

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT METROPOLITAN CREDIT UNION,
Plaintiff-Appellee,

UNPUBLISHED
May 29, 2014

v

No. 312121
Wayne Circuit Court
LC No. 10-005743-CK

ELLIOT R. SCHORE,

Defendant-Appellant,

and

BANK OF AMERICA,

Garnishee Defendant-Appellee.

Before: MURRAY, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Defendant Elliot Schore appeals by right from the trial court's denial of his motion for reconsideration of his objections to garnishment. For the reasons set forth below, we reverse and remand.

On May 19, 2010, plaintiff filed a complaint alleging that Schore defaulted on a \$60,000 promissory note. On January 18, 2011, plaintiff was granted summary disposition and a judgment against Schore was entered in the amount of \$51,966.38. On June 18, 2012, plaintiff sought a writ of garnishment for funds from Schore's bank accounts with garnishee-defendant Bank of America. Bank of America withheld \$1,888.80 from two of Schore's accounts. Schore objected, arguing that the entirety of the funds came from pension distributions and social security benefits and was, therefore, exempt from garnishment. However, Schore provided no evidence that the funds in his accounts were from his pension or social security. At the objection hearing, held August 3, 2012, the trial court denied Schore's objections, stating, "Yeah, I guess I don't have enough here to sustain objections to the garnishment. So I'm going to overrule the objection to the garnishment and allow the garnishment to continue."

On August 7, 2012, Schore moved for reconsideration under MCR 2.119(F). Schore attached bank statements showing that 100% of the incoming funds into his checking account

were from pension or social security distributions and that 100% of the incoming funds into his savings account were transfers from the checking account. The following day, the trial court denied Schore's motion, finding that Schore had not demonstrated "palpable error by which the Court and the parties have been misled and show[n] that a different disposition of the motion must result from the correction of the error."

"We review a trial court's decision on a motion for reconsideration for an abuse of discretion." *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). "An abuse of discretion occurs when the decision of the trial court results in an outcome falling outside the principled range of outcomes." *Id.* at 625 (brackets, quotation marks, and citation omitted).

As a preliminary matter, the law underlying Schore's objections is clear. Social security benefits are exempt from garnishment, even after being received. 42 USC 407(a); *Whitwood, Inc v South Blvd Prop Mgt Co*, 265 Mich App 651, 654; 701 NW2d 747 (2005). By contrast, pension benefits, once deposited into a beneficiary's account, are subject to garnishment. MCL 38.1683; *Whitwood*, 265 Mich App at 654-656. Accordingly, the trial court's denial of Schore's objections and motion for reconsideration, at least as to his claimed pension distributions, was not error.

However, Schore attached documentation to his motion for reconsideration indicating that some of the funds in the garnished accounts were social security benefits. Schore does not argue that this documentation could not have been obtained prior to the objection hearing. "Ordinarily, a trial court has discretion on a motion for reconsideration to decline to consider new legal theories or evidence that could have been presented when the motion was initially decided." *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012). However, "the trial court also has the discretion to give a litigant a 'second chance' even if the motion for reconsideration presents nothing new." *Id.*; see also *In re Moukalled*, 269 Mich App 708, 714; 714 NW2d 400 (2006) ("The plain language of [MCR 2.119(F)] does not categorically prohibit a trial court from granting a motion for reconsideration even if the motion presents the same issues initially argued and decided"). Indeed, MCR 2.119(F)(3) "allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000). In this case, the trial court did not state a reason for its denial of Schore's motion for reconsideration despite the evidence of unchallenged veracity that supported Schore's contention that some of the garnished funds were social security benefits. Given that the garnishment of social security benefits is prohibited under both federal and Michigan law, the trial court should have exercised its discretion and considered Schore's documentation, despite the fact that it was neither newly discovered nor advanced a novel legal theory. The court's failure to do so resulted in a garnishment order that quite likely is in violation of federal and Michigan law. An error of law necessarily constitutes an abuse of discretion, *People v Waterstone*, 296 Mich App 121, 126; 818 NW2d 432 (2012), and an "erroneous abdication of discretion is, in itself, an abuse of discretion," *King v State*, 488 Mich 208, 216; 793 NW2d 673 (2010). The trial court should have exercised its discretion to consider Schore's documentation to ensure that its garnishment order was not legally erroneous. In sum, it appears possible, if not probable, that the trial court's garnishment order is in violation of both federal and Michigan law and, if so, must not be allowed to stand.

The trial court made no findings of fact as to the amount of funds in the garnished accounts that came from social security benefits. Accordingly, we remand this case to the trial court for an evidentiary hearing to allow the parties to present evidence of the amount, if any, of the balance of the garnished accounts came from social security benefits. If the trial court finds that some amount of the garnished funds came from social security benefits, it must modify the garnishment order to exempt those funds.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Douglas B. Shapiro