

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D2024-0537
L.T. Appeal No. 502010CA009707XXXXMB

PATRICK T. SILL

Appellant,

vs.

JBK ASSOCIATES, INC., f/k/a COASTAL INSULATION, INC.

Appellee.

APPELLEE'S AMENDED ANSWER BRIEF

KEVIN R. JACKSON
Florida Bar No. 0153230
Law Offices of Kevin Jackson, P.A.
1136 SE 3rd Avenue
Fort Lauderdale, FL 33316
Telephone: (954) 779-2272
Facsimile: (954) 463-2301
E-service: filings@krjlaw.com
Counsel for Appellee

TABLE OF CONTENTS

TABLE OF CONTENTS.....ii

TABLE OF CITATIONS.....iii

STATEMENT OF THE CASE.....1

STATEMENT OF FACTS.....1

SUMMARY OF THE ARGUMENT.....7

STANDARD OF REVIEW.....12

ARGUMENT.....13

 I. Appellant’s Notice of Appeal of the November 22,
 2023 “Order Denying Defendant’s Motion to Dissolve
 Writ of Garnishment” is untimely13

 II. Appellant failed to timely and properly file a valid claim
 of exemption to the subject bank garnishment.....15

 A. Appellant failed to comply with Fla. Stat. §77.041.....15

 B. Appellant’s attorney, Les Osborne, was Appellant’s
 post-judgment attorney of record and therefore
 received proper notice of the garnishment filed by
 Appellee pursuant to Fla. Stat. §77.041.....18

 C. Appellant’s Motion to Dissolve failed to comply with
 Fla. Stat. §77.0728

 D. Appellant never provided any evidence of a valid
 claim of exemption.....30

CONCLUSION.....31

CERTIFICATE OF SERVICE.....32

CERTIFICATE OF COMPLIANCE.....33

TABLE OF CITATIONS

CASES:

<i>BNP Paribas v. Wynne</i> 944 So. 2d 1004 (Fla. 4th DCA 2005).....	18
<i>Bussey v. Legislative Auditing Committee</i> 298 So. 2d 219 (Fla. 1st DCA 1974).....	23, 24, 25
<i>Golden Hills Turf & Country Club v. Buchanan</i> 273 So. 2d 375 (Fla. 1973).....	12
<i>Jarrard v. Jarrard</i> 157 So. 3d 332, 337 (Fla. 2d DCA 2015).....	12
<i>Zivitz v. Zivitz</i> 16 So. 3d 841 (Fla. 2nd DCA 2009).....	17

STATUTES:

§77.041, Florida Statute.....	2, 3, 4, 8, 10, 13, 14, 15, 16, 17, 18, 29, 31
§77.041(1), Florida Statute.....	9, 15, 16, 17
§77.055, Florida Statute.....	3
§77.07, Florida Statute.....	4, 9, 10, 13, 14, 28, 29, 30, 31
§222.21, Florida Statute.....	9, 29

RULES:

Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii).....	13
Florida Rule of Appellate Procedure 9.210(a)(2).....	33

Florida Rules of General Practice and Judicial Administration Rule 2.505(e)(1).....	19
Florida Rules of General Practice and Judicial Administration Rule 2.505(e)(1) – (e)(5).....	20
Florida Rules of General Practice and Judicial Administration Rule 2.505(f).....	11, 20, 23
Florida Rules of General Practice and Judicial Administration Rule 2.505(f)(3).....	23, 24, 27
Florida Rules of General Practice and Judicial Administration Rule 2.505(f)(4).....	20, 23, 24
Florida Rules of General Practice and Judicial Administration Rule 2.505(f)(4)(A).....	2, 10, 11, 20, 21, 22, 23
Florida Rules of General Practice and Judicial Administration Rule 2.505(i).....	20
Florida Rules of General Practice and Judicial Administration Rule 2.516.....	21, 22
Florida Rules of General Practice and Judicial Administration Rule 2.516(b).....	21
Florida Rules of General Practice and Judicial Administration Rule 2.516(b)(1)(A).....	22

STATEMENT OF THE CASE

Appellant, Patrick T. Sill (“Appellant” or “Sill”) appeals the trial court's November 22, 2023 Order Denying Defendant’s Motion to Dissolve Writ of Garnishment (R.0200-0203), the subsequent Final Judgment Against Garnishee, Wells Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors entered on November 28, 2023 (R. 0206-0208) and the Order Denying Defendant’s Motion for Rehearing related to Plaintiff’s Motion for Entry of Final Judgment entered on February 26, 2024 (R.0209-0214).

STATEMENT OF FACTS

On May 12, 2010, a Final Judgment was entered in favor of JBK Associates, Inc., and against Sill, in the amount of \$740,487.22 (R. 0219-0248, pages 0227-0228). Thereafter, the Final Judgment was assigned to Judgment Enforcement Solution, Inc. (R. 0027).

On February 27, 2014 (nearly four years after entry of the Final Judgment), Sill’s current counsel, Les Osborne, made his appearance in this matter as Sill’s post-judgment attorney of record by way of filing a Motion to Dissolve Writ of Garnishment on behalf of Sill (R. 0219-0248, pages 0230-0234). It should be noted that attorney, Les Osborne, did not represent Sill prior to February 27, 2014, or prior to the entry of the May 12, 2010 Final Judgment (i.e., Les Osborne’s only representation of Sill was post-judgment).

Between February 27, 2014 and October 15, 2021, Sill's current counsel, Les Osborne, filed at least thirteen post-judgment pleadings/filings in this matter. Les Osborne, within the Appellant's Amended Initial Brief, acknowledges that he was extensively involved as the Appellant's attorney of record in post-judgment proceedings in this matter, so much so that he was involved in an appeal to the Florida Supreme Court. As of the date of this Motion, attorney Les Osborne has not filed any Motion to Withdraw as attorney of record for Sill, nor has attorney Les Osborne filed a Notice of Termination of Appearance on behalf of Sill, as was required by Rule 2.505(f)(4)(A) Fla. R. Gen. Prac. & Jud. Admin.

On August 2, 2023, a Writ of Garnishment was issued by the Clerk as to Garnishee, Wells Fargo Clearing Service, LLC d/b/a Wells Fargo Advisors ("Wells Fargo") (R. 0043-0046). On August 4, 2023, Appellee filed and served its "First Notice of Garnishment", as required by Fla. Stat. § 77.041 (R. 0048-0057); said First Notice being served upon Sill's counsel, Les Osborne, through the Florida ePortal system, as required by Florida law and as acknowledged as being received by Sill's counsel, Les Osborne. Appellee e-served attorney Les Osborne specifically because Mr. Osborne was Sill's attorney of record per the ePortal system and because he had not filed a

Notice of Termination of Appearance as Sill's counsel. However, despite having been served with the First Notice of Garnishment on August 4, 2023, Sill did not file a Claim of Exemption on or before August 24, 2023, as required by Florida Statute §77.041.

On August 11, 2023, Garnishee, Wells Fargo, filed an Amended Answer to the Writ of Garnishment (R. 0084-0088) setting forth that Sill maintained an account with Wells Fargo and that \$112,871.52 (the entire amount in the account) had been withheld from Sill's account as a result of the Writ of Garnishment. Contrary to Appellant's version of the facts, the Garnishee did not state that the funds being held were exempt from garnishment¹. In fact, Garnishee specifically set forth that it was in doubt as to whether the funds were exempt. Additionally, pursuant to the specifics of the Amended Answer, the Garnishee set forth that \$35,106.27 of the sums being held pursuant to the Writ of Garnishment were "cash".

On August 14, 2023, pursuant to Fla. Stat. §77.055, Appellee filed its "Notice to Defendants and Other Interested Parties" and provided copies of the Amended Answer to Sill, Sill's attorney, Les Osborne, and to all interested

¹ Although it is common for a Garnishee, in response to being served with a Writ of Garnishment, to refuse to withhold money that it knows to be exempt from garnishment, that did not occur in this instance; the Garnishee froze all funds in the subject account without setting forth that any of said funds were exempt from garnishment.

parties, per said Florida statute (R. 0089-0099).

On August 29, 2023, Appellant, through his attorney of record, Les Osborne, filed his "Motion to Dissolve Writ of Garnishment" pursuant to Fla. Stat. §77.07, which attached an Affidavit signed by the Defendant (R. 0124-0128). It should be noted that prior to filing the Motion to Dissolve Writ of Garnishment, Les Osborne did not file another Notice of Appearance.

On October 13, 2023, Appellee filed a Motion for Entry of Final Judgment in Garnishment related to the Wells Fargo garnishment (R. 0184-0195).

On November 1, 2023, the trial Court heard extensive argument on Sill's Motion to Dissolve Writ of Garnishment. Les Osborne was counsel for Sill at said hearing and made arguments on behalf of Sill, as he had done many times in the past during post-judgment proceedings.

On November 22, 2023, the trial court entered a very detailed Order denying Sill's Motion to Dissolve Writ of Garnishment (R. 0200-0203). The Order specifically found that the Appellee properly filed, and served, the First Notice in Garnishment as required by Fla. Sta. §77.041, said First Notice being served upon Appellant's counsel of record, Les Osborne, through the Florida ePortal system, as required by Florida law, and that the Appellant

failed to timely file a Claim of Exemption, as required by Florida law.

Thereafter, on November 28, 2023, the trial court entered a Final Judgment Against Garnishee (R. 0206-0208) for the full amount being held by the Garnishee within the Wells Fargo garnishment.

On December 1, 2023, Appellant filed a "Motion for Rehearing related to Plaintiff's Motion for Entry of Final Judgment" (R. 0209-0214), within which the Appellant (again through his counsel, Les Osborne) argued that service of the First Notice on Appellant's counsel, Les Osborne, was improper. However, the Appellant makes this argument despite Appellant's counsel, Les Osborne, acknowledging to the lower Court, on two occasions, and acknowledging to this Court, within his Initial Brief, that he did, in fact, appear on behalf of Sill during post-judgment proceedings, was Sill's post-judgment attorney of record and never filed a Notice of Termination of Appearance for Sill in the post-judgment proceedings.

It should also be noted that the Appellant did not file a Motion for Rehearing related to his Motion to Dissolve Writ of Garnishment or related to the November 22, 2023 Order Denying Defendant's Motion to Dissolve Writ of Garnishment (and/or the findings/rulings contained within said Order) but the Appellant's Motion for Rehearing was strictly related to Appellee's Motion

for Entry of Final Judgment in Garnishment and the Final Judgment Against Garnishee entered by the lower Court. However, the Final Judgment Against Garnishee did not contain any findings related to Appellee providing Notice to Les Osborne as said findings/rulings were only contained within the November 22, 2023 Order Denying Defendant's Motion to Dissolve Writ of Garnishment.

On February 9, 2024, the trial court entered an "Order on Defendant, Patrick T. Sill's, Motion for Rehearing on Plaintiff's Motion for Entry of Final Judgment in Garnishment, Specifically on the Issue of Notice", said Order setting the specific issue of Notice for hearing for February 22, 2024 (R. 0217-0218). On February 22, 2024, the lower Court again heard extensive argument related to attorney, Les Osborne's, representation of Sill throughout the post-judgment proceedings and the Notice that Appellee provided to Les Osborne related to the subject garnishment. On February 26, 2024, the trial court entered an "Order Denying Defendant's Motion for Rehearing" (R. 0249-0250).

SUMMARY OF ARGUMENT

Appellant's February 29, 2024 Notice of Appeal, as it pertains to the lower Court's November 22, 2023 "Order Denying Defendant's Motion to Dissolve Writ of Garnishment", and the rulings and findings contained therein, is untimely. Most of the arguments contained within Appellant's Amended Initial Brief pertain to the November 1, 2023 hearing on Defendant's Motion to Dissolve Writ of Garnishment and the findings/rulings contained within the Court's "Order Denying Defendant's Motion to Dissolve Writ of Garnishment" entered on November 22, 2023. However, because Appellant never filed a Motion for Rehearing related to said November 22, 2023 Order, the deadline to appeal said Order was December 22, 2023. As such, the Appellant's February 29, 2024 Notice of Appeal is untimely as it pertains to the November 22, 2023 Order Denying Defendant's Motion to Dissolve Writ of Garnishment and the funding/rulings contained therein. Given the untimeliness of Appellant's Notice of Appeal, any arguments related to the November 1, 2023 hearing on Defendant's Motion to Dissolve Writ of Garnishment and the November 22, 2023 Order denying same, should not be considered by this Court.

Notwithstanding the above, Appellant sets forth, within his "Summary of

Argument”, that “Appellee argued that because the form provided for ease under Florida Statutes was not used, the exemption was invalid” and further sets forth that the lower Court ruled that “Sill never filed a claim of exemption”. However, these statements are inaccurate as Appellee argued that Appellant never **TIMELY** filed a claim of exemption, as required by Fla. Stat. §77.041, and the Court agreed, and ruled, that Appellant never **TIMELY** filed a claim of exemption, as required by Fla. Stat. §77.041. The Appellant’s own argument within his Amended Initial Brief contradicts his own statements as the Appellant acknowledges, within his Initial Brief, that the Court ultimately ruled that the Claim of Exemption was untimely (not that it was never filed).

On August 4, 2023, Appellee filed its “First Notice of Garnishment” pursuant to Fla. Stat. §77.041 and a copy of said Notice was provided to the parties via email and via U.S. mail and was provided to Appellant’s attorney of record, Les Osborne, via the ePortal system (Appellant’s attorney, Les Osborne, had been representing Appellant throughout the previous post-judgment proceedings). Pursuant to Fla. Stat. §77.041, Appellant had twenty (20) days from the date of the First Notice of Garnishment to file a Claim of Exemption. However, Appellant did not file a Claim of Exemption on or before August 24, 2023, as required by Fla. Stat. §77.041. As garnishment

proceedings require strict adherence to the provisions of the garnishment statutes, and because Section §77.041(1) clearly provides that a garnishment defendant **must** complete and file a claim of exemption and request for hearing within twenty days after receiving notice of garnishment or else he/she may lose important rights to his property, the Court correctly ruled that Appellant had failed to timely file a Claim of Exemption pursuant to Florida Statutes.

On August 29, 2023, Appellant, through his post-judgment attorney of record, Les Osborne, filed his “Motion to Dissolve Writ of Garnishment” pursuant to Fla. Stat §77.07. Fla. Stat. §77.07 sets forth that the only valid reason for filing a Motion to Dissolve a Writ of Garnishment is to argue that an “allegation in Plaintiff’s motion for writ is untrue”. However, despite the unambiguous language/requirements of Fla. Stat. §77.07, the Appellant’s Motion to Dissolve does not allege that any allegation contained within the Appellee’s Motion for Writ of Garnishment is untrue. Instead, the sole basis for the Appellant’s Motion to Dissolve was to allege that the garnished funds were exempt from garnishment under Fla. Stat. §222.21 (i.e., that the Appellant was alleging a claim of exemption to the garnishment). Based upon strict adherence to the provisions of Fla. Stat. §77.07, the lower Court found

that Appellant's Motion to Dissolve Writ of Garnishment did not meet the unambiguous requirements of Fla. Stat. §77.07, as it did not set forth any valid grounds to dissolve the Writ. The Court also found that the Appellant's Motion to Dissolve was actually an attempt to file a Claim of Exemption outside of the time requirements specified within Fla. Stat. §77.041. Based upon these findings, the lower Court correctly denied Appellant's Motion to Dissolve Writ of Garnishment, as the Motion failed to comply with Fla. Stat. §77.07 and failed as a matter of law.

Florida Rules of General Practice and Judicial Administration (Fla. R. Gen Prac. & Jud. Admin) specifically set forth that an attorney may appear for a party in an action or proceeding by signing a pleading or other document on behalf of the party. Appellant's counsel, Les Osborne, acknowledged to the lower Court, and acknowledged to this Court, that he did, in fact, appear on behalf of the Appellant during post-judgment proceedings and was the post-judgment attorney of record for the Appellant (as is also evidenced by the docket in the lower Court). The record is clear that Les Osborne did not represent Appellant prior to the entry of a Final Judgment and only represented Appellant in post-judgment proceedings. Rule 2.505(f)(4)(A) Fla. R. Gen Prac. & Jud. Admin specifically deals with an attorney's termination

of representation **post-judgment** and what is required of an attorney to terminate his/her representation of a client in post-judgment proceedings. Specifically, Rule 2.505(f) Fla. R. Gen Prac. & Jud. Admin. sets forth that an appearance of an attorney for a party in an action or proceeding **shall terminate only upon....(4)(A)** In non-criminal matters in which an attorney has appeared after **entry of judgment**, the filing of a notice of termination of appearance.

Appellant's attorney, Les Osborne, acknowledged to the lower Court and to this Court that he never filed a Notice of Termination of Appearance related to his post-judgment representation of Appellant in the lower Court. It is undisputed that attorney, Les Osborne, only appeared in this matter after entry of the final judgment. Notwithstanding the untimeliness of the Appellant's appeal, given the Florida Rules of General Practice and Judicial Administration, given the arguments made to the lower Court and given Les Osborne's acknowledgment that he was Appellant's attorney of record in post-judgment proceedings, Appellee's ePortal service of the First Notice of Garnishment upon Appellant's attorney was proper.

Notwithstanding all of the above, even if the Defendant's Motion to Dissolve were to have been allowed as an untimely filed Claim of Exemption,

the Appellant never provided any evidence that the subject account was exempt from garnishment. In fact, to the contrary, Appellee's filings show that at least a portion of the account was being held as "cash", which obviously does not qualify as being exempt from garnishment, as was argued by the Appellant within his improperly filed Motion to Dissolve Writ of Garnishment.

STANDARD OF REVIEW

In his Amended Initial Brief, Appellant misstates this Court's standard of review, claiming that it is *de novo*, but then challenging the express or implied factual findings of the Trial Court. This Court reviews findings of fact for competent, substantial evidence. *Jarrard v. Jarrard*, 157 So. 3d 332, 337 (Fla. 2d DCA 2015). It is not the function of this Court to substitute its own judgment for that of the Trial Court, even if this Court might have reached a different conclusion from the evidence had it been the initial factfinder. See *Golden Hills Turf & Country Club v. Buchanan*, 273 So. 2d 375 (Fla. 1973).

While an interpretation of a statute may present a question of law, reviewable by this Court *de novo*, this Court's review of the application of the statute to the facts must be based upon the facts expressly or impliedly determined by the Trial Court which are supported by competent, substantial evidence presented below.

ARGUMENT

I. Appellant’s Notice of Appeal of the November 22, 2023 “Order Denying Defendant’s Motion to Dissolve Writ of Garnishment” is untimely

Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii) states that non-final Orders determining “the right to immediate possession of property, including but not limited to orders that grant, modify, dissolve, or refuse to grant, modify or dissolve writs of replevin, garnishment, or attachment” are to be appealed to the District Court of Appeal for review and determination.

On August 29, 2023, Appellant filed his "Motion to Dissolve Writ of Garnishment" pursuant to Fla. Stat. §77.07 (R.0124-0128). On November 1, 2023, the lower Court heard extensive argument on Appellant’s Motion to Dissolve Writ of Garnishment. On November 22, 2023, the trial court entered a very detailed Order denying Appellant’s Motion to Dissolve Writ of Garnishment (R. 0200-0203). The Order specifically found that the Appellee properly filed, and then served, the First Notice in Garnishment (as required by Fla. Sta. §77.041) upon Appellant’s counsel of record, Les Osborne, through the Florida ePortal system and found that the Appellant failed to timely file a Claim of Exemption as required by Florida law. The November 22, 2023 Order also found that the Appellant’s Motion to Dissolve Writ of

Garnishment did not comply with Fla. Stat. §77.07 and that said Motion was an attempt to “circumvent the time requirements of Fla. Stat. §77.041 by untimely alleging, within said Motion, that a Claim of Exemption may be applicable to the funds being held by the Garnishee”. As a result of the Court’s findings, the November 22, 2023 Order denied the Appellant’s Motion to Dissolve Writ of Garnishment and ordered that a final judgment in garnishment be entered in favor of the Appellee for the total sums being held by the Garnishee, pursuant to the subject Writ of Garnishment, as set forth within the Garnishee’s Amended Answer to Writ of Garnishment.

On February 29, 2024 Appellant filed a Notice of Appeal of the November 22, 2023 “Order Denying Defendant’s Motion to Dissolve Writ of Garnishment”, said appeal challenging the rulings and findings contained within said November 22, 2023 Order. Most of the arguments contained within the Appellant’s Amended Initial Brief pertain to arguments made at the November 1, 2023 hearing on Appellant’s Motion to Dissolve Writ of Garnishment and the findings/rulings made within the Court’s “Order Denying Defendant’s Motion to Dissolve Writ of Garnishment” entered on November 22, 2023. However, because Appellant never filed a Motion for Rehearing related to the November 22, 2023 Order, the deadline to appeal said Order

was December 22, 2023. As the Appellant filed a Notice of Appeal of the November 22, 2023 Order Denying Defendant's Motion to Dissolve Writ of Garnishment on February 29, 2024 (69 days after the deadline to file a Notice of Appeal), Appellant's Notice of Appeal, as it pertains to the lower Court's November 22, 2023 "Order Denying Defendant's Motion to Dissolve Writ of Garnishment", and the rulings/findings contained therein, is untimely. Given the untimeliness of Appellant's Notice of Appeal, any arguments contained within Appellant's Amended Initial Brief that relate to the November 1, 2023 hearing on Defendant's Motion to Dissolve Writ of Garnishment or relate to the November 22, 2023 Order Denying Defendant's Motion to Dissolve Writ of Garnishment should not be considered by this Court.

II. Appellant failed to timely and properly file a valid claim of exemption to the subject bank garnishment.

A. Appellant failed to comply with Fla. Stat. §77.041.

Section 1 of the Appellant's Amended Initial Brief argues that "the Plaintiff argued, and the trial court ruled, that by failing to use the form supplied by Florida Statute 77.041(1), Sill failed to claim his exemption". This statement is simply not true. Appellee's counsel never argued that by failing to use the form supplied by Florida Statute §77.041(1), the Appellant failed to file a Claim of Exemption. The trial Court never ruled that by failing to use the

form supplied by Florida Statute §77.041(1), the Appellant failed to file a Claim of Exemption. As is evident by the “Order Denying Defendant’s Motion to Dissolve Writ of Garnishment” entered by the trial Court on November 22, 2023 (R. 0200-0203), the trial Court clearly found that “any allegations of the applicability of a claim of exemption related to funds being held by Garnishee are untimely and were not alleged in compliance with Fla. Stat. §77.041”. Nowhere within the Trial Court’s Order does the Trial Court rule, or find, that Sill was required to use a particular form for filing a Claim of Exemption. The Appellant’s statements are simply inaccurate as to the Appellee’s arguments at the November 1, 2023 hearing and as to the Court’s November 22, 2023 Order Denying Defendant’s Motion to Dissolve Writ of Garnishment.

The trial Court properly found that the Appellant failed to **timely** file a Claim of Exemption, as required by Fla. Stat. §77.041. More specifically, on August 2, 2023, a Writ of Garnishment was issued by the Court as to Garnishee, WELLS FARGO CLEARING SERVICES, LLC d/b/a Wells Fargo Advisors (hereinafter referred to as “WELLS FARGO” or “Garnishee”) (R. 0043-0046). On August 3, 2023, said Writ of Garnishment was served upon Garnishee, WELLS FARGO. On August 4, 2023, Plaintiff filed its “First Notice of Garnishment” pursuant to Fla. Stat. § 77.041 and a copy of said Notice was

provided to the parties via email and US mail and provided to the Appellant's post-judgment attorney of record, Les Osborne, via the ePortal system (R. 0048-0057). Pursuant to Fla. Stat. §77.041, the Appellant had twenty (20) days from the date of the First Notice of Garnishment to file a Claim of Exemption. As the First Notice of Garnishment was filed, and provided to the Appellant and to the Appellant's attorney of record via the Court's ePortal system on August 4, 2023, the Appellant had until August 24, 2023 within which to file a Claim of Exemption to the WELLS FARGO garnishment in this matter. However, the Appellant did not file a Claim of Exemption on or before August 24, 2023, as required by Fla. Stat. § 77.041.

“Garnishment proceedings are statutory in nature and require strict adherence to the provisions of the statute”. *Zivitz v. Zivitz*, 16 So. 3d 841 (Fla. 2nd DCA 2009). “Section §77.041(1) clearly provides that a garnishment defendant *must* complete and file a claim of exemption and request for hearing within twenty days after receiving notice of garnishment or else he may lose important rights to his property.” *Id* at 847. “To interpret the statute otherwise would render meaningless the time requirements established in the statute for filing claims of exemptions and would result in garnishment defendants filing untimely exemption claims.” *Id*. “We also note that section

§77.041 does not provide a procedure for a garnishment defendant to file an untimely exemption claim. Rather it warns that the person can lose important rights by failing to file a timely exemption.” *Id.* If the legislature had intended to allow a garnishment defendant to assert a belated claim, it would have so provided. *Id.* at 848. Further, the Fourth DCA has found that because garnishment is a special statutory proceeding, the trial court does not have the same discretion to bend time requirements that might be allowed under the rules of Civil Procedure. *BNP Paribas v. Wynne*, 944 So. 2d 1004 (Fla. 4th DCA 2005).

Therefore, given that the Appellant did not timely file a claim of exemption within the twenty days set forth within Florida Statute §77.041 and the Court does not have discretion to allow a late filed claim of exemption, any attempt by the Appellant to file a Claim of Exemption after August 24, 2023 fails as a matter of law, requiring the untimely filed Claim of Exemption to be denied.

- B. Appellant’s attorney, Les Osborne, was Appellant’s post-judgment attorney of record and therefore received proper notice of the garnishment filed by Appellee pursuant to Florida statute §77.041.

The Florida Rules of General Practice and Judicial Administration (Fla. R. Gen. Prac.& Jud. Admin) set forth the rules and regulations pertaining to

administrative matters concerning all courts and attorneys in the state of Florida. Rule 2.505(e)(1) Fla. R. Gen Prac. & Jud. Admin. controls the appearance of attorneys within an action or proceeding and specifically sets forth that an attorney may appear for a party in an action or proceeding by signing a pleading or other document on behalf of the party. As such, by virtue of attorney, Les Osborne, signing the February 27, 2014 “Motion to Dissolve Writ of Garnishment” on behalf of Appellant, attorney, Les Osborne, was Appellant’s attorney of record for all subsequent post-judgment proceedings as of February 27, 2014 (four years after entry of the Final Judgment in this matter). Attorney, Les Osborne, even acknowledged to the lower Court, and has acknowledged to this Court, that he had, in fact, appeared on behalf of the Appellant in post-judgment proceedings in the lower Court as of February 27, 2014. Further, a review of the lower Court’s docket shows that between February 27, 2014 and October 15, 2021, Appellant’s current counsel, Les Osborne, filed at least thirteen post-judgment pleadings/filings in this matter. It is also undisputed that attorney, Les Osborne, did not represent Sill prior to the entry of the May 12, 2010 Final Judgment (Les Osborne only represented Sill in post-judgment proceedings in the lower Court).

Further, Rule 2.505(i) Fla. R. Gen Prac. & Jud. Admin. sets forth that an attorney appearing in an action or proceeding pursuant to subdivision (e)(1) - (e)(5), is the attorney of record for that party. Therefore, it is clear and undisputed that as of February 27, 2014, Les Osborne was the attorney of record for the Appellant as the matter proceeded throughout post-judgment litigation.

Additionally, Rule 2.505(f)(4) Fla. R. Gen Prac. & Jud. Admin. (which is titled “Termination of **Post-Judgment** Appearances”) specifically deals with an attorney’s termination of his/her appearance as the attorney of record for a party in **post-judgment** proceedings. More specifically, Rule 2.505(f) sets forth that an appearance of an attorney for a party in an action or proceeding **shall terminate only upon**....(4)(A) In non-criminal matters in which an attorney has appeared **after entry of judgment**, the filing of a notice of termination of appearance. Therefore, Rule 2.505(f)(4)(A) Fla. R. Gen Prac. & Jud. Admin. requires an attorney that has appeared for a party in a post-judgment proceeding to file a Notice of Termination of Appearance if that attorney no longer chooses to represent that party in any subsequent post-judgment proceedings. According to the Fla. R. Gen Prac. & Jud. Admin., filing a Notice of Termination of Appearance is the only way that an attorney

can terminate his/her post-judgment representation of a client, once that attorney has made an appearance in post-judgment proceedings for said client.

In the matter before this court, attorney Les Osborne never filed a Notice of Termination of Appearance related to his representation of Appellant in the lower Court matter, despite extensively participating in post-judgment proceedings as Appellant's attorney of record. Attorney, Les Osborne, acknowledged to the lower Court, and to this Court, that he never filed a Notice of Termination of Appearance during the post-judgment litigation of this matter. Based upon the clear and unambiguous language of Rule 2.505(f)(4)(A) Fla. R. Gen Prac. & Jud. Admin., which states that the representation of an attorney that has made an appearance on behalf of a client post-judgment SHALL TERMINATE ONLY UPON the filing of a notice of termination of appearance, Les Osborne was required to file a Notice of Termination of Appearance if he no longer wished to be attorney of record for Appellant (which he failed to do). Per Rule 2.505(f)(4)(A), Les Osborne was Appellant's attorney of record in August, 2023.

Rule 2.516 Fla. R. Gen Prac. & Jud. Admin. controls service of pleadings and documents and subsection (b) of said Rule sets forth that

“when service is required or permitted to be made upon a party represented by an attorney, service **must** be made upon the attorney unless service upon the party is ordered by the Court”. Subsection (b)(1)(A) of said Rule thereafter sets forth that service upon the attorney representing a party **must** be made via email at the email address designated by the attorney (the filer of the document having complied with this subsection if sent to the attorney through the “Florida Courts e-filing Portal”).

Per Rule 2.505(f)(4)(A), Les Osborne was Appellant’s attorney of record in August, 2023. Les Osborne, as post-judgment attorney of record for the Appellant, having never filed a Notice of Termination of Appearance, was registered with the Florida Courts e-filing Portal system as counsel of record for Appellant for all post-judgment proceedings. Per Rule 2.516, Les Osborne, as Appellant’s attorney of record, was properly served with all Notices of Garnishment in this matter. As such, Appellant, through his counsel of record, Les Osborne, was properly served with all post-judgment filings through the Florida Courts e-filing Portal system and was responsible for timely and properly responding to same.

Within his Amended Initial Brief, Appellant also attempts to argue that the post-judgment proceedings in this matter were “closed by the Court on

March 13, 2023" and, as such, the Appellant's ePortal service of the First Notice of Garnishment upon Appellant's attorney of record, Les Osborne, was somehow improper. In support of this theory, Appellant dismisses the clear and unambiguous language of Rule 2.505(f)(4)(A), as set forth above, and cites to Rule 2.505(f)(3) Fla. R. Gen Prac. & Jud. Admin, as well as cites to the case *Bussey v. Legislative Auditing Committee*, 298 So. 2d 219 (Fla. 1st DCA 1974). However, neither Rule 2.505(f)(3) Fla. R. Gen Prac. & Jud. nor the *Bussey* case is applicable, whatsoever, to the facts of this case.

Initially, Appellant misstates Rule 2.505(f)(3) within its Amended Initial Brief. Rule 2.505(f)(3) sets forth that "An appearance of an attorney for a party in an action or proceeding shall terminate only upon: (3) Termination of an action or proceeding AND expiration of any applicable time for appeal when no appeal is taken, without further action of the court...". As the Rule itself states, Rule 2.505(f)(3) only pertains to a situation where a case is automatically terminated after the time to appeal a Final Judgment has expired. Rule 2.505(f)(3) Fla. R. Gen Prac. & Jud. Admin does not pertain to post-judgment situations AT ALL. A simple reading of the titles of Rule 2.505(f) clearly shows that subsection (f)(4) pertains to "Post-Judgment Appearances" while subsection (f)(3) does not.

It is undisputed that Appellant's attorney was not involved with this case prior to the May 12, 2010 Final Judgment being entered; that Appellant's attorney only made an appearance on behalf of Appellant in the underlying matter during post-judgment proceedings; that Appellant's attorney extensively participated in post-judgment proceedings on behalf of the Appellant; and that Appellant's attorney never filed a Notice of Termination of Appearance as required by Rule 2.505(f)(4). As such, any arguments regarding, or any reliance upon, Rule 2.505(f)(3) are improper and fail as said Rule 2.505(f)(3) is inapplicable to the facts before the Court and inapplicable to post-judgment proceedings/situations as a whole.

Additionally, the Appellant's reliance on *Bussey v. Legislative Auditing Committee*, 298 So. 2d 219 (Fla. 1st DCA 1974) is unfounded and improper. Appellant claims that the *Bussey* case stands for the proposition that "a requirement to file a Motion to withdraw representation only is required if furtherance of the case did not occur within thirty (30) days or appealed". However, nowhere within said case is that sentence used (or anything close to that sentence). In fact, the *Bussey* case deals with the appellate Court's reversal of a trial court's denial of a Defendant's Motion to Dismiss a Complaint due to the fact that the Defendant was never properly served with

the Complaint. The *Bussey* opinion has nothing to do with post-judgment proceedings and has nothing to do with an attorney's representation of a client in post-judgment proceedings. In fact, the *Bussey* opinion sets forth that "We recognize the rule that papers may be served on a party's attorney where the case is pending or not yet concluded". The Court goes on to set forth that this rule "has been enunciated in cases where the trial court had previously obtained jurisdiction over the party in the original proceeding and that proceeding had not yet finally terminated, nor had the party's counsel terminated his representation therein". See *Bussey* at 221. Although the *Bussey* case has nothing to do with post-judgment representation, it does seem to stand for the proposition that, as long as the Court has jurisdiction over the parties and the case remains pending, service of pleadings and papers on a party's attorney of record is proper service upon the party, until the attorney files a Notice of Termination of Appearance.

As this matter is in a post-judgment posture and as Judgments are valid for twenty (20) years, the lower Court retains jurisdiction over the parties to conduct post-judgment execution or collection proceedings during said twenty (20) year time period. As set forth above, the *Bussey* case actually supports Appellee's argument that service of the First Notice of Garnishment on

Appellant's post-judgment attorney of record, Les Osborne, was proper service upon the Appellant, as the subject May 12, 2010 Final Judgment was valid until May 12, 2030 and the Court retains jurisdiction over the parties for all post-judgment collection proceedings throughout said time frame.

Further, as Judgments are valid for twenty (20) years and Appellee, as Judgment creditor, may proceed with post-judgment collection proceedings at anytime during said twenty (20) year period, the Appellant's argument related to the doctrine of futility also fails and is inapplicable to the facts of this case. Appellee's ability to collect upon the subject Judgment clearly did not end on March 13, 2023, as the Appellant is attempting to argue. A Judgment creditor has every right to forgo collection attempts for years and then, as long as the Judgment remains valid, continue collection attempts at anytime thereafter, with the Court retaining jurisdiction over the parties during said time period to rule on post-judgment matters. As the Court retains jurisdiction (and presides) over the parties for all post-judgment proceedings through May 12, 2030, the Appellant's futility argue fails.

Notwithstanding the untimeliness of the Appellant's appeal, the Florida Rules of General Practice and Judicial Administration required Mr. Osborne to file a Notice of Termination of Appearance with respect to his post-

judgment representation of Appellant if he no longer wished to represent Appellant in the post-judgment proceedings. However, it is undisputed that Mr. Osborne filed no such Notice. Appellee moved forward with post-judgment collection proceedings, as was its right to do so. Per Florida law, Appellee served Appellant's attorney of record, Les Osborne, with the First Notice of Garnishment. Mr. Osborne was counsel of record for the Appellant when the First Notice of Garnishment was served upon him through the ePortal system, said service being required by the Florida Rules of General Practice and Judicial Administration. Mr. Osborne continued to be counsel of record for the Appellant after the service of the First Notice of Garnishment as is evident by Mr. Osborne's filing of the Motion to Dissolve Writ of Garnishment on behalf of the Appellant. As Appellee properly provided Notice to Appellant's post-judgment counsel of record, Appellant was properly served with the First Notice of Garnishment on August 4, 2023. Appellant's arguments related to the applicability of Rule 2.505(f)(3) and Appellant counsel's argument that the case was "closed" on March 13, 2023 are inapplicable to this matter and fail as a matter of law. The trial Court properly found that Les Osborne, as post-judgment counsel of record for the Appellant, was properly served with the First Notice of Garnishment and that Appellant

did not timely file a Claim of Exemption per Florida Statutes.

C. Appellant's Motion to Dissolve failed to comply with Fla. Stat. §77.07

On August 29, 2023, the Appellant's attorney, Les Osborne, as post-judgment counsel for Appellant, filed, on behalf of Appellant, a "Motion to Dissolve Writ of Garnishment", said Motion having been filed pursuant to Fla. Stat. §77.07 and said Motion having attached an Affidavit signed by the Appellant (R. 0129-0133).

Fla. Stat. §77.07 sets forth that the only valid reason for filing a Motion to Dissolve a Writ of Garnishment is to argue that an "allegation in Plaintiff's motion for writ is untrue". Therefore, pursuant to the garnishment statutes, (specifically, Fla. Stat. §77.07) the Motion to Dissolve Writ of Garnishment filed by the Appellant must have alleged, and shown, that the allegations contained within Appellee's Motion for Writ of Garnishment were somehow untrue when filed and, therefore, the Writ of Garnishment should be dissolved because the Writ never should never have been issued in the first place. However, despite the clear and unambiguous language of Fla. Stat. §77.07, the Appellant's Motion to Dissolve Writ of Garnishment does not allege that any allegation contained within the Appellee's Motion for Writ of Garnishment is untrue, as required by Fla. Stat. §77.07. Instead, the sole basis for the

Appellant's Motion to Dissolve Writ of Garnishment was to allege that the garnished funds were exempt under Fla. Stat. §222.21 (i.e., that the Appellant allegedly has a claim of exemption to the garnishment).

Appellee, at the November 1, 2023 hearing on Appellant's Motion to Dissolve Writ of Garnishment, argued that the Appellant, through his Motion to Dissolve Writ of Garnishment, was attempting to circumvent the time requirements of Fla. Stat. §77.041 (i.e., the time within which a Appellant is required to file a Claim of Exemption) by untimely alleging, within said Motion to Dissolve, that a claim of exemption may be applicable to funds that are the subject of WELLS FARGO's Amended Answer. Appellee never argued that the Appellant did not use the "correct form" for a Claim of Exemption; Appellee argued that Appellant never timely filed a Claim of Exemption pursuant to Fla. Stat. §77.041 and that Appellant can not untimely allege a claim of exemption by way of a Motion to Dissolve Writ of Garnishment filed pursuant to Fla. Stat. §77.07. The unambiguous language of Fla. Stat. §77.07 provides specific instances wherein a Motion to Dissolve Writ of Garnishment would be appropriate and Appellant did not allege any such instances within his Motion to Dissolve, as required by Fla. Stat. §77.07. The trial Court properly found that the "Motion to Dissolve Writ of Garnishment

filed by the Defendant does not make any allegations related to Plaintiff's Motion for Writ of Garnishment being untrue, as required by Fla. Stat. §77.07". Furthermore, nowhere within the Appellant's Amended Initial Brief does Appellant make the argument that the Motion to Dissolve Writ of Garnishment complied with Fla. Stat. §77.07 or that any allegation contained within the Appellee's Motion for Writ of Garnishment was untrue. As Appellant's Motion to Dissolve Writ of Garnishment fails to comply with Fla. Stat. §77.07 (i.e., the statute under which the Motion was actually brought) and as Appellant makes no attempt within its Amended Initial Brief to argue that it did comply, the Appellant's Motion to Dissolve Writ of Garnishment fails as a matter of law and was properly denied by the trial Court.

D. Appellant never provided any evidence of a valid claim of exemption

Notwithstanding the untimeliness of the Appellant's appeal related to the Motion to Dissolve Writ of Garnishment; notwithstanding the fatal untimeliness of the filing of Appellant's Claim of Exemption; and notwithstanding the Appellant's acknowledged failure of his Motion to Dissolve Writ of Garnishment to comply with the clear and unambiguous language of Fla. Stat. §77.07; the Appellant's request to grant his Claim of Exemption, and reverse the Final Judgment in Garnishment entered by the trial Court, fails as there

is no evidence before this Court that the Appellant even qualifies for a Claim of Exemption relative to the funds that are the subject of the Final Judgment in Garnishment issued by the trial Court. As there is no evidence before this Court showing that the Final Judgment in Garnishment was improper and that the Appellant actually qualifies for any exemption from garnishment, the relief being sought by the Appellant fails and the Appellant's request for relief should be denied.

CONCLUSION

The Appellant's appeal of the November 22, 2023 "Order Denying Defendant's Motion to Dissolve Writ of Garnishment" is untimely. Notwithstanding same, the lower Court properly took notice of the attorney, Les Osborne's, representation of Sill during the subject post-judgment proceedings and properly found that Les Osborne was Appellant's attorney of record throughout the times that are relevant to this appeal. The lower Court properly found that service of the garnishment Notices upon Les Osborne, as counsel for the Appellant, were proper. The lower Court properly applied Florida Statutes §77.041 and §77.07 to the facts of this case. Given the facts of this matter, the evidence and documentation before the Court and the statutes, rules and case law cited herein, it should be found that the

Appellant's appeal should be denied and this Court should affirm the lower Court's rulings in all aspects.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2024, a true and correct copy of the foregoing has been furnished by using the Florida Courts e-Filing Portal, which will send an automatic e-mail message to the following parties Registered with the e-Filing Portal system: Les Osborne, Esq., 1300 North Federal Highway, Suite 203, Boca Raton, FL 33432 (office@rorlawfirm.com); Adam J. Hodkin, Esq., Padula Hodkin, PLLC, 101 Plaza Real South, Suite 207, Boca Raton, FL 33432 (ahodkin@padulahodkin.com); and W. Patrick Ayers, Burr & Forman, L.P., One Tampa City Center, Suite 3200, 201 N Franklin Street (33602), Post Office Box 380, Tampa, Florida 33601-0380 (payers@burr.com).

Respectfully Submitted,

Law Offices of Kevin Jackson, P.A.
1136 SE 3rd Avenue
Fort Lauderdale, FL 33316
Phone: (954) 779-2272
Fax: (954) 463-2301
filings@krjlaw.com

/s/ Kevin R. Jackson
Kevin R. Jackson, Esq.
Florida Bar Number 0153230
kjackson@krjlaw.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Kevin R. Jackson
Kevin R. Jackson, Esq.
Florida Bar Number 0153230