OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

PENGUIN PROPERTIES, LLC,	)	No. ED109087
	)	
Respondent,	)	
	)	
vs.	)	
	)	Appeal from the Circuit Court of
KING DAVID FASHIONS, LLC AND DAVID HUGHES,	)	St. Louis County
	)	
	)	
Defendants,	)	Honorable John F. Newsham
	)	
and	)	
	)	
TRANSWOOD, INC.,	)	
	)	
Appellant.	)	Filed: June 22, 2021

Transwood, Inc. ("Transwood"), a non-party to the underlying rent and possession matter from which this garnishment action follows, appeals from the judgment of the Circuit Court of St. Louis County granting the motion for summary judgment filed by the plaintiff/garnishor in this matter, Penguin Properties, LLC ("Penguin"). Penguin filed its motion for summary judgment in connection with its writ of garnishment served on garnishee Transwood. This garnishment action arose from the consent judgment Penguin had previously obtained against the defendants in this matter, David Hughes ("Hughes") and King David Fashions, LLC ("King David"), for past due rent and possession of the subject premises. In granting Penguin's motion for summary judgment, the circuit court held that Transwood was liable to Penguin, pursuant to § 525.080[1], for the then-outstanding amount of the garnishment because: (1) as a result of Transwood's settlement of a personal injury matter that Hughes had filed against it, Transwood owed a separate debt to Hughes that existed during the garnishment period; and (2) despite notice of the garnishment, Transwood failed to pay any of the garnishment amount to Penguin directly, or in the alternative, failed to interplead the garnishment amount into the circuit court pursuant to § 525.070; rather, Transwood fully satisfied its debt to Hughes with two checks from Transwood's liability insurance carrier (the "Settlement Checks").

Transwood raises two points on appeal. In its first point, Transwood argues that the circuit court erred in granting Penguin's motion for summary judgment because it never had control or possession of the two Settlement Checks. In its second point, Transwood argues that the circuit court erred in granting Penguin's motion for summary judgment because Transwood was an improper party to garnish in the first place.

AFFIRMED.

[1] All statutory references are to Mo. Rev. Stat. Cum. Supp. 2018.

DIVISION I HOLDS: Transwood's appeal presents an issue of first impression in Missouri regarding a garnishee's liability to a garnishor, pursuant to § 525.080, where the garnishee has settled a personal injury action with the judgment debtor of the garnishor, and the funds to satisfy the settlement are paid by the garnishee's insurance carrier to the judgment debtor during the period of garnishment and in disregard thereof.

In its response to Penguin's motion for summary judgment against it, Transwood raised the same arguments it raises now on appeal: (1) it never physically possessed or controlled the Settlement Checks; and (2) it was not a proper party to be garnished in the first place. In addition, with respect to Penguin's argument that it was not necessarily garnishing the Settlement Checks (but rather, Transwood's underlying debt to Hughes), Transwood raised the issue of its control over the settlement with Hughes, arguing it had no control over the underlying settlement; instead, Transwood claimed its insurer controlled the entire process.

Because Penguin's garnishment attached Transwood's undisputed debt to Hughes under Missouri law, the issue of whether Transwood physically possessed the Settlement Checks is irrelevant. Therefore, because Penguin established that Transwood disregarded Penguin's garnishment by fully satisfying its debt to Hughes with the Settlement Checks from its liability insurer, Penguin established Transwood's liability to it, pursuant to § 525.080, for the outstanding amount of the garnishment. In addition, due to Transwood's undisputed debt to Hughes, which existed and was outstanding when it was served with Penguin's garnishment, Transwood was a proper party to be garnished in the first place.

In further response to Penguin's argument that it was not necessarily garnishing the Settlement Checks (but rather, Transwood's underlying debt to Hughes), Transwood also raised the issue of its control over the settlement with Hughes, arguing that it had no control over the underlying settlement; instead, Transwood claimed that its insurer controlled the entire process. Thus, the issue of Transwood's purported lack of control over the settlement with Hughes constitutes an affirmative defense to the Transwood Garnishment for purposes of these garnishment proceedings, which Transwood was required to plead and prove under Missouri law. However, even if Transwood's purported lack of control over the settlement of the Personal Injury Action constituted a viable affirmative defense under Missouri law (which we need not decide and expressly decline to address), Transwood failed to meet its burden of both pleading and proving its purported lack of control over the settlement process with Hughes, waiving this defense.

We hold that Penguin has established Transwood's liability to it for the outstanding amount of the garnishment pursuant to § 525.080, notwithstanding that Transwood never physically possessed the settlement checks, and notwithstanding Transwood's unpled and unproven argument that it did not control the settlement of the personal injury action with Hughes, including the disposition of the Settlement Checks. For these reasons, the trial court's grant of summary judgment in favor of Penguin was proper.

Opinion by: Kelly C. Broniec, J.
Colleen Dolan, P.J. and Robert M. Clayton III, J. concur.

Attorney for Appellant: Ted L. Perryman, Anna K. Newell, and Helen P. Gab

Attorney for Respondent: Steven M. Hamburg

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.