

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE R. TALJONICK, Personal
Representative of the Estate of JUSTIN NILES
KING, a/k/a JUSTIN NILES TALJONICK,

Plaintiff-Appellant,

v

JEFFREY WAYNE STEBBINS,

Defendant-Appellee,

and

J.G. WENTWORTH SSC LIMITED
PARTNERSHIP,

Intervening Plaintiff-Appellee,

and

AMERICAN GENERAL ANNUITY, a/k/a AIG
ANNUITY INSURANCE COMPANY,

Intervening Plaintiff,

and

WESTERN NATIONAL LIFE INSURANCE
COMPANY and AMERICAN GENERAL
INSURANCE COMPANY,

Garnishers-Appellees.

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

In this garnishment action, plaintiff Lawrence R. Taljonick, personal representative of the estate of Justin Niles King, a/k/a Justin Niles Taljonick, appeals as of right from an order

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granting intervening plaintiff J.G. Wentworth, S.S.C. Limited Partnership's (Wentworth) motion to award it title to certain proceeds of an annuity contract that garnishee Western National Life Insurance Company (Western) issued to defendant Jeffrey Wayne Stebbins and to quash the garnishment writ. We affirm.

In the present case, plaintiff obtained a default judgment against Stebbins in a wrongful death action. Years earlier, Stebbins had settled a negligence action against Chrysler Corporation that was funded by an annuity purchased from Western, now known as American General Annuity Insurance Company (AGAIC). The settlement entitled Stebbins to monthly payments for life as well as a series of lump sum payments according to a fixed schedule. Based on his judgment against Stebbins, plaintiff attempted to garnish these annuity payments. But Wentworth was granted intervenor status and moved to quash plaintiff's writ of garnishment on the grounds that Stebbins had sold his right to a portion of the annuity payments to Wentworth. Plaintiff responded by asserting that the sale of these payments was invalid because the settlement agreement between Chrysler and Stebbins prohibited Stebbins from assigning his rights to the annuity payments. The trial court held that plaintiff did not have standing to enforce the anti-assignment clause and quashed the garnishment writ as to the payments purchased by Wentworth. This appeal ensued.

On appeal, plaintiff maintains that the trial court erred in finding that plaintiff lacked standing to challenge Stebbins' assignment of a portion of his annuity payments to Wentworth. Plaintiff maintains that his \$1,000,000 judgment against Stebbins in the underlying wrongful death action is a legally protected interest and provides a sufficient personal stake to challenge the improper assignment of some of Stebbins' annuity payments. We disagree.

Whether a plaintiff has standing presents a question of law that is reviewed de novo. *Crawford v Dep't of Civil Service*, 466 Mich 250, 255; 645 NW2d 6 (2002), citing *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 734; 629 NW2d 900 (2001). With respect to standing, in *Crawford, supra*, our Supreme Court explained:

In *Lee*, we endorsed the test articulated by the United States Supreme Court in *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992), in which the Court said:

Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

We concluded in *Lee*:

In our view, the *Lujan* test has the virtues of articulating clear criteria and establishing the burden of demonstrating these elements. Moreover, its three elements appear to us to be fundamental to standing; the United States Supreme Court described them as establishing the "irreducible constitutional minimum" of standing. We agree. Accordingly, we now join Justice Cavanagh's view [in *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 651-652; 537 NW2d 436 (1995)] and adopt the *Lujan* test [*Crawford, supra* at 258.]

"Generally, one who is not a party to an agreement cannot pursue a claim for breach of the agreement." *First Security Savings Bank v Aitken*, 226 Mich App 291, 305; 573 NW2d 307 (1997), overruled in part on other grounds by *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456 n 2; 597 NW2d 28 (1999); *Gianotta v Holderid*, 143 Mich App 249, 252; 372 NW2d 326 (1985).

In the present case, plaintiff was not a party to the settlement agreement that Stebbins entered into with Chrysler and several affiliated companies. Indeed, plaintiff does not claim any legal relationship to the settlement agreement and its anti-assignment provision that he seeks to enforce. Plaintiff's only argument is that his judgment against Stebbins, who is a party to the settlement agreement, is a legally protected interest that provides a personal stake in the matter and will ensure vigorous litigation in an effort to void the assignment of certain proceeds resulting from the settlement agreement. We have no doubt that if plaintiff has standing he will prosecute this garnishment action vigorously by seeking to void Stebbins' assignment to Wentworth. However, more is required to have standing to enforce the settlement agreement. It requires that plaintiff be a party to agreement, which he is not. *First Security, supra*. Not being a party to an agreement, plaintiff can show no injury in fact, and therefore plaintiff does not have standing. *Crawford, supra*.

Plaintiff also contends that the sale of the annuity payments should be found to constitute a fraudulent conveyance and be held invalid.

We note that the Legislature repealed the Uniform Fraudulent Conveyance Act (UFCA) as of December 30, 1998, and on that date, the Uniform Fraudulent Transfer Act (UFTA), MCL 566.31 *et seq.*, went into effect. 1998 PA 434, § 13; MCL 566.43. The first five of the six purchase agreements that Stebbins entered into with Wentworth were made before the effective date of the new statute. But the fifth amended purchase agreement, dated April 22, 1999, occurred under the UFTA.

Regardless, Stebbins' transfers of his rights to payment under the settlement agreement did not constitute a fraud on his creditors under either the UFCA or the UFTA. Under MCL 566.16 of the UFCA, a conveyance made without fair consideration is fraudulent as to present and future creditors if the person making the conveyance intends or believes he will incur debts beyond his ability to pay as they mature. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 658-659; 513 NW2d 441 (1993). And MCL 566.17 states that any conveyance made with the actual intent to hinder, delay, or defraud either present or future creditors constitutes fraud. *Coleman-Nichols, supra*. Similarly, the UFTA provides in relevant part:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made

or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor did either of the following:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.
[MCL 566.34 (1).]

In the present case, the six purchase agreements that Stebbins entered into all occurred before the October 14, 1999 collision that gave rise to plaintiff's wrongful death action. Although both statutes take future creditors into account, plaintiff has presented no evidence that Stebbins believed he was going to incur future liability or actually intended to defraud creditors when he sold his rights to the payments under the settlement agreement. Furthermore, in exchange for giving up his right to the annuity payments, Stebbins received an immediate payment of over \$121,000. The total amount of future payments that he gave up to obtain this sum was just over \$342,000. However, Wentworth will not be able to collect the entire amount until February 22, 2011. Because Stebbins received his payment in an immediate lump sum rather than having to wait years for the payments, the difference in the two sums is not exorbitant. Thus, Stebbins did not fail to receive fair consideration or a reasonably equivalent value in return for his rights under the settlement agreement. The trial court did not err in finding that the sales did not constitute a fraud on Stebbins' creditors and we affirm its order quashing the garnishment writ.

Plaintiff's remaining issue, concerning the enforceability of the anti-assignment clause in the settlement agreement, is rendered moot in view of our conclusion that plaintiff lacked standing to challenge the settlement agreement. Consequently, we decline to address it.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra