

[Cite as *Dinu v. Dinu*, 2009-Ohio-2879.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91705

LIVIA DINU

PLAINTIFF-APPELLANT

vs.

MARIUS DINU, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-621034

BEFORE: Cooney, A.J., Blackmon, J., and Sweeney, J.

RELEASED: June 18, 2009

JOURNALIZED:
ATTORNEY FOR APPELLANT

John V. Heutsche
John V. Heutsche Co., L.P.A.
700 West St. Clair Avenue
Hoyt Block Bldg., Suite 220
Cleveland, Ohio 44113-1274

FOR APPELLEE MARIUS DINU

Marius Dinu
2119 Chesterland Avenue
Lakewood, Ohio 44107

FOR APPELLEE VALENTINA VINT

Valentina Vint
2119 Chesterland Avenue
Lakewood, Ohio 44107

**FOR APPELLEES EURO QUALITY STONE LLC, QUALITY STONE, AND
QUALITY STONE LLC**

Euro Quality Stone LLC
Quality Stone
Quality Stone LLC
5301 Commerce Parkway
Parma, Ohio 44130

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Plaintiff-Appellant, Livia Dinu (“Livia”), appeals the trial court’s dismissal of her complaint. Finding merit to the appeal, we reverse and remand.

{¶ 2} This case arose when Livia sought to collect on child support arrearages determined by the domestic relations court.¹ To accomplish this, she filed a complaint for money damages and sought to set aside fraudulent conveyances, naming as defendants: Marius Dinu (“Marius”), Valentina Vint (“Vint”), Quality Stone, Quality Stone, LLC, and Euro Quality Stone, LLC (collectively, “Quality Stone businesses”).

{¶ 3} Livia believed Marius was attempting to evade the child support determination. First, Marius, the plaintiff in the domestic relations case, had failed to attend the domestic relations proceedings, because he was in Europe. Around the same time, she alleges that he transferred his ownership interests in his home and in the Quality Stone businesses to Vint and others for little or no consideration. The domestic relations court determined that Marius owed Livia over \$14,000 in past due child support and \$5,971.50 in fees and expenses. Livia alleged that the transfers had depleted Marius’s assets to which she could satisfy the child support arrearage.

{¶ 4} In September 2007, the trial court determined that all of the defendants had been served but filed no response. The trial court ordered Livia to seek a

¹This court affirmed the judgment of the domestic relations court. See *Dinu v. Dinu*, Cuyahoga App. No. 89216, 2008-Ohio-223.

default judgment within fourteen days or face dismissal for failure to prosecute.

However, the trial court later denied the motion for default judgment, finding:

“Plaintiff’s complaint fails as a matter of law. The court finds that plaintiff’s alleged child support owed does not qualify her as a ‘creditor’ pursuant to R.C. 1336. Furthermore, as the alleged child support owed is a result of divorce decree issued by the Cuyahoga County Domestic Relations Court, that court retains jurisdiction over such. Case is hereby dismissed.”

{¶ 5} Livia now appeals, raising one assignment of error in which she claims that a child support creditor may bring an action to set aside fraudulent transfers under the Ohio Uniform Fraudulent Transfer Act, R.C. 1336. We agree.

{¶ 6} Under the Ohio Uniform Fraudulent Transfer Act, a “creditor” is a person who has a “claim.” *Prouse, Dash & Crouch, L.L.P. v. DiMarco*, 175 Ohio App.3d 467, 2008-Ohio-919, 887 N.E.2d 1211, ¶48, citing R.C. 1336.01(D). A “claim” means a “right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” *Id.*, citing R.C. 1336.01(C). See, also, *Bank One, Akron, N.A. v. Atwater Enters.* (1996), 115 Ohio App.3d 461, 471 (holding that a judgment creditor may bring an action to set aside a fraudulent transfer under the Ohio Uniform Fraudulent Transfer Act).

{¶ 7} R.C. 1336.04 defines a fraudulent transfer as follows:

“[a] transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the claim of the creditor 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 ways:

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

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and if either of the following applies:

(a) The debtor 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;

(b) The debtor intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.”

{¶ 8} Because Marius owes Livia child support, Livia has a right to payment from Marius. Accordingly, she is a creditor under the Ohio Uniform Fraudulent Transfer Act. Livia alleges that Marius received little or no consideration in return for the transfers of his home and the Quality Stone businesses. A court should not treat Livia differently than other judgment creditors who seek to set aside their debtors’ fraudulent transfers simply because Livia’s claim involves past-due child support.

{¶ 9} Several Ohio courts of appeals have recognized this principle. For example, in *DeBord v. Pheneger* (July 20, 1988), Summit App. No. 13340, the Ninth District Court of Appeals held that a former wife who had obtained a judgment for child support arrearages was a creditor under the Ohio Uniform Fraudulent Transfer Act. In that case, the former husband had transferred his interest in family property to his siblings for a nominal sum and refused to pay child support. The former wife brought an action as a creditor under R.C. 1336.01 alleging fraudulent transfer, because the former husband appeared to be shielding his assets from the judgment. A jury found in favor of the former wife, and the former husband appealed, claiming that domestic relations court had exclusive jurisdiction over child support orders.

{¶ 10} The *DeBord* Court rejected his claim, holding:

“Dianne does not claim an interest in the property upon her status as a former wife. She is a creditor; the court awarded her a judgment for arrearages in child support and she is entitled to execute on John’s assets. A cause of action for fraudulent conveyance is clearly within the jurisdiction of the courts of common pleas. R.C. 2305.01.”

{¶ 11} Similarly, the Eleventh District Court of Appeals allowed a trial court to adjudicate a judgment for past-due child support under R.C. 1336 where the former wife alleged that the former husband had fraudulently transferred property to avoid the judgment. *Cresho v. Cresho* (Aug. 15, 1994), Ashtabula App. No. 93-A-1824.

{¶ 12} Livia further argues that the trial court erred in finding that it lacked jurisdiction to adjudicate this matter. We agree.

{¶ 13} In the instant case, the trial court found that it lacked jurisdiction because the domestic relations court had issued the divorce decree that gave rise to the child support order in question. Livia argues that the domestic relations court could not resolve the issues raised against the third parties she named as defendants. She relies on our decision in *Lisboa v. Karner*, 167 Ohio App.3d 359, 2006-Ohio-3024, ¶6, in which we stated, “Any collateral claims must be brought in a separate action in the appropriate court or division when the claim involves the determination of the rights of a third party.” Since Livia has brought claims against third parties not part of the domestic relations case, the common pleas court has jurisdiction. Accordingly, the sole assignment of error is sustained.

{¶ 14} Judgment reversed, and case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

PATRICIA ANN BLACKMON, J., and
JAMES J. SWEENEY, J., CONCUR