

IN THE COURT OF APPEALS OF IOWA

No. 2-445 / 11-1926
Filed August 22, 2012

LIBERTY BANK, FSB,
Plaintiff-Appellant,

vs.

THOMAS A. LUKSETICH,
Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Appellant Liberty Bank, F.S.B. challenges the district court denial of its objection to the payment of funds to Fidelity Bank & Trust, another judgment creditor. **AFFIRMED.**

Cory Thein of Kintzinger Law Firm, Dubuque, for appellant.

Brian Kane, of Kane, Norby & Reddick, P.C., Dubuque, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DANILSON, J.

Appellant Liberty Bank, F.S.B. challenges the district court denial of its objection to the payment of funds to Fidelity Bank & Trust, another judgment creditor. Appellant further challenges the portion of the district court order that stated the law firm of Kane, Norby, & Reddick, P.C. fully complied with Iowa Code chapter 642 (2009). Because Liberty Bank failed to establish that the judgment debtor had any right or interest in Rita Luksetich's trust, we affirm.

I. Background Facts and Proceedings

Liberty Bank, F.S.B. ("Liberty Bank") filed a petition against Thomas A. Luksetich. The district court granted a default judgment against Thomas A. Luksetich in the amount of \$514,068.59, plus attorney's fees and post-judgment interest. Liberty Bank filed a praecipe of execution and attempted to garnish funds held by Kane, Norby, and Reddick, P.C. in the name of Thomas A. Luksetich, Rita J. Luksetich, and trusts held in the name or for the benefit of Thomas A. or Rita J. Luksetich.¹

Interrogatories propounded on attorney Brian Kane inquired as to whether Kane, Norby, & Reddick, P.C. was indebted to or possessed or controlled any property belonging to Thomas Luksetich, as the judgment debtor, or whether the firm was aware of any property belonging to Thomas now in the possession or control of others.

Kane completed the first set of interrogatories on December 17, 2010, filed them with the sheriff, and supplemented them with a letter of the same date.

¹ An amended praecipe narrowed the scope of the requested levy to funds of Thomas Luksetich or funds held on his behalf. However, Liberty Bank continued to pursue garnishment against Rita's trust.

The letter explained that the firm had a trust account in the name of the judgment creditor in the past, but it had been cleared for over a year. The letter further disclosed that the firm held a trust account for Rita. On December 20, 2010, Kane answered a second set of identical interrogatories.² Liberty Bank never requested that Kane appear in court to answer interrogatories.

Fidelity Bank & Trust (“Fidelity”) then obtained a judgment against both Thomas and Rita Luksetich, and served an execution on Kane. On January 28, 2011, Kane sent funds held on behalf of Rita’s trust to Fidelity.

Liberty Bank filed an objection to Kane’s payment to Fidelity. The district court found that “the law firm of Kane, Norby, & Reddick, P.C. fully complied with Iowa Code chapter 642 by providing the sworn answers to the interrogatories to the sheriff” given that the judgment Liberty Bank sought to execute was solely against Thomas Luksetich, and the law firm had no funds in his name. The district court also denied Liberty Bank’s motion to reconsider.

On appeal, Liberty Bank asserts that Kane is liable for the amount of the held funds because Kane failed to accurately answer the sheriff’s interrogatories and failed to provide the funds to the sheriff for proper distribution. Thus, the bank urges it was deprived of the opportunity to argue that a fraudulent transfer from Thomas to Rita justified garnishing Rita’s trust, pursuant to Iowa Code section 684.7(2).³ It contends Kane’s action in forwarding the funds to Fidelity

² Thereafter, Kane received no further communication from attorney Cory Thein on behalf of Liberty Bank, until Thein filed the objection to Kane’s payment of funds to Fidelity Bank & Trust.

³ Iowa Code section 684.7(2) provides: “If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.”

rather than the sheriff should result in a judgment against Kane in the amount held, but not delivered.

II. Standard of Review

Garnishment proceedings are actions at law; thus, our review is for errors at law. Iowa R. App. P. 6.904; *Ellefson v. Centech Corp.*, 606 N.W.2d 324, 330 (Iowa 2000). The district court's findings of fact are binding if they are supported by substantial evidence. *Ellefson*, 606 N.W.2d at 330. However, we are not bound by the legal conclusions of the district court. *Id.*

III. Discussion

A. Burden of Proof.

The burden of proof lies with the garnisher to affirmatively demonstrate a garnishee's indebtedness to the defendant debtor. *Paul Davis Dry Goods Co. v. Paul*, 218 N.W. 276, 277 (Iowa 1928). "It is fundamental that the liability of the garnishee cannot be presumed; it must be affirmatively shown, and, if there is any reasonable doubt as to his accountability, he should be discharged." *Id.*

Liberty Bank's garnishment action cannot apply to assets of anyone but the judgment debtor, one who possesses assets of the judgment debtor, or one who is indebted to the judgment debtor. Here, Liberty Bank has failed to show that the judgment debtor had any right or interest in Rita Luksetich's trust.

B. Compliance with Iowa Code Chapter 642—answers to interrogatories.

Although the praecipe sought to garnish funds held by Kane, Norby & Reddick, P.C., the original praecipe of execution sought trust assets of Rita. However, the interrogatories served by the sheriff properly asked the garnishee if

the garnishee owes the *judgment debtor* any compensation; is indebted to the *judgment debtor*; if the garnishee is in possession or control of any form of property of the *judgment debtor*; and whether the garnishee had knowledge of any property, rights or credits owed to the *judgment debtor* that may be in the possession of others. Here the judgment debtor was Thomas, not Rita.

Attorney Kane complied with chapter 642 by providing full and unequivocal written answers to the questions posed. In fact, he went beyond the dictates of Iowa Code section 642.6⁴ by also sending a cover letter to disclose that his firm held funds on behalf of Rita's trust.

Liberty Bank never requested that Kane make an appearance to answer interrogatories before the court. After Kane provided written answers, Liberty Bank had an opportunity to controvert his answers prior to Kane's disbursement of funds to Fidelity. Iowa Code § 642.11.⁵ It did not do so. While the bank now contends funds were fraudulently transferred from Thomas to Rita, it offers no evidence whatsoever in support of this assertion.

C. Compliance with Iowa Code chapter 642—disbursement of funds.

Liberty Bank further asserts that Kane violated an obligation to distribute funds he held to the sheriff. We find no such obligation in chapter 642.⁶

⁴ Iowa Code section 642.6 provides: "If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, the garnishee shall be notified to appear and answer as above provided, and the garnishee may be so required in any event, if the plaintiff so notifies the garnishee." (Emphasis added.)

⁵ Iowa Code section 642.11 provides, in pertinent part: "When the garnishee has answered the interrogatories propounded to the garnishee, the plaintiff may controvert them by pleading thereto, and an issue may be joined, which shall be tried in the usual manner. . . ."

⁶ Section 642.10 provides that after answer, a garnishee may . . . be exonerated from further responsibility by paying over to the sheriff the amount owing by the garnishee to the defendant, and placing

Liberty Bank failed to demonstrate that the funds sought were owed to the judgment debtor. Generally, a garnishment is only effective to the extent of the debtor's interest in the property attached. *Verschoor v. Miller*, 143 N.W.2d 385, 389 (Iowa 1966). Liability attaches to the garnishee only to the extent it held the defendant's property at the time notice of garnishment was served, and failed to deliver those funds to the sheriff. Iowa Code § 642.13. Here, Liberty Bank did not establish Thomas Luksetich's entitlement to the funds held by Kane at the time of attempted garnishment.

IV. Conclusion

Liberty Bank failed to demonstrate that Kane held the property of Thomas Luksetich or that funds in the trust of Rita Luksetich were subject to garnishment due to fraudulent transfer by Thomas. Kane provided full and unequivocal answers to the interrogatories presented. Liberty Bank did not controvert his answers prior to disbursement of funds to Fidelity. Kane was under no obligation to transfer funds held on behalf of Rita's trust to the sheriff.

AFFIRMED.

at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of the property to be attached. (Emphasis added.) The statutory language is permissive, not mandatory; thus, a garnishee could transfer funds directly to garnisher, though the garnishee would relinquish the opportunity to secure exoneration from further responsibility for the sum owed.