STATE OF MICHIGAN

COURT OF APPEALS

ONECARE LTC, LLC,

Plaintiff-Appellee,

v

DIVERSIFIED REHAB SERVICES, LLC, doing business as GREENFIELD REHAB & NURSING CENTER,

Defendant/Third-Party Plaintiff,

and

PINAL PATEL,

Third-Party Plaintiff,

and

VAIRA ALJAJAWI,

Third-Party Defendant,

and

HUNTINGTON NATIONAL BANK,

Garnishee Defendant-Appellant.

UNPUBLISHED
November 23, 2021

No. 355131
Oakland Circuit Court
LC No. 2020-180835-CB

Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

In this postjudgment garnishment matter, garnishee defendant, Huntington National Bank, appeals as of right the trial court's order compelling it to marshal assets to satisfy the judgment

plaintiff, OneCare LTC, LLC, obtained against defendant/third-party plaintiff, Diversified Rehab Services, LLC, doing business as Greenfield Rehab & Nursing Center (Diversified).[1] For the reasons set forth in this opinion, we vacate the trial court's order and remand for further proceedings.

I. BACKGROUND

Diversified has three checking accounts and three commercial loans from Huntington. The loans are secured by all of Diversified's assets—including its bank account, real property valued at about $4.8 million, and equipment. Huntington also issued Diversified a Paycheck Protection Program loan through the CARES Act that is unsecured. Following arbitration of a contractual dispute, OneCare secured a judgment against Diversified for $558,456.51. In an effort to secure payment on the judgment, OneCare served Huntington with two writs of nonperiodic garnishment. Huntington, however, exercised its right of setoff, applying $316,251.13 to the outstanding balances of the three commercial loans on July 16, 2020, and $156,436.67 on September 17, 2020. As of August 20, 2020, the balances of the commercial loans totaled nearly $4 million. Upon OneCare's motion, the trial court ordered Huntington to marshal assets, requiring Huntington to pay OneCare the amount of funds in Diversified's accounts on the dates of garnishment. Huntington now appeals.

II. ANALYSIS

On appeal, Huntington argues the trial court erred because marshaling of assets would be inequitable and that the the trial court erred by ordering marshaling of assets without making any findings.

Our Supreme Court has provided the relevant standards of review:

> We hear and consider equity cases de novo on the record on appeal. The interpretation and applicability of a common-law doctrine is also a question that is reviewed de novo. [T]he granting of equitable relief is ordinarily a matter of grace, and whether a court of equity will exercise its jurisdiction, and the propriety of affording equitable relief, rests in the sound discretion of the court, to be exercised according to the circumstances and exigencies of each particular case. [*Tkachik v Mandeville*, 487 Mich 38, 44-45; 790 NW2d 260 (2010) (quotation marks and citations omitted; alteration in original).]

Garnishment is authorized by statute, and postjudgment garnishment proceedings are governed by MCR 3.101. *Ladd v Motor City Plastics Co*, 303 Mich App 83, 97; 842 NW2d 388 (2013). A garnishee defendant is, in general, liable to a judgment creditor for the amount of the judgment belonging to the judgment debtor that is in the defendant's possession and control,

[1] Pinal Patel and Vaira Aljajawi are not participating in this appeal.

"[s]ubject to . . . any setoff permitted by law." MCR 3.101(G). Thus, under certain conditions not in dispute here,[2] a bank may set off a deposit that is garnished by "the amount of any matured indebtedness due it by the depositor." *Ladd*, 303 Mich App at 97, quoting 6 Am Juris 2d, Attachment & Garnishment, § 373, p 748 (quotation marks omitted).

Nevertheless, a junior secured creditor may invoke the equitable remedy of marshaling of assets to obtain payment of a judgment notwithstanding a senior creditor standing in the way. *Sys Soft Technologies, LLC v Artemis Technologies, Inc*, 301 Mich App 642, 655; 837 NW2d 449 (2013).

> [W]here a [senior] creditor has a lien against two funds or parcels and the junior lienor has a lien against only one of those properties, a court of equity may compel the former to satisfy its claim out of the property that is encumbered by only its lien. However, application of the doctrine is limited in that it will not be allowed if it cannot be invoked without prejudicing or injuring the rights of the senior creditor or where it would harm the interests of a third party. [*SCD Chem Distrib, Inc v Maintenance Research Laboratory, Inc*, 191 Mich App 43, 46; 477 NW2d 434 (1991).]

OneCare argued below that marshaling of assets would be equitable because, according to OneCare, Huntington was significantly oversecured. Specifically, Huntington had a mortgage on Diversified's real property which was valued at about a million dollars over Diversified's secured debt to Huntington. And this did not account for Huntington's security interest upon all of Diversified's equipment and other assets, or multiple guaranties from individuals and another company for the full amount of Diversified's debt. Huntington—which twice exercised its right of setoff when served with two writs of garnishment from OneCare in the total amount of $472,687.80—opposed marshaling of assets by arguing it would be forced to foreclose on Diversified's property or seek repayment via the guaranties to recover the debt owed to it by Diversified if it had to marshal assets to pay OneCare. The trial court, without any discussion or explanation, ordered Huntington to marshal assets to pay OneCare under the terms of the writs of garnishment.

The trial court abused its discretion by ordering the marshaling of assets without making any findings of fact or stating any conclusions of law for our review. We recognize that "[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule." MCR 2.517(A)(4). But garnishee liability is generally subject to trial "in the same manner as other civil actions." MCR 3.101(M)(1). Thus, OneCare's motion for marshaling of assets was akin to a motion for summary disposition, with the trial court's order granting the same being a final judgment. See MCR 3.101(O)(1) ("*Judgment may be entered* against the garnishee for the payment of money or the delivery of specific property *as the facts warrant*.")

[2] Neither party disputed below, nor do they dispute on appeal, that Huntington has the right of setoff. The only issue is whether that right may be circumvented by the equitable doctrine of marshaling of assets.

(emphasis added). Accordingly, findings of fact and conclusions of law were necessary to enable meaningful appellate review. MCR 2.517(A)(1).

Additionally, while the doctrine of marshaling of assets may be available to OneCare as an equitable remedy, marshaling is not available "if it cannot be invoked without prejudicing or injuring the rights of the senior creditor." *Id*. Thus, before ordering marshaling, the trial court was required to determine whether ordering such would prejudice the rights of Huntington, a conclusion which requires the trial court to make findings of fact and conclusions of law susceptible to appellate review. See *Woodington v Shokoohi*, 288 Mich App 352, 357; 792 NW2d 63 (2010) (reversing and remanding because the trial court failed "to make findings of fact that [were] susceptible to appellate review"). Failure to state any findings or conclusions was erroneous, and the trial court's order must be vacated.

Vacated and remanded. We do not retain jurisdiction. No costs are awarded. MCR 7.219.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Mark T. Boonstra