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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1048

CorePointe Capital Finance, LLC, as assignee of
Chrysler Financial Services Americas, LLC,
as successor in interest to DaimlerChrysler Services
North America, LLC and DaimlerChrysler
Financial Services Americas, LLC, creditor,
Respondent,

vs.

Dennis E. Hecker, debtor,
Respondent,

Fourth Judicial District Court Administrator, garnishee,
Respondent,

Tamitha D. Hecker, intervenor,
Appellant.

Filed February 6, 2012
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-09-2152

Nicholas N. Nierengarten, Stephen F. Grinnell, Gray Plant Mooty Mooty & Bennett, P.A., Minneapolis, Minnesota (for respondent CorePoint Capital Finance, LLC)

Edward F. Rooney, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant Tamitha Hecker challenges the district court's grant of respondent Chrysler Financial Services Americas, LLC's motion, directing respondent Fourth Judicial District Court Administrator to release funds to Chrysler that respondent Dennis Hecker was ordered to place with the district court administrator in order to purge a contempt charge. Appellant argues that the funds held by the district court administrator are not susceptible to garnishment or attachment by Chrysler in its capacity as Dennis Hecker's judgment creditor because they are held *in custodia legis* or, in the alternative, because Dennis Hecker never had possession of the funds. We conclude that the funds are garnishable because the principle of *in custodia legis* is not applicable and because Dennis Hecker maintained constructive possession of the funds. We affirm.

FACTS

The facts leading to this appeal arose in the context of two separate but related district court proceedings: a claim by Chrysler against Dennis Hecker and the marital dissolution between Tamitha Hecker and Dennis Hecker.

Chrysler Financial Services v. Dennis Hecker

Between 2002 and 2007, Dennis Hecker obtained loans totaling approximately $477 million from Chrysler. When Dennis Hecker defaulted, Chrysler accelerated the loans and demanded full and immediate repayment. The district court found that Dennis Hecker owed Chrysler $476,925,874.60, and entered judgment for Chrysler in April

2009. Dennis Hecker filed for bankruptcy on June 4, 2009. After making partial payments to Chrysler, Dennis Hecker owed Chrysler $239,852,226.72 as of June 1, 2010.

Tamitha Hecker v. Dennis Hecker

Tamitha Hecker initiated marriage-dissolution proceedings against Dennis Hecker in April 2008. During the contentious dissolution, Dennis Hecker disclosed two retirement accounts held in his name that included a Pershing 401(k) worth $125,155.74 and a UBS IRA worth an estimated $96,000. Because the funds were retirement accounts, they were by statute beyond the reach of creditors. And as marital property, these accounts were subject to the temporary restraining provisions of Minn. Stat. § 518.091 (2010), preventing either party from disposing of marital assets. Nevertheless, in September 2009, Dennis Hecker liquidated and spent the proceeds from the Pershing account. When this conduct was discovered, the family court found Dennis Hecker to be in constructive civil contempt of court and ordered him to restore the amount that he had liquidated within 30 days. The family court also ordered Dennis Hecker to transfer the UBS IRA account in trust to Tamitha Hecker's attorney, stating that the family court was "not willing to allow that account to continue to be controlled by [Dennis] Hecker."

In February 2010, a friend of Dennis Hecker sent a wire transfer of $125,000 to Dennis Hecker's attorney to be used to purge the contempt charge. Dennis Hecker was unable to replace the money in the Pershing 401(k) account, because the account was closed when he removed the funds from it. By an order dated February 26, 2010, the family court ordered Dennis Hecker to deposit the $125,155.74 with the district court administrator. Dennis Hecker's attorney wrote a check for the required amount, payable

to Hennepin County district court. The family court subsequently authorized Dennis Hecker to withdraw $30,000 and Tamitha Hecker to withdraw $22,943.30 for their respective attorney fees, leaving a balance of $72,212.44 in the account held by the district court administrator.

Chrysler garnishes the account

On May 3, 2010, Chrysler served the district court administrator with a garnishment summons for the remaining $72,212.44, providing notice to Dennis Hecker. On May 11, 2010, Tamitha Hecker and Dennis Hecker entered into a handwritten agreement concerning the division of their assets. Under the terms of the agreement, Tamitha Hecker (who was unaware of Chrysler's garnishment summons) was to receive the assets remaining in the account held by the district court administrator and Dennis Hecker was to receive approximately $96,000 from the UBS IRA.

When Tamitha Hecker learned that Chrysler was seeking to garnish the $72,212.44 held by the district court administrator, she moved to rescind the May 11 dissolution stipulation. She argued that it was unfair because Dennis Hecker had not informed her of Chrysler's garnishment while Dennis Hecker's funds remained exempt from his creditors. The family court denied Tamitha Hecker's request to rescind the May 11 stipulation, but modified the dissolution agreement as follows:

> 2) [Tamitha Hecker] is awarded the remaining funds on deposit with the Clerk of Court (approx. $72,500.00).
>
> 3) [Dennis Hecker] is awarded the UBS retirement account (est. value of $96,000.00). Of said $96,000.00, [Dennis Hecker] has already been awarded $15,000.00 pursuant to this Court's order dated May

> 12, 2010. The approximate balance of said account, therefore, is in the sum of approximately $81,000.00. Of the present balance in said UBS IRA Account No. . . ., [Dennis Hecker] is hereby awarded and is hereby allowed to withdraw one-half of the balance and by way of presentation of this order, the custodian of said funds shall release one-half of the current balance of said account to [Dennis Hecker] or his assigns.
>
> The remaining balance in the UBS IRA Account No. . . . is hereby frozen pending a final disposition of the funds of approximately $72,500.00 presently on deposit with the Hennepin County District Court Administrator.
>
> . . . .
>
> 9) The above-referenced settlement is contingent upon receipt of an affidavit of the anonymous donor confirming he/she gave [Dennis Hecker] $125,000.00 for the purpose of replenishing the Pershing 401(k), that the transaction was a loan/gift, that the funds were his/hers and his/hers alone to give/loan and that he/she has received nothing of monetary value from [Dennis Hecker] during the past 36 months which would make the funds subject to a claim by the bankruptcy trustee, and, further, contingent upon [Dennis Hecker] confirming that payment to the Clerk of Court was funded with the monies he received from the anonymous donor.

The family court referred the resolution of Chrysler's garnishment claim to the remaining $72,212.44 to the district court that issued Chrysler's underlying $477 million judgment. The district court granted Tamitha Hecker's request to intervene.

Tamitha Hecker argued that the funds are marital property and that her rights are superior to Chrysler under the dissolution stipulation. She also argued that because the funds are held *in custodia legis* by the district court administrator, Chrysler is prevented

from garnishing them. Dennis Hecker asserted similar arguments, in addition to his contention that he never had possession of the $125,000 that he received from his friend.

The district court determined that the funds held by the district court administrator are nonmarital property because the gift or loan was not received during the existence of the marriage. That determination is not challenged on appeal. The district court also rejected Tamitha Hecker's *in custodia legis* argument, finding that the funds were transferred to allow Dennis Hecker to purge his contempt, not to protect them from creditors. The district court also rejected the argument that Dennis Hecker never had possession of the funds. The district court ordered the district court administrator to disburse the sum of $72,212.44, plus accrued interest, to Chrysler. Tamitha Hecker now appeals.

D E C I S I O N

I.

Tamitha Hecker contends that the $72,212.44 held by the district court administrator is not subject to garnishment by Chrysler because the money is held *in custodia legis*. We review the district court's application of the law de novo. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). The phrase *in custodia legis* is translated as "in the custody of the law." *In re Telesports Prods., Inc.*, 476 N.W.2d 798, 800 (Minn. App. 1991). While Minnesota case law does not define the term explicitly, "[t]he phrase is traditionally used in reference to property taken into the court's charge during pending litigation." *Black's Law Dictionary* 836 (9th ed. 2009). "Creditors have no right to interfere with property held [*in*] *custodia legis* or acquire liens upon it which if enforced

would affect the rights of those acquiring title under the receiver's distribution with the authority of the court." *Telesports*, 476 N.W.2d at 800; *see also Wheaton v. Spooner*, 52 Minn. 417, 422, 54 N.W. 372, 373 (1893) (holding that when property is *in custodia legis*, a judgment cannot be enforced against the receiver "in any such manner as to interfere with the possession of the receiver or the discharge of his duties as such").

In Minnesota, the doctrine was developed in the context of a district court's appointment of a receiver to act for the court by taking possession of and preserving property during the pendency of bankruptcy cases, business dissolutions, and sheriff's sales. *See Barnes v. Verry*, 154 Minn. 252, 257, 191 N.W. 589, 591 (1923) (sheriff's sale); *Manter v. Petrie*, 123 Minn. 333, 336, 143 N.W. 907, 908 (1913) (sheriff seizing property); *Gray v. Merriman*, 56 Minn. 171, 176, 57 N.W. 463, 464 (1894) (dissolution of a business); *Watkins v. Minn. Thresher Mfg. Co.*, 41 Minn. 150, 151, 42 N.W. 862, 863 (1889) (selling property of insolvent corporation). Court-appointed receivers do not simply hold the property; they exercise control and dominion over it. *Compare Sibley Cnty. Bank of Henderson v. Crescent Milling Co.*, 161 Minn. 360, 361-63, 201 N.W. 618, 619 (1925) (explaining that "[s]ince it is not practicable for the court to do the physical work in connection with taking possession and preserving the property, the court appoints the receiver to act," which prevents creditors from garnishing that property), *with Marine Nat'l Bank of Duluth v. Whiteman Paper Mills*, 49 Minn. 133, 138-39, 51 N.W. 665, 665 (1892) (reasoning that when a party gives the court property to hold that is not pursuant to a court order, the money is subject to garnishment).

The rule that property held *in custodia legis* cannot be garnished by creditors furthers the policy of encouraging the efficient administration of assets. A receiver acts as the "right arm of the court" for the purpose of "administering the property." *Henning v. Raymond*, 35 Minn. 303, 305, 29 N.W. 132, 133 (1886). The prohibition against creditors garnishing or taking a lien on the property ensures the most expeditious disposal of property—putting it back into the market and in the control of private individuals as opposed to it remaining in the possession of the court. That policy is not served by application of the doctrine here.

Based on the administrator's level of control or dominion over the money, the role of the district court administrator in this case can be distinguished from that of a receiver who holds property *in custodia legis*. While it is not necessary for us to adopt a bright-line rule concerning the degree of control or dominion necessary to trigger application of the doctrine, the facts in this case demonstrate that neither the type nor the degree of control exercised by the district court administrator is sufficient to prevent garnishment. The family court's order directing the transfer of the funds to the district court administrator did not limit the rights of creditors, establish a distribution priority for disbursing the funds, establish the exclusive jurisdiction of the court over the funds, or otherwise state that distribution could occur upon satisfaction of the statutory criteria relevant to funds held *in custodia legis* and set forth in Minn. Stat. §§ 302A.751-.755 (2010). The district court administrator's function is simply to hold the funds and to distribute them as directed by the district court. There is no suggestion, and Tamitha Hecker does not argue, that the funds were deposited into the district court to protect

them from creditors; rather, the placement was a mechanism for Dennis Hecker to purge his contempt offense and to prevent him from further dissipating the funds. This differs fundamentally from a receiver who holds funds *in custodia legis* and must make business decisions involving the liquidation, disposal, or investment of property or money.

Moreover, the family court expressly permitted Chrysler access to the sealed family court file in this contentious divorce so that Chrysler could evaluate the facts surrounding the transfer to the district court administrator and determine the viability of a garnishment action. And once the garnishment and levy papers were served, the family court approved an alternative property distribution for Tamitha Hecker in the event that the lien and levy were enforced. These actions are entirely inconsistent with an intent to shield the funds from garnishment.

While Tamitha Hecker and Dennis Hecker were the only parties with a legitimate interest in the funds before their liquidation, when the funds were in the Pershing account (and therefore statutorily exempt from creditors), Chrysler gained a legitimate interest when the marital funds were dissipated by Dennis Hecker and replaced by the nonmarital cash gift to him. There is no basis in law or the record before us to conclude that the contested funds are being held *in custodia legis*. Accordingly, that doctrine does not operate here to prevent Chrysler from garnishing the funds.

II.

Tamitha Hecker contends that Dennis Hecker never possessed the funds under Minn. Stat. § 571.73, subd. 3(2) (2010), and that they are therefore not susceptible to garnishment by Chrysler. Whether Chrysler meets the statutory criteria to garnish the

funds presents a question of law, which we review de novo. *Savig v. First Nat'l Bank of Omaha*, 781 N.W.2d 335, 338 (Minn. 2010). Minnesota statute provides that "all other nonexempt indebtedness, money, or other property due or belonging to the debtor and owing by the garnishee or in the possession or under the control of the garnishee at the time of service of the garnishment summons, whether or not the same has become payable," is property that is attachable by garnishment. Minn. Stat. § 571.73, subd. 3(2).

The district court determined that Dennis Hecker possessed the money held by the court administrator, stating:

> Before liquidation by [Dennis] Hecker, the Pershing 401(k) was marital property, and was not subject to attachment by garnishment. The cash received by [Dennis] Hecker, upon liquidation, lost its exempt status but was dissipated prior to any attachment by garnishment. The $125,000 gift or loan made to [Dennis] Hecker became [Dennis] Hecker's unencumbered property which was then transferred to the Court Administrator to purge his contempt.

Because the statute does not define "possession," we examine the term's meaning under Minnesota property law. "When a property owner intentionally gives direct physical control of the property to another party for the purpose of having him do some act for the owner, the owner retains constructive possession of the property." *Fin Ag, Inc. v. Hufnagle, Inc.*, 700 N.W.2d 510, 517 (Minn. App. 2005), *aff'd*, 720 N.W.2d 579 (Minn. 2006). "And the party to whom bare physical control of the property has been entrusted for the owner's purpose does not have possession but only custody." *Id.* (quotation omitted). While "[a]ctual possession is possession in its ordinary or original sense, . . . [c]onstructive possession . . . exists where the owner has *intentionally* given

the *actual* possession—namely, the direct physical control—of the property to another for the purpose of having him do some act *for the owner* to or with the property." *Koecher v. Koecher*, 374 N.W.2d 542, 546 (Minn. App. 1985) (quotations omitted), *review denied* (Minn. Nov. 26, 1985).

Here, Dennis Hecker maintained constructive possession of the $125,155.74 that he used to purge his contempt. Because the district court administrator holds the funds on behalf of Dennis Hecker, it only has custody. *See Hufnagle*, 700 N.W.2d at 517.

Tamitha Hecker also argues that Dennis Hecker's ownership over the $125,155.74 was contingent because the funds are being held by the district court administrator pending the district court's determination as to how the funds should be disbursed. The argument is rooted in statutory construction, which this court reviews de novo. *Nordstrom v. Eaton*, 652 N.W.2d 79, 82 (Minn. App. 2002). Minn. Stat. § 571.73, subd. 4(1) (2010), provides, "The following property is not subject to attachment by garnishment: . . . any indebtedness, money, or other property due to the debtor, unless at the time of the garnishment summons the same is due absolutely or does not depend upon any contingency."

The money held by the district court administrator does not satisfy the requirements of the statute. In a similar circumstance, when a creditor obtained a levy on the property of a debtor, the debtor did not lose complete possession, just immediate possession and control. *See Banker v. Caldwell*, 3 Minn. 94, 105 (1859). Here, even though Dennis Hecker may have lost the immediate possession and control of the money, he still has constructive possession. Therefore, the money was not "due" to him,

contingently or noncontingently, and Minn. Stat. § 571.73, subd. 4(1), does not apply. The funds are subject to garnishment.

Affirmed.