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May 16, 2016

Jeff Kirkpatrick, Vice President
Michigan Court Officers, Deputy Sheriffs
and Process Servers' Association
401 S. Jackson Street
Jackson, MI 49201

Dear Mr. Kirkpatrick:

Re: Research Regarding Set-Out of Personal Property by Court Officer

You provided to my firm, Foster, Swift, Collins & Smith, P.C., a letter dated April 13, 2001 regarding the subject set forth above. You requested, on behalf of the Michigan Court Officers, Deputy Sheriffs and Process Servers' Association, that I review and update the legal authorities referenced in that letter.

The referenced opinion letter cited *Knopf v Herta*, 212 Mich 631 (1920). *Knopf* has not been diminished by appeal nor has it been questioned by reported cases decided thereafter. Further, it is cited in the Michigan Digest, at 12 Michigan Digest Landlord and Tenant § 138, as one of a very few decisions of Michigan appellate courts on this topic. *Knopf* describes an officer and his assistant, acting pursuant to a writ of restitution, as being "clothed with proper authority to put the goods out into the street." *Knopf*, 212 Mich at 633. The jury instruction addressed in *Knopf* provided that there could be no cause of action against an officer acting pursuant to a proper writ of execution, and in so doing placing goods in the street, upon finding that "the officers exercised proper care in putting the goods on the street and taking the goods out of the house under this Writ and placing them upon the street." *Id.*

The United States Mfg Co v Ellen Stevens, 52 Mich 330, 330 (1883), also continues to be good law and does not require protection of the prior occupants' "goods," where they were removed "with good care, and the articles were placed in good order." Where "[n]o injury was done, and the position in which the things were put and left was unobjectionable," there was no liability for damage allegedly occurring thereafter due to exposure to the elements. *Id.*

Where the opinion letter presented to my Firm for review addresses eviction occurring pursuant to proper order, I would agree with the prior opinion that *Knopf* and *United States Mfg Co* support the conclusion that, where a court officer has the legal authority to evict a tenant, putting personal effects "into the street" should not subject the court officer to liability so long as the "goods" are removed and placed into the street with due care. Although less instructive than the above-referenced cases, *People v Long*, 409 Mich 346 (1980), *Ludwigsen v Larsen*, 227 Mich 528 (1924) and *Sewell v Clean Cut Management*, 463 Mich 569 (2001) have not been reversed or diminished on appeal.

The 2001 opinion letter also relied upon MCL 600.5744(1) which states, in pertinent part, that "the court entering a judgment for possession in a summary proceeding shall issue a writ commanding the sheriff, or any other officer authorized to serve the process, to restore the plaintiff to, and put the plaintiff in, full possession of the premises." This current language differs slightly from the language of the statute, as quoted in the 2001 letter provided. I do not perceive the modest change to be meaningful, with regard to the responsibility of the court officer when handling the personal property of an evicted occupant.

Relying on MCL 600.5744(1), the 2001 letter opined that, in order to put the plaintiff in "full possession of the premises," it "is logical that the actual personal belongings . . . must be physically removed not only from the apartment or home which the Defendant/tenant is occupying, but in fact removed from any property owned by the Plaintiff/landlord which would constitute any part of the 'premises.'" A recent unpublished, per curiam opinion of the Court of Appeals, adopts this logic. In *Barnaby v PCI*, decided April 23, 2015 (Docket No. 318073), 215 Mich App LEXIS 869, the plaintiffs had been evicted from their home and argued that execution of the eviction order was unlawful because plaintiffs' personal property was removed, placed outside, and posted "no trespass." In response, the court held that "the removal of plaintiffs' personal property was necessary to comply with the order mandating that the [property owner] receive full possession of the property. Accordingly, while the removal or destruction of personal property can constitute unlawful interference under MCL 600.2918(2), [the court officer and property owner] were immune under MCL 600.2918(3) to a claim of unlawful interference because their actions were undertaken pursuant to an order of eviction." *Barnaby*, *4, citing *Sickles v Hometown America, LLC*, 477 Mich 1076 (2007), reconsideration denied, 480 Mich 863 (2007).

In *Sickles*, the Michigan Supreme Court reversed the decision of the Court of Appeals (unpublished opinion, per curiam, decided June 13, 2006 (Docket No 266722) LEXIS 1847). The plaintiff was renting a mobile home lot, and Hometown America (the landlord) obtained an eviction order, directing the court officer to "remove the above named defendant(s) and other occupants from the premises described and to restore peaceful possession to the plaintiff." *Id*. at *2. No other reference is made to the court officer. Hometown America hired a construction company to remove the mobile home and its contents. The plaintiffs attempted to remove some of the home's contents, but were prohibited from doing so, and were told that they could retrieve their home and its contents after it was transferred to a secure lot. The plaintiffs proceeded to box up personal items, and the "defendants hooked up a chain to the steps of the home and pulled them off in an effort to make it more difficult to remove items from the

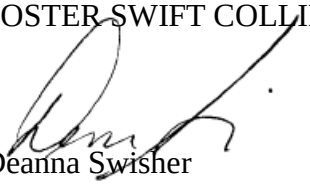
home . . . [and] began using electrical saws to demolish a sun porch attached to the mobile home and were throwing shrubs, trees, and large pieces of wood from the porch through closed windows of the home, breaking the glass, ...” *Sickles*, *3. When plaintiffs began removing belongings from a shed on the lot, defendants “‘cut up’ the shed, which resulted in its walls collapsing and destroying plaintiffs’ personal property in the shed. Plaintiffs asserted that several of defendants’ employees were laughing while they worked.” *Id*. *4. The facts in *Sickles* end with transfer of the home and its contents to a dump. The Court of Appeals found that “under the plain language of MCL 600.2918(2)(b) and (3)(a), a lessor and its agents are protected from claims alleging the unlawful ‘removal, retention, or *destruction*’ of the possessor’s personal property if the lessor and its agent acted pursuant to a court order.” *Id*. at *11 (emphasis in the original). Thus, while the alleged conduct was “disturbing and the disposition harsh, we emphasize that even under the process pursued in this case . . . plaintiffs had notice and opportunity to avoid the misfortune that ensued.” *Id*. However, the Michigan Supreme Court reversed the finding that the defendants were immune from suit because the “plain language of MCL 600.2918(3) provides immunity only for actions undertaken pursuant to an order of eviction. Accepting the plaintiffs’ well-pleaded factual allegations as true, . . . certain of the defendants’ actions, including the conversion and destruction of plaintiffs’ property in a manner that was neither necessary to effect the eviction nor incidental to the process of eviction, cannot be said as a matter of law to be within the scope of the . . . order of eviction, and hence, may not have been undertaken pursuant to that order.” *Sickles*, 477 Mich 1076 (2007).

Additionally, in *Frank Turner Ministries v Bank of America*, 2011 Mich App LEXIS 1879, decided October 20, 2011 (Docket No. 298967), the plaintiff claimed that the defendants had wrongfully removed and stored plaintiff’s personal property pursuant to an eviction order. While acknowledging that the defendants had the authority to remove plaintiff’s personal property, the plaintiff contended that by taking the property to a storage facility, rather than leaving it curbside, defendants committed conversion. “A defendant’s removal of an evicted plaintiff’s personal property is not wrongful if the defendant undertakes the removal pursuant to an eviction order.” *Id*. at *2. The court specifically noted that the eviction order expressly gave the defendants (which appears to include a court officer) authority to restore peaceful possession of the home to Bank of America which, “under the circumstances included removal of plaintiffs’ personal property.” *Id*.

The above-discussed unpublished opinions lack the precedential value of *Knopf* and *United States Mfg*. However, these more recent decisions of the Court of Appeals and Michigan Supreme Court support the opinion that you were given in 2001 and provide useful instruction with regard to the manner in which a court officer or landlord should act when moving personal property “curbside” or to a public area.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC



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