DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JPMORGAN CHASE BANK, N.A.,	)	No. 1 CA-CV 11-0498
	)	
Garnishee/Appellant,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	
CAMILLA MARIE CUTTER,	)	(Not for Publication –
	)	Rule 28, Arizona Rules of
Respondent/Judgment Creditor/Appellee.	)	Civil Appellate Procedure)
	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2008-001945

The Honorable Jay L. Davis, Commissioner

AFFIRMED

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T H U M M A, Judge

¶1 Garnishee JPMorgan Chase Bank, N.A. (Chase), appeals from a garnishment judgment in favor of judgment creditor Camilla Cutter and from the denial of Chase's motion to set

aside the judgment. Because Chase has failed to establish the superior court committed reversible error, the judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 As part of a dissolution decree ending the marriage of Camilla and William Cutter, the superior court granted Camilla a judgment exceeding $2,400,000 against William. This judgment in favor of Camilla included Chase checking account 6008 (the Omni account).[1] Camilla sought to collect on the judgment and filed an application for writ of garnishment directed to Chase. On Monday, February 14, 2011, Camilla effectuated service of the writ, summons, application, form for answer of garnishee, instructions to garnishee and related documents on Chase's statutory agent in Arizona.

¶3 On Friday, February 18, 2011, in Bexar County, Texas, Chase finalized an answer to the writ in a signed, notarized affidavit (the First Answer). In this First Answer, Chase stated it possessed William's property consisting of two regular checking accounts ($25,636.47 "cash on hand") and the Omni account (valued at $152,166.57 "subject to market fluctuation"). The First Answer stated Chase held the full amount of these three accounts subject to the garnishment, less just $275 in

[1] Chase states that, "[d]ue to a Chase computer system conversion, the #6008 account had originally been numbered with an account number ending in #6200."

exemption and bank fees (totaling $177,753.04). Although the answer form served with the writ asked for "Garnishee's name, mailing address and telephone number," Chase did not provide any of that requested information. The authorized agent signing the First Answer avowed to having read the document and to "know[ing] of my own knowledge that the facts stated therein are true and correct." Just above the authorized agent's signature, the First Answer asked that Chase "be discharged on this Answer."

¶4 Chase filed the First Answer with the court on February 25, 2011 and mailed copies to William and Camilla. William filed an objection to the writ and requested a hearing, arguing that the writ was premature given post-decree filings and an appeal in the dissolution proceedings. William did not, however, challenge the First Answer. The court set and then reset a hearing on William's objection, which was ultimately held on March 29, 2011. Although listing Chase as being involved, the minute entry setting the hearing states "NO ADDRESS ON RECORD" for Chase, consistent with Chase failing to provide a mailing address in the First Answer. The minute entry also required any request for a court reporter to be made at least 24-hours before the hearing.

¶5 No party requested a court reporter and, given a malfunction in the superior court's recording system, the record

does not include a transcript of the 35-minute March 29, 2011 hearing. The court's minute entry states William and Camilla, through counsel, held a "discussion" with the court and, as relevant here, the court continued the hearing to April 15, 2011. Although listing Chase as being involved, the minute entry from the hearing states "NO ADDRESS ON RECORD" for Chase.

¶6 Also on March 29, 2011, in Bexar County, Texas, Chase finalized an apparently unsolicited amended answer to the writ in a signed, notarized affidavit (the Second Answer). In this Second Answer, Chase stated it was holding William's property consisting of two regular checking accounts (this time with just $9,332.53 "cash on hand") and the Omni account (valued at $152,166.57 "subject to market fluctuation" and attaching a stock distribution listing showing a market value of $153,889.83). In all other material respects, the Second Answer was identical to the First Answer. The Second Answer again stated Chase held the full amount of these three accounts subject to the garnishment, less just $275 in exemption and bank fees (totaling $161,224.10). Although the Second Answer asked for "Garnishee's name, mailing address and telephone number," again, Chase did not provide any of the requested information. The authorized agent signing the Second Answer avowed to having read the document and "know[ing] of my own knowledge that the facts stated therein are true and correct." Just above the

authorized agent's signature, the Second Answer again asked that Chase "be discharged on this Answer."

¶7 Chase filed the Second Answer with the court on April 1, 2011 and mailed copies to William and Camilla. At the continued garnishment hearing on April 15, 2011, William objected to the Second Answer arguing, for the first time, that the answer was incorrect because Chase had listed accounts (including the Omni account) as subject to garnishment when, in fact, they were pledged to Chase to secure a line of credit.[2] At the hearing, the court denied this objection as untimely, finding William waived the argument by failing to raise it in his initial written objection or at the first garnishment hearing. The court then entered judgment on the garnishment according to the terms of Chase's Second Answer, ordering Chase to immediately turn over to Camilla the $9,332.53 from the two standard checking accounts and the proceeds from sale of the stocks included in the Omni account, less $275 in exemption and processing fees.

¶8 On April 28, 2011 –- nearly ten weeks after service of the writ, more than two months after the First Answer, a month after the Second Answer and nearly two weeks after entry of judgment on the garnishment -- Chase filed a motion to set aside

[2] Later that day, William filed a written objection along these same lines.

judgment. Chase's motion sought a new trial or to set aside the judgment, claiming the Omni account was controlled by Chase and not subject to garnishment for William's debt, meaning the garnishment judgment was erroneous. Chase attached "Consumer Pledge" and "Control" agreements and a "Trust Certificate," each dated August 2006 and apparently signed by William individually and on behalf of the William and Camilla Cutter Family Trust, that Chase argued rendered the Omni account exempt from garnishment. Chase also attached an unsigned, undated amended answer (the Unfiled Third Answer) that, for the first time, attempted to claim the Omni account was "already being held as collateral for a Loan" and, therefore, was exempt from garnishment.

¶9 At no time -– before the superior court or on appeal -- did Chase file a signed version of the Unfiled Third Answer. Moreover, Chase did not provide the superior court any admissible evidence -– through an affidavit, declaration or otherwise -– showing when Chase learned of any purported issue with the accuracy of the First or Second Answers, each of which was a sworn, notarized affidavit based on personal knowledge and filed with the court.

¶10 Camilla opposed Chase's motion. After considering the parties' filings, the superior court characterized Chase as asking that the judgment on the garnishment be set aside given

Chase's "failure . . . to properly report the assets of" William. The court further observed that Chase "offers no convincing authority to support [Chase's] action and, in the Court's view, a garnishee who fails to exercise due diligence in the preparation of an Answer does so at its own peril." Accordingly, the court denied Chase's motion.

¶11 Chase timely appealed. This Court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) section 12-2101(A)(1)-(2).[3]

DISCUSSION

I. Denial of New Trial.

¶12 Chase first argues the superior court erroneously denied its request for a new trial because the garnishment judgment was not justified by the evidence and relied on a misinterpretation of relevant law. The superior court has discretion to grant a new trial if the "judgment is not justified by the evidence or is contrary to law." Ariz. R. Civ. P. 59(a)(8). On appeal, denial of a motion for new trial is reviewed for an abuse of discretion. *County of La Paz v. Yakima Compost Co.*, 224 Ariz. 590, 596, ¶ 5, 233 P.3d 1169, 1175 (App. 2010).

[3] Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

¶13 Chase contends the Consumer Pledge and Control agreements and Trust Certificate conclusively prove the Omni account was pledged to and controlled by Chase as security for a loan, was thus "not 'owed to' or 'held for'" William and, therefore, could not be subject to the garnishment. Chase argues the superior court necessarily misinterpreted these documents in entering the garnishment judgment and in denying a new trial.

¶14 In entering the garnishment judgment, however, the superior court relied on Chase's sworn statements in the First and Second Answers. Indeed, Chase's own statements in the First and Second Answers were the only evidence before the superior court of the amount of property held by Chase subject to garnishment and remain the only evidence on that point on appeal. The garnishment judgment reflects the amounts Chase listed in the Second Answer to the penny.

¶15 Nor did the superior court's entry of the garnishment judgment "depend[] upon its interpretation of [these] contracts." The Consumer Pledge and Control agreements and Trust Certificate were not provided to the superior court until Chase filed the motion to set aside judgment, which occurred ***after*** entry of the garnishment judgment, meaning the terms of those documents could not have formed a basis of the garnishment judgment. Although William's second written objection to the garnishment stated the Control agreement was attached, no such

attachment was filed with the superior court or appears in the record on appeal.[4] Moreover, the superior court resolved William's second objection on waiver grounds and would not have considered the Control agreement even if it had been filed at that time.

¶16 Chase next argues the superior court misinterpreted A.R.S. § 12-1584(B) because the Omni account was not owed to or held for William and, therefore was not subject to garnishment. By statute, "[i]f a timely objection is filed" to a writ of garnishment, the court must determine "what amount of nonexempt monies, if any, the garnishee was holding for or owed to the judgment debtor at the time the writ was served, and the court shall enter judgment on the writ against the garnishee for that amount." A.R.S. § 12-1584(B). As evidenced by the garnishment judgment, the court determined Chase was holding for or owed to William precisely what Chase admitted it held in the Second Answer, which included the stocks in the Omni account. Although Chase now argues the statements Chase twice made under oath regarding the Omni account were mistaken, the superior court did not misinterpret § 12-1584(B) by relying on those statements prior to entry of the garnishment judgment. Because Chase has not identified any error by the superior court in considering

[4] The Consumer Pledge agreement and Trust Certificate were neither mentioned in nor purportedly attached to William's second written objection.

the evidence before it in entering the garnishment judgment, or in applying the law to that evidence, the superior court did not err by denying Chase's motion for new trial.

II. Denial of Motion to Set Aside Garnishment Judgment.

¶17 Chase argues the superior court erred by denying the motion to set aside the garnishment judgment because the judgment was based on a mistake, Chase lacked notice of the garnishment hearings and the judgment is inequitable. The court may, in its discretion, set aside a judgment for "mistake, inadvertence, surprise or excusable neglect" or for "any other reason justifying relief from the operation of the judgment." Ariz. R. Civ. P. 60(c)(1), (6). Denial of a motion to set aside judgment is reviewed for an abuse of discretion. *City of Phoenix v. Geyler*, 144 Ariz. 323, 328-29, 697 P.2d 1073, 1078-79 (1985).

A. Mistake or Excusable Neglect

¶18 Relief from judgment on grounds of mistake or excusable neglect is proper only if the moving party can establish its conduct was "excusable." *Id.* at 331-32, 697 P.2d at 1081-82; *Altman v. Anderson*, 151 Ariz. 209, 212, 726 P.2d 625, 628 (App. 1986) (party seeking relief under Rule 60(c)(1) "must make some showing of why [it] was justified in failing to avoid mistake or inadvertence") (citation omitted). A mistake may be excusable if it "might be the act of a reasonably prudent person under the same circumstances;" "diligence is the final

arbiter of whether mistake or neglect is excusable." *Geyler*, 144 Ariz. at 331-32, 697 P.2d at 1081-82.

¶19 Chase argues including the Omni account in the First and Second Answer was an "inadvertent mistake[]" made "despite diligent efforts," but provides no evidence to support those arguments. Chase twice considered the writ of garnishment before judgment and twice answered under oath and based on personal knowledge that the Omni account was held for or owed to William. Chase did not simply answer the writ and then await judgment, but again investigated and considered its records and filed the Second Answer, which, despite modifying the accounting of other monies, reaffirmed that the Omni account was subject to garnishment.

¶20 Accepting the argument that the Chase department responsible for answering writs of garnishment is not staffed by "trained attorneys," Chase admits that same department handles "literally tens of thousands of garnishments, levies and other legal papers every week." Although claiming the characterization of the Omni account was an "inadvertent mistake[]," Chase failed to offer any evidence (as opposed to argument) showing how any mistake in both the First Answer and Second Answer was justified or constitutes excusable neglect. *See Altman*, 151 Ariz. at 212, 726 P.2d at 628. Accordingly, the superior court did not err in

denying Chase's motion to set aside the garnishment judgment based on mistake or excusable neglect.

B. Any Other Reason

¶21 Relief from judgment under Rule 60(c)(6) is available where the reason offered for setting aside the judgment falls outside of the enumerated Rule 60(c)(1)-(5) grounds for relief yet nevertheless constitute another reason "that *justifies* relief." *Panzino v. City of Phoenix*, 196 Ariz. 442, 445, ¶ 6, 999 P.2d 198, 201 (2000) (citation omitted); *Hilgeman v. Am. Mortg. Sec's, Inc.*, 196 Ariz. 215, 220, ¶ 15, 994 P.2d 1030, 1035 (App. 2000). The catch-all ground of "any other reason justifying relief from the operation of the judgment," Ariz. R. Civ. P. 60(c)(6), "applies only when our systemic commitment to finality of judgments is outweighed by extraordinary circumstances of hardship or injustice," *Panzino*, 196 Ariz. at 445, ¶ 6, 999 P.2d at 201 (citation omitted).

¶22 It is undisputed that Chase was not provided written notice of the dates, times and locations of the hearings on the objections to the writ of garnishment. Chase argues the court erred by refusing to set aside the garnishment judgment because of this lack of notice. Chase's argument implicates the circumstances in which a garnishee that expressly claims no interest in funds held, fails to provide requested contact information and asks to "be discharged on this Answer" in a

signed, notarized affidavit filed with the applicable court is entitled to written notice of the date, time and place of a hearing on an objection to the propriety of the writ itself (rather than to the answer). It would seem odd if a garnishee could twice file such an answer that includes no method to provide the garnishee notice, stand idly by as a garnishment judgment is entered based on information provided by the garnishee and then seek to set aside the garnishment judgment claiming lack of notice. That issue, however, need not be resolved in this appeal because Chase has not shown as an evidentiary matter grounds for relief under Rule 60(c)(6).

¶23 Chase claims the lack of notice for the hearings addressing the objections to the writ of garnishment denied "Chase the opportunity to retain counsel and address the nature of the Omni account." But Chase failed to provide any evidence showing when it discovered any error in the description of the Omni account in the First or Second Answer. Chase's First Answer, dated February 18, 2011, described the Omni account as William's property subject to garnishment. William's first written objection, filed March 8, 2011, alleged no error in the First Answer. Although the hearing transcript is not available, nothing in the record suggests that ownership of the Omni account was challenged by anyone at the time of the March 29, 2011 hearing. If Chase had received notice of that hearing,

presumably it would have stood by either its First Answer or its Second Answer (dated March 29, 2011), both of which characterized the Omni account as William's property subject to garnishment.

¶24 The first record mention of any issue with the accuracy of Chase's First or Second Answer was William's second objection, filed April 15, 2011, which argued some accounts listed were pledged to Chase to secure a line of credit. The court never reached the merits of this argument, however, finding the objection was untimely at the April 15, 2011 hearing. The superior court then entered the garnishment judgment at 9:25 a.m. on April 15, 2011 according to the terms of the Second Answer.

¶25 The first time Chase filed anything suggesting any error in Chase's own description of the Omni account was in the motion to set aside judgment, filed nearly two weeks after entry of the garnishment judgment. Even then, Chase provided no evidence of when or how it discovered the claimed error or how the claimed error was made.

¶26 The Unfiled Third Answer attached to Chase's motion inconsistently includes the value of the Omni account as both subject to and not subject to garnishment. Although the Unfiled Third Answer may have been prepared on April 15, 2011, it is not signed, notarized or dated. Without some evidence (as opposed to

argument) that the description of the Omni account appearing in the First and Second Answers was erroneous and that Chase knew of the error before the garnishment judgment was entered, Chase could not have been prejudiced by the lack of notice or by not having another opportunity to "address the nature of the Omni account." Accordingly, on this record, the superior court did not err by denying Chase's motion to set aside judgment for lack of notice.

¶27 Finally, Chase argues equity demands the garnishment judgment be set aside. More specifically, Chase claims "it is particularly inequitable for the debt of [William] to be shifted to Chase," which as a garnishee is a "disinterested third party." In making this argument, Chase relies on authority applying a more liberal standard for relief from a *default* judgment when the *defaulting* party is a garnishee. *Webb v. Erickson*, 134 Ariz. 182, 187, 655 P.2d 6, 11 (1982). In that context, a garnishee is generally disinterested as to the judgment underlying the garnishment but, because Arizona law allows judgment against a defaulting garnishee "for the full amount of the judgment against the judgment debtor," a defaulting garnishee is potentially liable on default for well more than the property held by the garnishee. A.R.S. § 12-1583; *Webb*, 134 Ariz. at 187, 655 P.2d at 11.

¶28 When the garnishee answers, however, and when no timely objection to that answer is filed and sustained, the garnishee is liable only to the extent "the answer shows . . . the amount of the nonexempt monies of the judgment debtor owed or held by the garnishee." A.R.S. § 12-1584(A). Here, Chase's exposure to Camilla's writ did not and could not exceed the extent of Chase's admissions in the First and Second Answers and Chase has failed to support a claim of excusable error in those answers. In that circumstance, equity does not mandate relief from a judgment holding Chase to its word as contained in the First and Second Answers, which are signed, notarized affidavits. *Cf. Roberts v. Morgensen Motors*, 135 Ariz. 162, 165-66, 659 P.2d 1307, 1310-11 (App. 1982) (no new trial warranted on grounds of newly discovered evidence where moving party possessed evidence before judgment); 47 Am. Jur. 2d Judgments § 692 ("Evidence that is in the possession of a party before judgment is rendered is not newly discovered for purposes of obtaining relief from judgment."). The superior court did not err by declining to set aside the garnishment judgment on this ground.

CONCLUSION

¶29 Because Chase has failed to establish error in the superior court's decision denying Chase's motion to set aside judgment or request for new trial, the judgment is affirmed.

_/S/
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/
PHILIP HALL, Presiding Judge

_/S/
ANN A. SCOTT TIMMER, Judge