

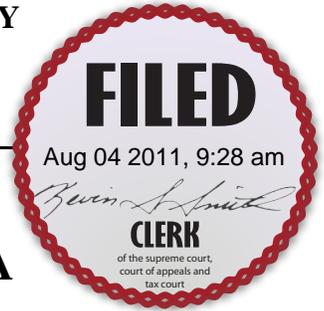
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANTS PRO SE:

TIMOTHY and STEPHANIE MACKALL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

RONALD W. BUCHMEIER
JEFFREY E. RAMSEY
Hopper Blackwell, PC
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY W. and STEPHANIE K. MACKALL,)
)
Appellants-Defendants,)
)
vs.)
)
CATHEDRAL TRUSTEES, INC. d/b/a)
CATHEDRAL HIGH SCHOOL,)
)
Appellee-Plaintiff.)

No. 49A02-1104-CC-281

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robyn L. Moberly, Judge
Cause No. 49D05-0807-CC-29352

August 4, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Timothy W. Mackall and Stephanie K. Mackall (collectively the Mackalls) appeal from the trial court's order in proceedings supplemental in an action originally filed by Cathedral Trustees Inc. d/b/a Cathedral High School against the Mackalls for non-payment of tuition. The Mackalls present the following restated issue for our review: Did the trial court have subject matter jurisdiction to enforce its judgment entered in favor of Cathedral for the Mackalls' breach of contract for non-payment of tuition?

We affirm.

In May 2007 the Mackalls enrolled their two children in Cathedral High School for the 2007-2008 school year. The Mackalls executed a "Payment Options Selection and Tuition Agreement Form." *Appellants' App.* at 13. Pursuant to the tuition agreement, the Mackalls agreed to pay tuition in the amount of \$9,675 for each child for the school year. One-half of the tuition was to be paid to Cathedral on or before July 2, 2007, with the balance due by January 2, 2008. The Mackalls did not pay according to the terms of the agreement and owed Cathedral \$19,245 at the end of the school year.

Cathedral filed a complaint against the Mackalls on July 1, 2008 alleging breach of contract based on their non-payment of tuition. The Mackalls filed a "Complaint Reply" in which they asserted that they had agreed to a different payment plan and argued that Cathedral had failed to grade first-semester examinations resulting in inaccurate transcripts. *Id.* at 14-16. The Mackalls sought to recover \$76,125 in damages from Cathedral on those claims. A bench trial was held during which Cathedral presented evidence of the contract between the parties and the amounts owed. The Mackalls did not present any evidence or testimony at that time. The trial court entered judgment in favor of Cathedral in the amount

of \$19,245 plus costs, and found the Mackalls complaint to be without merit. A day before the trial court entered its judgment, the Mackalls filed a motion to set aside the findings of fact, conclusions of law, and judgment and requested a retrial. Their motion and request were denied and the Mackalls did not appeal the trial court's judgment.

Thereafter, Cathedral filed its motion for proceedings supplemental to execute on the judgment, which included the issuance of orders to the Mackalls to appear for examination to testify about any non-exempt property available for the satisfaction of the judgment. Timothy Mackall appeared at the proceedings supplemental hearing, but Stephanie Mackall did not. The hearing was continued to a later date, but neither of the Mackalls appeared. Stephanie Mackall's employer answered Cathedral's interrogatories indicating that she had wages available for garnishment in order to satisfy the judgment. The trial court entered its final order in garnishment on March 3, 2011, directing Stephanie Mackall's employer to begin withholding her wages. The Mackalls now appeal.¹

The Mackalls frame their issue as one involving a determination of whether the trial court lacked subject matter jurisdiction to enforce its judgment in favor of Cathedral for \$19,245 plus costs. The substance of their argument belies their true motive in prosecuting this appeal--collaterally attacking the underlying judgment.²

¹ Subsequent to the trial court's entry of the final order on garnishment, the Mackalls filed a motion to dismiss for lack of personal and subject matter jurisdiction. The trial court denied the Mackalls' motion, and granted Cathedral's motion to strike the Mackalls' motion to dismiss on April 11, 2011.

² The Mackalls claim that the controversy between the parties is an ecclesiastical one to be resolved between the parties according to the doctrine of the Roman Catholic Church. They claim that the trial court was, therefore, without jurisdiction to resolve the issues between the parties, and that Cathedral erred by attempting to enforce in the trial court the tuition payment agreement entered into by the parties. We do not reach this issue as the time for appeal of that judgment has passed.

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs.” *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006). Our Supreme Court has stated the following:

Far too often there is an inclination in a law suit to attempt to convert a legal issue into one of “jurisdiction” and from that point contend all actions of the court are void, and that the question of jurisdiction may be raised at any time or that the proceedings are subject to collateral attack and are a matter for original writs in this court.

Id. at 541. The question of jurisdiction is a question of law that is reviewed de novo. *Alvarado v. Nagy*, 819 N.E.2d 520 (Ind. Ct. App. 2004). “Generally, the question of subject matter jurisdiction is resolved by determining whether the claim involved falls within the general scope of authority conferred on the court by statute or the Indiana Constitution” and may be raised at any time. *Id.* at 523.

This is an appeal from the trial court’s order in proceedings supplemental to garnish Stephanie Mackall’s wages. This court has stated the following about proceedings supplemental:

A trial court is vested with broad discretion in conducting proceedings supplemental. Under T.R. 69, proceedings supplemental are initiated under the same cause number in the same court which entered judgment against the defendant. Proceedings supplemental are summary in nature and the judgment-debtor is not afforded all the due process protections ordinarily afforded to civil defendants because the claim has been determined to be a justly owed debt reduced to judgment. A proceeding supplemental under T.R. 69 is not an independent action asserting a new or different claim from the claim upon which the judgment was granted, but is merely a proceeding to enforce the earlier judgment. The T.R. 69 petition speaks only to *how* the claim is to be satisfied, whereas the complaint in the original action speaks to *whether* the claim should be satisfied. Proceedings supplemental are merely a continuation of the underlying claim and may not be used to collaterally attack the underlying judgment.

Hermitage Ins. Co. v. Salts, 698 N.E.2d 856, 858-59 (Ind. Ct. App. 1998) (internal citations and quotations omitted) (emphasis in the original).

T.R. 69(E) provides in pertinent part as follows:

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:

- (1) that the plaintiff owns the described judgment against the defendant;
- (2) that the plaintiff has no cause to believe that levy of execution against the defendant will satisfy the judgment;
- (3) that the defendant be ordered to appear before the court to answer as to his non-exempt property subject to execution or proceedings supplemental to execution or to apply any such specified or unspecified property towards satisfaction of the judgment; and,
- (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.

If the court determines that the motion meets the foregoing requirements it shall, ex parte and without notice, order the judgment debtor, other named parties defendant and the garnishee to appear for a hearing thereon or to answer the interrogatories attached to the motion, or both.

Ind. Code Ann. § 34-55-8-1 (West, Westlaw current through 2011 Pub. Laws approved & effective through 6/28/2011) provides in pertinent part that a judgment creditor “is entitled to an order to be issued by any circuit, superior, or city court in the jurisdiction to which the execution issued that requires the judgment debtor to appear before the court to answer concerning the judgment debtor’s property, income, and profits within the court to which the execution was issued.”

Here, the same trial court that entered judgment against the Mackalls on Cathedral's original complaint considered Cathedral's motion for proceedings supplemental and entered an order to enforce that judgment. Our review of the record leads us to the conclusion that this was done without error.

We need not address the Mackalls' arguments about the propriety of the underlying judgment entered against them for non-payment of tuition, as the time for appeal of that issue has long since passed. *See Ind. Appellate Rule 9(A)* (notice of appeal from final judgment must be filed with trial court clerk within thirty days after entry of final judgment if no motion to correct error has been filed).

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.