBAN MOTOR FREIGHT, INC., 998 F.2d 338 (6TH CIR. 1993), AND OUTLINES SUCH ARGUMENT IN THE ATTACHED MEMORANDUM."

There is little background information in the record of this case, but it appears that appellee owned a construction related business in the early 1990s.¹ He apparently ran into problems (either with that business and/or his own personal finances) and, in 1992, filed a Chapter 7 consumer bankruptcy. The schedules he submitted along with his bankruptcy petition set forth numerous debts, including an "unsecured priority claim" by the "Ohio Bureau of Workers' Compensation" (hereinafter "BWC") for unpaid workers' compensation premiums owed on account of his business employees. The United States Bankruptcy Court for the Southern District of Ohio granted appellee a discharge from all "dischargeable debts" in May of 1993.

¹ The precise nature of that business is not entirely clear from the record. It would also appear that appellant had some sort of involvement with another business known as "Carter & Evans, Inc." but, again, the nature of that involvement is unclear from the record.

Several months later, judgment was entered against appellee in state court in the amount of \$5,365.62 for the unpaid workers' compensation premiums. It is unclear whether BWC took any other action to collect this debt but, on January 11, 2000, the agency initiated the proceedings below by filing a notice of garnishment of personal property in the trial court. Appellee objected to the garnishment and requested a hearing on grounds that the debt had been discharged in his aforementioned bankruptcy. The matter came on for a hearing at which time appellee appeared pro se and argued that he was no longer liable for payment of the workers' compensation premiums or the judgment rendered thereon. Appellee had no documentation of the bankruptcy with him at the time, however, and the matter was continued.

Appellee then obtained counsel and, on March 17, 2000, filed a motion to dismiss the garnishment. In support of that motion, he submitted copies of his bankruptcy schedules (showing the debt for unpaid workers' compensation premiums) as well as the final entry discharging his indebtedness. BWC filed a memorandum in opposition arguing that the workers' compensation premiums were excise taxes which could not be discharged under federal law.

The matter came on for a second hearing on April 5, 2000, but there is no transcript of that proceeding in the record to show what was discussed at that time. In any event, the trial court entered judgment on May 18, 2000 sustaining appellee's motion and dismissing the garnishment. The trial court held that the debt BWC sought to collect from him had been "discharged in

bankruptcy" and that the law prohibited any further enforcement of that claim. This appeal followed.

BWC argues in its assignment of error that the trial court erred in finding that the unpaid workers' compensation premiums had been discharged in bankruptcy and could not be collected in a garnishment proceeding. We agree. Our analysis begins with the provisions of Section 523(a)(1)(A), Title 11, U.S. Code which state that a discharge in bankruptcy does not discharge a debtor from those debts set forth inter alia in "section . . . 507(a)(8) of this title." The provisions of Section 507(a)(8)(E), Title 11, U.S. Code, give priority status to governmental claims for "excise taxes." Therefore, "excise taxes" are not dischargeable in bankruptcy. See e.g. Williams v. Motley (C.A.4 1991), 925 F.2d 741, 743; In re Dawson (Bankr.Or. 1989), 98 B.R. 519, 522-523.² The United States Sixth Circuit Court of Appeals held in In re Suburban Motor Freight, Inc. (C.A.6 1993), 998 F.2d 338, 342 (hereinafter referred to as "In re Suburban"), that unpaid premiums owed the BWC were excise taxes for purposes of federal bankruptcy law.

Thus, the unpaid premiums owed by appellee in this case must be treated as "excise taxes" which, under the aforementioned federal statutory provisions, are not dischargeable in bankruptcy. The trial court therefore erred in holding that the

² Creditors of nondischargeable debt are then free to pursue their claims outside of the bankruptcy proceeding. See In re Grynburg (C.A.10 1993), 986 F.2d 367, 370-371; also see generally 4 Collier on Bankruptcy (15th Ed. 1998), 501-7, ¶ 501.01[3][d].

claim against appellee had been discharged and that BWC could not pursue the debt through a garnishment proceeding.

Appellee does not contest application of these principles to the present case but argues, instead, that In re Suburban was not decided until a month after his discharge and should not be applied to him retrospectively. We are not persuaded. Unlike statutory enactments, judicial pronouncements of the law generally apply retrospectively. State v. Akers (Sep. 9, 1999), Lawrence App. No. 98CA33, unreported; also see Shockey v. Our Lady of Mercy (Jun. 25, 1997), Hamilton App. No. C-960492, unreported. The effect of a court decision is not to make new law, but only to hold that the law always meant what the court says it now means. Akers, supra. There are exceptions to this rule in those instances in which a court expressly indicates that its decision is only to apply prospectively, see Lakeside Ave. L.P. v. Cuyahoga Cty. Bd. Of Revision (1999), 85 Ohio St.3d 125, 127, 707 N.E.2d 472, 475; State ex rel. Bosch v. Indus. Comm. (1982), 1 Ohio St.3d 94, 98, 438 N.E.2d 415, 418, or in which contractual rights have arisen or a party has acquired vested rights under prior law. See Peerless Elec. Co. v. Bowers (1955), 164 Ohio St. 209, 210, 129 N.E.2d 467, 468; also see Cartwright v. The Maryland Ins. Group (1995), 101 Ohio App.3d 439, 443, 655 N.E.2d 827, 829; King v. Safeco Ins. Co. (1990), 66 Ohio App.3d 157, 161-163, 583 N.E.2d 1051, 1054-1055. Those circumstances do not exist here, however, and we therefore conclude that the In re Suburban decision controls in the present case.

We would parenthetically note that even if In re Suburban did not control this case, we would still reach the same result.

That decision by the Sixth Circuit Court of Appeals was not the first time this issue was addressed in federal court. Several lower level bankruptcy courts had also reviewed this issue and had reached the same conclusion. See In re Primeline Industries, Inc. (N.D.Ohio 1987), 103 B.R. 861, 862; In re Mansfield Tire & Rubber Co. (N.D.Ohio 1987), 80 B.R. 395, 398; In re International Automated Machines, Inc. (N.D.Ohio 1981), 9 B.R. 575, 576. Thus, even if In re Suburban did not apply here, this Court would have followed the principles set down in these other cases and found that workers' compensation premiums owed by appellee were excise taxes which could not be discharged in bankruptcy.

For these reasons, the assignment of error is well taken and is hereby sustained. The judgment of the trial court is reversed and this cause is remanded for further proceedings consistent with this opinion.

JUDGMENT REVERSED AND
CAUSE REMANDED FOR
FURTHER PROCEEDINGS.

JUDGMENT ENTRY

It is ordered that the judgment be reversed and remanded for further proceedings. Appellant shall recover of appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Exceptions.

Harsha, J. & Kline, P.J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele
Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.