IN THE COURT OF APPEALS
STATE OF GEORGIA

GEBO LAW LLC,

Appellant,

v.

BRYAN CAVE LEIGHTON PAISNER LLP,

Appellee.

Georgia Court of Appeals
Case No. A24A1243

BRIEF OF CROSS-APPELLANT GEBO LAW LLC

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The trial court generally got it right: a judgment creditor may garnish an attorney's trust account when the trust account holds funds belonging to a judgment debtor. But the trial court erred when it judicially created an exception to that rule – that attorneys may somehow exempt some of the judgment debtor's funds from garnishment by merely having an engagement letter set a minimum balance the judgment debtor client must maintain in the trust account as the attorneys perform work over time. Georgia law creates no such exception, nor would any such exception be logical or equitable. If attorneys hold a judgment debtor's funds in a trust account, and the attorneys have not otherwise billed against or earned those funds, the funds remain the property of the judgment debtor and are subject to garnishment.

Here, it is undisputed that at the time it was garnished Bryan Cave Leighton Paisner LLP ("Bryan Cave") held $175,265 of its judgment debtor client's money in its trust account. V2-239.[1] The money was

[1] Because this case involves an appeal and a cross appeal, only one record was transmitted from the trial court, as allowed under O.C.G.A. § 5-6-38. Therefore citations to the record throughout refer to the record in the main appeal, *Bryan Cave Leighton Paisner, LLP v. Gebo Law LLC*, No. A24A1230.

refundable to the judgment debtor client if it terminated Bryan Cave's representation. Thus, the full $175,265 was subject to garnishment.

Existing Georgia precedent permits garnishment of client funds in the hands of an attorney. *Water Processing Co. v. Southern Golf Builders, Inc.*, 248 Ga. 597, 598 (1981). And O.C.G.A. § 18-4-4, the statute setting forth obligations subject to garnishment, creates no exception to prevent a judgment debtor's funds from being garnished merely because the funds are held in an attorney's trust account. To the contrary, "[a]ll money or other property of the defendant in the possession or control of the garnishee… shall be subject to garnishment." *See* O.C.G.A. § 18-4-4(b); *see also* O.C.G.A. § 18-4-6 (providing specific exemptions, but not including money held in an attorney's trust account). Accordingly, this Court should reverse the trial court and find all of the judgment debtor's funds held in Bryan Cave's trust account are subject to garnishment.

I. JURISDICTIONAL STATEMENT

This Appeal is properly before this Court as opposed to the Supreme Court pursuant to the Constitution of the State of Georgia, Ga. Const., Art. VI, Sec. V, para. III, and pursuant to O.C.G.A. § 5-6-35 and O.C.G.A.

§ 15-3-3.1. Appellee Bryan Cave filed a timely Application for Appeal of the decision of the State Court of Fulton County. This Court granted that Application on February 14, 2024. Appellee Bryan Cave then filed its Notice of Appeal on February 23, 2024. Gebo Law filed this cross appeal within the fifteen days allowed by O.C.G.A. § 5-6-38.

II. ENUMERATION OF ERRORS

The trial court erred when it found law firms could exempt client funds from garnishment up to the trust account's minimum balance as set by the engagement agreement between the law firm and its client. V2-568. The trial court cited no statute or case law in support of its determination. V2-568-69.

III. STATEMENT OF THE CASE

At its core, this case is about whether funds held in an attorney's trust account belong to the attorney or whether they remain client property. As the facts show, finding funds in a trust account belong to an attorney would allow rampant abuse of trust accounts by judgment debtors.

On December 19, 2022, following a week-long jury trial and verdict, Gebo Law obtained a judgment against Cordial Endeavor Concessions of Atlanta, LLC ("Cordial") for $1,150,000 plus post-judgment interest. V2-386. The following day, December 20, 2022, Cordial wrote four separate checks for $25,000 to Garnishee Bryan Cave. V2-394. At the time Cordial wrote those checks to Bryan Cave, Cordial had not yet even engaged Bryan Cave to represent it in any matter. It was not until 24 days later, on January 13, 2023, that Cordial signed an engagement agreement with Bryan Cave. V2-437-41. Pursuant to the agreement, Cordial "engaged [Bryan Cave] to represent [it] in Advice in connection with potential restructuring considerations regarding airport concession business at Atlanta Hartsfield Jackson International Airport." V2-437. The scope of representation does not include appeal of the underlying judgment[2] or any garnishment actions. *Id.*

The engagement agreement required a retainer of $100,000. V2-438. The retainer funds were to be deposited into Bryan Cave's "client

[2] Indeed, Cordial hired another law firm to represent it in appealing the underlying judgment, and this Court has since affirmed Gebo Law's judgment against Cordial.

trust account." *Id.* Per the agreement, any unused deposit is to be refunded to Cordial at the conclusion of the engagement. V2-439. The retainer funds are "refundable to the extent not subject to disbursement." *Id.* The engagement agreement did not provide that any of the retainer funds were earned upon receipt. Instead, the engagement agreement allowed Bryan Cave to withdraw from the trust account to satisfy Bryan Cave's monthly bills and expenses. V2-438-39. Specifically, "[w]ithdrawal from the trust account will be made on or after the date of [Bryan Cave's] statement for services each month." V2-439. Additionally, if the retainer amount in trust dipped below $50,000, then Bryan Cave could request Cordial replenish the retainer to $50,000. V2-439. Unless and until such time, however, Cordial had no obligation to deposit any additional money in trust with Bryan Cave.

On February 23, 2023, Bryan Cave issued its invoice for January work in the amount of $24,735. V2-442-45. On the same date, Bryan Cave transferred $24,735 from Cordial's client trust account to the Bryan Cave operating account to satisfy the bill. V2-445. As of February 23, 2023, $75,265.00 remained in Cordial's client trust account. *Id.*

On March 10, 2023, with its client trust account balance still at $75,265.00, and having no additional obligation to pay Bryan Cave, Cordial sent another $100,000 of its money to Bryan Cave. V2-397-98. Bryan Cave had not even requested these funds from Cordial. V2-398. Cordial knew garnishment was ongoing. Its bank had already been served with a garnishment on February 6, 2023, over a month before Cordial sent the additional $100,000 to Bryan Cave from a separate bank account Cordial had opened. V2-22. The only explanation is that Cordial sent the funds to Bryan Cave in an attempt to continue to hide its money from Gebo Law and avoid paying its judgment debt.

On March 22, 2023, Plaintiff served Bryan Cave with the summons of garnishment at issue here. V2-243. As of that date, Bryan Cave was holding $175,265 of Cordial's money in its trust account. V2-239. Nevertheless, Bryan Cave answered the garnishment on May 1, 2023, and claimed it possessed no property of Cordial. V2-122. Gebo Law therefore responded by filing a traverse. V2-126.

On December 21, 2023, the trial court entered its order requiring payment by Bryan Cave of $125,265 (erroneously exempting $50,000

from payment) to Gebo Law. V2-568.

IV. ARGUMENT

a. Standard of Review

As an initial matter, this Court "owe[s] no deference to a trial court's ruling on a legal question." *Dodds v. Dabbs, Hickman, Hill & Cannon, LLP*, 324 Ga. App. 337, 345 (2013). In a garnishment proceeding such as this, "[w]hen the evidence is uncontroverted and no question of witness credibility is presented … the trial court's application of the law to undisputed facts is subject to de novo appellate review." *Truist Bank v. Stark*, 359 Ga. App. 116, 116 (2021).

b. Georgia law is clear that garnishment of an attorney trust account is permitted and there is no exemption for funds up to a minimum balance.

The Georgia garnishment statutes provide for garnishment of all of Defendant's property in the possession of a garnishee at the time of service of garnishment. O.C.G.A. § 18-4-4. Although the garnishment statute provides some limited exemptions, it does not provide any exemptions for attorney trust accounts. O.C.G.A. § 18-4-6. There is also no statutory authority to exempt retainer fees in attorney trust accounts

from garnishment. O.C.G.A. § 18-4-6. Similarly, because there is no listed exemption for attorney trust accounts, there is no listed exemption for funds up to the minimum trust balance required by an attorney's private engagement letter with its judgment debtor client.

Where there is no explicit authority for an exemption, courts are required to find the property subject to garnishment. *See, e.g.*, *Smith v. Robinson*, 355 Ga. App. 159, 159-161 (2020). In *Smith*, the Georgia Court of Appeals found no garnishment exemption for the portion of wages allocated to child support. *Id.* at 159. Also in *Smith*, this court specifically rejected public policy arguments in favor of exemption, finding "[i]t is fundamental that matters of public policy are entrusted to the General Assembly, not this [c]ourt." *Id.* at 161. And this Court has recognized "[g]arnishment proceedings are measured by the strict terms of the statute." *Wachovia Bank of Ga. N.A. v. Unisys Finance Corp.*, 221 Ga. App. 471, 474 (1996). This Court therefore cannot create an exemption to the garnishment statutes. That is left for the General Assembly if it so chooses. By denying garnishment of the full $175,265.00 trust account balance at issue here, the trial court created a common law garnishment

exemption. This Court should correct that error.

In addition to the framework set forth by the Georgia garnishment statutes, the Georgia Supreme Court has also expressly held that "money belonging to a client in the hands of an attorney is subject to garnishment." *Water Processing Co. v. Southern Golf Builders, Inc.*, 248 Ga. 597, 598 (1981).

The trial court, without citing any supporting authority, held that $50,000 of Cordial's money in Bryan Cave's trust account was not subject to garnishment, presumably because Bryan Cave's engagement letter required Cordial to maintain at least that minimum balance. V2-568. Such an exception lacks basis in Georgia law. No statute or case provides for that exception. Because Georgia garnishment law is purely statutory, *Smith*, 355 Ga. App. at 159-161, courts cannot create exceptions. The trial court exceeded its authority, and this Court should reverse the finding that $50,000 of Cordial's money held in trust was not subject to garnishment.

c. The entire body of funds held in the client trust account is client property, which is subject to garnishment.

The $50,000 minimum balance is still Cordial's property and is

therefore subject to garnishment. Georgia Rule of Professional Conduct 1.15(II)(a) states that every lawyer must deposit client funds into a trust account. Subsection (b) states that aside from funds for account maintenance, lawyer personal funds should not be in a trust account. Ga. R. Prof. Con. 1.15(II)(b) That rule does allow attorneys to deposit unearned fees into a client trust account. Absent special circumstances, attorneys are not required, however, to deposit advance fee payments into a client trust account. *See* Formal Advisory Op. 91-2. Taking Rule 1.15(II) together with Formal Advisory Opinion 91-2, it follows that by depositing funds into the client trust account as opposed to the operating account, Bryan Cave recognized that the funds at issue here were client funds until earned through billing by Bryan Cave. Those funds were therefore property of Cordial and were subject to garnishment. Nothing about the $50,000 minimum balance funds is different from the other funds held in trust.

The engagement agreement executed by Cordial further supports that the funds belong to Cordial, not Bryan Cave. The retainer funds were to be deposited into Bryan Cave's "client trust account." V2-438. Per

the agreement, any unused deposit is to be refunded to Defendant at the conclusion of the engagement. V2-439. The retainer funds are "refundable to the extent not subject to disbursement." *Id.* The retainer was not earned on receipt. Instead, the engagement agreement allowed Bryan Cave to withdraw from the trust account to satisfy Bryan Cave's monthly bills and expenses. V2-438-439. Specifically, "[w]ithdrawal from the trust account will be made on or after the date of BCLP's statement for services each month." V2-439. If Bryan Cave had intended to immediately take ownership of any of the funds, it could have structured a different fee arrangement, but it did not.

As noted in Georgia Bar Formal Advisory Opinions 03-1 and 91-2, Bryan Cave had another option: enter into an agreement for a pre-paid, flat fee that was non-refundable and then deposit the funds into its operating account. But Bryan Cave did not do this, and there is no assurance Cordial would have agreed to this. Regardless, Bryan Cave is not allowed to retrospectively and unilaterally change the terms of its own engagement. In fact, if Bryan Cave's argument were correct, and the trust funds all belonged to Bryan Cave immediately upon receipt, it

violated Georgia Rule of Professional Conduct 1.15(II) by holding personal funds in trust.

d. Bryan Cave does not have a valid security interest in the $50,000 minimum balance.

As an alternative argument below, Bryan Cave claimed it has a security interest in the funds at issue. This position has no support in law or logic. First, Bryan Cave cited no Georgia law supporting its position. In fact, the law review article cited does not mention Georgia. That is because Georgia does not recognize a security retainer. *See, e.g., In re Patterson*, 2008 WL 7842101, at *2 (N.D. Ga. Jan. 15, 2008). ("Georgia law does not recognize a security retainer."). Again, Bryan Cave attempted to create a garnishment exemption that does not exist. The trial court did not explain its rationale for exempting the $50,000 minimum balance from garnishment, but to the extent it relied on Bryan Cave's security interest argument, that was improper and lacks basis in Georgia law.

Even if Georgia law did recognize a security retainer, however, nothing in Bryan Cave's engagement agreement suggests this retainer is for ***securing*** payment of legal fees. While the agreement does reference

an "advance fee payment," the words security and collateral are never used. As Bryan Cave recognized below, a security interest arises only in payments made for "expected future services." V2-342. To create a security interest, Bryan Cave would need to use precise and specific language securing payment for a specific scope of work. Bryan Cave drafted the agreement and could have included such language but did not.

If this Court were to find in Bryan Cave's favor, the potential for abuse is endless. Judgment debtors could send funds to law firms, regardless of whether there is expected legal work in the future, ask the law firm to set a high minimum balance for the retainer trust account, and judgment creditors would be unable to reach the funds. The garnishment process is designed to avoid this type of behavior, not encourage it. This Court should find Bryan Cave has no security interest in the funds held in trust for Cordial and therefore find the full trust account balance was subject to garnishment.

e. Law in other contexts and states supports a finding that the entire balance of the trust account is subject to garnishment.

Under Georgia law alone, the trial court correctly determined the funds at issue were subject to garnishment. But law from other contexts and states supports that result as well. No law in any context supports the trial-court-created exemption for funds up to the minimum balance.

First, the Northern District of Georgia has recognized that attorney retainers become part of a bankruptcy estate as well. *See, e.g.*, *In re Patterson*, 2008 WL 7842101, at *1-2 (N.D. Ga. Jan. 15, 2008). To become part of a bankruptcy estate, funds must belong to the client not the attorney. There is no exemption for a "minimum balance" in the bankruptcy context, just as this Court should not recognize an exemption here.

Second, other states with similar rules to Georgia have found attorney retainers subject to garnishment without regard to any minimum balance provision. In Ohio, for example, the court of appeals found "a debtor's funds generally are not exempt from garnishment merely because the funds are placed with an attorney." *Hadassah v.*

Schwartz, 197 Ohio App. 3d 94, 97 (2011). In *Hadassah*, the judgment debtor paid an attorney a $150,000 retainer. *Id.* at 96-97. The attorney's office claimed the funds were not subject to garnishment because they represented "a retainer for ongoing legal services." *Id.* at 97. There, the court relied on the Ohio Rules of Professional Conduct, which "mandate that property belonging to a client or third party be kept in a client's trust account and that property belonging to an attorney be kept separate from a client's property," the court found that because the attorney placed the $150,000 retainer in an IOLTA account, the client retained ownership rights over the retainer and it was therefore subject to garnishment. *Id.* at 97-98.[3] None of these cases make a distinction between funds paid for a minimum trust account balance versus funds paid as a general retainer. This is because the funds remain client property no matter the

[3] Numerous other states have found the same. *See, e.g.*, *Sports Imaging of Arizona, L.L.C. v. Meyer Hendricks & Bivens, P.A.*, No. 1 CA-CV 05-0533, 2008 WL 4516397, at *2 (Ariz. Ct. App. Oct. 2, 2008) (Arizona); *In re Marriage of Rubio*, 313 P.3d 623, 625 (Colo. App. 2011) (Colorado); *M.M. v. T.M.*, 50 Misc. 3d 565, 578, 17 N.Y.S.3d 588, 599 (N.Y. Sup. Ct. 2015) (New York); *Dowling v. Chicago Options Assocs., Inc.*, 226 Ill. 2d 277, 293, 875 N.E.2d 1012, 1022 (2007) (Illinois); *Marcus, Santoro & Kozak, P.C. v. Hung-Lin Wu*, 274 Va. 743, 750-53 (2007) (Virginia).

designation. This Court should recognize that all funds paid as a retainer remain client property so long as they are held in the trust account.

V. CONCLUSION

This Court should reverse the trial court's unsupported finding that funds up to the minimum balance in a trust account are not subject to garnishment. Georgia precedent allows garnishment of attorneys' trust accounts without exemption or exception. Bryan Cave's own engagement agreement supports that all funds at issue were client property at the time of garnishment. Accordingly, this Court should find the entire $175,265 subject to garnishment.

This submission does not exceed the word count limit imposed by Rule 24.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served Appellee Bryan Cave in the foregoing matter with a copy of this pleading by sending a PDF copy via electronic mail to the addresses listed below. I certify that there is a prior agreement with Bryan Cave to allow documents in a PDF format sent via email to suffice for service.

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