



9 of 9 DOCUMENTS

**REGENT BANK, a Florida Corporation, Appellant, v. ROBERT WOODCOX and VIRGINIA WOODCOX, Appellees.**

**CASE No. 94-0492**

**COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT**

**636 So. 2d 885; 1994 Fla. App. LEXIS 4686; 19 Fla. L. Weekly D 1113**

**May 18, 1994, Filed**

**PRIOR HISTORY:** [\*\*1] Appeal from final order of the Circuit Court for Broward County, Harry G. Hinckley, Jr., Judge. L.T. Case No. 89-3085-CL.

**DISPOSITION:** REVERSED.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Appellant judgment creditor sought review of an order of the Circuit Court for Broward County (Florida) which denied its motion to implead a third party in proceedings supplementary under Fla. Stat. ch. 56.29.

**OVERVIEW:** Appellant judgment creditor sought to implead a third party in proceedings supplementary under Fla. Stat. ch. 56.29. Appellant had filed the requisite affidavit showing that the sheriff held an unsatisfied writ of execution on a money judgment and that the unsatisfied execution was valid and outstanding. It sought to implead the third party in the proceedings so as to discover assets which may have been fraudulently transferred by its debtor so that they could effectively be subjected to appellant's judgment. The trial court denied appellant's motion to implead on the ground that it lacked jurisdiction to permit it because the final judgment did not reserve jurisdiction for that purpose. On appeal, the appellate court held that the denial of appellant's motion was plain error because appellant had met the statutory

requirements necessary in order to implead the third party and the trial court had no discretion to deny the relief requested under the statutory proceeding. The judgment of the trial court was reversed and the matter was remanded directing the trial court to enter an order impleading the third party and to conduct further proceedings consistent with due process.

**OUTCOME:** The appellate court held that the trial court's conclusion that it lacked jurisdiction was plainly in error. Moreover, because the judgment creditor made the required statutory showing, the trial court had no discretion to deny the application. The judgment of the trial court was reversed and the trial court was directed on remand to enter an order impleading the third party and conduct further proceedings.

**COUNSEL:** Joseph W. May of Goodman, Webber & Hinden, P.A., Pembroke Pines, for appellant.

No appearance by appellees.

**JUDGES:** FARMER, KLEIN, PARIENTE

**OPINION BY:** FARMER

**OPINION**

[\*886] FARMER, J.

A judgment creditor seeks review of an order denying its motion to implead a third party in proceedings supplementary under section 56.29, Florida Statutes. The order is appealable as a non-final order entered after final order on authorized motion because the court has determined finally that it would not allow the party to be so impleaded. *See* Fla.R.App.P. 9.130(a)(4); *Sverdahl v. Farmers & Merchants Savings Bank*, 582 So. 2d 738 (Fla. 4th DCA 1991) (rule 9.130(a)(4) jurisdiction to review order entered in proceedings supplementary attaches only when trial court has entered final order on subject). The circuit judge denied this motion on the grounds that he lacked jurisdiction because the final judgment did not reserve jurisdiction for this purpose. We reverse.

The predicate for impleading [\*\*2] a third party under section 56.29 is that the judgment creditor file an affidavit showing that the sheriff holds an unsatisfied writ of execution on a money judgment and that the unsatisfied execution is valid and outstanding. The judgment creditor here filed such an affidavit. No other showing is necessary in order to implead the third party.

Under section 56.29, "a judgment creditor may treat an attempted fraudulent transfer of property to which his debtor had legal title as a nullity and sell said property under execution as though no transfer had been made." *Richard v. McNair*, 121 Fla. 733, 164 So. 836 (1935). The statutory proceeding provides "a useful, efficacious, and salutary remedy at law enabling the judgment

creditor not only to discover assets which may be subject to his judgment, but to subject them thereto *by a speedy and direct proceeding in the same court in which the judgment was recovered.*" [e.s.] *Richard*, 164 So. at 840. It is "intended to afford to a judgment creditor the most complete relief possible in satisfying his judgment." *Riley v. Fatt*, 47 So. 2d 769, 772 (Fla. 1950). [\*\*3] The statutory procedure was designed to avoid the necessity of the judgment creditor initiating an entirely separate action for a creditor's bill. *Advertects Inc. v. Sawyer Industries Inc.*, 84 So. 2d 21 (Fla. 1955); *Richard*, 164 So. at 840; *Ryan's Furniture Exchange Inc. v. McNair*, 120 Fla. 109, 162 So. 483 (1935).

Hence the court's conclusion that it lacked jurisdiction -- that the judgment creditor was required to commence an entirely new civil action simply to subject goods in the hands of a third party to its unsatisfied writ of execution -- was plainly in error. Moreover, because the judgment creditor made the required statutory showing, the trial court had no discretion to deny the application. *Richard*, 164 So. at 840 (under section 56.29 judges have the duty to implead third parties wherever it appears relief against them may be warranted). On remand the trial court shall enter an order impleading the third party under section 56.29 and conduct further proceedings consistent with due process.

REVERSED.

KLEIN [\*\*4] and PARIENTE, JJ., concur.