

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER LEBLANC,

Plaintiff–Appellee,

v

DAVID BLAIN LEBLANC, d/b/a BLAIN’S TREE
SERVICE, INC.,

Defendants,

and

SCOTTSDALE INSURANCE COMPANY,

Garnishee-Defendant-Appellant.

UNPUBLISHED

September 20, 1996

No. 182264

LC No. 91-109055-NO

Before: Michael J. Kelly, P.J., and Markman and Martlew,*JJ.

PER CURIAM.

Garnishee defendant Scottsdale Insurance Company (“Scottsdale”) appeals as of right from the circuit court’s order directing it to pay plaintiff \$147,000. We reverse.

This case arose out of fistfight between plaintiff and his brother, defendant David LeBlanc, on the premises of his brother’s business, defendant Blain’s Tree Service. Plaintiff brought suit against defendants to recover for injuries suffered in the fight. Eventually, plaintiff and defendants stipulated to a consent judgment against defendants for \$150,000. Under the terms of the judgment, defendants were to pay \$3000 and assign their rights against Scottsdale, defendants’ insurer. Plaintiff then filed a writ of garnishment against Scottsdale for \$147,000. In its garnishee disclosure, Scottsdale stated that it was not indebted to defendant for any amount in connection with the underlying suit. Upon motion by plaintiff, the lower court ordered Scottsdale’s disclosure set aside as an improper objection to the writ of garnishment. The court then ordered Scottsdale to pay plaintiff the judgment balance and fees.

* Circuit judge, sitting on the Court of Appeals by assignment.

On appeal, Scottsdale asserts that the lower court erred in setting aside the disclosure as an improper objection and ordering payment of garnishment without a trial to determine whether Scottsdale was in fact indebted to defendant. We agree.

Whether the garnishee disclosure which stated that Scottsdale was not indebted to defendant was an improper objection to the writ of garnishment under MCR 3.101(K) is a question of law. This Court reviews questions of law de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

Michigan's garnishment statute, MCL 600.4011(1); MSA 27A.4011(1), grants the circuit courts the power to apply obligations owed to a judgment-debtor to payment of the outstanding judgment. *Royal York v Coldwell Banker*, 201 Mich App 301, 304; 506 NW2d 279 (1993). The garnishment statute only applies to obligations which are owed or payable at the time the writ of garnishment is served. *Royal York*, *supra* at 304. While garnishment actions are authorized by statute, "the procedural aspects of the garnishment process are set out in the court rules under MCR 3.101 and 3.102." *Id.* at 305. The statute specifically directs that the court's exercise of jurisdiction regarding garnishment actions must conform to these court rules. *Id.*; MCL 600.4011(2); MSA 27A.4011(2).

Under MCR 3.101(G)(1)(d), the garnishee defendant is liable for any debts, whether or not due, owing by the garnishee defendant to the principal defendant when the writ of garnishment is served on the garnishee defendant. *Royal York*, *supra* at 305. If the garnishee defendant is not indebted to the principal defendant, the garnishee defendant "shall file a disclosure so indicating." MCR 3.101(H)(1)(b). If there is a dispute with respect to the liability of the garnishee defendant, "the issue shall be tried in the same manner as other civil actions." MCR 3.101(M)(1). In the event of such a dispute, the writ of garnishment containing the averments of the garnishee defendant's indebtedness acts as the complaint, and the disclosure serves as the answer. MCR 3.101(M)(2). Unless the plaintiff serves interrogatories or notices a deposition within fourteen days of the filing of the disclosure, "[t]he facts stated in the disclosure must be accepted as true" and the garnishee defendant's liability "shall be tried on the issues thus framed." MCR 3.101(M)(2); *Alyas v Illinois Employers Ins of Wasau*, 208 Mich App 324, 326; 527 NW2d 548 (1995).

The court rule also allows the garnishee defendant to file "objections" to the writ of garnishment within fourteen days of service of the writ. MCR 3.101(K)(1). Such objections "may only be based on defects in or the invalidity of the garnishment proceeding itself . . ." *Id.* After the objections have been filed, the court is required to notify the parties of the date of the hearing on the objections and of its decision. MCR 3.101(K)(3) and (4).

In the present case, Scottsdale filed its disclosure, on the approved disclosure form, indicating that it was not indebted to the principal defendants as directed by MCR 3.101(H)(1)(b). Clearly, such disclosure was not an objection to the writ of garnishment. Furthermore, it is clear that plaintiff disputed Scottsdale's denial of indebtedness. Hence, resolution of this dispute was to be accomplished by trial as in other civil actions. MCR 3.101(M)(1). Therefore, the lower court erred in determining that Scottsdale's disclosure was an improper objection and in ordering it to pay garnishment without holding

trial on the issue of the disputed indebtedness. As such, we conclude that the lower court's order must be reversed and the case remanded for trial.¹

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Stephen J. Markman
/s/ Jeffrey L. Martlew

¹ Scottsdale's assertion that remand is unnecessary because it is not liable to defendants as a matter of law is without merit. A determination of whether defendants breached the insurance contract is a factual issue which has never been resolved. Therefore, this issue cannot be resolved as a matter of law.