

Circuit Court for Anne Arundel County
Case No. C-02-CV-18-001050

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1206

September Term, 2020

CLIFFORD W. CUNIFF

v.

DAVONNE EVANS, ET AL.

Graeff,
Reed,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: December 6, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from an order that granted an exemption from execution of judgment in a garnishment proceeding in the Circuit Court for Anne Arundel County. Clifford W. Cuniff, appellant, holds judgments entered in the circuit court against DaVonne Evans and her husband, William Evans, appellees. Mr. Cuniff sought to garnish funds in the Evanses’ joint bank account held by the garnishee, PNC Bank, N.A. (“PNC”). Mr. Cuniff and PNC eventually proposed a “Consent Order of Judgment on Garnished Funds.” Mr. and Mrs. Evans did not consent to that proposed order, despite its title. The circuit court initially approved the order, but then revised its judgment and granted Mr. and Mrs. Evans’ request for an exemption from garnishment under Md. Code, Cts. & Jud. Proc. (“CJP”) § 11-504(b)(5) and Md. Rule 2-643(d). Mr. Cuniff timely appealed, and presents one question¹ for our review, which we rephrase as follows:

Did the circuit court err when it granted Mr. and Mrs. Evans’ request to exempt their joint bank account from garnishment when that request was filed within thirty days of an order that issued a garnishment against them as to that joint bank account?

For the reasons to follow, we shall affirm the judgment.

¹ Mr. Cuniff phrased the question as follows:

Did the Circuit Court err when it granted an untimely request for exemption from garnishment when the request was filed more than 30 days after levy/garnishment in violation of Rule 2-643(d) and/or 2-645(i), especially in view of [the] fact that the amended consent order (dated 11/24/20) which granted the untimely exemption and directed the garnished funds be paid to Evans rather than Cuniff (amending the prior 11/10/20 consent order that the funds be paid to Cuniff) was entered *ex parte* without prior notice to either Cuniff or the garnishee, PNC Bank?

BACKGROUND

Mr. Cuniff appeals from an order entered in the circuit court in Case No. C-02-CV-18-001050 (“the civil case”). Mr. Cuniff sued Mrs. Evans for conversion, fraud, and civil conspiracy. Also in that case, Mr. Cuniff sued Mr. Evans for conversion, unjust enrichment, and civil conspiracy. The complaint set forth the following. Mrs. Evans was Mr. Cuniff’s secretary and bookkeeper at his law office. From January 1, 2007, through October 31, 2016, Mrs. Evans forged Mr. Cuniff’s name on at least 152 escrow checks and made the checks payable to herself, without Mr. Cuniff’s consent. Mrs. Evans cashed or deposited the checks into various accounts, including a PNC account held jointly by Mr. and Mrs. Evans. Mr. Evans conspired with Mrs. Evans to launder the funds that were illegally obtained by Mrs. Evans. In addition, Mr. Evans received proceeds of the forged checks as gifts and conveyances from Mrs. Evans.²

Mr. Cuniff obtained a default judgment against Mr. Evans on April 2, 2019. After a hearing on September 10, 2019, the court granted Mr. Cuniff’s motion for summary judgment against Mrs. Evans, which she did not oppose. On September 24, 2019, the court

² Mr. Cuniff also sued Brandi McIntyre and her husband, Bradley McIntyre, in the civil case. Mr. Cuniff sued the McIntyres for unjust enrichment, civil conspiracy, and Racketeer Influenced and Corrupt Organization Act (“RICO”) violations. The complaint stated that the McIntyres had benefited from and were complicit in a theft scheme orchestrated by Mrs. Evans, who is Mrs. McIntyre’s mother. Because Mr. and Mrs. Evans had filed for bankruptcy, the proceedings against them were stayed, and trial proceeded only against the McIntyres. After a three-day trial, a jury found the McIntyres liable for unjust enrichment and RICO violations. The McIntyres appealed and challenged whether there was sufficient evidence to support the jury’s verdicts as to those counts. We affirmed the circuit court’s judgments in an unreported opinion. *McIntyre, et al. v. Cuniff*, No. 1570, Sept. Term 2019 (Md. App. July 27, 2021).

entered judgments in the civil case for Mr. Cuniff against Mrs. Evans in the amount of \$326,820.00 and against Mr. Evans in the amount of \$1,496,855.00.

A restitution judgment also factors into this appeal. The circuit court entered that restitution judgment in favor of Mr. Cuniff against Mrs. Evans in Case No. C-02-CR-18-000450JG (“the restitution case”).³ In both cases, Mr. Cuniff sought to garnish funds in a PNC account held jointly by Mr. and Mrs. Evans. This appeal centers on the timing of the parties’ filings and the court’s orders. Although Mr. Cuniff appeals from the ruling in the civil case, the procedural timeline of the restitution case provides necessary background information.

I. April 2018 judgment in the restitution case (C-02-CR-18-000450JG).

The circuit court entered the restitution judgment in favor of Mr. Cuniff in the restitution case on April 17, 2018, in the amount of \$1,120,035.18. The court issued a writ of garnishment to PNC on August 7, 2018. PNC answered on August 13, 2018, and stated that it was holding \$2,194.97 in an account owned jointly by Mr. and Mrs. Evans. Mr. Cuniff filed a “Request for Entry of Judgment on Garnishment” on December 13, 2018. After a hearing on March 27, 2019, the circuit court denied Mr. Cuniff’s request for entry of judgment on garnishment. On June 17, 2020, Mrs. Evans requested a court order

³ On April 16, 2018, Mrs. Evans pleaded guilty in the Circuit Court for Anne Arundel County to two counts of a theft scheme involving property valued at more than \$100,000 and two counts of forgery. The court sentenced her to fifteen years for each of the theft counts and ten years for each of the forgery counts with all but two years suspended. The sentences for each count were ordered to run concurrently. The court also ordered restitution as a civil money judgment in favor of Mr. Cuniff in the amount of \$1,120,035.18.

quashing the garnishment so that PNC could release the funds to her. PNC responded that it needed to hold the funds because the court had not quashed or vacated the garnishment writ in the restitution case.

On August 4, 2020, the court entered an “Order Terminating Garnishment Proceeding” in the restitution case:

ORDERED, that the writ of Garnishment . . . is quashed.

I[t] is further ORDERED that Plaintiff – Garnish[e]r is directed to move immediately to enter judgment, and Defendant shall file its objections and/or claim of exemption forthwith, and barring the filing of any of the aforesaid pleadings, within thirty (30) days herefrom, instead, judgment shall be deemed entered in favor of Garnishee PNC Bank, N.A., thereby terminating this garnishment proceeding on the Writ of Garnishment issued in July 2020 against PNC Bank.

II. Judgments in the civil case (C-02-CV-18-001050).

Mr. Cuniff appeals from a ruling in the civil case. He obtained money judgments against both Mr. and Mrs. Evans in that case. Mr. Cuniff obtained a default judgment against Mr. Evans on April 2, 2019. On September 24, 2019, the circuit court entered judgments in the civil case for Mr. Cuniff against Mrs. Evans in the amount of \$326,820.00 and against Mr. Evans in the amount of \$1,496,855.00. Mr. Cuniff then began another garnishment proceeding—this time in the civil case.

Mr. Cuniff filed a request for a writ of property garnishment in the civil case on July 21, 2020. On July 29, 2020, the court denied that request. PNC, the garnishee, filed an answer the next day. In that answer, PNC stated that it was still holding the funds because of the garnishment writ in the restitution case. PNC requested action from the court so that PNC would not be garnished twice. As stated above, on August 4, 2020, the court quashed

the garnishment writ in the restitution case. The next day, Mr. Cuniff filed a “Motion for Reconsideration of Denial of Request for Writ of Garnishment” in the civil case. Mr. Cuniff’s motion recognized that the court had denied the request for a writ of garnishment and argued that “the writ of garnishment should issue.” On September 1, 2020, the court granted reconsideration, issued the garnishment against Mr. and Mrs. Evans in the civil case and vacated the denial of Mr. Cuniff’s request to enter a garnishment judgment:

Upon review of Plaintiff Clifford W. Cuniff’s Motion for Reconsideration of Denial of Request for Entry of Judgment on Garnishment, and any response thereto, it is by the Circuit Court for Anne Arundel County hereby,

ORDERED, that Plaintiff’s Motion for Reconsideration be and hereby is GRANTED, garnishment of \$2,194.97 held by PNC Bank issued against Defendants DaVonne Evans and William L. Evans; and it is further

ORDERED, that the Denial of Plaintiff’s Request for Entry of Judgment on Garnishment be and hereby is VACATED.

That same day, Mr. and Mrs. Evans filed a request to exempt the funds in their PNC joint bank account.

A week later, PNC filed a motion for interpleader. PNC noted that the September 1, 2020 order vacated the denial of Mr. Cuniff’s request for entry of judgment, but PNC pointed out that Mr. and Mrs. Evans had requested an exemption. PNC was unsure about whether it should continue to hold the funds.

On November 6, 2020, Mr. Cuniff and PNC proposed a “Consent Order of Judgment on Garnished Funds,” which sought an *in rem* judgment for Mr. Cuniff as to the \$2,194.97 held by PNC in the Evanses’ joint bank account. That proposed order sought

remittance of those funds to Mr. Cuniff. Despite the title of the proposed order, Mr. and Mrs. Evans had not consented to it. On the morning of November 9, 2020, the court signed the proposed order. Later that day, Mr. and Mrs. Evans filed an opposition to the proposed order. Although the court had signed the proposed order on November 9, 2020, the court entered the order the next day. On November 24, 2020, the court amended that order. The amended order granted Mr. and Mrs. Evans’ request for an exemption (filed on September 1, 2020) and ordered PNC to remit the funds to Mr. and Mrs. Evans. Also on November 24, 2020, Mr. Cuniff filed a “Motion for Reconsideration in Light of Untimely Motion for Exemption.” The court denied that motion for reconsideration.

STANDARD OF REVIEW⁴

We are tasked with determining whether the circuit court’s November 24, 2020 order was legally correct. When “an order involves an interpretation and application of Maryland constitutional, statutory or case law, [we] must determine whether the trial court’s conclusions are ‘legally correct’ under a *de novo* standard of review.” *Schisler v. State*, 394 Md. 519, 535 (2006) (citation omitted). The circuit court’s order involved an application of Maryland statutory law governing judgment debtors’ ability to exempt certain property from execution of judgment. Thus, we review the trial court’s conclusions

⁴ The appellant’s brief and the appellees’ brief failed to contain the applicable standard of review. *Cf.* Md. Rule 8-504(a)(5) (a brief filed in this Court shall contain a “concise statement of the applicable standard of review for each issue[.]”).

de novo. Id. See also Stevenson v. Edgefield Holdings, LLC, 244 Md. App. 604, 611 (2020).

DISCUSSION

I. Mr. and Mrs. Evans’ request for an exemption was timely.

Mr. Cuniff claims that the circuit court erred because Mr. and Mrs. Evans failed to make a timely motion for an exemption. The circuit court’s amended order granted Mr. and Mrs. Evans’ request to exempt the funds in their PNC account. That order amended the court’s approval of PNC and Mr. Cuniff’s proposed “Consent Order of Judgment on Garnished Funds.” In Mr. Cuniff’s brief filed in this Court, he theorizes about reasons why the circuit court issued the amended order: “[Mrs.] Evans must have contacted [the circuit court], outside the presence of both Cuniff and PNC, and touted her untimely exemption as supposed grounds for relief.” Mr. Cuniff alleges that an *ex parte* communication must have occurred, which caused the court to amend its order. That allegation is baseless.

Despite the title of PNC and Cuniff’s proposed “Consent Order of Judgment on Garnished Funds,” that proposed order lacked Mr. and Mrs. Evans’ consent. Md. Rule 2-612 governs consent judgments in circuit court and provides in relevant part as follows: “The court may enter a judgment at any time *by consent of the parties*.” (emphasis added). The Court of Appeals has defined a consent order as “*an agreement of the parties* with respect to the resolution of the issues in the case or in settlement of the case, that has been embodied in a court order and entered by the court, thus evidencing its acceptance by the court.” *Long v. State*, 371 Md. 72, 82 (2002) (emphasis added). Mr. and Mrs. Evans were parties with an interest in the relief sought by the proposed order. As a result, that proposed

“consent” order required their consent. *See Chernick v. Chernick*, 327 Md. 470, 477 n.1 (1992) (“consent judgments” are appealable when a party contended below that “the consent was coerced, the judgment exceeded the scope of consent, or for other reasons there was never any valid consent.”).

On appeal, Mr. Cuniff suggests that Mr. and Mrs. Evans implicitly consented to the proposed order because Mr. and Mrs. Evans had failed to timely move for an exemption. But the proposed order did not mention the timeliness of Mr. and Mrs. Evans’ request for an exemption. Indeed, the proposed order did not mention Mr. and Mrs. Evans’ exemption request at all. Instead, the proposed order stated that Mr. and Mrs. Evans had failed to respond to two filings: PNC’s motion for interpleader and Mr. Cuniff’s motion to direct the bank to release garnished funds. PNC filed its motion for interpleader about a week after Mr. and Mrs. Evans had filed their request for an exemption. Mr. Cuniff filed his motion for release of funds almost a month after Mr. and Mrs. Evans had filed their request for an exemption. Mr. Cuniff’s motion for release, like the proposed “consent” order, failed to mention that Mr. and Mrs. Evans had filed a request for an exemption.

On the morning of November 9, 2020, the court signed the proposed “consent” order as filed by Mr. Cuniff and PNC. Later that day, Mr. and Mrs. Evans filed an opposition to the proposed order. The record suggests that the circuit court judge might have then learned of the opposition motion that Mr. and Mrs. Evans had e-filed. But fortunately, we need not speculate as much as Mr. Cuniff does here. The amended order stated why the court had decided to issue it. First, the amended order stated that the court had received Mr. and Mrs. Evans’ “Opposition to Plaintiff’s Consent Judgment on Garnished Funds, docketed

November 9, 2020[,]” and the “Request for Exemption from Garnishment, docketed September 1, 2020.” The court then provided the statutory foundation for its amended ruling: “Upon review of the file, it is . . . hereby, . . . **ORDERED** that pursuant to Md. Rule 2-643(d) the . . . Request for Exemption from the execution of Writ of Garnishment is **GRANTED**; and it is further **ORDERED** that PNC Bank shall remit the funds to the Defendants less any amount in excess of \$6,000.00, pursuant to [CJP] §11-504(b)(5).”

Those statutory provisions in the circuit court’s amended order govern the timeliness of a motion for an exemption. First, Md. Rule 2-643(d) provides as follows: “By motion filed within 30 days after a levy, the judgment debtor may elect to exempt from execution of the judgment selected items of property or cash not exceeding in amount the cumulative value permitted by law.” Md. Rule 2-645(i) states that “a motion under Rule 2-643(d) shall be filed within 30 days after service of the writ of garnishment on the garnishee.” Next, under CJP § 11-504(b)(5), “[c]ash or property of any kind equivalent in value to \$6,000 is exempt, if within 30 days from the date of the attachment or the levy by the sheriff, the debtor elects to exempt cash or selected items of property in an amount not to exceed a cumulative value of \$6,000.”

The circuit court issued the garnishment against Mr. and Mrs. Evans in the civil case by order on September 1, 2020. Mr. and Mrs. Evans filed their request for an exemption that same day. That exemption request was thus timely, and the court did not err when it granted the exemption request in its November 24, 2020 amended order.

Mr. Cuniff argues that the thirty-day time limit should be calculated from July 21, 2020, which is when he filed his request for writ of property garnishment in the civil case.

Md. Rule 2-645(i) states that the exemption motion “shall be filed within 30 days after service of the *writ* of garnishment on the garnishee.” (Emphasis added.) Md. Rule 1-202(ff) defines a writ as “a written order *issued by a court*[.]” (Emphasis added.) Here, the court issued an order denying Mr. Cuniff’s request for a writ of garnishment in the civil case. But in an order granting reconsideration, the court issued the garnishment against the Evanses in that case on September 1, 2020. Mr. and Mrs. Evans filed their exemption request that same day. As a result, the court did not err in finding that the exemption request was timely.

In the alternative, Mr. Cuniff argues that the thirty-day time limit should be calculated from when PNC was served with the writ of garnishment in the restitution case. That argument is unavailing for three reasons. First, the court denied Mr. Cuniff’s request for entry of judgment in the restitution case after a hearing on March 27, 2019. Second, although Mrs. Evans did not timely file an exemption in the restitution case, judgment was never entered for Cuniff on the garnishment in the restitution case. Indeed, on August 4, 2020, the court quashed the writ of garnishment issued in the restitution case. Third, Mr. Evans was not a judgment debtor in the restitution case. As a judgment debtor in the civil case, however, Mr. Evans could elect to exempt the funds at issue in the joint bank account within thirty days after service of the writ of garnishment on the garnishee. Md. Rule 2-645(i). The court issued the garnishment by order in the civil case on September 1, 2020, and Mr. Evans requested an exemption that same day.

II. The court’s September 1, 2020 order in the civil case did not grant judgment on the garnishment for Mr. Cuniff. The court properly granted the exemption when it amended PNC and Mr. Cuniff’s proposed order.

Mr. Cuniff devotes a substantial portion of his brief filed in this Court to one topic. He argues that the court’s September 1, 2020 order in the civil case granted judgment in his favor on the garnishment, and the court lacked the authority to vacate it in the absence of a motion to alter or amend. In support of his argument, Mr. Cuniff argues that the court’s September 1, 2020 order in the civil case granted judgment on the garnishment writ issued in 2018 in the restitution case. The plain language of that order says otherwise. The September 1, 2020 order in the civil case stated:

Upon review of Plaintiff Clifford W. Cuniff’s Motion for Reconsideration of Denial of Request for Entry of Judgment on Garnishment, and any response thereto, it is by the Circuit Court for Anne Arundel County hereby,

ORDERED, that Plaintiff’s Motion for Reconsideration be and hereby is GRANTED, *garnishment of \$2,194.97 held by PNC Bank issued against Defendants DaVonne Evans and William L. Evans*; and it is further

ORDERED, that the Denial of Plaintiff’s Request for Entry of Judgment on Garnishment be and hereby is *VACATED*.

(Emphasis added.) Mr. Cuniff argues that the court should have entered the September 1, 2020 order in the restitution case, instead of the civil case, because the restitution case is where he “had specifically moved for entry of judgment on the first garnishment.” That description of the procedural background does not tell the whole story. In both the restitution case and the civil case, Mr. Cuniff moved for entry of a garnishment judgment. The court denied Mr. Cuniff’s request for entry of judgment on garnishment in the

restitution case after a hearing on March 27, 2019. Mr. Cuniff filed a motion for reconsideration of that denial on April 4, 2019. In the civil case, Mr. Cuniff filed a request for entry of judgment on garnishment on June 29, 2020. The next day, Mr. Cuniff filed a substantively identical request in the restitution case. The only apparent difference between those two filings is the case number in the caption. In the civil case, Mr. Cuniff requested the issuance of a second garnishment writ on July 21, 2020, which the court denied on July 29, 2020, and then granted on September 1, 2020. The court quashed the writ of garnishment in the restitution case by order on August 4, 2020.

In any event, the September 1, 2020 order in the civil case did not enter judgment for Mr. Cuniff on a garnishment. To be sure, that order said that the court granted Mr. Cuniff’s motion for reconsideration. A grant of reconsideration, however, does not necessarily enter judgment on a garnishment. By its plain language, the order vacated the earlier denial of Mr. Cuniff’s request for entry of judgment. Black’s Law Dictionary defines “vacate” as “[t]o nullify or cancel; make void; invalidate[.]” *Vacate*, Black’s Law Dictionary (11th ed. 2019). The September 1, 2020 vacatur meant the following: the denial of Mr. Cuniff’s request for entry of judgment on garnishment was voided, but it was not replaced with a contrary judgment. By contrast, the order reversed the earlier denial of Mr. Cuniff’s request for a writ of garnishment in the restitution case.⁵

⁵ Multiple circuit court judges ruled on matters below that are relevant to this appeal. Mr. Cuniff interprets the September 1, 2020 order as granting a garnishment judgment in his favor. But the same judge who issued that order later denied Mr. Cuniff’s motion to reconsider the order that granted the exemption.

Finally, Mr. Cuniff suggests that the court lacked the authority to amend PNC and Mr. Cuniff’s proposed “consent” order that the court had signed. CJP § 6-408 provides in relevant part:

For a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment.

The court amended the order of judgment within thirty days after its entry. The court can amend the order of judgment *sua sponte* under the circumstances here. *See Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 409 (1997) (“The court may act to revise its judgment *sua sponte*.”) (citations omitted). Mr. Cuniff and PNC proposed a “Consent Order of Judgment on Garnished Funds.” Mr. and Mrs. Evans did not consent to that proposed order, despite its title. The proposed order sought to remit funds to Mr. Cuniff from Mr. and Mrs. Evans’ joint bank account. The court did not err in amending the order and granting the timely exemption request.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**