UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2089

September Term, 2014

EDMUND K. AWAH

v.

BETTY M. NGYENI

Meredith,
Hotten,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: December 3, 2015

As part of the proceeding annulling their marriage, the Circuit Court for Montgomery County entered judgment in favor of appellee Betty Ngenyi ("Wife") against appellant Edmund Awah ("Husband") in the amount of $2,350.00. Husband doesn't dispute that he owes this money, nor does he challenge the underlying judgment. Instead, he challenges the circuit court 's denial of three motions relating to the writs of garnishment Wife served on two banks in an effort to collect the judgment. We affirm.

I. BACKGROUND

Husband and Wife were married in Rockville in September 2011. When they met, Husband told Wife that his first wife, whom he had married in South Africa in 1995 and never divorced, had died. Wife, herself a widow, believed him. After they married, the couple appeared for their interview with immigration officials (Wife is a United States citizen, Husband is not), and Husband seemed less sure that his first wife was dead after all. The situation then unraveled quickly.

This case began with Husband's Petition to Annul Marriage, to which Wife responded with a Counter-Petition of her own. Although many papers were filed (including Husband's demand for repayment of money he had expended during the marriage), Husband never responded to Wife's Counter-Petition, and the court entered a default against him, denied his motion to vacate the default, and entered a Judgment of Annulment on July 19, 2013. In addition to declaring the marriage void *ab initio*, the court

also entered judgment against Husband in favor of Wife's attorneys "in the amount of $2,350.00 for attorneys fees incurred in this matter."

Husband appealed, then withdrew his appeal, then filed a motion to reconsider that the circuit court denied in October 2013. After seven months passed without payment, Wife asked the court in May 2014 to issue writs of garnishment to two banks—Capital One Bank and Educational Systems Credit Union—at which she thought Husband had accounts. The Clerk issued the writs on May 15, 2014, and Wife's counsel served them on the banks by certified mail; copies also were sent to Husband by mail at his last known address. Educational Systems Credit Union's return receipt shows that it signed for the writ on May 22; Capital One's is undated. Both banks responded on June 2, 2014—Capital One Bank held two small balances, and Educational Systems Credit Union replied that Husband had no open account there.

Two weeks after the banks responded, Husband filed the three motions at issue in this appeal, all on the same day. *First*, he filed a Motion to Strike Defendant's Writ of Garnishment, in which he argued that Wife had failed to serve him in a timely manner. *Second*, he filed a Motion to Request to Strike or Vacate the Writ of Garnishment of Property or in the Alternative for Exemptions from Garnishment of Property, in which he argued that Wife had failed to try and collect the debt from him, that the two writs sought improperly to freeze double the amount owed, and that his personal circumstances warranted an exemption from garnishment. *Third*, he filed a Supplementary Motion to Strike Defendant's Writ of Garnishment that reiterated points from the other two filings.

Wife opposed all three motions, and the court held a hearing on November 21, 2014. In response to questions from the court, Husband admitted that he had received notices relating to the motions at his Montgomery Village post office box, the address he had listed in his original Petition and that had remained his address of record throughout the case. After reviewing the file and hearing argument from counsel, the court walked through Maryland Rule 2-645(d), then denied the motions from the bench:

> I think it [was filed] in accordance with the rules, and I think everything was done properly, Mr. Awah. You were served I find at your P.O. Box, which is part of the court records. There's no evidence and you have the burden of persuasion, and my test would be preponderance of the evidence. You would have to prove to me by a preponderance of the evidence that it wasn't sent to the P.O. Box at P.O. Box 2944, Montgomery Village 20866. I find that it was. I do find that the, you have the 30 days after you[']re] served and I agree with counsel's interpretation of the rules. Therefore, I'm going to deny your motion to strike or vacate the writs of garnishment of property or in the alternative for exemptions from garnishment. So that would be, your motions, Tab 68, 70 and 71, and I'll sign an order to that effect, and put the official stamp on there. Good luck to you, Mr. Awah, nice argument, good job.

The court entered a written order on December 8, 2014, and Husband filed a timely notice of appeal.

II. DISCUSSION

Husband's brief lists five questions,[1] but they boil readily down to two. *First*, he contends that the circuit court erred in denying his motion to strike the writs of garnishment

[1] He phrased the questions in his brief as follows (emphasis in original):

because he was not served properly. *Second*, he claims that the circuit court took too long to decide his motions, and then failed to rule on his request to exempt property from garnishment. But Husband's complaints with the garnishment process in this case flow from a fundamental misunderstanding of where he stood and the steps Wife was taking to collect this long-unsatisfied judgment. We review the circuit court's factual findings for clear error and its identification of the appropriate Rules *de novo*, and find no error. *See Storetrax.com, Inc. v. Gurland*, 397 Md. 37, 49-50 (2007) (quoting S*pace Aero Prods. Co. v. R.E. Darling Co.*, 238 Md. 93 (1965) ("[W]hen an action has been tried by the lower court without a jury, the judgment of the lower court will not be set aside on the evidence

1. Did the lower Court err in denying Appellant Motion to strike Appellee's Service of Process and Writ of Garnishment of property in view of the fact that Appellee failed to comply with the Rules on the Service of Process?

2. Did the lower Court err when it took over **five months** to rule on Appellant's Motion for Exemptions from Garnishment of Property when Maryland Rules make it mandatory that such ruling must be made within 14 days after Appellant's Exemption Claim motion is filed?

3. Did the lower Court at the hearing on November 21, 2014 err by ruling on only one segment of Appellant's motion and refusing to rule on the second segment when in fact the two requests were articulated in the same motion?

4. Did the lower Court err by failing to hear Appellant's claim for Exemptions from Garnishment within fourteen days?

5. Did the lower Court err by denying Appellant's Motion for Exemption from Garnishment when Appellant has fully met the statutory threshold for Exemptions?

unless clearly erroneous. . . . The conclusions of law based on the facts, however, are reviewable by the Court.")).

At the time of the motions at issue here, the court had entered a Judgment of Annulment that included an award to Wife of attorneys' fees. Husband had withdrawn his appeal of that judgment and the court had denied his motion to reconsider its decisions. All that was left at this point was for him to satisfy the judgment, which he hadn't. And his failure or refusal to do so for months after the court entered judgment entitled Wife to execute against his assets, wherever (at least within Maryland) they might be.

Maryland Rules 2-645 and 2-645.1 set forth the procedure for garnishing property other than wages; the latter, which covers garnishments of accounts in financial institutions, is the directly relevant Rule, but it points back to Rule 2-645 for the procedural elements at issue here. The real parties to the garnishment process are not Wife and Husband, but rather Wife and the *garnishees*, in this case Husband's banks. Husband is not challenging the issuance of the writs, nor could he, but he seems to contend that Wife was required to serve him with them, and that he then was entitled to an opportunity to seek exemptions. But that's not what the Rule provides.

Rule 2-645(d) establishes different service requirements for garnishees and debtors that reflect their relative roles and rights. The Rule first requires Wife, the creditor, to serve the garnishees "in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction." This makes sense because the banks have not previously been parties to this litigation—as newcomers, they are entitled to service of process, just

as the original defendant was at the outset. Then, Wife was required "[p]romptly after service upon the garnishee . . . [to] mail a copy of the writ to the judgment debtor's last known address" and, consistently with Rule 2-126, to file proof of service with the court. The court found as a matter of fact that Wife complied with these requirements, and we find no error in that ruling. To the contrary, the record reflects that Wife complied fully with these requirements.

From there, Husband complains that the court took too long to decide his motions and that the court failed to rule on his request that his property be exempt from garnishment. But Husband never complained about any delay in the circuit court, either in writing or during the hearing, nor has he identified any prejudice he suffered as a result (beyond including the words "severe financial hardship" in his brief). Since the judgment remained unsatisfied during the time the motions were pending, it seems more likely that Husband benefitted from any delay. Regardless, Husband waived any issues the delay might theoretically have raised. *See* Maryland Rule 8-131(a); *Univ. Sys. of Md. v. Mooney*, 407 Md. 390, 401 (2009) (commenting on the rationale for Md. Rule 8-131(a), and declining to review issues that were not raised and argued in the circuit court).

Finally, Husband is correct that the circuit court did not address his requests to exempt these accounts from garnishment,[2] but this argument fails as well. As to

[2] We note that Husband offered no argument in his brief in support of this point, which would be reason enough for us to decline to address it. *See DiPino v. Davis*, 354 Md. 18, 56 ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the [appellate] court may, and ordinarily should, decline to address it."). In light of Husband's status as an unrepresented litigant, however, we will address it on the merits nonetheless.

Educational Systems Credit Union, Husband's request is moot, since that institution had no accounts in his name to garnish. And as to Capital One, Husband's motions fail even to allege the basic requirements of Rule 2-643(c)(5).[3] Even assuming the fungible (and small amount of) funds in the two Capital One accounts were subject to exemption, Husband offered no argument in the circuit court or here demonstrating that "the levy upon the *specific property* will cause undue hardship to the judgment debtor *and* the judgment debtor has delivered to the sheriff or made available for levy alternative property sufficient in value to satisfy the judgment and enforcement costs." *Id*. (emphasis added). He argued only, and generally, that his post-judgment auto accident had strained his financial resources, and he offered no alternative source property. On this record, the circuit court would have abused its discretion to exempt the funds in the Capital One accounts, and it did not err in declining to reach Husband's unsupported alternative theories.

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

[3] Rule 2-645 contemplates that judgment debtors may seek to exempt property under Rule 2-643(d) "[b]y motion filed within 30 days after a levy." Treating Husband's motion as a motion under Rule 2-643(d), which is generous, and applying the standard set forth in Rule 2-643(c), (c)(5) is the only rationale that conceivably could apply here: the judgment had not been vacated, has not expired, or been satisfied ((c)(1)); the property was not exempt from levy ((c)(2)); the judgment creditor had not failed to comply with the rules or an order of the court ((c)(3)); property sufficient in value to satisfy the judgment and enforcement costs would not remain under levy after a release ((c)(4)); and the levy had not existed for 120 days without the sale taking place. *Id*., (c)(6).