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Vining v. Martyn
Fla.App. 3 Dist.,2003.

District Court of Appeal of Florida,Third District.

Edward C. VINING, Jr., Appellant,

v.

Eva MARTYN, Appellee.

No. 3D02-858.

Nov. 5, 2003.

Judgment creditor filed a writ of garnishment against third party against whom judgment debtor had obtained judgments, and against any affirmative recovery that debtor might obtain due to counterclaim against a separate third party. The Circuit Court, Miami-DadeCounty, [Ronald M. Friedman](#), J., found that judgments did not qualify for exemption for money due for personal labor, and denied debtor's motions to dismiss the second writ. Debtor appealed. The District Court of Appeal held that: (1) creditor's sworn denial of exemption for money due for personal labor was timely; (2) amounts owed by third party to debtor's law practice did not qualify for exemption for money due for personal labor; and (3) trial court's order denying debtor's motion to dismiss creditor's second writ was interlocutory and non-appealable.

Affirmed one garnishment, and dismissed appeal as to other garnishment.

West Headnotes

[1] Exemptions 163 127

163 Exemptions

163VI Protection and Enforcement of Rights

163k127 k. Contest and Determination of

Claim. [Most Cited Cases](#)

Judgment creditor's sworn denial of exemption for money due for personal labor was timely when calculated from the service of notice, as required by statute, and thus amounts owed by third party to judgment debtor's law practice were subject to garnishment. [West's F.S.A. § 222.12.](#)

[2] Exemptions 163 48(2)

163 Exemptions

163I Nature and Extent

163I(C) Property and Rights Exempt

163k48 Earnings, Wages, or Salaries

163k48(2) k. What Are Wages or Personal

Earnings. [Most Cited Cases](#)

Amounts owed by third party to judgment debtor's law practice did not qualify for statutory exemption for money due for personal labor, and thus amounts were subject to garnishment by judgment creditor. [West's F.S.A. § 222.12.](#)

[3] Appeal and Error 30 230

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions, and Rulings Thereon

30k230 k. Necessity of Timely Objection.

[Most Cited Cases](#)

Judgment debtor waived right to contend on appeal that oath was insufficient to support opposition affidavit filed by judgment creditor's attorney, denying that debtor was entitled to exemption from garnishment for money due for personal labor, where debtor did not raise issue until after trial court had already entered partial summary judgment in favor of creditor.

[4] Appeal and Error 30 71(2)

30 Appeal and Error

30III Decisions Reviewable

30III(D) Finality of Determination

30k67 Interlocutory and Intermediate Decisions

30k71 Affecting Provisional Remedies

30k71(2) k. Attachment and Garnishment. [Most Cited Cases](#)

Trial court's orders denying judgment debtor's motions to dismiss, dissolve, and discharge judgment creditor's writ of garnishment were interlocutory and non-appealable.

Edward C. Vining, Jr., Miami, in proper person.

[Lauri Waldman Ross](#), Miami, for appellee.

Before [COPE](#), [GERSTEN](#) and [GODERICH](#), JJ.
PER CURIAM.

Edward C. Vining, Jr., appeals a final judgment in one garnishment proceeding and interlocutory orders in another. We affirm the final judgment and dismiss the appeal as to the interlocutory orders.

***366 I.**

Appellee Eva Martyn obtained a judgment against Vining, which has not been satisfied. Martyn determined that in other litigation Vining obtained two judgments against Frank J. Pepper, Jr., and other defendants (collectively “Pepper”). Pepper had not paid Vining the judgment amount, which was approximately \$36,000.

Martyn served writs of garnishment on Pepper, seeking to collect the \$36,000 which Pepper owed to Vining. Vining filed an affidavit for exemption from garnishment under [section 222.12, Florida Statutes \(2000\)](#), asserting that the judgment was due for his personal labor and services, and that he is the head of a Florida family. Martyn's attorney filed a sworn denial, denying that Vining was entitled to the exemption.

Pepper interpled the judgment amounts into the registry of the court. The trial court ruled that Martyn is entitled to the money. Vining has appealed.

[1] We conclude that the judgment must be affirmed. We reject Vining's argument that the sworn denial of exemption was untimely. Under the statute, time is calculated from “the service of said notice,” *id.*, and when so calculated, is timely.

[2] On the merits, the funds at issue here were proceeds of Vining's law practice. We agree with the trial court that the funds do not qualify for the statutory exemption. See *In re: Zamora*, 187 B.R. 783 (Bankr.S.D.Fla.1995); *Patten Package Co. v. Houser*, 102 Fla. 603, 136 So. 353 (1931); *Vining v. Segal*, 731 So.2d 826 (Fla. 3d DCA 1999); *Refco, Inc. v. Sarmiento*, 487 So.2d 75 (Fla. 3d DCA 1986).

[3] Vining also argues that the oath was insufficient

to support the opposition affidavit filed by Martyn's counsel. In absence of a transcript, we have been unable to determine whether this argument was timely called to the trial court's attention, and if so, what arguments were made for and against. See *Applegate v. Barnett Bank*, 377 So.2d 1150 (Fla.1979).^{FN*}

^{FN*} It appears that Vining did not raise this issue until after the trial court had already entered partial summary judgment in favor of Martyn, reserving only a single issue for decision (whether the opposition affidavit of Martyn's counsel had been timely served). It thus appears that the issue of sufficiency of the oath was untimely raised.

II.

[4] Vining was sued in separate litigation by a former client, Mary Alice Poe, alleging legal malpractice, breach of contract, and other claims. Vining filed a counterclaim.

Martyn filed a writ of garnishment, seeking to reach any affirmative recovery that Vining might obtain because of his counterclaim in the Poe litigation. Vining filed motions to dismiss, dissolve, and discharge the writ of garnishment. The trial court denied Vining's motions, and Vining has appealed.

As the trial court's rulings on these motions are interlocutory, non-appealable orders, we dismiss the appeal as to the Poe garnishment, and decline to entertain the appeal as a petition for writ of certiorari.

Affirmed as to Pepper garnishment; appeal dismissed as to Poe garnishment.

Fla.App. 3 Dist.,2003.

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858 So.2d 365, 28 Fla. L. Weekly D2521

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