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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)
_____)

APPELLANT'S PETITION FOR REHEARING

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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APPELLANT’S PETITION FOR REHEARING

I. Introduction

This matter must be reheard because the Panel overlooked the requirement of N.R.S. §21.112(1) that for any garnishment on earnings, the debtor would be required to file an exemption claim “within 10 days after the date of each withholding.”¹ (emphasis added) Under the Panel’s interpretation, this means all the courts must hold hearings weekly, biweekly, semimonthly, or monthly for Wildcard claims that would be filed with the court, and served on the debtor’s employer, among others. This would require that creditors’ filed objections (also served on the debtor’s employer, among others) be heard and litigated at an expedited hearing for each withholding, on every Wildcard claim for earnings in every case. If not reheard, the Panel’s Opinion would trigger an unintended explosion of Wildcard filings and hearings for every paycheck withholding for every garnishment of every debtor.

The unintended application of applying the Wildcard exemption to earnings would be to the detriment of debtors and the courts, and lead to saddling judges with massive serial Wildcard exemption claims proceedings (for every paycheck) in every case where the Wildcard is a claim on earnings.

¹ This issue was raised in Appellant’s Opening Brief page 8 and page 11 of the Appellant’s Reply.

In addition to the unintended drain of judicial resources, the unreasonable and intended result of applying the Wildcard to earnings would mean that it would take longer to enforce judgments, and thus increase post-judgment litigation costs and interest (to be accrued to the judgment balance), and additional and protracted months and years of judgment enforcement to reach satisfaction. The unreasonable and absurd results of applying the Wildcard to Earnings are unintended by the Legislature, not merely “intended-but-unwise.”

In addition, the Panel’s Opinion renders the language “not otherwise exempt from execution pursuant to this subsection” meaningless.² Under the Panel’s interpretation, the Legislature need only have stated that the Wildcard applied to “Any personal property . . . not to exceed \$10,000 in total value. . .” without the additional qualifying language in the statute to limit its application, or exclude any of the debtor’s personal property.

II. Legal Argument

A. Standard for Rehearing

Pursuant to N.R.A.P. 40(c)(2), this Court may consider rehearing in the following circumstances: (A) When the court has overlooked or misapprehended . . . a material question of law in the case, or (B) When the court has overlooked,

² This was raised in the Appellant’s Opening Brief pages 11-14 and the Reply Brief pages 4-6.

misapplied or failed to consider a statute . . . directly controlling a dispositive issue in the case. Rehearing is necessary in this case.

B. This Panel overlooked that N.R.S. §21.112(1) requires that for every earnings garnishment the judgment debtor must file their exemption claim within 10 days after the date of each paycheck withholding, forcing serial creditor objections for each paycheck, and requiring the Court to hold a hearing for each withholding pay period for the garnishment duration, proving that the Wildcard was never intended to be applied to Earnings.

The Case is appropriate for rehearing because the Court has overlooked, misapplied or failed to consider N.R.S. §21.112(1) that states in pertinent part, “If the property that is levied on is the earnings of the judgment debtor, the judgment debtor must file the claim of exemption pursuant to this subsection within 10 days after the date of each withholding of the judgment debtor’s earnings.” (emphasis added) This language, requiring that for every paycheck the debtor must file and serve a claim of exemption (including on their employer, among others), and that the creditor file and serve an objection (also on the debtor’s employer, among others) and apply for an expedited court hearing for each paycheck, reveals that the Legislature did not intend to apply the Wildcard exemption to earnings.

Although the Panel acknowledged “the administrative burdens on the courts and litigants, complicates wage garnishment calculation,” the full extent of those “burdens” cannot be overstated.

Pursuant to N.R.S. §21.112(1), in order for a debtor to claim the Wildcard Exemption on earnings, the debtor is required to file claims of exemption 10 days after each withholding pay period. The debtor must also serve all of those claims on the sheriff, their employer, the judgment creditor, and file with the court. Pursuant to N.R.S. §21.112(7), if the debtor does not serve the sheriff and their employer a claim of exemption after each withholding, the property is released to the judgment creditor.³ These withholding periods could be as frequent as weekly, biweekly, semimonthly, or monthly⁴ for every 180-day⁵ duration of an earnings garnishment. The unreasonable and intended results of applying the Wildcard to earnings do not end there.

The creditor is then required to file and serve objections to each withholding exemption claim because, with the application of the Wildcard to earnings, there must be an accounting of what portion of the debtor's earnings for each paycheck is exempt under N.R.S. §21.090(1)(g), and what portion is "attachable"

³ N.R.S. §21.112(7) states, "If the sheriff or garnishee does not receive a copy of a claim of exemption from the judgment debtor within 25 calendar days after the property is levied on, the garnishee must release the property to the sheriff or, if the property is held by the sheriff, the sheriff must release the property to the judgment creditor."

⁴ These withholding periods are stated in the Garnishment Interrogatory form contained in N.R.S. §31.290(1).

⁵ N.R.S. §31.296(1) ("[I]f the garnishee indicates in the garnishee's answer to garnishee interrogatories that the garnishee is the employer of the defendant, the writ of garnishment served on the garnishee shall be deemed to continue for 180 days . . .")

and applicable to the Wildcard. Each creditor's objection must be filed and served within 8 days⁶ after each claim of exemption, which claim of exemption is required to be filed 10 days after each withholding period. Under the Panel's interpretation, the debtor and the creditor would be required to "paper" the debtor's employer with objections on each paycheck during their 180-day garnishment period.

It must be noted that under the Panel's interpretation, the creditor is in fact compelled to object to each of the debtor's claims and get a hearing on each claim to avoid losing their right to the property⁷. In addition, pursuant to N.R.S. §21.112(3), each of the creditor's objections on each of the claims of exemption for each withholding period requires an expedited hearing. The unintended, unreasonable result of applying the Wildcard to earnings means a storm of claims and frequent expedited hearings on every paycheck. There is no evidence that the Legislature intended such an unreasonable result.

⁶ N.R.S. §21.112(3) states, "An objection to the claim of exemption and notice for a hearing must be filed with the court within 8 judicial days after the claim of exemption is served on the judgment creditor... The judgment creditor shall also serve notice of the date of the hearing on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing."

⁷ N.R.S. §21.112(2) states, "[T]he property must be released to the judgment debtor if no objection to the claim of exemption is filed and an order to be used by the court to grant or deny an exemption." Further, N.R.S. §21.112(4) states, "If an objection to the claim of exemption and notice for a hearing are not filed within 8 judicial days after the claim of exemption has been served, the property of the judgment debtor must be released . . ."

Not only that, but at each expedited hearing on each claim of exemption for each withholding, it is the debtor's burden⁸ to prove the extent to which they are entitled to the Wildcard exemption for each paycheck withholding period. Compounding that, the debtor must rely upon their employer's "double-ledger accounting," as to N.R.S. §21.090(1)(g) deductions and Wildcard deductions for disposable earnings for each paycheck. For each paycheck withholding, it will be the duty of the judge, the judgment debtor, the employer, the sheriff or the judgment creditor to review the accounting dollar-for-dollar, cent-for-cent, for exempt and "attachable" earnings under the Wildcard, for each and every paycheck for the 180-day duration of each and every garnishment on the disposable earnings. Nowhere does the Legislature evidence its intention for such an unreasonable result.

Perforce, this unintended process of applying the Wildcard to earnings will trigger an exponential increase in serial Wildcard exemption claims, serial expedited hearings, consume vast judicial resources, the debtor's time and resources, and cause unnecessary post-judgment costs and interest to accrue on garnishment renewals and judgment renewals until the "attachable" portion of the disposable earnings reach \$10,000.00.

⁸ N.R.S. §21.112(6) states in pertinent part, "The judgment debtor has the burden to prove that he or she is entitled to the claimed exemption at such a hearing."

Further, with the Court's new burdens imposed on employers, the employer's risk of non-compliance increases because there is now greater exposure for the employer's withholding errors⁹, or even an employer's illegal temptation to discharge or discipline¹⁰ an employee due to the burdens brought upon by the Panel's decision of applying the Wildcard to earnings. Although such actions are improper, this Panel's Opinion imposes every employer who is served a wage garnishment and flooded with serial claims filings and objections, with a dilemma of which cost is in their best business interests: discharge/termination of a debtor; or tolerate the complications of Wildcard compliance on earnings for each paycheck. This will likely hit lower-earning debtors the hardest, who would be most vulnerable to discharge or discipline, for forcing their employers to be flooded with, and likely confused by, claims and objections for every paycheck withholding.

Without rehearing, the Panel's Opinion will result in an exemption claim litigation explosion that is unintended by the Legislature, imposing unintended drain of resources in the exemption program for judgment debtors, judges, employers, and judgment creditors. This unreasonable result proves that the Legislature did not intend the application of the Wildcard to earnings. "A fundamental rule of statutory

⁹ N.R.S. §31.297 (employer liability for refusal to withhold or misrepresentation earnings)

¹⁰ N.R.S. §31.298 (unlawful for an employer to discharge or discipline an employee due to a writ of garnishment.)

interpretation is that the unreasonableness of the result, produced by one among alternative possible interpretations of a statute, is reason for rejecting that interpretation in favor of another that would produce a reasonable result.” Sheriff, Washoe County v. Smith, 91 Nev. 729 (1975)

The Panel’s Opinion respectfully must be reheard to prevent the unintended results.

C. The Panel’s Interpretation of N.R.S. §21.090(1)(z) overlooks the legislative history renders “not otherwise exempt from execution pursuant to this subsection” meaningless.

The Legislative history proves that the Legislature did not intend to apply the Wildcard exemption to Earnings. The Panel’s decision overlooks that according to the Legislature History, the Bill’s sponsor, Assemblywoman Barbara Buckley, testified that “this modest amount of protection has only a minor impact on creditors. Nothing eliminates [a judgment creditor’s] just claims to garnish wages.”¹¹

However, the application of the \$10,000.00 Wildcard to the “attachable” portions of wages would do just that, causing more than “little injury” to creditors, and potentially eliminating their ability to garnish wages. Many creditors have been devastated by financial losses to debtors, and satisfying these judgments is necessary for their financial survival.

¹¹ Cited in Appellant’s Opening Brief Page 15 Note 14 (Hearing before Assembly Comm. On Judiciary, 74th Session (April 10, 2007)(statement of Barbary Buckley, Assemblywoman)).

Further, the Court’s Decision renders most language of the Wildcard statute meaningless.¹² If the intent of the Legislature was to simply allow the debtor to exempt “any personal property,” the Legislature would have enacted the Wildcard to state just that in N.R.S. §21.090(1)(z):

“Any personal property¹³ . . . not to exceed \$10,000 in total value. . .”

However, the Legislature went through loquacious lengths to qualify “any personal property,” to intentionally limit the application, not expand. The subsection states:

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. (emphasis added)

“not otherwise exempt from execution pursuant to this subsection”: There is no meaning to the qualifying language “not otherwise exempt from execution pursuant to this subsection,” if the entire universe of the debtor’s personal property is eligible for exemption.

If “not otherwise exempt pursuant to this subsection” is describing the attachable surplus of an enumerated exemption subsection, as opined, then the

¹² C. Nicholas Pereos, Ltd. v. Bank of Am., 131 Nev. 436, 441 (2015) (“We will not interpret a statute in a way that would render any part of [the] statute meaningless.”) (citations omitted) (alteration in original)

¹³ The term “personal property” would not require examples because the “personal property” is already broadly defined in N.R.S. §10.045.

Panel’s interpretation would then exclude “wild” personal property that is not surplus property of enumerated exemption in the subsection. This “not otherwise exempt pursuant to this subsection” language is meaningless if it is only intended to state that any of the debtor’s personal property, that exists in the universe, may be exempted. The plain language of “not otherwise exempt from execution pursuant to this subsection” is intended to exclude its application to enumerated exemptions in the subsection,¹⁴ such as earnings.

The Legislature elected not to write “earnings” in drafting the Wildcard subsection, with knowledge that the exclusion of the word “earnings” would result in the interpretation that the Wildcard does not apply to earnings, which is perhaps the most common garnishment. “We presume that the Legislature enacted the statute ‘with full knowledge of existing statutes relating to the same subject.’...” Naiw v. Nevada Self-Insurers Association, 126 Nev. 74, 84 (2010)(Considering legislative history statements of Assemblywoman Barbara Buckley for statutory interpretation) Even under the Panel’s interpretation, the Legislature chose to avoid the word “earnings,” choosing instead to state “money” See Galloway v. Truesdell,

¹⁴ As pointed out in the Appellant’s Opening Brief (page 13), it is customary that Wildcard exemptions apply to “wild” property, and not apply to other enumerated exemptions. For example, in Oregon, O.R.S. 18.345(p) that its Wildcard “may not be used to increase the amount of any other exemption.”

83 Nev. 13, 26 (1967)(stating the canon of statutory construction ‘*expressio unius est exclusio alterius*.’ “the expression of one thing is the exclusion of another.”)

It is also noteworthy that the Legislature elected to avoid stating in plain language that the Wildcard may be cumulated with the other enumerated exemptions. The Wildcard neither states that it applies to earnings, nor the attachable surplus balance of any other enumerated exemption (for example, the value of private libraries, works of art, musical instruments and jewelry in excess of \$5,000 in value). Therefore, under the plain language of the statute, and giving meaning to all of the language, the Wildcard does not apply to earnings.

III. CONCLUSION

Based on the foregoing, this Panel should allow rehearing of its Opinion in order to determine that the Legislature did not intend for Wildcard exemption to apply to earnings.

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 40

I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word in 14 point; I further certify that this brief

complies with the page- or type-volume limitations of NRAP 40(b)(3) because it contains approximately 2,920 words.

Dated this 5th day of January, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January 2022, I filed the foregoing **APPELLANT’S PETITION FOR REHEARING**, which shall be served via electronic service from the Court's eFlex system to:

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Electronic notification will be sent to the following:

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