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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' ANSWER TO PETITION FOR EN BANC
RECONSIDERATION**

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' ANSWER TO PLATTE RIVER'S
PETITION FOR EN BANC RECONSIDERATION**

I. Introduction

This Court should deny *Appellant's Petition for En Banc Reconsideration* (hereinafter "Petition") filed by Appellant Platte River Insurance Company (hereinafter "Platte River"). In its Petition Platte River contends that the implications and the practical application of the result of the Panel's December 23, 2021 Opinion would be absurd, and therefore en banc reconsideration is appropriate.¹

However, the Panel's Opinion is thorough and straight forward, and appropriately interpreted the meaning of NRS 21.090(1)(z), also known as the "wildcard exemption" as it applies to the issue of whether the exemption can be applied to a judgment debtor's earnings.²

Based upon the Panel's Opinion, this Court should find that en banc reconsideration of the issue that is the subject of this appeal is unnecessary and not warranted under the arguments presented in Platte River's Petition.

Therefore, Respondents Susan Jackson and Lance Jackson respectfully request that this Court conclude that en banc reconsideration is not warranted, and deny Platte River's Petition.

¹ App. 2/26/2022 Pet., p.5

² *Platte River Ins. Co. v. Jackson*, 137 Adv. Op. 82, p.2.

II. Argument

A. Standard for En Banc Reconsideration

The basis asserted for consideration of en banc reconsideration is that “the proceeding involves a substantial precedential, constitutional or public policy issue.”³

When seeking en banc consideration, “[i]f the petition is based on grounds that the proceeding involves a substantial precedential, constitutional or public policy issue, the petition shall concisely set forth the issue, shall specify the nature of the issue, and shall demonstrate the impact of the Panel’s decision beyond the litigants involved.”⁴

The issue before the Panel of this Court was whether Respondent Susan Jackson is able to exempt the portion of her wages not exempt pursuant to the “wage exemption” found in NRS 21.090(1)(g) under the “wildcard exemption” pursuant to NRS 21.090(1)(z).⁵

The Nevada Constitution requires that “wholesome laws” be established that exempt “a reasonable amount of property from seizure” in order to permit a debtor to “enjoy the necessary comforts of life.”⁶

³ NRAP 40(a).

⁴ *Id.*

⁵ 137 Adv. Op. 82, pp.1-2

⁶ Nev. Const., art. 1, § 14.

Because the Panel's Opinion will affect the rights of debtors to claim earnings as exempt, Respondents Susan Jackson and Lance Jackson (hereafter "Respondents" or "the Jacksons") do not disagree that the determination of the issue is of substantial precedential importance. However, that admission alone should not be where this Court's discretion ends.

Platte River's primary contention in its Petition is that the Panel's interpretation of NRS 21.090(1)(z) will create an "absurd" and "unintended result" and create additional burdens on Nevada courts, sheriffs, creditors, debtors, and debtors' employers.⁷

As demonstrated below, the impact of the decision will not create the tidal wave Platte River warns of because the Legislature has provided a procedure for judgment debtors to make claims of exemptions to earnings as was done in this case.⁸

This Court should look to the validity of Platte River's argument before granting Platte River's Petition. Platte River's interpretation of NRS 21.090 as

⁷ App. 2/26/2022 Pet., p.5.

⁸ See NRS 21.112(1) (Providing a procedure for debtors to make claims of exemptions to earnings subject to levy).

argued in its Petition and its opening brief would require this Court to interpret “any” to mean “only” and “without limitation” to mean “limited to.”⁹

Platte River goes to such lengths to turn NRS 21.090(1)(z) on its head because it simply does not agree with the law.¹⁰ The Panel recognized Platte River’s frustration with the law.¹¹ On page 9 of its Opinion, it noted that “we may not adopt an interpretation contrary to a statute’s plain meaning merely because we ‘disagree[] with the wisdom of’ the Legislature’s policy determinations.”¹²

While it is true that this case may be of substantial import as to its precedential value, Platte River is not entitled to en banc reconsideration. Platte River’s argument that the “absurd result” of the district court and the Panel’s interpretation of NRS 21.0090 requires a different interpretation of the law is not valid and should not be entertained by further reconsideration.

The Panel’s Opinion in this case fully and adequately addressed the issue pertaining to the plain and simple meaning of NRS 21.090(1)(z). Further reconsideration of the issue is not necessary when the Panel has adequately and

⁹ App. 2/26/2022 Pet., p.10 (Stating intention of Legislature inclusion of “Any personal property” was to “limit its application, not expand.”)

¹⁰ *See id.*

¹¹ *See* 137 Adv. Op. 82, p.9

¹² 137 Adv. Op. 82, p.9. (*quoting Anthony v. State*, 94 Nev. 338,341, 580 P.2d 939, 941 (1978)(*citations omitted*)).

thoroughly reviewed the same as well as all arguments raised. Accordingly, Platte River's Petition should not be found to compel this Court to allow for en banc reconsideration.

Therefore, Respondents respectfully request that this Court deny Platte River's Petition for en banc reconsideration.

B. Statutory Arguments Do Not Warrant En Banc Reconsideration

To demonstrate that Platte River's arguments do not warrant en banc reconsideration, as it pertains to Platte River's interpretation of NRS 21.090(1)(z), Respondents provide the following limited review of NRS 21.090(1)(z) in the context of the other applicable provisions of Chapter 21 of Nevada Revised Statutes.

The issue on appeal in this matter is whether Susan Jackson was able to exempt her earnings pursuant to NRS 21.090(1)(g) cumulatively with the "wildcard exemption" pursuant to NRS 21.090(1)(z).

The answer to the issue is easily found in the plain and unambiguous language of the applicable statutes.

NRS 21.090(1)(g) provides that "75 percent of the disposable earnings of a judgment debtor" are "exempt from execution" under NRS 21.090(1).^{13 14}

¹³ NRS 21.090(1) provides that the property identified in its subsections is "exempt from execution."

NRS 21.090(1)(z) provides that “[a]ny personal property not otherwise exempt from execution . . . 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” is also “exempt from execution” under NRS 21.090(1).^{15 16}

Thus, the district court only needed to determine whether 25% of Susan Jackson’s earnings constituted “[a]ny personal property not otherwise exempt from execution” under NRS 21.090(1)(z).¹⁷

NRS 21.090(1) when read together with NRS 21.090(1)(g) establishes that “disposable earnings” are “property” of the debtor.^{18 19}

NRS 21.025 creates the “nonjudicial” garnishment limitation by way of specific instruction to the sheriff that only 18% or 25% of earnings may be subject to garnishment.²⁰

¹⁴ NRS 21.090(1)(g) identifies “disposable earnings” as exempt property under NRS 21.090(1).

¹⁵ NRS 21.090(1) (Providing that the property identified in its subsections is “exempt from execution.”)

¹⁶ NRS 21.090(1)(z) (Identifying “[a]ny property not otherwise exempt” as exempt property under NRS 21.090(1)). (emphasis added).

¹⁷ *Id.*

¹⁸ NRS 21.090(1) (Defining “property” identified in its subsections as “exempt from execution.”)

¹⁹ NRS 21.090(1)(g) (Identifying “disposable earnings” as “Property”)

NRS 21.112(1) provides the process by which a debtor may exempt earnings beyond the 18% and 25% limitations set forth in NRS 21.025.²¹ Pursuant to NRS 21.112(1) a debtor whose earnings are subject to levy may file a “claim of exemption . . . within 10 days after the date of each withholding of the judgment debtor’s earnings.”²²

Thus, because earnings are defined as property under NRS 21.090(1) and NRS 21.090(1)(g), and because a sheriff is only entitled to garnish 18% or 25% of earnings under NRS 21.025, and because a judgment debtor has the right to file a claim of exemption as to their earnings pursuant to NRS 21.112(1), it must be concluded that the Nevada Legislature intended that other exemptions may be claimed by a judgment debtor whose earnings are subject to garnishment. Otherwise, NRS 21.112(1) would be meaningless. *See* NRS 21.112(1).

Thus, all that may be left for argument is whether 25% of earnings not exempt under NRS 21.090(1)(g) constitute “any property not otherwise exempt.”

²⁰ NRS 21.025 (Providing statutory form “Writ of Execution” explicitly exempting earnings).

²¹ *See* NRS 21.112.

²² NRS 21.112(1).

Platte River argues that the language “not otherwise exempt” limits application of the wildcard exemption only to those categories where no other exemption may apply.²³

Thus, “any property” under Platte River’s interpretation means “only that certain property” where no other exemption is applicable.²⁴

To further substantiate the point, NRS 21.090(1)(z) includes a list of property applicable to the exemption “without limitation” that includes the debtor’s equity in “any property, money, stocks, bonds or other funds on deposit with a financial institution.”²⁵

Under Platte River’s interpretation where “money” and “funds on deposit” are received through employment and are considered earnings covered under the wage garnishment exemption under NRS 21.090(1)(g)(2), 25% of the same would not be exempt from execution, even though the “money” and “funds on deposit” are specifically identified as exempt under NRS 21.090(1)(z), and should be exempt up to \$10,000.^{26 27}

²³ App. 2/26/2022 Pet., pp.11 (Stating that “not otherwise exempt is intended to exclude its application to enumerated exemptions in the subsection, such as earnings.”)

²⁴ *See id.*

²⁵ NRS 21.090(1)(z)

²⁶ *See* App. 2/26/2022 Pet., pp.11-12.

²⁷ Cf. NRS 21.090(1)(g)(2); NRS 21.090(1)(z).

The Panel’s Opinion rejected Platte River’s exclusionary interpretation of NRS 21.090(1)(z) and stated that “[t]he wildcard exemption, however, applies to property ‘not otherwise exempt,’ and thus, its application is not limited in the way Platte River suggests.”²⁸

Platte River’s argument and interpretation clearly turns the plain meaning of NRS 21.090(1)(z) on its head and does not warrant further reconsideration by this Court.

C. Alleged Absurd Results Do Not Warrant Reconsideration

Platte River’s Petition for en banc reconsideration focuses upon the impact of the Panel’s interpretation of NRS 21.090(1)(z).²⁹ Platte Rivers argument is unavailing and does not warrant en banc reconsideration.

Platte River attempts to paint a picture that a district court, sheriff, creditor, debtor, and a debtor’s employer would all be required to account for the debtor’s use of \$10,000 wildcard exemption.³⁰

Platte River appears to interpret that the wildcard exemption is a one-time exemption that would be reduced each time it was applied to property of the

²⁸ 137 Adv. Op. 82, p.5.

²⁹ See App. 2/26/2022 Pet., pp.5-10.

³⁰ *Id.*, p.8.

debtor, regardless of whether the debtor used the funds to pay for necessities, food or utilities.³¹

Platte River's understanding of exemptions under NRS 21.090 is flawed. The exemptions provided to a judgment debtor in the subsections to NRS 21.090(1) are ongoing exemptions that apply to the property of the judgment debtor at the time of execution and the debtor's claim of exemption.³²

Accordingly, a judgment debtor has an ongoing wildcard exemption of \$10,000 as provided by NRS 21.090(1)(z).³³ Thus, because the wildcard exemption is not reduced each and every time a debtor claims the exemption, much of the absurdity and additional burdens described by Platte River pertaining to accounting for the debtor's prior claims of exemptions including NRS 21.090(1)(z) simply do not exist.

While it is true that NRS 21.112(1) does require a debtor to file a claim of exemption with each withholding, this burden is easily eliminated by a stipulation of the creditor and debtor to avoid unnecessary hearings and claims of exemption.³⁴

³¹ *See id.*

³² *See* NRS 21.090(1); NRS 21.075(2).

³³ *See id.*

³⁴ NRS 21.112(1)

If it is understood by the parties and the court that the debtor is entitled to claim the debtor's earnings not exempt under NRS 21.090(1)(g) as exempt under NRS 21.090(1)(z), why would the parties continue to proceed to endless serial claims of exemption as proposed by Platte River?

Furthermore, the procedural framework established by the Legislature to permit debtors to protect their property by way of a claim of exemption pursuant to NRS 21.112(1) is not changed by the Panel's Opinion and there are no additional burdens not otherwise intended or created by the Legislature.³⁵ The procedure outlined in NRS 21.112(1) remains the same and is not altered by the Panel's Opinion.³⁶

Accordingly, this Court should conclude that en banc reconsideration is not warranted by Platte River's overstated "absurd results" and "additional burdens."

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³⁵ *See id.*

³⁶ *Cf.* 137 Adv. Op. 82, p.5.; NRS 21.112.

III. Conclusion

Therefore, Respondents respectfully request that this Court conclude that based upon the foregoing arguments, *Appellant's Petition for En Banc Reconsideration* should be denied.

Dated February 24, 2022.

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IV. Certificate of Compliance

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

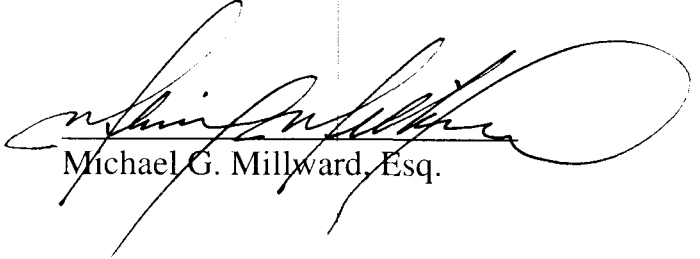
I, Michael G. Millward, Esq., hereby certify that this *Respondents' Answer to Platte River's Petition for En Banc Reconsideration* complies with the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This brief has been 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 40 or 40A because it contains 2,545 words.

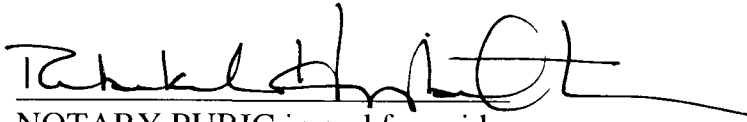
I further hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose.

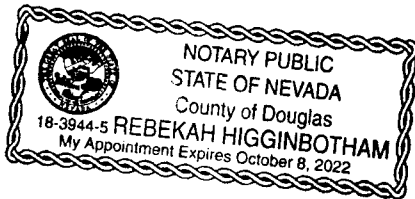
I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in Particular NRAP 28(e)(1), which required every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix 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 24th day of February, 2022.


NOTARY PUBLIC in and for said
COUNTY AND STATE



V. Certificate of Service

I hereby certify that I am an employee of Millward Law Ltd., and that on the 24th day of February, 2022, I filed the foregoing ***Respondents' Answer to Petition for En Banc Reconsideration***, which shall be served via electronic service from the Court's Eflex system to:

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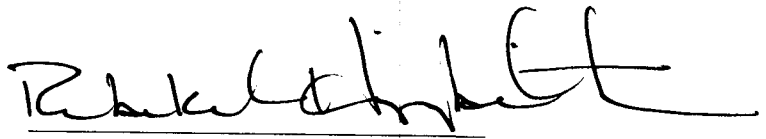
Case Category Civil Appeal

Information current as of: Feb 24 2022 10:37 p.m.

Electronic notification will be sent to the following:

Michael Millward

Peter Dubowsky

A handwritten signature in black ink, appearing to read 'Rebekah Higginbotham', written over a horizontal line.

Rebekah Higginbotham