

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL.  
CHRIS KOSTER, MISSOURI  
ATTORNEY GENERAL**

**APPELLANT,**

**v.  
HORTENSE CAIN**

**RESPONDENT.**

---

DOCKET NUMBER WD74734

DATE: November 13, 2012

---

Appeal From:

Cole County Circuit Court  
The Honorable Daniel R. Green, Judge

---

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin,  
Judge

---

Attorneys:

Laura E. Elsbury, Jefferson City, MO, for appellant.

Peter P. Fiore, Jr., St. Louis, MO, for respondent.

---

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL.  
CHRIS KOSTER, MISSOURI  
ATTORNEY GENERAL,**

**APPELLANT,**

**v.  
HORTENSE CAIN,**

**RESPONDENT.**

No. WD74734

Cole County

Before Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

The State of Missouri filed a garnishment in aid of collection of a 2006 consent judgment that resolved a Missouri Incarceration Reimbursement Act claim against Hortense Cain ("Cain"). The consent judgment had entered judgment in favor the State in the amount of \$168,078.85, but limited the State's means of collecting the judgment to receipt of one-half of Cain's net proceeds, if any, from a pending personal injury lawsuit. Cain thereafter settled her personal injury lawsuit and was entitled to receive the net amount of \$84,218.19 from the settlement, after the payment of attorney's fees and expenses. The State filed its garnishment against the law firm seeking to collect \$42,109.09, one-half of the net proceeds. The law firm and Cain filed a motion to quash the garnishment, which the trial granted.

The State appeals and claims the trial court erred in characterizing the garnishment as an effort to enforce a *contempt* judgment the State had secured in an effort to coerce Cain to perform the consent judgment. The State also claims the trial court erred in holding that the consent judgment was too indefinite to be performed. Finally, the State claims the trial court erred in concluding that the garnishment interrogatories sought information protected by the attorney-client privilege.

**REVERSED AND REMANDED**

**Division Three holds:**

(1) The garnishment was sought in aid of execution of the consent judgment, as indicated by the State on the garnishment application. The consent judgment entered a judgment in favor of the State and against Cain in the amount of \$168,078.85, making the consent judgment sufficiently definite to be enforced, notwithstanding the State's agreement to limit the means by which it could enforce the judgment.

(2) A garnishment cannot be sought to collect a judgment that is not final. The contempt judgment was not final, as it had not been enforced. Because the garnishment was sought in execution of the consent judgment, and not the contempt judgment, it was unnecessary for the trial court to determine whether it had personal jurisdiction over Cain sufficient to enter the contempt judgment.

(3) The party asserting the attorney-client privilege has the burden of proof to demonstrate that the privilege applies. The party asserting the privilege must allege the existence of the privilege and the manner in which its violation is threatened in a sufficiently specific manner to permit a trial court to determine whether the privilege applies.

(4) Here, law firm and Cain's assertion that the standard form interrogatories submitted by the State with its garnishment "may" require law firm to reveal "potentially privileged information" was nothing more than a hypothetical, blanket assertion of privilege, insufficient to meet the burden of proof.

(5) Moreover, attorneys are not entitled to a blanket exemption from garnishments which seek to attach client funds in an attorney's possession. An attorney is generally subject to garnishment from a client's creditors to the extent the attorney is a debtor of the client.

(6) As a general rule, fee arrangements are not subject to protection from disclosure by the attorney-client privilege.

Opinion by Cynthia L. Martin, Judge

November 13, 2012

\*\*\*\*\*

This summary is UNOFFICIAL and should not be quoted or cited.