STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1208

RSR, Inc.,
Respondent,

vs.

James Rothers,
Appellant,

and

West Central Crane, Inc., third party plaintiff,
Appellant,

vs.

RSR, Inc., third party defendant,
Respondent.

Filed March 17, 2014
Affirmed
Stauber, Judge

Kandiyohi County District Court
File No. 34CV10879

Jeff C. Braegelmann, Matthew Berger, Gislason & Hunter, L.L.P., New Ulm, Minnesota (for respondent)

Gregory R. Anderson, Kristen E. Pierce, Anderson, Larson, Hanson & Saunders, P.L.L.P., Willmar, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

In this appeal from a default judgment entered in garnishment proceedings, appellant-garnishee challenges the district court's determination that a nonearnings disclosure did not comply with the requirements of Minn. Stat. § 571.75 (2012) because it was (1) signed by his attorney, rather than appellant personally and (2) dated seven days after service of the garnishment summons, rather than the date of the summons. We affirm.

FACTS

In October 2010, respondent RSR, Inc. filed a lawsuit against appellant James Rothers for breach of contract arising out of the sale of a truck crane. According to the complaint, Rothers agreed to purchase the crane "as is" from RSR for $75,000. Rothers paid by check, but canceled the check after receiving the crane. According to Rothers, RSR represented that the crane was in good working condition and capable of traveling to a job in North Dakota, but the crane failed en route. Rothers attempted to add his employer, appellant West Central Crane, Inc. (WCC), as a third-party defendant, claiming that he had signed the check as an agent for WCC, and therefore was not personally liable. The district court denied Rothers's request. Subsequently, WCC sued RSR for breach of contract and other claims, and the two cases were consolidated.

Following a trial held on April 24 and 25, 2012, a jury found that RSR did not induce WCC to enter the contract for sale by fraudulent means, and based on the parties' stipulations, the court concluded that WCC breached the contract and that RSR's

worthless-check claim succeeded. Further, because the jury found that WCC was the buyer of the crane and WCC's name was printed on the check, the district court concluded that Rothers was not personally liable for any damages. The district court entered judgment against WCC for damages, penalties, interest, and attorney fees, and dismissed WCC's complaint with prejudice.

Seeking to identify assets in an effort to collect its judgment against WCC, RSR served a garnishment summons and nonearnings disclosure form on Rothers on December 3, 2012. A week later, RSR received Rothers's disclosure form, which was signed by Rothers's attorney, and dated December 10, 2012. RSR filed a motion for default judgment against Rothers for failing to properly disclose assets in accordance with the garnishment summons, arguing that the law required Rothers to personally sign the disclosure form and date the form as of the date of the December 3 summons. On January 25, 2013, Rothers submitted another disclosure form, this time signed by him personally, but still reciting the disclosure date as of December 10, 2012. A hearing was held on the motion on February 28, 2013. On June 10, 2013 the district court granted RSR's default judgment motion, concluding that Rothers had failed to comply with the requirements of the garnishment summons because he did not personally sign a disclosure form within 20 days of the summons, and did not make disclosures as of the date of the summons as required by law. This appeal followed.

D E C I S I O N

This court reviews a district court's entry of default judgment against a garnishee for abuse of discretion. *Jordan v. Jordan*, 109 Minn. 299, 301, 123 N.W. 825, 826

(1909); *see also Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005) (stating that "[t]he decision to grant or deny a motion for a default judgment lies within the discretion of the district court, and this court will not reverse absent an abuse of that discretion"), *review dismissed* (Minn. Sept. 28, 2005). But issues of statutory interpretation are reviewed de novo. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009).

Garnishment procedures are governed by statute. *Savig v. First Nat'l Bank of Omaha*, 781 N.W.2d 335, 338 (Minn. 2010); *see also* Minn. Stat. §§ 571.71-.932 (2012). "The process begins with a creditor serving a garnishment summons and disclosure form on a garnishee." *Savig*, 781 N.W.2d at 338 (footnote omitted). "[W]ithin 20 days after service of the garnishment summons," the garnishee must serve a written disclosure of the garnishee's "indebtedness, money, or other property owing to the debtor." Minn. Stat. § 571.75, subd. 1. The garnishee must state in the nonearnings garnishment disclosure "a description of any personal property or any instrument or papers relating to this property belonging to the judgment debtor or in which the debtor is interested." *Id.*, subd. 2(b). The garnishment disclosure form must be "the same or substantially similar to" the statutory forms provided. *Id.*, subd. 2(f). The disclosure must state what assets were held by the garnishee *as of the time of service of the garnishment summons*. *First State Bank of N.Y. Mills v. West*, 185 Minn. 225, 227, 240 N.W. 892, 893 (1932).

The statutory form concludes with an affirmation, which states: "I, [blank] (person signing Affirmation), am the garnishee or I am authorized by the garnishee to complete this nonearnings garnishment disclosure, and have done so truthfully and to the best of my knowledge." Minn. Stat. § 571.75, subd. 2. Minn. Stat. § 571.75, subd. 1, also states

that "[i]f the disclosure is by a corporation, it shall be made by an officer, managing agent, or other authorized person having knowledge of the facts."

Rothers argues that the district court erred by concluding that an attorney was not authorized to sign for him on his disclosure form because the statutory form "clearly allows for the possibility of one other than the garnishee to complete the form and justifies some latitude by the court." RSR claims that the statutory language unambiguously limits the use of an attorney to make disclosures to situations where the garnishee is a corporation and not a natural person. But, Minn. Stat. § 571.75 does not state who is required to make a disclosure where the garnishee is a natural person; it only states who may disclose if the garnishee is a corporation. And the statutory form appears to allow someone other than the garnishee to make the disclosure because the "affirmation" states "I . . . am the garnishee *or* . . . *am authorized by the garnishee*." Minn. Stat. § 571.75, subd. 2 (emphasis added). There is no dispute that Rothers authorized his attorney to sign the disclosure form for him.

There are not many cases on point. In *Security State Bank of Lewiston v. Thor*, 184 Minn. 156, 156, 238 N.W. 52, 52 (1931), a garnishee appealed from a default judgment against him, arguing that the summons failed to confer personal jurisdiction. The supreme court concluded that the garnishee waived personal jurisdiction by appearing in court through his attorney, and further concluded that the attorney's disclosures on the record failed to satisfy the requirements of the garnishment summons because "[t]he statute . . . requires, in the case of an individual garnishee, his personal appearance and answer upon oath concerning his indebtedness to the defendant, and any

property, money, or effects of the defendant in his possession or control." *Thor*, 184 Minn. at 157, 238 N.W. at 52.

In another case affirming a default judgment against a garnishee, the Minnesota Supreme Court concluded, in the case of a corporate garnishee, that disclosure by the corporation's attorney was not effective because the attorney merely testified that he was "authorized to make disclosure, but claimed no other knowledge." *Johnson v. Bergman*, 80 Minn. 73, 76, 82 N.W. 1108, 1109 (1900). The district court entered default judgment after the corporation's paymaster was summoned but failed to appear, even though the corporation's attorney appeared instead. *Id.* at 75, 82 N.W. at 1109. The supreme court stated that "[t]he order must be sustained if the evidence before the justice reasonably tended to show that some other representative of the garnishee was better acquainted with the subject-matter." *Id.* at 76, 82 N.W. at 1109. The supreme court affirmed the judgment because "[t]he knowledge possessed by the attorney was not of such complete and definite character as would become necessarily sufficient." *Id.*

The goal when interpreting statutory provisions is "to ascertain and effectuate the intention of the legislature." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (quotations omitted). "If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language." *Id.* "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted). We conclude that this statute is ambiguous because it is susceptible of two interpretations: either (1) only corporations may disclose through an attorney or

(2) anyone authorized by a garnishee may disclose. "If a statute is ambiguous, we apply other cannons of construction to discern the legislature's intent." *Brua*, 778 N.W.2d at 300.

Generally, where the legislature omits something from a statute, we infer that such an omission was intentional. *See City of Moorhead v. Red River Valley Coop. Power Ass'n*, 811 N.W.2d 151, 159 (Minn. App. 2012) (stating that "the expression of one thing is the exclusion of another"), *aff'd*, 830 N.W.2d 32 (Minn. 2013); *see also* Minn. Stat. § 645.19 (2012) ("Exceptions expressed in law shall be construed to exclude all others."). Here, Minn. Stat. § 571.75, subd. 1, carves out an exception for corporations to make disclosures via an "officer, managing agent, or other authorized person having knowledge of the facts." But the statute is silent regarding garnishees who are natural persons. Assuming as we must that the legislature intended this omission, we conclude that RSR is correct that only corporations may submit nonearnings disclosures through an attorney. Such an interpretation is consistent with existing caselaw, which requires a garnishee to appear personally when making a disclosure. *See Thor*, 184 Minn. at 157, 238 N.W. at 52.

Rothers argues that the rules of civil procedure permit attorneys to sign garnishment-disclosure statements. Minn. Stat. § 571.72, subd. 1 (2012), states that "[u]nless this chapter specifically provides otherwise, the Rules of Civil Procedure for the District Courts shall apply in all proceedings under this chapter." And Minn. R. Civ. P. 11.01 states that "[e]very pleading, written motion, and other similar document shall be signed by at least one attorney of record." But RSR argues that Minn. R. Civ. P. 11.01

does not apply to factual statements, such as affidavits, or in this case, a garnishment disclosure, citing the rules of civil procedure for interrogatories, which require responses to interrogatories to be signed by the party served. *See* Minn. R. Civ. P. 33.01(d); *see also* Minn. R. Civ. P. 56.05 (stating that affidavits for or opposing summary judgment must be made on personal knowledge). RSR argues that these rules, when taken together, show that an attorney may "assert legal positions but may not provide factual testimony on behalf of his client." We agree. Minn. R. Civ. P. 11.01 specifically refers to "pleading[s], written motion[s], and other similar document[s]," excluding by omission affidavits or similar statements of fact. Moreover, Minn. Stat. § 571.72, subd. 1, specifically states that the rules of civil procedure only apply where they do not conflict with the other statutory provisions governing garnishment proceedings. As previously explained, Minn. Stat. § 571.75, subd. 1, provides that attorneys may not sign for a natural person, and because the statute conflicts with the rules of civil procedure, the statute controls.

Rothers also argues that the district court erred by entering default judgment against him because he did not disclose assets as of the date of the service of the garnishment summons. There is no dispute that Rothers was required to make disclosures as of December 3, 2012, and that his attorney actually signed disclosures as of December 10, 2012.[1] Rothers alleges that this was an oversight. Moreover, Rothers argues that the error was not prejudicial and, therefore, default judgment should not have

[1] The nonearnings disclosure statement signed by Rothers's attorney was returned blank with no disclosures or comments. The form only contained the attorney's name, the date, and the attorney's signature.

been entered against him. Specifically, he asserts that RSR had an opportunity to find out about any assets Rothers had as of the date of the summons when RSR deposed Rothers on December 20, 2012. During that deposition, Rothers was specifically asked "[a]s of December 3rd, 2012, did you owe any money to or have possession of any property belonging to [WCC]?" Rothers responded: "Not that I'm aware of." But we agree with RSR that this oral disclosure was not sufficient to satisfy the garnishment statute, which requires a written disclosure of assets. Although RSR may not have suffered significant prejudice in the absence of a written disclosure, this fact is not sufficient to render the district court's decision clearly erroneous, particularly where Rothers had an opportunity to cure the defect but failed to do so.[2]

Rothers also argues that the district court abused its discretion because it should have allowed him to cure the defects in his disclosure statement rather than impose a default judgment. Rothers cites *Lyon Dev. Corp. v. Ricke's, Inc.*, 296 Minn. 75, 85, 207 N.W.2d 273, 279 (1973), which states:

> Garnishees should be entitled to strict compliance with all procedural remedies because of the nature of their relationship to the parties in the original action. A garnishee should not become indebted to the plaintiff unless every proper procedural step is taken to protect its interests, and the entry of judgment against it must be strictly construed.

[2] During a deposition held December 20, 2012, counsel for RSR told Rothers's attorney that "[w]e do not believe that [the disclosure statement] complies with the statute for disclosure. We believe you still have time to correct that, and we are making you aware that we don't believe that that complies because we believe it has to be signed by the garnishee." After some discussion between the parties, RSR's attorney stated that he disagreed with Rothers's attorney's interpretation of the statute and added that "[w]e are making you aware of that, of our view while there is still time for it to be corrected if you so choose."

Rothers asserts that he should especially be protected against default judgment because, at trial, the jury found that he was not liable to RSR. But Rothers does not contend that RSR failed to correctly follow all the procedural requirements in obtaining its default judgment. Rather, he seems to argue that he is entitled to relief on the equities.

Minn. Stat. § 571.82, subd. 1, provides that, upon motion by the creditor, "the court may render judgment against the garnishee" if the "garnishee fails to serve a disclosure as required by this chapter." The decision whether to enter default judgment against a garnishee is within a district court's discretion. *Jordan*, 109 Minn. at 301, 123 N.W. at 826. "The court upon good cause shown may remove the default and permit the garnishee to disclose on just terms." Minn. Stat. § 571.82, subd. 1.

RSR argues that Rothers is not entitled to relief because he has failed to show good cause. We agree. At the deposition on December 20, 2012, counsel for RSR informed Rothers that he believed Rothers's disclosure did not comply with the law because it was not signed by him personally. Nevertheless, Rothers did not provide a personally signed disclosure until January 25, 2013, well outside the 20-day timeframe required by law and after he was served with RSR's motion for default judgment. *See* Minn. Stat. § 571.75, subd. 1. The better practice would have been for appellant to either provide a corrected and completed disclosure form prior to the expiration of the 20-day time limit, or make an appropriate motion to the district court to explain his position

concerning the statutory disclosure requirement. Because he did neither, we conclude that the district court did not abuse its discretion by entering default judgment against Rothers for failing to comply with the garnishment statute.

Affirmed.