

STATE OF MICHIGAN
COURT OF APPEALS

ABUBAKR ALKUSARI,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

UNPUBLISHED
November 2, 1999

No. 213779
Court of Claims
LC No. 97-016799 CM

Before: O'Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant appeals by leave granted the lower court's order granting plaintiff's motion for summary disposition and entering judgment for plaintiff in the amount of \$51,743.53. We reverse and remand.

Plaintiff posted a \$50,000 bail bond¹ with the Washtenaw County Clerk to secure the pretrial release of Mufed Beshara,² who had been charged with a felony.³ The criminal action against Beshara was ultimately dismissed as part of an agreement whereby Beshara, who was an illegal immigrant, was deported. Plaintiff then sought the return of the money, but was informed that the funds had been turned over to defendant pursuant to a levy filed because of an unpaid tax liability owed by Beshara.

Plaintiff then brought an action against defendant and the Washtenaw County Clerk, asserting that the levy was unlawful and seeking recovery of the money he posted. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) (failure to state a valid defense) and MCR 2.116(C)(10) (no genuine issue of material fact and moving party entitled to judgment as a matter of law). The lower court denied plaintiff's motion with respect to the Washtenaw County Clerk and dismissed the clerk from the action on jurisdictional grounds.⁴ However, the court granted plaintiff's motion with respect to defendant and entered a judgment against defendant for \$50,000, plus interest, costs, and attorney fees.⁵

Although the lower court ostensibly granted summary disposition pursuant to MCR 2.116(C)(9), plaintiff submitted documentary evidence to support his motion for summary disposition. In deciding whether to grant a motion for summary disposition pursuant to MCR 2.116(C)(9), a court

may only consider the pleadings. MCR 2.116(G)(5); *Royce v Citizens Ins Co*, 219 Mich App 537, 540; 557 NW2d 144 (1996). Therefore, the more appropriate court rule was MCR 2.116(C)(10), under which the court may consider all relevant documentary evidence. Accordingly, we will review the lower court's decision as though it were rendered pursuant to MCR 2.116(C)(10). *Royce, supra* at 541. We therefore review the court's decision whether to grant the motion for summary disposition de novo to determine whether any genuine issue of material fact exists that would prevent entering judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Defendant argues that the levy was authorized under MCL 205.25(1); MSA 7.657(25)(1), which provides, in part, as follows:

The commissioner,^[6] or an authorized representative of the commissioner, may cause a demand to be made on a taxpayer for the payment of a tax, unpaid account, or amount due the state or any of its departments, institutions, or agencies, subject to administration under this act. If the liability remains unpaid for 10 days after the demand and proceedings are not taken to review the liability, the commissioner or an authorized representative of the commissioner may issue a warrant under the official seal of that office. Except as provided in subsection (5), the commissioner or an authorized representative of the commissioner, through any state officer authorized to serve process or through his or her authorized employees, *may levy on all property and rights to property, real and personal, tangible and intangible, belonging to the taxpayer or on which a lien is provided by law for the amount of the deficiency* [emphasis added.]

Subsection (5) provides that certain property is exempt from levy for an unpaid tax. Plaintiff argues that defendant may not levy on bail proceeds because MCL 765.16; MSA 28.903 provides that cash deposited as bail is not subject to garnishment or attachment. Defendant counters by maintaining that bail proceeds are not among the property specifically exempted from a tax levy and that a tax levy is not a garnishment or attachment. The trial court held that a tax levy is a form of garnishment and that MCL 765.16; MSA 28.903 therefore prohibits a tax levy from being filed against cash deposited as bail.

We find it unnecessary to address the issue whether cash deposited as bail is subject to a tax levy. To reach this issue would require an analysis of the interaction between MCL 765.16; MSA 28.903 and MCL 205.25(1); MSA 7.657(25)(1). We find that such an analysis would be unnecessary, given our resolution of this case. This Court may decline to address issues not necessary to the resolution of the case at hand. *Kernen v Homestead Development Co*, 232 Mich App 503, 513; 591 NW2d 369 (1998); *People v Yeoman*, 218 Mich App 406, 414 n 1; 554 NW2d 577 (1996). We now turn our attention to the narrow issue on which we resolve this case.

Defendant filed the levy pursuant to MCL 205.25(1); MSA 7.657(25)(1), which authorizes a levy for unpaid taxes against property belonging to the taxpayer who owes the tax liability. Plaintiff argues that the levy in this case was improper because plaintiff was not the taxpayer who owed the tax

liability. If plaintiff were in fact the owner of the money deposited, then we would hold that defendant was without authorization to levy against property belonging to plaintiff and not to the taxpayer.

In interpreting a statute, our primary task is to determine and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1997). We first look to the language of the statute itself as evidence of legislative intent. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). If the language is unambiguous, we conclude that “the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written.” *Id.* In such cases, judicial construction of the statute is neither required nor permitted. *Id.*; *Turner v ACIA*, 448 Mich 22, 27; 528 NW2d 681 (1995).

In this case, we find the language of MCL 205.25(1); MSA 7.657(25)(1) to be clear and unambiguous. By the clear terms of the statute, defendant is authorized to make a demand on a taxpayer for payment of an unpaid tax and, if the taxpayer does not pay the tax, levy on property belonging to the taxpayer. The meaning of the phrase “belonging to the taxpayer” is unambiguous, and the Legislature must have intended the plain meaning of this phrase. Therefore, we conclude that MCL 205.25(1); MSA 7.657(25)(1) does not provide authority to levy on property belonging to a person *other than* the taxpayer owing the unpaid tax. In other words, defendant lacked authority to levy property *not* belonging to the taxpayer.

Turning to the instant case, if the money posted as bail did not belong to Beshara, then defendant was without authority to file a levy on the money to satisfy Beshara’s unpaid tax liability. However, the record is unclear whether the money belonged to plaintiff or to Beshara. Some evidence suggests that the money belonged to plaintiff. For example, plaintiff deposited the money, the bond form indicates that the money was deposited by plaintiff, and the receipts for the money were issued to plaintiff, not to Beshara. However, other evidence indicates that perhaps the money, although deposited by plaintiff, in fact belonged to Beshara. For example, plaintiff refused to answer interrogatories intended to discover whether the money belonged to him or to Beshara. Plaintiff refused to disclose employment or other income information and refused to disclose whether he had borrowed any money from Beshara. Moreover, the bond receipts indicate that plaintiff had the same address as Beshara. In light of all the circumstances, we cannot determine who was the owner of the money. Therefore, we remand to the lower court to make this determination.

In *McFadden v Downriver Area Narcotics Organization*, 90 Mich App 748, 751; 282 NW2d 464 (1979), this Court held that an evidentiary hearing was required to determine whether money seized from a person and levied by the Department of Treasury belonged to that person or to a third party who claimed ownership of the money. Also, in *In re Forfeiture of Bail Bond*, 209 Mich App 540, 550; 531 NW2d 806 (1995), this Court held that the trial court’s finding that the defendant had posted the bond was clearly erroneous, noting that, although the defendant had signed the bond form, the receipts attached to that form indicated that a third party deposited the funds on behalf of the defendant. These cases further indicate that remand in this case is necessary because the lower court is the appropriate factfinder to determine who owned the money. We review factual findings for clear error, MCR 2.613(C); here, the lower court made no factual findings regarding who owned the money, and we are unable to adequately address this issue ourselves.

On remand, the lower court must afford defendant a reasonable time in which to conduct full discovery, after which the court shall conduct an evidentiary hearing to determine the issue of ownership. If the court determines that the money belonged to plaintiff, then, as discussed above, defendant's levy was unauthorized. However, if the lower court determines that the money truly belonged to Beshara, then plaintiff would be without standing to complain of the tax levy. As noted above, because of our resolution of this case, we do not address defendant's argument that, because a tax levy is not a garnishment or an attachment, bail bonds are subject to a tax levy.

Reversed and remanded. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

/s/ Brian K. Zahra

¹ Plaintiff's brief on appeal indicates that he posted a total of \$52,000. However, the judgment entered in favor of plaintiff was for \$50,000, plus interest, costs, and attorney fees. Plaintiff does not argue that the judgment was for an incorrect amount. The confusion likely results from the receipts from the Washtenaw County Clerk's office. Plaintiff was given two receipts. One of the receipts initially indicates that \$50,013 was collected, but that amount is crossed out and \$48,013 is written in its place. The other receipt initially indicates that \$2,000 was collected, but that amount is also crossed out and \$1,987 is written in its place.

² The record provided to this Court is unclear regarding the correct spelling of this name. Alternative spellings include Mufid Bashara and Moufed Beshara.

³ Washtenaw Circuit Court file number 97-7841 FH.

⁴ The court held that it lacked jurisdiction because the county clerk was not a state official. The Court of Claims has exclusive jurisdiction over claims against the state or its agencies. MCL 600.6419(1)(a); MSA 27A.6419(1)(a); *Watson v Bureau of State Lottery*, 224 Mich App 639, 643; 569 NW2d 878 (1997). Plaintiff does not appeal the dismissal of the county clerk from the action.

⁵ Plaintiff initially filed a claim of appeal that was dismissed for lack of jurisdiction because no order had been entered disposing of plaintiff's claims against the county clerk. *Alkusari v Dep't of Treasury*, unpublished order of the Court of Appeals, entered August 5, 1998 (Docket No. 212378). The lower court then entered an order dismissing the clerk from the action, and this Court then granted defendant's application for delayed appeal. *Alkusari v Dep't of Treasury*, unpublished order of the Court of Appeals, entered September 1, 1998 (Docket No. 213779).

⁶ MCL 205.2; MSA 7.657(2) creates the position of state commissioner of revenue, who is the administrative head of the revenue division of the department of treasury.