Circuit Court for Anne Arundel County
Case No. C-02-FM-18-003681

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 130

September Term, 2022

BENNETT & ELLISON, PC

v.

KAREN BENNETT

Wells, C.J.
Leahy,
Shaw,

JJ.

Opinion by Wells, C.J.

Filed: November 15, 2022

*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.

Appellant, Bennett & Ellison, P.C. ("Garnishee"), appeals the Circuit Court for Anne Arundel County's order denying its motion to quash appellee, Karen Bennett's, service of writ of garnishment upon Garnishee. Garnishee asks this Court one question, which we have rephrased slightly:[1]

> Did the trial court improperly deny Garnishee's motion to quash service of the writ of garnishment when a charging order attached to the notice of writ was unsigned?

We shall answer Garnishee's question in the negative and affirm the judgment.

BACKGROUND

Garnishee is a law firm where Paul Bennett is an officer and holds a membership interest. Paul Bennett and appellee, Karen Bennett, were married in 1986 and divorced in 2018. In October of 2021, Ms. Bennett filed a motion for judgment alleging that Mr. Bennett had failed to pay amounts owed pursuant to the divorce judgment. On November 9, 2021, the trial court entered an order reducing counsel and other fees to judgment in the amount of $17,614.00 in favor of Ms. Bennett. Mr. Bennett appealed and in an unreported opinion, this Court affirmed. *See Bennett v. Bennett*, No. 1520, 2022 WL 1744185, September Term, 2021 (filed May 31, 2022).[2]

[1] In its brief, Garnishee phrases its question presented as follows: "Did the trial court improperly deny the Garnishee's Motion to Quash service of the Writ of Garnishment of Property Other Than Wages when the Charging Order attached to the Notice of Writ was unsigned, and indeed remained unsigned for months after Service was Attempted?"

[2] The procedural history of this case was set forth in detail in our opinion addressing Mr. Bennett's prior consolidated appeals. *See Bennett v. Bennett*, No. 1520, 2022 WL 1744185, September Term, 2021 (filed May 31, 2022). We include only those facts necessary to determination in the instant appeal.

On November 22, 2021, in efforts to collect on the judgment, Ms. Bennett filed a request for a writ of garnishment of property other than wages and a request for a writ of garnishment of wages, as well as a request for a charging order against Garnishee. The next day, both writs of garnishment were issued and served on Garnishee, along with a copy of the request for a charging order.[3] Garnishee filed a motion to quash service of the writ of garnishment asserting that "attached to [the writ of garnishment] was an incomplete and unsigned[] 'Charging Order[,]'" and that accordingly, "service of the Writ of Garnishment is premature and is currently unenforceable." On January 14, 2022, the court issued a charging order against Garnishee. On February 17, 2022, the court conducted a hearing and denied Garnishee's motion to quash. Garnishee timely filed this appeal.

STANDARD OF REVIEW

Md. Rule 8-131 provides that:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Legal conclusions, however, such as the court's interpretation of the Maryland Rules, are "interpreted under a de novo standard of review." *Xu v. Mayor of Baltimore*, 254 Md. App. 205, 211, *cert. denied sub nom. Mayor & City Cncl. of Baltimore v. Xu*, 479 Md. 467 (2022); *see also Maryland Nat'l Bank v. Parkville Fed. Sav. Bank*, 105 Md. App. 611,

[3] Although the charging order had not yet been issued by the court, Ms. Bennett asserts that she served a copy of her request for the charging order on Garnishee pursuant to Md. Rule 1-323.

614 (1995), *aff'd*, 343 Md. 412 (1996) ("The trial court's "determination of the writ [of garnishment]'s sufficiency is a question of law that this Court subjects to a *de novo* standard of review.") Under the *de novo* standard of review, we determine "whether the circuit court's order was legally correct." *Walter v. Gunter*, 367 Md. 386, 391 (2002).

DISCUSSION

Garnishee asserts that because Ms. Bennett "did not provide any properly executed charging order when the writ [of garnishment] was served, the service of the writ of garnishment other than of wages should therefore have been quashed[.]" Ms. Bennett responds that the court properly denied Garnishee's motion to quash because "Maryland Rule 2-645(d) does not require that a signed Charging Order accompany a Writ of Garnishment of Property Other than Wages to be valid or to effect service upon a garnishee." Specifically, Ms. Bennett asserts that the Maryland Rules governing writs of garnishment and charging orders are both "devoid of language requiring a signed Charging Order as a pre- or co-requisite to the issuance of a Writ of Garnishment." We agree.

Once a judgment is entered, a writ of garnishment may be used as "a means of enforcing" the judgment. *Parkville Fed. Sav. Bank*, 343 Md. at 418. Specifically, "[i]t allows a judgment creditor to recover property owned by the debtor but held by a third party." *Id*. Garnishment of property other than wages is governed by Md. Rule 2-645. Subsection (a) of that rule provides that:

> this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

Md. Rule 2-645(a).

> Charging orders, on the other hand, are governed by Md. Rule 2-649:
>
> > [T]he court where the judgment was entered or recorded may issue an order charging the partnership interest or limited liability company interest of the judgment debtor with payment of all amounts due on the judgment. The court may order such other relief as it deems necessary and appropriate, including the appointment of a receiver for the judgment debtor's share of the partnership or limited liability company profits and any other money that is or becomes due to the judgment debtor by reason of the partnership or limited liability company interest.

Md. Rule 2-649(a).

Charging orders are the "statutory means by which a judgment creditor may reach the partnership interest[] of a judgment debtor." *91st St. Joint Venture v. Goldstein*, 114 Md. App. 561, 567 (1997). This Court has explained that "'[i]n contrast to statutes pertaining to more conventional enforcement proceedings such as executions, attachments and garnishments, the charging order statute is couched in the most general terms.'" *Id*. at 571 (quoting J. Gordon Gose, *The Charging Order Under the Uniform Partnership Act*, 28 WASH. L. REV. 1, 3 (1953)). The result is "'a highly flexible and elastic procedure'" that at the outset, proceeds "'in a manner somewhat like that used in garnishment proceedings[.]'" *Id*. However, in contrast to the writ of garnishment procedure, the charging order allows for a "'more drastic course of action[,]'" including "'sale of the debtor's interest in the partnership.'" *Id*. *See also In re Keeler*, 257 B.R. 442, 447 (Bankr. D. Md. 2001) (citation omitted) ("Case law observes that there are two basic collection methods for the charging order[:] (1) the diversion of the debtor partner[']s profits to the

judgment creditor; and (2) the ultimate transfer of the debtor partner's interest should the first collection method prove unsatisfactory.").

Moreover, we note that while charging orders create a lien "upon the debtor's interest in the partnership[,]" *In re Keeler*, 257 B.R. at 447, writs of garnishment typically only serve to create an "inchoate lien" until the entry of a judgment in a garnishment action. *Fico, Inc. v. Ghingher*, 287 Md. 150, 161 (1980). In sum, while writs of garnishment and charging orders are both tools available to a judgment creditor to enforce a judgment, we are not persuaded that they are the same remedy or required to be used concurrently under Md. Rules 2-645 or 2-649. *See also Christensen v. Oedekoven*, 888 P.2d 228, 232 (Wyo. 1995) (holding that "charging orders are remedies different in character from writs of garnishment."); *Union Colony Bank v. United Bank of Greeley Nat'l Ass'n*, 832 P.2d 1112, 1117 (Colo. App. 1992) (noting that the charging order and writ of garnishment remedies are "not the same.").

Here, Garnishee's sole challenge to the writ of garnishment is that it did not include a "properly executed charging order when the writ was served[.]" Garnishee does not challenge service of the writ of garnishment, or the writ of garnishment itself, and instead asserts only that "[a] charging order is mandatory to enforce a writ of garnishment of property other than wages on a partnership or LLC." Garnishee cites no support – within this jurisdiction or otherwise – for this proposition, and this Court is not aware of any. At least one other jurisdiction has rejected this assertion. *See In re Allen*, 228 B.R. 115, 121–22 (Bankr. W.D. Pa. 1998) (holding that a judgment creditor "may garnish a judgment debtor's interest in a partnership or limited partnership notwithstanding the availability of

a charging order against the same interest."). We decline to read a mandate into the Maryland Rules that plainly does not exist. We shall thus affirm the circuit court's denial of Garnishee's motion to quash.

We also decline Ms. Bennett's motions for sanctions pursuant to Md. Rule 1-341 and to dismiss Garnishee's appeal pursuant to Md. Rule 8-602(c)(6) for failure to comply with Md. Rule 8-504(a)(5) and (6).[4] This Court has stated that "[a]n award of counsel fees pursuant to Rule 1–341 is an 'extraordinary remedy,' which should be exercised only in rare and exceptional cases." *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999) (citation omitted). Further, we have held that "sanctions should not be imposed simply because a cause of action avows a misconceived legal basis upon which relief is sought, or urges a legal theory which was not adopted by the court[.]" *Jenkins v. Cameron & Hornbostel*, 91 Md. App. 316, 323 (1992) (quotation marks and citations omitted). Though we agree with Ms. Bennett that Garnishee does little more than rely "on three cases in its brief and those cases only discuss the purpose of a charging order[,]" we cannot say that this arises to the rare or exceptional situation sanctions are "reserved for" under Md. Rule 1-341. *Art Form Interiors, Inc. v. Columbia Homes, Inc.*, 92 Md. App. 587, 595 (1992).

[4] Md. Rule 1-341(a) provides that "if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification," the court may require the offending party "to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it."

Md. Rule 8-504(5) and (6) require a party's appellate brief to include "[a] concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument[,]" and an "[a]rgument in support of the party's position on each issue[,]" respectively.

Lastly, as this Court has made clear, "dismissing an appeal on the basis of an appellant's violations of the rules of appellate procedure is considered a 'drastic corrective' measure." *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (citation omitted). Accordingly, reaching a decision on the merits "is always a preferred alternative." *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007). Here, we conclude that on the merits, the trial court properly denied Garnishee's motion to quash, and we decline to dismiss the appeal.

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