STATE OF MICHIGAN

COURT OF APPEALS

SHIRLEY MCKNIGHT,

Plaintiff-Appellee,

v

GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT,

Defendant-Appellant,

and

LARHONDA MCKNIGHT,

Interested Party.

UNPUBLISHED
November 16, 2010

No. 290261
Wayne Circuit Court
LC No. 08-111962-CK

SHIRLEY MCKNIGHT,

Plaintiff-Appellee/Cross-Appellee,

v

GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT,

Defendant-Cross-Appellant.

and

LARHONDA MCKNIGHT,

Interested Party,

and

J.P. MORGAN CHASE BANK, N.A.,

Garnishee Defendant-Appellant.

No. 293215
Wayne Circuit Court
LC No. 08-111962-CK

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

PER CURIAM.

The General Retirement System of the City of Detroit (Retirement System) appeals an order requiring them to pay decedent Eric McKnight's annuity benefits to his mother, Shirley McKnight as contingent beneficiary. The Retirement System cross appeals the trial court's denial of an award of sanctions for the alleged violation of a stay of proceedings by counsel for Shirley McKnight. J. P. Morgan Chase Bank, N.A. (Chase Bank) also appeals the trial court's denial of its request to set aside a default judgment for failure to file a disclosure statement following issuance of a writ of garnishment and requiring Chase Bank to pay Shirley McKnight from its own funds rather than monies held for the Retirement System. We affirm in part, reverse in part and remand to the trial court.

Eric Darryl McKnight was employed by the city of Detroit and a member of the 1973 Defined Benefit Plan (DBP). In 1996, during his employment, Eric named his wife, LaRhonda McKnight, as his primary beneficiary and his mother, Shirley McKnight, as his contingent beneficiary on both the Retirement System membership annuity form and on his death benefit enrollment form with the Employee Benefit Plan. Specifically, the nomination of beneficiary[1] on the Retirement System membership form states:

> In the event of my death before my retirement from the employ of the City of Detroit, and no pension, except in the case of duty death, becomes payable by the City of Detroit Retirement System on account of my death, I direct the Board of Trustee to pay the accumulated contributions standing to my credit in the annuity savings fund to *LaRhonda McKnight* whose relationship to me is *wife*, whose date of birth is *3-2-72*, whose residence address is *12704 Asbury Park Detroit Mich*; if living, otherwise to *Shirley McKnight*, whose relationship to me is *mother*, whose date of birth is *2-21-41*, whose residence address is *12704 Asbury Park Detroit Mich*; if living, otherwise to my estate.

The nomination of beneficiary form for the death benefit contained similar language. The General Retirement System for the City of Detroit (Retirement System) has oversight and control over disbursements from both the Defined Benefit Plan annuity and the Employee Benefit Plan death benefit.

Eric and LaRhonda divorced on August 2, 2002. The divorce judgment contained pension and insurance waiver provisions. Eric died on October 5, 2007, without having effectuated any changes to his employer's beneficiary forms following his divorce. According to the record, the monies available through the various plans were as follows: (a) Death benefit - $10,000 and (b) Annuity - $52,871.09.

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[1] On the beneficiary form, the italicized words reflect wording that is handwritten by Eric McKnight. Non-italicized words are boilerplate language pre-printed on the form.

Shirley, as the contingent beneficiary, applied for payment of the death benefit, annuity and life insurance policy. The city of Detroit indicated that it would pay the annuity and death benefits to Eric's estate. The Retirement System did pay the funeral costs for Eric from the death benefit funds.[2]

Shirley sought a declaratory judgment for payment of the annuity and death benefit as Eric's contingent beneficiary.[3] The Retirement System asserted that payment of benefits should be to Eric's estate. LaRhonda has not contested or challenged Shirley's claim. The trial court granted Shirley's request for a declaratory judgment and directed the city of Detroit to pay her the annuity balance. The Retirement System filed a motion for clarification and/or rehearing. The trial court did correct a clerical error but rejected the Retirement System's assertion of error. In the order, the trial court also noted, "Because this is a final Order affecting a governmental entity an Order granting a Stay will be signed if requested per MCR 2.614(E) without bond."

Procedural issues arose following the trial court's final order denying reconsideration on January 20, 2009. The Retirement System filed their appeal on February 4, 2009.[4] On or about February 17, 2009, the Retirement System presented the trial court with an order to grant a stay of proceedings (without bond) for entry under the seven day rule.[5] Shirley did not file an objection to the proposed order. The order was not immediately entered as during this time the original trial judge was appointed to this Court and subsequently, Judge Amy Hathaway, was reassigned this case in the lower court. The order granting a stay, "including any proceedings for enforcement of the judgment," was entered by Judge Hathaway on March 16, 2009.

Shortly before entry of the stay order, counsel for Shirley signed and submitted an application for a writ of garnishment in the amount of $69,409.19. The garnishment order was entered and presented to a Chase Bank employee on March 13, 2009. Chase immediately placed a hold of $28,579.12 on funds it retained for the Retirement System. By letter, Chase informed the Retirement System of the garnishment on March 16, 2009. Counsel for the Retirement System notified Chase Bank by telephone on March 17, 2009, that the stay order had been entered by the trial court. The Retirement System filed objections to the garnishment and a motion for release from garnishment on March 23, 2009, asserting the stay order precluded the garnishment proceeding and that the application for garnishment had been sought in bad faith. Following a hearing, the trial court entered an order on April 7, 2009, indicating "stay although [sic] requested improperly, is in place and stay does also stay garnishment."

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[2] The Retirement System paid $8,404.40 to the James Cole Funeral Home from the $10,000 death benefit funds.

[3] Simultaneously, Shirley also filed a motion for declaratory judgment and ultimately her complaint was amended to include LaRhonda McKnight as an interested party.

[4] Docket No. 290261.

[5] MCR 2.602(B)(3).

Concurrently, Shirley filed a default against Chase Bank for the failure to file a garnishee disclosure. The court clerk entered the default on April 7, 2009, in the amount of $69,429.19.[6] Chase Bank then filed a motion to set aside the default accompanied by a disclosure statement. Chase Bank contended that good cause existed to set aside the default based on the improper service of documents and that it also maintained a meritorious defense because any failure to file a disclosure statement was a mistake and that the default was procured by Shirley through misconduct given the existence of a stay order. Counsel for Shirley also filed a motion for clarification of order of stay of garnishment and reconsideration.

The trial court conducted a hearing on both motions and found that Chase Bank was "not properly served," but denied Chase Bank's motion indicating the failure by Chase "to comport with any good reasons why it did not file the disclosure statement." The trial court declined to set aside the default and entered a default judgment against Chase Bank for the amount it held for the Retirement System. Chase filed a motion for reconsideration and, in the alternative, sought clarification of the trial court's ruling that precluded Chase from using the Retirement System's withheld funds to satisfy the default judgment. The motion was denied on July 2, 2009.

The Retirement System seeks to have this Court determine whether the proceeds of an annuity and death benefit available through the decedent's employment with the city of Detroit should be paid to the named contingent beneficiary or the decedent's estate. The trial court determined that the contingent beneficiary was entitled to the proceeds of the annuity, and we affirm that ruling, albeit for somewhat different reasons than those set forth by the litigants.[7] As recognized by this Court, "A circuit court's decision whether to grant declaratory relief . . . is reviewed for an abuse of discretion."[8] This Court reviews "de novo questions of law arising from a declaratory judgment action."[9] Similarly, the de novo standard also applies to the interpretation of contracts.[10]

The overriding question is whether the language included on the subject forms of "if living" serves as a condition to disqualify the contingent beneficiary from being eligible to receive the designated Retirement System funds. The Retirement System relies on a decision

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[6] Chase Bank held only $28,579.12 of Retirement System's funds.

[7] The trial court only ruled on the annuity proceeds and did not discuss the $10,000 death benefit. Approximately 84 percent of the death benefit was paid directly to the funeral home for costs incurred for the decedent's burial. The remaining 16 percent was paid to Shirley McKnight, who contends on appeal that she was entitled to the full payment of the death benefit and is, therefore, owed an amount equal to that paid directly to the funeral home.

[8] *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119, 133; 550 NW2d 826 (1996), rev'd on other grounds 485 Mich 876 (1998).

[9] *Detroit City Council v Detroit Mayor*, 283 Mich App 442, 449; 770 NW2d 117 (2009).

[10] *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

rendered by our Supreme Court[11] to support its contention that this language imposes a precondition that serves to preclude the assets passing in succession to the contingent beneficiary despite the primary beneficiary's disqualification on the alternative ground that she is no longer the decedent's wife. Contrary to the arguments posited by the Retirement System, the contract language of the case addressed in *Seitz* can be factually distinguished and renders it inapplicable in the circumstances of this case.

In *Seitz* the language to be addressed contained as an explicit precondition for devolution to a contingent beneficiary that the primary beneficiary "predeceases me." No such contingency exists in the contract forms involved herein. Specifically, in *Seitz* the precedent condition that the primary beneficiary must predecease the insured directly impacted whether the contingent beneficiary would be qualified to receive the asset. In this case, the term "if living" serves only as a precedent condition for each beneficiary's own qualification and not the disqualification of any successor beneficiary. As discussed in *Seitz*:

> The applicable rule is that [i]n the absence of ambiguity the rights of the parties rest on the contract as written." The critical word in this statement is "predecease." No special definition of the term "predecease" appears in the definition section of the life insurance policy so as to render a disqualification by divorce of a primary beneficiary equivalent to predeceasing an insured. As this court has stated before, "We do not rewrite the agreement of the parties under the guise of interpretation." Thus "predecease" must be construed according to its plain and common meaning. If the word "predecease" means to die before, "said beneficiary" refers to the primary beneficiary, and "me" refers to the insured, the phrase "in the event said beneficiary predeceases me, I hereby designate" means only one thing, that the contingent beneficiary takes when the primary beneficiary dies before the insured dies. Therefore, the contingency statement in this case is not susceptible to two different meanings, but is clear and unambiguous and must be followed according to its terms.[12]

In contrast, according to the contract language pertaining to Eric's beneficiaries, the term "if living" serves as a qualifying condition for the specific beneficiary's eligibility to receive the assets. In this instance, LaRhonda qualified as the primary beneficiary under the contract language because she was "living" at the time of Eric's death. But, because of the divorce and the waiver provisions contained therein, LaRhonda was disqualified to receive the designated assets. As a result, Shirley, as the contingent beneficiary qualified in the line of succession because she met the precedent condition of "if living." In other words, when read in context, the form language does not impose a clear and unambiguous precondition for disqualification of a beneficiary. Instead, the language simply delineates the rights of survivorship held by a beneficiary regarding that beneficiary's interest in the available benefits or policies.

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[11] *In re Seitz*, 426 Mich 630; 397 NW2d 162 (1986).

[12] *Id.* at 637 (internal citations omitted).

The reasoning to be applied in this case is more akin to the holdings in other cases cited by our Supreme Court in *Seitz*.[13] Similar to this case, in *Starbuck*:

> [T]he insured named his wife as primary beneficiary and his mother as contingent beneficiary on a life insurance policy. The insured became divorced from his wife . . . before his death. The dispute over the proceeds was between the insured's estate and his mother. In its opinion, this court remarked, "it is perhaps pertinent to note at this point that the insurance policy does not enumerate any events upon which the mother would receive the proceeds of the policy aside from her designation as the 'contingent' beneficiary." Thus finding no contingency, the *Starbuck* Court held that "as a matter of contract interpretation a contingent beneficiary will be qualified to receive the proceeds of an insurance policy upon the disqualification of the primary beneficiary *unless a provision of the insurance contract requires a different result*."[14]

While a factual distinction exists between this case and *Starbuck*, in that this case does involve a condition that the contingent beneficiary be "living" to qualify, the basic premise underlying the *Starbuck* decision is applicable; namely, that as long as the contingent beneficiary meets any necessary or specified requirements or qualifications they are not precluded from receiving the asset following the disqualification of the primary beneficiary. Similarly, in *Seitz* our Supreme Court reaffirmed its determination in *Holley* finding the absence of a "reason to exclude the contingent beneficiary from receiving the proceeds because no provision of the . . . contract required a different result."[15] The *Seitz* Court delineated as the "critical fact that determines the outcome" in a particular case to be "an explicitly stated precondition on the beneficiary designation card that requires a different result from that of the contingent beneficiary's taking."[16]

As the forms in this case fail to define the term "contingent beneficiary" we rely on the recognized meaning of that term, which is: "A person designated by the testator to receive a gift if the primary beneficiary is unable or unwilling to take the gift."[17] Consistent with previous decisions by our Supreme Court, "as a matter of contract interpretation a contingent beneficiary

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[13] See *Starbuck v City Bank & Trust Co*, 384 Mich 295; 181 NW2d 904 (1970); *Holley v Schneider*, 422 Mich 248; 369 NW2d 857 (1985).

[14] *Seitz*, 426 Mich at 638, citing *Starbuck*, 384 Mich at 298, 301 (emphasis in original, internal citations omitted).

[15] *Seitz*, 426 Mich at 639, citing *Holley*, 422 Mich at 252.

[16] *Seitz*, 426 Mich at 639.

[17] Black's Law Dictionary (9th ed).

will be qualified to receive the proceeds . . . upon the disqualification of the primary beneficiary unless a provision of the insurance contract requires a different result."[18]

We are also required to address an additional aspect of the award. Specifically, Shirley McKnight contends that the Retirement System wrongfully disbursed $8,404.40 of the $10,000 death benefit directly to the funeral home to pay for the decedent's burial expenses and that she should be reimbursed this amount based on her status as the contingent beneficiary.[19] It should be noted that Shirley opened the decedent's probate estate and that any costs associated with funeral expenses will not dissipate any of the estate assets. Further, even though the Retirement System paid the funeral expenses on behalf of the estate, this Court has no information available to determine whether burial contract/expenses were incurred by the estate or personally by Shirley McKnight as the decedent's immediate family member. Clearly, the repayment of this amount would constitute double-dipping. Rather, should the estate be comprised of other assets to cover these expenses and it is determined that the expenditure was incurred by the decedent's estate Shirley could seek reimbursement from the probate estate as appropriate. Payment of the decedent's burial or funeral costs constitutes a legitimate and necessary expense. What remain unclear are the choices that were made, who authorized the particular expenses and whether other resources or assets existed to cover these costs. It is incumbent on Shirley to be responsible for payment of these costs if she authorized them and whether the monies are derived from the death benefit or her other personal assets is ultimately irrelevant. If the decedent's estate authorized the expenses and has available other assets to cover the costs incurred, Shirley can seek reimbursement from that source. But under either scenario the Retirement System should not be required to pay the same monies twice.

The Retirement System also contends that the language of the January 20, 2009, order, "Because this is a final Order affecting a governmental entity an Order granting a Stay will be signed if requested per MCR 2.614(E) without bond," served to actually impose a stay of proceedings in this matter. According to the Retirement System, because a stay was effectuated the submission of a writ of garnishment was improper under the Court Rules.[20] The decision of a trial court to impose sanctions is reviewed under the clearly erroneous standard.[21] We review de novo questions of law, such as the proper interpretation of a court rule.[22]

First and foremost, the language of the order is clear that the trial court was amenable to granting a stay if the Retirement System submitted a request. In accordance with the Court Rules, "The trial court retains authority over stay and bond matters, except as the Court of

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[18] *Starbuck*, 384 Mich at 301; see also, *Holley*, 422 Mich at 252.

[19] Shirley McKnight received the balance of this $10,000 fund directly and does not dispute the propriety of that disbursement.

[20] MCR 2.114(E).

[21] *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

[22] *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 456; 733 NW2d 766 (2006).

Appeals otherwise orders."[23] A stay of proceedings is not automatic on the filing of an appeal, except in very specific circumstances that are not applicable to this action.[24] In order to obtain a stay of proceedings, the Retirement System was required to file a motion, which it failed to do.[25] Because the Retirement System failed to comply with the requisite procedure to procure a stay, counsel for Shirley McKnight was not precluded from filing a writ of garnishment despite having knowledge that an appeal of the trial court's decision had been initiated.

Because counsel was not precluded by a stay of proceedings from filing a writ of garnishment, the Retirement System's contention that the action necessitates the imposition of sanctions is also misplaced. Sanctions may be awarded if an attorney or litigant signs or submits documents that are "imposed for any improper purpose"[26] or that are "not warranted by existing law."[27] In accordance with the Court Rules:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.[28]

Contrary to the contention of the Retirement System, because a stay of proceedings was not in place at the time counsel for Shirley McKnight initiated a writ of garnishment, there was no violation of the relevant court rule and no basis existed for the imposition of sanctions.

Chase Bank asks this Court to set aside the default judgment and the trial court's order for payment of monies by Chase Bank from its own assets for its failure to timely file a disclosure statement. This Court reviews a trial court's decision on a motion to set aside a default judgment for a "clear abuse of discretion."[29] When issues arise regarding a default

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[23] MCR 7.208(F).

[24] MCR 7.209(A)(1), which provides in relevant part: "Except for an automatic stay pursuant to MCR 2.614(D) [pertaining to governmental immunity], an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders."

[25] MCR 7.209(A)(2), (3).

[26] MCR 2.114(D)(3).

[27] MCR 2.114(D)(2).

[28] MCR 2.114(E).

[29] *Zaiter v Riverfront Complex, Ltd*, 463 Mich 544, 552; 620 NW2d 646 (2001) (citation omitted).

judgment, that involve questions of court rule interpretation, this Court evaluates such questions of law de novo.[30]

Garnishment proceedings are governed by court rule.[31] Specifically, once a writ of garnishment is issued, "it shall be served upon the garnishee as provided in subrule (F)(1)," and the garnishee is required, "within 14 days after service of the writ, [to] file with the court clerk a verified disclosure indicating the garnishee's liability . . . to the defendant."[32] The failure of a garnishee to disclose within the specified time limit permits the entry of a default "as in other civil actions."[33] But, "[a] default judgment against a garnishee" is limited to no more than the amount of the unpaid judgment, interest, and costs[34] as stated in the verified statement requesting the writ of garnishment."

Chase Bank does not deny that it failed to file a disclosure within 14 days of the service of the writ. Rather it claims that it prepared the disclosure but inadvertently neglected to file the document. Chase Bank further contends that any such mistake or inadvertence was sufficient to set aside the default and that any failure on its part to comply with the court rule and time frames was justified based on the lack of proper service and the existence of a stay of proceedings in the underlying matter.

Shirley McKnight contests Chase Bank's assertion of improper service. Contrary to the implication of Chase Bank that the writ was served on a teller at a local branch, the affidavit of service indicates the writ was delivered to the main headquarters at Woodward and Congress in Detroit and that a staff person signed for the document acknowledging service on behalf of the Bank. It would appear that service was effectuated in accordance with the applicable court rule[35] and it cannot be disputed, based on its subsequent actions acknowledging receipt of the writ, that Chase Bank had notice of the proceedings.

The rules governing service of process "are intended to satisfy the due process requirement that a defendant be informed of the pendency of an action by the best means available, by methods reasonably calculated to give a defendant actual notice of the proceeding and an opportunity to be heard and to present objections or defenses."[36] Even if Shirley McKnight did not properly effectuate service in accordance with the court rule, such a failure is not construed to be fatal, as "[a]n action shall not be dismissed for improper service of process

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[30] *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003).

[31] MCR 3.101.

[32] MCR 3.101(E)(2), (E)(3)(b), (H).

[33] MCR 3.101(S)(1).

[34] MCR 3.101(S)(1), (G)(2).

[35] MCR 2.105(D)(1).

[36] *Hill v Frawley*, 155 Mich App 611, 613; 400 NW2d 328 (1986).

unless the service failed to inform the defendant of the action within the time provided in these rules for service."[37] The record adequately demonstrates that Chase Bank had notice of the garnishment action having contacted the Retirement System within three days of receipt of the writ. Any technical defect that may have existed in the manner of service cannot be equated to a complete failure of service[38] and would not justify the setting aside of the default judgment on that basis.

Chase Bank also contends that it was justified in not taking any action, including the filing of the disclosure, based on the entry of an order staying proceedings. Contrary to Chase Bank's position, our Supreme Court has determined that a stay order issued in an underlying or "original" case does not serve to "relieve the garnishee defendant from making its disclosure within the time fixed by the statute, nor did it make the default order void."[39]

While the entry of a default and default judgment by the trial court was justified and in conformance with the court rule[40], the remedy of imposing full liability on Chase Bank for the monies owed by the Retirement System to Shirley McKnight constituted error. While not binding precedent[41], we find that federal case law provides the necessary guidance on this issue. Discussing liability for false disclosure by a garnishee, a reasonable interpretation regarding the intent and application of the relevant court rule indicated that any obligation of the garnishee is more in the context of a surety for the funds rather than a substitute debtor. Specifically:

> Michigan Court Rule 3.101 provides the rules for garnishment after judgment. MCR 3.101(G)(2) addresses the liability of the garnishee and specifically provides, "The garnishee is liable for no more than the amount of the unpaid judgment, interest and costs as stated in the verified statement requesting the writ of garnishment." Additionally, MCR 3.101(O)(1) provides, "A money judgment against the garnishee may not be entered in an amount greater than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the writ of garnishment." MCR 3.101(O)(7) provides, "Satisfaction of all or part of the judgment against the garnishee constitutes satisfaction of a judgment to the same extent against the defendant."
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> These court rules strongly suggest that the Michigan courts accept the general rule of "one satisfaction." *See Grace v Grace*, 253 Mich App 357; 655 NW2d 595,

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[37] MCR 2.105(J)(3).

[38] *Hill*, 115 Mich App 613-614.

[39] *DeBoe v Dunham*, 231 Mich 352, 355; 204 NW 125 (1925).

[40] MCR 3.101(S)(1).

[41] Although federal case law does not comprise binding precedent, it can be considered persuasive authority. *Sharp v City of Lansing*, 464 Mich 792, 803; 629 NW2d 873 (2001).

602 (2002) ("Generally, under Michigan law, only one recovery is allowed for an injury.").

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> The Court holds that it is a better reading of the statute that a garnishee defendant that files a false disclosure is liable only for the remaining balance due on the underlying judgment.[42]

In this instance, there is no indication that the monies maintained by Chase Bank for the Retirement System denoted in the writ of garnishment were dissipated. As a result, once the stay is lifted and the Retirement System monies paid to Shirley McKnight, Chase Bank would be responsible only for any discrepancy that may exist in the funds available governed by the writ. Such an outcome constitutes a more reasonable application of the court rule and is consistent with statutory law, which provides in the event of a false disclosure by a garnishee:

> Any person summoned as a garnishee . . . who appears and answers for a corporation summoned as a garnishee, who knowingly and willfully answers falsely upon his disclosure or examination on oath is liable to the plaintiff in garnishment, or to his executor or administrators, to pay out of his own goods and estate the full amount due on the judgment recovered with interest, to be recovered in a civil action.[43]

In other words, the failure or wrongdoing of a garnishee subjects them to liability for any loss incurred, but it does not completely transfer all liability. Further, the trial court could, within specified limits, "impose costs on a garnishee whose default . . . results in expense to other parties."[44] A contrary result would result in an improper windfall to the actual debtor.

We affirm the trial court's award of the annuity to Shirley McKnight as the contingent beneficiary. We affirm the trial court's denial of an award of sanctions to the Retirement System. We affirm the entry of the default judgment against Chase Bank for failure to file a disclosure statement, but reverse the trial court's award and remand to the trial court for a determination of monies owed consistent with MCR 3.101(S), and this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Talbot

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[42] *In re John Richards Homes Bldg Co, LLC*, 402 BR 780, 787-788 (ED Mich, 2009).

[43] MCL 600.4051.

[44] MCR 3.101(S)(3).