STATE OF MICHIGAN

COURT OF APPEALS

ISSA G. HADDAD,

Plaintiff-Appellant,

v

ANTONE F. HADDAD

Defendant,

and

TOTAL G SERVICES, LLC,

Garnishee Defendant-Appellee.

UNPUBLISHED
September 23, 2014

No. 315686
Wayne Circuit Court
LC No. 10-006871-NO

ISSA G. HADDAD,

Plaintiff-Appellant,

v

ANTONE F. HADDAD,

Defendant,

and

TOTAL G SERVICES, LLC,

Garnishee Defendant-Appellee.

No. 316492
Wayne Circuit Court
LC No. 10-006871-NO

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

In this garnishment action, plaintiff appeals as of right orders granting summary disposition in favor of garnishee defendant and awarding garnishee defendant attorney fees and costs. We affirm.

In June 2010, plaintiff sued his uncle, Antone Haddad, and eventually obtained a judgment in the amount of $100,000. In February 2011, plaintiff served writs for periodic and nonperiodic garnishment on Total G Services LLC, seeking to collect the $100,000 judgment entered against defendant. The resident agent of Total G Services is plaintiff's first cousin, Fouad Haddad. Total G Services filed its garnishee disclosures stating that it was not indebted to defendant, did not possess or control defendant's property, and was not obligated to make periodic payments to defendant because he was not an employee. Thereafter, plaintiff served written interrogatories on Total G Services, and subpoenas were issued directing defendant and Fouad to appear, provide testimony, and produce particular documents. After this discovery was conducted, and plaintiff's motion to appoint a receiver for Total G Services was denied by the trial court, plaintiff took no further action with regard to this proceeding.

In April 2012, plaintiff again served writs for periodic and nonperiodic garnishment on Total G Services LLC, seeking to collect the $100,000 judgment entered against defendant, plus interest and costs for a total of $103,442. On May 3, 2012, plaintiff obtained a default and default judgment against Total G Services after it failed to file its garnishee disclosures.

On May 16, 2012, Total G Services filed its garnishee disclosures which stated that it was not obligated to make periodic payments to defendant because he was not employed by Total G Services, and it was not indebted to defendant for any amount because defendant was not an owner, member, or officer of Total G Services.

On May 22, 2012, garnishee defendant filed a motion to set aside the default and default judgment arguing that its resident agent, Fouad, believed that the writs of garnishment were not properly served because his name was misspelled so he refused to sign documentation acknowledging receipt of the material. Fouad expected the process server to return later with corrected documents, but the next communication in this regard was the notice of default and default judgment against Total G Services. Thereafter, the garnishee disclosures were promptly filed. Garnishee defendant asserted two meritorious defenses, including that it was not obligated to make any payments to defendant because he was not an employee and it was not indebted to defendant because he was not a member or owner. Accordingly, pursuant to MCR 2.603, the default and default judgment should be set aside. Further, garnishee defendant argued, setting aside the default and default judgment was appropriate because: (1) plaintiff was not prejudiced by the short delay, (2) this case was the result of a family feud and personal vendetta which had existed for years, (3) plaintiff and the underlying defendant, his uncle, were in collusion against garnishee defendant, and (4) it would be manifestly unjust to hold garnishee defendant liable on defendant's judgment debt considering the strength of its meritorious defenses and its showing of good cause.

Plaintiff opposed the motion, arguing that garnishee defendant did not establish good cause to set aside the default and default judgment. Defendant's affidavit established that he was an equal owner, and shared equally in the profits, of Total G Services. Further, employees of Total G Services and family members presented affidavits which stated that Total G Services and

defendant "operated as a partnership as well as they displayed this to family, friends, employees and customers of Total G Services LLC."

Following oral argument, garnishee defendant's motion to set aside the default and default judgment was granted. The trial court noted that garnishee defendant's resident agent, Fouad, believed that the writs of garnishment were not properly served and he had appropriately filed garnishee disclosures in the past. Further, the court held that, considering the circumstances and that garnishee defendant provided absolute defenses to the action, if proved, sufficient good cause was shown to set aside the default and default judgment.

On March 1, 2013, after discovery was completed, garnishee defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that defendant was neither a "member" nor employee of Total G Services; thus, it was not required to make any garnishment payments to plaintiff on behalf of defendant. Garnishee defendant argued that Fouad created Total G Services in 2008 under the Michigan Limited Liability Company Act and he was the only "member." Defendant was not a member when the company was formed, and never became a member of the company as evidenced by the company's records, tax filings, bank statements, and other documents. Further, defendant could not be a member or employee of this company that is licensed to host charity poker games because he was convicted of felony gambling; thus, he was prohibited from becoming a member by Michigan's Traxler-McCauley-Law-Bowman Bingo Act, MCL 432.118. Moreover, no written employment contract existed, and there was no evidence to support the claim that defendant was employed by garnishee defendant. Garnishee defendant also requested the trial court to impose sanctions against plaintiff under MCL 600.2591, arguing that this was a frivolous action. Plaintiff's primary purpose was to perpetuate a family feud, and he had no reasonable basis to believe that defendant was employed by, or had an ownership interest in, Total G Services.

Plaintiff responded to garnishee defendant's motion for summary disposition, arguing that this garnishment proceeding was governed by MCR 3.101 and that rule provides that a dispute must be *tried* in the same manner as other civil actions. MCR 3.101(M). The rule does not permit a garnishee defendant to move for summary disposition; thus, the motion should be denied. Further, the motion should be denied because genuine issues of material fact existed regarding the business relationship between defendant and garnishee defendant. Moreover, the motion should be denied because the agreement between defendant and garnishee defendant was not illegal under MCL 432.118; the statute does not prohibit employees or silent partners from participating in such a business.

On March 22, 2013, following oral arguments, the trial court granted garnishee defendant's motion for summary disposition. The trial court concluded that there was no "dispute" under MCR 3.101(M)(1) because there was no evidence that defendant was either a member or employee of Total G Services. The business records indicated that Fouad was the only "member" of the company, and there was no written agreement between Total G Services and defendant. The only evidence that plaintiff presented in support of this garnishment action were hearsay statements from family members which were not admissible evidence. The trial court also concluded that the action was frivolous because it was "nothing more than a family

feud." Thus, the issue of sanctions was taken under advisement pending additional briefing by the parties.

On April 12, 2013, plaintiff filed his appeal challenging the trial court's order granting garnishee defendant's motion for summary disposition and it was assigned docket number 315686.

On May 3, 2013, garnishee defendant filed its motion for attorney fees and costs, arguing that the trial court specifically found plaintiff's claim to be frivolous and, thus, sanctions were mandatory under MCR 2.114. Garnishee defendant further argued that it incurred $10,800 in attorney fees to defend against this frivolous action, which were reasonable fees under the factors set forth in *Wood v Detroit Auto Inter-Ins Exchange*, 413 Mich 573, 588; 321 NW2d 653 (1982). That is, considerations of counsel's professional standing and experience, as well as the complexity and time-consuming nature of this matter (because it was vexatious, involved numerous discovery requests, and several court hearings) supported counsel's normal billing rate of $190 per hour for the 118 hours expended. However, because legal services were provided to it since May 2012 pursuant to a fixed fee agreement, garnishee defendant only sought reimbursement of $10,800, about half of the amount that would have been considered reasonable. Further, the amount in controversy was over $100,000 and the result achieved was dismissal of the action. Although time records were not maintained because of the fixed-fee agreement, a detailed estimate of the time spent on the various matters involved in this case was provided to the trial court and totaled 118 hours. Because garnishee defendant only actually paid $10,800 in attorney fees, at an hourly rate of $190, that amounted to payment for 56.8 hours. Garnishee defendant also argued that the record clearly supported its request for the attorney fees in the amount of $10,800, thus an evidentiary hearing was not required.

Plaintiff responded to garnishee defendant's motion, arguing that the garnishment action was not frivolous under MCL 600.2591. The primary purpose of this action was not to harass, embarrass or injure garnishee defendant. Defendant testified under oath that he "was a partner and is still owed money from Garnishee Defendant." And "Garnishee Defendant testified under oath that [defendant] received a percentage of the profits." In fact, Total G Services had made payments to plaintiff on behalf of defendant's debt until the first writs of garnishment were served. After the first garnishment proceeding ended, plaintiff became aware that garnishee defendant paid additional monies to defendant so a second proceeding was commenced. A second set of interrogatories was sent and garnishee defendant revealed that it had paid defendant $54,000 in 2011 and $18,000 in 2012. Plaintiff also argued that he had a reasonable basis to believe the underlying facts were true, i.e., that defendant was employed by, and had an ownership interest in, Total G Services. Plaintiff further argued that an award of costs was not permitted because the matter was not "tried" as required under MCR 2.625(E)(2)(a). And, plaintiff argued, counsel for garnishee defendant did not provide the alleged agreement pertaining to the "tiered flat fee" charged or an itemized billing record setting forth what services were performed. Thus, at minimum, an evidentiary hearing was necessary to determine the amount of the sanction.

On May 10, 2013, following oral argument, the trial court entered an order granting garnishee defendant's motion and awarding $10,800 in attorney fees and costs. The trial court

again concluded that the garnishment action was frivolous and adopted garnishee defendant's analysis of the *Wood* factors.

On May 31, 2013, plaintiff filed his appeal challenging the trial court's order granting garnishee defendant attorney fees and costs, and it was assigned docket number 316492. On June 12, 2013, this Court entered an order consolidating plaintiff's appeals. On June 26, 2013, the trial court entered an order granting plaintiff's motion for stay pending appeal.

Docket No. 315686

Plaintiff first argues that the trial court erred when it set aside the default and default judgment entered against garnishee defendant because the requisite showing of good cause was not established. We disagree.

We review for an abuse of discretion the trial court's decision on a motion to set aside a default or a default judgment. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

A motion to set aside a default or a default judgment, unless grounded in a lack of jurisdiction, may be granted only if an affidavit of facts showing a meritorious defense is filed and good cause is shown. MCR 2.603(D)(1). The totality of the circumstances should be considered when determining whether there is a meritorious defense and good cause. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 236-237; 760 NW2d 674 (2008). Factors relevant to determining whether there is "good cause" under the totality of the circumstances include:

> (1) whether the party completely failed to respond or simply missed the deadline to file; (2) if the party simply missed the deadline to file, how long after the deadline the filing occurred; (3) the duration between entry of the default judgment and the filing of the motion to set aside the judgment; (4) whether there was defective process or notice; (5) the circumstances behind the failure to file or file timely; (6) whether the failure was knowing or intentional; (7) the size of the judgment and the amount of costs due under MCR 2.603(D)(4) . . . . [*Id*. at 238.]

Sufficient "good cause" can be established when there is a substantial defect or irregularity in the proceedings, or when there is a reasonable excuse for the failure to comply with the requirements that created the default. *Alken-Ziegler*, 461 Mich at 233. The strength of the meritorious defense will affect the good cause showing that is necessary. *Id*. "In other words, if a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent a manifest injustice." *Id*. at 233-234. After a party demonstrates a meritorious defense and good cause, the trial court may consider whether manifest injustice would result if the default judgment was allowed to stand. *Id*. at 233.

Plaintiff challenges garnishee defendant's showing of good cause, arguing that it was insufficient and was premised on Fouad's erroneous and inexcusable understanding of the law.

The trial court disagreed, as do we. Garnishee defendant was served through its resident agent, Fouad, who believed that the service was insufficient because of a misspelling of his name. Consequently, Fouad refused to sign the acknowledgement of service and believed that he would be served corrected documents. The trial court noted that garnishee defendant had properly filed garnishee disclosures in the previous garnishment action. Thus, Fouad knew the process, which apparently led him to believe that there was a mistake in this case and that service of the corrected documents would have to occur before he was required to respond to the action. As discussed above, sufficient good cause can be established when there is a substantial defect or irregularity in the proceedings, or when there is a reasonable excuse. *Alken-Ziegler*, 461 Mich at 233.

Further, the circumstances presented in this case included that garnishee defendant filed its garnishee disclosures and promptly moved to set aside the default and default judgment upon receiving notice of the same. Garnishee defendant also had been appropriately responsive in the previous garnishment action, and simply was under the mistaken belief that his signature was required to effectuate service in this second garnishment action; thus, the failure was not knowing or intentional. Further, plaintiff was seeking to enforce a judgment against garnishee defendant that was in excess of $100,000. And the previous garnishment action was defended on the same grounds presented in this action, i.e., defendant was neither an employee nor member of Total G Services and, after discovery was completed, plaintiff took no further action in that case. If proven, these defenses would be absolute. Therefore, garnishee defendant's showing of good cause was sufficient to support its motion to set aside the default and default judgment entered against it, particularly in light of the strength of its meritorious defenses, and manifest injustice would result if the default judgment was allowed to stand. See *Alken-Ziegler*, 461 Mich at 233. Accordingly, the trial court did not abuse its discretion when it granted garnishee defendant's motion to set aside the default and default judgment. See *Saffian*, 477 Mich at 12.

Next, plaintiff argues that the trial court erroneously granted garnishee defendant's motion for summary disposition because "genuine issues of material fact abounded that were required to be resolved by the trier of fact." We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(10) should be granted if there is no genuine issue as to any material fact. A party opposing the motion must show by evidentiary materials that a genuine issue of disputed fact exists. *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). Documentary evidence, including affidavits and depositions, offered in support of or in opposition to a motion based on MCR 2.116(C)(10) "shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6).

"[T]he purpose of garnishment is to preserve a principal defendant's assets in the hands of the garnishee so that those assets may later be available to satisfy a claim against the principal defendant." *Berar Enterprises, Inc v Harmon*, 93 Mich App 1, 8; 285 NW2d 774 (1979). The judgment creditor stands in no better position than the principal defendant with regard to an obligation owed by a third-party to the principal defendant. See *Smit v State Farm Mut Auto Ins Co*, 207 Mich App 674, 683; 525 NW2d 528 (1994).

In this case, plaintiff claimed that an "asset" of the principal defendant was an ownership interest or "equity interest" in Total G Services. Total G Services is a limited liability company and was organized in 2008 under the Michigan limited liability company act, MCL 450.4101 *et seq*. A "limited liability company" is defined as "an entity that is an unincorporated membership organization formed under this act." MCL 450.4102(2)(k). A "member" is "a person who has been admitted to a limited liability company as provided in [MCL 450.4501]." MCL 450.4102(2)(p). MCL 450.4501 sets forth the various ways in which a person may be admitted as a "member" of a limited liability company. Under MCL 450.4501(1)(a), a person may be admitted as a member by complying with the requirements for admission set forth in the company's operating agreement. However, if no such requirements for admission are set forth in an operating agreement, a person may be considered admitted as a member of the company if the person signed the initial operating agreement, or if the person's membership status is reflected in the company's records, tax filings, or other written statements. MCL 450.4501(1)(b). Further, MCL 450.4501(1)(c) provides that a person may be admitted as a member in any manner established in a written agreement of the members. And MCL 450.4102(2)(q) defines "membership interest" as a member's rights in the company, including any right to receive distributions of its assets.

The rights of judgment creditors with regard to a limited liability company and its members are set forth in MCL 450.4507, which provides that: "If a court of competent jurisdiction receives an application from any judgment creditor of a member of a limited liability company, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment with interest." MCL 450.4507(1). Further, MCL 450.4507(6) provides: "This section provides the exclusive remedy by which a judgment creditor of a member may satisfy a judgment out of the member's membership interest in a limited liability company."

Here, garnishee defendant argued that defendant was not a member of Total G Services and, thus, defendant had no membership interest in the company which could be charged to satisfy plaintiff's judgment against defendant. See MCL 450.4507(1). And, further, defendant was not an employee of Total G Services. In response, plaintiff argued that defendant testified that: (1) he was "50/50 partners" with Fouad, (2) both defendant and Fouad "owned the company," and (3) defendant and Fouad were supposed to split the profits of the company. Throughout his brief on appeal, plaintiff characterizes defendant's interest in Total G Services as an "equity interest," and characterizes the cash Fouad paid to defendant as "distributions." However, conspicuously absent from plaintiff's brief on appeal is any discussion or analysis of the laws applicable to a limited liability company, including those laws set forth above. That is, plaintiff completely fails to demonstrate that defendant was a "member" of Total G Services, and fails to discuss the manner in which defendant was purportedly admitted as a member of Total G Services, as set forth in MCL 450.4501. Plaintiff also fails to explain how defendant can have an "equity interest" in this limited liability company.

Although defendant testified that he was an "owner" and a "partner" in this limited liability company, these assertions are not supported by any legal documents and, in any case, are inconsistent with the law applicable to limited liability companies. Whether defendant had a cognizable interest in Total G Services depends upon whether he was a "member," as defined by MCL 450.4102(2)(p), which presents an issue of law because it involves the interpretation and

application of statutory requirements. That is, to be considered a "member" of a limited liability company, the statutory requirements must be met. Thus, for defendant to establish his interest in the company and entitlement to a distribution from Total G Services, he would have to prove that he had a "membership interest" because he was a "member" of Total G Services and became a "member" in one of the ways set forth in MCL 450.4501. Likewise, for Total G Services to be liable on defendant's debt in this garnishment proceeding, plaintiff was also required to establish that defendant was a member of Total G Services, that he became a member in one of the ways set forth in MCL 450.4501, and, thus, had a membership interest entitling him to distributions from the company which were subject to garnishment. See MCL 450.4102(2)(q); *Smit*, 207 Mich App at 683.

In short, plaintiff failed to establish that a genuine issue of material fact existed on the issue whether defendant was a "member" of Total G Services. According to the record evidence, Fouad was the only "member" of Total G Services. Because Fouad was the only "member" of Total G Services, only he was entitled to distributions of cash from Total G Services. See MCL 450.4303(1). After receiving a distribution, Fouad was entitled to do whatever he wished with his distribution, including give cash to defendant. However, when Fouad gave cash to defendant, it was not a "distribution" because defendant was not a "member" of Total G Services. Thus, plaintiff's claim that defendant periodically received "distributions" from Total G Services is without merit. And plaintiff's claim that defendant's "interest was never properly terminated" is likewise without merit because plaintiff did not establish that defendant ever had a legally cognizable interest in Total G Services that was required to be terminated.

Further, plaintiff fails to present any argument on appeal in support of a claim that defendant was an employee of Total G Services; thus, to the extent such a claim was alleged, the claim is abandoned on appeal. See *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008); *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). In any case, the record evidence fails to establish that a genuine issue of material fact existed on the issue whether defendant was an employee of Total G Services. That is, plaintiff failed to present any evidence of a contract of employment or of an employment relationship between defendant and Total G Services. To the contrary, defendant maintained throughout his creditor's examination that he was a "partner" and "owner" of Total G Services; he never testified that he was its employee. Thus, plaintiff failed to present any evidence that would tend to establish that defendant was an employee of Total G Services and, thus, that it was obligated to make periodic payments to defendant. See MCR 3.101(B)(1)(a).

We also reject as irrelevant plaintiff's claim on appeal that Michigan's Traxler-McCauley-Law-Bowman Bingo Act (Bingo Act), MCL 432.118, did not prohibit "a person with a gambling-related conviction from owning an equitable membership interest in a licensed charitable gaming entity." Again, for Total G Services to be liable on a judgment against defendant in this garnishment proceeding, defendant had to be a "member" of this limited liability company as set forth in the statutes applicable to limited liability companies discussed above. See also MCR 3.101(G). Because plaintiff failed to establish that a genuine issue of material fact existed in that regard, the Bingo Act is irrelevant to the resolution of the issue whether Total G Services was liable in this garnishment proceeding for the debt of defendant.

In summary, the trial court properly granted garnishee defendant's motion for summary disposition after concluding that no genuine issue of material fact existed on the issue whether defendant was either a "member" or employee of Total G Services, a limited liability company. Accordingly, plaintiff was not a "judgment creditor of a member of a limited liability company" and, thus, that the trial court could not "charge the membership interest of the member with payment of the unsatisfied amount of judgment with interest." MCL 450.4507(1). The dismissal of this garnishment proceeding is affirmed.

Docket No. 316492

Next, plaintiff argues that the trial court abused its discretion when it concluded that this garnishment proceeding was frivolous and granted garnishee defendant attorney fees and costs in the amount of $10,800. We disagree.

A trial court's finding that a claim was frivolous is reviewed for clear error. *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999). "A trial court's decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id*. We review a trial court's decision to award attorney fees and costs for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

Pursuant to MCR 2.114(F), a party pleading a frivolous claim is subject to costs as provided in MCR 2.625(A)(2), which states that "costs shall be awarded as provided by MCL 600.2591." MCL 600.2591 provides:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

Plaintiff argues that his garnishment action was not "frivolous" as defined by the statute because, first, his primary purpose in initiating the action was not to harass garnishee defendant. Plaintiff explains that the second writs of garnishment were issued after he became aware that "Fouad and Total G Services were once again making distributions to [defendant] in 2012." Second, plaintiff argues, he had a reasonable basis to believe the underlying facts were true; defendant testified that he had an ownership interest in Total G Services. Third, plaintiff argues, his legal position was not devoid of arguable legal merit because the agreement between defendant and Fouad "resolved to the statutory construction of the [Bingo Act]".

We conclude that none of plaintiff's arguments have merit but, in any case, only one of the three conditions must be met to warrant a finding that the action was frivolous. MCL 600.2591(3)(a). It appears the trial court concluded that plaintiff's primary purpose was to harass garnishee defendant as a consequence of a longstanding feud. It also appears from the record that this conclusion followed a finding that plaintiff had no reasonable basis to believe that garnishee defendant was indebted to defendant. As discussed above, we agree that plaintiff had no reasonable basis to believe that defendant was a "member" of Total G Services and that defendant was receiving "distributions" from it. The business records of this limited liability company, which were produced, indicated that Fouad was the only member of the company. See MCL 450.4102(2)(k); MCL 450.4501. That is, the fact that defendant was not a "member" of the company could easily be discerned from the discovery materials produced by Total G Services. The fact that Fouad gave money to defendant for his assistance with regard to the formation and operation of Total G Services does not lead to the legal conclusion that defendant was a "member" of Total G Services and, thus, had a "membership interest" in the company as defined by the applicable statutes. Taken to its logical conclusion, according to plaintiff's argument, any person who provided some service to Total G Services for compensation or who merely claimed to have an "ownership interest" in the company would be considered a "member" who has a "membership interest" that was subject to garnishment. Accordingly, the trial court did not abuse its discretion when it concluded that plaintiff's garnishment action was frivolous.

Next, plaintiff argues that the trial court's award of $10,800 constituted an abuse of discretion because MCR 2.625(E)(2)(a) only allows for costs to be awarded to a garnishee defendant when the matter was "tried," and not when the matter is summarily dismissed by motion. We disagree.

MCR 2.625(E) provides:

> Costs in garnishment proceedings are allowed as in civil actions. Costs may be awarded to the garnishee defendant as follows:
>
> (1) The court may award the garnishee defendant as costs against the plaintiff reasonable attorney fees and other necessary expenses the garnishee defendant incurred in filing the disclosure, if the issue of the garnishee defendant's liability to the principal defendant is not brought to trial.

> (2) The court may award the garnishee defendant, against the plaintiff, the total costs of the garnishee defendant's defense, including all necessary expenses and reasonable attorney fees, if the issue of the garnishee defendant's liability to the principal defendant is tried and
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> * * *
>
> (b) the plaintiff fails to recover judgment against the principal defendant.

In this case, garnishee defendant did not merely file garnishee disclosures; rather, extensive proceedings were conducted before this matter was eventually dismissed following garnishee defendant's filing of a motion for summary disposition. Although the court rule refers to the word "tried," generally a summary disposition ruling is the procedural equivalent of a trial on the merits. *The Mable Cleary Trust v The Edward-Marlah Muzyl Trust*, 262 Mich App 485, 510; 686 NW2d 770 (2004), overruled in part on other grounds *Titan Ins Co v Hyten*, 491 Mich 547, 555 n 4 (2012). We note that, when there are disputed issues in garnishment proceedings, they are generally resolved by the trial court, MCR 3.101(M)(4). We agree with the trial court's clear conclusion that the summary disposition ruling was the procedural equivalent of a trial on the merits and an award of reasonable attorney fees and costs was permissible. Accordingly, the trial court did not abuse its discretion by awarding attorney fees and costs to garnishee defendant.

Finally, plaintiff argues that the trial court's award of $10,800 constituted an abuse of discretion because an evidentiary hearing was not conducted and garnishee defendant failed to produce either the "flat fee" agreement or counsel's itemized billing statements in support of the claimed hours spent defending this matter. We disagree.

First, plaintiff argues that the flat-fee agreement between garnishee defendant and its counsel should have been produced. However, plaintiff has failed to support his argument with citation to legal authority which holds that a fee agreement must be produced in support of a motion for attorney fees and costs and we could find no such authority.

Second, plaintiff argues that garnishee defendant's motion for attorney fees and costs was not supported by "detailed billing records setting forth what its counsel was allegedly doing when he was purportedly using every second of his workday for 2½ weeks working on this matter." However, garnishee defendant's counsel did not merely work on this case for a couple of weeks; he was retained about a year prior to its final resolution. That is, garnishee defendant's disclosures were filed by counsel on May 16, 2012, and the trial court entered an order awarding garnishee defendant attorney fees and costs on May 10, 2013. The record demonstrates that during the pendency of this action, garnishee defendant's counsel: filed garnishee disclosures; filed a motion to set aside a default and default judgment; filed a motion to quash plaintiff's subpoena; assisted his client in answering plaintiff's interrogatories and providing extensive discovery materials; responded to plaintiff's motion to compel discovery; filed a motion for summary disposition; compiled and filed a witness list; filed a motion for attorney fees and costs; appeared at numerous court hearings; and, participated in telephone conferences as well as client meetings. Garnishee defendant's counsel's normal hourly billing rate was $190 and he estimated that he spent about 118 hours on this matter. He was paid $10,800 for his legal services,

although a fee of $22,420 would have been reasonable. Thus, the trial court's award of attorney fees and costs in the amount of $10,800 reimbursed garnishee defendant for the attorney fees actually paid, but represented payment for only about one-half of the time garnishee defendant's counsel actually spent on this matter. We note that at the hearing on garnishee defendant's motion to set aside the default and default judgment, plaintiff's counsel told the court that he had spent about 10 hours on the single motion and brief, and that his normal hourly rate was $300. In any case, an evidentiary hearing is not required if the trial court has sufficient evidence to determine the amount of attorney fees and costs. *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 171; 712 NW2d 731 (2005). In this case, the trial court, which presided over this matter throughout these proceedings, did not abuse its discretion when it concluded that there was sufficient evidence for it to determine the award of attorney fees and costs without an evidentiary hearing. See *id*.

Lastly, plaintiff argues that garnishee defendant's counsel's affidavit was deficient because it failed to state that the affiant was competent to testify. However, the affidavit met the requirements set forth in MCR 2.119(B)(1). Further, the affidavit stated that the affiant "made this Affidavit upon personal knowledge and will testify to the facts contained therein, if called as a witness in this matter." Accordingly, this argument is without merit.

Affirmed. Garnishee defendant is entitled to costs as the prevailing party. See MCR 7.219(A).

/s/ Michael J. Riordan
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot