

STATE OF MICHIGAN
COURT OF APPEALS

LESLIE LEE,

Garnishee Plaintiff-Appellant,

v

CNA INSURANCE COMPANY,

Garnishee Defendant-Appellee.

UNPUBLISHED

September 29, 2005

No. 254146

Antrim Circuit Court

LC No. 99-007636-NZ

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Garnishee plaintiff appeals as of right from the trial court's order that quashed its writ of garnishment and the notice of deposition and dismissed the action with prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff initially filed this lawsuit on December 8, 1999, against Steyer Roofing Company and Follansbee Steel Company due to a defective roof that caused damage to plaintiff's home. Plaintiff received a default judgment against Steyer Roofing on April 8, 2002, in the amount of \$1,200,761.30. CNA Insurance Company was brought in as a garnishee defendant and is the only defendant involved in this appeal.¹

Plaintiff initially issued a writ of garnishment to defendant on June 12, 2002. In defendant's garnishee disclosure, it denied any indebtedness to Steyer Roofing and gave the following statement in support of its denial: "[p]olicy does not apply to underlying claim and policy defenses and exclusions apply."

Plaintiff did not challenge the disclosure within fourteen days as required by court rule. Instead, plaintiff served a notice of deposition on defendant on December 4, 2002, which was over five months after the garnishee disclosure was received by plaintiff. Nothing further transpired in the trial court concerning that initial writ of garnishment.

Plaintiff subsequently filed a new lawsuit directly against defendant. That complaint was for declaratory relief and requested that the trial court find plaintiff was a beneficiary of the

¹ Accordingly, the term defendant in the singular throughout this opinion will refer only to garnishee defendant CNA Insurance Company.

insurance policy between Steyer Roofing and defendant. The trial court granted defendant's motion for summary disposition in the declaratory action, stating that plaintiff was not a third-party or other beneficiary of the defendant's insurance contract with Steyer Roofing. The trial court also stated that it was not addressing the issue of policy coverage other than to say that plaintiff was "stuck with" defendant's denial of coverage based on plaintiff's failure to contest that disclosure according to MCR 3.101(M)(2). Neither party appealed the trial court's decision in the declaratory action.

Plaintiff served a second writ of garnishment in the initial case on defendant on December 4, 2003. The next day defendant delivered a copy of its garnishee disclosure to the court and plaintiff stating once again that it was not indebted to Steyer Roofing for any amount for multiple reasons including that the policy does not apply, policy defenses and exclusions do apply, and that the writ of garnishment had been dismissed with prejudice. Plaintiff served a notice of deposition on defendant within fourteen days after this second garnishee disclosure was filed.

The trial court held a hearing and granted defendant's motion to quash the writ and the notice of deposition and to dismiss the action with prejudice. The trial court concluded that the facts taken as true in the first attempt at garnishment cannot be questioned in this second attempt at garnishment.

This appeal involves questions concerning interpretation of court rules, which are questions of law and reviewed de novo on appeal. *Nationsbanc Mortgage Corp of Georgia v Luptak*, 243 Mich App 560, 564; 625 NW2d 385 (2000).

Garnishment actions are authorized by statute, MCL 600.4011(1). The trial court may exercise its garnishment power only in accordance with the court rules. MCL 600.4011(2). *Nationsbanc Mortgage Corp, supra*. MCR 3.101 governs garnishment after judgment. MCR 3.101(M)(2), which applies to a determination of the garnishee's liability, provides:

The verified statement acts as the plaintiff's complaint against the garnishee, and the disclosure serves as the answer. The facts stated in the disclosure *must be accepted as true* unless the plaintiff has served interrogatories or noticed a deposition within the time allowed by subrule (L)(1) or another party has filed a pleading or motion denying the accuracy of the disclosure. Except as the facts stated in the verified statement are admitted by the disclosure, they are denied. Admissions have the effect of admissions in responsive pleadings. [Emphasis added.]

A plaintiff has fourteen days within which to serve interrogatories or a notice of deposition following service of the garnishee's disclosure statement. MCR 3.101(L)(1).

The language of the court rule is mandatory and requires the court to accept facts stated in the garnishment disclosure as true when the plaintiff fails to challenge those facts within the fourteen-day time period. *Alyas v Illinois Employers Ins of Wasau*, 208 Mich App 324, 326-327; 527 NW2d 548 (1995). The *Alyas* Court stated that "the accuracy of the disclosure is precisely what plaintiff is now precluded from arguing in light of plaintiff's failure to challenge the disclosure's statement of non-liability within the period required under subrule M(2)." *Id.*

In the present case, plaintiff did not challenge the initial garnishee disclosure within fourteen days of service. Plaintiff's first response was over five months after the disclosure was served. Accordingly, plaintiff cannot now attempt to challenge the disclosure's statement of non-liability. Plaintiff argues that insurance contract questions of liability are questions of law and therefore this section of the court rule concerning facts is not applicable. We disagree. The *Alyas* Court plainly characterized a statement of non-liability from an insurance company in such a disclosure to be a statement accepted as fact when not challenged. *Id.*

Further, MCR 3.101(M)(2), as quoted above, also states that admissions in the disclosure have the same effect as admissions in responsive pleadings. It is axiomatic that an admission will not simply disappear with the passage of time and filing of subsequent motions of amended pleadings in a case. Therefore, the facts as admitted previously in this case have not terminated or expired due to the passage of time, and the statement of non-liability remains controlling in this case.

Because of the statement of non-liability controls the outcome of this case, there is no need to discuss the arguments concerning res judicata. The trial court did not err in its decision to quash the writ of garnishment and the notice of deposition, and to dismiss the action with prejudice.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey