

85230-8

FILED

NOV 02 2009

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 281698-III

COURT OF APPEALS FOR DIVISION III

STATE OF WASHINGTON

BONNIE ANTHIS, individually, and as Personal Representative of the
Estate of HARVEY ALLEN ANTHIS, aka H. AL ANTHIS,

Respondents

vs.

WALTER WILLIAM COPLAND,

Appellant.

RESPONDENT'S BRIEF

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.
ANDREA J. CLARE #37889
2415 W. Falls Avenue
Kennewick, WA 99336
509-736-1330

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE	2
III. ISSUE PRESENTED	3
IV. ARGUMENT	3
A. Standard of Review	5
B. The Court Correctly Determined that RCW6.15.020 does not Exempt Mr. Copland's Retirement Account	5, 6
C. The Court Harmoniously Construed Statutes Together and Correctly Applied the Law to the Facts.	8
D. If There is Still an Ambiguity, then the Court Correctly Gave Preference to the Garnishment Statute Which Omits Mr. Copland's Pension	13
V. CONCLUSION	15

TABLE OF AUTHORITIES

Statutes

RCW 6.15.010	10, 11
RCW 6.15.020	3, 6, 13
RCW 6.15.15, et. seq..	3
RCW 6.27 et. seq.	14
RCW 6.27.010	11
RCW 6.27.080 (3)	11
RCW 6.27.150 (5).	11
RCW 41.26 et. seq.	4
RCW 41.26.053.	3, 4
RCW 48.18.400	9
RCW 48.18.410	9

Cases

Page

<i>Dep't of Ecology v. Campbell & Gwinn, L.L.C.</i> , 146 Wn.2d 1, 11, 43, P.3d 4 (2002)	9
<i>Foremost Dairies, Inc. v. State Tax Comm'n</i> 75 Wn.2d 758, 762, 453 P.2d 870 (1969)	8
<i>Hallauer v. Spectrum Props., Inc.</i> 143 Wn.2d 126, 146, 18 P.3d 540 (2001)	13

<i>In re Custody of Smith,</i> 137 Wn.2d 1, 9, 969 P.2d 21 (1998)	8
<i>In re Horse Heaven Irr. Dist.,</i> 11 Wn.2d 218, 226, 118 P.2d 972 (1941)	8
<i>In re Pers. Restraint of Yim,</i> 139 Wn.2d 581, 592, 989 P.2d 512 (1999)	13
<i>King County v. Taxpayers of King County,</i> 104 Wn.2d 1, 9, 700 P.2d 1143 (1985).	9
<i>Monroe v. Soliz,</i> 132 Wn.2d 414, 425, 939 P.2d 205 (1997).	8
<i>State v. Conte,</i> 159 Wn.2d 797, 803, 154 P.3d, 194, <i>cert denied</i> , U.S., 128 S.Ct. 512, (2007)	14
<i>State v. Costich,</i> 152 Wn.2d 463, 470, 98 P.3d 795 (2004)	8
<i>State v. Fairbanks,</i> 25 Wn.2d 686, 690, 171 P.2d 845 (1946)	9
<i>State v. Houck,</i> 32 Wash.2d 681, 685, 203 P.2d 693 (1949)	8
<i>State v. McCraw,</i> 127 Wn.2d 281, 288, 898 P.2d 838 (1995)	8
<i>State v. Tatum,</i> 74 Wn.App. 81,86, 871 P.2d 1123, <i>review denied</i> , 125 Wn.2d 1002, 886 P.2d 1134 (1994)	5
<i>Wark v. Wash. Nat'l Guard,</i> 87 Wn.2d 864, 867, 557 P.2d 844 (1976)	13

I. INTRODUCTION

This claim arises from a very unfortunate set of circumstances. Due to the reckless conduct of the Appellant/Defendant, Mr. Copland, Respondent/Plaintiff, Harvey Allen Anthis is dead. Mr. Copland, a retired Captain from the Tacoma Police Department, was found guilty of first degree manslaughter for the gunshot to the head death of Mr. Anthis. Mrs. Anthis, individually and as personal representative of the Estate of Harvey Allen Anthis, sought damages pursuant to a wrongful death action against Mr. Copland. The case went to trial on the issue of damages in Benton County and the Honorable Judge Robert Swisher entered judgment in the amount of \$950,495.00 together with interest at the rate of twelve percent (12%) per annum, from and after November 7, 2007.

While currently housed in the state penitentiary (paid for by the gracious taxpayers of Washington), the former law enforcement officer, Mr. Copland, is able to collect and save substantial monies periodically issued from his state pension (LEOFF-1). Meanwhile, as a result of Mr. Copland's criminal conduct, Mrs. Anthis is left without the financial support and companionship of her late husband. Ms. Anthis has obtained a court order regarding these pension assets, permitting her to garnish the

same. This appeal followed said order.

II. STATEMENT OF THE CASE

After obtaining judgment, Mrs. Anthis sought to collect Mr. Copland's only known asset, the LEOFF-1 pension. CP 116-118. Mrs. Anthis asked the court to permit supplemental proceedings via interrogatories due to Mr. Copland's incarceration and to determine the exemption status of said pension. CP 41-42, 1-2; see also RP 1-3. On January 9, 2009, the court granted Ms. Anthis' request to commence supplemental proceedings via interrogatories but declined a ruling on the status of Mr. Copland's pension. Id.

In response to those interrogatories, Mr. Copland by and through counsel, indicated he has "no assets" despite the known existence of his pension. See CP 107-115; 3-30; 43-44. Upon further discovery of records from Mr. Copland's banking institution, it is learned that money from the pension is directly deposited into an account, each month. RP 4:15-21. It was also revealed that Mr. Copland shares said account with his son, a co-tenant and authorized user. Id.

The Honorable Judge Bruce Spanner, heard arguments from both

counsel regarding the issue of whether Mr. Copland's pension is exempt from garnishment on May 8, 2009. RP 1-25. In a very well reasoned decision, Judge Spanner correctly ruled in favor of Ms. Anthis. Id.

III. ISSUE PRESENTED

While the fund itself is not subject to attachment or garnishment, can Mr. Copland's state administered pension asset be subject garnishment proceedings once the periodic payments are deposited into his personal/shared bank account whereby he and/or others exercise control and possession over the same?

IV. ARGUMENT

The two statutes at issue in this appeal are RCW 6.15.020 and RCW 41.26.053. Mrs. Anthis suggests that the garnishment statutes under RCW 6.15 et. seq., should be examined first to determine whether Mr. Copland's pension is exempt from any garnishment proceedings. However, as indicated below and by Judge Spanner, RCW 6.15.020 does not include or otherwise exempt Mr. Copland's particular pension (i.e. an employee benefit plan that is established by the state of Washington under

chapter 41.26). In relevant part, RCW 6.15.020 states that exemptions relating to retirement benefits are provided therein as follows:

“(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension **from the government of the United States, whether the same be in the actual possession of such person or be deposited or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever,**

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington **under any employee benefit plan, ...**

(4) For the purposes of this section, **the term “employee benefit plan” means any plan or arrangement that is described in RCW 49.64.020....** The term “employee benefit plan” **shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter(s)... 41.26.”** (Emphasis added).

Next, when examining the Law Enforcement Officer’s Retirement Systems statutory scheme located under RCW 41.26 et. seq, the relevant statute concerning pension exemptions, specifically, RCW 41.26.053, in

relevant part provides:

“(1) Subject to subsection (2) and (3) of this section, **the right of a person** to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, **any other right accrued or accruing to any person under the provisions for this chapter**, and the **money’s in the fund created under this chapter**, are hereby exempt from any state, county, municipal, or other local tax **and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall be unassignable.**” (Emphasis added).

It is certainly notable and vastly significant that the language used in RCW 6.15.020 clearly extends the garnishment exemption to disposable earnings in the hands and bank accounts of debtors but does not do so in RCW 41.26.053. Courts must assume that lawmakers acted purposefully when using different language. This obvious omission is undeniable and bolsters the lower courts ultimate conclusion.

A. STANDARD OF REVIEW

The question presented here requires this Court to apply the garnishment statute to undisputed facts. In doing so, this Court reviews the lower court's application of the statute to the facts under a de novo standard. *State v. Tatum*, 74 Wn.App. 81, 86, 871 P.2d 1123, *review denied*, 125 Wn.2d 1002, 886 P.2d 1134 (1994).

B. THE COURT CORRECTLY DETERMINED THAT RCW 6.15.020 DOES NOT EXEMPT MR. COPLAND'S RETIREMENT ACCOUNT.

Mr. Copland begins his appeal by citing to a statute that does not support his asserted analysis or conclusion. He quotes RCW 6.15.020(1) for "the legislature's general policy¹ behind exempting retirement accounts and pension income from garnishment". See Appellate Brief, p. 3. Actually, the statutory chapter cited pertains to personal property exemptions. However, when examining the particular statute closer, it explicitly rejects the type of retirement account at issue here. Specifically, "[t]he term "employee benefit plan" shall not include any employee

¹ RCW 6.15.020 (1) provides: "It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled.. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided."

benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter ... 41.26..." Thus, the court below considered this statute to be inapplicable. See RP 13-25. Yet despite this obvious problem, Mr Copland attempts to assert the statute's seemingly favorable legislative policy to support his position. However, Mr. Copland fails to recognize and appreciate that after setting forth its legislative policy to exempt certain pension money 'for the well-being of its citizens,' our legislature specifically excluded any mention of the type of retirement account held by Mr. Copland. Assuming it did so purposefully, the clear absence of protection here is significant. Again, such lack of provision must be interpreted as an intentional omission.

Nevertheless, our legislature has also set forth another intention which bears upon the collection of debts as follows:

"The legislature recognizes that a garnishee has no responsibility for the situation leading to the garnishment of a debtor's wages, funds, or other property, **but that the garnishment process is necessary for the enforcement of obligations debtors otherwise fail to honor, and that the garnishment procedures benefit the state and the business community** as creditors." RCW 6.27.005

(Emphasis added).

**C. THE COURT HARMONIOUSLY CONSTRUED
STATUTES TOGETHER AND CORRECTLY
APPLIED THE LAW TO THE FACTS.**

When construing statutes, it's the spirit or intention of the law which prevails over the letter thereof. **In re Horse Heaven Irr. Dist.**, 11 Wn.2d 218, 226, 118 P.2d 972 (1941). Words of a statute, unless otherwise defined, must be given their usual and ordinary meaning. **Foremost Dairies, Inc. v. State Tax Comm'n**, 75 Wn.2d 758, 762, 453 P.2d 870 (1969). This is true regardless of the policy of enacting the law or the seeming confusion that may follow its enforcement. **State v. Houck**, 32 Wash.2d 681, 685, 203 P.2d 693 (1949).

When construing a statute, the "primary goal is to give effect to the legislature's intent, [and] derive such intent by construing the language as a whole, giving effect to every provision." **State v. Costich**, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). If a statute is unambiguous this Court is required to apply the statute as written and "assume[] that the legislature means exactly what it says." **In re Custody of Smith**, 137 Wn.2d 1, 9, 969 P.2d 21 (1998) (quoting **State v. McCraw**, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)) As done by Judge Spanner below, the court derived a

statute's plain meaning not only from the statute at hand, but also “all that the Legislature has said in the ... related statutes which disclose legislative intent about the provision in question.” **Dep't of Ecology v. Campbell & Gwinn, L.L.C.**, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Moreover, when “statutes relate to the same thing or class, they are *in pari materia* and must be harmonized if possible.” **Monroe v. Soliz**, 132 Wn.2d 414, 425, 939 P.2d 205 (1997) (quoting **King County v. Taxpayers of King County**, 104 Wn.2d 1, 9, 700 P.2d 1143 (1985)); *see also* **State v. Fairbanks**, 25 Wn.2d 686, 690, 171 P.2d 845 (1946) (“It is a cardinal rule that two statutes dealing with the same subject matter will, if possible, be so construed as to preserve the integrity of both.”).

In compliance with said law governing statutory construction, the Court, considered a number of statutes, *in pari materia*, to ascertain the proper interpretation. See RP 20-25. Initially, the court looked to RCW 48.18.400 and 48.18.410 which utilize notably different language regarding exemption of benefits (albeit for disability or life), “for any debt of the insured, and from any debt of the beneficiary **existing at the time the proceeds are made available for his use.**” See RP 20: 18-23 (Emphasis added). Then the Court examined RCW 6.15.010 which

provides exemption status for other property, again, shielding the property from execution, attachment and garnishment. The Court notes that the comprehensive nature of the list identified therein and properly concludes that Mr. Copland's pension is not exempt. Next, the Court examines RCW 6.15.025 which provides exemption of pensions from execution or judgment for out-of-state income tax. RP 21:11-21. Likewise, Mr. Copland's pension is not exempt or otherwise indicated by that statute.

The Court then examined RCW 6.15.010 for the limitations on exemptions within the personal property exemption framework. The Court noted subsection (3) which states: "[n]o property may be exempt under RCW 6.15.010 from legal process issued upon a judgment for restitution ordered by a court to be paid for the benefit of a victim of a criminal act." While not mentioned by Judge Spanner specifically, this provision certainly applies by analogy as Ms. Anthis is a victim of Mr. Copland's criminal act and the judgment constitutes, in large part, restitution damages. An inference in favor of Ms. Anthis could clearly be made in terms of the legislative intent behind this statutory provision, i.e. criminals (and their heirs) can not be allowed to hide behind or benefit from their wrongdoings to the detriment of their victims.

Pursuant to RCW 6.27.010 (Garnishment Statute Definitions), “the term ‘earnings’ means **compensation paid or payable** to an individual for personal services whether denominated as wages, salary, commission, bonus, or otherwise, and **includes periodic payments pursuant to a non-governmental pension or retirement program.**” (Emphasis added). Furthermore, RCW 6.27.150 (5) indicates that “[n]o money due or earned as earnings as defined in RCW 6.27.010 shall be exempt from garnishment under the provisions of RCW 6.15.010, as now or hereafter amended.” This provision also suggests legislative intent favorable to Ms. Anthis’s position and Judge Spanner’s ruling allowing Mr. Copland’s pension to be garnished upon receipt of said funds.

Lastly, the Court looked for guidance within the substantive garnishment statutes themselves, where, if the legislature had intended to protect Mr. Copland’s pension, it would have provided such protection. According to the garnishment laws and procedures, the legislature set forth a process for doing exactly what Ms. Anthis attempts to do here, attach deposits. Pursuant to RCW 6.27.080(3),

“[a] writ naming the financial institution as the garnishee defendant shall be **effective only to attach deposits, accounts, credits, or other personal**

property of the defendant in the possession or control fo the particular branch to which the writ is directed and on which service is made.”

(Emphasis added).

This provision is significant in that, it shows that the legislature is capable of using precise language which contemplates and distinguishes situations where attachment/assignment of a fund are unavailable while attachment/garnishment upon deposit or possession/control of the debtor is permissible. Finally, the forms set forth by the legislature are indicative of it's intent regarding exemption status as follows:

“BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits, **such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans' benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt** if you have deposited only such benefit funds in the account.”

(Emphasis added).

This provision is also significant, because it lists, consistent with RCW 6.15.020, only federally funded retirement or disability funds as exempt and not a Washington maintained individual retirement account

such as the one at issue here. Thus, Mr. Copland's pension simply does not qualify for such the exemption status as he prefers.

D. IF THERE IS STILL AN AMBIGUITY, THEN THE COURT CORRECTLY GAVE PREFERENCE TO THE GARNISHMENT STATUTE WHICH OMITTS MR. COPLAND'S PENSION.

Again, as previously indicated, the court must attempt to read statutes governing the same subject matter in *pari materia*. **Hallauer v. Spectrum Props., Inc.**, 143 Wn.2d 126, 146, 18 P.3d 540 (2001) ("Such statutes 'must be construed together.'" (*quoting In re Pers. Restraint of Yim*, 139 Wn.2d 581, 592, 989 P.2d 512 (1999)). However, if there is still an ambiguity or a contradiction concerning legislative intent, then fortunately, the rules of statutory construction provide a way to resolve this tension. Under the general-specific rule, a specific statute will prevail over a general statute. **Wark v. Wash. Nat'l Guard**, 87 Wn.2d 864, 867, 557 P.2d 844 (1976) ("It is the law in this jurisdiction, as elsewhere, that where concurrent general and special acts are in *pari materia* and cannot be harmonized, the latter will prevail, unless it appears that the legislature intended to make the general act controlling.>"). As the court recognized in **Wark**, "It is a fundamental rule that where the general statute, if standing

alone, would include the same matter as the special act and thus conflict with it, the special act will be considered as an exception to, or qualification of, the general statute, whether it was passed before or after such general enactment.” *Id.*; see **State v. Conte**, 159 Wn.2d 797, 803, 154 P.3d 194, *cert. denied*, --- U.S. ----, 128 S.Ct. 512, (2007).

Applying the general-specific rule to statutes at issue, the Garnishment statutes (RCW 6.27) represent the specific statute and the Law Enforcement Retirement Systems statutes (RCW 41.26) represent the general one. Garnishment statutes govern a discrete and specific function relating to collection. On the other hand, the Retirement System statutes apply to the comprehensive administration and management of state run retirement plans. Therefore, the RCW 6.27 et. seq. can be properly read as a specific exception to the general goals and procedures of the Retirement Systems statutes (regarding various Public Employment Pensions). Judge Spanner therefore, correctly examined and analyzed the above statutory provisions when ruling on the exemption status of Mr. Copland’s pension.

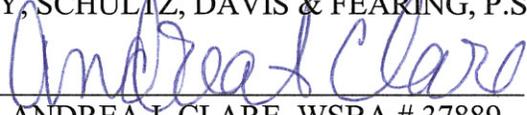
V. CONCLUSION

Based on the foregoing, Ms. Anthis respectfully requests this Court
AFFIRM the lower court's decision concerning it's Final Order on
Pension Assets.

DATED this 13th day of October, 2009.

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.

By: _____


ANDREA J. CLARE, WSBA # 37889