

STATE OF MICHIGAN  
COURT OF APPEALS

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FOWLER FARM-CITY SALES, INC.,

Plaintiff-Appellee,

v

STEVEN J. RAMON and ANNETTE RAMON,

Defendants-Appellants.

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UNPUBLISHED

August 30, 2007

No. 269224

Gratiot Circuit Court

LC No. 93-002630-CK

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendants appeal by delayed leave granted from an order denying defendant Annette Ramon’s motion for a protective order. We vacate the trial court’s decision and remand for appropriate reconsideration of that motion. This case is being decided without oral argument under MCR 7.214(E).

Defendants argue that the trial court erred in applying *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454; 674 NW2d 731 (2003), to conclude that plaintiff’s requests for writs of garnishment in this case constituted actions that extended the ten-year limitations period of MCL 600.5809(3) for enforcing the judgment at issue. A trial court’s decision on a motion for a protective order limiting discovery is reviewed for an abuse of discretion. *P.T. Today, Inc v Comm’r of the Office of Financial & Ins Services*, 270 Mich App 110, 151; 715 NW2d 398 (2006).

MCL 600.5809(3) provides in relevant part:

[T]he period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state . . . from the time of the rendition of the judgment or decree. . . . Within the applicable period of limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree. The new judgment or decree is subject to this subsection.

In *Van Reken, supra*, the plaintiff brought an ex parte motion to renew a judgment within ten years of the entry of the judgment. *Van Reken, supra* at 455. This Court rejected the defendants’ argument that a filing of a complaint was necessary to bring an “action” to renew a judgment within the meaning of MCL 600.5809(3), concluding that the ex parte motion, as “an assertion of a right through a judicial proceeding”, was sufficient to constitute an action under

MCL 600.5809(3). *Id.* at 459-461. While this conclusion would seem to indicate that plaintiff's filing of the requests for writs of garnishment in this case constituted "actions" within the meaning of MCL 600.5809(3), plaintiff's action alone is insufficient to extend the ten-year limitation period of MCL 600.5809(3) because the plain language of that provision contemplates an action "for a new judgment or decree" to extend the limitations period.

The forms used by plaintiff and the trial court to, respectively, request and grant the writs of garnishment include no language indicating that they are renewing the initial December 1993 judgment or in any way entering a new judgment or decree against defendant. Rather, they simply reflect the issuance of writs of garnishment to certain third parties to make collections on the original judgment. Notably, the *ex parte* motion in *Van Reken, supra*, seeking to renew a judgment plainly constituted an effort to obtain a new judgment or decree against the defendants in that case. Accordingly, there was no need for the *Van Reken* Court to focus on the language in MCL 600.5809(3) requiring that an action be brought to obtain "a new judgment or decree" in order to extend the limitations period. The trial court erred in considering *Van Reken, supra*, as supporting a conclusion that plaintiff's requests for the writs of garnishment at issue extended the limitations period. Rather, it appears that the ten-year limitations period on the December 1993 judgment expired in December 2003 because plaintiff never took action to renew that judgment.

With regard to plaintiff's argument that the garnishment orders constituted new judgments or decrees, a successful garnishment action effectively results in the entry of an order against a third-party garnishee to transfer funds or assets to which a defendant would otherwise be entitled to enforce a judgment against that defendant, not in a new judgment or decree against the defendant. Accordingly, such a garnishment action against a third party cannot reasonably be considered an action for a new judgment or decree that would extend the limitations period to enforce the original judgment. Rather, considered in context, the "new judgment or decree" contemplated by MCL 600.5809(3) is plainly a new judgment or decree against the defendant in the original action to renew or extend the effect of that judgment. See *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672-673; 719 NW2d 1 (2006) (expressing that statutory language should be understood according to its plain meaning together with its placement and purpose in the statutory scheme).

Because the trial court abused its discretion in denying Annette Ramon's motion for a protective order based on a flawed legal rationale we vacate that denial and remand this case to the trial court for appropriate reconsideration of that order.

Vacated and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Pat M. Donofrio  
/s/ Deborah A. Servitto