

IN THE SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

ROSEBUD SIOUX
FILED
JAN - 2 2020
TRIBAL COURT

DOCKET #CA2019-01

LAVERN LANZ,
Plaintiff- Appellant

MEMORANDUM OPINION

V.

AND ORDER

GEORGE SCHMIDT,
Defendant- Appellee

Per Curiam (Charles Abourezk, Chief Justice and Associate Justices Frank Pommersheim and Pat Donovan).

This appeal involves the attempted collection of a money judgment entered by the Rosebud Sioux Tribal Court. Appellant, Lavern Lanz, appeals the Tribal Court's order denying an order to show cause and an order denying an issuance of a bench warrant in Lanz's latest effort to collect on the judgment.

For the reasons set forth below, this Court reverses the trial court's dismissal of Lanz's effort to collect on the judgment.

PROCEDURAL AND FACTUAL HISTORY

In 2004 Lanz obtained a money judgment against George Schmidt and another co-defendant jointly and severally in the amount of \$8,500. Since the entry of the money judgment, Lanz has

been diligent and continuous in his efforts to collect on the judgment from Schmidt.¹

The record shows Lanz filed multiple motions for orders to show cause why Schmidt should not be found in contempt of court for failure to pay on the judgment, motions for bench warrants and motions for debtor's exam to determine assets Schmidt has to pay of the judgment. There were many efforts by Lanz to collect from 2007 to 2014. He also made many diligent efforts from 2014 to the present. These filings are too numerous to recite here but exceeds more than a dozen. After several contempt citations, the trial court ordered Schmidt to make monthly payments to purge his contempt for failure to pay on the judgment.

Lanz then filed a motion to show cause and affidavit on May 2, 2019 for Schmidt's failure to make the monthly payments as ordered. On May 6, 2019 the trial court entered an order denying Lanz's motion to show cause. The trial court cited Rule 64(d)² in its dismissal. The court found that the judgment was granted over 14 years ago and nothing in the court record showed that Lanz brought an action or request to renew the judgment.

Both parties appeared pro se. Justices Pommersheim and Donovan appeared telephonically.

ISSUES ON APPEAL

Lavern Lanz argues that because he actively pursued the matter by filing appropriate pleadings and motions, made all court appearances and otherwise kept up on developments, his case should not have been dismissed. He further argues that even though he made countless attempts to collect on the judgment, Schmidt failed to abide by court orders to do so.

DISCUSSION

The trial court dismissed Lanz order to show cause in his effort to collect on the judgment for failure to file a motion prior to August 4, 2014 to renew the period of limitations of the judgment

¹ From the limited record before us it appears that to date Schmidt has paid Lanz a mere \$805.00.

² RST Law and Order Code Title 4 Chapter 1 Rules of Civil Procedure.

for an additional 10 years. The court relied on Rule 64(d). Rule 64(d) provides in relevant part:

A partially satisfied judgment or an unsatisfied judgment shall continue in effect and become and remain a lien upon the judgment debtor's property for a period of 10 years or until satisfied, whichever comes first. An action to renew a judgment may be maintained anytime prior to the expiration of the 10 years and will extend the period of limitations an additional 10 years and may thereafter be extended once more by the same procedure.

Lanz argues that since he was diligent in seeking the collection of the judgment in this matter, the judgment should be extended another 10 years, even though he did not maintain an action to renew the judgment for another 10 years. It should be noted that Lanz proceeded throughout these proceedings without the assistance of counsel and proceeded throughout pro se.

The original 10-year life of this judgment ran from August 4, 2004 to August 4, 2014. Yet the trial court allowed Lanz to proceed with his collection efforts over five years beyond August 4, 2014. It would be inequitable to allow the trial court to sua sponte (of its own accord) dismiss the judgment as being time barred after allowing Lanz to proceed on the collection of it well after August 4, 2014. The record reveals that the trial court entertained motions to show cause, motions for bench warrants several times after August 4, 2014 and in fact the trial court entered orders either finding Schmidt in contempt of court for not making monthly payments on the judgment as ordered and issued many bench warrants during the same time frame. The trial court issued a bench warrant for nonpayment in 2014, 2015 and twice in 2017. The trial court issued contempt citations after hearings on motions to show cause in 2015, four times in 2016, twice in 2017 and once in 2019.

The equities of the situation dictate that because the trial court allowed Lanz to continue to collect on the judgment for over 5 years after the original judgment expired in affect allowed the judgment to be extended to August 4, 2024. Allowing the trial court to sua sponte raise the time limitations at this juncture of the proceedings would be inequitable and serve only to benefit a

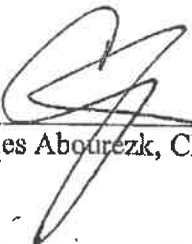
defendant who has consistently failed to satisfy a legal money judgment rendered against him fifteen years ago. Mr. Lanz is forewarned that he will be required file a motion to maintain an action to extend this second 10-year period of limitation for another 10 years prior to August 4, 2024 if he wishes to pursue collection on any unsatisfied portion of the judgment remaining.

Conclusion

For the above stated reasons, the Tribal Court order denying the motion to show cause is reversed and this matter is remanded to the trial court for further proceedings consistent with this opinion.

Dated this 27th day of December, 2019.

BY THE COURT:



Charles Aboutrezk, Chief Justice