

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 93-1735

Summary Calendar

---

PETER HAMMERLE,

Plaintiff-Appellant,

v.

KEVIN HASSFURTHER,

Defendant-Appellee.

---

Appeal from the United States District Court  
for the Northern District of Texas  
(3:92-CV-1653-R)

---

(April 14, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Peter Hammerle appeals the district court's grant of summary judgment in favor of Linda and Kevin Hassfurther. Finding no error, we affirm the judgment of the district court.

I.

Peter Hammerle (Hammerle) and Linda Hassfurther, formerly husband and wife, entered into state court litigation concerning

---

\*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

custody, visitation, and support of their child, Mark Jacob Hammerle, in 1991. Among other relief, Linda sought to collect past due child support and to increase the monthly amount of child support which Hammerle paid.

During the course of this litigation, Linda and her present husband, Kevin Hassfurther, suspected that Hammerle was not fully disclosing his assets and income in connection with the state support/custody action because they believed that Hammerle had acquired an ownership interest in Crow-Erickson-Hammerle Enterprises, Inc. (Crow-Erickson). Kevin Hassfurther, whose business purchases products from ABC Supply Co. (ABC Supply), requested that ABC Supply obtain a report for him from Dunn & Bradstreet on Crow-Erickson to see if Hammerle owned an interest in that company. ABC Supply delivered the Dunn & Bradstreet report as requested, along with a consumer credit report on Hammerle from TRW Credit Reporting, Inc.

Learning that Kevin Hassfurther had received a copy of his consumer credit report, Hammerle filed suit on August 14, 1992, in the United States District Court for the Northern District of Texas against Linda and Kevin Hassfurther (the Hassfurthers), alleging violation of 15 U.S.C. § 1681 et seq., the Fair Credit Reporting Act (FCRA). Hammerle alleged that the Hassfurthers knowingly and willfully obtained and used a copy of Hammerle's credit report without permissible purpose and under false pretenses.

On September 9, 1992, the Hassfurthers moved for dismissal of Hammerle's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). They argued that although the FCRA imposed civil liability on consumer reporting agencies or users of information obtained from such an agency who willfully or negligently failed to comply with any requirement of the FCRA, they were neither an "agency" or "user" under the FCRA. They further argued that the section of the FCRA which imposed criminal liability for persons who failed to comply with FCRA requirements did not expressly grant a private cause of action. The district court, however, denied the Hassfurthers' motion to dismiss, stating that it did not appear to a certainty that Hammerle would not be entitled to recover under any set of facts that could be proved in support of his claim.

On December 2, 1992, Hammerle and Linda Hassfurther signed a settlement order in their state support/custody suit. The Hassfurthers then moved for summary judgment in federal court, arguing that Hammerle's suit against them was barred by the state support/custody order because that order resolved any and all claims asserted in or arising from the support/custody action.

On April 14, 1993, the federal district court granted the Hassfurthers' motion for summary judgment. The court found that by the agreement which formed the basis of the state support/custody order, the parties "intended to put an end to all litigation--not merely the state court litigation," thus barring

the FCRA action in federal court. Hammerle then filed a timely notice of appeal.

## II.

We review the granting of summary judgment de novo, applying the same criteria used by the district court in the first instance. That is, we review the evidence and inferences to be drawn therefrom in the light most favorable to the non-moving party. Federal Deposit Ins. Corp. v. Dawson, 4 F.3d 1303, 1306 (5th Cir. 1993); Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.), cert. denied, 113 S. Ct. 462 (1992). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c).

## III.

Hammerle argues that the district court erred in concluding that the state support/custody order barred his FCRA suit against the Hassfurthers and thus in granting the Hassfurthers summary judgment. We disagree.

In its order granting the Hassfurthers summary judgment, the district court determined that by the agreed order the parties intended "to put an end to all litigation--not merely state court litigation." The court also determined that Hammerle's FCRA action "arose" from the state court litigation because "but for the underlying state court action, Mr. Hassfurther would have had

no incentive to improperly acquire a copy of [Hammerle's] credit report." Hence, the court concluded that the state support/custody order barred Hammerle's FCRA suit in federal court against the Hassfurthers.

Whether an agreed order is ambiguous or whether it clearly demonstrates the intent of the parties is a question of law. See Shelton v. Exxon Corp., 921 F.2d 595, 602 (5th Cir. 1991). The unambiguous language in an agreed order should be enforced as written, and objective intent rather than subjective intent controls. See id. at 603; Sun Oil Co. (Delaware) v. Madeley, 626 S.W.2d 726, 731 (Tex. 1981). The agreed order which Hammerle signed provides that "it is the intent of each of the parties that this agreement fully and finally resolve all past, present and future litigation arising from any suit affecting the parent-child relationship."

The undisputed summary judgment evidence established that Kevin Hassfurther requested a Dunn & Bradstreet report on Crow-Erickson to determine whether Hammerle owned an interest in that company. The evidence also established that Hassfurther sought this information because he and Linda Hassfurther suspected that Hammerle was not disclosing all of his income and assets in connection with the state support/custody suit. Hammerle does not allege or offer any evidence for the proposition that Kevin Hassfurther had any use for Hammerle's consumer credit report except for possible use by his wife in the support/custody suit.

The district court thus had grounds on which to find that

Hammerle's FCRA suit against the Hassfurthers "arose" from the support/custody suit and, as such, was barred by the state court order.

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.