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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 27 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GLOBAL MUSIC SUPPLY, LLC, a Hawaii)
limited liability company,)

Plaintiff/Appellee,)

v.)

PRESTINI INTERNATIONAL, INC.,)

Defendant/Appellant.)

2 CA-CV 2012-0175
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CV12289

Honorable James A. Soto, Judge

AFFIRMED IN PART; VACATED AND REMANDED IN PART

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K E L L Y, Presiding Judge.

¶1 Debtor Prestini International, Inc. (Prestini) appeals from the trial court’s ruling refusing to quash a writ of garnishment served upon garnishee Wells Fargo Bank, N.A. (Wells Fargo). Prestini argues creditor Global Music Supply, LLC (Global Music) failed to “satisfy the due process requirements” of garnishment proceedings by serving a writ on Wells Fargo that did not properly name the bank as garnishee. For the reasons below, we affirm the court’s refusal to quash the writ, vacate its subsequent judgment on the writ, and remand.

Factual and Procedural Background

¶2 The relevant facts are undisputed. Global Music obtained a judgment for contractual damages against Prestini in the First Circuit Court for the State of Hawaii. It filed a copy of the judgment with the clerk of the Santa Cruz County Superior Court, in compliance with the Uniform Enforcement of Foreign Judgments Act. *See* A.R.S. §§ 12-1701 through 12-1708. In July 2012, Global Music served writs of garnishment upon J.P. Morgan Chase Bank, N.A. (Chase) and Wells Fargo, alleging the banks possessed funds belonging to Prestini. Each garnishee filed an answer to the writ.

¶3 Prestini requested a hearing to object to the garnishment against Wells Fargo. *See* A.R.S. § 12-1584(B). It argued the trial court should quash the writ and strike Wells Fargo’s answer because the writ had failed to name Wells Fargo as the garnishee. After a hearing, the trial court found the writ naming Chase had been served upon Wells Fargo and the writ naming Wells Fargo had been served upon Chase.¹

¹The validity of the writ served upon Chase is not at issue on appeal.

However, it noted each bank had filed an answer that identified the institution and provided the information required by statute. It concluded Prestini had not been prejudiced by the “clerical oversight” and entered a signed minute entry denying Prestini’s motion to quash the writ, ordering judgment against Wells Fargo, and directing Global Music to lodge a form of judgment consistent with its order. Prestini filed a notice of appeal from the signed minute entry. Thirteen days later, the court entered final judgment on the writ against Wells Fargo, ordering it to “immediately transfer” to Global Music non-exempt funds it held for Prestini at the time the writ was served.

Discussion

Refusal to Quash Writ

¶4 Prestini argues Global Music failed “to satisfy the due process requirements involved in garnishment of non-wages” because the writ served upon Wells Fargo did not name the proper garnishee as required by A.R.S. § 12-1574(B)(2). Relying on *San Fernando Motors, Inc. v. Fowler*, 17 Ariz. App. 357, 498 P.2d 169 (1972), it contends a writ that does not comply substantially with statutory requirements is invalid and “does not confer any jurisdiction in the court over the defendant’s assets.” “We review legal questions, including questions of constitutional law, de novo.” *Williams v. Cahill ex rel. Cnty. of Pima*, 232 Ariz. 221, ¶ 6, 303 P.3d 532, 535 (App. 2013).

¶5 The record on appeal does not reflect that Prestini raised its constitutional argument in the trial court. Generally, this court will not address issues raised for the first time on appeal, even if they are of constitutional magnitude. *Romero v. Sw. Ambulance*, 211 Ariz. 200, 204, 119 P.3d 467, 471 (App. 2005). However, we need not determine

whether Prestini has waived its argument on appeal because it lacks standing to raise the issue.

¶6 Constitutional rights such as the right to due process generally are personal and cannot be raised vicariously.² *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973); *Kerr v. Killian*, 197 Ariz. 213, ¶ 16, 3 P.3d 1133, 1137 (App. 2000) (department of revenue lacked standing to assert due process rights of taxpayers who allegedly received inadequate notice of intent to seek common fund attorney fee award). Prestini has not alleged the failure to name Wells Fargo in the writ implicated its own right to notice of the garnishment proceedings. It does not dispute that Wells Fargo delivered it a copy of the writ and summons within three days of its service, as required by statute. *See* § 12-1574(D) (garnishee must deliver to debtor copies of writ, summons, underlying judgment, notice of hearing rights). Instead, it raises the issue of Wells Fargo's notice rights by discussing *Fowler*, a case in which default judgment was entered after a garnishee failed to answer a writ of garnishment. 17 Ariz. App. at 357, 498 P.2d at 169. In *Fowler*, this court concluded the garnishee's due process rights had been violated because it had not been summoned to appear before the court and, therefore, the court had lacked personal jurisdiction over the garnishee. *Id.* at 360-61, 498 P.2d at 172-73 (garnishee must receive reasonable and adequate notice of pendency of action and opportunity to appear). The *Fowler* court did not discuss the notice rights of a debtor, nor

²Prestini emphasized at oral argument that it had standing to object to the writ and request a hearing pursuant to A.R.S. § 12-1580(A). We agree. Nonetheless, Prestini's ability to challenge the writ did not confer upon it the ability to assert the bank's constitutional rights.

would its holding apply in a case like the one at issue, in which the garnishee bank waived any objection it may have had to personal jurisdiction by answering the writ. *See Ariz. Tile, L.L.C. v. Berger*, 223 Ariz. 491, ¶ 12, 224 P.3d 988, 991 (App. 2010) (failure to object to lack of personal jurisdiction waives defense).

¶7 Prestini does not otherwise dispute the trial court’s conclusion that it was not prejudiced by any technical error in the service of the writ. And we will not find reversible error unless the appellant’s substantial rights reasonably may have been prejudiced. *Creach v. Angulo*, 189 Ariz. 212, 214, 941 P.2d 224, 226 (1997); *Warner v. Sw. Desert Images, LLC*, 218 Ariz. 121, ¶ 10, 180 P.3d 986, 992 (App. 2008). Therefore, we affirm the court’s ruling denying Prestini’s motion to quash the writ of garnishment.

Trial Court’s Jurisdiction to Enter Final Judgment

¶8 Prestini argues the trial court lacked jurisdiction to enter judgment against Wells Fargo after Prestini had filed its notice of appeal from the court’s signed ruling denying its motion to quash the writ of garnishment. *See* A.R.S. § 12-2101(A)(5)(c) (party may appeal from order refusing to dissolve garnishment). The filing of a notice of appeal generally divests a trial court of jurisdiction to proceed other than in furtherance of the appeal or “to address matters pending before it that do not relate to an intermediate or interlocutory order from which an appeal has been taken.” *Sw. Gas Corp. v. Irwin ex rel. Cnty. of Cochise*, 229 Ariz. 198, ¶ 8, 273 P.3d 650, 653-54 (App. 2012). Any action the court takes without jurisdiction after an appeal is perfected is void. *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 6, 293 P.3d 504, 506 (App. 2012). The court’s judgment on the writ depended on the writ’s validity, which was the issue raised on

appeal. Therefore, although the court may enter judgment against Wells Fargo upon remand, we must vacate the judgment it filed on December 11, 2012. *See Advanced Prop. Tax Liens, Inc. v. Sherman*, 227 Ariz. 528, ¶ 9, 260 P.3d 1093, 1095 (App. 2011) (reviewing court has no discretion and must vacate judgment void for lack of jurisdiction).

Disposition

¶9 For the foregoing reasons, we affirm the trial court's refusal to quash the writ of garnishment, vacate its judgment of December 11, 2012, and remand for further proceedings consistent with this decision. Both parties request an award of attorney fees on appeal, pursuant to A.R.S. § 12-341.01. In our discretion, we award Global Music its attorney fees upon its compliance with Rule 21, Ariz. R. Civ. App. P.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge