

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY,
FLORIDA

CASE NO.: 2014-CV-000020-A-O
Lower Case No.: 1998-SC-003407-O

JAMES B. BALLOU,

Appellant,

v.

DIANA SCHMIDT,

Appellee.

Appeal from the County Court, for Orange County,
Florida, Andrew L. Cameron, County Judge.

James B. Ballou, Pro Se, Appellant.

Kevin R. Jackson, Esquire, for Appellee.

Before MIHOK, TURNER, and UNDERWOOD, J.J.

PER CURIAM.

FINAL ORDER REVERSING IN PART AND AFFIRMING IN PART TRIAL COURT

Appellant, James B. Ballou (“Ballou”), timely appeals the trial court’s “Final Judgment Against Garnishee” entered on February 14, 2014. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

In May 1998, Diana Schmidt (“Schmidt”) filed a small claims action against Ballou to collect monies alleged to be owed. Schmidt prevailed in the action and on August 17, 1998, a final judgment was entered in her favor. Thereafter, in December 2013, Schmidt assigned the judgment to S & K Portfolios, Inc. (“S & K”). On January 10, 2014, S & K began proceedings to enforce the judgment through a writ of garnishment served on McCoy Federal Credit Union (“Garnishee”), the entity that held Ballou’s two checking accounts. On January 15, 2014, Garnishee filed an answer to the writ of garnishment acknowledging the accounts and monies contained therein. Thereafter, on January 16, 2014, S & K mailed Ballou a “Notice to Defendants and Other Interested Persons” document stating the necessary statutory requirements. According to S & K, Ballou did not file any response to the writ of garnishment within 20 days as required by section 77.07, Florida Statutes. Thus, on February 6, 2014, S & K filed a motion for final judgment of garnishment. On February 10, 2014, Ballou filed a “Response in Opposition to Writ of Garnishment, Request for Hearing, and Motion to Dissolve the Writ of Garnishment”. On February 17, 2014, S & K filed a “Response and Objection to Ballou’s Response”. On February 14, 2014, the trial court entered a final judgment against garnishee that Ballou now appeals.

Arguments on Appeal

Ballou argues: 1) his “Response in Opposition to Writ of Garnishment, Request for Hearing, and Motion to Dissolve the Writ of Garnishment” was timely mailed and filed; thus, the trial court erred in finding in favor of S & K; 2) S & K’s filings were mailed to his ex-wife’s 1998 mailing address and that he didn’t receive any documents to respond to and only learned of the garnishment action from the Garnishee; 3) he was never served with the complaint filed in

1998 to collect the debt; 4) he was never indebted to Schmidt for the alleged monies owed; thus, he concludes that the Affidavit of Indebtedness was fraudulent and made in bad faith; 4) the documents filed in 1998 were sent to the address of his ex-wife who was not a party to the case; and 5) the Clerk's purging of the court documents filed in 1998 from the system was a violation of due process.

Conversely, S & K argues: 1) the trial court's order granting the final judgment against garnishee was proper and not an abuse of discretion given Ballou's failure to strictly follow the time constraints for filing motions to dissolve writs; and 2) Ballou's appeal of the final judgment entered on August 17, 1998 is untimely.

Standard of Review

A trial court's interpretation of a statute or rule involves a question of law and thus, is subject to de novo review. *See In re Guardianship of J.D.S. v. Dep't of Children & Families*, 864 So. 2d 534, 537 (Fla. 5th DCA 2004). The standard of review of a final judgment for garnishment is abuse of discretion. *See United Presidential Life Ins. Co. v. King*, 361 So. 2d 710, 713 (Fla. 1978); *Carpenter v. Benson*, 478 So. 2d 353, 356 (Fla. 5th DCA 1985).

Analysis

Ballou's Arguments in "Assignment of Error I"

First, this Court addresses Ballou's argument that he did not receive any documents from S & K to respond to because the documents were mailed to his ex-wife's 1998 mailing address. This argument lacks merit because the "Certificate of Notice" was properly mailed by S & K to Defendant at two different addresses as stated in the notice's certificate of service.

Next, this Court addresses Ballou's argument that he timely mailed and filed his Response in Opposition to Writ of Garnishment, Request for Hearing, and Motion to Dissolve

the Writ of Garnishment (“Ballou’s response”). Florida Rule of Judicial Administration 2.514(b) provides that when a party may or must act within a specified time after service and service is made by mail or e-mail, 5 days are added after the period that would otherwise expire under subdivision (a) of the rule. In this case, S & K mailed the Certificate of Notice to Ballou on January 16, 2014 as stated in the notice’s certificate of service. Per section 77.07(2), Florida Statutes (2014), Ballou had 20 days to file his response plus 5 additional days per rule 2.514(b). Ballou filed his response on February 10, 2014. Therefore, Ballou timely filed his response.

S & K argues that as garnishment exists only by statutory mandate, the provision of garnishment must be strictly adhered to and thus, a trial court does not have the same discretion to bend time requirements that might be allowed under the rules of civil procedure. This Court has reviewed the applicable statutes under chapter 77, Florida Statutes, addressing garnishment and finds that there are no provisions specifying a method of computing time that precludes the additional 5 days via rule 2.514(b). *See Investment and Income Realty, Inc. v. Bently*, 480 So. 2d 219, 220 (Fla. 5th DCA 1985) (applying Florida Rule of Civil Procedure 1.090(e), now codified as rule 2.514(b), Fla. R. Jud. Admin., to the landlord’s 3-day notice of overdue rent mailed to tenant per section 83.56(3), Florida Statutes, and finding that per the rule, the tenant was entitled to 5 more days to file the response).

Further, none of the cases cited by S & K support its argument that Ballou’s response was filed untimely. Interestingly, one of the cases S & K cites, *BNP Paribas v. Wynne, III*, 944 So. 2d 1004 (Fla. 4th DCA 2005), affirmatively supports Ballou’s argument that his response was filed timely. *BNP Paribas* involved a motion for extension of time to file a motion to dissolve a pre-judgment writ of garnishment. The Fourth District analyzed rule 1.090(e), Fla. R. Civ. P. and explained that this rule did apply to special statutory proceedings because the express

language in the rule did not limit its scope and thus, the Court concluded that per the rule, 5 additional days for mailing should be added to the deadline to file the motion. The Fourth District went on to distinguish rule 1.090(b), Fla. R. Civ. Proc., which allows the court in its discretion to enlarge the time to perform an act and because the rule did not expressly mention statutes, it was inapplicable to procedural deadlines under a special statutory proceeding. *Id.* at 1005-1006.

Because Ballou's response was filed prior to the entry of the final judgment against garnishee, it is possible that the trial court did review and consider the merits of the response and found that it lacked merit. However, as written in that final judgment, the finding by the trial court was that Ballou failed to properly file any paper opposing the garnishment within the statutory time. Therefore, it is reasonable to conclude that the trial court did not consider the merits of Ballou's response and instead found that it was filed untimely. Notwithstanding whether the trial court reviewed Ballou's response on its merits, section 77.07(2), Florida Statutes (2014), requires that timely filed motions to dissolve garnishments shall be tried. Accordingly, this case must be remanded for a trial to address Ballou's timely filed response.

Ballou's Arguments in "Assignments of Error II & III"

Ballou's remaining arguments addressed in his "Assignment of Error II & III" pertain to the complaint and other filings in 1998 as to the underlying action. Therefore, this Court finds that per rule 9.110(b), Fla. R. App. P., these arguments are barred as untimely as they pertain to the final judgment entered on August 17, 1998 that Ballou failed to appeal by the September 16, 1998 deadline.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's "Final Judgment Against Garnishee" entered on February 14, 2014 is **REVERSED** as to the trial court's ruling addressing Ballou's response and **REMANDED** for further proceedings consistent with this opinion. The trial court's rulings that pertain to all of Ballou's other arguments in this appeal are **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 27th day of October, 2014.

/S/

A. THOMAS MIHOK
Presiding Circuit Judge

TURNER and UNDERWOOD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **James B. Ballou**, P.O. Box 692114, Orlando, Florida 32869 and **Kevin R. Jackson, Esquire**, Law Offices of Kevin Jackson, P.A., 1136 SE 3rd Avenue, Fort Lauderdale, Florida 33316, on this 27th day of October, 2014.

/S/

Judicial Assistant