

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BUCKEYE RETIREMENT CO.,
LLC., LTD,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D06-2202

NASSAU LAND & TRADING CO.,
INC. and NASSAU
COMMODITIES, INC., and
CARGO-LINK, INC., and JOHN A.
STUBBS, an individual, and DARCY
ELTON STUBBS, JR., an individual,
and WILLIAM H. KAVANAUGH,
an individual, and WILLIAM H.
JOHNSON, JR., an individual,

Appellees.

Opinion filed November 3, 2006.

An appeal from the circuit court for Nassau County.
Brian J. Davis, Judge.

Jay S. Grife, Jacksonville, for Appellant.

Kelly B. Mathis of Kelly B. Mathis, P.A., Jacksonville, for Appellee William H.
Kavanaugh and interested party Anne B. Kavanaugh.

PER CURIAM.

Appellant seeks review of a final order dissolving a writ of garnishment based on the conclusion that appellant had failed to rebut the presumption that the bank account garnished was intended by appellee William H. Kavanaugh and his wife to be held as a tenancy by the entirety and that, therefore, the account was not subject to garnishment for a debt owed by Mr. Kavanaugh individually. Appellant concedes that Kavanaugh and his wife held the account as tenants by the entirety, urging that we address another issue not reached by the trial court. What appellant apparently fails to comprehend is that, having concluded that appellant had failed to prove that the account was not held by the entirety, it was unnecessary for the trial court to reach the other issue. Because appellant failed to rebut the presumption that the account was intended to be held by the entirety, the Kavanaughs were entitled to have the writ dissolved. See Beal Bank, SSB v. Almand & Assocs., 780 So. 2d 45, 53 (Fla. 2001) (“when property is held as a tenancy by the entirety, only the creditors of both the husband and wife, jointly, may attach the tenancy by the entirety property; the property is not divisible on behalf of one spouse alone, and therefore it cannot be reached to satisfy the obligation of only one spouse”) (citations omitted). Accordingly, we affirm. Moreover, because this appeal is devoid of any arguable merit, we grant Kavanaugh’s motion for attorneys’ fees, made pursuant to section

57.105, Florida Statutes (2005). See Dunn v. Kean, 928 So. 2d 383, 383 (Fla. 1st DCA 2006). We remand to the trial court, with directions that it determine the appropriate amount of fees to be awarded for Kavanaugh's lawyers' services in this appeal should the parties be unable to agree.

AFFIRMED and REMANDED, with directions.

WEBSTER, VAN NORTWICK, and PADOVANO, JJ., CONCUR.