

Bleidt v. Lobato

en banc

664 So. 2d 1074 (Fla. 5th DCA 1995) (en banc) · 1995-12-01

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Carwin BLEIDT, Limited Gaming of America, Inc., etc., et al., Appellants, v. Robert LOBATO, Appellee.

No. 94-2727.

District Court of Appeal of Florida, Fifth District.

December 1, 1995.

Scott R. Rost of Doran, Walters, Rost, Selter & Wolfe, Daytona Beach, for Appellants.

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EN BANC.

COBB, Judge.

The final judgment in these proceedings supplementary is affirmed. We consider this case en banc in order to recede from *Wieczoreck v. H & H Builders, Inc.*, 450 So.2d 867 (Fla. 5th DCA 1984), overruled on other grounds, *Exceletech, Inc. v. Williams*, 579 So.2d 850 (Fla. 5th DCA 1991), affirmed, 597 So.2d 275 (Fla. 1992). In *Wieczoreck*, this court ruled that under section 56.29, Florida Statutes, a jurisdictional prerequisite for supplementary post-judgment proceedings is a returned and unsatisfied writ of execution. As authority for this pronouncement, the court relied on *Tomayko v. Thomas*, 143 So.2d 227 (Fla. 3d DCA 1962). *Tomayko*, however, was decided before section 56.29 *1075 was amended in 1967. The amended version of the statute eliminates the requirement that the writ of execution be returned unsatisfied so that the judgment creditor need only have a writ of execution which remains unsatisfied. See *Standard Property Investment Trust v. Luskin*, 585 So.2d 1099 (Fla. 4th DCA 1991). Accord, *Trawick*, Florida Practice & Procedure § 27-9; 2 Rakusin, Florida Creditors' Rights Manual, Ch. 8, p. 9 (D & S 1993). We recede from our erroneous pronouncement in *Wieczoreck*.¹ Accordingly, we reject the appellants' claim that return of an unsatisfied writ of execution is a jurisdictional prerequisite to proceedings supplementary.

We have considered the remaining points raised and find no reversible error.

AFFIRMED.

PETERSON, C.J., and DAUKSCH, W. SHARP, GOSHORN, HARRIS, GRIFFIN, THOMPSON and ANTOON, JJ., concur.

Footnotes

¹ We likewise recede from *Timothy Dunn Associates v. Seligman*, 557 So.2d 207 (Fla. 5th DCA 1990) and *Nestor v. Dependable Insurance Company, Inc.*, 552 So.2d 1192 (Fla. 5th DCA 1989) to the extent they are based upon the

erroneous language contained in Wieczorek.