UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-4809

INEZ PHELAN,

Plaintiff-Appellant,

VERSUS

FEDERAL DEPOSIT INSURANCE CORPORATION,
as receiver for First State Bank of McKinney and
FIRST BANK OF McKINNEY,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(4:90 CV 176)

July 16, 1993

Before SMITH, DUHÉ, and WIENER, Circuit Judges.

PER CURIAM:[1]

Plaintiff Appellant Inez Phelan, individually and "as Trustee for the Collin County Sheriff and Treasury Department," filed this action for wrongful garnishment and conversion against First State Bank of McKinney ("the Bank") for paying four certificates of deposit to the sheriff. The Bank had just failed, and Defendant Appellee the FDIC as receiver intervened and removed to federal court. On cross-motions for summary judgment, the court ruled for

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Defendant based on the preclusive effect of a garnishment agreed judgment.[2] We affirm and grant the motion to dismiss by First Bank of Farmersville.

I.

The first question is whether the district court erred in giving preclusive effect to the agreed judgment in the garnishment action. The agreed judgment has the same effect in the federal district court as it has in Texas courts. 28 U.S.C.A. § 1738 (1966); Steph v. Scott, 840 F.2d 267, 279 (5th Cir. 1988). Under Texas law a settlement agreement and release, valid on its face, is a complete bar to any later action based on the matters included in the settlement agreement and covered by the release. Tobbon v. State Farm Mut. Auto. Ins. Co., 616 S.W.2d 243, 245 (Tex. Civ. App.--San Antonio 1981, writ ref'd n.r.e.) (citing Hart v. Traders & Gen. Ins. Co., 189 S.W.2d 493, 494 (1945)). Rules relating to contract interpretation apply to an agreed judgment, and the judgment is accorded the same degree of binding force as a final judgment rendered after a trial. McCray v. McCray, 584 S.W.2d 279, 281 (Tex. 1979).

Phelan had purchased from the Bank four certificates of deposit in her name as trustee for the sheriff and had delivered them to the County Treasury Department as security for bail bond forfeiture judgments in connection with her bail bond business. The State of Texas filed in County Court an application for a post-

[2] On motion for new trial, the district court allowed Phelan to pursue a conversion claim in her capacity as trustee. Summary judgment was later reentered for defendant.

judgment writ of garnishment directed to the Bank as garnishee, alleging debt on bond forfeiture judgments. Funds from the four certificates of deposit were among the garnished assets. In the garnishment proceeding Phelan agreed to entry of a judgment which stated as follows:

> The Court finds that it has jurisdiction over this cause of action.
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> . . .
>
> The parties have consented to the terms of this decree and the Court finds that the parties have entered into an Agreement Incident to Garnishment. The Court approves the Agreement. . . .
>
> . . .
>
> The State of Texas is entitled to recover: [description of the four certificates of deposit].
>
> The Court finds that the Certificates of Deposit were pledged as security for the payment of any judgment obtained as a result of bond forfeitures and that the judgments which are the basis of this garnishment are a result of bond forfeitures.
>
> . . .
>
> . . . [T]he First State Bank of Mc Kinney is relieved of any and all liability for any actions taken pursuant to the Writ of Garnishment.

Phelan now challenges the jurisdiction of the County Court on two bases: that the matter exceeded the jurisdictional limits of the County Court and that the court lacked subject matter jurisdiction because a district court, not a County Court, has exclusive jurisdiction over all proceedings concerning trusts. We reject these jurisdictional challenges. No defect in the jurisdiction is evident on the face of the judgment. First, the amount of the garnished assets disposed of by the judgment is within the jurisdictional limits. As for the argument that a district court would have exclusive jurisdiction over a "trust," Phelan has admitted in the consent judgment that she deposited the

certificates of deposit as a security device, namely, a pledge securing her obligations on any unpaid bond forfeiture judgments. We agree with Appellees that the mere designation of Phelan "as trustee" without more does not elevate this security device to the status of a trust.

Phelan "as trustee" also argues that she is not bound by the agreed judgment because she did not sign the judgment in her capacity as trustee. We reject the notion that a trust existed. Her purchasing the certificates "as trustee for the sheriff" and delivering them to the country treasurer constituted an assignment or pledge of the instruments as security; this arrangement did not create a trust.

This agreed judgment is thus valid on its face, in that it recognizes that the court has jurisdiction, disposes of funds in an amount not exceeding the court's jurisdictional limit, and disposes of pledged assets, not trust assets. Phelan has articulated no defect that could make the garnishment judgment subject to collateral attack.

The County Court's judgment therefore is a complete bar to any action based on the matters included in the agreement and the release. See Tobbon, 616 S.W.2d at 245. The agreed judgment relieved the Bank "of any and all liability for any actions taken pursuant to the Writ of Garnishment." Phelan agreed that the State of Texas was entitled to recover the certificate of deposit funds. Phelan's criticism of the propriety of the garnishment is waived by the agreed judgment. The disposition of the property contained in

the agreed judgment is binding. See McCray, 584 S.W.2d at 281. Thus we will not entertain arguments that Phelan's husband rather than Phelan personally signed the bond instruments, or that the bond forfeiture judgments were entered against him rather than her.

Nor do we address the question whether the Bank is liable for conversion or misapplication for having unjustifiably refused to pay her the certificates of deposit. If such withholding of the deposited funds was wrongful, Phelan released the Bank for these actions in the agreed judgment. The district court's dismissal of Phelan's claims against the Bank for such alleged wrongs was proper.

II.

The unopposed motion by First Bank, Farmersville, for dismissal from this appeal is granted.

AFFIRMED; motion to dismiss GRANTED.