STATE OF MICHIGAN

COURT OF APPEALS

SHARON ANN BOLLE and JOSEPH M. WRIGHT,

Plaintiffs-Appellees,

v

GEORGE W. HARRISON III,

Defendant,

and

KATHLEEN HARRISON and THE KATHLEEN HARRISON TRUST,

Garnishee Defendants-Appellants.

UNPUBLISHED
November 20, 2001

No. 223916
Washtenaw Circuit Court
LC No. 91-041875-CK

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Garnishee-defendants Kathleen Harrison and the Kathleen Harrison Trust (collectively, defendants) appeal as of right the trial court's order, after a bench trial, ruling that defendant George W. Harrison III ("husband") fraudulently conveyed assets to his wife, garnishee-defendant Kathleen Harrison ("wife"), and to the Kathleen Harrison Trust ("the trust"), and that these assets are therefore subject to garnishment by plaintiffs, judgment debtors of husband. Further, the trial court excepted from garnishment the assets wife owned before the series of fraudulent conveyances began, in the amount of $95,000. We affirm.

Defendants first argue that, notwithstanding the trial court's finding that fraudulent conveyances were made, no evidence was presented actually showing that specific fraudulent conveyances took place, showing the values or amounts of any such transfers, or showing any intent to defraud creditors. According to defendants, the trial court erred in ruling that virtually all of wife's assets are subject to attachment to satisfy a judgment against her husband.

We review a trial court's findings of fact to determine whether they are clearly erroneous. MCR 2.613(C); *Regan v Carrigan*, 194 Mich App 35, 37; 486 NW2d 57 (1992). To the extent that the trial court based its ruling on a statutory provision, our review of statutory interpretation is de novo. *In re Contempt of Tanksley*, 243 Mich App 123, 127; 621 NW2d 229 (2000).

Contrary to defendants' assertion, a plaintiff is not required to furnish direct evidence of the fraudulent conveyances, something that is often difficult to do because of the frequent absence of a clear paper trail. Rather, it is sufficient if circumstantial evidence is presented from which the making of the conveyances can be inferred. *McIntyre v Farmers' & Merchants' Bank*, 115 Mich 255, 257; 73 NW 233 (1897); *United States v Rode*, 749 F Supp 1483, 1493 (WD Mich, 1990) ("[T]he issue of fraud is commonly determined by certain recognized indicia[;] [a]lthough these indicia are not conclusive, the occurrence of several of them 'will always make out a strong case.'" (citation omitted)), aff'd 943 F2d 53 (CA 6, 1991). Here, there was not merely sufficient circumstantial evidence, but overwhelming circumstantial evidence that husband, who worked without compensation as chief executive officer for a number of companies that wife owned in whole or part and who also managed wife's investments, also without compensation, transformed a relatively small initial investment by her into capital assets of two million dollars or more. This transformation occurred during a time in which wife was earning no income and husband's own investments were becoming worthless. Coincidentally, during this same period husband was facing legal malpractice suits as the result of an admittedly fraudulent real estate scheme in which he had been a partner. This evidence, which was presented not only through the testimony of plaintiffs but of defendants themselves, certainly permits the inference that husband was transferring money he was earning through his work for the companies to wife without receiving compensation for it. This evidence thus meets not only the elements of MCL 566.16 that a conveyance has been made, and that it has been made without consideration, but also the element that husband believed that he had debts beyond his ability to pay as they were incurred. In fact, as to this element, husband conceded as much in his testimony. This evidence also meets the elements of MCL 566.17[1] that a conveyance has been made and an obligation has been incurred "with actual intent . . . to defraud either present or future creditors." Upon review of the record, we note that the indicia of fraud permeate this case. We cannot say that the trial court clearly erred.

Defendants assert that the conveyances in question could not have been fraudulent as to plaintiffs because they were made before husband incurred any liability to plaintiffs. This argument ignores the fact that if the statutory elements of a fraudulent conveyance are met, the transaction "is fraudulent as to both present and future creditors." MCL 566.16 and MCL 566.17. Thus plaintiffs are no less entitled to the protection of the statute because they were "future creditors" when the fraudulent conveyances were made than they would have been had they been "present creditors."

Defendants further assert that no fraud was perpetrated upon plaintiffs when they decided to enter a financial transaction with husband with a financial guaranty from him but not wife, because full disclosure was made to plaintiffs at this time regarding who owned which assets. Initially, we note that the financial disclosure was misleading at best. It stated that husband had assets of two million dollars when he in fact had virtually no assets apart from whatever value there may have been to the company whose value plaintiffs asked him to guarantee and which proved to be virtually worthless. Further, conflicting evidence was presented at trial regarding whether a disclosure in fact was made. The trial court was entitled to make the credibility

[1] Both MCL 566.16 and MCL 566.17 were repealed by 1998 PA 434, § 13, immediately effective December 30, 1998.

determinations regarding whose testimony it would believe on this point, MCR 2.613(C); *Bracco v Michigan Technological Univ*, 231 Mich App 578, 585; 588 NW2d 467 (1998), and we will not disturb its findings.

Defendants also argue that although the trial court correctly exempted wife's premarital assets from attachment, it erred in limiting the exemption to the original 1980 value of her assets. According to defendants, the trial court should have exempted those assets' *current* value or "their value at the time of the 'put option' guaranty." Defendants claim that the trial court's ruling fails to account for the growth, appreciation, accumulation and increase in value of wife's assets during the intervening twenty years. Defendants repeatedly contend that wife's original assets have "increased dramatically" during that time. In essence, defendants assert that the trial court ought to have calculated a generous increase in the value of wife's original assets on the basis of their presumed appreciation. We note that defendants did not present this argument at trial. Rather, they raised this issue in a motion made pursuant to MCR 2.517(B) that requested the trial court to amend its findings of fact. Moreover, defendants cite no law for this proposition. This Court need not search for authority to support defendants' position. *McPeak v McPeak (On Remand)*, 233 Mich App 483, 495-496; 593 NW2d 180 (1999). Furthermore, defendants testified at trial that wife spent her money on living expenses and paying off husband's debts. This testimony permits the inference that these assets were not available for appreciation in value; furthermore, husband's own experience, which he narrated at considerable length at trial, is sufficient to demonstrate that assets do not automatically increase in value, as defendants suggest in their brief, and that they may in fact diminish in value, or even be lost altogether. In the absence of any law to support defendants' position on this issue or of evidence presented at trial to show that it is justifiable, and in the presence of evidence refuting it, we find no error in the trial court's ruling as to the amount of wife's assets to be immune from garnishment by husband's judgment creditors.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Jane E. Markey