

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 21, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1406

Cir. Ct. No. 2009TJ161

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LELAND G. CHRISTENSON, II,

PLAINTIFF-RESPONDENT,

V.

NIKKI LEE,

DEFENDANT-APPELLANT,

SANDRA BAUMGARTNER,

GARNISHEE-RESPONDENT.

APPEAL from an order of the circuit court for Brown County:
KENDALL M. KELLEY, Judge. *Modified and, as modified, affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Nikki Lee, pro se, appeals an order in this nonearnings garnishment action requiring the garnishee to pay Leland Christenson, a creditor of Lee's, the amount payable under a money judgment Lee obtained in a separate action. Lee advances several arguments in this appeal, all of which we reject, except for Lee's argument that the order improperly requires the garnishee to make payments to Christenson's attorney, rather than to Christenson. Pursuant to our authority under WIS. STAT. § 808.09, we modify the order to substitute Christenson, rather than his attorney, as the proper recipient of any garnishment payments made under the order, and we affirm the order as modified.¹

BACKGROUND

¶2 The complicated history of this nonearnings garnishment action began in 2002, when Christenson attempted to purchase several machine guns from Lee. Lee kept Christenson's money but did not deliver the firearms, ostensibly because Christenson did not have the proper license to possess them and the transfer would have been illegal.² *Christenson v. Lee*, 415 B.R. 367, 370-71 (Bankr. E.D. Wis. 2009). The nontransferability of the firearms was a surprise to Christenson, who demanded either transferable firearms or his money back. *Id.* at 371. Lee refused to deliver either, eventually admitting he had spent Christenson's purchase money. *Id.*

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² Some of the firearms were "nontransferable," which means they "cannot be bought and sold by the public; these weapons require a Class 3 gun dealer's license to purchase, sell or even possess." *Christenson v. Lee*, 415 B.R. 367, 370 (Bankr. E.D. Wis. 2009).

¶3 Lee subsequently filed for bankruptcy, and Christenson initiated an adversary proceeding within that action based on Lee’s alleged fraud. *Id.* at 369. Following a full-day trial, the bankruptcy court found Christenson credible, specifically finding that he had “made it clear to Lee that he only wanted transferables.” *Id.* at 370, 373. The court therefore found that Lee was obligated to disclose the material fact that the guns Christenson sought to purchase were nontransferable, and that Lee had intentionally failed to do so in order to induce Christenson to enter into the transaction. *Id.* at 373. Based on the undisputed amount of Christenson’s payments, the court determined the debt was nondischargeable, and it entered a money judgment for \$44,500. *Id.* at 374. Christenson docketed this judgment in Brown County, the location of Lee’s last known address, shortly after it was entered.³

¶4 Lee appealed the bankruptcy judgment to the federal district court. The district court “affirmed the bankruptcy court’s finding as to the amount of the debt and its nondischargeability but vacated the portion of the judgment that denied Christenson’s requests for prejudgment interest and punitive damages.” *Lee v. Christenson*, No. 13-CV-00126, 2013 WL 5491946, at *1 (E.D. Wis. Oct. 1, 2013), *aff’d*, 558 F. App’x 674 (7th Cir. 2014). On remand, the bankruptcy

³ WISCONSIN STAT. § 806.17 provides:

Every judgment and decree requiring the payment of money rendered in a district court of the United States within this state shall be a lien upon the real property of the judgment debtor situated in the county in which it is entered, the same as a judgment of the state court. A transcript of the judgment may be filed with the clerk of circuit court of any other county and shall be entered in the office of the clerk of circuit court as in the case of judgments and decrees of the state courts and with like effect
....

court discovered an error in its calculations and, after awarding prejudgment interest, the court entered a modified judgment for \$44,289.84. *Id.*

¶5 While Lee’s appeal in his bankruptcy proceeding was pending, he commenced a separate action against Sandra Baumgartner alleging conversion of property on October 26, 2012, in Waukesha County. Soon thereafter, Lee filed a motion in the bankruptcy court seeking to vacate Christenson’s money judgment, which Lee asserted was void because the bankruptcy court “lacked statutory and constitutional authority to liquidate Christenson’s claim and enter judgment on it.” *Id.*, *2. The bankruptcy court denied Lee’s motion, and he appealed to the district court, which affirmed on October 1, 2013. *Id.*, *1, *4.

¶6 Meanwhile, on July 10, 2013, a jury in the Waukesha County case involving Baumgartner returned a \$10,000 verdict in Lee’s favor. A few days later, Christenson filed the present nonearnings garnishment action against Lee in Brown County. The suit named Lee as the debtor and Baumgartner as the garnishee. Baumgartner answered on August 9, 2013, acknowledging Lee obtained a judgment against her that had not yet been perfected. Lee was served with the garnishment summons and complaint while present in the Waukesha County courthouse on August 27, 2013.

¶7 Lee filed several documents in the garnishment action in September 2013, including a document entitled “ANSWER AND AFFIRMATIVE DEFENSE BY NIKKI LEE AND MOTION TO DISMISS” and a document entitled “NOTICE OF JURISDICTIONAL CONFLICT IN THIS MATTER.” Throughout these filings, Lee asserted the bankruptcy money judgment was void because the bankruptcy court did not have authority to do anything more than determine dischargeability, and it therefore lacked authority to

award a money judgment on Christenson's claim. Christenson filed a response to Lee's motion, arguing the underlying bankruptcy judgment was valid. Christenson's response included as an attachment the district court's October 1, 2013 decision holding as much.

¶8 The circuit court held a scheduled hearing on Lee's various filings on October 17, 2013. Lee was permitted, with the help of a "spectator," to read his motion aloud to the court. The court then engaged the parties in an extensive discussion in an effort to ascertain the case's procedural history. During this discussion, the parties noted Lee was appealing the district court's October 1, 2013 decision to the Seventh Circuit of the U.S. Court of Appeals. The court therefore construed Lee's filings as a motion for a stay pending appeal to the Seventh Circuit, and granted that motion. The court told Lee that the Seventh Circuit's decision regarding the validity of the bankruptcy money judgment was "likely to control the outcome of this case."

¶9 On March 17, 2014, Christenson's attorney notified the circuit court that the Seventh Circuit had affirmed the district court's decision and upheld the validity of the bankruptcy money judgment. Christenson's attorney sent a proposed order at the circuit court's request on April 10, copying Lee, which order the circuit court signed on May 2.⁴ The order required Baumgartner, as garnishee, to pay the "plaintiff/judgment creditor's attorney the amount due to defendant/judgment debtor."

⁴ Although the letter submitting the proposed order is not in the record on appeal, Lee concedes he timely received a copy of the letter and the proposed order.

¶10 On May 12, 2014, Lee notified the circuit court by letter that he had assigned his judgment against Baumgartner in the Waukesha County case to an individual in Michigan. Attached to the letter was a notice of assignment filed in Waukesha County dated April 21, 2014, purporting to transfer Lee’s entire interest in the judgment, but Lee did not indicate what effect he believed this notice had on the garnishment order. Lee then filed the present appeal.

DISCUSSION

¶11 Lee raises five broad challenges to the garnishment order. First, he asserts the order was void because the circuit court lacked personal jurisdiction over him. Second, Lee argues he was denied due process, for various reasons. Third, Lee objects to the order because it required payment to Christenson’s attorney, not to Christenson. Fourth, Lee argues the garnishment action is untimely. Fifth, he asserts the court failed to consider his indigence and ability to pay before rendering the garnishment order.⁵

I. Jurisdiction

¶12 Lee claims the garnishment order was void because the circuit court lacked personal jurisdiction over him. He concedes he once lived in Brown County, but represents that he left in 2008 to join a touring motorcycle

⁵ Baumgartner has filed a separate response brief, in which she contends that Lee lacks standing to pursue this appeal by virtue of his assignment of the judgment against her to a third party in April 2014. We assume, for purposes of this appeal, that Lee does have standing, and reject his arguments on their merits. In any event, the “NOTICE OF ASSIGNMENT OF JUDGMENT” Lee filed in the Waukesha County case, in which Lee purports to have transferred his entire interest in the judgment against Baumgartner to an individual in Michigan, does not conclusively establish that Lee no longer has any beneficial interest in the judgment, nor does it necessarily preclude enforcement of the order obtained in this garnishment action, which was commenced well before the assignment was purportedly made. *Cf.* WIS. STAT. § 815.18(10).

performance group and now lives in Michigan. In short, Lee asserts he is no longer sufficiently tied to Brown County such that he may properly defend an action there.

¶13 Lee’s argument confuses personal jurisdiction and venue, which are “related, but distinct[,] topics.” *Enpro Assessment Corp. v. Enpro Plus, Inc.*, 171 Wis. 2d 542, 549, 492 N.W.2d 325 (Ct. App. 1992). “Jurisdiction determines the power of Wisconsin courts to decide a matter, while venue merely determines where within Wisconsin a matter should be tried.” *Id.* In particular, personal jurisdiction “refers to the court’s power to exercise jurisdiction over a given individual.” *Rasmussen v. General Motors Corp.*, 2011 WI 52, ¶15 n.19, 335 Wis. 2d 1, 803 N.W.2d 623. One component of Lee’s argument is that the action was improperly venued in Brown County because the bankruptcy judgment originated in Milwaukee and the money judgment subject to garnishment was obtained in Waukesha County. A defect in venue, however, “shall not affect the validity of any order or judgment.” WIS. STAT. § 801.50(1).

¶14 Any assertion that the circuit court lacked personal jurisdiction over Lee is meritless.⁶ The circuit court had general personal jurisdiction over Lee by virtue of Wisconsin’s long-arm statute, *see* WIS. STAT. § 801.05(1), which is “liberally construed in favor of jurisdiction,” *Kopke v. A. Hartrodt S.R.L.*, 2001 WI 99, ¶10, 245 Wis. 2d 396, 629 N.W.2d 662. Lee is a natural person who was “present within this state when served,” so personal jurisdiction was obtained under § 801.05(1)(a). Moreover, Lee was actively litigating matters in the

⁶ Whether a court has personal jurisdiction over a party is a question of law subject to our independent review. *FL Hunts, LLC v. Wheeler*, 2010 WI App 10, ¶7, 322 Wis. 2d 738, 780 N.W.2d 529.

Wisconsin court system as a plaintiff when served. Notably, these lawsuits included the very matter that produced the money judgment subject to Christenson’s garnishment claim. We conclude this is sufficient to confer personal jurisdiction under § 801.05(1)(d).

¶15 “The Due Process Clause of the Fourteenth Amendment limits the exercise of jurisdiction by a state over a nonconsenting nonresident.” *Kopke*, 245 Wis. 2d 396, ¶22. However, compliance with the long-arm statute establishes a rebuttable presumption that all due process requirements relating to jurisdiction have been satisfied. *Id.*; see also *Lincoln v. Seawright*, 104 Wis. 2d 4, 10-11, 310 N.W.2d 596 (1981). In addition, we conclude Lee’s extensive state contacts—which included his living in Wisconsin, conducting business here, and actively choosing courts located within the state to litigate various claims—are more than sufficient to satisfy constitutional jurisdiction requirements. See *Kopke*, 245 Wis. 2d 396, ¶¶23-24 (personal jurisdiction over a nonresident defendant is proper when the defendant has certain minimum contact with the forum state such that the defendant should reasonably anticipate being haled into court there).

II. Due process

¶16 Lee asserts the procedure used following the October 17, 2013 hearing violated his right to procedural due process. Specifically, he argues the circuit court erred by failing to address his objections to the garnishment action, at least as he explained them to the court at the October 17 hearing. Additionally, he construes certain of the circuit court’s comments at the hearing as promising him an opportunity for further argument after the Seventh Circuit’s ruling. Lee complains, “Never was it explained to Mr. Lee that he would not have another hearing, or that the Objections to garnishment that he documented on the case

record, sent to Judge Kelley, and further presented at the one hearing held, would not be addressed and ruled upon by the Court.”

¶17 “Due process requires that there be an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked.” *State ex rel. Schatz v. McCaughtry*, 2003 WI 80, ¶18, 263 Wis. 2d 83, 664 N.W.2d 596. As Lee concedes, he not only had the opportunity, but actually presented his arguments to the circuit court several times, both orally and in writing. Indeed, the circuit court heard substantial argument from Lee at the October 17 hearing, which included the reading aloud of Lee’s motion. The court understood Lee’s primary objection to be that the money judgment in the bankruptcy case was invalid, an issue that was then pending on appeal before the Seventh Circuit. Accordingly, the circuit court concluded Lee’s motion to dismiss was premature and construed his affirmative defenses as a motion for a stay pending appeal. The court then granted the motion, indicating it would be “unjust” not to do so.

¶18 However, at no point did the circuit court promise to entertain further argument at another hearing. In fact, the court made statements that strongly suggested the contrary would be true, “alerting” Lee that the “[Seventh Circuit] decision is likely to control the outcome of this case. In other words, if they say that’s a valid judgment, it’s not my place to really question a valid judgment elsewhere.” The court continued, “So if they come back and say that’s a valid debt, then the other issues, I suspect, are not likely to be issues that’ll stop us from going forward, so I want to encourage you to take that into account.”

¶19 In short, Lee had ample opportunity to present his arguments to the court, and the circuit court informed him that he would likely have no further

opportunities for argument once the Seventh Circuit Court of Appeals rendered its decision in Lee's federal appeal. The circuit court stated the resolution of that appeal was likely to control the outcome of the case, and Lee did not object to the court construing his various arguments as a request for a stay pending appeal. Lee fails to identify anything that he left unsaid, including anything that could have affected the order as issued by the circuit court. Under the circumstances, we see no meritorious due process issue in the procedures utilized by the circuit court.

¶20 Lee also argues his case was not given a "fair and just resolution." He argues Christenson's attorney "stood as judge and jury in submitting an Order to which he was well informed that Mr. Lee had pending Objections." To the extent Lee argues that his due process rights were somehow violated by virtue of the order having been prepared by Christenson's attorney, we note that it is common for the prevailing party to draft a proposed order, which is only effective when signed by the presiding judge. Lee timely received a copy of the proposed order and apparently did not object to it. Judge Kelley then signed the proposed order, which indicates he agreed with its language. There is no merit to any contention that Christenson's attorney, rather than Judge Kelley, acted as the judge.

III. Invalid judgment recipient

¶21 Lee contends the circuit court erred by entering an order requiring payment to Christenson's attorney, rather than to Christenson personally. Lee correctly observes that he does not owe any obligation to Christenson's attorney, and he suggests the order is invalid because it does not direct payment to a valid creditor of Lee's. For his part, Christenson states he "has no objection to this court modifying the [order] to clarify that any payment to Mr. Christenson's

attorney pursuant to the [order] will apply to Mr. Christenson’s judgment against Mr. Lee.” Therefore, pursuant to our authority under WIS. STAT. § 808.09 to modify a circuit court order, we modify the order to substitute Christenson, rather than his attorney, as the recipient of any garnishment payments made under that order.

IV. Timeliness of action

¶22 Lee asserts the present action is untimely, citing a variety of statutes of limitation. First, he contends this is an “action with respect to a fraudulent transfer or obligation under [WIS. STAT. ch. 242],” which is subject to a four-year statute of limitations. *See generally* WIS. STAT. § 893.425. In the alternative, he claims this is an action based upon a contract, subject to a six-year statute of limitations. *See* WIS. STAT. § 893.43. Lee argues the underlying oral contract in this case was made in 2002, thereby precluding this garnishment action under either statute.⁷ Determining the applicable statute of limitations presents a question of law. *Hamilton v. Hamilton*, 2003 WI 50, ¶14, 261 Wis. 2d 458, 661 N.W.2d 832.

¶23 Neither statute of limitation cited by Lee applies to this action. The substantive rights of the parties have been previously litigated, resulting in a bankruptcy money judgment in Christenson’s favor. This action is an attempt to collect the amount awarded by that judgment using Wisconsin’s garnishment law.

⁷ Lee notes that although the case carries a 2009 circuit court case number, the current case record begins in 2013. This fact is of no moment in our analysis. An action is commenced by the filing of a garnishee summons and complaint, which in this case occurred in 2013. *See* WIS. STAT. § 812.04(3). As we explain, this action was commenced within the applicable statute of limitations.

The applicable statute of limitations is therefore WIS. STAT. § 893.40, relating to an “action upon a judgment or decree of a court of record of ... the United States.” Both the original bankruptcy money judgment, entered in 2009, and the modified judgment, entered on April 23, 2010, fall well within the twenty-year statute of limitations applicable under § 893.40.

V. Indigence/Ability to pay

¶24 Lee’s final argument is that the circuit court was required, but failed, to make a determination regarding Lee’s ability to pay before approving the garnishment order. He argues that he is indigent and is not able to make any payments. Lee further argues that his interest in the Waukesha County judgment against Baumgartner is exempt from garnishment under WIS. STAT. §§ 425.106(1)(a), 812.34(2) and 815.18(3)(h).

¶25 Lee ignores that this is a nonearnings garnishment action. An earnings garnishment “is an action to collect an unsatisfied civil judgment for money damages ... from earnings payable by the garnishee to the debtor.” WIS. STAT. § 812.32. “Earnings,” in turn, are defined as “compensation paid or payable by the garnishee for personal services, whether designated as wages, salary, commission, bonus or otherwise.” WIS. STAT. § 812.30(7). Christenson does not seek an earnings garnishment; he seeks to garnish a money judgment Lee obtained in a separate action. For this reason (and others, but this is sufficient for our purposes), Lee cannot make use of the exemptions contained in WIS. STAT. §§ 425.106(1)(a) (exempting certain unpaid earnings from being used to satisfy a judgment arising from a consumer credit transaction), 812.34(2) (exempting eighty percent of the debtor’s disposable earnings from earnings garnishment), and 815.18(3)(h) (exempting from execution seventy-five percent of the debtor’s net

income, defined as gross receipts for personal services or derived from rent, for each one-week pay period).⁸

By the Court.—Order modified and, as modified, affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

⁸ Lee also alludes to, but does not directly cite, WIS. STAT. § 812.34(2)(b). We reject Lee's reliance on this exemption provision for the same reason articulated above—namely, that Christenson does not seek an earnings garnishment.

