

IN THE COURT OF APPEALS OF IOWA

No. 1-331 / 10-1291
Filed June 29, 2011

PEOPLES TRUST & SAVINGS BANK,
Plaintiff-Appellee,

vs.

SECURITY SAVINGS BANK,
Defendant-Appellant.

Appeal from the Iowa District Court for Boone County, William C. Ostlund,
Judge.

A defendant appeals from the district court's order granting summary
judgment in favor of the plaintiff. **APPEAL DISMISSED.**

Gary A. Norton of Whitfield & Eddy, P.L.C., Des Moines, for appellee.

Steven W. Hendricks of Kersten Brownlee Hendricks, L.L.P., Fort Dodge,
for appellant.

Heard by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

Peoples Trust & Savings Bank (Peoples) asks us to dismiss Security Savings Bank's (Security's) appeal, asserting we have no appellate jurisdiction as the judgment in Peoples' favor has been paid.

I. Background Proceedings.

On June 24, 2010, the district court found Peoples had a prior perfected security interest in certain collateral over Security's interest. See Iowa Code § 554.9322 (2009). The decision is a thorough account of all the facts in dispute, legally sound, and well reasoned, ultimately ordering judgment in favor of Peoples and against Security for \$299,353.94 plus interest. On July 23, Security filed its notice of appeal, but did not file a supersedeas bond. See Iowa R. App. P. 6.601(1)–(5).

On or about July 27, Peoples transcribed its judgment to the State of Wisconsin, Dane County Circuit Court. Notice of Garnishment dated August 16, was served on Security. Email correspondence was exchanged between the attorneys for Peoples and Security, which included the following:

August 2 [Security to Peoples]: "I have advised my client that you can levy on your judgment unless we file an appeal bond."

August 13 [Security to Peoples]: "I would like to offer to place the amount required to satisfy the judgment in an interest bearing escrow account . . ."

August 18 [Security to Peoples]: "We would suggest Bankers Bank as the escrow agent to hold funds."

August 19, 10:40 AM [Peoples to Security]: "Your proposal is of some interest, but our client is unsure if it would be in its interests at present."

August 19, 10:49 AM [Security to Peoples]: "Were you aware of the garnishment directed to Banker's Bank? That garnishment has made getting a resolution an immediate issue."

August 20, 11:22 AM [Peoples to Security]: "Wisconsin counsel for our client has forwarded to me the attached

Garnishment Summons and Complaint . . . Would you be willing and authorized to accept service of this document and sign an acceptance of service to that effect? Otherwise, I will have a process server accomplish the service.”

August 20, 12:57 PM [Security to Peoples]: “I don’t know why there needs to be a garnishment at all. We have indicated we would prefer to set up an escrow arrangement but will pay the judgment in full. Just tell me that is what your client wants. I will need until Monday to make the arrangement but if that is People’s position I will get you certified funds.”

August 20, 2:47 PM [Peoples to Security]: “As we discussed by telephone a few minutes ago, our client will accept payment of, and you have stated your client will pay, the amount stated on the Garnishment Summons and Complaint I emailed to you earlier today . . . \$301,430.73, to fully satisfy the judgment. . . . Once the payment is received, the garnishment procedure will be withdrawn. . . .”

August 23 [Security to Peoples]: “I am attaching the signed Acceptance. If you can send me wiring instructions . . . we could do a wire. Otherwise we will mail certified funds today.”

August 23, 8:41 AM [Security’s Attorney to Security, with copy to Peoples]: “So there [is] no misunderstanding, this payment is made as a result of a demand to satisfy the judgment pending appeal. I understand the garnishment and any other collection activity will be rescinded and cancelled.

Iowa Rule of Appellate Procedure 6.601 provides that unless a bond is posted or unless the Supreme Court issues an Order staying the judgment the appeal does not stay enforcement of judgment. I will prepare a pleading to be filed acknowledging payment of the judgment without waiving the pending appeal.”

Security paid the full amount of the judgment with accrued interest by wire transfer. The wire transfer was evidenced in the record with a document entitled “Incoming Wire Detail,” dated August 23, 2010, showing the amount of \$301,430.73, and referencing the underlying case. A “Satisfaction of Judgment, Satisfaction of Lien” was filed in the State of Wisconsin on August 25, 2010, for the full amount of the judgment, plus interest. The Garnishment Summons and Complaint was then dismissed.

On September 10, 2010, Peoples filed a motion to dismiss Security's appeal. In response, Security's attorney filed an affidavit dated September 15, 2010 reciting,

I advised [Security] that an appeal did not stay proceedings under a judgment or order unless the Appellant executed a bond, which was not available. . . . After the Notice of Garnishment was served on [Security], I contacted [People's attorney] to let him know that the Notice of Garnishment was embarrassing to my client and that we would like to make arrangements to get the judgment paid. The wire transfer was made as a result of the Notice of Garnishment. The payment was not voluntary but caused by the garnishment.

On October 8, 2010, our Supreme Court ordered Peoples' motion to dismiss be addressed in the parties' appellate briefs.

Our review is for correction of errors at law. Iowa R. App. P. 6.907; *Adams v. Johnson*, 445 N.W.2d 422,423 (Iowa Ct. App. 1989).

II. Payment of Judgment and Preservation of Appeal.

Generally, payment of a judgment constitutes acquiescence in the judgment and waiver of the right to appeal. See *Adams*, 445 N.W.2d at 424 ("It is well settled that a party who makes payment of a judgment or who accepts the benefits of a judgment may not ordinarily challenge the action from which his actions arise on appeal. The party relying on the appellate waiver doctrine, however, has burden to demonstrate a voluntary and knowing waiver."); see also, e.g., *Starke v. Horak*, 260 N.W.2d 406, 407 (Iowa 1977) ("Ordinarily voluntary compliance with a judgment by a party requires dismissal of his appeal."); *Ames Gen. Contractors, Inc. v. Iowa Emp't Sec. Comm'n*, 200 N.W.2d 538, 541 (Iowa 1972) (explaining that payment of a judgment constitutes acquiescence in the judgment and waiver of the right to appeal); *Bates v.*

Nichols, 223 Iowa 878, 274 N.W. 32, 33 (1937) (“[V]oluntary payment of a judgment by one against whom the judgment is entered precludes an appeal.”).

Security resists the motion to dismiss. Security first argues that because the notice of appeal was filed before the judgment was paid, the waiver rule does not apply. In support of this argument, Security cites to *Credit Industrial Co. v. Bendixen*, 255 Iowa 1020, 1022, 125 N.W.2d 262, 263 (1963) (“[V]oluntary payment of a judgment by one against whom the judgment is entered precludes an appeal[.]”). The *Credit Industrial Co.* court found that it was not when the judgment was paid, but rather whether the payment was voluntary that determines whether an appeal is precluded. *Credit Indus. Co.*, 255 Iowa at 1021–22, 125 N.W.2d at 262–63. The court further found that there was no distinction of merit between whether the judgment was satisfied before the notice of appeal was filed or simultaneous with the notice of appeal. *Id.* at 1022, 125 N.W.2d at 263. Likewise, we find no distinction of merit between payment of judgment before or after filing the notice of appeal. See *Bell v. Great Atl. & Pac. Tea Co.*, 257 Iowa 241, 243, 132 N.W.2d 358, 359–60 (1965) (“Nor do we think it material whether the judgment is paid before, at the time of, or after taking the appeal. If paid before, there remains nothing to appeal from; if paid after, the appeal is lost by acquiescence and waiver.”), *overruled on other grounds by Vermeer v. Sneller*, 190 N.W.2d 389, 396 (Iowa 1971).

Security next argues that the payment was not voluntary because Security paid the judgment under the threat of garnishment. Although indicated in the August 23 email, no pleading was filed objecting to the voluntariness of the payment. Peoples responds that Security had other means to stay the execution

of garnishment. Pursuant to Iowa Rule of Appellate Procedure 6.601(1)–(5), Security could have filed a supersedeas bond, which would have stayed the execution of the judgment and garnishment. See *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 101 (Iowa 2004) (citing *Edge v. Harsha*, 334 N.W.2d 741, 742 (Iowa 1983) (“A supersedeas bond is a method of keeping creditors at bay to maintain the status quo until an appeal is decided. It does not work to deprive a judgment of its force, only to withhold moving upon the judgment debtor.”)); *Lutz v. Darbyshire*, 297 N.W.2d 349, 352 (Iowa 1980) (“In Iowa an appellee may invoke judicial power to enforce a decree while its correctness is being appealed, unless a supersedeas bond is filed.”), *overruled on other grounds by Phillips v. Iowa Dist. Ct.*, 380 N.W.2d 706, 708–09 (Iowa 1986). It is apparent from the email correspondence that this option was considered but rejected by Security, and that paying the judgment was preferable to the “embarrassment” caused by the garnishment. Because Security chose to pay the judgment in full rather than posting the supersedeas bond and resisting the garnishment, the payment was voluntary. Therefore, we grant Peoples’ motion to dismiss.

APPEAL DISMISSED.