

REL: January 15, 2021

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190467

Miller Construction, LLC

v.

DB Electric and David Shank

Appeal from Baldwin Circuit Court
(CV-18-900158)

EDWARDS, Judge.

On September 3, 2019, the Baldwin Circuit Court ("the trial court") entered a judgment in favor of DB Electric and David Shank and against

2190467

Miller Construction, LLC ("the LLC"), and Greg Miller for the amount of \$17,374.22, plus court costs. The trial court later amended the judgment to reflect that the judgment was against only the LLC and entered a judgment in favor of Miller on the claims against him. In October 2019, DB Electric and Shank commenced garnishment proceedings seeking to garnish funds totaling \$3,693.76 in an account at Trustmark National Bank labeled "Miller Construction LLC Insurance Escrow Account." The LLC and Miller filed a motion to quash the garnishment proceedings on multiple grounds and submitted the affidavits of David Zak, the bookkeeper for Fort Morgan Property Management, LLC, and Evelyn Pyles, the bookkeeper for the LLC in support of the motion.¹

After a hearing on the motion to quash, at which the trial court heard only arguments of counsel, the trial court denied the motion to

¹According to Zak's affidavit, Fort Morgan Property Management, LLC, "is a property management company that is the rental agency for a number of vacation rental properties near the West end of the Fort Morgan peninsula" and the "Miller Construction LLC Insurance Escrow Account" is the account into which money from the owners of the rental properties is placed to pay the premiums for insurance that Fort Morgan Property Management, LLC, secured on those properties.

2190467

quash by an order entered on February 12, 2020. The order denying the motion to quash states, in its entirety: "Motion to Quash filed by [the LLC] and [Miller] is hereby denied." The LLC filed a notice of appeal on March 4, 2020.

As we explained in Robbins v. State ex rel. Priddy, 109 So. 3d 1128, 1132 (Ala. Civ. App. 2012), an order denying a motion to quash garnishment proceedings without otherwise concluding the rights of the parties, such as by directing the garnishee to satisfy the garnishment, is not a final judgment capable of supporting an appeal. We stated:

"The question of appellate jurisdiction under the predecessor to [Ala. Code 1975, § 6-6-464, the statute governing appeals from garnishment proceedings,] was examined by our supreme court in Steiner Bros. v. First National Bank of Birmingham, 115 Ala. 379, 22 So. 30 (1897), in which that court indicated the necessity of a 'final judgment or decree,' as is required in appeals generally, in order to support an appeal in a garnishment action and identified the classes of orders that would support an appeal:

" '[T]he judgment rendered, as between the parties, the plaintiff instituting it, and the garnishee standing in the relation of a defendant, has all the properties and qualities of finality and conclusiveness of a judgment rendered in any other civil suit. A judgment against the garnishee in favor of the plaintiff, as finally and conclusively

fixes and determines the liability of the garnishee and the rights of the plaintiff as if it had been rendered in a suit inter partes commenced in the ordinary mode of instituting civil suits; and such is in effect the declaration of the statute. A judgment against the plaintiff, discharging the garnishee [--] the only final judgment which can be rendered in his favor [--] as conclusively adjudges that he was not subject to the process, was not the debtor of the plaintiff, and had not possession, or custody, or control of effects of such debtor. Either judgment -- the one in favor of the plaintiff, or that in favor of the garnishee -- concludes the rights of the parties in respect to the cause of action involved -- the matter of right asserted by the one and denied by the other.'

"115 Ala. at 384, 22 So. at 31 (emphasis added; citations omitted).

"Those principles were later applied in a setting similar to that present in this appeal in Edwards v. Edwards, 249 Ala. 350, 31 So. 2d 69 (1947). In Edwards, the former wife was awarded periodic alimony pursuant to a 1929 judgment divorcing her from the former husband; although the former husband's obligation was reduced in 1930 and 1933, it was not terminated. In 1945, the former wife sought to garnish the former husband's wages earned from a railroad company; the former husband then filed a motion seeking to quash those garnishment proceedings. The trial court denied the former husband's motion to quash without addressing the duty of the railroad company to withhold any portion of the former husband's wages, after which the former husband attempted to appeal. Our supreme court dismissed the appeal, observing that 'the only order made here was preliminary in character'

2190467

and ruling that it 'will not support an appeal.' 249 Ala. at 351–52, 31 So. 2d at 70."

Robbins, 109 So. 3d at 1132 (first alteration added).

The order denying the motion to quash filed by the LLC and Miller addressed only the disposition of that motion but did not direct the garnishee, Trustmark National Bank, to disburse any funds to DB Electric and Shank. Thus, the February 12, 2020, order denying the motion to quash is not a final judgment and is not capable of supporting this appeal. See id. Accordingly, the appeal is dismissed.

APPEAL DISMISSED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ., concur.