This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1577

August Ventures, LLC a Minnesota limited liability company, et al.,
Respondents,

vs.

Gedney Foods Company,
Defendant,

PMC Global, Inc., et al.,
Appellants.

Filed July 8, 2024
Affirmed
Jesson, Judge*

Carver County District Court
File No. 10-CV-19-999

Matthew P. Kostolnik, Aaron P. Minster, Sara E. Filo, Moss & Barnett, P.A., Minneapolis, Minnesota (for respondents August Ventures, LLC, Capstone Investors, LLC, and 915 South 9th Street, LLC)

Ryan T. Murphy, Steven R. Kinsella, Katherine A. Nixon, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for appellant PMC Global Inc.)

Considered and decided by Connolly, Presiding Judge; Bratvold, Judge; and Jesson, Judge.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JESSON, Judge

After pickle company defendant Gedney Foods Company (the Old Pickle Company) stopped paying rent to its landlord, respondent August Ventures LLC, and abandoned its warehouse, the landlord sued for breach of contract. The district court agreed that the Old Pickle Company breached its lease and a jury later awarded money damages to the landlord. The landlord tried to collect on this award by sending a garnishment summons to the Old Pickle Company's bank, Wells Fargo Bank, N.A. Appellant PMC Global Inc, the parent company that owned the pickle company, objected and claimed that the money in the bank account belonged to the parent company. In response, the bank deposited the money with the district court. The district court determined that the money was due to the pickle company and, therefore, could be released to the landlord, August Ventures. PMC appeals. Because the district court did not err in determining that the money in the bank account was due to the pickle company, we affirm.

FACTS

August Ventures, the judgment creditor, sought to recover unpaid rent from the Old Pickle Company, the judgment debtor, after prevailing in a breach-of-contract action. August Ventures is a commercial real-estate management company and the landlord of the Old Pickle Company's former property. The Old Pickle Company is a food-processing company that previously owned a commercial warehouse in Chaska, Minnesota (the property) used for bottling and packaging pickles for distribution, and for office space.

PMC is a privately held management company with more than 20 subsidiaries. The Old Pickle Company was one of PMC's subsidiaries.

Before addressing the facts surrounding the garnishment of funds central to this case, we briefly revisit the circumstances which led to the judgment underlying the garnishment. In 2007, the Old Pickle Company sold the property to a predecessor of August Ventures.[1] The transaction included a sale leaseback allowing the company to continue operating at its location. In 2018, the Minnesota Pollution Control Agency (the MPCA) identified several permit violations at the property requiring corrective action. In 2019, the Old Pickle Company informed the MPCA that it would cease operations at the property. A few months later, the Old Pickle Company stopped paying rent and vacated the property. In response, August Ventures' predecessor filed suit against the Old Pickle Company for breach of contract, among other things. August Ventures moved for summary judgment on its breach-of-contract claim. The district court granted the motion in August Ventures' favor. However, the district court found that the damages resulting from the breach were "unclear." The district court also noted that the lease permitted August Ventures to recover attorney fees but found that the specific amount of reasonable attorney fees was a question of fact. Therefore, the district court determined that the issues of damages, mitigation of damages, and the amount of contractual attorney fees would proceed to a jury trial. This court affirmed the district court's summary-judgment decision

[1] After the suit commenced, the parties stipulated to substitute Stoughton Avenue Ventures, LLC, the original plaintiff, with August Ventures, LLC, Capstone Investors, LLC, and 915 South 9th Street LLC, after Stoughton assigned its interests in the property and the lease to August Ventures.

on appeal. *Aug. Ventures, LLC v. Gedney Foods Co.*, No. A23-0760, 2024 WL 1152575, at *1 (Minn. App. Mar. 18, 2024).

Following trial on the issues related to damages, the jury returned a special verdict form finding that August Ventures was entitled to compensation in the amount of $1,459,952.30 for the Old Pickle Company's breach of contract. The district court awarded August Ventures damages in that amount.[2] In January 2023, August Ventures docketed its judgment. As judgment creditor, it then served a garnishment summons on Wells Fargo. The Old Pickle Company had two bank accounts at Wells Fargo. One account ended in 1013, which received payments from customers. The second account, ending in 6788, was used to pay the Old Pickle Company's accounts payable. Both of the Old Pickle Company accounts were connected to, and part of, a larger "zero-balance account structure" with PMC. Under this structure, any funds deposited in the Old Pickle Company's account ending in 1013 were "swept" up on a daily basis from the Old Pickle Company's account and the funds were transferred to PMC's master account. Additionally, any time an item was presented for payment to the account ending in 6788, funds were automatically transferred from a PMC account to the Old Pickle Company account to pay the presented item.

On the day the garnishment summons was served, Wells Fargo conducted an account balance inquiry, which revealed that the Old Pickle Company account ending in

[2] The district court also awarded August Ventures contractual attorney fees, in light of the jury's verdict.

1013 had an "intraday balance"[3] of $566,325.77, less exceptions of $163.52, leaving an available balance of $566,162.25. The Old Pickle Company was "the titled account owner" of the account ending in 1013. According to the bank, this amount "was available to [the Old Pickle Company] at that time." After conducting the intraday balance, Wells Fargo retained possession and control of the $566,162.25 balance (the first garnishment). Counsel for Wells Fargo explained that the bank took this action because it believed it was required to do so in accordance with the garnishment summons and the garnishment statute, Minnesota Statutes section 571.71 (2022). The bank later identified two additional sources of funds, of $14,237.32 (the second garnishment) and $26,563.78 (the third garnishment), which it determined were due or belonging to the Old Pickle Company.

After Wells Fargo took control of the funds, PMC sent letters to the bank demanding release of the garnished funds on the ground that the funds belonged to PMC and its related affiliates—not to the Old Pickle Company. In response, Wells Fargo asserted that PMC's demand was adverse to Wells Fargo's duty to retain the funds and disclose the retention to August Ventures, the judgment creditor. But in the face of this demand, Wells Fargo sought leave to deposit the garnished funds in its possession with the district court to relieve it of any further responsibility. *See* Minn. R. Civ. P. 67.02 (permitting a disinterested third party in possession of money claimed adversely by two other parties, neither of whom has brought an action against the party in possession, to place the money in the custody of the court).

[3] "Intraday" means "[o]ccuring within a single day." *Black's Law Dictionary* 984 (12th ed. 2024).

In response to Wells Fargo's motion to deposit the funds with the district court, PMC moved to intervene in August Ventures' breach-of-contract suit against the Old Pickle Company and demanded that the garnished funds be released to PMC. In its intervention motion, PMC asserted that the Old Pickle Company ceased operations in October 2022 because it could not produce sufficient revenue to pay its expenses. The Old Pickle Company's assets were sold through a public foreclosure sale to PMC and its assignee, Gedney Foods Product LLC (the New Pickle Company), a newly-formed subsidiary of PMC. PMC asserted that this public sale "effectively ended" the Old Pickle Company's operations. As a consequence, PMC claimed that the Old Pickle Company had no present ownership interest in the garnished funds.

The district court held a hearing on Wells Fargo's motion for leave to deposit funds with the court and on PMC's motion to intervene and to release funds to PMC. It granted Wells Fargo's request for leave to deposit the funds with the court. And by stipulation of the parties, PMC was permitted to intervene in the action.

PMC and August Ventures then filed cross-motions for release of the garnished funds. Counsel for PMC and August Ventures agreed that the district court could rely on the parties' submissions, including the testimony and exhibits contained in the parties' affidavits, when making its decision. This included Wells Fargo's evidence and affidavits regarding the operation of the account structure. Following a hearing, the district court released the garnished funds to August Ventures. The district court determined that the funds were due, owing, or belonging to the Old Pickle Company, the judgment debtor, and were properly garnished by the bank for August Ventures, the judgment creditor. Based on this ruling, the district court denied PMC's motion.

PMC appeals.[4]

DECISION

PMC argues that the district court erred by determining that August Ventures was entitled to the garnished funds because those funds were not due, owing, or belonging to the Old Pickle Company. Based on our de novo review, we conclude that the district court did not err in its factual findings or in its analysis of the law because the funds were due to the Old Pickle Company at the time the bank garnished the funds from its account. In reaching this determination, we consider (1) the appropriate burden of proof, (2) whether the district court erred in its determination regarding the first and third garnishments, and (3) whether the district court erred in its determination related to the second garnishment.[5]

I. PMC bears the burden of proving its interest in the garnished funds.

As a threshold matter, PMC and August Ventures disagree about which party bears the burden of proof in a dispute regarding garnished funds. PMC asserts that the garnishment statutes do not address which party carries the burden of proof and urges this court to perform a burden-shifting analysis.[6] In response, August Ventures argues that

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[4] The district court stayed further action pending the outcome of this appeal.

[5] The funds for the second garnishment were identified in a different manner than the funds for the first and third garnishments. These garnishments are therefore addressed separately.

[6] PMC relies on *Savig v. First National Bank of Omaha*, 781 N.W.2d 335 (Minn. 2010), in support of its argument. *Savig* involved personal funds in a joint marital account and is inapposite here. *Id.* at 338.

PMC bears the burden of proof as the party claiming to have a superior interest in the garnished funds.

We agree with August Ventures. Under long-standing law, an intervenor in a garnishment proceeding bears the burden of proving its right to garnished funds. *Conroy v. Ferree*, 71 N.W. 383, 383 (Minn. 1897); *N. Star Boot & Shoe Co. v. Ladd,* 20 N.W. 334, 335 (Minn. 1884). As a result, when PMC asserts that the Old Pickle Company had no material assets and that Wells Fargo erroneously captured PMC funds when it garnished the funds in the Old Pickle Company's bank account, PMC bears the burden of supporting those claims. *See Leiendecker v. Asian Women United of Minnesota*, 895 N.W.2d 623, 635 (Minn. 2017) (discussing the burdens of proof, production, and persuasion in a civil action).

Additionally, to the extent that PMC challenges the district court's factual findings now on appeal, PMC also bears the burden of demonstrating clear error. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) ("[T]he burden of showing error rests upon the one who relies upon it."). This court reviews the interpretation and application of the garnishment statute de novo. *B & B Floor Covering Co. v. Country View Builders, Inc.*, 504 N.W.2d 272, 274 (Minn. App. 1993), *rev. denied* (Minn. Oct. 19, 1993). In a garnishment case, an appellate court reviews the district court's findings of fact for clear error. *In re Sw. Glass Co., Inc.*, 332 F.3d 513, 516 (8th Cir. 2003); *see also* Minn. R. Civ. P. 52.01 (noting that findings of fact shall not be set aside unless clearly erroneous). Clearly erroneous findings are those that are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *N. States Power Co. v. Lyon Food Prods., Inc.*, 229 N.W.2d 521, 524 (Minn. 1975). Thus, PMC carries the burden of proving that the district court's findings were clearly erroneous. *Loth*, 35 N.W.2d at 546.

II. The district court did not err in determining that the funds identified in the first and third garnishments were properly attached because they were due to the Old Pickle Company.

The primary issue on appeal is whether the funds in the Old Pickle Company's account ending in 1013 were due, owing, or belonging to the Old Pickle Company and thus available for garnishment to satisfy August Ventures' garnishment summonses.[7] Garnishment procedures are governed by statute. *Savig*, 781 N.W.2d at 338; *see also* Minn. Stat. §§ 571.71-.932 (2022). Accordingly, we turn first to examine the garnishment statute. Statutory interpretation is a question of law which we review de novo. *Moore v. Robinson Env't*, 954 N.W.2d 277, 280 (Minn. 2021). The first step in statutory interpretation is to determine whether the statutory language is ambiguous. *Peterson v. City of Minneapolis*, 892 N.W.2d 824, 827 (Minn. 2017). If the statute's meaning is clear and unambiguous, then the plain language of the statute controls and our inquiry on appeal ends there. *328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 749 (Minn. 2015). After any necessary statutory interpretation, we then apply Minnesota Statutes chapter 571 to the record before us to determine whether the disputed funds were due to the Old Pickle Company under that framework.

The garnishment statutes are designed to assist a judgment creditor in collecting a judgment by providing a means to reach the judgment debtor's assets that are in the hands

[7] This issue relates to the first and third garnishments.

of a third party, the garnishee. *Peterson v. Wilson Township*, 672 N.W.2d 556, 559 (Minn. 2003). Garnishment proceedings are initiated when the judgment creditor serves the garnishee with a garnishment summons. Minn. Stat. § 571.72. A creditor may begin an ancillary proceeding to a civil action for recovery of money through a garnishment summons "at any time after entry of a money judgment in the civil action." Minn. Stat. § 571.71(3). The process begins with a creditor—in this case, August Ventures—serving a garnishment summons on the debtor, the Old Pickle Company, and on the garnishee, Wells Fargo. *See* Minn. Stat. § 571.72, subds. 2, 4, 5 (setting forth general garnishment provisions). After receiving a garnishment summons, a bank "shall retain as much of the amount under section 571.73 as the financial institution has on deposit *owing to the debtor*." Minn. Stat. § 571.911 (emphasis added). Section 571.73 provides that all "money, or other property *due or belonging to the debtor* and owing by the garnishee or in the possession or under the control of the garnishee" is attachable by garnishment. Minn. Stat. § 571.73, subd. 3(2) (emphasis added).

The parties agree that the question before this court is whether the funds in the account ending in 1013 were due, owing or belonging to the Old Pickle Company. The statute does not define these terms. *See, e.g., Enright v. Lehmann*, 735 N.W.2d 326, 335 (Minn. 2007) (recognizing that the statute does not define section 571.73's terms). But an appellate court may turn to dictionary definitions to determine the plain and ordinary meaning of terms. *See Lagasse v. Horton*, 982 N.W.2d 189, 198 (Minn. 2022) ("When a term is not defined by statute, we may use dictionary definitions."); *see also* Minn. Stat. § 645.08(1) (2022) (noting that words and phrases are construed "according to their common and approved usage"). Here, Black's Law Dictionary defines "due" as "[i]mmediately enforceable" and "[o]wing or payable; constituting a debt." *Black's Law Dictionary* 630 (12th ed. 2024). "Owing" is defined as "[t]hat is yet to be paid; owed, due." *Id.* at 1329). And to "belong" is "[t]o be the property of a person or thing." *Id.* at 190. Accordingly, the definition of "due" in section 571.73 includes "immediately enforceable" or "payable."

But PMC asserts that this statutory interpretation of "due" is flawed because the Old Pickle Company's access to funds, alone, does not mean that the funds are due, owing, or belonging to that company. This interpretation renders the word "due" superfluous and turns the entire focus on what "belongs" to the debtor. The canons of statutory construction require us to give effect to all of the provisions of a law. Minn. Stat. § 645.16 (2022). That is, no "word, phrase, or sentence" may be deemed superfluous, void, or insignificant. *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). A garnishment summons attaches money that is owing, due, or belonging to a debtor. *See* Minn. Stat. §§ 571.73, subd. 3(2) (providing that money "due or belonging to the debtor" is attachable by garnishment); 571.911 (authorizing a bank to retain money that it "has on deposit owing to the debtor"). Thus, each word has its own distinct meaning. PMC's interpretation of these statutes would make redundant the word "due."

Applying the plain language of the garnishment statute to the facts before us, we conclude that the evidence supports the district court's findings that the funds in the Old Pickle Company's account were due to the Old Pickle Company. Wells Fargo's counsel submitted affidavits explaining how these funds were identified and garnished. After receiving the garnishment summons, the bank conducted an account balance inquiry of the Old Pickle Company's account ending in 1013. This account was titled to the Old Pickle Company. The uncontroverted testimony reveals that the Old Pickle Company had the right to demand payment of these funds from Wells Fargo based on how the account was structured. The account structure put in place by PMC allowed the Old Pickle Company to debit this account. The inquiry revealed that the account had an intraday balance of $566,325.77, less exceptions of $163.52, leaving $566,162.25. This amount was available to the Old Pickle Company at that time.

And while PMC had a zero-balance account structure in place at Wells Fargo, the undisputed evidence shows that the bank drew the funds directly from the Old Pickle Company's account. Wells Fargo did not transfer funds from the PMC account to the Old Pickle Company account in order to garnish the funds. Rather, Wells Fargo's counsel explained, it debited the intraday balance, less exceptions, directly from the Old Pickle Company account. Wells Fargo's counsel stated that "[a]ny of the account owners of the [subsidiary] accounts could have requested, and would have received, the intraday balance less exceptions available through the account structure—including [the Old Pickle Company]." In other words, if the Old Pickle Company had requested the amount of $566,162.25 from the bank, then that amount "would have been automatically available and delivered to [the Old Pickle Company] at that time." Thus, the funds were due to the Old Pickle Company. Regarding the sale of the Old Pickle Company's assets to the New Pickle Company, Wells Fargo noted that: "For the avoidance of doubt, regardless of any sale of the [the Old Pickle Company] loan from PMC to a special purpose entity created and owned by PMC, [the Old Pickle Company] Account was titled to [the Old Pickle Company] at the time the Garnishment Summons was served."[8]

Based on the testimony and evidence presented, we conclude that the funds in the account ending in 1013 were due to the Old Pickle Company, the titled account holder. The affidavits submitted by Wells Fargo satisfy us that Wells Fargo took possession of the funds directly from the Old Pickle Company's bank account, which was titled in its name and held funds of $566,162.25 at the time of the balance inquiry. Because these funds were due to the Old Pickle Company, the bank properly garnished the funds on behalf of August Ventures, the judgment creditor, under Minnesota Statutes section 571.73, in response to the summonses.

To persuade us otherwise, PMC argues that the district court's factual findings are clearly erroneous. And it further asserts that nonprecedential caselaw from this court suggests that an account agreement can provide a right to withdraw funds without creating an ownership interest. We address each issue in turn.

With regard to the factual findings, PMC claims that the district court (1) relied on clearly erroneous factual findings regarding the Deposit Account Control Agreement, and (2) made clearly erroneous factual findings regarding the zero-balance account structure.[9] PMC argues that neither of these two factual findings have adequate support in the record.

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[8] After the garnishment, PMC changed its account structure.

[9] Specifically, PMC argues first that the district court erred by finding that a Deposit Account Control Agreement authorized Wells Fargo to transfer funds to satisfy a "settlement item," including a garnishment summons. Second, PMC argues that the district court erred by characterizing PMC's master account as a "clearinghouse" for its subsidiaries.

Assuming without deciding that the district court erred in these factual findings, any such errors were harmless because they were not central to the question of whether the funds in the Old Pickle Company's account—as opposed to the PMC master account—were due to the Old Pickle Company. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that "[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal"). Wells Fargo's attorney testified in his affidavit that the bank withdrew money from the account ending in 1013, which "was titled to [the Old Pickle Company] at the time the [g]arnishment [s]ummons was served." This uncontroverted testimony establishes that Wells Fargo captured the funds while they were in the Old Pickle Company's account. It was not drawn from PMC's account. Thus, PMC's argument regarding the relationship between PMC and its subsidiary accounts under the Deposit Account Control Agreement is not relevant.

Moreover, while PMC objects to how Wells Fargo responded to the garnishment summonses, it points to no agreements or other evidence that contradicts Wells Fargo's approach here. During the motion hearing, PMC and August Ventures stipulated that the district court could consider the bank's evidence and the declarations in the record in making its decision. And we do not presume error on appeal. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (noting that an error "must be made to appear affirmatively before there can be reversal"). PMC acknowledges that the only evidence in the record is the Deposit Account Control Agreement. The parties agree that there should be other agreements relating to these accounts and the zero-balance structure itself, but they were unable to locate any additional agreements to submit into evidence. If there were additional documents that PMC believed were relevant to the bank's duties here, it bore the burden of proving that, just as it bore the burden of proving that the bank erred. It has not done so. Because the errors—if any—are immaterial to the district court's resolution of the issue, and because the record supports the district court's ultimate determination that the funds were due to the Old Pickle Company, we decline to reverse on the basis of factual error.

We are similarly unpersuaded by PMC's argument that the district court's two alleged factual errors—which we reject—conflict with nonprecedential caselaw from this court. We are not bound by nonprecedential opinions. Minn. R. Civ. App. P. 136.01, subd. 1(c). Additionally, these cases are distinguishable because they do not concern zero-balance account structures such as exist here. *See, e.g., Vill. at Izatys Ass'n v. Jaskowick*, No. A09-1030, 2010 WL 10423, at *1 (Minn. App. Jan. 5, 2010) (regarding a business account owned by a sole proprietor); *Dooner v. Pui Yuen,* No. 16-CV-1939, 2017 WL 3172986, at *2 (D. Minn. July 25, 2017) (relating to the application of the Multiparty Accounts Act to joint account holders); *Phillips v. Messerli & Kramer P.A.*, No. 08-4419, 2008 WL5050127, at *6 (D. Minn. Nov. 20, 2008) (same); *Pokela v. Dana*, No. C5-92-1067, 1992 WL 333606, at *1 (Minn. App. Nov. 17, 1992) (regarding a certificate of deposit). Because these cases are factually distinct, we do not find their analysis persuasive.

Instead, we determine, based on the uncontroverted testimony in the record and under the plain language of the garnishment statute, that the funds in the Old Pickle

Company account ending in 1013 were payable—that is, due—to the Old Pickle Company. As a result, the district court did not err in ordering the distribution of the garnished funds to August Ventures.

III. The district court did not err in its decision related to the second garnishment.

In its final argument, PMC contends that the funds attached in the second garnishment were not due, owing, or belonging to the Old Pickle Company. According to PMC, Target Northern Campus made a payment to the Old Pickle Company account for pickles. Wells Fargo put a garnishment hold on the account for those funds. PMC asserts that this payment was incorrectly routed by Wells Fargo to the Old Pickle Company's account. It claims that, because these funds were mistakenly put into the wrong account, the bank did not have a garnishable interest in those erroneously deposited funds.

The record does not show that the district court clearly erred by finding that these funds were subject to garnishment. In response to a garnishment summons, Wells Fargo identified $14,237.32 in the Old Pickle Company's bank account, which the bank determined was due to the Old Pickle Company. The record shows that, based on how the accounts were structured, the "intraday balance," less exceptions, was "automatically available" to all of the account holders, including the Old Pickle Company. Additionally, while PMC asserts that the bank made an error, it does not identify any evidence establishing that the funds from Target were incorrectly routed to the Old Pickle Company's account. Because PMC has not adequately supported its claim of error, reversal is not appropriate. *See Horodenski v. Lyndale Green Townhome Ass'n*, 804

N.W.2d 366, 372 (Minn. App. 2011) ("[E]rror is not presumed on appeal, and the burden of showing error rests on the party asserting it.").

Affirmed.