

STATE OF MICHIGAN
COURT OF APPEALS

REALTY EXECUTIVES BELL, INC.,
Plaintiff-Appellant,

UNPUBLISHED
July 26, 2012

v

No. 301452
Wayne Circuit Court
LC No. 09-009719-CK

WOOLSEY REALTY, INC., d/b/a
REMAX EXPERTS,

Defendant,

and

CHARLES FRIZZELL and LINDA FRIZZELL,

Garnishee Defendants-Appellees.

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

In this post-judgment garnishment matter, plaintiff Realty Executives Bell, Inc., appeals as of right the order denying its motion for summary disposition under MCR 2.116(C)(10) and granting summary disposition in favor of garnishee defendants Charles and Linda Frizzell under MCR 2.116(I)(2). We affirm.

Plaintiff first argues that the circuit court erred in concluding that MCR 3.101(M)(2) required the trial court to accept as true Charles Frizzell's statement in a garnishee disclosure that he was not indebted to defendant. A trial court's interpretation and application of a court rule is reviewed de novo. *Wilcoxon v Wayne Co Neighborhood Legal Servs*, 252 Mich App 549, 553; 652 NW2d 851 (2002).

MCR 3.101(M)(2) provides as follows:

The verified statement acts as the plaintiff's complaint against the garnishee, and the disclosure serves as the answer. 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 (L)(1) or another party has filed a pleading or motion denying the accuracy of the disclosure. Except as the facts stated in the verified statement are admitted by the disclosure, they are denied. Admissions have the effect of admissions in responsive pleadings. The

defendant and other claimants added under subrule (L)(2) may plead their claims and defenses as in other civil actions. The garnishee's liability to the plaintiff shall be tried on the issues thus framed.

Here, it is undisputed that plaintiff did not serve interrogatories or notice a deposition within the 14-day time limit set forth in MCR 3.101(L). Charles Frizzell's statement in the disclosure that he was not indebted to defendant and did not possess or control defendant's property because he was "not in possession of funds owed to the Defendant" was a statement of fact. Under MCR 3.101(M)(2), this fact must be taken as true. If this fact is taken as true, then garnishee defendants are not subject to garnishment and the circuit court properly granted summary disposition in favor of garnishee defendants under MCR 2.116(I)(2).¹

Plaintiff further argues that the circuit court erred in finding that a letter and other documents sent by garnishee defendants' counsel to plaintiff's counsel were not part of the disclosure. A trial court's findings of fact are reviewed on appeal for clear error. MCR 2.613(C).

As noted by the circuit court, the letter and other documents were not attached to the disclosure. Furthermore, garnishee defendants assert that the letter and documents were sent by separate cover three days after the disclosure was sent and plaintiff has not challenged this assertion. Plaintiff has not shown that the trial court's finding was clearly erroneous.

Because we conclude that the circuit court properly granted summary disposition in favor of garnishee defendants under MCR 2.116(I)(2) on the basis of MCR 3.101(M)(2), we need not address the remaining issues raised by plaintiff.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

¹ Plaintiff's reliance on *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305; 583 NW2d 548 (1998), is misplaced. In *West American*, the Court applied the rule in MCR 3.101(M)(2) prohibiting the garnishor from challenging the facts in the disclosure because the garnishor failed to engage in discovery within the time provided in the rule. The only fact stated in the disclosure was that a certain insurance policy had been cancelled. *Id.* at 313. This Court found that the trial court did not err in failing to dismiss the action on the basis of the disclosure only because the fact that the insurance policy had been cancelled was not relevant to the case. *Id.* at 313-314. Therefore, contrary to plaintiff's argument, *West American* does not stand for the position that a garnishor may challenge a disclosure even though it did not conduct discovery as set forth in MCR 3.101 if the garnishor has other facts in its possession with which to challenge the disclosure.