

STATE OF MICHIGAN
COURT OF APPEALS

JAMES HAGER,

Plaintiff/Counterdefendant-
Appellee,

v

DARCY ANN FRANTZ-HAGER,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

April 22, 2014

No. 313477

Kalamazoo Circuit Court

LC No. 2004-006448-DM

Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

In this divorce action, defendant-wife Darcy Ann Frantz-Hager appeals from the trial court order that quashed a writ of garnishment against the credit union account of a business owned by plaintiff-husband James Hager. For the reasons set forth below, we reverse the quashing of the writ, but only as to certain funds remaining in the account.

James and Darcy were granted a judgment of divorce in August 2006. In August 2012, James was in arrears under the terms of the property settlement and still owed Darcy money. Darcy then sought and received a writ of garnishment against the credit union account of James's construction business, Preferred Builder's Inc. (PBI). The writ was executed on August 27, 2012 and the account was garnished for \$31,733.24, the amount James still owed under the divorce property settlement. James objected to the writ, arguing that the funds in the account were held in trust under the builders' trust fund act, MCL 570.151 *et seq.*, and, therefore, were exempt from garnishment. The trial court stayed the release of the funds and, after an evidentiary hearing, agreed with James's argument and quashed the writ.¹

¹ We review a trial court's decision whether to quash a writ of garnishment for an abuse of discretion. *Sys Soft Technologies, LLC v Artemis Technologies, Inc*, 301 Mich App 642, 650; 837 NW2d 449 (2013). We review de novo issues of statutory interpretation. *Radina v Wieland Sales, Inc*, 297 Mich App 369, 373; 824 NW2d 587 (2012).

“The builders’ trust fund act applies to those funds paid to contractors and subcontractors for products and services provided under construction contracts.” *DiPonio Constr Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 47; 631 NW2d 59 (2001). “It imposes a trust on funds paid to contractors and subcontractors for products and services provided under construction contracts.” *Livonia Bldg Materials Co v Harrison Constr Co*, 276 Mich App 514, 518; 742 NW2d 140 (2007). The contractor or subcontractor may not retain those funds or any part of those funds for any purpose other than to first pay laborers, subcontractors, or materialmen who were engaged by the contractor or subcontractor to perform labor or furnish material for the specific project. MCL 570.151.

On August 27, 2012, the day the writ was executed, the PBI account had a balance of \$36,578.69. The entirety of the funds had been deposited by EDR Western Michigan LP (EDR) as final payment pursuant to a contract it had with PBI to perform roof replacement at an apartment complex.

The trial court properly concluded that EDR’s final contract payment was held in trust by PBI until all subcontractors, laborers, and materialmen, in this case, ABC Supply Company and Going Green, were paid. MCL 750.151; *Livonia Bldg Materials Co*, 276 Mich App at 518. However, it abused its discretion by quashing the writ because the amount in the account on August 27, 2012 exceeded the amount owed to ABC Supply and Going Green and, therefore, was available for garnishment. Out of the \$114,384 contract price, James had paid out \$74,945.39 (\$84,145.39 minus \$9,200 in child support)² for labor, overhead, and supplies, with \$39,438.61³ remaining from the contract proceeds. PBI still owed ABC Supply \$31,063.88 and Going Green \$2,650. At that time, all remaining proceeds from the contract were still held in trust by PBI until both ABC Supply and Going Green were paid in full. MCL 750.151; *Livonia Bldg Materials Co*, 276 Mich App at 518.

² James deducted from the construction contract proceeds the total amount of child support payments made to Darcy from the beginning of the EDR project until final payment was received. However, because the construction contract funds are held in trust until all contractors, subcontractors, laborers and materialmen have been paid, it is not appropriate to deduct the child support payments from the construction contract proceeds to determine whether money is available for garnishment. Accordingly, the child support payment should not have been included as a deduction from the contract amount to arrive at the amount of funds held in trust.

³ James testified that there was only \$30,238.61 remaining from the EDR contract proceeds. However, James arrived at this amount by subtracting his child support payment. As discussed, it is not appropriate to include this item when calculating the amount still held in trust for any unpaid contractors, subcontractors, laborers and materialmen involved in the construction project. Thus, the amount from the contract still held in trust was \$39,438.61 (\$30,238.61 + \$9,200).

However, the account balance was \$36,578.69⁴ on the date of execution, more than the amount owed to ABC Supply and Going Green. After subtracting the amount still owed to those companies (\$31,063.88 + \$2,650 = \$33,713.88) from the available funds in the account (\$36,578.69), \$2,864.81 remained available for garnishment. Accordingly, the trial court abused its discretion by quashing the writ of garnishment on the basis that all remaining funds from the construction project were protected by the builders' trust fund act.⁵

We reverse the quashing of the writ of garnishment but hold that only \$2,864.81 may be garnished from the account under the writ.

Reversed. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Douglas B. Shapiro

⁴ The amount in the PBI account on August 27, 2012 (\$36,578.69) is less than the \$39,438.61 that was held in trust from the contract proceeds until ABC Supply and Go Green are paid. It appears that because James comingles business and personal finances in the account, the construction contract proceeds have been used to pay other expenses. Regardless, because the contract proceeds held in trust is less than the amount of money in the account on August 27, 2012, the balance in the PBI account on that date is the relevant figure for determining whether, after ABC Supply and Go Green are paid, there was money remaining for garnishment.

⁵ Because we conclude that the trial court abused its discretion by quashing the writ of garnishment, we decline to address Darcy's other arguments on appeal.