

STATE OF MICHIGAN
COURT OF APPEALS

TRIANGLE ASSOCIATES, INC.,

Plaintiff-Appellee,

v

BENTWATERS PARTNERS, L.P., and POINTE
WEST I, L.P.,

Defendants,

and

FIFTH THIRD BANK,

Garnishee Defendant-Appellant.

UNPUBLISHED

June 26, 2014

No. 313726

Kent Circuit Court

LC No. 08-003945-CK

Before: FITZGERALD, P.J., and SAAD and WHITBECK, JJ.

PER CURIAM.

Garnishee defendant Fifth Third Bank appeals the trial court's order that denied its motion for reconsideration to set aside a default judgment. For the reasons stated below, we remand to the trial court for entry of an order of dismissal.

I. FACTS AND PROCEDURAL HISTORY

This case has a long and convoluted procedural history, only some of which is relevant to this appeal. Plaintiff Triangle Associates ("Triangle") won a settlement for \$430,465.96 against defendant Bentwaters in July 2008. Since that time, Triangle has sought to execute writs of garnishment against Bentwaters' debtors for the funds. In July 2009, Triangle learned that the United States Department of Agriculture ("USDA") had a security interest in most of Bentwaters' assets. In August 2011, the USDA perfected its security interest in Bentwaters' account at Fifth Third, which contained most of Bentwaters' funds.

At Triangle's request, the Kent Circuit Court issued a writ of garnishment to Fifth Third in June 2012, which demanded the original judgment plus interest (\$484,550.40) from Bentwaters' account. Fifth Third immediately placed a hold on the account, and then began research on whether the USDA's security interest took priority over Triangle's garnishment. In the process, Fifth Third failed to timely file a garnishment disclosure on June 21, 2012. Triangle

requested a default judgment as to Fifth Third's failure to comply with the garnishment disclosure, which the trial court entered. The trial court did not, however, decide whether Fifth Third had to satisfy Triangle's garnishment from its own corporate assets in the event that the USDA's security interest took priority over Triangle's interest in the funds in Bentwaters' account.

In the meantime, Fifth Third appealed its motion for reconsideration on the default judgment to our Court, which granted leave to appeal in October 2013.¹ Fifth Third also interpleaded the USDA in the Western District of Michigan, and sought to determine whether the USDA's security interest had priority in Bentwaters' account. On March 6, 2013, Fifth Third filed a motion to hold its appeal to our Court in abeyance, pending the outcome of the federal suit, which our Court denied.² The federal court issued an order on April 26, 2013, and held that the USDA's security interest had priority over Triangle's writ of garnishment in Bentwaters' account. It ordered Fifth Third to pay the full amount of the account to the court, which would in turn give the money to the USDA.

After the federal court issued its order, Fifth Third filed a complaint for declaratory relief in the Kent Circuit Court, and sought a ruling on the remaining question of whether Fifth Third had to satisfy Triangle's writ of garnishment from its own corporate funds, as opposed to the funds in Bentwaters' account. On April 28, 2014, the trial court issued a final judgment, and held that, in light of the federal court judgment on the priority of the USDA's security interest, Fifth Third performed all of its obligations as a garnishee defendant, and that it cannot be held liable for the \$484,550.40 in Triangle's garnishment writ.³

Though the events of the past few months have radically altered each party's position in this case, this appeal remains limited to "the issues raised in the application and supporting brief,"⁴ namely Fifth Third's contention that the trial court violated MCR 2.603(B) when it denied Fifth Third's motion for reconsideration.

II. ANALYSIS

A court "will not decide moot issues. This is because it is the principle duty of [a] Court to decide actual cases and controversies." *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010) (internal citation and quotation marks omitted), amended 784 NW2d 204 (2010). "An

¹ *Triangle Associates Inc v Bentwater Partners LP*, unpublished order of the Court of Appeals, entered October 18, 2013 (Docket No. 313726).

² *Triangle Associates Inc v Bentwater Partners LP*, unpublished order of the Court of Appeals, entered (Docket No. 313726).

³ The parties at oral argument agreed that this Court could take judicial notice of the trial court's order, which postdates this appeal and the parties' filing of their briefs.

⁴ *Triangle Associates Inc v Bentwater Partners LP*, unpublished order of the Court of Appeals, entered October 18, 2013 (Docket No. 313726).

issue is moot if an event has occurred that renders it impossible for the court to grant relief.” *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 472; 761 NW2d 846 (2008). In other words, a court will not review a moot case because doing so “would be a purposeless proceeding.” *Richmond*, 486 Mich at 35 (internal quotation marks omitted).

This appeal is manifestly a “purposeless proceeding.” *Id.* Whatever relief Fifth Third sought in its motion for reconsideration was granted by the trial court in the April 28, 2014 final judgment, in which the trial court stated that Fifth Third performed its obligations as a garnishee defendant and cannot be held liable for the \$484,550.40 in Triangle’s writ of garnishment. It is thus impossible for our Court to grant relief, as an affirmance or reversal of the trial court’s denial of Fifth Third’s motion for reconsideration would have no impact on the trial court’s April 2014 final judgment. *Tenneco Inc*, 281 Mich App at 472.

In any event, the trial court’s final judgment reached the correct result, as Triangle essentially demands that Fifth Third pay it a massive windfall. Triangle sought to force Fifth Third to pay \$484,550.40 from Fifth Third’s corporate funds to satisfy a debt that Bentwaters—not Fifth Third—incurred. Triangle offers no compelling argument as to why it should receive this money from Fifth Third’s corporate funds, and instead lists now irrelevant ways in which it believes Fifth Third has violated Michigan Court Rules. “An appellant may not simply announce a position on appeal and leave it to this Court to rationalize the basis for that claim.” *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 287; 761 NW2d 761 (2008). The proper forum for such an argument is an appeal of the trial court’s final judgment, which Triangle may make if it so chooses.

We remand to the trial court for entry of an order of dismissal. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad
/s/ William C. Whitbeck