

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

25-292 consolidated with CA 25-329

TOWER CREDIT, INC.

VERSUS

BEATRICE JOHNSON

**APPEAL FROM THE
LAFAYETTE CITY COURT, NO. 2023CV3647
HONORABLE DOUGLAS J. SALOOM, CITY COURT JUDGE**

**SHANNON J. GREMILLION
JUDGE**

Court composed of Shannon J. Gremillion, Gary J. Ortego, and Wilbur L. Stiles,
Judges.

**AFFIRMED IN PART;
REMANDED WITH INSTRUCTIONS.**

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GREMILLION, Judge.

For the reasons set forth in 25-329 in this consolidated matter, the judgment of the trial court is affirmed in part and the matter is remanded with instructions.

**AFFIRMED IN PART;
REMANDED WITH INSTRUCTIONS.**

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**AFFIRMED IN PART;
REMANDED WITH INSTRUCTIONS.**

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GREMILLION, Judge.

AFNB Home Care, LLC, appeals the judgment rendered against it for \$10,990.64 relating to the wage garnishment of its former employee, Beatrice Johnson, in favor of Tower Credit. Tower Credit also appeals the judgment. For the following reasons, we affirm in part and remand with instructions.

FACTUAL AND PROCEDURAL BACKGROUND

Tower Credit obtained a judgment against Johnson in October 2007 in the principal amount of \$7,746.96, plus contractual interest at 24% per year until January 1, 2009 and thereafter 18% per year, attorney fees of 25% of that amount, and all costs. On December 6, 2023, Tower filed a petition to make the 2007 judgment executory and to garnish Johnson's non-exempt wages from AFNB. AFNB was served on January 5, 2024, but did not timely file its responses within thirty days. On April 24, 2024, Tower filed a Motion for Judgment Pro Confesso, and AFNB was served with notice of the hearing scheduled for June 27, 2024.

On June 27, 2024, the trial court held the required contradictory hearing before a judgment *pro confesso* can be rendered. AFNB did not attend the hearing. The trial court entered a judgment *pro confesso* that same day against AFNB in the amount of \$44,869.20 comprised of the full amount of the underlying judgment, contractual interest from 2006, attorney fees, and costs.

On July 29, 2024, AFNB's July 19, 2024 answer to the writ of garnishment was filed into the record. The answer selected a box indicating that Johnson was not an employee as of April 12, 2024.¹ On August 2, 2024, an identical answer was filed into the record except this one also noted that Johnson earned \$10.50 per hour. On

¹ AFNB employed Johnson from March 9, 2023, until April 12, 2024.

August 28, 2024, AFNB filed a motion to reopen the case and a petition of intervention to annul the June 27, 2024 judgment and requested other relief. To this it attached four exhibits: Tower's December 6, 2023 petition, the January 16, 2024 garnishment citation, the June 27, 2024 judgment, and the notice of judgment. The motion stated that "AFNB should have garnished a total of \$665.39 for payment to Tower Credit, Inc., in accordance with the exemptions set forth in La.R.S. 13:3881(A)(1)(a)." It provided no further information as to how that sum was calculated or the hours worked by Johnson. In fact, AFNB's motion urged that Tower "failed to present any competent evidence of the amount of Beatrice Johnson's earnings, as mandated by La.R.S. 13:3922; and unlawfully awarded an [sic] penalty amount against AFNB that is sixty-seven times greater than the amount that AFNB should have deducted from Beatrice Johnson's earnings during her employment." Tower filed an answer on September 10, 2024. On December 9, 2024, AFNB filed an affidavit urging that it should have withheld \$665.39, the amount that would have been garnished between January 5, 2024, and April 12, 2024, in accordance with the December 18, 2023 executory judgment of the trial court naming AFNB as garnishee. In this affidavit, AFNB attested in part:

5. AFNB first employed Ms. Johnson between March 9, 2023, and April 12, 2024, after which Ms. Johnson's employment with AFNB resumed on August 16, 2024.

6. Between the period when AFNB was served with the Garnishment Judgment and garnishment interrogatories on January 5, 2024, and April 12, 2024, AFNB should have withheld \$665.39 from Ms. Johnson earnings and paid those amounts in accordance with the December 18, 2023, Executory Judgment.

7. AFNB employed Beatrice Johnson between March 9, 2023, and the termination of her employment on April 12, 2024. Johnson subsequently became re-employed with AFNB on August 16, 2024.

8. After AFNB was first served with the citation relating to Tower Credit's garnishment and the garnishment interrogatories through its agent for service of process on January 5, 2024, AFNB's third-party payroll service computed and did not pay Ms. Johnson the amounts due and payable in connection with the garnishment and at that time furnished draft response to the garnishment interrogatories.

9. Arlesha Henderson was the AFNB representative and employee who was assigned to handle such matters.

10. Arlesha Henderson failed to execute and send AFNB's responses to the garnishment interrogatories to the Court or to counsel for Tower Credit.

11. Arlesha Henderson failed to disclose or report her failure to execute and send AFNB's responses to the garnishment interrogatories to any member of AFNB's management.

12. Upon its discovery of the foregoing conduct as well as other matters involving Arlesha Henderson on or about April 18, 2024, AFNB terminated her employment.

Tower filed an exception of no cause of action on January 8, 2025. Tower also filed an opposition to the motion to reopen the *pro confesso* proceeding. AFNB filed an opposition to Tower's exception of no cause of action.

A hearing on Tower's exception of no cause of action and AFNB's rule to show cause was held on April 10, 2025. Tower argued that the affidavit was not evidence and a witness had to be present to testify and it objected to the affidavit's inclusion as evidence. Tower argued that the trial court could not reopen the case without holding another hearing; however, it acquiesced in the reopening of the judgment *pro confesso* for the sake of judicial economy for the limited purpose of modifying the imposition of interest. The trial court commenced the accrual of interest from the date of service of the garnishment interrogatories on AFNB (January 5, 2024), resulting in a revised award of \$10,990.64 based on the underlying judgment and legal interest. The trial court found AFNB's petition failed to state a cause of action for fraud or ill practice. It sustained Tower's exception of

no cause of action and dismissed AFNB's petition to annul the June 27, 2024 judgment.

On April 22, 2025, AFNB filed a motion for new trial, which the trial court denied on April 28, 2025. Tower timely appealed and that appeal was lodged under docket number 25-292. AFNB also appealed and that appeal was lodged under docket number 25-329. The two docket numbers are consolidated as they concern the same garnishment proceedings and judgments rendered by the trial court. In docket number 25-292, Tower filed an original appellant brief (7/2/2025), and AFNB filed a brief in response to Tower's appeal (7/29/05). In docket number 25-329, AFNB filed an original appellant brief (7/18/2025), Tower filed an original appellee brief (7/29/2025), and AFNB filed a reply brief (8/21/2025). On August 5, 2025, AFNB filed a motion to strike the additional appellant brief (7/29/2025) filed by Tower Credit in 25-329 and for expedited consideration. AFNB argues the July 29, 2025 brief filed by Tower functions as a second appellate brief and not a reply and that pursuant to Uniform Rules Courts of Appeal Rule 2-12.6, a reply brief is limited to rebuttal of points raised in the appellee's brief and that no further briefs shall be filed without leave of court. AFNB states that the second brief introduces new arguments and expands its original assignments of error. AFNB further notes that the page limit has been exceeded. It requests the brief be stricken, or alternatively, that it be given time to submit a supplemental brief.² Due to our findings below, this issue is rendered moot.

² Tower's July 29, 2025 brief does not add any additional assignments of error but does add an additional issue presented for review as follows:

3. Whether the Trial Court was correct in granting Tower's exception of no cause of acti[o]n regarding AFNB's claim of fraud and ill practice.

ASSIGNMENT OF ERRORS

AFNB assigns as error:

1. The trial court erred by failing to enter an amended judgment based only on the \$665.39 in garnishable wages due to Tower Credit in connection with AFNB's former employment of Beatrice Johnson, in accordance with the laws specifically applicable to the garnishment of wages, La.R.S. 13:3921, *et seq.*, and further erred by relying on La. C.C.P. art. 2413 to grant relief to Tower Credit based on the \$7,746.96 principal amount due by Beatrice Johnson under the original 2007 judgment, even though AFNB responded to the garnishment interrogatories prior to the hearing and for the other reasons set forth herein.
2. The trial court erred in sustaining Tower Credit's exception of no cause of action and dismissing AFNB's petition for nullity, despite AFNB's well-pleaded allegation of ill practices and procedural irregularities that, if proven, would entitle AFNB to relief under La. C.C.P. arts. 2002 and 2004.
3. Whether the trial court erred by failing to annul the Judgment Pro Confesso under La.C.C.P. arts. 2002 and 2004, where the judgment was obtained through ill practices, specifically because Tower Credit sought and obtained the entry of a judgment against AFNB as a garnishee for the full amount then due under the original 2007 judgment, plus additional relief, despite knowing that AFNB no longer employed the debtor and that its potential liability as a garnishee was limited to \$665.39, and the court's entry of judgment without regard to the limited garnishment exposure disclosed in the record, resulting in a fundamentally inequitable, unconstitutional, unjust, penal and punitive outcome.
4. Whether the trial court erred by denying AFNB's Motion for New Trial despite clear evidence of procedural irregularities, including the imposition of improper and unconstitutional penalty and punitive damages not specifically or unambiguously authorized by any applicable law and in disregard AFNB's interrogatory responses disclosing its limited potential liability as a garnishee.

Tower assigns as error:

1. The trial court erred by reopening the Judgment Pro Confesso rendered on June 27, 2024.
2. The trial court erred by rendering a new pro confesso judgment in which it changed the start date for the accrual of interest and changed the interest rate from the underlying contract rate to legal interest.

DISCUSSION

Louisiana Code of Civil Procedure Article 2413, found under the subheading “Money Judgments” relating to “Garnishment under a Writ of Fieri Facias,” sets forth the effect of a garnishee’s failure to answer as follows:

A. If the garnishee fails to answer within the delay provided by Article 2412, the judgment creditor may proceed by contradictory motion against the garnishee for the amount of the unpaid judgment, with interest and costs. When the garnishee is a state agency or department within the executive branch of state government, the party designated for service of garnishment petitions in Article 2412(B) shall be notified of the intent to file such a motion by certified mail at least fifteen days prior to the filing of the motion. The failure of the garnishee to answer prior to the filing of such a contradictory motion is prima facie proof that he has property of or is indebted to the judgment debtor to the extent of the judgment, interest, and costs.

B. Judgment shall be rendered against the garnishee on trial of the motion unless he proves that he had no property of and was not indebted to the judgment debtor. If on the trial of such motion, the garnishee proves the amount of such property or indebtedness, the judgment against the garnishee shall be limited to the delivery of the property or payment of the indebtedness, as provided in Article 2415.

C. Regardless of the decision on the contradictory motion, the court shall render judgment against the garnishee for the costs and a reasonable attorney fee for the motion.

Louisiana Revised Statutes 13:3923, effective August 1, 2022, states:

A. It shall not be necessary that more than one writ of garnishment or one set of interrogatories be served in a garnishment proceeding, but the court shall render judgment for the monthly, semimonthly, weekly, or daily payments to be made to the seizing creditor according to the manner best suited to the circumstances, until the indebtedness is paid. The garnisher shall serve upon the garnishee the citation, the petition, the garnishment interrogatories, the notice of seizure, and a statement of sums due under the garnishment, such statement to include but not be limited to the principal, interest, court costs incurred to date, and attorney fees due under the judgment. The court, in its discretion, may reopen the case upon the motion of any party concerned for evidence affecting the proper continuance of the garnishment judgment, and the court shall retain jurisdiction to amend or set aside its garnishment judgment at any time in its discretion; however, all effects of the seizure by garnishment shall cease upon the termination of employment of the debtor with the garnishee, unless the

debtor is reinstated or reemployed within one hundred eighty days after the termination. Should judgment by default be taken against any party garnishee, he may obtain a reopening of the case upon proper showing and within the discretion of the court.

B. Nothing in this Section is meant to affect judgments rendered pursuant to Code of Civil Procedure Article 2413.

Subsection B was added by 2022 La. Acts No. 265. According to Tower, Article 2413 stands for the proposition that if a garnishee does not answer, a prima facie case is established that the garnishee owes the entire amount of the underlying judgment and that La.R.S. 13:3923(B) does not authorize the reopening or reconsideration of a *pro confesso* judgment rendered pursuant to La.Code Civ.P. art. 2413. AFNB argues that Section B has no application to wage garnishment proceedings and that a garnishee's liability in a wage garnishment proceeding begins at the time interrogatories are served.

Tower's Assignment of Errors One and Two
AFNB's Assignment of Error One

Tower argues that the trial court could not reopen the *pro confesso* judgment. It claims that La.R.S. 13:3923 only applies to a garnishment judgment stemming from a writ of garnishment and does not apply to the reopening of a judgment *pro confesso*. Tower states that "the Louisiana legislature added part B and altered part A in 2022 to make it clear to the judiciary that the statute does not apply to *pro confesso* judgments."

AFNB argues that Article 2413 does not "expressly or specifically allow a court to impose more than the amount that the garnishee may owe or be indebted to a judgment creditor based on the judgment debtor's non-exempt earnings."

The supreme court has been called upon to decide this very issue in another case instituted by the same counsel, who is also the judgment creditor, who argued

that pursuant to Part B, a judgment *pro confesso* cannot be reopened in any case. In *First Pay v. Dukes*, Richard D. Bankston, the same attorney as in this case, was the successor in interest of First Pay, Inc. Quantix was served with a garnishment petition and interrogatories but did not answer. Bankston obtained a *pro confesso* judgment in excess of \$100,000.00 against Quantix, which he alleged employed Dukes, even though Bankston had been informed by Quantix’s counsel that it had never, at any time, employed Dukes. Quantix did not attend the *pro confesso* hearing despite receiving notice of it. Bankston argued then, as Tower argues now, that La.R.S. 13:3923(B) does not allow for the trial court’s discretion in reopening the proceedings when a *pro confesso* judgment has been obtained. The trial court granted Quantix’s motion to reopen the proceedings and vacated the judgment. The court of appeal reversed and reinstated the judgment in favor of Bankston. *First Pay, Inc. v. Dukes*, 23-1272 (La.App. 1 Cir. 11/20/24), 405 So.3d 1066. The supreme court granted Quantix’s writ of certiorari. *First Pay, Inc. v. Dukes*, 24-1565 (La. 4/1/25), 403 So.3d 596. The supreme court very recently rendered its judgment interpreting the amended La.R.S. 13:3923 and whether a trial court has discretion to reconsider a judgment *pro confesso*. It stated:

As set forth at the outset, Quantix’s writ was granted to consider whether La.R.S. 13:3923, as amended by 2022 La. Acts. No. 265, provides a trial court discretion to reopen and reconsider a judgment *pro confesso*. Because the issue presented in this case is one of statutory interpretation, we are mindful of the well-settled rule that “[t]he starting point for the interpretation of any statute is the language of the statute itself.” *McBride v. Old Republic Ins. Co.*, 2024-01519, p. 14 (La. 6/27/25), 413 So.3d 452, 467 (quoting *Bergeron v. Richardson*, 2020-01409, p. 3 (La. 6/30/21), 320 So.3d 1109, 1111). A foundational interpretive directive codified into Louisiana law is that “[w]hen a law is clear and unambiguous **and its application does not lead to absurd consequences**, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” *Id.* (citing La. C.C. art. 9 emphasis supplied).

Applying these basic principles of statutory interpretation, we agree with the majority of the court of appeal that La.R.S. 13:3923 is clear and unambiguous. *First Pay, Inc.*, 405 So.3d 1066. However, this does not end the inquiry because, as stated above, La. C.C. art. 9 requires *both* that the law be clear and unambiguous and that its application not lead to absurd results. In this case, the trial court was not informed before the hearing that Mr. Bankston had, in fact, received Quantix’s sworn answers to interrogatories—**which denied any involvement with the purported debtor-employee**. Precluding reopening this proceeding, where the trial court’s judgment was based upon the omission of material information, would lead to a demonstrably absurd result. La. C.C. art. 9.5.

The statutory scheme “is not meant to provide a basis for a judgment in favor of judgment creditors against employers who may be tardy, but nonetheless establish that they hold no property due the creditor. . . . ‘If the law were otherwise, garnishees could be, and would often be, mulcted for the benefit of persons to whom they are due nothing.’ ” *Tower Credit, Inc. v. McGee*, 2023-0787, p. 9 (La.App. 1 Cir. 9/6/24), 405 So.3d 612, 618, writ denied sub nom. *TKTMJ, Inc. v. Sewerage & Water Bd. of New Orleans*, 2024-00660 (La. 10/23/24), 394 So.3d 1287, and writ denied, 2024-01392 (La. 1/28/25), 399 So.3d 418 (quoting *Tower Credit, Inc. v. Williams*, 352 So.3d at 1037 (Chutz, J., dissenting)). See also *First Pay v. Dukes*, 405 So.3d at 1078 (Miller and Stromberg, J.J., dissenting) (citing *Tower Credit v. McGee*, 405 So.3d at 618) (“[T]he goal of a garnishment proceeding is to seize a debtor’s property in the hands of a third-party employer - not to force Louisiana employers/garnishees to turn over property they do not possess, nor to make employers/garnishees the guarantors of their employees’ debt.”).

Under Louisiana law as duly enacted by the legislature, when a statute is not clear, *or when its application leads to absurd consequences*, courts must resort to secondary rules of statutory interpretation to resolve the case. *Borcik v. Crosby Tugs, L.L.C.*, 2016-1372, pp. 4-5 (La. 5/3/17), 222 So.3d 672, 675. La. C.C. art. 9. In such cases, the statute must be interpreted as having the meaning that best conforms to the purpose of the law. *Id.* Here, the purpose of the garnishment law, and permitting judgments *pro confesso* more specifically, is to allow a creditor to seize a debtor’s property in the hands of a third-party employer. In reviewing a judgment, that purpose is not advanced when information material to a decision is withheld from the court regarding a garnishee’s responses.

For the foregoing reasons, we find the court of appeal did not properly complete the requisite statutory analysis under La. C.C. art. 9. Although we find La.R.S. 13:3923 is clear and unambiguous, we reverse the court of appeal and reinstate the trial court’s September 27,

2023 judgment, finding the application of La.R.S. 13:3923 in this case and under these facts leads to absurd results.

What began as a small debt owed by Mr. Dukes has resulted in a judgment against Quantix in excess of \$100,000, with interest still accruing. This has occurred notwithstanding Quantix's consistent denial of any relationship with Mr. Dukes at all. Upon reopening of the proceedings, if Quantix disproves the codal prima facie presumption and bears its burden to prove that it was never Mr. Dukes' employer, was never indebted to him, and was never responsible for any of his debts, then Quantix should not owe this judgment. Significant to our decision, Mr. Bankston is both a counsel of record and the underlying judgment creditor. Under these unique facts, Quantix should be given its day in court to prove Mr. Dukes was not its employee. The trial court should allow Mr. Bankston any needed time for discovery.

First Pay, Inc. v. Dukes, 24-1565, pp., 6–9 (La. 10/24/25), ___ So.3d ___, ___ (underlined emphasis ours).

Thus, the supreme court found the legislature's intent is clear that the addition of part B expressly prohibits the reopening of a judgment *pro confesso*; however, if doing so would lead to an absurd result it cannot not be sustained. Accordingly, we find similarly absurd results in this case when expressly applying the law. Therefore, the trial court erred in awarding Tower the full amount of the underlying judgment. While not as egregious as the facts in *First Pay* where the alleged "employer" never employed the judgment debtor at all, in this case the employee was employed for a period of fourteen weeks from the date the garnishment notice was served on AFNB and no longer worked there when the judgment *pro confesso* was filed. Bankston is the counsel of record and the underlying judgment creditor in this case. The application of La.R.S. 13:3923 to the facts of this case leads to an absurd result when an employer is deemed responsible for the entirety of a creditor's judgment rendered nearly two decades prior. Pursuant to *First Pay*, there are instances when it is wholly appropriate to reopen consideration of a judgment *pro confesso* and this is one of them.

While AFNB was responsible for garnishing Johnson's wages over the course of the fourteen weeks, it would be absurd and punitive to cast it with a judgment in excess of \$10,000.00 if the amount that could have been garnished from Johnson's checks amounted to \$665.39. While we are mindful that an employer does have a duty to respond to interrogatories regarding garnishment proceedings, penalizing it to this degree is not in line with the purpose of the statute, which is "to allow a creditor to seize a debtor's property in the hands of a third-party employer." The result reached herein instead seizes *the employer's* property.

While the recently enacted part B of La.R.S. 13:3923 would not lead to absurd results in instances where a judgment debtor has recently obtained a judgment, a garnishee of a current employee has failed to respond and attend the *pro confesso* hearing, and the amount of the garnishment approaches the amount of the underlying judgment, others, determined on a case-by-case basis, should be suspect due to the various factors such as those set forth by the supreme court. Significantly, "Mr. Bankston is both a counsel of record and the underlying judgment creditor" in this matter, the underlying judgment is nearly two decades old, the amount that should have been garnished during Johnson's employment is allegedly miniscule as compared to that which was rendered against AFNB, and the judgment is excessively penal in nature. *First Pay, Inc.*, ___ So.3d at ___. Courts have routinely recognized as such, coincidentally in cases all involving the same counsel as in this one.

In *Tower Credit, Inc. v. McGee*, 23-787 (La.App. 1 Cir. 9/6/24), 405 So.3d 612, *writs denied*, 24-660 (La. 10/23/24), 394 So.3d 1287, 24-1392 (La. 1/28/25), 399 So.3d 418, also rendered after the amendment to La.R.S. 13:3923, the appellate court affirmed the trial court's denial of Tower's judgment *pro confesso*. Tower

advances the same argument in the case before us as it did in *McGee* relating to the sufficiency of the evidence to rebut the prima facie presumption in favor of the creditor when the garnishee fails to timely answer interrogatories. In *McGee*, the employer did not timely file its answers to interrogatories but filed them *before* the hearing on the judgment *pro confesso*. *McGee* essentially holds that those answers are sufficient to rebut the prima facie case despite Tower's argument that the employer had to produce witnesses at the hearing to rebut. The court set forth the procedure and purpose of wage garnishment (emphasis added):

A garnishment proceeding is nothing more than a streamlined legal process for obtaining the seizure of property of a judgment debtor in the hands of a third party. Tower Credit, Inc. v. Carpenter, 2001-2875 (La. 9/4/02), 825 So. 2d 1125, 1127. Louisiana Code of Civil Procedure articles 2411 through 2417 govern garnishment proceedings in general. Garnishment of a debtor's wages is a procedure specifically governed by La. R.S. 13:3921, et seq., along with the general provisions found in the Code of Civil Procedure. Dads BR1, L.L.C. v. Conner, 2022-0141 (La. App. 1st Cir. 9/16/22), 352 So. 3d 1012, 1014. At its functional essence, garnishment is the seizure of property in the hands of a third party. See 2 La. Prac. Civ. Forms § 11:1, *Nature of the writ of garnishment*, citing Ascension Credit Union v. Babin, 2014-1653 (La. App. 1st Cir. 11/6/15), 183 So. 3d 544 and McMillon v. European Service, Inc., 52,701 (La. App. 2nd Cir. 5/22/19), 275 So. 3d 375, 378.

Louisiana Code of Civil Procedure article 2411, et seq. and La. R.S. 13:3921, et seq. must be considered supportive of each other. Otherwise, the wage garnishment proceedings could be ignored by obtaining a judgment under codal provisions thereby precluding the garnishee from seeking relief under the statutory provisions creating his liability in the first instance. Accordingly, it has been repeatedly held that where an employer fails to timely answer wage garnishment interrogatories, a default judgment may be rendered against him pursuant to La. C.C.P. art. 2413, but the court has discretion thereafter to reopen the case pursuant to La. R.S. 13:3923. Beneficial Financial Company of Louisiana v. Haviland, 411 So. 2d 1102, 1105 (La. App. 4th Cir.), writ denied, 415 So. 2d 942 (La. 1982); Tower Credit, Inc. v. Williams, 2022-0106 (La. App. 1st Cir. 9/16/22), 352 So. 3d 1029, 1037, writ granted, judgment vacated in part, 2022-01556 (La. 2/7/23), 354 So. 3d 659; Dad's BR1, L.L.C. v. Harmon, 2022-0141 (La. App. 1st Cir. 9/16/22), 352 So. 3d 1012; Houma Mortgage & Loan, Inc. v. Marshall, 94-0728 (La. App. 1st Cir. 11/9/95), 664 So. 2d 1199; Zurich

Insurance Company v. Harmon, 95-0297 (La. App. 1st Cir. 10/6/95), 671 So. 2d 383.3

Service upon the garnishee of the petition, citation, and interrogatories operates to seize any property of, or credit due, the judgment debtor held by the garnishee at the moment of service, though the amount and kind of such property will not be known until the garnishee answers. *Carpenter*, 825 So. 2d at 1128; also see La. C.C.P. art. 2411(B).⁴ It is the garnishee's duty to answer all proper interrogatories and to make all proper disclosures concerning property of the debtor in its possession. *Houma Mortgage & Loan, Inc. v. Marshall*, 94-0728 (La. App. 1st Cir. 11/9/95), 664 So. 2d 1199, 1204; *Wynnco Construction, LLC v. Bergeron*, 2013-0250 (La. App. 1st Cir. 11/4/13), 136 So. 3d 823, 825; and La. C.C.P. art. 2411(A). The garnishee shall file his sworn answers to the interrogatories within thirty days from the date of service. La. C.C.P. art. 2412(D). However, **up until the time the rule is heard, the court may permit the garnishee to file his answers in an attempt to rebut the judgment creditor's *prima facie* case.** *Houma Mortgage & Loan, Inc.*, 664 So. 2d at 1205, citing *Commercial Securities Company, Inc. v. Corsaro*, 417 So. 2d 1346, 1349 (La. App. 3rd Cir. 1982). (Emphasis added).

.....

[The] failure of the garnishee to file his answer within the delay provided by law creates the opportunity for plaintiff to seek a judgment *pro confesso*, *i.e.*, a judgment against the garnishee for the amount of the judgment, plus interest and costs. *Dads BR1, L.L.C.*, 352 So. 3d at 1015; *Wynnco Construction, LLC*, 136 So. 3d at 825. While the garnishee's failure to file a sworn answer to garnishment interrogatories is *prima facie* proof of the creditor's claim against the garnishee under La. C.C.P. art. 2413, *this prima facie proof is rebuttable if the garnishee presents evidence of its actual debt or lack thereof to the debtor.* *Wynnco Construction, LLC*, 136 So. 3d at 825-826.

A contradictory hearing must be conducted on the motion and the garnishee must be given *an opportunity to present evidence of the actual indebtedness, employment of the debtor, character of the employment, prior garnishments, and other facts relevant to the garnishment proceeding.* *Wynnco Construction, LLC*, 136 So. 3d at 826. If the garnishee thereafter fails to present evidence at the contradictory hearing to rebut the judgment creditor's *prima facie* case, *i.e.*, proof that he had no property of and was not indebted to the judgment debtor, judgment shall be rendered against the garnishee. *Dads BR1, L.L.C.*, 352 So. 3d at 1015.

The question of whether the trial court erred by denying a motion for judgment *pro confesso* involves a mixed issue of law and fact, which is subject to the manifest error standard of review. *Ascension Credit*

Union v. Babin, 2014-1653 (La. App. 1st Cir. 11/6/15), 183 So. 3d 544, 547. In this appeal, the question before us is straightforward - could the trial court rely upon the late filed interrogatory answers to determine the rule on the motion for judgment *pro confesso*? Or, stated another way, did the interrogatory answers of record overcome the garnishor's *prima facie* case?

.....

In the present matter, it is undisputed that PSC was served with and failed to answer garnishment interrogatories under oath prior to the filing of the motion for judgment *pro confesso*. Accordingly, *prima facie* proof was established, and the *burden shifted to PSC to prove at the trial on the motion that it had no property of and was not indebted to Tower*. See La. C.C.P. art. 2413. *Before the hearing, but after the motion for judgment pro confesso was filed, the garnishee filed sworn answers into the record*. As set forth above, at the hearing, the garnishee attempted to supplement the answers by introducing Mr. McGee's pay stubs and evidence of other existing garnishments already in place into evidence, but the trial court sustained Tower's objection and excluded the evidence. The fact that the interrogatory answers were made part of the record is not in dispute, but the fact that PSC filed its answers to the garnishment interrogatories prior to the trial on the motion did not relieve it of the burden of rebutting the *prima facie* proof established by its initial failure to answer. The question is whether the answers were sufficient to show the garnishee did not possess property of the debtor.

Considering there was no evidence or testimony presented at the hearing, the trial court's decision to deny the motion for judgment *pro confesso* was necessarily based on its consideration of the interrogatory answers of record. The trial court's consideration of the interrogatory answers is consistent with the longstanding jurisprudence of this circuit. As previously explained, the court may permit the late filing of answers "to rebut the judgment creditor's *prima facie* case." Houma Mortgage & Loan, Inc., 664 So. 2d at 1205. As such, the jurisprudence considers tardy answers, in the context of a *pro confesso* hearing, as rebuttal evidence. This court has further explained that "Where a garnishee's answers are not traversed and disproved, the extent of his liability is to be tested solely by his said answers." Ascension Credit Union, 183 So. 3d at 544. Here, the garnishee's answers showed that it did not employ the debtor nor did it hold the debtor's property. While consideration of PSC's answers of record is most assuredly implicit in the trial court's judgment denying the motion for judgment *pro confesso*, at a minimum, these answers were available to the trial court to take judicial notice of same.

The goal of a garnishment proceeding is to seize a debtor's property in the hands of a third-party employer - not to force Louisiana employers/garnishees to turn over property they do not possess, nor to

make employers/garnishees the guarantors of their employees' debt. Thus, when the relevant code of civil procedure articles, revised statutes, and jurisprudence is considered, the law should be interpreted to that effect. We conclude that this statutory scheme, which provides no dollar limit on judgments *pro confesso*, is not meant to provide a basis for a judgment in favor of judgment creditors against employers who may be tardy, but nonetheless establish that they hold no property due the creditor.

Id. at 615-18 (italicized emphasis ours).

Unlike in *McGee*, AFNB's responses and affidavit were filed *after* the contradictory hearing at which it did not appear on the motion for judgment *pro confesso*. Had AFNB filed the documents in the record prior to the *pro confesso* hearing, the prima facie presumption would have been rebutted and AFNB could have presented evidence at the contradictory hearing relating to the amount of its indebtedness for failing to garnish Johnson's wages. Nevertheless, we find no error in the trial court's reopening of the judgment *pro confesso*, though it erred in addressing only the origination date of interest. Rather, based on the reasoning set forth in *First Pay*, reopening the proceeding was proper because an absurd result would be reached if the judgment was allowed to stand. To reiterate, the purpose of the garnishment statutes is not to make the employer the guarantor of its employee's debts. Moreover, Part B of La.Civ.Code art. 2413 specifically provides that "the judgment against the garnishee shall be limited to the delivery of the property or payment of the indebtedness," *if* at the contradictory trial "the garnishee proves the amount of such property or indebtedness." If the amount that could have been garnished by AFNB was \$665.39, the result of casting it with a more than \$10,000 judgment because of a nearly two decades old judgment is clearly absurd.

Similarly in *Tower Credit, Inc. v. Williams*, 22-106, 21-1509 (La.App. 1 Cir. 9/16/22), 352 So.3d 1029, writ granted, vacated in part, 22-1556 (La. 2/7/23), 354

So.3d 659, involving the same attorney as in this case, the appellate court took the hard line approach and cast Louisiana Fish Fry, the debtor's employer, with an \$18,000 underlying judgment (plus interest and attorney fees) denying the employer's motion to reopen the judgment *pro confesso*, noting, "We recognize that the result of the judgment *pro confesso* is harsh. However, the language of La.C.C.P. art. 2413 is clear. Any relief from the harshness of this result must come from the legislature." *Id.* at 1035. Tower filed suit against Williams in 2017 and obtained a default judgment against him in 2018. Tower filed a petition for garnishment in September 2020 requesting that Fish Fry be made garnishee. Fish Fry did not answer interrogatories. In March 2021, Tower filed a motion for judgment *pro confesso*. Fish Fry did not attend the October 2021 hearing on the motion for judgment *pro confesso* just as in this case. The appellate court affirmed the trial court's judgment of the full debt stating:

At the contradictory hearing, the garnishee is given an opportunity to present evidence of the actual indebtedness, employment of the debtor, character of the employment, prior garnishments, and other facts relevant to the garnishment proceedings. *Tower Credit, Inc.*, 2001-2875 at p. 4, 825 So.2d at 1128. Louisiana Fish Fry did not take advantage of this opportunity, and the trial court did not err in rendering the judgment for the entire amount as provided by Article 2413(A).

Id. at 1034.

The supreme court granted writs, 22-1556 (La. 2/7/23), 354 So.3d 659, and found:

Writ granted. Based on the particular facts of this case and considering La. R.S. 13:3923(A), that part of the judgment *pro confesso* against Louisiana Fish Fry Products, Ltd. representing the amount of the unpaid judgment, with interest and costs, is vacated, and the motion to re-open the garnishment proceeding is granted. The matter is remanded to the district court for further proceedings.

In *Fish Fry*, the hearing to reopen had not yet occurred. In this case, it has; however, AFNB did not present any evidence at the hearing as to its actual indebtedness. Thus, while we find no error in the trial court's reconsideration of the judgment *pro confesso*, we remand for further proceedings to allow AFNB the opportunity to disprove the prima facie presumption and to present evidence of the actual amount of its indebtedness for failing to remit garnishment payments to Tower pursuant to La.Code Civ.P. art. 2413(B). As in *First Pay*, Tower is entitled to traverse the witnesses. AFNB's brief interrogatory response alleged Johnson was an employee, that her last date of employment was April 12, 2024, and that she earned \$10.50 per hour. The affidavit filed into the record alleged that the amount that could have been garnished during that fourteen week period was \$665.39. There was no evidence presented at the *pro confesso* hearing, since AFNB did not appear nor was any evidence admitted at the reopening hearing. We note that the *McGee* court cited with approval *Ascension Credit Union v. Babin*, 14-1653, p. 9 (La.App. 1 Cir. 11/6/15), 183 So.3d 544, 550, in which the court stated:

Where a garnishee's answers are not traversed and disproved, "the extent of his liability is to be tested solely by his said answers." *Smith v. McCall*, 14 La.App. 609, 611, 122 So., 149, 150 (La.App. 2d Cir.1929); *see also Johnson v. Bolt*, 144 So. 296, 298 (La.App. 2d Cir.1932) ("The extent of the garnishee's liability is to be tested by his answers to interrogatories when the truth of those interrogatories has not been disproved."); *compare with Vela v. Jurisich*, 210 So.2d 108, 109 (La.App. 4th Cir.1968) (finding La. C.C.P. art. 2414 does not provide the "exclusive remedy" when garnishment answers are filed *after* a timely motion for judgment *pro confesso*). Where the record contains proof of "all the pertinent facts without the necessity of the introduction of further evidence[.]" a formal rule to traverse a garnishee's answers is not indispensable; but, if a garnishee's answers are conditional or qualified, or disclose an unqualified denial of liability to defendant, or if the introduction of evidence is necessary to fix the liability of the garnishee, "a rule to traverse is necessary." *See Johnson v. Bolt*, 146 So. 375, 376 (La.App. 2d Cir.1933).

It is unclear why AFNB was not prepared to present evidence at the reopening hearing as to its actual indebtedness. It did present various arguments relating to its nullity action for fraud and ill practices. Tower objected and requested that another hearing date be set but eventually acquiesced when the trial court indicated another hearing would only serve to delay the proceedings. Tower could not traverse or disprove AFNB's meager answer to interrogatories or its sworn affidavit at the April 10, 2025 motion to reopen hearing because AFNB presented no evidence. There is simply insufficient information in the record to render a ruling in line with *Ascension* because AFNB did not provide any. Nevertheless, due to the particular circumstances presented in this case, we find a remand for further proceedings consistent with this opinion is warranted.

For the reasons noted above related to the absurdity of a result holding an employer liable for a judgment rendered decades prior and the principle that an employer is not the guarantor of its employee's debts, the trial court did not err in reopening the judgment *pro confesso*. However, we remand for a hearing to allow AFNB to present evidence of its indebtedness based on Johnson's non-exempt earnings during the fourteen week period and to allow Tower time for discovery. Any interest to be assessed will begin on the date the notice of garnishment was served on AFNB, i.e., January 5, 2024. Attorney fees and costs shall be assessed pursuant to La.R.S. 13:3923. Accordingly, Tower's assignments of error one and two are without merit.

AFNB'S ASSIGNMENTS OF ERROR TWO, THREE, AND FOUR

AFNB's assignments of error two, three, and four are rendered moot by our above findings.

CONCLUSION

We affirm the trial court's reopening of the judgment *pro confesso* and remand for further proceedings consistent with this opinion. Costs of this appeal are assessed equally between the parties.

**AFFIRMED IN PART;
REMANDED WITH INSTRUCTIONS.**