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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

No. 5D2024-2872

VEROS CREDIT, LLC,
Appellant(s),

v.

COURTNEY PRIDE, LLC, AND SENELLA DEAN WARREN,
Appellee(s).

CASE NO: 16-2023-SC-016067-XXXX-MA
DIVISION: CC-K (Civil)

APPELLANT'S INITIAL BRIEF

On Appeal from the County Court of the Fourth Judicial Circuit Court in and for Duval County, Florida

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Appellant's Initial Brief

PRELIMINARY STATEMENT

In this appeal, the following abbreviations or special terms will be used. Garnishee/Appellee, COURTNEY PRIDE LLC, will be referred to as "Garnishee." Plaintiff/Appellant, VEROS CREDIT, LLC, will be referred to as "Judgment Creditor." Defendant/Appellee, SENELLA DEAN WARREN, will be referred to as "Judgment Debtor." Reference to the Appendix will be by the symbol "App."

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Appellant initiated this action in the trial court to collect an unpaid debt within the county court's jurisdictional limit, seeking a deficiency judgment against Defendant/Appellee. The underlying action in the trial court was disposed of by entry of a Default Final Judgment. This appeal is from a non-final order that dissolved a Continuing Writ of Garnishment Against Salary Wages entered in an action for garnishment that (1) held Plaintiff may not discover information from a nonparty during post-judgment collection proceedings via a Subpoena Duces Tecum Without Deposition; (2) vacated a post-judgment Order to Show Cause without any conditions against Judgment Debtor and Garnishee, despite their refusal to properly respond to post-judgment discovery; (3) dissolved the Continuing Writ of Garnishment Against Salary Wages pursuant to § 77.07(5) Fla. Stat.

without regard for the Judgment Creditor's right to extend the writ for an additional six months, and relinquished Garnishee from "anything" involving this action; (4) granted Garnishee's Motion to Strike Subpoena Duces Tecum Without Deposition; and (5) determined Garnishee's Motion to Strike Plaintiff's Request for Production Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution was moot. This Court has jurisdiction pursuant to Florida Rules of Appellate Procedure Fla. R. App. P. 9.130(a)(3)(C)(ii).

The pleadings at issue in the subject non-final order on appeal consist of (1) Plaintiff's Order to Show Cause of Defendant, SENELLA DEAN WARREN, and Garnishee, COURTNEY PRIDE, LLC, (App. #73–76); (2) Garnishee's Motion to Strike Plaintiff's Request for Production Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution, filed April 16, 2024, (App. #20–26); and (3) Garnishee's Motion to Strike Subpoena Duces Tecum Without Deposition and Notice to Plaintiff's Counsel of Objection to Production Request, filed June 10, 2024, (App. #50–60).

STATEMENT OF THE CASE AND OF THE FACTS

I. Nature of the Case.

This is an appeal of an order in favor of Garnishee dissolving a writ of garnishment and discharging Judgment Debtor and Garnishee from their legal obligations to respond to numerous lawful post-judgment discovery requests served by Judgment Creditor, which Judgment Debtor and

Garnishee resisted. The underlying case involves a post-judgment proceeding that the Judgment Creditor commenced to obtain discovery in aid of execution to collect a judgment debt from Judgment Debtor.

The trial court entered an Order Granting Garnishee's Motion to Strike Subpoena Duces Tecum Without Deposition and erroneously dissolved the writ of garnishment without requiring Garnishee or Judgment Debtor to respond to or comply with any of Judgment Creditor's lawful post-judgment discovery requests. Judgment Creditor moved for an Order to Show Cause Against Judgment Debtor and Garnishee for their blatant refusal to comply with the trial court's orders mandating compliance with post-judgment discovery prior to the show-cause hearing. In response to Judgment Creditor's attempts to compel compliance with post-judgment discovery, Garnishee moved to strike all forms of discovery served upon it, concealing relevant and discoverable financial information of Judgment Debtor in aid of execution of the judgment the trial court entered against Judgment Debtor.

At the subsequent hearing, the trial court granted Garnishee's various motions allowing Judgment Debtor and Garnishee to be excused from having to respond to any post-judgment discovery and vacated an Order to Show Cause, without any basis in law finding there is no pending litigation, and that post-judgment discovery does not fall underneath the purview of Fla. R. Civ. P. 1.280. The trial court held that Judgment Creditor may not discover information from a nonparty during post-judgment collection proceedings via a Subpoena Duces Tecum Without Deposition.

Judgment Creditor timely filed this appeal of the trial court's order as a clear error of law. The findings contained in the trial court's subject order are contrary to long standing law in the State of Florida governing post-judgment discovery and ultimately prohibit Judgment Creditor from obtaining post-judgment discovery in any fashion.

II. Course of Proceedings and Facts.

On November 3, 2023, Judgment Creditor obtained a final judgment from the trial court against Judgment Debtor for money damages. App. #7. The final judgment ordered Judgment Debtor to complete under oath Florida Small Claims Rules Form 7.343 (Fact Information Sheet) and return it to the plaintiff's attorney within 45 days from the date of this final judgment, unless the final judgment is satisfied or a motion for new trial or notice of appeal is filed. App. #7. The trial court retained jurisdiction to enter further orders that are proper to compel the defendant to complete Form 7.343 and return it to Plaintiff's attorney. App. #7.

On November 10, 2023, Judgment Creditor filed a Motion for Continuing Writ of Garnishment After Judgment. App. #9. On November 28, 2023, the Continuing Writ of Garnishment Against Salary of Wages was issued by the trial court (hereinafter the "Writ"). App. #11–13. The Writ inquired as to whether Garnishee knows of any other person indebted to Defendant, or who may have any of the property of Defendant in his or her possession or control pursuant to § 77.04, Fla. Stat. App. #12. The Writ provided

Garnishee with an example of such disclosure, such as “Defendant’s paychecks directly deposited by the Garnishee to routing numbers.” App. #12. On February 13, 2024, the clerk of the trial court docketed a letter received from Garnishee advising Judgment Debtor terminated employment with Garnishee. App. #15–16.

On March 17, 2024, the Judgment Creditor propounded post-judgment discovery (Request for Production to Defendant and Garnishee Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution) to Judgment Debtor and Garnishee. App. #18. On April 16, 2024, Garnishee filed its Motion to Strike Plaintiff’s Request for Production Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution (App. #20–26) and Response to Plaintiff’s Request for Production to Defendant and Garnishee Pursuant to Fla. R. Civ. P 1.560 Discovery in Aid of Execution (App. #28–30). Judgment Debtor did not respond or object to the subject discovery despite Garnishee’s contention that the request “seeks documents that are protected from disclosure by statute and/or that would require Garnishee to violate a statute in responding.” App. #28 para. 1 and App. #29 para. 2. Notably, Garnishee’s objection does not refer to the specific purported statute that would protect such disclosure in a post-judgment discovery garnishment proceeding.

On April 20, 2024, Judgment Creditor filed and furnished Judgment Debtor with a Notice of Production from Garnishee Courtney Pride LLC, advising Judgment Debtor of Judgment Creditor’s intent to subpoena

Garnishee for documents in aid of execution of the judgment. App. #32–34. Had either Garnishee or Judgment Debtor produced the documents in response to Judgment Creditor's Request for Production Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution, Judgment Creditor's subpoena would have been unnecessary. On April 22, 2024, Judgment Creditor filed its Motion to Compel Post-judgment Discovery due to Judgment Debtor's failure to comply with the directive in the final judgment to complete and return Florida Small Claims Rules Form 7.343 (Fact Information Sheet) to Judgment Creditor's counsel. App. #36. On May 24, 2024, Judgment Creditor filed its Notice of Extension of Writ Garnishment and Subpoena Duces Tecum Without Deposition and Notice of Non-Objection to Production from Garnishee Courtney Pride LLC. App. #41. On May 31, 2024, the trial court entered an Order Granting Motion to Compel Post-judgment Discovery and ordered Judgment Debtor to serve a notarized response to the Fact Information Sheet and produce all documents requested by Judgment Creditor within ten (10) of the order. App. #43–48. The trial court warned Judgment Debtor that "DEFENDANT'S FAILURE TO COMPLY MAY RESULT IN THE IMPOSITION OF SANCTIONS AND CONTEMPT PROCEEDINGS." App. #43. On June 10, 2024, Garnishee filed its Motion to Strike Subpoena Duces Tecum Without Deposition and Notice to Plaintiff's Counsel of Objection to Production Request. App. #50–60.

On June 26, 2024, the clerk of the trial court docketed a letter received from Judgment Debtor containing irrelevant commentary which was nonresponsive to the post-judgment discovery sought from Judgment Debtor. App. #62–67. Judgment Debtor attached to her letter a Fact Information Sheet with “NA” marked all over it. App. #63–66. It goes without saying that Judgment Debtor’s return of a Fact Information Sheet with “NA” marked all over it is a willful disregard of the trial court’s order compelling post-judgment discovery (App. #43–48) entered on May 31, 2024. On June 27, 2024, Judgment Creditor filed a Motion for Order to Show Cause and for Sanctions and Issuance of Writ of Bodily Attachment for Violation of Order Granting Motion to Compel Post-judgment Discovery and Violation of Order Granting Motion to Compel Post-judgment Discovery and Violation of Order to Show Cause Against Garnishee for Refusal to Comply with Court Order. App. #69–72. The trial court entered an Order to Show Cause directed towards Judgment Debtor and Garnishee on July 10, 2024, which is the subject Order to Show Cause vacated in the non-final order on appeal. App. #73–76 and App. #85 para. 1. On July 16, 2024, Garnishee filed a Second Amended Notice of Hearing, noticing the matters at issue in the trial court’s order that is the subject of the current appeal. App. #78–80. On July 16, 2024, the trial court issued a Second Amended Notice of Hearing, consistent with the notice filed by Garnishee, and the clerk of the trial court docketed the notice on July 17, 2024. App. #82–83.

On August 13, 2024, the trial court held a hearing on the various post-judgment matters in the Second Amended Notice of Hearing. App. #78–80 and App. #82–83. Judgment Debtor failed to attend the hearing. Furthermore, at the time of the hearing neither Judgment Debtor nor Garnishee had provided any post-judgment discovery to Judgment Creditor. Following the hearing, on September 9, 2024, the trial court entered the subject order on appeal (App. #85–88), which vacated the Order to Show Cause (App. #73–76 and App. #85 para. 1), and relieved Judgment Debtor and Garnishee of any obligation to respond to post-judgment discovery. The subject order virtually rendered any future attempts of the Judgment Creditor to obtain post-judgment discovery futile by holding Plaintiff may not discover information from a non-party during post-judgment collection proceedings via a Subpoena Duces Tecum Without Deposition. App. #87 para. 9. On October 9, 2024, Judgment Creditor filed a Notice of Appeal.

SUMMARY OF ARGUMENT

The issue presented is whether the trial court violated judgment creditor's due process rights by issuing an order that was tantamount to prohibiting Plaintiff from engaging in post-judgment discovery. The trial court's dissolution of the writ and discharge of an Order to Show Cause without requiring Judgment Debtor and Garnishee to respond to post-judgment discovery (the very basis for the trial court's entry of the Order to

Show Cause) is contrary to longstanding Florida law and a violation of Judgment Creditor's due process rights to obtain discovery in aid of execution. The trial court's order finding that Plaintiff may not discover information from a nonparty during post-judgment collection proceedings via a Subpoena Duces Tecum Without Deposition is subject to reversal as a clear error of law.

First, the trial court committed reversible error by vacating the Order to Show Cause against Judgment Debtor and Garnishee without any regard for compelling responses to Judgement Creditor's post-judgment discovery. The trial court vacated the Order to Show Cause because Judgment Debtor terminated employment with Garnishee. App. #85 para. 1. However, the trial court's reliance on Garnishee's claim of Judgment Debtor's termination of employment with Garnishee, and the trial court's use of this information as a basis for discharging an Order to Show Cause pertaining to non-compliance with post-judgment discovery, is without basis in law.

Second, the trial court committed reversible error by utilizing selective portions of § 77.07(5) Fla. Stat. to dissolve the Writ in favor of Garnishee (App. #86 para. 2) during the pendency of ongoing discovery disputes, without regard for the Notice of Extension of Writ of Garnishment filed by the Judgment Creditor (App. #41), pursuant to Judgment Creditor's right to extend the writ for an additional six months.

Third, the trial court committed reversible error by not compelling Judgment Debtor and Garnishee to respond to Plaintiff's Request for

Production Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution. The trial court improperly utilized § 77.07(5) Fla. Stat. to dissolve the Writ in favor of Garnishee (App. #86 para. 2), and, because of the trial court's misapplication of § 77.07(5) Fla. Stat., the trial court determined Garnishee's Motion to Strike Plaintiff's Request for Production Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution (App. #20–26) was moot (App. #86 para. 3).

Fourth, the trial court committed reversible error by granting Garnishee's Motion to Strike Subpoena Duces Tecum Without Deposition (App. #86 para. 4), based on legal conclusions not supported by any law. The trial court erroneously granted Garnishee's motion stating that Plaintiff may not discover information from a non-party during post-judgment collection proceedings via a Subpoena Duces Tecum Without Deposition. App. #87 para. 9. The trial court furthered this improper legal conclusion by including a footnote that contains multiple misstatements of the law, not supported by any legal authority. App. #87 para. 9 n.1.

Fifth, the trial court committed reversible error by finding that post-judgment discovery does not fall underneath the purview of Fla. R. Civ. P. 1.280 because the underlying litigation concluded with entry of a final judgment. App. #87 para. 9 n.1. The trial court's finding is a clear error of law and erroneous, based on a plain reading of Fla. R. Civ. P. 1.560(a), and

furthermore, the trial court did not refer to any legal authority to support its conclusion, which violated judgment creditor's due process rights to obtain post-judgment discovery.

Sixth, the trial court committed reversible error by finding the subpoena overreaching for seeking to discover an asset of Judgment Debtor prior to Judgment Debtor's termination. App. #87 para. 10. Judgment Debtor's termination with Garnishee has no relevance to Judgment Creditor seeking information regarding the assets of Judgment Debtor, to enable Judgment Creditor to collect the debt.

STANDARD OF REVIEW

Orders construing statutes, such as those controlling garnishment, are reviewed *de novo*. *See* *Akerman Senterfitt & Eidson, P.A. v. Value Seafood, Inc.*, 121 So. 3d 83, 86 (Fla.3d DCA 2013) *(Akerman Senterfitt & Eidson, P.A.)* (quoting *Marquez v. BlueCare Home Health Servs., Inc.*, 116 So. 3d 563 (Fla.3d DCA 2013)). The standard of review of a court's interpretation of the rules of civil procedure is also *de novo*. *See* *Koppel v. Ochoa*, 243 So. 3d 886, 889 (Fla. 2018) (citing *Strax Rejuvenation & Aesthetics Inst., Inc., v. Shield*, 49 So. 3d 741 (Fla. 2010)). A hearing transcript is not necessary to correct errors of law that are apparent on the face of the record. *See* *Fugina v. Fugina*, 874 So. 2d 1268, 1269 (Fla.5d DCA 2004) (citing *Fortune v. Pantin*, 851 So. 2d 274 (Fla.5d DCA 2003); *Casella v. Casella*, 569 So. 2d 848, 849 (Fla.4d DCA 1990)).

ARGUMENT

I. THE ORDER MUST BE REVERSED BECAUSE THE TRIAL COURT FAILED TO ALLOW JUDGMENT CREDITOR TO OBTAIN INFORMATION DISCOVERABLE FROM GARNISHEE PURSUANT TO § 77.04, FLA. STAT. AND IMPROPERLY UTILIZED § 77.07(5) FLA. STAT. TO DISSOLVE THE WRIT IN FAVOR OF GARNISHEE.

As an initial matter, the Writ Judgment Creditor obtained should have provided an expeditious method of discovering information from an employer (Garnishee) as to any possible assets belonging to Judgment Debtor which may be obtained to satisfy the judgment. *See United Presidential Life Ins. Co. v. King*, 361 So. 2d 710, 712 (Fla. 1978) *(United Presidential Life Ins. Co.)*. The Florida Supreme Court, relying on § 77.04, Fla. Stat., held that judgment creditors are allowed to file unverified motions as an expeditious method of discovering information from employers and financial institutions as to any possible assets belonging to a judgment debtor which may be obtained to satisfy the judgment. *See id.* at 712 n.3.

The Writ inquired as to whether Garnishee knows of any other person indebted to defendant, or who may have any of the property of Defendant in his or her possession or control pursuant to § 77.04, Fla. Stat. App. #12. "The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." § 1.01(3), Fla. Stat. Furthermore, "[b]ecause "person" "includes" the list of individuals and entities, . . . "the legislature did not intend this list to be a limiting and

exhaustive definition of the term. In standard usage, the use of the term "include" does not indicate that a list of subjects is exhaustive." *Childers v. State*, 936 So. 2d 585, 597 (Fla.1d DCA 2006).

While Garnishee did send a letter to the clerk of the trial court indicating that Judgment Debtor was a former employee of Garnishee, the letter did not provide the Judgment Creditor with any information discoverable pursuant to § 77.04, Fla. Stat. Had Garnishee complied with § 77.04, Fla. Stat., and provided information in its possession as to any possible assets belonging to Judgment Debtor which may be obtained to satisfy the judgment (i.e. asset information Garnishee would have maintained during the tenure of Judgment Debtor's employment, such as Judgment Debtor's paychecks directly deposited by Garnishee), much of the additional post-judgment discovery issues which led to this appeal could have been avoided. The trial court improperly determined that it was overreaching for Judgment Creditor to discover an asset of an "ex-employee/Debtor," held prior to termination, (App. #87 para. 10), because "a motion for writ of garnishment is not required to allege a debt is owed between the garnishee and the judgment debtor, or that the garnishee holds property of the judgment debtor." *United Presidential Life Ins. Co.*, 361 So. 2d at 712.

Instead of the trial court ordering Garnishee to provide Judgment Creditor with information discoverable pursuant to § 77.04, Fla. Stat., mirrored by Judgment Creditor's post-judgment discovery requests, the trial court, relying on selective portions of § 77.07(5), Fla. Stat., dissolved the

Writ. The trial court selectively mentioned that Judgment Creditor failed to file a dismissal or Motion for Final Judgment within six months of the issuance of the Writ as mandated by § 77.07(5), Fla. Stat. App. #86 para. 2(a). While those are two different reasons that the Writ could have been deemed automatically dissolved, the trial court did not take into account the second sentence in § 77.07(5), Fla. Stat. which states "[t]he plaintiff has the right to extend the writ for an additional 6 months by serving the garnishee and the defendant a notice of extension and filing in the underlying proceeding a certification of such service." § 77.07(5), Fla. Stat.

On May 24, 2024, within six months after the trial court's filing of the Writ on November 28, 2023, Judgment Creditor served Garnishee and Defendant a Notice of Extension and filed in the underlying proceeding a certification of such service. App. #41. Judgment Creditor filed a Notice of Extension of the Writ anticipating Garnishee would later attempt to announce the automatic dissolution of the Writ to the trial court to evade the trial court from compelling Garnishee to comply with the disclosure requirements mandated by § 77.04, Fla. Stat., mirrored by Judgment Creditor's post-judgment discovery requests. Nevertheless, and despite Judgment Creditor's extension of the writ pursuant to § 77.07(5), Fla. Stat., the trial court relinquished Garnishee "*from any and all actions* involving this Writ *and this action*." (emphasis added). App. #86 para. 2(b).

Even *arguendo* if the trial court could declare the writ automatically dissolved pursuant to § 77.07(5), Fla. Stat. (which it could not because the

Judgment Creditor served a Notice of Extension of the Writ pursuant to § 77.07(5), Fla. Stat.), the trial court exceeded the scope of its authority to the extent that the trial court relinquished Garnishee "from any and all actions … and this action." App. #86 para. 2(b). "The language of this subsection is clear and unambiguous, such that its plain meaning should be used to determine legislative intent. It provides for the automatic dissolution of a writ of garnishment, and for the discharge of a garnishee, not from *all* further liability, but rather, from liability under the writ automatically dissolved. § 77.07(5), Fla. Stat. ("[T]he writ shall automatically be dissolved and the garnishee shall be discharged from further liability *under the writ.*") (emphasis added)." *Akerman Senterfitt & Eidson, P.A.*, 121 So. 3d at 87. Any dissolution of the writ purportedly pursuant to § 77.07(5), should have been strictly limited to the Writ and not "this action."

II. THE ORDER MUST BE REVERSED BECAUSE THE TRIAL COURT ERRONEOUSLY VACATED AN ORDER TO SHOW CAUSE CONCERNING JUDGMENT DEBTOR AND GARNISHEE'S FAILURE TO COMPLY WITH POST-JUDGMENT DISCOVERY, WITHOUT ENTERING AN ORDER COMPELLING JUDGMENT DEBTOR AND GARNISHEE TO COMPLY WITH POST-JUDGMENT DISCOVERY AS A CONDITION PRECEDENT TO VACATING THE ORDER TO SHOW CAUSE.

At the time the trial court vacated its Order to Show Cause, neither Judgment Debtor nor Garnishee had produced post-judgment discovery sought by Judgment Creditor, which Judgment Creditor was entitled to pursuant to Fla. R. Civ. P. 1.560(a), 1.560(b). The trial court erroneously

vacated its Order to Show Cause entered as a result of Judgment Creditor not receiving compliance with post-judgment discovery, because Judgment Debtor was not employed by Garnishee (a factor completely irrelevant in relation to a Judgment Creditor's right to obtain post-judgment discovery). App. #69–71, App. #73–76, and App. #85 para. 1. Furthermore, the trial court vacated its Order to Show Cause under the false premise that the writ was dissolved pursuant to § 77.07(5), Fla. Stat. App. #85 para. 1 and App. #86 para. 2.

"Discovery is part of the collection effort, which occurs after the issuance of the judgment as part of the final process for the case. See Fla. R. Civ. P. 1.560(a), 1.570(a) (describing execution and garnishment as the "[f]inal process to enforce a judgment ... for the payment of money")." *Salinas v. Ramsey*, 234 So. 3d 569, 573 (Fla. 2018). "Post-judgment discovery is appropriate as long as the judgment is enforceable." *See id.* at 574. (citing *Young v. McKenzie*, 46 So. 2d 184, 185 (Fla. 1950). "Florida judgments have a twenty-year "life" during which they are enforceable." *Salinas*, at 574. (citing *Young*, at 185–86; *Norwich Union Indem. Co. v. Willis*, 168 So. 418, 420 (Fla. 1936); § 55.081, Fla. Stat. (2004) (providing that a lien imposed under a judgment lasts no longer than twenty years)). "Accordingly, all post-judgment discovery efforts aimed at collecting such a judgment must occur—and may be compelled—within twenty years of entry of the judgment." *Salinas*, at 574. Thus, the trial court, relying on irrelevant factors, committed reversible error by vacating its Order to Show Cause

without imposing a condition precent to the vacatur of said order, mandating Judgment Debtor and Garnishee comply with Judgment Creditor's lawful post-judgment discovery requests in aid of execution.

Furthermore, the trial court committed reversible error by refusing to compel responses to post-judgment discovery in contradiction to Fla. R. Civ. P. 1.560, by vacating its Order to Show Cause without compelling or mandating any sort of compliance with post-judgment discovery. *See* *Shooster v. Gelfand*, 439 So. 2d 1000, 1001 (Fla.4d DCA 1983), holding that the trial court erred in refusing to grant appellant's motion compelling appellee's response to post-judgment discovery because the judgment was rendered following a default. "A judgment debtor is subject to discovery procedures. Fla.R.Civ.P. 1.560." *See* *Lumpkins v. Amendola*, 466 So. 2d 1214, 1215 (Fla.4d DCA 1985) (quoting *Winfield v. Brompton Air Servs., a Div. of Afr. Am. Trade Corp.*, 443 So. 2d 466 (Fla.4d DCA 1984)).

There is also no question that Garnishee is subject to post-judgment discovery procedures pursuant to Fla. R. Civ. P. 1.560. "Rule 1.560 permits a judgment creditor to obtain discovery in aid of execution from *any person* in the manner provided in the Rules of Civil Procedure." *2700 N. Ocean, LLC v. Sternberg*, 139 So. 3d 379, 380 (Fla.3d DCA 2014) *(2700 N. Ocean, LLC)* (quoting *Albert v. Hartford Nat. Bank & Tr. Co.*, 423 So. 2d 1027, 1028 (Fla.4d DCA 1982) (emphasis added); see also Fla. R. Civ. P. 1.560(a). Garnishee is undeniably a *person*. *See* *Childers*, 936 So. 2d at 597; *see also* § 1.01(3), Fla. Stat. Accordingly, the trial court erroneously determined

Garnishee's Motion to Strike Plaintiff's Request for Production Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution was moot. App. #86 para. 3. "An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) (citing *DeHoff v. Imeson*, 15 So. 2d 258 (Fla. 1943)). Garnishee's refusal to provide documentation in its possession and control pertaining to discoverable financial information of Judgment Debtor that Garnishee maintained during the tenure of Judgment Debtor's employment, coupled with Judgment Debtor also refusing to provide documents responsive to the Request for Production, and sending a Fact Information Sheet to the trial court with "NA" marked all over it (App. #63–66), does not render Plaintiff's Request for Production to Defendant and Garnishee Pursuant to Fla. R. Civ. P. 1.560 Discovery in Aid of Execution (App. #18) moot (App. #86 para. 3).

III. THE ORDER MUST BE REVERSED BECAUSE IT WAS WITHOUT BASIS IN LAW FOR THE TRIAL COURT TO DETERMINE THAT JUDGMENT CREDITOR COULD NOT DISCOVER INFORMATION FROM A NON-PARTY DURING POST-JUDGMENT COLLECTION PROCEEDINGS VIA A SUBPOENA DUCES TECUM WITHOUT DEPOSITON BECAUSE POST-JUDGMENT DISCOVERY DOES NOT FALL UNDERNEATH THE PURVIEW OF FLA. R. CIV. P. 1.280.

The trial court made numerous findings that were without basis in law to erroneously strike Judgment Creditor's Subpoena Duces Tecum Without Deposition (App. #38–39), an additional mechanism Judgment Creditor attempted to utilize to obtain post-judgment discovery from a hostile

Garnishee. The trial court determined that Judgment Creditor could not utilize a Subpoena Duces Tecum Without Deposition to discover information from a non-party during post-judgment collection proceedings (App. #87 para. 9) and arrived at that conclusion by finding post-judgment discovery does not fall underneath the purview of Fla. R. Civ. P. 1.280. (App. #87 para. 9 n.1). The trial court's improper misinterpretation and misapplication of the Fla. R. Civ. P. governing post-judgment discovery is reversible as a clear error of law.

"A judgment creditor should be allowed broad discovery into the debtor's finances, pursuant to section 56.29(4), Fla.Stat. (1985), and Fla.R.Civ.P. 1.280, even if the discovery concerns property jointly owned with others." *Jim Appley's Tru-Arc, Inc. v. Liquid Extraction Sys. Ltd. P'ship*, 526 So. 2d 177, 179 (Fla.2d DCA 1988) (citing *Goodfriend v. Druck*, 321 So. 2d 120 (Fla.4d DCA 1975); *Keystone Tr. Co. v. Rockefeller*, 118 So. 2d 604 (Fla.1d DCA 1960). "[ ] [I]n post-judgment discovery, the dispute in the original civil action has been resolved [and, therefore] [t]he matters relevant for discovery [are those] that will enable the judgment creditor to collect the debt." *2245 Venetian Ct. Bldg. 4, Inc. v. Harrison*, 149 So. 3d 1176, 1179 (Fla.2d DCA 2014) *(2245 Venetian Court Bldg. 4, Inc.)* (quoting *Regions Bank v. MDG Frank Helmerich, LLC*, 118 So. 3d 968, 969 (Fla.2d DCA 2013) *(MDG Frank Helmerich, LLC)*); (*see also* *Gen. Elec. Cap. Corp. v. Nunziata*, 124 So. 3d 940, 943 (Fla.2d DCA 2013)).

("In the context of post-judgment discovery, matters relevant to the subject matter of the pending action or which would lead to the discovery of admissible evidence, per [Florida] Rule [of Civil Procedure] 1.280(b)(1), would encompass matters identifying or leading to the discovery of assets available for execution ...." (alteration in original) (internal quotation omitted)). This means that in a post-judgment discovery context, "the creditor has the right to discover any assets the debtor might have that could be subject to levy or execution to satisfy the judgment, *or assets that the debtor might have recently transferred.*" *2245 Venetian Court Bldg. 4, Inc.*, 149 So. 3d at 1179 (quoting *MDG Frank Helmerich, LLC*, 118 So. 3d 968 (emphasis added)). "Broad discovery of a debtor's assets is permitted post-judgment—the debtor's assets, whether held individually or jointly, are relevant to collecting the debt owed. *See, e.g.*, Fla. R. Civ. P. 1.560; Form 1.977." *Id.* at 970. "Rule 1.560 permits a judgment creditor to obtain discovery in aid of execution from any person in the manner provided in the Rules of Civil Procedure. Parties may obtain discovery by deposition or by production of documents or things regarding any matter, not privileged, that is relevant to the subject matter of the [ ] action. Fla.R.Civ.P. 1.280." *Albert v. Hartford Nat. Bank & Tr. Co.*, 423 So. 2d at 1028–29.

The trial court undeniably failed to distinguish between pre-judgment and post-judgment discovery by determining there was no pending litigation for Fla. R. Civ. P. 1.280(b) to be applicable when the underlying litigation concluded with entry of a Final Judgment. App. #87 para. 9 n.1. "[ ] [A]

person's financial information is private and [ ] discovery should be limited to matters relating to contested issues in the case. See *Woodward v. Berkery*, 714 So. 2d 1027, 1035–36 (Fla.4d DCA 1998); see also Fla. R. Civ. P. 1.280(b) ("Parties may obtain discovery regarding any matter ... that is relevant to the subject matter of the pending action...."). Thus, in prejudgment discovery, a party is entitled only to the opponent's financial records that pertain to the pending action.

But in post-judgment discovery, the dispute in the original civil action has been resolved. The matters relevant for discovery no longer involve theories such as negligence or breach of contract; they are concerned with information that will enable the judgment creditor to collect the debt. See *Citibank, N.A. v. Plapinger*, 461 So. 2d 1027 (Fla.3d DCA 1985); cf. [ ] *Gibson v. Progress Bank of Fla.*, 54 So. 3d 1058 (Fla.2d DCA 2011) (comparing prejudgment and post-judgment discovery rules)." *MDG Frank Helmerich, LLC*, 118 So. 3d at 969–70.

This Court, relying on Fla. R. Civ. P. 1.560, found an Appellant's argument that a Judgment Creditor taking further legal action by seeking to enforce post-judgment discovery via an order to show cause meritless, holding that the Judgment Creditor's actions were consistent with the Florida rules for enforcing judgments, which allow discovery requests in aid of execution. *See* *Pratt v. Equity Bank, N.A.*, 124 So. 3d 313, 317 (Fla.5d DCA 2013). Accordingly, as the *2700 N. Ocean, LLC*, 139 So. 3d 379, court held that pursuant to Fla. R. Civ. P. 1.560 a judgment creditor can obtain

discovery in aid of execution from any person in the manner provided in the Rules of Civil Procedure, Garnishee's arguments to the trial court drafted in the subject order on appeal, which Garnishee was successful in getting the trial court to sign, are just as meritless.

There is also no legal basis for the trial court to have determined there was no pending litigation, amid Judgment Creditor seeking to obtain post-judgment discovery, by determining the underlying litigation concluded with entry of a Final Judgment and the post-judgment matter concluded by the purported dissolution of the Writ. App. #87 para. 9 n.1. As made clear by the *Akerman* court, there is no legal basis for a garnishee to utilize § 77.07(5), Fla. Stat., as a mechanism to be discharged from *all* further liability (i.e. being compelled by the trial court to provide a judgment creditor with documents in its possession and control relevant to discovery in aid of execution), and the trial court's order is tantamount to providing Garnishee with such relief by ordering the post-judgment matter was concluded when the Writ was dissolved. Also, as made clear by the *Salinas* court, post-judgment discovery is appropriate as long as the judgment is enforceable, and there was no legal basis for the trial court's conclusion that the post-judgment matter was concluded when Judgment Creditor holds an unsatisfied enforceable judgment against Judgment Debtor. Thus, it was entirely without legal basis for the trial court to determine Judgment Creditor's subpoena seeking information regarding an asset of Judgment Debtor (i.e. banking information), held prior to termination, was

overreaching (App. #87 para. 10); because post-judgment discovery seeking discoverable information in aid of execution of an unsatisfied judgment is appropriate as long as the judgment is enforceable (and not whether a judgment debtor has an active employment relationship with the *person* subpoenaed).

CONCLUSION

For the reasons and upon the extensive legal authorities stated in Appellant's Brief, this Honorable Court should quash the trial court's order and remand this cause to the trial court with directions to enter appropriate post-judgment order(s) to enforce Judgment Creditor's rights to obtain and conduct post-judgment discovery in aid of execution. *See Garcia v. Yellow Cab Co.*, 49 Fla. L. Weekly. D1909 (Fla. 3d DCA Sept. 18, 2024), (holding that the judgment creditor would face irreparable harm from the trial court's protective order denying the discovery sought by the judgment creditor's subpoena and that the trial court's order departed from the essential requirements of the law).

Respectfully submitted,

Dated: October 30, 2024

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Certificate of Service

I HEREBY CERTIFY that the foregoing was filed with the Clerk of Court through the e-Portal on October 30, 2024, and a copy of the same was served on SENELLA DEAN WARREN, Defendant/Appellee, at SDWARREN19@GMAIL.COM, 2217 CREEKSIDE CT, PENSACOLA, FL 32514, COURTNEY PRIDE LLC, c/o Counsel for Garnishee/Appellee, ANDREA CAROL LYONS, ESQ. at acl@esclaw.com, kturk@esclaw.com, and lbouler@esclaw.com, via e-Service in accordance with Fla. R. Jud. Admin. 2.516.

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Certificate of Compliance with Font Requirements

I HEREBY CERTIFY that the foregoing INITIAL BRIEF OF APPELLANT has been prepared in Arial 14-point font as required by the Florida Rules of Appellate Procedure 9.045. This brief complies with the type-volume limitations of Florida Rules of Appellate Procedure 9.210 as the brief contains **5,550** words, excluding those parts exempted by Florida Rules of Appellate Procedure 9.045.

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