

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JONESVILLE DEVELOPMENT COMPANY,

Plaintiff-Appellant,

v

K&K GALLERIES, INC.  
and TIMOTHY KLING,

Defendants-Appellees,

and

J. RICHARD COLBECK, ESQ.,

Garnishee-Defendant.

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UNPUBLISHED

July 31, 2001

No. 218042

Macomb Circuit Court

LC No. 97-005820-CK

Before: K. F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying its motion for release of garnishment funds. We affirm.

This action arises out of a landlord-tenant relationship between plaintiff and its tenant, defendant K&K Galleries, and defendant Timothy Kling as guarantor. Plaintiff filed suit in Macomb Circuit Court against defendants alleging breach of a lease agreement and guaranty agreement. The parties entered into a consent judgment in favor of plaintiff. The consent judgment provided that if the debt was not satisfied in a timely fashion, plaintiff could pursue its legal remedies. It also provided that plaintiff would be granted a mortgage on defendant Kling's property located at 512 East Chicago Street in Coldwater, Michigan to secure payment of the debt. A mortgage on the Coldwater property was to be executed contemporaneously with the judgment.<sup>1</sup>

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<sup>1</sup> Apparently, the mortgage was never executed.

However, approximately one month before the consent judgment was entered, Bonnie Kling started a divorce action against defendant Kling in the Branch Circuit Court. The Branch Circuit Court entered an order allowing the sale of the Coldwater property. The order indicated that, at the closing of the sale, “all necessary expenses of the sale including all outstanding indebtedness on the property shall be satisfied and the remaining balance shall be held in trust by [garnishee-defendant Colbeck] for further distribution pursuant to Order of the Court.”<sup>2</sup>

When defendants failed to satisfy the consent judgment, plaintiff sent a non-periodic garnishment to garnishee-defendant seeking to attach the proceeds held by him in escrow from the sale of the Coldwater property. In a garnishee disclosure, garnishee-defendant responded that there was no debt owing when plaintiff served the writ because the “[m]onies held in escrow are joint marital assets of Timothy and Bonnie Kling.” Garnishee-defendant petitioned the Branch Circuit Court for a determination as to the availability of the funds for garnishment. Plaintiff intervened in the Branch Circuit Court divorce action and sought release of the escrowed funds.

Plaintiff also filed a motion for release of funds in the Macomb Circuit Court action. While that motion was pending, the Branch Circuit Court determined that the funds held in escrow were the property of defendant Kling’s wife, but stayed the decision until Macomb Circuit Court ruled on plaintiff’s request for release of the escrowed funds. The Macomb Circuit Court thereafter denied plaintiff’s motion to release the funds. Plaintiff’s motion for reconsideration was also denied.

On appeal, plaintiff argues that the Macomb Circuit Court erred by failing to conduct a trial to determine garnishee-defendant’s liability, as required by MCR 3.101(M)(1). We disagree. We review this issue de novo as a question of law. See *Nationsbank Mortgage Corporation of Georgia v Luptak*, 243 Mich App 560; 625 NW2d 385 (2000).

Garnishment actions are authorized by statute. MCL 600.4011(1). The court may exercise its garnishment power only in accordance with the Michigan Court Rules. MCL 600.4011(2); *Id.* at 564. See also *Waatti & Sons Electric Co v Dehko*, 230 Mich App 582, 587; 584 NW2d 372 (1998); *Royal York of Plymouth Ass’n v Coldwell Banker Schweitzer Real Estate Services*, 201 Mich App 301, 305; 506 NW2d 279 (1993).

MCR 3.101 governs postjudgment garnishment proceedings and provides that:

If there is a dispute regarding the garnishee’s liability or if another person claims an interest in the garnishee’s property or obligation, the issue shall be tried in the same manner as other civil actions.

Additionally, MCR 3.101(M)(2) provides, in pertinent part, that:

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

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<sup>2</sup> Garnishee-defendant Colbeck was the defendants’ attorney in the Macomb Circuit Court action and defendant Kling’s attorney in the Branch Circuit Court divorce action.

(L)(1) or another party has filed a pleading or motion denying the accuracy of the disclosure.

Thus, “[a]s a general rule, facts stated in a garnishee disclosure must be accepted as true at trial if the plaintiff fails to timely contest the garnishee disclosure through discovery.” *West American Insurance Company v Meridian Mutual Insurance Company*, 230 Mich App 305, 312; 583 NW2d 548 (1998). MCR 3.101(L)(1) requires discovery to occur within fourteen days of the disclosure. Accordingly, a party who does not timely follow the mandates of MCR 3.101(M)(2) may not attack the accuracy of the disclosure. See *Alyas v Illinois Employers Insurance of Wausau*, 208 Mich App 324, 326-328; 527 NW 2d 548 (1995).

In the case at bar, a review of the record clearly reveals that plaintiff failed to serve interrogatories or notices of depositions within the requisite fourteen days from the date upon which the garnishee-defendant filed the disclosure. In fact, the record indicates that no party contested the accuracy of garnishee-defendant’s disclosure within the requisite fourteen days in accord with MCR 3.101(L)(1). Thus, we accept garnishee-defendant’s statement that any money from the sale of the subject property was not owed to plaintiff. When plaintiff filed and served the writ, those funds were considered marital assets and thus not available to satisfy the debt of one of the marital partners. MCR 3.101(M)(2); *Alyas, supra*. Since no one contested the garnishee-defendant’s disclosure within the allotted time, there was no contested issue upon which to conduct a hearing pursuant to MCR 3.101(M)(1)<sup>3</sup>.

We decline to address plaintiff’s claim that garnishee-defendant intentionally circumvented the procedures set forth in MCR 3.101 by seeking release of the funds in the Branch Circuit Court. Plaintiff failed to provide any argument or authority regarding fraud, lack of jurisdiction, or any other subject matter that may be deemed relevant to the alleged impropriety. A party may not merely announce a position and then leave it to this Court to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Peter D . O’Connell

/s/ Jessica R. Cooper

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<sup>3</sup> The trial court did not refer to MCR 3.101(M)(2) in denying plaintiff’s request for an “evidentiary hearing.” Notwithstanding, this court will not reverse a trial court’s decision where the trial court reached the correct result even if for the wrong reason. See *Marlo Beauty Supply, Inc v Farmers Insurance Group* 227 Mich App 309, 319; 575 NW2d 324 (1998).