

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KAREN VANDERPOOL,

Plaintiff/Garnishor Plaintiff-  
Appellee,

v

PINEVIEW ESTATES, L.C., and MKT LEASING  
& FINANCING,

Garnishee Defendants-Appellants,

and

MARTIN KRAUSE,

Defendant.

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FOR PUBLICATION

June 29, 2010

9:10 a.m.

No. 289359

Genesee Circuit Court

LC No. 08-089139-AV

Before: CAVANAGH, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Garnishee defendants appeal by leave granted from the Genesee Circuit Court's order that reversed a district court order setting aside a judgment against garnishee defendants, and directed reinstatement of the judgment against the garnishee defendants. We vacate the circuit court's order reinstating the district court's judgment, and remand for further proceedings.

Garnishee defendants first argue that the district court should not have entered a default judgment against them because plaintiff did not comply with the procedural requirements pertaining to defaults and default judgments. Garnishee defendant's assertion in this regard is inopposite because there was no default judgment in this case. Plaintiff originally served garnishee defendants with a wage garnishment petition on July 14, 2007, for payment of a judgment debt owed by defendant. After garnishee defendants failed to respond to that writ of

garnishment within the 14-day period set by MCR 3.101(H),<sup>1</sup> plaintiff filed a motion to show cause why garnishee defendants failed to respond and why garnishee defendants should not be responsible for defendant's entire judgment debt. When garnishee defendants failed to appear at the hearing on the motion to show cause on March 18, 2008, the district court granted judgment in favor of plaintiff for the amount of defendant's judgment debt, \$10,997.05.

MCR 2.603(A)(2) requires notice of entry of default to the defaulted party. It is undisputed that there was no entry of default in this case and, accordingly, no notice of such an entry. MCR 2.603(B)(1)(a)(ii) further requires notice of a request for entry of default judgment be made at least seven days prior to entry of default judgment if the relief sought differs in kind or amount from the pleadings. Plaintiff sought periodic garnishment payments in her writ of garnishment, but sought a lump sum judgment from garnishee defendants in her motion for order to show cause. However, the judgment against garnishee defendants was entered on the same day as the hearing on the motion to show cause. The requirements of MCR 2.603 were not followed because they did not apply, and the judgment against garnishee defendants was not styled as a default judgment. Because there was no default judgment, garnishee defendants' first claim of error fails.

Garnishee defendants next argue that the circuit court erred in reinstating the judgment because, as the district court concluded in setting aside that judgment, defendant's bankruptcy filing automatically stayed all efforts to collect his debts, including garnishment payments. We agree. We review a court's issuance of a contempt order for an abuse of discretion. *Porter v Porter*, 285 Mich App 450, 454; 776 NW2d 377 (2009). To the extent that garnishee

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<sup>1</sup> MCR 3.101(H) provides, in relevant part:

(H) Disclosure. The garnishee shall mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure within 14 days after being served with the writ.

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(2) Periodic Garnishments.

(a) If not obligated to make periodic payments to the defendant, the disclosure shall so indicate, and the garnishment shall be considered to have expired.

(b) If obligated to make periodic payments to the defendant, the disclosure shall indicate the nature and frequency of the garnishee's obligation. The information must be disclosed even if money is not owing at the time of the service of the writ.

(c) If a writ or order with a higher priority is in effect, in the disclosure the garnishee shall specify the court that issued the writ or order, the file number of the case in which it was issued, the date it was issued, and the date it was served.

defendants' argument involves the construction, interpretation, and application of the court rules, we review de novo as a question of law. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003); *Kernan v Homestead Dev Co*, 252 Mich App 689, 692; 653 NW2d 634 (2002).

Defendant filed for bankruptcy on August 3, 2007. This filing resulted in an automatic stay preventing the enforcement, against defendant or against property of his estate, of a prior judgment. 11 USC 362. Nevertheless, the district court's March 18, 2008 judgment against garnishee defendants followed. The judgment was entered on several grounds, including: 1) garnishee defendants violated a court order by "not paying plaintiff" pursuant to an earlier garnishee disclosure from January 2007, and 2) "[garnishee defendants were] with a request for garnishment periodic and garnishee disclosure and order to show cause to which [garnishee defendants] failed, neglected, or otherwise refused to respond." Even though the district court later vacated this judgment against garnishee defendants, rejecting the first ground of the judgment because garnishee defendants were powerless to make garnishment payments following the stay, the circuit court reinstated the judgment on appeal because garnishee defendants "did not disclose" under the 14-day rule in MCR 3.101(H) and "ignored the show cause issued."

In reinstating the judgment, the circuit court implicitly found that garnishee defendants were in criminal contempt. "[W]hen a court exercises its criminal contempt power it is not attempting to force the contemnor to comply with an order, but is simply punishing the contemnor for past misconduct that was an affront to the court's dignity." *Porter v Porter*, 285 Mich App 450, 455; 776 NW2d 377 (2009). Some courts have concluded that a default judgment or contempt finding against a garnishee defendant does not relate to the defendant or the property of the defendant's estate, but instead creates an independent and personal liability against the garnishee defendant, so the default judgment or contempt finding does not violate the automatic stay under 11 USC 362. *In re Sowers*, 164 BR 256 (ED Va, 1994); *In re Gray*, 97 BR 930, 935-937 (ED Ill, 1989).<sup>2</sup>

However, under MCR 3.101, a judgment against a garnishee for contempt is inextricably related to the enforcement of a prior judgment against a defendant or his estate. Pursuant to MCR 3.101(S)(2), "If the garnishee fails to comply with the court order, the garnishee may be adjudged in contempt of court." MCR 3.101(O)(7) provides, "Satisfaction of all or part of the judgment against the garnishee constitutes satisfaction of a judgment to the same extent against the defendant." Reading these subrules together, if garnishee defendants had satisfied the \$10,997.05 judgment of contempt, the same amount of defendant's outstanding judgment debt would have been satisfied, thereby violating the automatic stay under 11 USC 362.

We find persuasive and adopt the bankruptcy court's analysis of MCR 3.101 in *In re Feldman*, 303 BR 137 (ED Mich, 2003). In that case, the plaintiff obtained a default judgment against the defendant. *Id.* at 138. The plaintiff subsequently served a writ of garnishment on the

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<sup>2</sup> Lower federal court decisions are not binding on state courts, but may be persuasive. *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004).

defendant's employer, who responded that the defendant "worked for tips only so there was no way to garnish his wages." *Id.* In response, the plaintiff filed a motion to review the employer's business records. *Id.* Thereafter, the defendant filed for bankruptcy in federal court. *Id.* Meanwhile, the employer failed to appear at the state court hearing to review its business records and a judgment was entered against the employer "for its failure to comply with Michigan's garnishment laws and procedures." *Id.* The bankruptcy court concluded that the plaintiff's postpetition actions to obtain a judgment against the employer violated the stay because the actions were aimed to collect on the defendant's prepetition debt. *Id.* at 139-140. The court reasoned that "there would be no garnishment judgment against the employer absent the underlying debt." *Id.* at 139. Citing MCR 3.101(O)(7), the court further reasoned that satisfaction of all or part of the judgment against the employer would satisfy the same amount of the prepetition judgment against the defendant, and the defendant would then owe the employer on the claim under MCR 3.101(O)(2).

In light of our conclusions above, though the district court may have properly found garnishee defendants to be in contempt of court, the district court erred by entering a judgment in favor of plaintiff for the amount of defendant's judgment debt. Therefore, we vacate the circuit court's order reinstating the judgment against garnishee defendants. We decline to address garnishee defendants' last argument challenging the amount of the judgment of contempt. We do not retain jurisdiction.

Garnishee defendants, being the prevailing parties, may tax costs pursuant to MCL 7.219.

/s/ Mark J. Cavanagh  
/s/ Peter D. O'Connell  
/s/ Kurtis T. Wilder