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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

RESPONDENTS' ANSWERING BRIEF

APPEAL

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

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RESPONDENTS' ANSWERING BRIEF

INTRODUCTION

This case concerns a district court's determination that the disposable earnings of a judgment debtor are fully exempt from execution. The District Court determined that 75% of the judgment debtor's disposable earnings were exempt pursuant to a claim of exemption under NRS 21.090(1)(g) and that the remaining 25% of disposable earnings being exempt pursuant to the judgment debtor's claim of exemption of the remainder pursuant to NRS 21.090(1)(z).

Respondents seek to have this Court uphold the District Court's determination.

STATEMENT OF THE ISSUES

Whether the District Court erred in determining that 75% of Respondent Susan Jackson's disposable earnings are exempt from execution under NRS 21.090(1)(g) and the remaining 25% of Respondent's disposable earnings up to the sum of \$10,000 are exempt pursuant to NRS 21.090(1)(z)?

STATEMENT OF THE CASE

This appeal is from an Order issued by the Honorable Thomas W. Gregory, District Court Judge for the Ninth Judicial District Court in and the for the County of Douglas, on September 29, 2020, following a hearing held on September 4,

2020, concerning claims of exemption by Respondents in response to a writ of garnishment issued at Appellant's request.. AA114.

In Respondent Susan Jackson's *Affidavit of Claim of Exemption* filed on August 20, 2020 (hereinafter "Claim of Exemption"), Susan Jackson claimed that 75% of her disposable earnings were exempt pursuant to NRS 21.090(1)(g) (1). AA027. Susan Jackson also claimed that "\$10,000" of her remaining unexempt disposable earnings "sought to be garnished" were exempt pursuant to NRS 21.090(1)(z). AA027.

On September 29, 2020, the District Court entered its *Order Upon Claim of Exemptions*, determining therein that seventy-five percent (75%) of Susan Jackson's earnings are exempt from execution pursuant to the wage garnishment exemption and the remaining twenty-five percent (25%) of Susan Jackson's disposable earnings were exempt up to the total sum of \$10,000 "during the pendency of the garnishment." AA121.

STATEMENT OF FACTS

On June 2, 2020, the Court entered Judgment against Defendants Eureka Builders, Inc., and Respondents Lance Jackson and Susan Jackson in the total sum of \$47,912.89.

On July 31, 2020, at Platte River's request, the Court Clerk issued a Writ of Execution directing the Sheriff of Carson City to satisfy the judgment.

On August 20, 2020, upon receipt of the notice of the Writ of Execution, Lance and Susan Jackson filed their respective *Affidavit of Claim of Exemption* claiming an exemption of their earnings pursuant to NRS 21.090(1)(g) and NRS 21.090(1)(z).

On August 27, 2020, Platte River objected to Susan Jackson's *Affidavit of Claim of Exemption* by filing its *Motion to Determine the Issue of Exemption*.

Respondents filed their *Opposition to Platte River's Motion Regarding Exemption* on September 1, 2020.

On Friday September 4, 2020, the Court held a hearing upon Platte River's *Motion to Determine the Issue of Exemption*.

On September 29, 2020, the Court entered its *Order Upon Claim of Exemptions*, determining therein that seventy-five percent (75%) of Susan Jackson's earnings are exempt from execution pursuant to NRS 21.090(1)(g). The Court further determined that the remaining twenty-five percent (25%) of Susan Jackson's earnings are exempt up to the total sum of \$10,000 for the remainder of the garnishment.

On or about October 15, 2020, Appellant filed its *Notice of Appeal*.

On November 16, 2020, a *Writ of Execution* was issued by the Court Clerk of the Ninth Judicial District Court at the request of Appellant.

On or about November 30, 2020, Susan Jackson became aware that \$727.71 had been garnished from her Wells Fargo Checking Account and \$10,317.35 had been garnished from her Wells Fargo savings account.

On December 2, 2020, Respondents filed their respective *Affidavits of Claim of Exemption* and served the same upon the Douglas County Sheriff, the Carson City Sheriff, and Appellant's Counsel.

On December 7, 2020, Appellant filed its *Motion to Determine the Issue of Exemption*.

On January 5, 2021, the District Court held a hearing upon Respondents' respective *Affidavits of Claim of Exemption* and a briefing schedule upon the issues was agreed upon.

On February 8, 2021, the District Court entered its *Order Regarding Claimed Exemption*.

SUMMARY OF ARGUMENT

The district court correctly determined that NRS 21.090(1)(g), pertaining to wage garnishment exemption and NRS 21.090(1)(z) (also referred to as "wildcard exemption") pertaining to the claim of exemption up to \$10,000 of "any personal property not otherwise exempt from execution," can be applied cumulatively to exempt 100% of the debtor's wages.

Platte River argues that NRS 21.090(1)(z) can only apply to property where

no other exemption has been claimed. The plain meaning of the statutes in question establish that Platte River's interpretation is incorrect.

The language of the statutes in question are not ambiguous and this Court should apply the plain meaning of the statute in reviewing the district court's decision.

NRS 21.090(1) exempts the property delineated in its subsections except as it pertains to property specifically excluded.

NRS 21.090(1)(z) as defined by statute and the other statutory definitions found in Title 2 of the Nevada revised statutes clearly establishes that the wildcard exemption is applicable to any and all personal property selected by the debtor, including a debtor's disposable earning held in a financial account.

The phrase "not otherwise exempt" found in NRS 21.090(1)(z) should be found to mean any property selected by the debtor that is not exempted under any other exemption within NRS 21.090(1). The phrase does not imply that the "any property" is excluded where it is partially exempted under NRS 21.090. Furthermore, NRS 21.090(1)(z) does not provide for the specific exclusion of property as required under NRS 21.090(1) and as shown in the numerous exemptions within its subsections.

Additionally, Platte River's interpretation of the application of NRS 21.090(1)(z) is not being employed in the bankruptcy court, and does not comport

with this Court's previous suggested use of NRS 21.090(1)(z) to supplement other exemptions to exempt property that would otherwise not be exempt.

Platte River's citation to legislative history is informative, but fails to yield the legislators understanding and intention as it pertains to the expansion of the wildcard exemption from \$1,000 to \$10,000, and is therefore unavailing.

Lastly, no absurd result occurs through the plain application of the wildcard exemption. The legislature has given debtors a tool to exempt more of their property for their own protection and needs. Sophisticated debtors will be more likely to exempt more of their wages, and debtors who fail to exercise their rights to claim an exemption will be subject to garnishment.

Accordingly, little will change. However, the application of the statute will require the debtor and the creditor to look at new and additional ways to settle and satisfy judgment debts.

ARGUMENT

A. Standard of Review

Statutory interpretation served as the basis of the District Court's decision, and thus, de novo review is appropriate. *See Waldman v. Maini*, 124 Nev. 1121 1129, 195 P.3d 850, 856 (2008).

B. Statutory Interpretation

When reviewing de novo, Nevada's courts interpret statutes by their plain meaning unless the statute is ambiguous. *People Nev. v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008). "Thus, when the language of a statute is plain and unambiguous, such that it is capable of only one meaning, this court should not construe that statute otherwise." *Becker v. Becker*, 131 Nev. 857, 362 P.3d 641 (2015)(quoting *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228-29, 209 P.3d 766, 769 (2009)).

Appellant has admitted that NRS 21.090(1)(z) is not ambiguous.¹ In Platte River's August 27, 2020 *Motion to Determine the Issue of Exemption* (hereinafter "Exemption Motion") and at the hearing on September 4, 2020, Platte River argued that the language "any property not otherwise exempt from execution" from NRS 21.090(1)(z) prevents application of the "wildcard" exemption to any other property that is partially or fully exempt under any other exemption including wages under NRS 21.090(1)(g). Tr. at 12:12-12:19.; AA032. Platte River argued that the District Court's interpretation would create an absurd result, but Platte River did not argue in its Exemption Motion, or at the September 4, 2020 hearing, that the plain language of the statute creates an absurd result. Likewise, the District Court did not consider the legislative history. AA0121

¹ Tr. at 11-23:11-24; Tr. at 12-13:12-14; Tr. at 13-17; Tr. at 14-1:14-2; Tr. at 14-10:14-12; Tr. at 42-1:42-3.

Section 14 of Article One of the Nevada Constitution mandates "[t]he privilege of the debtor to enjoy the necessary comforts of life be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities." Nev. Const., art. 1, § 14.

The legislative purpose of NRS 21.090 is "to secure to the debtor the necessary means of gaining a livelihood, while doing as little injury as possible to the creditor." *In re Galvez*, 115 Nev. 417, 419, 990 P.2d 187, 188 (1999) (*quoting Krieg v. Fellows*, 21 Nev. 307, 310, 30 P. 994, 995 (1892)).

This Court has gone so far as to state that "the exemptions set forth in NRS 21.090 are 'absolute and unqualified,' with few exceptions, 'and [their] effect is to remove property beyond the reach of the legal process.'" *Savage v. Pierson*, 123 Nev. 86, 90, 157 P.3d 697, 700 (2007) (*quoting Elder v. Williams*, 16 Nev. 416, 423 (1882)).

The statutes NRS 21.090(1)(g) and NRS 21.090(1)(z) are unambiguous, simple and straight forward, and are not susceptible to multiple meanings. The result complained of, the exemption of additional wages from garnishment, fits within the fits within the intentions for debtor exemptions under the Nevada Constitution and the legislative purpose behind NRS 21.090.

Accordingly, the Court should conclude that looking beyond the plain language of these statutes to determine their meaning and application is unnecessary.

C. NRS 21.090(1)(z): “Any Personal Property”

NRS 21.090(1)(z) has been called the “wildcard exemption” meaning it can be applied to any and all property as determined by the debtor up to the exemption amount. *See In re Newman*, 487 B.R. 193, 196 (B.A.P. 9th Cir. 2013).

At issue is the meaning of NRS 21.090(1)(z) and whether “any personal property not otherwise exempt” includes “earnings” as defined under NRS 21.090(1)(g)(2).

NRS 21.090(1), NRS 21.090(1)(g), and NRS 21.090(1)(z) provide as follows in pertinent part:

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law: (g) For any work week, . . . 75 percent of the disposable earnings of a judgment debtor during that week . . . As used in this paragraph:

(1) “Disposable earnings” means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) “Earnings” means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor’s equity in any property, money, stocks, bonds or other funds on deposit with a

financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

It is notable under the definitions given in NRS 21.090(1)(g)(2) that “earnings” are defined to include “compensation” in the debtor’s possession and also “compensation held in accounts maintained in a bank or any other financial institution.” *See* NRS 21.090(1)(g)(2).

Likewise, NRS 21.090(1)(z) defines “personal property” to include “money” and “other funds on deposit with a financial institution.” *See* NRS 21.090(1)(z).

Chapter 10 (“General Provisions”) within Title 2 (“Civil Practice”) of the Nevada Revised Statutes provides definitions that are applicable to Chapters 10 through 22.

Personal property is defined in Chapter 10 to include “money, goods, things in action, and evidences of debt.” In other words, everything except for real property. *See* NRS 10.065 (defining “property”); NRS 10.075 (defining “real property”).

The definitions of “personal property,” “real property,” and “property” found in Chapter 10 are repeated verbatim in Chapter 28 of Title 3 (“Remedies; Special Actions and Proceedings”), which also pertains to Chapters 28 through 43 of the Nevada Revised Statutes which includes Chapter 31 (“Attachment, Garnishment and Other Extraordinary Remedies”). *See* NRS 28.050 (defining

“personal property”; NRS 28.080 (defining “real property”); NRS 28.070 (“property”).

“Money” is defined in Chapter 17 (“Judgments”) of Title 2 in NRS 17.500 as “a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.” NRS 17.500.

Application of the foregoing definitions make it clear that a debtor’s “earnings” are the also the debtor’s “personal property.” It is also clear that there is overlap between the two statutes with both NRS 21.090(1)(g) and NRS 21.090(1)(z) being applicable to funds held in a “financial institution.” *See* NRS 21.090(1)(g)(2); NRS 21.090(1)(z).

Remarkably Platte River does not cite to or discuss the above definitions in detail or the definition of “earnings” as defined under NRS 21.090(1)(g)(2) in its Brief. It further fails to address the overlap between funds held in financial accounts as specifically provided as exempt under both NRS 21.090(1)(g) and NRS 21.090(1)(z). *See* Appellant Br.

Accordingly, the Court should conclude that there is no dispute that “any personal property” in NRS 21.090(1)(z) is applicable to a debtor’s “earnings” as defined in NRS 21.090(1)(g)(2). *See id.*

D. NRS 21.090(1)(z): “Not Otherwise Exempt”

Pursuant to NRS 21.090(1) a debtor has the right to claim all property delineated in the exemptions that follow “except as specifically provided in this section.” *See* NRS 21.090(1).

Because NRS 21.090(1) requires that property be specifically excluded for Respondent Susan Jackson’s wages not to be exemptible under NRS 21.090(1)(g) and NRS 21.090(1)(z), one or both statutes would be required to specifically exclude the property. *See id.*

The crux of Platte River’s argument before the District Court is that the phrase “not otherwise exempt” in NRS 21.090(1)(z) serves to limit exemptions application to property where no other exemption had been claimed. Tr. at 12:12-12:19; AA032. However, the plain meaning of the statute doesn’t support Platte River’s interpretation.

NRS 21.090(1)(z) applies to “[a]ny personal property.” The word “any” has been interpreted by the U.S. Supreme Court and the Ninth Circuit Court of Appeals to be “all encompassing” or “all-inclusive.” *See e.g. United States v. Williams*, 514 U.2. 527, 531-32, 115 S.Ct. 1611 (1995) (interpreting “any” in tax statute); *Barker v. Riverside Cty. Office of Ed.* 584 F.3d 821, 825-26 (9th Cir.2009) (finding “any” to be “all-inclusive”); *Lockett v. Ericson*, 656 F.3d 892,898 (9th Cir. 2011) (finding “any issue” to mean “all inclusive”).

Thus, NRS 21.090(1) and NRS 21.090(1)(z) means “all property” not exempt by way of some other exemption, chosen by the debtor, is exempt from execution up to \$10,000. *See* NRS 21.090(1)(z); NRS 21.090(1).

Comparing NRS 21.090(1)(z) to other exemptions proves that the language “not otherwise exempt” is not language limiting application of the exemption to specific property. One good example is NRS 21.090(1)(g) which provides specific exclusions as to disposable earnings subject to “any order . . . for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax.” NRS 21.090(1)(g).

NRS 21.090(1)(n) exempts security deposits except as to landlords seeking to enforce a rental or lease agreement. *See* NRS 21.090(1)(n).

NRS 21.090(1)(bb) exempts stock in a closely held corporation except as to charging orders as provided under NRS 78.746. *See id.*; NRS 78.746.

NRS 21.090(1)(r)(5) exempts funds contributed to a 529 account, unless the funds were deposited after the entry of a judgment. *See Id.*

All of these exceptions are specific as to the property that is exempt as required by NRS 21.090(1).

It is also notable that Platte River’s interpretation does not conform to this Court’s own suggested use of the wildcard exemption, or the practical use of the

exemption occurring in the United States Federal Bankruptcy Court for the District of Nevada.²

In the case *Becker v. Becker*, 131 Nev. 857, 362 P.3d 641 (2015), this Court was tasked with determining the scope of NRS 21.090(1)(bb) pertaining to a debtor's right to exempt an interest in stock in a closely held corporation. *See id.* The Nevada Supreme Court determined that a debtor could exempt the debtor's noneconomic interest in a closely held corporation, but the economic interests in the stock, dividends and income distributions were subject to a charging order remedy provided by NRS 78.746(1). *See* 131 Nev. at 863, 362 P.3d at 644.

In *Becker*, the Court's discussed the "Wildcard Exemption," and determined that "the debtor can still apply the wildcard exemption to retain up to \$1,000 in distributions from the corporation."³ 131 Nev. at 863, 362 P.3d at 645 (citations omitted).

It's noteworthy to point out that in the *Becker* decision, the Court concluded that prospective economic distributions were exemptible under the wildcard exemption even though the charging order exemption was applicable to the equity

²*See Becker v. Becker*, 131 Nev. 857, 362 P.3d 641, 645 (2015)*In re Gagow*, 590 B.R. 512 (Bankr. Nev. 2018); see also *In re Acosta and Fonseca*, Bankr. D. Nev.: 17-15347-MKN, p.3, lns. 14-17. <https://www.nvb.uscourts.gov/downloads/opinions/mkn-17-15347-jorge-a-acosta-beatriz-fonseca.pdf>

³ NRS 21.090(1)(z) was amended in 2017 by the Nevada Legislature by Appellant Br. p.314, which provided for an increase in the exemption amount from \$1,000 to \$10,000.

interest of the corporate asset. *See id.* In other words, the wildcard exemption was not excluded because the interest in the corporate asset was not “otherwise exempt.” *See id.*

The federal bankruptcy cases *In re Gagow*, as well as the bankruptcy case *In re Acosta and Fonseca*, are cited above as examples of the regular use of the wildcard exemption to exempt property not completely exempt under some other exemption.

In *Gagow* for example the debtor sought to exempt \$25,000 in cash pursuant to NRS 21.090(1)(g) and NRS 21.090(1)(z). 590 B.R. at 520. Notably, in *Gagow*, the bankruptcy trustee’s challenge to the claimed exemptions pertain to the type of property exempted; property distributed from an IRA rather than the claim of exemption of property under NRS 21.090(1)(g) and the remainder NRS 21.090(1)(z). *See* 590 B.R. 517, fn.13.

In the second example, *In re Acosta and Fonseca*, the bankruptcy court determined that from a balance of “\$42,000, the Debtors and the Trustee do not dispute that \$16,150 may be exempted . . . under NRS 21.090(1)(u) and an additional \$10,000 may be exempted . . . under NRS 21.090(1)(z).”⁴

⁴ *In re Acosta and Fonseca*, Bankr. D. Nev.: 17-15347-MKN, Doc. 55, 10/17/2019, p.3, lns. 14-17; <https://www.nvb.uscourts.gov/downloads/opinions/mkn-17-15347-jorge-a-acosta-beatriz-fonseca.pdf>

Under all three examples, the wildcard exemption is used to exempt value of personal property above and beyond the value of a claimed exemption upon the same property.

Applying Platte River's interpretation, that the exemption only applies to "any property that is not already claimed as exempt," would render the wildcard exemption ineffective to protect the property of debtors, and runs afoul of the practical application of the statute in bankruptcy proceedings as established in the examples. Appellant Br., p.12. Only in instances where the exemption would be claimed not in association with any other claim of exemption would a debtor receive any benefit whatsoever. *See* Appellant Br., p.12.

Appellant argues that under its interpretation, a judgment debtor would not waste the \$10,000 wildcard exemption on personal property already exempted from execution. *See* Appellant Br., p.12. Appellant further argues in its brief that if the meaning of "not otherwise exempt" was not to limit the application of the exemption, the words would be redundant and meaningless. *Id.*

However, as shown in the *Acosta* and *Gagow* examples cited above, debtors are able to use the wildcard exemption to supplement any other exemption, where their personal property "is not otherwise exempt," or, in other words, not fully or completely exempted by claim of another exemption.

This interpretation is supported by NRS 21.075(2) which includes the language a judgment creditor must provide to a debtor upon execution in the “Notice of Execution. ” Under item no. 24 under NRS 21.075(2) within the “Notice of Execution” provisions, the notice provides that “[p]ersonal property, not to exceed \$10,000 in total value, [is exempt] if the property is not otherwise exempt from execution.” NRS 21.075(2). The notice does not state any limitation except that the exemption is not applicable to otherwise fully exempt property.

The statute does not put the debtor on notice that cumulative application of the statute is not available, or that the exemption is not applicable if the debtor’s property falls within some other exemption. *See id.*

Platte River’s interpretation of NRS 21.090(1)(z) is not the status quo. Applying the wildcard exemption as Appellant suggests would be a significant change from how the wildcard exemption is currently applied in bankruptcy matters as shown above and its application would have a significant disrupting effect.

Under Platte River’s interpretation, Respondent Susan Jackson would have had to claim 100% of her income as exempt under NRS 21.090(1)(z) for the exemption to apply, and forego any of the relief permitted under NRS 21.090(1)(g).

Platte River's all or nothing approach doesn't make sense and is not supported by the plain meaning of NRS 21.090(1)(g) and NRS 21.090(1)(z).

This Court should find Platte River's interpretation defies the plain meaning of the statute, and would turn the purpose and application of the exemption on its head.

E. Legislative History of Wildcard is Unavailing

Even though Platte River has admitted that the wildcard exemption is unambiguous, it proceeds to review the legislative history of NRS 21.090(1)(z). However, NRS 21.090(1)(z) when enacted provided for significantly less of an exemption than the current exemption of \$10,000. It can hardly be said that NRS 21.090(1)(z) is a "small exemption" that "allows a person to be able to pay for essentials." Appellant Br. p. 14-15. Furthermore, the meaning and purpose of the statute have more to do with what the legislature wanted the exemption to accomplish than what property it was to apply to. *See* AA035-AA036.

In 2017, NRS 21.090(1)(1) was amended to extend the wildcard exemption from \$1,000 to \$10,000. *See* AB 314. Notably, Platte River does not make an overview of the reasons and purposes behind the extension of the statute. A debtor could do very little with the cumulative application of the wage garnishment and wildcard exemption, when the exemption was limited to only \$1,000. However, at \$10,000 the exemption makes a significant impact in the debtor's ability to protect

and provide for themselves. The legislative history of the wildcard exemption as to its impetus, is informative, but unhelpful in understanding its intended application following the expansion of the sum to \$10,000.

Respondents requests the Court disregard Appellant's argument and interpret the statutory provisions harmoniously according to their plain meaning.

F. Wage Garnishment and Wildcard Exemptions can be Claimed Simultaneously.

Platte River argues in its brief that simultaneous application of the wage garnishment exemption and the wildcard exemption produces an absurd result because while the wildcard exemption is applied, the judgment continues to accrue garnishment costs. Appellant Br., p.22.

Garnishment and execution costs are added to a judgment in each and every case that a debtor makes a claim of exemptions. *See* NRS 17.130. If Platte River believes that application of the wildcard creates an absurd result in that additional costs will be added to the judgment, then the same would be true also each and every time a debtor claims an exemption as to any other property. *See id.*

There is no absurdity in a judgment creditor obtaining the right to recover its costs resulting from an execution or garnishment of property, just as there is no absurdity created by a judgment debtor making a claim of exemptions to protect the property and means of providing for themselves. *See id.*; NRS 21.112.

Unless Platte River is suggesting that costs should not be recoverable or added to the judgment when the debtor makes a valid claim of exemption to avoid the absurdity of the accrued costs, its argument should be disregarded.

G. District Court did not Err in Determining of Wildcard Exemption's Application to Disposable Earnings.

Platte River argues in its opening brief that the District Court erred by determining that wildcard exemption is applicable to future interest in property. Appellate Br., p. 24. Without citation to any authority, Platte River states that the “Exemption Statute does not legislatively grant exemptions to future interests in property, not even wages.” *Id.*

Platte River is wrong. NRS 21.090 makes no distinction between future and current interests in property when making claims of exemptions. *See id.* For example, NRS 21.090(1)(g) provides an exemption of disposable earnings sought to be garnished. NRS 21.090(1)(k) exempts a beneficial interest in any life insurance policy. NRS 21.090(1)(w) exempts “payments” received for future earnings of the judgment debtor. NRS 21.090(1)(u) exempts ongoing payment not to exceed \$16,150, received as compensation for personal injury. NRS 21.090(1)(cc) exempts a trust beneficiary’s “distribution interest.” NRS 163.4155 defines a “distribution interest” as a “present or future interest in trust income or principal . . .” NRS 163.4155.

All of these examples either are or can be applicable to future interests in property. Conversely, there is no language in NRS 21.090 limiting the applicability of any delineated exemption to only that property currently in the debtor's possession, except as specifically stated within the exemption. *Cf.* NRS 21.090.

Under the wildcard exemption, any personal property "belonging to the judgment debtor" may be chosen. For example, a debtor could claim the wildcard exemption as to a tax refund not yet received, or even and as to an interest in an inheritance that the debtor has become entitled to receive in the future. *See* NRS 21.090(1)(z). In both examples, the property is not otherwise exempt, and the property is or will become property of the debtor. Whether the debtor has a current possessory interest in the property is irrelevant to a debtors' claim of the exemption unless specifically required by the statutes.

Platte River tries to complicate the issue by referencing Susan Jackson's claim of the wildcard exemption over funds received from her employment in her financial accounts. Appellant Br., p.24. What is not explained in Platte River's brief is that it sought to garnish the same exempted property twice. *See* AA142, lns. 25-28.

Platte River sought to garnish Susan Jackson's wages by way of the Writ of Execution issued on July 31, 2020, and thereafter on November 16, 2020, Platte

River sought again to execute against Respondents' bank accounts where Respondent Susan Jackson's earnings are received. *See* AA125-127

Platte River complicated Respondents' claim of exemptions by executing on financial accounts that held and received earnings during the initial garnishment period, thereby prompting the argument that Platte River was executing upon the same exempt property a second time. *See* AA142-AA143.

Accordingly, any complication asserted by Platte River as to its collection efforts should be attributable to its own attempts to take property that had already been exempted by Respondent Susan Jackson, and not to application of the claims of exemptions.

CONCLUSION

The exemptions found in NRS 21.090(1), not including NRS 21.090(1)(z) encompass the vast majority of the property an individual owns in some degree. By expanding the wildcard exemption, the Nevada Legislature has given Nevada judgment debtors another tool to protect themselves and their needs. Additionally, the additional protection provided by the application of the wildcard exemption as exercised by Respondents will force both creditor and debtor to the table to look at different and better approaches to satisfy judgments.

However, the adoption of a rule that the wildcard exemption be made exclusively applicable to property where no other exemption has been claimed

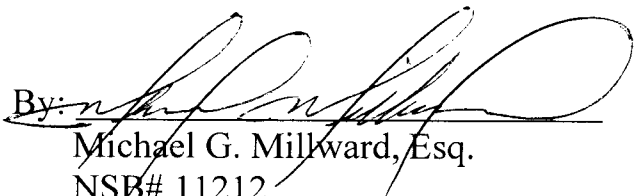
would, in many respects, make application of the exemption meaningless, and would turn its intended purpose on its head. *See* NRS 21.090(1)(z).

Based upon the plain language of the statutes cited herein, this Court should easily conclude that the definition of “earnings” found in NRS 21.090(1)(g)(2) must be read in concert with NRS 21.090(1)(z)’s exemption of “[a]ny personal property not otherwise exempt from execution.” *See* NRS 21.090(1)(g)(2); NRS 21.090(1)(z). In doing so, the Court should further conclude that the only harmonious reading of the two statutes requires cumulative application.

Therefore, Respondents respectfully request that this Court conclude that the District Court did not err in determining that Respondent Susan Jackson’s wages that are not exempt from execution pursuant to NRS 21.090(1)(g), are exempt from execution up to the sum of \$10,000 under her claim of exemption made pursuant to NRS 21.090(1)(z).

Dated this 10th day of May, 2021.

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CERTIFICATE OF COMPLIANCE

STATE OF NEVADA)
)ss.:
COUNTY OF DOUGLAS)

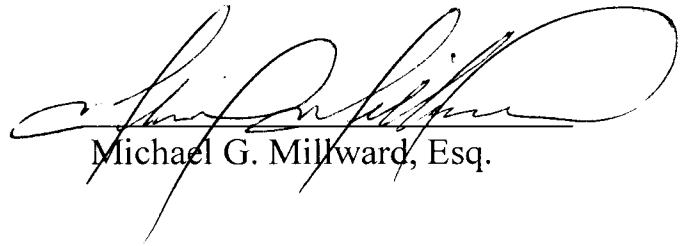
I, Michael G. Millward, Esq., hereby certify that this Answering Brief follows the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This brief has been prepared and proportionally spaced using Microsoft Word 2010 in Times New Roman, 14 point and with 1 inch margins.

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

I further hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose.

I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in Particular NRAP 28(e)(1), which required every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

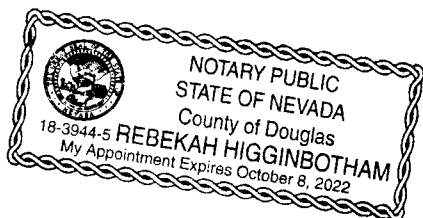
I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.


Michael G. Millward, Esq.

SUBSCRIBED and SWORN to before
me this 10th day of May, 2021.



NOTARY PUBLIC in and for said
COUNTY AND STATE



CERTIFICATE OF SERVICE

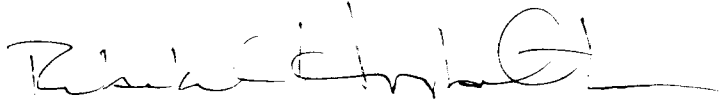
I hereby certify that I am an employee of Millward Law Ltd., and that on the 10th day of May, 2021, I filed the foregoing **RESPONDENTS' ANSWERING BRIEF**, which shall be served via electronic service from the Court's Eflex system to:

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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:

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