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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Ronald Earl Mays

v.

John A. Yung IV

Appeal from Montgomery Circuit Court
(CV-14-900385)

PER CURIAM.

This appeal arises from efforts exerted by John A. Yung IV ("the plaintiff") to execute upon a judgment entered in 2014 by the Montgomery Circuit Court against one of two

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defendants in a tort action, Ronald Earl Mays ("the defendant"), for \$10,400.14.¹

In September 2017, during postjudgment discovery, counsel for the plaintiff took the deposition of Karen R. Cagle, who was directed to produce documents evidencing moneys received by her from the defendant or any business with which the defendant had been affiliated. Cagle disclosed that she had received a \$1,850 mortgage-payment check signed by the defendant in February 2017; that check had been drawn on a particular numbered bank account at Wells Fargo Bank, N.A. ("the garnishee") and bore the names of the defendant and of "City Jet Inc." The plaintiff then issued process of garnishment directed to the garnishee seeking the collection of moneys of the defendant in the garnishee's control. Before the garnishee could answer the process of garnishment, counsel for the defendant moved to quash the process of garnishment, asserting, among other things, that the garnishment of what he termed a "business account" was wrongful because "City Jet, Inc.," was a separate entity from the defendant. The

¹It appears from the record that a separate judgment in the tort action entered against the defendant's mother in the amount of \$2,402.07 has been satisfied and is not at issue.

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plaintiff responded, attaching a copy of the check received from Cagle and averring that the check evidenced that the defendant "uses the account ... as his own personal checking account"; he requested that the motion to quash be denied or, in the alternative, that an evidentiary hearing be set. The trial court thereafter set a hearing for December 4, 2017.

On November 7, 2017, a verified answer that had been executed by the garnishee seven days beforehand was filed in the trial court. The answer contained form language calling for blank spaces next to potentially pertinent applicable paragraphs to be checked, including paragraphs allowing for the garnishee to admit possession of moneys belonging to the defendant or to deny possession thereof. However, neither the paragraph admitting possession nor the paragraph denying possession was checked; rather, a paragraph labeled "Other (Explain)" was chosen, and the adjacent blank bore the added language "Amount of funds on hold/collected: \$5,515.41." Counsel for the defendant thereafter renewed his motion to quash the process of garnishment.

The trial court held a hearing on December 4, 2017. At that hearing, the trial court received arguments of counsel

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and an evidentiary exhibit that was offered by the plaintiff without objection from the defendant; no testimony was taken. The plaintiff's exhibit included two photocopied checks that had been signed by the defendant and drawn on the same numbered account as the Cagle check, but those checks listed only the name of the defendant instead of the names of both the defendant and "City Jet Inc.";² the first check was made payable to "cash" and stated that it was tendered for "2 crew days/Myles Mays," whereas the second check was made payable to "Theresa Chaputi" and indicated that the funds drawn were for registration of "N609RB" (an airplane call sign). Counsel for the defendant responded by noting that the defendant had informed him that he was not the owner of the pertinent account but was solely an authorized signer of checks drawn on that account. The trial court expressed skepticism regarding the defendant's explanation of the nature of the numbered account, averring that "it appears ... that you've got a check that appears to be a personal check" and that there were

²Both of the checks in that exhibit listed the address of a Prattville branch of the garnishee, while the check made payable to Cagle bore the address of one of the garnishee's branches in Marietta, Georgia.

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"personal things being paid out of that account." The trial court further accorded significant weight to the garnishee's answer, which it interpreted as "represent[ing] that they have withheld money that belongs to [the defendant]" rather than "holding money for this corporation." The trial court stated that it would deny the motion to quash, remarking to the defendant that "if the [garnishee] has pulled ... out [the \$5,515.41 identified in the answer] and said this is yours, you may have a beef with the bank."

On December 8, 2017, before the trial court had entered a written order on the defendant's motion to quash the process of garnishment, the defendant filed a motion to stay, attaching exhibits indicating that the account number referenced on all the checks submitted by the plaintiff identified an account owned solely by City Jet, Inc. One of the exhibits was a form "Business Account Application" dated December 9, 2014, listing "City Jet Inc." -- a corporation identified as being involved in the servicing of airplanes -- as the "Sole Owner" of the account and identifying the defendant (and three other people) as "Signer[s]." In response, the plaintiff argued that the two checks submitted

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at the December 4, 2017, hearing had demonstrated that the defendant was "the owner or one of the owners of the account"; the plaintiff also requested that the garnishee be made to pay into court the \$5,515.41 identified as "funds on hold/collected" in the garnishee's answer. On December 13, 2017, the trial court entered an order denying the defendant's motions to quash and to stay and granting the plaintiff's request to direct the garnishee to pay \$5,515.41 into court. There is no dispute that the garnishee thereafter complied with that direction and paid that sum into court.

On January 3, 2018, the plaintiff filed a motion to condemn the \$5,515.41 that had been paid into court "in partial satisfaction of" the underlying tort judgment. The trial court granted that motion on January 4, 2018, after which the defendant immediately filed a motion to set aside that order. The defendant's motion was supported by a copy of an October 26, 2017, letter sent by the garnishee to "City Jet Inc." stating that "we withdrew \$5,309.19 from your account" in response to the process of garnishment, which had been directed to the defendant's funds. The defendant later amended his motion to assert that the plaintiff had not made

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an adequate showing that would have warranted disregarding the corporate form of "City Jet Inc." so as to support condemning funds of that corporation for the benefit of the plaintiff. The trial court denied the defendant's motion to set aside on January 9, 2018, and the defendant, on February 20, 2018, timely appealed to this court.³

The defendant, appearing pro se on appeal, asserts that the trial court erred in condemning the funds paid into court by the garnishee from the account of "City Jet Inc." He initially argues that no presumption of correctness should be applied to the judgment of the trial court. With that argument, we agree. "[W]here there are no disputed facts and where the judgment is based entirely upon documentary evidence, no ... presumption of correctness applies;

³See generally Ala. Code 1975, § 6-6-461 (providing that a judgment in a garnishment proceeding condemning money to the satisfaction of a plaintiff's demand is conclusive as between the garnishee and the defendant unless the defendant successfully appeals from such a judgment) and § 6-6-464 (stating that this court or our supreme court "as the case may be" will have appellate jurisdiction of an appeal by the defendant); Ala. Code 1975, § 12-3-10 (conferring exclusive appellate jurisdiction as to appeals in civil cases in which the amount in controversy does not exceed \$50,000); and Rule 4(a)(3), Ala. R. App. P. (tolling the time for taking an appeal from a final judgment until after disposition of postjudgment motions).

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[appellate] review is de novo.'" Padgett v. Conecuh Cty. Comm'n, 901 So. 2d 678, 685 (Ala. 2004) (quoting Alfa Mut. Ins. Co. v. Small, 829 So. 2d 743, 745 (Ala. 2002)). In this case, the trial court heard no sworn testimony from witnesses in open court, and it condemned the funds at issue based solely upon the documentary record and the contentions of counsel.

Although the trial court, during the hearing on whether to quash the plaintiff's process of garnishment, placed particular emphasis on the garnishee's implicit representation in its answer that the funds at issue belonged to the defendant, that representation is not, under Alabama law, conclusive of the matter in the manner that the plaintiff suggests. As we noted in Robbins v. State ex rel. Priddy, 109 So. 3d 1128, 1131 (Ala. Civ. App. 2012), "Alabama's garnishment statutes recognize that both the putative garnishee and the defendant are entitled to ... assert their respective positions as to the plaintiff's garnishment claim" (emphasis added). On multiple occasions before the trial court condemned the funds paid into court by the garnishee, the defendant placed the plaintiff and the trial court on

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notice that the account listed on the three checks submitted by the plaintiff was not, in actuality, an account owned by the defendant; the documentary record instead established that the account was not owned by the defendant, but was solely owned by "City Jet, Inc." Although the plaintiff correctly notes that the garnishment papers directed to the garnishee had sought only a response concerning whether the garnishee had, in its possession or control, money "belonging to" the defendant, the garnishee in actuality removed \$5,309.19 from the "City Jet Inc." account -- as evidenced by the garnishee's October 26, 2017, letter to "City Jet Inc." that was submitted by the defendant in support of his motion to set aside the order condemning the funds paid by the garnishee into court. Thus, at least as to that \$5,309.19, the trial court erroneously granted the plaintiff's motion to condemn. See House v. Malcolm Thomas Indus., Inc., 611 So. 2d 1085, 1085-86 (Ala. Civ. App. 1992) (affirming judgment denying garnishment efforts of plaintiff directed to bank account as to which defendant showed that he was solely a signatory party).

Although the defendant devotes much of his brief on appeal to the issue whether the trial court properly "pierced

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the corporate veil," we agree with the plaintiff that the judgment under review is not based upon that ground. First, that issue was initially injected by the defendant in his postjudgment motion, long after the trial court had expressed its reliance upon the garnishee's answer implicitly indicating that the \$5,515.41 "on hold/collected" belonged to the defendant. Further, no testimony or other evidence was adduced in the trial court tending to prove or disprove that the three checks submitted by the plaintiff -- which, on their faces, were issued for rent, payment of labor expenses, and an aircraft-registration fee -- were not written in the ordinary course of business of "City Jet, Inc.," which is a corporation that is devoted to servicing airplanes. We therefore may not properly affirm the judgment condemning the funds on the alternate ground that "City Jet, Inc.," may have been an alter ego of the defendant. However, that issue, if properly presented in the trial court, will remain for that court's initial determination on remand. See generally Hill v. Fairfield Nursing & Rehab. Ctr., LLC, 134 So. 3d 396, 406-09 (Ala. 2013) (discussing legal principles governing piercing the corporate veil).

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The trial court's January 4, 2018, order condemning the funds paid into court by the garnishee is reversed. The cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

All the judges concur.