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IN THE
COURT OF APPEALS OF INDIANA

JOHN F. FREIDLINE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0706-CV-257
	)	
ANTHONY THOMALLA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable David T. Ready, Special Judge
Cause No. 71C01-0310-PL-469

October 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, John F. Freidline (Freidline), appeals the trial court's Order on Remand identifying certain property held by Freidline available for levy by Appellee-Plaintiff, Anthony Thomalla (Thomalla), to satisfy Thomalla's judgment against Land Trust No. 4810 (the Land Trust), the judgment debtor.

We affirm.

ISSUE

Freidline raises one issue on appeal, which we restate as: Whether the trial court's Order on Remand properly ordered Freidline to pay the judgment owed by the Land Trust.

FACTS AND PROCEDURAL HISTORY

Freidline and Thomalla have twice previously appeared before our court in an attempt to determine their dispute. *See Land Trust No. 4810 v. Thomalla*, Cause No. 71A03-0010-378, slip op. (June 12, 2001); *Freidline v. Thomalla*, 852 N.E.2d 17 (Ind. Ct. App. 2006). In our more recent opinion, we explained that:

> In 1992, Thomalla entered into an Office Building Lease with the Land Trust for a five-year term, leasing an office in the John M. Studebaker building located in South Bend, Indiana. The trust corpus of the Land Trust consisted of this single office building and Freidline was listed as its sole beneficiary. In July of 1998, Thomalla filed his Complaint against the Land Trust alleging breach of contract and seeking to recover damages. Freidline, appearing as the beneficiary of the Land Trust, counterclaimed for breach of contract. On August 24, 2000, following a bench trial, the trial court found in favor of Thomalla and awarded him $14,400.50, which included attorney fees and pre-judgment interest. At the same time, the trial court also found in favor of the Land Trust and awarded it $1,647.50, which included prejudgment interest.
>
> Appealing the trial court's decision, the Land Trust contended, in part, that the trial court had erred by declining to award it attorney fees on its

> counterclaim. After review, we agreed and remanded to the trial court for determination of the appropriate amount of reasonable attorney fees. On July 27, 2001, the trial court entered an amended judgment in favor of Thomalla in the amount of $11,753.
>
> On June 26, 2003, Thomalla filed a Verified Motion in Proceedings Supplementary against Freidline as garnishee-defendant pursuant to Indiana Trial Rule 69(E) to enforce its unpaid judgment against the Land Trust. On February 3, 2005, Thomalla filed his Motion for Summary Judgment, to which Freidline responded. Additionally, Freidline filed his own Motion for Summary Judgment. On January 9, 2006, following a hearing, the trial court entered findings of fact and conclusions of law in favor of Thomalla's Motion for Summary Judgment, finding that Freidline had an obligation to the Land Trust to pay its debts and requiring Freidline to satisfy the Land Trust's judgment debt owed to Thomalla.

Freidline, 852 N.E.2d at 19.

After considering Freidline's last appeal of the trial court's judgment that Freidline had an obligation to the Land Trust to pay its debts, we determined that Freidline possessed nonexempt property and obligations owing to the judgment-debtor, the Land Trust, subject to proceedings supplemental to execution. Accordingly, we remanded the case to the trial court with instructions to identify the specific property of the Land Trust held by Freidline, or obligations by Freidline to the Land Trust, on which execution can be levied to satisfy the judgment debt in favor of Thomalla.

On remand, Thomalla presented evidence that he paid $31,130.50 in rent and a $788 security deposit to the Land Trust during the course of his lease. The trial court found that "because Freidline retained absolute control of the management of the building in which Thomalla rented office space and collected all the rent and profits resulting from the Lease, Freidline had an interest in the rent collected." (Appellant's App. p. 9). Based on this reasoning, the trial court found that the rent collected by Freidline on behalf of the Land

Trust is non-exempt property subject to proceedings supplemental for execution.

Freidline now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Freidline contends that the trial court erred in concluding that the rent collected by him on behalf of the Land Trust constitutes nonexempt property subject to proceedings supplemental. Specifically, Freidline argues that (1) there is no evidence the Land Trust has any current interest in any assets held by Freidline; (2) there is no evidence any of the rents collected by Freidline on behalf of the Land Trust are currently held by Freidline, and (3) in the alternative, if we find the Land Trust has a present interest in rent payments made by Thomalla. Freidline requests us to remand to the trial court to determine what portion was held by him on June 20, 2004, the date he was served with a Verified Motion in Proceedings Supplementary.

I. *Standard of Review*

The proceedings before the trial court on remand since our last opinion consisted of briefings from the parties with submitted paper exhibits. Because we are reviewing the same information that was available to the trial court, we need not defer to its findings. *Hunter v. Klimowicz*, 867 N.E.2d 626, 628 (Ind. Ct. App. 2007). Therefore, we will apply a *de novo* standard of review to the trial court's decision at issue. *See id*. If we find error in the judgment of the trial court, modification of the trial court's award is proper. *Stroud v. Lints*, 790 N.E.2d 440, 445 (Ind. 2003). However, we will affirm the judgment of the trial court on any legal theory supported by the evidence in the record. *GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001).

II. *Analysis*

In an attempt to protect Freidline from undue personal liability, we previously ordered the trial court to identify specific property of the Land Trust held by Freidline, or obligations by Freidline to the Land Trust on which execution could be levied to satisfy the judgment debt of the Land Trust in favor of Thomalla. *See Freidline*, 852 N.E.2d at 21-22. Our analysis of the situation was based on the application of Ind. Trial Rule 69(E) to the facts. T.R. 69(E) provides in relevant part:

> Proceedings supplemental to execution. Notwithstanding any other statute to the contrary, proceedings supplemental to execution may be enforced by verified motion or with affidavits in the court where the judgment is rendered alleging generally:
>
> . . .
>
> (4) if any person is named as garnishee, that garnishee has or will have specified or unspecified nonexempt property of, or an obligation owing to the judgment debtor subject to execution or proceedings supplemental to execution, and that the garnishee be ordered to appear and answer concerning the same or answer interrogatories submitted with the motion.

In reviewing our previous opinions, we find that we did not consider the fact that on August 21, 1995, the trustee executed a Quit Claim Deed for the John. M. Studebaker building, the entire corpus of the trust, to Freidline personally in exchange for ten dollars.[1] Regardless, upon further review of the record, we note that Freidline had accepted an obligation on behalf of the Land Trust, which does not require the identification of

[1] Thomalla explains that Freidline did not present the fact that the Land Trust had been previously dissolved during the trial court or appellate court proceedings which resulted in the initial judgment in Thomalla's favor. (Appellees Br. p. 6). Without reviewing the record presented during the appeal which resulted in our more recent opinion, *Freidline*, 852 N.E.2d 17, we cannot be certain that that fact was presented to us in that proceeding either. Nevertheless, we did not rely on that fact in our decision.

nonexempt property in which the Land Trust has present interest. In the Land Trust Agreement, Freidline agreed to the following:

> If the trustee shall make any advances on account of this trust or the property or shall incur any expenses by reason of being made a party to any litigation in connection with this trust or the property or if the trustee shall be compelled to pay money on account of this trust or the property, whether for breach of contract, injury to person or property, fines or penalties under any law, or otherwise, the beneficiaries jointly and severally on demand shall pay to the trustee, with interest at the rate of 9% per annum, the amount of all such expenses, advances or payments made by the trustee, plus all its expenses, including attorneys' fees.

(Appellant's App. p. 28). We find this language supports a determination that Freidline, the former sole beneficiary of the Land Trust, pay the judgment owed by the former Land Trust.

Further in support of a determination that Freidline should pay the judgment owed to Thomalla, we note that our proceedings supplemental concepts originate in equity. *See McCarthy v. McCarthy*, 156 Ind.App. 416, 297 N.E.2d 441, 444 (Ind. Ct. App. 1973) (citing 4 Pomeroy's Equity Jurisprudence, s 1415, p. 1066 (5th ed. 1941)). Equity may be invoked to prevent one party from injuring another through fraud and deceit by declaring that as done which in good conscience ought to be done. *Brant v. Krilich*, 835 N.E.2d 582, 586 (Ind. Ct. App. 2005). Additionally, public policy demands that wide latitude be given and broad discretionary power be exercised by the trial court to the end that properly rendered judgments are satisfied. *Stuard v. Jackson & Wickliff Auctioneers, Inc.*, 670 N.E.2d 953, 955 (Ind. Ct. App. 1995). Therefore, because of the obligation which Freidline accepted on behalf of the trust, we conclude that equity and public policy demand that Freidline satisfy the judgment in favor of Thomalla.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly ordered Freidline to satisfy the judgment owed by the Land Trust to Thomalla.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.