

Peter Dubowsky, Esq.
Nevada Bar No. 4972
DUBOWSKY LAW OFFICE, CHTD.
300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
(702) 360-3500
Fax (702) 360-3515
Attorney for Appellant

Electronically Filed
Mar 24 2021 01:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

PLATTE RIVER INSURANCE) Case No.: 81974
COMPANY)
)
Appellant,)
)
vs.)
)
SUSAN JACKSON; and LANCE))
JACKSON)
)
Respondents)
)

APPELLANT'S OPENING BRIEF

APPEAL
From the Ninth Judicial District Court, Douglas County
The Honorable THOMAS W. GREGORY, District Judge
District Court Case No. 19CV0197

1 **A. N.R.A.P. 26.1 Disclosure**

2 The undersigned counsel of record certifies that the following are persons
3 and entities as described in NRAP 26.1(a), and must be disclosed:
4

5 Platte River Insurance Company is a wholly owned subsidiary of Capitol
6 Indemnity Corporation. Capitol Indemnity Corporation is a wholly owned
7 subsidiary of CapSpecialty, Inc. CapSpecialty, Inc., is wholly owned by
8 Alleghany Insurance Holdings LLC, which is wholly owned by Alleghany
9 Corporation (NYSE:Y).

10 These representations are made in order that the judges of this court may
11 evaluate possible disqualification or recusal.

12 Attorney of record for PLATTE RIVER INSURANCE COMPANY

13 Dated this 24th day of March 2021

14 DUBOWSKY LAW OFFICE, CHTD.
15

16 By: /s/Peter Dubowsky
17 Peter Dubowsky, Esq.
18 Nevada Bar No. 4972
19 300 South Fourth Street,
20 Suite 1020
21 Las Vegas, Nevada 89101
22 (702) 360-3500
23 Fax (702) 360-3515
24 Attorney for Appellant
25

B. Table of Contents

Table of Authorities.....v

Jurisdictional Statement and Basis for Appellate Jurisdiction.....vii

Routing Statement.....viii

Statement Of The Issues Presented For Review.....xi

Statement of the Case.....1

Procedural and Factual History.....2

Summary of the Arguments.....6

Argument.....9

 A. Standard of Review.....9

 B. Statutory Interpretation.....10

 C. Judgment Enforcement Exemptions for Debtors.....10

 D. The Statutory Language of N.R.S. 21.090(1)(z) Does Not Allow Applying the Wildcard with the Wage Garnishment.....11

 E. The Legislative History Proves that the Wildcard Does Not Apply to Wages.....14

 F. Subsection (1)(z) Glaringly Omits “wages” or “earnings” in its statutory illustrations.....15

 G. In the same 2017 Legislative Session when the Legislature Increased the Wildcard Exemption Ten-Fold from \$1,000 to \$10,000, Which Would Have Drowned the Entire Wages Exemption, the Legislature Also Made Some Minor “Fine-Tuning” to the Wage Exemption, Demonstrating that the Two

1	Exemptions Operated Independently of Each	
2	Other.....	16
3	H. Applying the Wildcard to Wages Produces Absurd or	
4	Unreasonable Results Because It Forces Every Wage	
5	Garnishment Into a Court Hearing; and a Court Hearing for	
6	Every Withholding Period on Wages.....	17
7	I. Compliance with Applying Both the Wage and Exemption and	
8	the Wildcard Simultaneously Would be Practically	
9	Impossible.....	19
10	J. Respondent’s Interpretation that the \$10,000 Wildcard Can Be	
11	Applied to Produce Absurd or Unreasonable Results Because	
12	if the \$10,000 Wildcard is Applied to Wages, Then While the	
13	Wildcard is Being Applied, 180 Days of Post-Judgment	
14	Interest Accrues and Garnishment Costs Continue to	
15	Accrue.....	22
16	K. It Was Error for the District Court to Extend the Legislative	
17	Grant of Exemptions to Future Interests in Property.....	24
18	Conclusion.....	25
19	Attorney’s Certificate.....	26
20		
21		
22		
23		
24		
25		

C. Table of Authorities

A. Cases

<u>Carson-Tahoe Hosp. v. Bldg. & Constr. Trades,</u> 122 Nev. 218 (2006).....	10, 12 n.11
<u>In re Christensen,</u> 122 Nev. 1309 (2006).....	11
<u>Dodge City Healthcare Group v. Chaudhry</u> (D. Nev. June 9, 2010 Case No. 09-00091).....	ix
<u>In re Frei Irrevocable Trust,</u> 133 Nev. 50, 52 (2017).....	9
<u>Hobbs v. State,</u> 127 Nev. 234, 237 (2011).....	10
<u>Koster Finance v. Ken Vi Lu</u> (Las Vegas Justice Court 16C019573).....	ix
<u>In re Lenox,</u> 58 B.R. 104, 106 (Bankr.D.Nev.1986).....	11
<u>Nev. Board of Parole Commissioners v. Second Judicial Dist. Court of Nev.,</u> 135 Nev.Adv.Op. 53, 451 P.3d 73 (Nev. 2019).....	10, 12 n.12
<u>Pub. Agency Comp. Tr. v. Blake,</u> 127 Nev. 863, 866 (2011).....	9
<u>Savage v. Pierson,</u> 123 Nev. 86 (2007).....	11
<u>Torres v. Nev. Direct Ins. Co.,</u> 131 Nev. 531, 535 (2015).....	10, 14 n.12
<u>Weinstein v. Fox (In re Fox),</u> 129 Nev. 377 (2013).....	11

B. Nevada Constitution

Nevada Const. art. 1, § 14.....10 n.9

C. Statutes

N.R.S. §4.370(1)(a).....x n.6, 10

N.R.S. §21.025.....22 n.19

N.R.S. §21.075.....x n.4

N.R.S. §21.090(1).....11

N.R.S. §21.090(1)(g).....vii n.1, viii, 12, 19, 20, 21

N.R.S. §21.090(1)(z).....vii, viii, 6, 11, 15

N.R.S. §21.112(1).....x n.4, 8, 18, 19, 24

N.R.S. §21.112(2).....18

N.R.S. §21.112(3).....7 n.6, 18

N.R.S. §21.112(6).....x n.4, 2, 8 n.7, 11 n.10, 18

N.R.S. §31.249(2)(b).....3 n.1

N.R.S. §31.296(1).....9 n.8, 20 n.18

N.R.S. §73.010(1).....x n.5

Oregon Revised Statute §18.345(1)(p).....13

D. Rules

N.R.A.P. 17(a)(11).....viii, x

N.R.A.P. 17(a)(12).....viii

N.R.A.P. 17(b)(7).....viii n.2

E. Administrative Orders

Ninth Judicial District Court Administrative Order 20-07.....4 n.3

1 **D. Jurisdictional Statement Basis for Appellate Jurisdiction**

2 This is an appeal from a post-judgment District Court Order that ruled
3 that the Judgment Debtor/Respondent could apply the \$10,000 Wildcard
4 Exemption (N.R.S. §21.090(1)(z)) (the “\$10,000 Wildcard” or “Wildcard”) to
5 her “attachable wages.”¹
6

7 On October 6, 2020, the Respondent/Judgment Debtor filed a Notice of
8 Entry of Order Upon Claim of Exemption dated September 29, 2020 (the
9 “Exemption Order”). (AA114-AA122). The Judgment Creditor filed their
10 timely Notice of Appeal on October 15, 2020. (AA123-124)
11

12 This Court’s February 8, 2021 Order Reinstating Briefing ruled that the
13 Exemption Order was properly appealable.
14
15
16
17
18
19
20
21
22

23 ¹ By “attachable wages” this Brief is referring to that portion of Respondent’s
24 wages that are not exempt under the Wage Exemption (§21.090(1)(g)). In this
25 case Respondent’s attachable earnings are approximately 25% of her earnings.
Further, this Brief will use the terms “wages” “salary” or “earnings”
interchangeably.

1 **E. Routing Statement**

2 This appeal involves a substantial issue of first impression (N.R.A.P.
3 17(a)(11)), and a matter raising a principal issue of statewide public importance
4 (N.R.A.P. 17(a)(12)), presumptively retaining the jurisdiction of the Supreme
5 Court.²

6
7 The issue on appeal is whether the \$10,000 Wildcard of N.R.S.
8 §21.090(1)(z) judgment enforcement exemption can be used on the 25%
9 attachable portion of a Judgment Debtor's wages. The Appellant
10 Judgment/Creditor Platte River ("Appellant") levied a garnishment on the
11 salary of Respondent/Judgment Debtor Susan Jackson ("Respondent" or
12 "Jackson"). Jackson filed a Claim of Exemption, claiming both the existing
13 Wage Exemption on her wages (that is automatically applied pursuant to N.R.S.
14 §21.090(1)(g)), and then claiming an additional \$10,000 Wildcard Exemption
15 on the remaining 25% attachable portion of her wages. At the expedited
16 exemption hearing, the District Court's ruled that under its interpretation of the
17 exemption statute, the Respondent could apply the \$10,000 Wildcard to the
18 attachable portion of her wages.

19 This District Court's interpretation, contrary to other courts, but likely the
20 first Nevada district court decision on this issue, has potential state-wide impact.
21 The District Court's interpretation goes against the language of the Wildcard
22 statute, renders a clause of the Wildcard statute meaningless, contradicts the
23

24
25 ² Pursuant to N.R.A.P. 17(b)(7), post-judgment orders in a civil case are
presumptively assigned to the Court of Appeals.

1 legislative history, produces absurd or unreasonable results, and extends the
2 legislative grant.

3 Whether the \$10,000 Wildcard can be applied to attachable wages is a
4 substantial issue of first impression, and a matter raising a principal issue of
5 statewide public importance. This issue of Nevada statutory interpretation is
6 coming before Nevada district courts and justice courts with increasing
7 frequency. So much so that in February 2020, the Las Vegas Justice Court
8 issued a 16-page written opinion holding that the \$10,000 Wildcard cannot be
9 applied to attachable wages. (The Las Vegas Justice Court Order Regarding
10 Claim of Exemption from Execution in Koster Finance v. Ken Vi Lu (Las Vegas
11 Justice Court 16C019573) is **attached**).

12 Also in the federal court, the Nevada U.S. District Court in Dodge City
13 Healthcare Group v. Chaudhry (D. Nev. June 9, 2010 Case No. 09-00091),
14 wherein the Federal Court denied a judgment debtor's attempt to claim wages
15 under the "wildcard" exemption.³ (AA058-AA61)

16 Contrary to the other decisions, the District Court in the case *sub judice*
17 has interpreted the Nevada statute to allow the \$10,000 Wildcard to be applied
18 to attachable wages. Among the myriad of absurd and unreasonable results
19 produced by the District Court's interpretation, it would force every court to
20 hold Wildcard exemption hearings on every wage garnishment. A judgment
21
22

23
24 ³ The opinions are not being cited for precedential value, but to show that other
25 courts have issued decisions on this important issue and have ruled contrary to
this District Court's ruling, creating a split of authority and statewide
uncertainty.

1 debtor would have the right to claim a Wildcard Exemption when a routine wage
2 garnishment is served.⁴ Further, if a judgment debtor can claim the \$10,000
3 Wildcard on their wages, it would render every small claims judgment⁵ and
4 most justice court judgments⁶ unenforceable and effectively nullified, because
5 the Wildcard would exceed the amount of the judgment, prohibiting and
6 preventing wage garnishments to enforce smaller judgments.
7

8
9 In light of the District Court's Exemption Order finding that the \$10,000
10 Wildcard can be applied to wages, the Supreme Court's involvement is
11 necessary pursuant to N.R.A.P. 17(a)(11) and (12).
12
13
14
15
16

17
18 ⁴ The wage exemption is "non-judicial" because the employer automatically
19 withholds by following the formula set forth in N.R.S. §21.075. A hearing on
20 a claim of exemption for wages is only necessary if the withholding exceeds the
21 exemption for that pay period. (N.R.S. §21.112(1) ("If the property that is levied
22 on is the earnings of the judgment debtor, the judgment debtor must file the
23 claim of exemption pursuant to this subsection within 10 days after the date of
24 each withholding of the judgment debtor's earnings.") However, a claim on the
25 \$10,000 Wildcard Exemption triggers a mandatory court hearing (N.R.S.
§21.112(6)).

⁵ Pursuant to N.R.S. §73.010(1), small claims court jurisdiction is up to \$10,000,
confining every small claims court judgment to within the Wildcard exemption
amount.

⁶ Pursuant to N.R.S. §4.370(1)(a), justice court jurisdiction is limited to
\$15,000.

1 **F. Statement of the Issues Presented for Review**

2 Did the District Court err when it applied the \$10,000 Wildcard
3 exemption to the 25% attachable portion of Respondent's wages, when the
4 District Court's interpretation goes against the language of the exemption
5 statute, renders a clause of the Wildcard statute meaningless, contradicts the
6 legislative history, causes injury to creditors, produces absurd or unreasonable
7 results, and extends the legislative grant?
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **I. Statement of the Case**

2 This is an appeal from a District Court Order granting Respondent's
3 \$10,000 Wildcard claim of exemption on the 25% attachable portion of
4 Respondent's earnings.
5

6 The relevant proceedings are in the post-judgment enforcement,
7 execution, and exemption claim stage of this District Court case. By way of
8 background, Appellant Platte River Insurance is a bonding company. The
9 Respondents, Susan and Lance Jackson, signed an indemnity agreement on the
10 bond. Appellant paid losses on the Bond, and accordingly brought this action
11 against them to enforce the indemnity agreement. (AA001-AA003). Around
12 June 2020, Appellant was granted summary judgment against Respondents in
13 the approximate amount of \$50,000. (AA008-AA016)
14

15 Respondent, Susan Jackson, is an employee of the State of Nevada
16 Parole Board. Around August 2020, Appellant levied a wage garnishment on
17 Susan's salary. Respondents responded with Claims of Exemption, listing
18 approximately seven exemptions including the \$10,000 Wildcard, among
19 several inapplicable exemptions. (AA026-AA029) Appellant promptly moved
20 for a hearing to determine the exemption, addressing all the claimed
21 exemptions. (AA030-AA036) The Appellant's Motion to Determine
22 Exemption addressed each exemption claim, briefed the Wildcard, and
23
24
25

1 requested an expedited hearing as required by N.R.S. §21.112(6). Essentially,
2 the judicial day prior to the hearing, just before traveling up to Minden for the
3 in-person hearing, Respondent filed an Opposition that more fully discussed
4 the Wildcard exemption. (AA038-AA061). The Respondent's September 1,
5 2020 Opposition attached as an exhibit an order from the District Court in a
6 different case involving Respondent's counsel, wherein the District Court
7 ruled that the \$10,000 Wildcard could be applied to attachable wages.
8 (AA052-AA056). At the September 4, 2020 court hearing in Minden, the
9 District Judge ruled that consistent with his prior order in another case that he
10 could apply the \$10,000 Wildcard to attachable wages. (AA112-AA122). This
11 timely appealed followed.

12 With due respect to the District Court, the District Court's interpretation of
13 the Nevada exemption statute is incorrect and must be reversed.

14 **II. Procedural and Factual History**

15 1. On May 1, 2020, the District Court entered an Order Granting
16 [Plaintiff/Appellant's] Motion for Summary Judgment. (AA008-AA016)

17 2. On June 2, 2020, the District Court entered a Judgment based on
18 the May 1, 2020 Order Granting [Plaintiff/Appellant's] Motion for Summary
19 Judgment. (AA017-AA020)

1 3. In or around August 13, 2020, the Plaintiff/Appellant garnished
2 the earnings of Defendant/Judgment Debtor/Respondent Susan Jackson.¹

3 (AA021-AA024)
4

5 4. On August 14, 2020, the Nevada State Controller responded to
6 the Writ of Garnishment Interrogatories, “Yes. The State uses a biweekly pay
7 period. Defendant is employed by the Parole Board and presently earns
8 \$41.28 per hour.” (AA025)
9

10 5. On or around August 24, 2020, Susan Jackson, through her
11 counsel, served an Affidavit of Claim of Exemption asserting no less than
12 seven (7) exemptions including 1) homestead exemption; 2) private library,
13 works of art, etc.; 3) household goods and furnishings; 4) 75% of disposable
14 earnings; 5) \$10,000 Wildcard; 6) money in her retirement plan; and 7) her
15 2019 Jeep Grand Cherokee. (AA026-AA029)
16

17 6. On August 27, 2020, Plaintiff timely filed and served a Motion to
18 Determine Issue of Exemption (“Motion”) and submitted a proposed Order
19 Setting Hearing. The Motion addressed each claim of exemption in brief. The
20
21
22
23

24
25 ¹ Susan Jackson is an employee of the State of Nevada. Therefore, the Appellant caused the Carson City Sheriff to serve the Writ of Garnishment on the Nevada State Controller in accordance with N.R.S. §31.249(2)(b).

1 Motion also briefed that the \$10,000 Wildcard did not apply.² (AA030-
2 AA036)

3
4 7. On September 1, 2020, the District Court signed the Order
5 Setting Hearing for September 4, 2020 at 8:30am in Ninth Judicial District
6 Court in Minden.³ (AA037)

7
8 8. On September 1, 2020, after office hours⁴, the
9 Defendant/Respondent's attorney e-mailed a courtesy copy of their Opposition
10 to Platte River's Motion Regarding Exemption. (AA038-AA061) The
11 Opposition's Exhibit 1 consisted of the District Court's December 5, 2018
12 Order on Appeal from East Fork Township Justice Court, wherein the District
13 Court ruled that the \$10,000 Wildcard can applied to wages. (AA051-AA56)
14
15
16
17

18 ² It should be noted that at the time the Plaintiff/Appellant filed the Motion, it
19 appeared that the Defendant/Respondent was not asserting the \$10,000
20 Wildcard Exemption claim with any more sincerity than her claim that
21 Plaintiff/Appellant was executing on her private library or her Jeep.

22 ³ Ninth Judicial District Court hearings are held in person unless otherwise
23 ordered by the court (see August 17, 2020 Administrative Order 20-07).

24 ⁴ The dates, times and places are relevant in order to demonstrate that it was
25 not until Wednesday after-hours that Plaintiff/Appellant was even on notice of
the fact that the 1) Plaintiff/Appellant was not only seriously asserting the
\$10,000 Wildcard on her wages, but 2) that the District Court had already
decided the issue in a previous case with Respondent's counsel.
Plaintiff/Appellant's counsel had to travel on Thursday September 3, 2020 for
the 8:30am September 4, 2020 hearing in Minden, when the ruling was made.

1 9. The Hearing was held September 4, 2020 as scheduled, wherein
2 the District Court ruled that the \$10,000 Wildcard Exemption could be applied
3 to wages.
4

5 10. On October 6, 2020, Defendant/Respondent served Notice of
6 Entry of the September 29, 2020 Order Upon Claims of Exemption (the
7 “Exemption Order”). (AA112-AA122)
8

9 11. On October 15, 2020 Plaintiff/Appellant filed the Notice of
10 Appeal. (AA123-AA124)

11 12. Subsequently, in or around November 2020, during the 180 days
12 of the Exemption Order’s implementation, the Plaintiff/Appellant served a
13 bank account execution on the Wells Fargo bank accounts of
14 Defendant/Respondent Susan Jackson.
15

16 13. On or around December 2, 2020, Susan Jackson filed an Affidavit
17 of Claim Exemption, claiming among other exemptions, another \$10,000
18 Wildcard Exemption, this time on her bank accounts. (AA125-AA128)
19

20 14. Respondent Susan Jackson attempted to withdraw her Wildcard
21 claim of exemption on her wages that had already been granted in the
22 Exemption Order, and to switch her Wildcard to her Wells Fargo bank
23 accounts. In Defendant/Respondent’s January 2021 Brief in Support of
24 [Respondents’] Affidavits of Exemption, the Respondent asserted incorrectly
25

(on Page 9 of 18, lines 17-19 (AA137)) that while her wages were still being applied to the Wildcard “Susan continues to have a considerable amount of the Wildcard Exemption remaining available to her.”

III. Summary of the Arguments

The District Court’s Exemption Order finding that the \$10,000 Wildcard can be applied to attachable wages must be reversed because:

- As a matter of statutory construction, the District Court’s Interpretation is incorrect because the limiting language in N.R.S. §21.090(1)(z) “not otherwise exempt from execution pursuant to this subsection” is meant to exclude otherwise exempt property (such as wages). Second, the District Court’s interpretation of the meaning of that clause (namely that the clause means that the Wildcard could be applied to any property that was not already claimed as exempt), renders the clause superfluous and meaningless. Under the District Court’s interpretation, the Wildcard subsection would have the same meaning with or without the quoted clause.

- Having established that the Wildcard statute either expressly excludes its application to wages, or it is ambiguous, the Court may look to legislative history. The Legislative History expressly states that the Wildcard does not affect the wage garnishment.

1 • If the \$10,000 Wildcard Exemption were intended to be applied to the
2 common wage garnishment, the subsection would have included “wages,”
3 “salary” or “earnings” among its statutory illustrations.
4

5 • In the same 2017 Legislative Session, when the Wildcard was increased
6 ten-fold from \$1,000 to \$10,000, which would have drowned out the entire
7 wages exemption, the Legislature also made some minor “fine-tuning” to the
8 Wage Exemption, demonstrating that the tsunamic \$10,000 Wildcard was
9 neither intended to wash away the nuanced wage exemption, nor to affect its
10 application.
11

12 • The District Court’s statutory interpretation applying the \$10,000
13 Wildcard to wages produces absurd or unreasonable results because this
14 interpretation would force every wage garnishment into a court hearing to
15 apply the \$10,000 Wildcard. The District Court’s statutory interpretation
16 would load a crushing burden upon all Nevada courts for every wage
17 garnishment. While the wage garnishment exemption is a “non-judicial”
18 exemption that does not require court intervention, the \$10,000 Wildcard, on
19 the other hand, requires an affidavit claiming the exemption⁵, a motion by the
20 judgment creditor to determine the exemption⁶, and a hearing.⁷ If the \$10,000
21
22
23
24

25 ⁵ N.R.S. §21.112(1).

⁶ N.R.S. §21.112(3).

1 Wildcard could be applied to wages, then every judgment debtor would be
2 entitled to claim the Wildcard for every wage execution, and therefore be
3 entitled to a court hearing to determine that Wildcard on every wage
4 garnishment. Compounding this absurd or unreasonable result, N.R.S.
5 §21.112(1) requires a claim on wages to be filed after each paycheck
6 withholding period. Therefore, the District Court's interpretation would also
7 open the door to court hearings for every paycheck withholding period.
8
9

10 • The statutory interpretation applying the \$10,000 Wildcard to wages
11 produces absurd or unreasonable results because compliance and enforcement
12 of the double exemption would be nearly impossible because every Nevada
13 employer (from large employers to mom-and-pop businesses) would have to
14 do a complicated two-tiered accounting formula for both exemptions for every
15 paycheck. In the case *sub judice*, not even the State of Nevada nor the Carson
16 City Sheriff could do this.
17
18

19 • The statutory interpretation applying the \$10,000 Wildcard to the
20 Wages exemption produces absurd or unreasonable results because under the
21 District Court's interpretation, the judgment debtor will end up paying more to
22 satisfy the judgment if they claim the \$10,000 Wildcard on wages. When the
23
24
25

⁷ N.R.S. §21.112(6).

1 wage garnishment is renewed after 180 days⁸, all of the post-judgment interest
2 that accrued for 180 days, plus the accrued costs, would be tacked on to the
3 wage garnishment, so the judgment debtor would end up paying the \$10,000
4 and additional amounts on the renewed wage garnishment by the time the
5 \$10,000 Wildcard is finally exhausted.
6

7 Finally, the legislative grant of the exemption statute only applies to
8 existing interests in property, not to future interests. Therefore, the statute does
9 not allow asserting an exemption in future contingent interests in property, not
10 even in wages.
11

12 **IV. Argument**

13 **A. Standard of Review**

14 The District Court's interpretation of the Nevada Judgment Exemption
15 Statute and the \$10,000 Wildcard Exemption is reviewed *do novo*. "This court
16 reviews a district court's legal determinations, including matters of statutory
17 interpretation, de novo." In re Frei Irrevocable Trust, 133 Nev. 50, 52 (2017).
18 "We review issues of statutory construction de novo." Pub. Agency Comp. Tr.
19 v. Blake, 127 Nev. 863, 866 (2011).
20
21
22
23
24
25

⁸ N.R.S. §31.296(1).

1 **B. Statutory Interpretation**

2 “No part of a statute should be rendered meaningless, and this court will
3 not read statutory language in a manner that produces absurd or unreasonable
4 results.” Carson-Tahoe Hosp. v. Bldg. & Constr. Trades, 122 Nev. 218 (2006)
5 “[W]e avoid statutory interpretation that renders language meaningless or
6 superfluous.” Hobbs v. State, 127 Nev. 234, 237 (2011).
7

8 As this Court stated in Nev. Board of Parole Commissioners v. Second
9 Judicial Dist. Court of Nev., 451 P.3d 73 (Nev. 2019) *quoting* Torres v. Nev.
10 Direct Ins. Co., 131 Nev. 531, 535 (2015), “But when the statute is
11 ambiguous, meaning that it is subject to more than one reasonable
12 interpretation, this court may look to interpretive aids such as legislative
13 history and “the context and the spirit of the law or the causes which induced
14 the [L]egislature to enact it.””
15
16

17 **C. Judgment Enforcement Exemptions for Debtors**

18 The Nevada Constitution allows that “The privilege of the debtor to
19 enjoy the necessary comforts of life shall be recognized by wholesome laws,
20 exempting a reasonable amount of property from seizure.”⁹ The purpose of
21 Nevada's exemption statutes is “to secure to the debtor the necessary means of
22 gaining a livelihood, while doing as little injury as possible to the creditor.”
23
24

25 _____
⁹ Nevada Const. art. 1, § 14.

1 Savage v. Pierson, 123 Nev. 86 (2007)(emphasis added) “Although
 2 exemptions are to be liberally construed in favor of the debtor, the Court must
 3 not depart from the statutory language nor extend the legislative grant.”
 4
 5 Weinstein v. Fox (In re Fox), 129 Nev. 377 (2013)(emphasis added) *citing In*
 6 *re Lenox*, 58 B.R. 104, 106 (Bankr.D.Nev.1986)(“The Court must ascertain
 7 and then carry out the intention of the legislature.”) “While we will liberally
 8 construe exemption statutes in favor of the debtor, it is not within our power to
 9 enlarge or extend the provisions of the legislative grant. N.R.S. §21.090(1)
 10 sets forth various forms of property exempt from execution . . . and are limited
 11 as stated in that measure. In re Christensen, 122 Nev. 1309 (2006) (emphasis
 12 added) When a judgment debtor claims an exemption, “The judgment debtor
 13 has the burden to prove that he or she is entitled to the claimed exemption at
 14 such a hearing...”¹⁰

17
 18 **D. The Statutory Language of N.R.S. 21.090(1)(z) Does Not**
 19 **Allow Applying the Wildcard to Wages.**

20 The \$10,000 Wildcard states in N.R.S. §21.090(1):

21 The following property is exempt from execution, except as
 22 otherwise specifically provided in this section or required by
 23 federal law:

23 ...

24 (z) Any personal property not otherwise exempt from
execution pursuant to this subsection belonging to the judgment

25 ¹⁰ N.R.S. §21.112(6)

1 debtor, including, without limitation, the judgment debtor's
2 equity in any property, money, stocks, bonds or other funds on
3 deposit with a financial institution, not to exceed \$10,000 in total
value, to be selected by the judgment debtor. (emphasis added)

4 As set forth above, "No part of a statute should be rendered meaningless, and
5 this court will not read statutory language in a manner that produces absurd or
6 unreasonable results."¹¹ The limiting or qualifying language "not otherwise
7 exempt from execution pursuant to this subsection" means that the Wildcard
8 may not be claimed on property that is otherwise exempt in the subsection,
9 such as wages. Wages are "otherwise exempt from execution" under N.R.S.
10 §21.090(1)(g), and therefore, subsection (1)(z) expressly excludes its
11 application to wages. The only correct meaning of the clause "not otherwise
12 exempt from execution pursuant to this subsection" is to limit the grant of the
13 exemption to unenumerated property, or "wild" property.
14
15
16

17 The District Court interpreted this clause "not otherwise exempt from
18 execution pursuant to this subsection" to mean that the \$10,000 Wildcard
19 applies to any property that is "not already claimed as exempt." However, if
20 the property is already claimed as exempt, the statute would not need to tell
21 the judgment debtor to not waste redundant exemption claims on the same
22 property. Nor would a judgment debtor waste the \$10,000 Wildcard on
23
24
25

¹¹ Carson-Tahoe Hosp. v. Bldg. & Constr. Trades, 122 Nev. 218 (2006).

1 personal property that they already exempted from execution, to no legal
2 effect.

3
4 Further, if the clause was simply meant to emphasize or reinforce that it
5 applies to any judgment debtor property that was not already exempted, then
6 the language “not otherwise exempt from execution pursuant to this
7 subsection” is redundant or meaningless. Simply put, the Wildcard Exemption
8 states:
9

10 “Any personal property not otherwise exempt from execution pursuant to this
11 subsection belonging to the judgment debtor,”

12 Without the operative clause, the subsection would have the same meaning as:

13
14 “Any personal property belonging to the judgment debtor.”

15 In that the District Court’s interpretation renders that *not-otherwise-exempt*
16 clause meaningless, the District Court’s statutory interpretation is incorrect.

17
18 Finally, the limiting language “not otherwise exempt from execution
19 pursuant to this subsection” appears to be in line with limitations that other
20 states have also enacted limitations on their wildcard exemption that does not
21 allow their application to other categories of exempt property. For example,
22 Oregon Revised Statute §18.345(1) states, “The following property . . . shall
23 be exempt from execution: . . . (p) The debtor’s interest, not to exceed \$400 in
24
25

value, in any personal property. However, this exemption may not be used to increase the amount of any other exemption.” (emphasis added)

E. The Legislative History Proves that the Wildcard Does Not Apply to Wages.

As set forth above, [W]hen the statute is ambiguous, meaning that it is subject to more than one reasonable interpretation, this court may look to interpretive aids such as legislative history and "the context and the spirit of the law or the causes which induced the [L]egislature to enact it."¹² If the interpretation set forth above is the only reasonable interpretation, then the Wildcard would not apply to wages. However, even assuming *arguendo* that the District Court’s interpretation is a reasonable interpretation, then the statute is subject to more than one reasonable interpretation, and therefore ambiguous. Hence, the Court may look to the legislative history to interpret the ambiguous statute.

In this case, the legislative history (AA035-AA036) proves that the Wildcard, when enacted in 2007¹³, would not apply to wages. When the “wildcard” exemption was proposed to the Nevada Legislature, the Bill’s sponsor, Assemblywoman Barbara Buckley, testified at the hearing:

¹² Nev. Board of Parole Commissioners v. Second Judicial Dist. Court of Nev., 451 P.3d 73 (Nev. 2019) *quoting* Torres v. Nev. Direct Ins. Co., 131 Nev. 531, 535 (2015)

¹³ When enacted in 2007, the Wildcard was \$1,000.

1 The first exemption is sometimes called the “wildcard exemption” . . .
 2 This small exemption I am requesting allows a person to be able to
 3 pay for essentials. In addition, this modest amount of protection has
 4 only a minor impact on creditors. Nothing eliminates their just claims
to garnish wages and seize non-exempt assets... (emphasis added)¹⁴

5 Therefore, the legislative history conclusively proves that the Wildcard does
 6 not apply to wage garnishments.

7 **F. Subsection (1)(z) Glaringly Omits “wages” or “earnings” in**
 8 **its Statutory Illustrations.**

9 Nevada Revised Statute §21.090(1)(z) states that the \$10,000 Wildcard
 10 may be applied to the following property: “including, without limitation, the
 11 judgment debtor’s equity in any property, money, stocks, bonds or other funds
 12 on deposit with a financial institution, not to exceed \$10,000 in total value, to
 13 be selected by the judgment debtor.” The subsection glaringly omits “wages”
 14 or “earnings” from its list of examples. If the Wildcard applied to earnings or
 15 wages, this is not only where the legislature would have listed it, but where the
 16 Legislature would have needed to list it.

17 Given the reality that the wage garnishment is undisputedly, the most,
 18 or one of the most, prevalent forms of garnishment executions, by omitting
 19 “wages” or “earnings” from its illustrations, the subsection is excluding wages
 20 or earnings from their application of the Wildcard. Even though the list is
 21
 22
 23
 24

25 ¹⁴ Hearing before Assembly Comm. On Judiciary, 74th Session (April 10,
 2007)(statement of Barbary Buckley, Assemblywoman).

“without limitation,” if the Wildcard statute were intended to apply to the all-pervasive wage garnishment, then the drafters would decidedly written “wages” or “earnings” into the subsection as a helpful illustration of applicable property. The fact that the legislature did not state “wages” or “earnings” cannot be dismissed as oversight, or that “wages” or “earnings” were too obscure to mention, but as a statement that wages did not apply to the Wildcard.

G. In the same 2017 Legislative Session when the Legislature Increased the Wildcard Exemption Ten-Fold from \$1,000 to \$10,000, Which Would Have Drowned the Entire Wages Exemption, the Legislature Also Made Some Minor “Fine-Tuning” to the Wage Exemption, Demonstrating that the Two Exemptions Operated Independently of Each Other.

In the 2017 Legislative Session, the Nevada Legislature increased the Wildcard in subsection (1)(z) from \$1,000 to a tsunamic \$10,000.¹⁵ This ten-fold increase in the Wildcard Exemption would have effectively washed away the wage garnishment exemption, rendering the earnings exemption essentially supplanted. However, in the same 2017 Legislative Session, the Legislature enacted minor adjustments to the wage garnishment. Specifically, the legislature increased the wage exemption from 75% to 82% for those

¹⁵ 2017 Statutes of Nevada, Page 1664 (CHAPTER 311, AB 314)(“not to exceed ~~[\$1,000]~~ **\$10,000** in total value”) (emphasis in original)

1 earning a gross weekly salary of \$770.¹⁶ The fact that the Legislature would
 2 make both these amendments to the Nevada Exemption statutes, inflating the
 3 Wildcard to \$10,000 and simultaneously tinkering with the wage exemptions,
 4 demonstrates that these two exemptions, the \$10,000 Wildcard and the Wage
 5 Exemption, were intended to apply independently of one another. Again, the
 6 fact that the Wildcard does not affect the wage exemption is consistent with
 7 the original legislative history.
 8
 9

10 **H. Applying the Wildcard to Wages Produces Absurd or**
 11 **Unreasonable Results Because It Forces Every Wage**
 12 **Garnishment Into a Court Hearing; and a Court Hearing for**
 13 **Every Withholding Period on Wages.**

14 If the \$10,000 Wildcard exemption can apply to attachable earnings,
 15 then a judgment debtor would be entitled to file a Wildcard Exemption claim
 16 every time their wages were garnished. That produces absurd and
 17 unreasonable results.

18 The Wage exemption is a “non-judicial” exemption. In other words, a
 19 judgment debtor collects their exempt wages without court intervention
 20

21 ¹⁶ 2017 Statutes of Nevada, Page 1970 (CHAPTER 329, SB 230) (“For any
 22 workweek, *82 percent of the disposable earnings of a judgment debtor*
 23 *during that week if the gross weekly salary or wage of the judgment debtor*
 24 *on the date the most recent writ of garnishment was issued was \$770 or*
 25 *less, 75 percent of the disposable earnings of a judgment debtor during that*
week [H] if the gross weekly salary or wage of the judgment debtor on the
date the most recent writ of garnishment was issued exceeded \$770”) (emphasis in original)

1 because the employer only withholds the attachable portion of the wages. If
2 the employer does over-withhold exempt portions of the judgment debtor's
3 wages, then the judgment debtor may, pursuant N.R.S. §21.112(1), "file the
4 claim of exemption pursuant to this subsection within 10 days after the date of
5 each withholding of the judgment debtor's earnings."

6
7 However, the District Court interpreted the \$10,000 Wildcard
8 Exemption to also apply to any garnishment of wages. Unlike the wage
9 exemption, the \$10,000 Wildcard can only be claimed by filing and serving a
10 Claim of Exemption (N.R.S. §21.112(1)), which triggers the judgment
11 creditor's obligation to file an objection or motion to determine the claim of
12 exemption within 8 judicial days (N.R.S. §21.112(3)), and request a court
13 hearing to be held within 7 judicial days (N.R.S. §21.112(6)), or risk the
14 property be released to the judgment debtor (N.R.S. §21.112(2)). If the
15 Wildcard would apply to wages, then there would be no reason why a
16 judgment debtor would not claim the \$10,000 Wildcard exemption whenever
17 wages are garnished. Therefore, under the District Court's interpretation that
18 the \$10,000 Wildcard applies to wages, then by perforce every wage
19 garnishment in the State of Nevada in every court would lead to a court
20 hearing, burdening both the court, clerks, sheriffs, and litigants.
21
22
23
24
25

Not only that, if the exemption is being claimed on wages, the language of the statute states that a claim be filed for every withholding period (N.R.S. §21.112(1)), then the judgment debtor may make a Wildcard claim for every withholding period, forcing the court to hear the claim of exemption for every withholding period.

I. Compliance with Applying Both the Wage and Exemption and the Wildcard Simultaneously Would be Practically Impossible.

As discussed above, the wage exemption is a “non-judicial” exemption that is automatically applied by the employer without the necessity of court hearing or intervention. Although there is certain degree of resources necessary to calculate the withholding based on N.R.S. §21.090(1)(g),¹⁷ the task of calculating withholding becomes nearly impossible to calculate when an employer must also conduct a “double-accounting” simultaneous ledger on both the exempt portion and the attachable portion as it applies to the \$10,000

¹⁷ The subsection states in pertinent part: For any workweek, 82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater.

Wildcard. In the case *sub judice*, the District Court ordered the following on the employer, the State of Nevada, and the Carson City Sheriff (AA121):

4. That during the pendency of the garnishment (180 days from the date of the issuance of the writ of garnishment¹⁸), at the time of each intervening pay period the garnishee shall determine the total sum of [Respondent]'s leviable earnings, which will constitute 25% of [Respondent]'s disposable earnings pursuant to NRS 21.090(1)(g) from the date of issuance of the writ of garnishment to the present date.

5. That the garnishee shall not provide to the Carson City Sheriff with the leviable earnings of Respondent pursuant to NRS 21.090(1)(g) until the total sum [Respondent]'s leviable earnings earned during the pendency of the garnishment exceeds \$10,000.

6. That once [Respondent]'s leviable earnings exceed \$10,000, the Garnishee shall provide the Carson City Sheriff evidence of its calculation of total leviable earnings and [Respondent]'s leviable earnings which are then in excess of \$10,000.

The Exemption Order appeared to be ordering the State of Nevada, who had not appeared in this case, to calculate the "leviable" 25% of Respondent's earnings," but not to levy on those earnings. Then, of the "leviable 25%" that were not being levied, to keep a running tab of how much was not being withheld until that non-withheld amount exceeded \$10,000, so that it could finally be withheld. For every garnishment, an employer would be forced to

¹⁸ Under N.R.S. §31.296(1) the 180 days is calculated from the date of service, or the date of the writ interrogatory answers, not necessarily "the date of the issuance of the writ."

1 conduct a double-tiered accounting of their garnishment withholding: 1) first
2 the employer would have to calculate the exemption under the formula
3 outlined in N.R.S. §21.090(1)(g). Then the employer would have to take the
4 remaining attachable portion and then 2) filter that remainder through a second
5 formula of an accruing accounting of those amounts and, without withholding
6 or sending the money to the Sheriff, add up those withholdings, give the
7 withheld money back to the judgment debtor, and wait until those
8 withholdings, which are not actually withheld, break \$10,000 before sending
9 the funds to the Sheriff. If it sounds difficult and complicated, then that is
10 because it is.

11
12
13
14 Under the Respondent's interpretation of the statute, every employer
15 from the State of Nevada, local governments, casinos, down to every "mom
16 and pop" employer with limited accounting resources, would have to expend
17 resources for compliance with this complex double-ledger accounting for each
18 paycheck.

19
20 In the case *sub judice*, the State of Nevada, did not conduct an
21 accounting, notwithstanding the Exemption Order. The State of Nevada had
22 not appeared in the case, and likely could not be forced to comply with the
23 Exemption Order. It can be represented by this counsel that when the Carson
24 City Sheriff received the September 2020 Exemption Order, they stated that
25

1 they lacked the mechanism to perform the Exemption Order as it was
2 explained to them. None of Respondent's wages were garnished and neither
3 the Sheriff nor the State of Nevada served an accounting of the 25% that
4 should have been withheld.
5

6 **J. Respondent's Interpretation that the \$10,000 Wildcard Can**
7 **be Applied to Produces Absurd or Unreasonable Results**
8 **Because if the \$10,000 Wildcard is Applied to Wages, then**
9 **While the Wildcard is Being Applied, 180 Days of Post-**
10 **Judgment Interest Accrues and Garnishment Costs Continue**
11 **to Accrue.**

12 Yet another absurd or unreasonable result produced by the District
13 Court's interpretation, is that the judgment debtor claiming the \$10,000
14 Wildcard would eventually end up paying the \$10,000 and all the accrued
15 costs and interest. If the \$10,000 Wildcard is applied to wages, then during
16 the 180 days that attachable wages are applied to the Wildcard, the judgment
17 accrues 180 days of post-judgment accrued interest plus the accrued
18 garnishment costs¹⁹ for each renewal wage garnishment. In claiming the
19 \$10,000 Wildcard, the judgment debtor will end up nonetheless paying back
20 the \$10,000 in the end, plus all the accrued post-judgment costs and interest.
21

22 Compounding the absurdity, under the District Court's interpretation, if
23 the employee is not highly paid, the judgment creditor would have to go
24

25 ¹⁹ N.R.S. §21.025.

1 through the futility of serving a series of writs of garnishment every 180 days,
2 perhaps over several years, accruing post-judgment costs, and causing post-
3 judgment interest to continue to pile up, until the \$10,000 exemption is
4 exhausted. Then after all of these garnishments are served, perhaps six
5 months, one year, or years later, the wage garnishment could be levied for the
6 full amount of the judgment. For a highly paid employee, the non-exempt
7 may reach \$10,000 within the 180 days. However, the writ is not “returned”
8 by the Sheriff for 180 days, so there would be no practical way of knowing
9 when the \$10,000 is reached.

12 Compounding this absurdity, Respondent’s counsel argued at the
13 September 4, 2020 Exemption hearing that “the \$10,000 can be claimed,
14 essentially each successive garnishment.”²⁰ The Respondent appears to take
15 the position that the \$10,000 Wildcard is an unlimited exemption to be
16 claimed on all successive writs, notwithstanding this Court’s pronouncement
17 that exemptions are not to cause “injury to creditors” or “extend the provisions
18 of the legislative grant.” These absurd and unreasonable results lead to the
19 inescapable conclusion that the statute was not written for the \$10,000
20 Wildcard to apply to wages.

25 ²⁰ September 4, 2020 Exemption Hearing Transcript Page 39 line 9-10
(AA100).

1 **K. It Was Error for the District Court to Extend the Legislative**
2 **Grant of Exemptions to Future Interest in Property.**

3 The Exemption Statute does not legislatively grant exemptions to future
4 interests in property, not even wages. The legislative grant of exemptions is
5 only as to existing interests in property. Although the wage garnishment lasts
6 for 180 days, an exemption claim on wages applies for each withholding
7 period, not to the future interests. The exemption statute in N.R.S. §21.112(1)
8 states, “If the property that is levied on is the earnings of the judgment debtor,
9 the judgment debtor must file the claim of exemption pursuant to this
10 subsection within 10 days after the date of each withholding of the judgment
11 debtor’s earnings.” (emphasis added) A judgment debtor has no equity in
12 wages beyond their current pay period.
13
14

15 In fact, even in this case *sub judice*, there is confusion in attempting to
16 apply the \$10,000 Wildcard to future interests in wages. The Respondent
17 herein attempted to exploit that confusion by arguing that she could use her
18 \$10,000 Wildcard on a bank account while simultaneously collecting the
19 money on the Wildcard from her wages. (AA137) As set forth above in the
20 Procedural and Factual History, the Respondent got her Exemption Order in
21 September 2020. Pursuant to that September 2020 Exemption Order, all of
22 her wages were being diverted back to the Respondent for the 180-day
23 garnishment term: she was collecting her standard exempt wages, plus getting
24
25

1 her attachable wages that were being applied to her \$10,000 Wildcard. While
2 the Exemption Order was still being implemented for the 180-day term, and
3 Respondent was enjoying the benefit of the \$10,000 Wildcard exemption and
4 collecting all of her wages, the Appellant levied on Respondent's Wells Fargo
5 bank account. Respondent then made a duplicate \$10,000 Wildcard claim on
6 her Wildcard. In Respondent's brief she asserted that "Susan continues to have
7 a considerable amount of the Wildcard Exemption remaining available to her."
8
9 (AA137) However, that was not correct. Her \$10,000 Wildcard was in the
10 process of being exhausted on her wages for the 180-day garnishment term in
11 accordance with the Exemption Order, and the \$10,000 Wildcard was not
12 available to be claimed simultaneously on a Wells Fargo bank account.
13 Respondent's argument aptly demonstrates that attempting the "square peg"
14 \$10,000 Wildcard (for existing property interests) into the "round hole" wage
15 exemption (for future property interests) statutorily is not a fit.
16
17
18

19 **V. Conclusion**

20 Based on the foregoing the District Court's September 2020 Order Upon
21 Claims of Exemptions should be reversed, and this Court should rule that the
22 \$10,000 Wildcard does not apply to wages.
23
24
25

1 **VI. Attorney's Certificate**

2 I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
4 and the type style requirements of NRAP 32(a)(6) because:

5 This brief has been prepared in a proportionally spaced typeface using
6 Word in 14-point Times New Roman.

7 I further certify that this brief complies with the page- or type-volume
8 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
9 exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

10 Finally, I hereby certify that I have read this appellate brief, and to the
11 best of my knowledge, information, and belief, it is not frivolous or interposed
12 for any improper purpose. I further certify that this brief complies with all
13 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
14 which requires every assertion in the brief regarding matters in the record to
15 be supported by a reference to the page and volume number, if any, of the
16 transcript or appendix where the matter relied on is to be found. I understand
17 that I may be subject to sanctions in the event that the accompanying brief is
18 not in conformity with the requirements of the Nevada Rules of Appellate
19 Procedure.

20 Dated this 24th day of March 2021

21 DUBOWSKY LAW OFFICE, CHTD.

22 By: /s/Peter Dubowsky

23 Peter Dubowsky, Esq.
24 Nevada Bar No. 4972
25 300 South Fourth Street
Suite 1020
Las Vegas, Nevada 89101
(702) 360-3500
Fax (702) 360-3515
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March 2021, I filed the foregoing
**APPELLANT’S OPENING BRIEF AND APPELLANT’S APPENDIX
001-146**, which shall be served via electronic service from the Court's eFlex
system to:

Master Service List

Docket Number and Case Title: 81974 – PLATTE RIVER INSURANCE
COMPANY VS. SUSAN JACKSON
AND LANCE JACKSON
Case Category: Appeal
Information current as of: March 24, 2021 11:11 a.m.

Electronic notification will be sent to the following:

Peter Dubowsky
William Thompson
Michael G. Millward

/s/William Thompson
An employee of Dubowsky Law Office, Chtd.