

Circuit Court for Anne Arundel County
Case No. C-02-JG-14-000602

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 406

September Term, 2017

CHRISTOPHER M. ZURMUHLEN

v.

MARIANNE SITAR ZURMUHLEN COOK

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 11, 2018

*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 case comes to us from the Circuit Court for Anne Arundel County, which, on April 11, 2017, entered an order for condemnation absolute against Katherine Vahey, Trustee of the Francis P. Zurmuhlen Trust (“Trust”), in the amount of \$18,957.35. The Anne Arundel County Office of Child Support Enforcement (“OCSE”), appellee, had filed a writ of garnishment against the Trust seeking child support arrearages owed by Christopher Zurmuhlen, appellant, a beneficiary of the Trust. Zurmuhlen noted this timely appeal, arguing that his share of the Trust was not subject to garnishment.¹ For the reasons stated below, we affirm.

BACKGROUND

Zurmuhlen and Marianne Sitar Cook were divorced in 2005. As part of the divorce order, he was obligated to pay child support for the couple’s three minor children in the amount of \$1,000 per month. Zurmuhlen states that he began accruing arrears for child support payments in January 2014.

Accordingly, on April 14, 2014, he filed a motion to modify child support. The court granted the motion, decreasing his child support obligation to \$597 per month, and also ordered him to pay \$28 per month towards the arrearage. Zurmuhlen subsequently

¹ Zurmuhlen also argues that the trial court erred in denying his motion to modify child support without a hearing. In his brief, he also argues that the circuit court erred in its child support calculation and that the court should have credited him for certain payments. These issues are, however, not properly before us in this appeal. Zurmuhlen’s previous attempts to appeal these issues were unsuccessful. *See* No. 1087, September Term 2016 (dismissed April 12, 2017) and No. 1695, September Term 2016 (dismissed November 17, 2017).

appealed that order, and this Court dismissed the appeal (No. 1087, September Term 2016) because Zurmuhlen failed to file a brief.

Zurmuhlen fell further into arrears. On October 29, 2014, OCSE filed a notice of lien against him for unpaid child support. On March 20, 2015, OCSE filed a show cause order, asking the court to find him in contempt for his failure to pay child support. Additionally, three days later, the circuit court issued a writ of garnishment to the Trust. On August 8, 2016, the circuit court held Zurmuhlen in contempt following a hearing. That day, he entered into a consent order authorizing the Trust to release the portion of his share of the Trust to pay the child support arrearage. The trustee thereupon issued a check to OCSE to satisfy the judgment, but Zurmuhlen directed the trustee to issue a stop payment order because he was appealing the entry of the consent order. This Court subsequently dismissed that appeal as moot (No. 1695, September Term 2016).

Following the issuance of the stop payment order, OCSE filed for a judgment of condemnation absolute against the Trust. On April 11, 2017, following a hearing, the court entered the requested judgment and ordered the Trust to pay \$18,957.35 to OCSE. Zurmuhlen appealed. The Trust did not note an appeal.

DISCUSSION

Zurmuhlen contends that his portion of the Trust is not subject to garnishment by OCSE pursuant to the Maryland Trust Act, specifically Maryland Code (1974, 2017 Repl. Vol.), Estates & Trusts (“E & T”), § 14.5-502. We note that Zurmuhlen merely cites one foreign case, *Kolpack v. Torres*, 829 S.W.2d 913 (Tex. App. 1992), in support and simply

states that the Texas court “recognized all of these points.”² He makes no attempt to analogize his case to the Texas case he cites. Moreover, a review of that case indicates that the Texas court was interpreting Texas law, not E & T § 14.5-502. Accordingly, Zurmuhlen’s authority is unpersuasive.

Turning to his legal theory, we note that, because we are interpreting the Trust instrument and Maryland statutory law, our review is *de novo*. See *John B. Parsons Home, LLC v. John B. Parsons Found.*, 217 Md. App. 39, 54 (2014) (“[A]s a general rule, the construction or interpretation of all written instruments is a question of law for the court’ and, therefore, subject to a *de novo* review.” (quoting *Olde Severna Park Improvement Ass’n v. Gunby*, 402 Md. 317, 329 (2007))); *Gomez v. Jackson Hewitt, Inc.*, 198 Md. App. 87, 93 (2011), *aff’d*, 427 Md. 128 (2012).

Zurmuhlen is correct that E & T § 14.5-502 limits the ability of a creditor to attach a beneficiary’s interests in a trust with a discretionary distribution provision.³ His

² “[A]ll of these points” appears to be a near verbatim recitation of E & T § 14.5-502(a)-(c).

³ Indeed, Subsection (a) of that statute provides that a “beneficiary of a discretionary distribution provision has no property right in a trust interest that is subject to a discretionary provision[,]” and that a “beneficial interest that is subject to a discretionary distribution provision may not be judicially foreclosed, attached by a creditor, or transferred by the beneficiary.” Subsections (b) and (c) of the statute further provide that the creditor of such a beneficiary “has no enforceable right to trust income or principal that may be distributed only in the exercise of the discretion of the trustee[,]” and that a creditor “may not compel a distribution that is subject to a discretionary distribution provision created by someone other than that beneficiary.”

argument fails, however, because the Trust does not contain a discretionary distribution provision.

Article Seven of the Trust instrument provides that the trustee “shall pay to, or apply for the benefit of” Zurmuhlen the proceeds of his share of the Trust “as my Trustee from time to time, and in my Trustee’s sole and absolute discretion, deems appropriate.” The instrument continues: “Notwithstanding the preceding sentence, [Zurmuhlen] may, subject to [inapplicable provisions of the instrument], by written instrument filed with our Trustee, require our Trustee to distribute to him a portion of his trust share, up to the whole thereof, as he shall demand.”⁴ Accordingly, Zurmuhlen has the right to demand payments from the Trust, rendering the discretionary trust protections of E & T § 14.5-502 inapplicable. *See Brent v. State of Md. Cent. Collection Unit*, 311 Md. 626, 640 (1988) (defining a discretionary trust as one “conferring uncontrolled discretion upon the trustee as to the manner and terms of payment to the beneficiary” (quoting *State Cent. Collection Unit v.*

⁴ The Trust instrument provides that the trustee may postpone a distribution for a “compelling reason,” which is defined as: “the beneficiary is a Special Needs Beneficiary” as defined in the instrument; the beneficiary is under thirty-years-old; the “susceptibility of the beneficiary to undue influence or duress by an individual or group;” drug or alcohol abuse; a pending divorce action; “financial difficulty or a proven inability of the beneficiary to manage money;” a “serious” tax disadvantage; minimization of taxes; and substitution of taxes to another beneficiary.

Brent, 71 Md. App. 265, 272 (1987), *aff'd*, 311 Md. 626 (1988))).⁵ Zurmuhlen’s share of the Trust is, therefore, available to satisfy his obligation to the minor children.

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

⁵ OCSE also contends that it is no ordinary judgment creditor in this case. Indeed, in *Kelly v. Montgomery County Office of Child Support Enforcement*, 227 Md. App. 106, 112 (2016), this Court noted that “Maryland courts have long distinguished between a ‘debtor,’ that is, someone who simply owes money to another, and an ‘obligor’ who must pay money arising out of a separate, and separately enforceable, legal duty.” We noted that our courts have drawn “a distinction between the obligation to pay a debt and the obligation to support a spouse or minor child.” *Id.* That distinction has served to vitiate statutory exemptions applicable to debts for the payment of alimony and child support. *See, e.g., Pope v. Pope*, 283 Md. 531, 537 (1978) (statutory exemption shielding unemployment benefits from judgment creditors inapplicable for alimony payments); *United States v. Williams*, 279 Md. 673, 678 (1977) (statutory exemption shielding military retirement pay from judgment creditors inapplicable to alimony payments); *Safe Deposit & Trust Co. of Balt. v. Robertson*, 192 Md. 653, 662-63 (1949) (statutory exemption shielding income from a spendthrift trust from judgment creditors inapplicable to alimony payments).