



ATTORNEY FOR APPELLANT

Christopher L. Cassidy
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Joshua W. Casselman
Rubin & Levin, P.C.
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Liberty First Bank,
Appellant-Garnishee Defendant,

v.

Automotive Finance
Corporation d/b/a
AFC Automotive Finance
Corporation d/b/a AFC,
Appellee-Plaintiff

November 17, 2021

Court of Appeals Case No.
21A-CC-1462

Appeal from the
Marion Superior Court

The Honorable
Patricia McMath, Judge

Trial Court Cause No.
49D12-1404-CC-12931

Vaidik, Judge.

Case Summary

- [1] When a trial court orders a garnishee who has no connection to the State of Indiana to place a hold on an out-of-state bank account and answer interrogatories and the garnishee does so without objecting to personal

jurisdiction, the garnishee waives any claim that the trial court lacked personal jurisdiction. We affirm the trial court’s denial of Liberty First Bank’s (“Garnishee”) motion to dismiss for lack of personal jurisdiction.

Facts and Procedural History

[2] In December 2020, Automotive Finance Corporation (AFC) filed a verified motion for proceedings supplemental in Marion Superior Court to collect on a judgment it had obtained against Sheryl Turkia in 2014. On December 29, the trial court ordered Turkia to appear in court via Zoom on February 22, 2021. Also on December 29, the court issued a Notice of Garnishment Proceedings, Summons and Order to Answer Interrogatories, Notice of Hearing and Interrogatories (“Notice and Order”) to Garnishee, a bank in Georgia. Turkia was believed to have deposit accounts with Garnishee. The Notice and Order provided:

[AFC] has an unpaid judgment against [Turkia] on which there is due the principal sum of \$79,168.61, post judgment interest of \$36,612.77, costs of \$315.00, for a total unpaid judgment of \$116,096.38. The garnishee, LIBERTY FIRST BANK, is now ordered to answer under oath the interrogatories set forth below or attached in writing within 30 days after service, or, at your option, appear in Court **virtually via ZOOM**, and answer the interrogatories at the hearing. . . . Any claim or defense to the proceedings supplemental or garnishment order must be presented at the time of the hearing specified herein. Said garnishee is hereby notified that the hearing on this matter will occur on Feb[ruary] 22, 2021 at 2:30 [p.m.] in the Marion Superior Court, Room No. T-341 virtually via ZOOM.

Appellee’s App. Vol. II pp. 14-15. The court also ordered Garnishee “to place a 90-day hold on any deposit accounts in which [Turkia] has an interest, either individually or jointly with another person” *Id.* at 15. The Notice and Order was served on Garnishee by certified mail.

[3] On January 20, 2021, Garnishee filed its responses to the interrogatories with the trial court without objecting to personal jurisdiction. *See id.* at 20-23. According to the responses, Turkia had deposit accounts at the bank with balances totaling \$239,342.60. Garnishee also placed a hold on Turkia’s deposit accounts as required by the Notice and Order. *See Appellant’s Br.* p. 7.

[4] Garnishee did not appear at the February 22 Zoom hearing to raise any defenses. On March 2, the trial court issued an order finding it had personal jurisdiction over Garnishee “based on the Garnishee’s filing responses to Interrogatories without objecting to the jurisdiction of the Court.” Appellee’s App. Vol. II p. 24. The court then ordered Garnishee to pay from Turkia’s deposit accounts the amount of the judgment against Turkia—now \$116,566.54—to AFC. *Id.* at 25.

[5] Over two months later, on May 13, Garnishee appeared by counsel and filed a motion to dismiss for lack of personal jurisdiction. The trial court denied the motion.

[6] Garnishee now appeals.

Discussion and Decision

[7] Garnishee contends the trial court erred in denying its motion to dismiss for lack of personal jurisdiction because it “owns no property, nor conducts any business within the State of Indiana.” Appellant’s Br. p. 8.¹ “Personal jurisdiction refers to a court’s power to impose judgment on a particular defendant.” *Boyer v. Smith*, 42 N.E.3d 505, 509 (Ind. 2015). The Due Process Clause of the Fourteenth Amendment requires that before an Indiana court can properly assert personal jurisdiction over a defendant, the defendant must have “certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Id.* (citing *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). However, “[a] party can waive lack of personal jurisdiction and submit [itself] to the jurisdiction of the court **if [it] responds** or appears **and does not contest the lack of jurisdiction.**” *Heartland Res., Inc. v. Bedel*, 903 N.E.2d 1004, 1007 (Ind. Ct. App. 2009) (emphases added); *see also Stidham v. Whelchel*, 698 N.E.2d 1152, 1155 (Ind. 1998) (“A court simply has no power over persons who have no contact with their territory, unless and until there is a response or an appearance and the lack of personal jurisdiction is not protested.”). Although it would be “a bold move,” a defendant can “ignore a pending proceeding and take the risk that a subsequent challenge to personal jurisdiction will prevail.” *Parkview Hosp.*

¹ Garnishee’s motion indicated it was being filed under Indiana Trial Rule 12(B)(2). AFC notes that because judgment had already been entered, Garnishee should have filed a motion for relief from judgment under Trial Rule 60(B)(6). *See* Appellee’s Br. p. 14. Under either rule, we would reach the same result.

Inc. v. Am. Family Ins. Co., 151 N.E.3d 1218, 1225 (Ind. Ct. App. 2020)
(quotation omitted), *trans. denied*.

[8] Here, Garnishee did not ignore the garnishment proceeding. Rather, it complied with the Notice and Order by filing its responses to the interrogatories with the trial court without challenging personal jurisdiction and placing a hold on Turkia’s deposit accounts. By taking these actions, Garnishee waived its claim that the trial court lacked personal jurisdiction. *See Allstate Ins. Co. v. Morrison*, 146 Ind. App. 497, 256 N.E.2d 918, 922 (1970) (holding the garnishee waived its challenge to personal jurisdiction because it “chose to submit its person to the jurisdiction of the trial court by (1) answering interrogatories and (2) filing a motion for new trial, attacking only the merits of the decision”), *reh’g denied*; *In re Paternity of T.M.Y.*, 725 N.E.2d 997, 1003 (Ind. Ct. App. 2000) (holding a nonresident challenging a paternity judgment was “estopped from asserting lack of personal jurisdiction as he voluntarily submitted to the court’s jurisdiction by paying on the child support order for over two years”), *reh’g denied, trans. denied*. We therefore affirm the trial court’s denial of Garnishee’s motion to dismiss for lack of personal jurisdiction.

[9] Affirmed.

May, J., and Molter, J., concur.