

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL REMAR,

Plaintiff-Appellant,

v

CATHERINE SUSAN TRUMBLEY and WAYNE  
TRUMBLEY, d/b/a SHAROLYN MOTEL,

Defendants,

and

MADIGAN/PINGATORE INSURANCE  
SERVICES,

Garnishee/Defendant-Appellee.

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UNPUBLISHED

June 15, 2004

No. 246500

Chippewa Circuit Court

LC No. 99-004616-NO

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting the motion for summary disposition filed by garnishee defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained injuries when he was bitten by a brown recluse spider while staying at the Sharolyn Motel, owned and operated by defendants Trumbley. Plaintiff obtained a \$350,000 default judgment against defendants. Defendants' insurer, Citizens Insurance Company, declined to pay the judgment because it never received notice of the lawsuit as required by its policy. Citizens was granted summary disposition of plaintiff's garnishment claim.

Plaintiff filed a request and writ for garnishment against Madigan/Pingatore, the insurance agency, reasoning that if Madigan/Pingatore received notice of the suit from the Trumbleys but failed to act to protect the Trumbleys' interests, then the Trumbleys had an "errors and omissions" claim. Madigan/Pingatore moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that the writ failed to state a claim because it was not indebted to the Trumbleys and did not control or possess any money or property belonging to the Trumbleys. The trial court granted Madigan/Pingatore's motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Subject to the provisions of the garnishment statute, MCL 600.4011, a garnishee is liable for all debts, whether or not due, owed by the garnishee to the defendant when the writ is served on the garnishee, except for debts evidenced by negotiable instruments or representing the earnings of the defendant. MCR 3.101(G)(1)(d). If the garnishee disputes liability, the trial court must try the issue in the same matter as other civil actions. *Waatti & Sons Electric Co v Dehko*, 249 Mich App 641, 644-645; 644 NW2d 383 (2002).

At the time plaintiff filed the writ, Madigan/Pingatore held no money or property that belonged to the Trumbleys. The Trumbleys had filed no claim against Madigan/Pingatore, and Madigan/Pingatore owed no obligation to the Trumbleys. No evidence indicates that plaintiff received an assignment of any claim that the Trumbleys might have against Madigan/Pingatore. Any obligation that Madigan/Pingatore might owe to the Trumbleys could not be determined in the context of the garnishment action brought by plaintiff. Cf. *Rutter v King*, 57 Mich App 152, 169-170; 226 NW2d 79 (1974). Summary disposition was proper.

Affirmed.

/s/ Janet T. Neff  
/s/ Brian K. Zahra  
/s/ Christopher M. Murray