

STATE OF MICHIGAN
COURT OF APPEALS

SCHENK BONCHER & PRASHER,

Petitioner-Appellant,

v

ROBERT VANDERLAAN,

Respondent-Appellee.

UNPUBLISHED

August 28, 2003

No. 237690

Kent Circuit Court

LC No. 99-011906-CZ

Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

PER CURIAM.

Petitioner appeals as of right from the October 17, 2001, order of the Kent Circuit Court denying its motion for the surrender of cash values of respondent's four life insurance policies. The issues in this case are whether petitioner is entitled to collect part of its judgment against respondent by either (1) a garnishment of the surrender value of respondent's life insurance policies, or (2) by having a court order respondent to request the surrender value of those policies from the insurance company. We conclude that the court was authorized to order respondent to obtain the surrender value of the policies. We therefore reverse the circuit court and remand to the circuit court for it to determine whether respondent, in fact, should be ordered to obtain the surrender values.

I. Facts and Procedural History

On February 22, 2000, a judgment of \$120,433.76 in favor of petitioner was entered against respondent in accordance with an arbitration award. The arbitration proceedings resolved a dispute between the parties that arose as a result of respondent's employment with petitioner. During its attempt to collect this judgment, petitioner served a writ of garnishment on Northwestern Mutual Life Insurance Company ("Northwestern"). Through that writ, petitioner discovered that respondent had four life insurance policies, each with a surrender value. However, Northwestern refused to turn over the surrender values to petitioner "unless and until [respondent] as the owner of the policies, exercises the policy surrender or policy loan privileges."

After several hearings not now relevant, petitioner renewed its motion to compel Northwestern to release the surrender values on the life insurance policies. At the hearing, the trial court, relying upon *Isaac Van Dyke Co v Moll*, 241 Mich 255; 217 NW 29 (1928), held that because respondent's policies required respondent *himself* to first exercise his right to obtain the surrender values of the life insurance policies before they were due and owing from Northwestern, Northwestern held no money for respondent and had no debt to him, and could not be ordered to release the surrender values. However, the trial court left open the possibility that respondent himself could be ordered to execute a release of the surrender values of the four policies. In light of the court's statement, petitioner filed a motion to order respondent to instruct Northwestern to release the surrender cash values of the life insurance policies. In denying petitioner's motion, the trial court held that it continued to be bound by *Van Dyke, supra*.

II. Analysis

As we noted in the commencement of this opinion, petitioner has presented two independent arguments for reversal of the trial court's order: (1) Northwestern can be compelled to release the surrender value of respondent's insurance policies even though respondent has not requested it to do so, and (2) the trial court can order respondent to demand the surrender values from Northwestern in order to satisfy part of the judgment. We address the second argument first, for we believe it is dispositive of this appeal.

MCL 600.6104 sets forth several options for a trial court to utilize in seeking to obtain satisfaction of an outstanding judgment. Specifically, the applicable subsections provide:

After judgment for money has been rendered in an action in any court of this state, the judge may, on motion in that action or in a subsequent proceeding:

(3) Order the satisfaction of the judgment out of property, money, or other things in action, liquidated or unliquidated, not exempt from execution;

(5) Make any order as within his discretion seems appropriate in regard to carrying out the full intent and purpose of these provisions to subject any nonexempt assets of any judgment debtor to the satisfaction of any judgment against the judgment debtor.

When applying the above statute, the primary role of this Court is to ascertain and give effect to the intent of the Legislature. *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). Furthermore, unless defined, this Court must apply the plain and ordinary meaning to words contained in the statute. *Id.* In this case, applying the plain and ordinary meaning to MCL 600.6104, it is readily apparent that the statute affords the trial court the authority to order respondent to obtain the surrender value of the life insurance proceeds from Northwestern.

The plain and broad language of MCL 600.6104(3) allows for the satisfaction of a

judgment out of any property, liquidated or unliquidated, that is not exempt.¹ The surrender values are respondent's personal property, as personal property is defined as everything that is the subject of ownership that is not land. *People v Fox (After Remand)*, 232 Mich App 541, 554; 591 NW2d 384 (1998). Under respondent's life insurance policies, he is clearly the owner of these policies and their surrender values. As petitioner correctly points out in its brief, respondent retains property rights in the policies, including the right to assign the policy as collateral security, the right to change policy beneficiaries, the right to borrow against the policies, and the right to surrender the policies. Furthermore, the affidavit of Northwestern's attorney states that respondent may release the surrender values at any time. The surrender values are, therefore, nonexempt personal property owned by respondent. MCL 600.6104(3).

Additionally, subsection (5) of the statute allows the court to order the collection of *any* nonexempt assets it deems necessary to effectuate the intent of the statute. MCL 600.6104(5). The surrender values of respondent's life insurance policies are, therefore, collectible under MCL 600.6104(3) and (5). As such, the trial court was authorized to order respondent to obtain the surrender values of his insurance policies, if the trial court in its discretion deemed it appropriate.²

In its ruling, the trial court erroneously relied on *Van Dyke*, which dealt with the validity of a garnishment proceeding against an insurance agency under "3 Comp. Laws 1915, §§ 13123 and 13139" when the insured had not requested the surrender value of the policies, and not the ability of a trial court to order the debtor to request the proceeds. Moreover, MCL 600.6104 was enacted well after *Van Dyke* was decided.³ Although *Van Dyke* was relevant to the first argument raised by petitioner, it did not address the trial court's authority under MCL 600.6104 to order respondent to obtain the surrender values of his insurance policies.

Accordingly, we reverse the trial court's order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray

¹ Life insurance proceeds are not exempt under any statute.

² MCL 600.6104 is stated in discretionary terms, for it states that the trial court "may" order any of the remedies provided in the statute.

³ See 1961 PA 236. Interestingly, at the time *Van Dyke* was decided, there was a statutory provision similar to that found within MCL 600.6104(3), that being 1915 PA 314, § 13381. However, that provision was neither relied upon nor cited by the *Van Dyke* Court.