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No. 43451-2-II, CONS with 43751-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FIRST-CITIZENS BANK & TRUST COMPANY, a Washington Financial Institution,

Respondent / Cross Appellant,

v.

ROBERT R. HARRISON & TIFFANY J. HARRISON, husband and wife and the marital community comprised thereof,

Appellants / Cross Respondents.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE STEPHANIE A. AREND

PETITION FOR REVIEW BY SUPREME COURT

DAVIES PEARSON, P.C.

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FILED IN COA ON JULY 3, 2014

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A. IDENTITY OF PETITIONER

Respondent/Cross Appellant First-Citizens Bank and Trust Company ("First-Citizens") petitions the Court to accept review of the published opinion of the Court of Appeals, Division II designated in Part B of this petition.

B. COURT OF APPEALS DECISION

In its June 3, 2014 published opinion, the Court of Appeals, Division II denied First-Citizens' cross appeal. A copy of this opinion is attached hereto as Appendix B. First-Citizens seeks review of all portions of this opinion denying its appeal.

C. ISSUE PRESENTED FOR REVIEW

1. Does the exemption from garnishment for lease proceeds from Indian trust land under 25 U.S.C. §410 endure after such proceeds are disbursed to an individual Indian and deposited into his or her own account at a private bank?

D. STATEMENT OF THE CASE

First-Citizens is the successor-in-interest to Venture Bank. CP at 20. The Harrisons are sophisticated real estate developers and Mr. Harrison is an attorney licensed to practice in Washington. CP at 182; *see* CP at 21, 31; *see also* 2 CP at 204-07.[1] Mrs. Harrison also happens to be an

[1] Because this was originally a consolidated appeal, there are two volumes of Clerk's Papers that are not consecutively paginated. To avoid confusion, this brief refers to the volume of Clerk's Papers filed under case number 43451-2-II as "CP" and to the volume

enrolled member of the Puyallup Tribe of Indians. *See* CP at 38-56. Venture Bank and the Harrisons maintained a business relationship between 2005 and 2007, during which time Venture Bank made several separate loans to the Harrisons. CP at 21.

One of the loans that Venture Bank made to the Harrisons was for a $105,000 revolving line of credit that Venture Bank made to the Harrisons on January 6, 2006. CP at 20, 23-24, 190-92. Under this line of credit, at the Harrisons' request, Venture Bank deposited $105,000 into the Harrisons' personal checking account with no restrictions on their use of the funds in March 2007. CP at 191. The Harrisons signed a promissory note on this line of credit. CP at 20, 23-24, 26-27.

The Harrisons defaulted by failing to repay this line of credit when due, despite several demands for payment by First-Citizens as successor-in-interest to Venture Bank. CP at 4-5, 20, 191. First-Citizens then brought suit and the superior court entered a judgment against the Harrisons for the principal outstanding on the line of credit, prejudgment interest thereon, late fees, and for First-Citizens' costs and reasonable attorney fees. CP at 1-6, 212-14, 315-16.

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of Clerk's Papers filed under case number 43751-1-II as "2 CP." Mr. and Mrs. Harrison voluntarily dismissed their appeal after briefs were filed at the Court of Appeals.

After the superior court entered judgment in favor of First-Citizens on the line of credit, First-Citizens commenced garnishment proceedings to collect on its judgment. 2 CP at 1-18. First-Citizens obtained writs of garnishment to collect funds from the Harrisons' personal bank accounts at Banner Bank, Fife Commercial Bank, and Key Bank. 2 CP at 1-18.

At the time of garnishment, the Harrisons' Key Bank account had a balance of $165.26, their Banner Bank account had a balance of $15,403.83, and their Fife Commercial Bank account had a balance of $94.63. 2 CP at 48-49, 50-51, 195-96. The Harrisons then filed claims of exemption in the garnishment proceedings for the funds in their personal accounts at Banner Bank and Fife Commercial Bank. 2 CP at 20-41. Both Mr. and Mrs. Harrison were the named owners of the Banner Bank and Fife Commercial Bank accounts and the statements for those accounts were mailed to the Harrisons' home outside of Indian Country. 2 CP at 153-69.

Nonetheless, the Harrisons claimed that the funds in their Banner Bank and Fife Commercial Bank accounts were exempt from garnishment under 25 U.S.C. §410 because these accounts contained proceeds from the lease of Mrs. Harrison's Indian trust lands. 2 CP at 21, 32, 42-43, 46-47.

First-Citizens objected to the Harrisons' claimed exemptions and moved the superior court to strike those exemption claims. 2 CP at 52-77,

115, 117. At the hearing on First-Citizens' motion to strike the Harrisons' claimed exemptions, the superior court balanced the defendant's burden on exemption claims under RCW 6.27.160(2) against 25 U.S.C. 410. RP (July 24, 2012) at 3-7. The superior court noted that (1) the funds in both the Banner Bank and Fife Commercial Bank accounts had been deposited into the Harrisons' personal accounts and (2) the information presented showed that the funds in these accounts were community property, meaning that Mrs. Harrison had made a gift of the proceeds from her leases on Indian Country to the Harrisons' marital community. RP (July 24, 2012) at 3-7. Although the funds in the Harrisons' Banner Bank and Fife Commercial Bank accounts were their joint, personal accounts held at private banks outside of Indian Country, the superior court denied First-Citizens' motion to strike the Harrisons' exemption claims based on the absence of clearly-controlling precedent regarding the scope of the protection provided by 25 U.S.C. §410. 2 CP at 222-23; RP (July 24, 2012) at 7.

First-Citizens appealed the superior court's order. 2 CP at 230-31. The Court of Appeals affirmed the trial court's denial of First-Citizens' motion to strike the Harrisons' exemption claims, holding that 25 U.S.C.

§410[2] exempts from garnishment any money accruing from lease of Indian trust land even if such money is held by an individual Indian in a private bank account. *First-Citizens v. Harrison*, -- Wn. App. --, ¶26, 326 P.3d 808 (2014).[3]

E. ARGUMENT

This Court will accept review of a Court of Appeals decision terminating review if it is in conflict with a decision of this Court or if it involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(1), (4). This Court should grant First-Citizens petition for review because this appeal presents an issue of substantial public importance and because the Court of Appeals' opinion on this issue conflicts with this Court's opinion in *Anthis v. Copland*, 173 Wn.2d 752, 760-65, 270 P.3d 574 (2012).[4]

1. *The substantial public interest requires this Court to grant review.*

The issue presented in this appeal is one of first impression involving the intersection of Washington's garnishment law and Federal Indian Law in a manner that substantially affects the public interest because it impacts the rights of Indians who receive lease proceeds from Indian trust land and

[2] Attached hereto as Appendix A.

[3] Attached hereto as Appendix B.

[4] Attached hereto as Appendix C.

their creditors. Chapter 6.27 RCW governs garnishment actions in Washington and permits certain, narrow exemptions from garnishment. RCW 6.27.150; RCW 6.27.160. Under certain circumstances that are not present here, 25 U.S.C. §410 may exempt funds from garnishment under chapter 6.27 RCW. 25 U.S.C. §410 states:

> No money accruing from any lease or sale of lands held in Trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.

In this appeal, this Court is called on to decide the breadth of the protection created by 25 U.S.C. §410; namely, whether the protection afforded to proceeds from the lease of Indian trust land remains intact after an individual Indian deposits those funds into accounts owned jointly with third parties that are held at private banks outside of Indian Country. This question affects the rights of all Indians who receive lease proceeds from Indian trust lands and the rights of their creditors. Moreover, given the dearth of cases on the protections afforded by 25 U.S.C. §410, this Court's opinion in this appeal will likely guide courts nationwide. This Court should conclude that the protection afforded by 25 U.S.C. §410 is not inviolate and it does not protect from garnishment the funds held in the

Harrisons' jointly owned, private bank accounts outside of Indian Country.

Generally, proceeds from the sale or lease of Indian trust land are paid to the Department of the Interior and held in trust for the individual Indian beneficiary in an Individual Indian Money (IIM) account. *Cohen's Handbook of Federal Indian Law*, §16.04[3]-[4] at 1090-91 (Nell Jessup Newton ed., 2012) (hereinafter "*Cohen's Handbook*"). Indians who have attained the age of majority normally may withdraw funds from their IIM accounts at any time. *Cohen's Handbook*, §16.04[4] at 1091. However, while these funds remain in trust in the Indian's IIM account, they remain protected from creditors under 25 U.S.C. §410. *Cohen's Handbook*, §16.04[5] at 1092. Nonetheless, such protection is not unlimited, as a creditor may even reach sale or lease proceeds from Indian trust land in the Indian's IIM account with the approval of the Secretary of the Interior. 25 U.S.C. §410; *Cohen's Handbook*, §16.04[5] at 1092-93.

As demonstrated in federal regulations, the Secretary of the Interior's authority to authorize a creditor to reach an Indian's trust funds is limited to IIM accounts. *See* 25 CFR 115.104[5]; 25 CFR 115.601.[6] Notably, there are no corresponding federal regulations regarding the

[5] Attached hereto as Appendix D

[6] Attached hereto as Appendix E

Secretary of the Interior's authority to permit a creditor of an Indian to reach funds held in the Indian's private bank account outside the jurisdiction of the Secretary of the Interior. This Court should take judicial notice that the Secretary of the Interior does not have jurisdiction over an Indian's funds held in private bank accounts; thus, the Secretary of the Interior's authority to approve a creditor from reaching funds held in an IIM account does not extend to scenarios where an Indian has deposited lease proceeds from Indian trust land into accounts held at private banks. Because the Court of Appeals' opinion suggests that the Secretary of the Interior has jurisdiction over an Indian's funds held in his or her private bank account, there is a strong danger of confusion and inconsistent rulings on this issue. Thus, this Court should accept review to and should hold that, in such instances, the Indian has removed lease proceeds from Indian trust land from the scope of 25 U.S.C. §410's protection.

The few cases interpreting 25 U.S.C. §410 weigh in favor of restricting the scope of its protection to funds that remain in trust for the benefit of the Indian or in the Indian's IIM account. For example, in one of the few cases interpreting 25 U.S.C. §410, the Supreme Court of South Dakota analyzed whether a creditor could reach proceeds from the sale of land formerly held in trust for Indians after the Secretary of the Interior had sold that land to a non-Indian. *Jordan v. O'Brien*, 69 S.D. 230, 9

N.W.2d 146 (1943). The *Jordan* court concluded that the purpose of 25 U.S.C. §410 was "for the protection of Indians, who were wards of the government, and not for the protection of the [non-Indian] who purchased Indian land." 9 N.W.2d at 148. Accordingly, creditors could reach proceeds from the sale of the land after it had been transferred to a non-Indian without running afoul of 25 U.S.C. §410. *Jordan*, 9 N.W.2d at 148.

Additionally, a California case interpreted whether a child support order entered against an Indian constituted an improper charge against proceeds from her lease of Indian trust lands under 25 U.S.C. §410 when the lease proceeds from those lands were her only source of income. *Randy Purnel v. Debrah Purnel*, 52 Cal. App. 4th 527, 538, 60 Cal.Reptr.2d 667 (1997). In conducting its analysis, the *Purnel* court stated that, among the defendant Indian's assets outside of 25 U.S.C. §410's protection was her:

> [p]ersonal bank account. Once she has received payment of the rental income from lease of her Indian Trust Allotment lands, it loses its "Indian" character." Money is fungible. When wife bought her Porsche and her BMW, she did not spend "Indian" money. She spent the legal tender which all individuals or persons spend in the United States to aquire goods and property. . . .

52 Cal. App. 4th at 539. The *Purnel* court further reasoned that: "[c]ertainly, once the rental income [from wife's Indian trust land] was

deposited into a bank account outside Indian Country, the money involved lost its identity as immune Indian property [under 25 U.S.C. §410]." 52 Cal. App. 4th at 541. Thus, even if the money in the defendant wife's personal bank account derived from lease proceeds of her Indian trust land, that money lost its protection under 25 U.S.C. §410 when she deposited it into her non-IIM personal bank account. *Id.*

Conversely, the Alaska Supreme Court concluded that proceeds from an award to an Indian following a condemnation of his Indian trust lands were protected by 25 U.S.C. §410 and not available to satisfy an attorney fee lien against the Indian. *Law Offices of Vincent Vitale, P.C. v. Tabbytite*, 942 P.2d 1141, 1144 (1997). Importantly, however, the condemnation award funds at issue in the case had *not yet been disbursed to the Indian and had not been deposited into his personal bank account* outside of Indian Country. *Tabbytite*, 942 P.2d at 1146.

Thus, the courts that have addressed 25 U.S.C. §410 weigh in favor of a conclusion that proceeds from the sale or lease of Indian trust land is protected from the Indian's creditors while the funds remain in trust or in an IIM account but that they lose that protection after the Indian removes them from trust and deposits those funds into his or her own personal bank account or uses those funds to purchase assets.

These courts' decisions align with the Department of the Interior's Board of Indian Appeals (IBIA) decisions applying 25 U.S.C. §410 and its derivative regulations, which all analyze whether proceeds from the sale or lease of Indian trust land are protected from creditors *while those proceeds remain in trust in an IIM account*. *See G.H.G.*, 39 IBIA 27 (2003); *Pretty Paint*, 38 IBIA 177 (2002); *Vitale*, 36 IBIA 177 (2001); *Charlie*, 24 IBIA 253 (1993); *Fredericks*, 24 IBIA 115 (1993); *Robinson*, 20 IBIA 168 (1991).[7] These IBIA decisions do not even consider applying 25 U.S.C. §410's protection for proceeds from the sale or lease of Indian trust land after those proceeds have been distributed to the Indian and removed from his or her IIM account. *See Id.*

Here, this Court should conclude that the lease proceeds from Mrs. Harrison's Indian trust land lost any protection provided by 25 U.S.C. §410 when she were disbursed to Mrs. Harrison and she deposited them into joint, community property, private, personal accounts that she co-owned with her husband, who is not an enrolled member of the Puyallup Tribe of Indians. Thus, in accordance with *Jordan* and *Purcell*, when the funds were deposited into the Harrisons' joint, community property accounts at private banks, those funds lost any protection they had under 25 U.S.C. §410 while retained in an IIM account. Consequently, this

[7] The Department of the Interior's Board of Indian Appeals decisions are available at: http://oha.doi.gov:8080/index.html by selecting the IBIA Decisions database.

Court should conclude that trial court erred in denying First-Citizens' motion to strike the Harrisons' claimed exemptions on their Banner Bank and Fife Commercial Bank accounts.

2. *The Court of Appeals' opinion conflicts with this Court's opinion in Anthis, which requires this Court to grant review.*

Although the issue presented in this appeal is one of first impression, this Court's recent decision in *Anthis v. Copland*, 173 Wn.2d 752, 760-65, 270 P.3d 574 (2012), should control. Under *Anthis*, proceeds from the lease of Indian trust land that had been distributed to an individual Indian for his or her unrestricted use are not protected from garnishment under 25 U.S.C. §410. The Court of Appeals, however, disagreed. *First-Citizens*, -- Wn. App. at ¶¶22-23.

The *Anthis* court was tasked with resolving a parallel issue to the issue presented in this appeal: whether the statutory protection from garnishment for pension benefits under the state's Law Enforcement Officers' and Firefighters' (LEOFF) Retirement System continued even after the state had distributed those pension funds to the individual beneficiaries and those beneficiaries had deposited those funds into their personal accounts at private banks. *Id.* The LEOFF statute at issue in *Anthis* states:

> Subject to subsections (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 of this chapter, and the moneys 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.

RCW 41.26.053(1)(emphasis added); *Anthis*, 173 Wn.2d at 756. Notably, like 25 U.S.C. §410, the LEOFF statute protects rights that are "accruing." Because the plain language of this statute is silent on whether the statutory exemption of LEOFF payments continued after being deposited into a private bank account, the *Anthis* court considered several similar state and federal statutes and case law interpreting those statutes. 173 Wn.2d at 752-65.

After conducting its detailed analysis, the *Anthis* court noted that, in the garnishment context, "[b]oth federal and state cases generally indicate that statutorily exempt funds, whatever their predistribution nature, may be garnished after they come into the personal possession of the beneficiary, including deposit into a personal account, *unless the legislature provides some express language to the contrary*." 173 Wn.2d at 763 (emphasis added).

For example, the language in the Employee Retirement Income Security Act (ERISA) does not exempt funds from garnishment after such

funds have been deposited into the personal accounts of the payees because the statutory language provides simply: "each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." *Anthis*, 173 Wn.2d at 761. Conversely, the language of the Social Security Act and the World War Veterans' Act did exempt funds from garnishment even after distribution because their statutory language explicitly provides that each respectively protects "moneys paid or payable" and funds "*either before or after receipt by the beneficiary.*" *Anthis*, 173 Wn.2d at 760-61 (emphasis added).

Accordingly, because the LEOFF exemption statute did not explicitly state that the exemption endured after funds had been distributed to the beneficiary and deposited into a private bank account, the *Anthis* court declined to read language into the statute that the legislature had omitted. 173 Wn.2d at 765. Instead, even acknowledging the principle that courts broadly construe statutes and even in light of the LEOFF statute's use of the term "accruing", the *Anthis* court held that funds paid under the LEOFF Retirement System were not exempt from garnishment after the payee deposited those funds into a private bank account because the statutory language did not explicitly provide that heightened protection. 173 Wn.2d at 765.

Here, as in *Anthis*, 25 U.S.C. §410 is silent on whether its exemption for funds accruing from lease proceeds from Indian trust land continues after such funds are deposited into an individual Indian's personal account held at a private bank. *See* 25 U.S.C. §410. Moreover, even more striking than in *Anthis*, the funds derived from leases of the Indian land held in trust for Mrs. Harrison's benefit were deposited into her personal accounts at private banks that she held jointly with her husband, a person for whom those lands were not held in trust. 2 CP at 1-18, 153-69.

This Court should grant review and clarify that its recent analysis in *Anthis* controls. The statute examined in *Anthis* exempted benefits "accrued or accruing" to persons under LEOFF; however, such exemption terminated when a person in receipt of such benefits deposited them into private bank accounts because the exemption statute does not explicitly state that the protection endures *after* benefits are received by an individual beneficiary. 25 U.S.C.§410 is analogous to the LEOFF statute examined in *Anthis*. Accordingly, as in *Anthis*, because Congress chose not to include in 25 U.S.C. §410 language specifying that the garnishment exemption for proceeds from the sale or lease of Indian trust land is perpetual and endures even after deposited by an individual Indian into his or her personal account held at a private bank, this Court should not read

that language into the statute. Instead, this Court should conclude that the protection afforded by 25 U.S.C. §410 are lost when funds accruing from lease proceeds of Indian trust land are deposited into an individual Indian's private bank account.

F. CONCLUSION

This Court should accept review because the issue presented in this appeal implicates an issue of substantial public importance that should be decided by this Court and because this Court should confirm that its analysis in *Anthis* controls. After accepting review, this Court should conclude that the proceeds from Mrs. Harrison's lease of her Indian trust land lost their exemption when she deposited those funds into her personal accounts at a private bank held outside of Indian Country and jointly with her husband.

RESPECTFULLY SUBMITTED this 3rd day of July 2014.

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DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I mailed, or caused to be mailed, a copy of the foregoing **PETITION FOR REVIEW**, via postage prepaid U.S. mail and via e-mail to the following:

Court of Appeals via JIS

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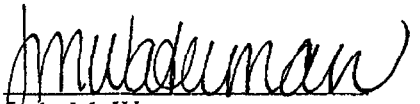
DATED this 3rd day of July 2014.



Jody M. Waterman

APPENDIX A

United States Code Annotated
Title 25. Indians
Chapter 12. Lease, Sale, or Surrender of Allotted or Unallotted Lands

25 U.S.C.A. § 410

§ 410. Moneys from lease or sale of trust lands not liable for certain debts

Currentness

No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.

CREDIT(S)

(June 21, 1906, c. 3504, 34 Stat. 327.)

Notes of Decisions (8)

25 U.S.C.A. § 410, 25 USCA § 410
Current through P.L. 113-120 approved 6-10-14

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FIRST CITIZENS BANK & TRUST COMPANY, Respondent/Cross-Appellant v. ROBERT RANDALL HARRISON and TIFFANY HARRISON, husband and wife and the marital community comprised thereof, Appellants/Cross-Respondents	No. 43451-2-II (Consolidated with) 43751-1-II PUBLISHED OPINION

MAXA, J. – 25 U.S.C. § 410 provides that money accruing from any lease of Indian land the United States holds in trust for a Native American is not liable for the payment of any debt or claim against that Native American. The issue here is whether the statute applies when lease payments from Indian trust land are distributed to a Native American and placed in a private bank account.

Tiffany and Robert Harrison appealed the trial court's summary judgment award to First-Citizens Bank & Trust Company for its breach of contract lawsuit based on the Harrisons' failure to pay on a promissory note. First-Citizens cross-appealed on the trial court's ruling that Native American Tiffany Harrison's personal bank accounts containing proceeds from the lease of her Indian trust land were exempt under 25 U.S.C. § 410 from garnishment to collect First-Citizens' judgment against the Harrisons. After the initial briefs were filed in this court, the Harrisons voluntarily withdrew their appeal.

We address First-Citizens' cross-appeal, holding that (1) First-Citizens is judicially estopped from contesting that the money in the Harrisons' bank accounts derived solely from the

lease of Indian trust land, and (2) the 25 U.S.C. § 410 exemption extends to money accruing from the lease of Indian trust land even after the money is placed in a Native American's personal bank account. Accordingly, we affirm. We also award First-Citizens its reasonable attorney fees and costs incurred in responding to the Harrisons' voluntarily dismissed appeal.

FACTS

First-Citizens filed a breach of contract lawsuit against the Harrisons for failure to pay a promissory note based on a line of credit. The trial court entered an order granting summary judgment in favor of First-Citizens on its claim, and awarded First-Citizens its reasonable attorney fees based on a contractual provision in the promissory note. This order resulted in a $161,831.97 judgment against the Harrisons

First-Citizens sought to satisfy its judgment by garnishing the Harrisons' personal bank accounts at Banner Bank, Fife Commercial Bank, and Key Bank. Tiffany Harrison is an enrolled member of the Puyallup Tribe. The Harrisons claimed that the funds in their Banner Bank and Fife Commercial Bank accounts contained money only from the lease of Indian trust lands, and therefore were exempt from garnishment under 25 U.S.C. § 410. First-Citizens objected to and moved to strike the Harrisons' exemption claims, arguing that the Harrisons did not specifically identify the nature of the funds in the accounts and that 25 U.S.C. § 410 is not applicable to money deposited into a Native American's personal bank account.

During oral argument on First-Citizens' motion to strike the Harrisons' claimed exemptions, First-Citizens assured the trial court that an evidentiary hearing regarding the source of the funds in the Harrisons' bank accounts was unnecessary because it was not disputing that the funds derived directly from Indian trust land. Based on the understanding that the parties'

dispute was purely a legal one, the trial court heard argument on whether funds derived from Indian trust land deposited into a personal account were exempt from garnishment under 25 U.S.C. § 410. The trial court agreed with the Harrisons that the money in the bank accounts was exempt under 25 U.S.C. § 410, and it denied First-Citizens' motion to strike the Harrisons' exemption claims.

The Harrisons appealed the entry of judgment against them in favor of First-Citizens. First-Citizens cross-appealed on the exemption claims. After initial briefing, the Harrisons dismissed their appeal. We address First-Citizens' cross-appeal, and its request for attorney fees incurred in responding to the Harrisons' appeal.

ANALYSIS

A. SOURCE OF FUNDS UNDER RCW 6.27.160

First-Citizens argues that the Harrisons' exemption claims must be stricken because they failed to prove the factual basis for the exemption – i.e., that the funds in the bank accounts derived from leases of Indian trust land. However, we hold that First-Citizens cannot dispute the source of the funds because it previously stipulated that they derived from the lease of Indian trust land.

In support of their exemption claims, the Harrisons filed declarations of themselves, a manager of one of their businesses, and their attorney asserting that the funds contained in the bank accounts were from leases of Indian trust land. The Harrisons urged the trial court to schedule an evidentiary hearing to allow them to satisfy their burden of proof under RCW 6.27.160 to prove the claimed exemption, including the source and the amount of the exempt

funds. However, First-Citizens repeatedly assured the trial court that it was not disputing that the funds derived directly from Indian trust land and that an evidentiary hearing was unnecessary.

First-Citizens' argument on appeal – that the Harrisons failed to prove the source of the funds in the accounts was traceable to leases of Indian trust land – is inconsistent with its position in the trial court proceedings. "Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." *Bartley-Williams v. Kendall*, 134 Wn. App. 95, 98, 138 P.3d 1103 (2006). Courts consider whether the earlier position was accepted by the court, and whether assertion of the inconsistent position results in an unfair advantage or detriment to the opposing party. *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538-39, 160 P.3d 13 (2007).

Here, the trial court clearly relied on First-Citizens' representation that the parties' dispute about the source of the bank account funds was purely a legal one, because the court did not hold an evidentiary hearing and instead proceeded to hear argument on whether funds derived from Indian trust land deposited into a personal account were exempt from garnishment under 25 U.S.C. § 410. And in its oral ruling, the trial court reiterated that there was no dispute between the parties that the funds in the bank accounts were from the lease of Indian trust lands. Further, allowing First-Citizens to maintain this inconsistent position would result in unfair detriment to the Harrisons, who were allegedly willing and able to provide such proof regarding the source of the funds in the accounts but were denied the opportunity to do so based on First-Citizens' representations to the trial court.

Accordingly, we hold that First-Citizens is judicially estopped from challenging the adequacy of the Harrisons' proof that the funds are traceable to leases of Indian trust land.

B. 25 U.S.C. § 410 EXEMPTION

Tiffany Harrison received proceeds from the lease of her Indian trust land and placed them into her personal bank account. First-Citizens argues that the exemption in 25 U.S.C. § 410 did not apply once lease proceeds arising from Harrison's trust land were distributed directly to her and she placed them in her personal bank account. We disagree, and hold that 25 U.S.C. § 410 continues to protect any money accruing from the lease of Indian trust land, even after it has been distributed to a Native American and placed in a personal bank account.

1. Jurisdiction

"When a federal statute is silent on the question of jurisdiction, state and federal courts have concurrent jurisdiction." *Law Offices of Vincent Vitale, P.C. v. Tabbytite*, 942 P.2d 1141, 1147 (Alaska 1997) (citing *Charles Dowd Box. Co. v. Courtney*, 368 U.S. 502, 506-08, 82 S. Ct. 519, 7 L. Ed. 2d 483 (1962)). Because 25 U.S.C. § 410 does not purport to impose exclusive federal jurisdiction, Washington courts have subject matter jurisdiction to determine whether 25 U.S.C. § 410 bars garnishment of the funds in the Harrisons' bank accounts. *See Vitale*, 942 P.2d at 1147 (holding that Alaska state courts had jurisdiction to determine application of 25 U.S.C. § 410 to proceeds of condemnation action on Indian trust land). Accordingly, the trial court had jurisdiction to resolve this issue.

2. Statutory Construction

Construction of a statute is a question of law, which we review de novo. *Anthis v. Copland*, 173 Wn.2d 752, 755, 270 P.3d 574 (2012). Our fundamental objective in interpreting a federal statute is to ascertain Congress's intent in enacting it. *Parsons v. Comcast of California/Colorado/Washington I, Inc.*, 150 Wn. App. 721, 726-27, 208 P.3d 1261 (2009). The

traditional rules of statutory interpretation apply. *Parsons*, 150 Wn. App. at 727; *see Western Radio Servs. Co. v. Quest Corp.*, 678 F.3d 970, 984 (9th Cir.), *cert. denied*, 133 S. Ct. 758 (2012). If the statute's meaning is plain on its face, then we give effect to that plain meaning as an expression of legislative intent. *Parsons*, 150 Wn. App. at 727. When determining a statute's plain meaning, we look to the language of the statute itself and the context of the statute, including related statutes. *Anthis*, 173 Wn.2d at 756. If the statute is susceptible to more than one reasonable interpretation, then we may resort to statutory construction, legislative history, and relevant case law for assistance in determining legislative intent. *Anthis*, 173 Wn.2d at 756.

Two key statutory construction principles apply directly to 25 U.S.C. § 410. First, "[e]xemption statutes should be liberally construed to give effect to their intent and purpose." *Anthis*, 173 Wn.2d at 756. 25 U.S.C. § 410 clearly is an exemption statute. Second, " 'statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians.' " *Bryan v. Itasca County*, 426 U.S. 373, 392, 96 S. Ct. 2102, 48 L. Ed. 2d 710 (1976). Also, we construe statutes to effect their purpose while avoiding absurd, strained, or unlikely consequences. *Thompson v. Hanson*, 168 Wn.2d 738, 750, 239 P.3d 537 (2010). These principles suggest that if the two interpretations of 25 U.S.C. § 410 are equally reasonable, the interpretation that extends the exemption and that is most favorable to Tiffany Harrison should be adopted.

3. Statutory Language

We first examine the statutory language. 25 U.S.C. § 410 provides:

> No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a

> minor, during his minority, except with the approval and consent of the Secretary of the Interior.

Here, the statute does not expressly state that the exemption applies to lease proceeds that are distributed to a Native American and placed in a personal bank account. However, the statute protects money "accruing" from the lease of Indian trust land. "[A]ccrue" is defined as "to come by way of increase or addition: arise as a growth or result." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 13 (2002) (definition 2, usually used with *to* or *from*). Under this definition, in the context of lease proceeds we interpret "accruing" as synonymous with "paid" or "distributed." Stating that money is accruing from the lease of property is the same as stating that the lessee is making lease payments to the lessor.

Here, as required in the statute (1) the bank accounts First-Citizens attempted to garnish contained "money", (2) that money had "accrued" to Tiffany Harrison, and (3) that money had "accrued" from the lease of Tiffany Harrison's Indian trust lands. As a result, the plain language of 25 U.S.C. § 410 unambiguously provides protection for the money in the Harrisons' bank accounts.

Nevertheless, First-Citizens argues that the language of 25 U.S.C. § 410 must be interpreted in light of the unique procedure for Indian trust land that allows the government to collect lease proceeds accruing from that land. Proceeds from Indian trust land usually are paid to the Department of Interior and held in trust for the individual Native American beneficiary in an Individual Indian Money (IIM) account. FELIX S. COHEN, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, §16.04[3], at 1090 (2012). The owner of an unrestricted IIM account may withdraw the funds at any time. COHEN'S HANDBOOK §16.04[4], at 1091. First-Citizens claims that 25 U.S.C. § 410 protects only money accruing to an IIM account and not to money accruing

directly to the Native American. To support its argument, First-Citizens points out that the statute allows the Secretary of Interior to consent to the use of the otherwise exempt proceeds for payment of debt, and contends that this provision indicates that the funds contemplated by 25 U.S.C. § 410 would be held in trust by, and therefore under, the control of the Secretary of the Interior.

However, the language of 25 U.S.C. § 410 does not limit the exemption to money accruing to an IIM account. It broadly refers to *any* money accruing from Indian trust land. Further, there is no legislative history or case law that supports this restrictive interpretation of the broad statutory language. Finally, the reference to the Secretary of the Interior also is consistent with extending the exemption to money distributed to a Native American. The Secretary also could consent to using that money for payment of a debt. Accordingly, we reject First-Citizens' interpretation.[1]

Even if we agreed that First-Citizens' interpretation was reasonable, we would conclude that the Harrisons' interpretation also is reasonable. If a statute is subject to two reasonable interpretations, that statute is ambiguous and it is appropriate to resort to statutory construction principles. *Anthis*, 173 Wn.2d at 756. The law requires that we liberally construe both exemption statutes and statutes enacted for the benefit of Native Americans. As a result, any ambiguity in 25 U.S.C. § 410 must be resolved in favor of Tiffany Harrison.

[1] First-Citizens also argues that protecting money from the lease of Indian trust land that is distributed to a Native American would lead to an absurd expansion of the exemption to items purchased with the lease payments. But our holding here applies only to money in the Harrisons' bank accounts, and 25 U.S.C. § 410 clearly applies to money. Whether 25 U.S.C. § 410 would extend protection to items purchased with lease proceeds is not before us, and therefore we do not address this issue.

4. Washington Supreme Court – *Anthis*

First-Citizens argues that our Supreme Court's decision in *Anthis*, 173 Wn.2d at 765, requires a ruling that 25 U.S.C. § 410 does not protect Indian trust land lease proceeds that have been distributed to a Native American. In *Anthis*, 173 Wn.2d at 756-57, the court considered a similar issue regarding RCW 41.26.053(1), the statutory protection from garnishment for pension benefits under the Law Enforcement Officers' and Firefighters' (LEOFF) Retirement System. RCW 41.26.053(1) exempted the right of a person to a retirement allowance and the retirement allowance itself. The court reviewed cases interpreting other state and federal exemptions, and concluded that "[c]ourts in other jurisdictions have generally, but not universally, held that some unambiguous reference to money actually paid to or in the possession of the pensioner is necessary in order to find that pension funds retain their exempt status postdistribution." *Anthis*, 173 Wn.2d at 760. The court held that because RCW 41.26.053(1) did not contain explicit language exempting payments deposited in a personal account, LEOFF pension payments were not exempt from garnishment.[2] *Anthis*, 173 Wn.2d at 765.

The court in *Anthis* noted the general rule that exemption statutes are to be liberally construed. *Anthis*, 173 Wn.2d at 765. But the court stated: "we decline to read into the statute language the legislature has omitted, whether intentionally or inadvertently, unless it is required to make the statute rational or to effectuate the clear intent of the legislature." *Anthis*, 173 Wn.2d at 765.

[2] Four justices disagreed. *See Anthis*, 173 Wn.2d at 767, 783 (Stephens, J., dissenting). The dissent argued that cases the court reviewed supported a different rule: "courts have determined that pension funds retain their exempt status postdistribution when the language of the statute shows the exempt status attaches to the benefit itself as opposed to the benefit only while held by the government." *Anthis*, 173 Wn.2d at 774 (Stephens, J., dissenting).

First-Citizens argues that like the statute addressed in *Anthis*, 25 U.S.C. § 410 does not contain explicit language exempting Indian trust land lease payments deposited in a personal account. We disagree. As noted above, the term "accruing" as used in the statute includes the receipt of lease payments. 25 U.S.C. § 410. We hold that 25 U.S.C. § 410's reference to "money accruing" from the lease of Indian trust land constitutes an "unambiguous reference to money actually paid" to the Native American as required in *Anthis*, 173 Wn.2d at 760.[3]

Our conclusion is bolstered by the interpretation of the exemption provision of the Social Security Act, another federal statute containing language that is similar to 25 U.S.C. § 410. 42 U.S.C. § 407(a) exempts "moneys paid or payable" to a beneficiary. Under this language, benefits deposited in a personal bank account retain protection as money paid to the beneficiary. *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415-17, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973). Because "money accruing" is synonymous with "money paid," the same interpretation applies to 25 U.S.C. § 410.

5. Conclusion

We conclude that the plain language of 25 U.S.C. § 410 supports a holding that money from the lease of Indian trust land remains protected even after it has been paid to a Native American and placed in a private bank account, as long as the Native American can show that the funds in the account are traceable to the lease. Because the funds in the Harrisons' bank accounts are proceeds of leases on Indian trust land, we hold that the trial court correctly denied First-Citizens' motion to strike the Harrisons' exemption claims.

[3] First-Citizens also refers to cases in other jurisdictions discussing 25 U.S.C. § 410. However, none of these cases directly address the issue here. And because our holding is based on the clear statutory language, we need not address them.

C. FIRST-CITIZENS ATTORNEY FEES FOR HARRISONS' APPEAL

The Harrisons appealed from the trial court's order granting summary judgment in favor of First-Citizens based on the promissory note the Harrisons executed. After the Harrisons' initial brief and First-Citizens' response brief on both the appeal and cross-appeal were filed, the Harrisons moved for voluntary withdrawal of review of their appeal. First-Citizens did not oppose dismissal, but moved for reasonable attorney fees and costs for responding to the appeal under the attorney fee provision in the promissory note. The Commissioner entered an order dismissing the Harrisons' appeal but deferring First-Citizens' request for attorney fees.

When a contract provides for an attorney fee award in the trial court, the party prevailing before this court may seek reasonable attorney fees incurred on appeal. *See* RAP 18.1; *First-Citizens Bank & Trust Co. v. Reikow*, 177 Wn. App. 787, 799, 313 P.3d 1208 (2013). Here, the promissory note and a related change in terms agreement both contain attorney fee provisions stating that the borrower will be responsible for the lender's attorney fees and expenses related to collecting the debt owed. First-Citizens has a contractual right to recover its attorney fees and costs under the terms of these provisions. And the Harrisons did not oppose or otherwise respond to First-Citizens' request for attorney fees, so we need not address whether the

contractual right is inapplicable here. Accordingly, we hold that First-Citizens is entitled to recover its attorney fees and costs incurred in responding to the Harrisons' appeal.[4]

We affirm.

MAXA, J.

We concur:

HUNT, P.J.

BJORGEN, J.

[4] First-Citizens also requested appellate attorney fees on its cross-appeal. Because First-Citizens is not the prevailing party on its cross-appeal, we deny its request for the cross-appeal. The Harrisons did not request appellate attorney fees.

APPENDIX C

173 Wash.2d 752
Supreme Court of Washington,
En Banc.

Bonnie ANTHIS, individually, and as Personal Representative of the Estate of Harvey Allen Anthis, Respondent,
v.
Walter William COPLAND, Petitioner.

No. 85230–8. | Argued June 14, 2011. | Decided Feb. 16, 2012.

Synopsis

Background: Widow of manslaughter victim, who had won a civil judgment against retired police officer after officer fatally shot victim, sought to garnish officer's state law enforcement officers' and firefighters (LEOFF) retirement system pension to satisfy the judgment. The Superior Court, Benton County, Carrie L. Runge, J., ruled that officer's pension funds, which were in his personal bank account, could be garnished. Officer appealed. The Court of Appeals certified question to the Supreme Court.

Holdings: The Supreme Court, Chambers, J., held that:

[1] in a matter of first impression, officer's LEOFF pension was not exempt from garnishment once the pension funds had been deposited into his personal bank account, and

[2] officer's distributed pension funds were not "earnings" for purposes of earnings exemption provision of garnishment statutes.

Affirmed.

Stephens J., dissented, with opinion, in which Madsen, C.J., Owens, and Fairhurst, JJ., concurred.

West Headnotes (10)

[1] **Appeal and Error**
Cases Triable in Appellate Court

Construction of a statute is a question of law reviewed de novo.

2 Cases that cite this headnote

[2] **Statutes**
Intent

A court interpreting a statute must discern and implement the legislature's intent.

2 Cases that cite this headnote

[3] **Statutes**
Plain language: plain, ordinary, common, or literal meaning

Where the plain language of a statute is unambiguous and legislative intent is apparent, the court will not construe the statute otherwise.

1 Cases that cite this headnote

[4] **Statutes**
Plain Language; Plain, Ordinary, or Common Meaning

Statutes
Similar or Related Statutes

Plain meaning of a statute may be gleaned from all that the legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.

Cases that cite this headnote

[5] **Courts**
Previous Decisions as Controlling or as Precedents

Statutes
In general; factors considered

Statutes
Plain, literal, or clear meaning; ambiguity

If a statute is susceptible to more than one reasonable interpretation, then a court may resort to statutory construction, legislative history, and relevant case law for assistance in determining legislative intent.

2 Cases that cite this headnote

[6] **Exemptions**
Construction of exemption laws in general

Exemption statutes should be liberally construed to give effect to their intent and purpose.

1 Cases that cite this headnote

[7] **Exemptions**
Ownership or possession of property in general

Retired police officer's state law enforcement officers' and firefighters (LEOFF) retirement system pension was not exempt from garnishment once the pension funds had been deposited into his personal bank account, as under the LEOFF exemption statute, which exempted from garnishment both the right "to a retirement allowance" and the right "to the retirement allowance itself," there was no express language exempting LEOFF funds from garnishment once they had been distributed to the beneficiary. West's RCWA 41.26.053(1).

Cases that cite this headnote

[8] **Statutes**
Absent terms; silence; omissions

Statutes
Unintended or unreasonable results; absurdity

The court declines to read into the statute language the legislature has omitted, whether intentionally or inadvertently, unless it is required to make the statute rational or to effectuate the clear intent of the legislature.

1 Cases that cite this headnote

[9] **Exemptions**
Pension and retirement funds and accounts

Retired police officer's state law enforcement officers' and firefighters (LEOFF) retirement system pension funds, which had been distributed to officer and were in his personal bank account, were not "earnings" for purposes of earnings exemption provision of garnishment statutes, as only nongovernmental pensions were statutorily defined as "earnings," for purposes of garnishment statutes, but officer's LEOFF pension was a governmental pension, and "earnings" could be partially garnished while still in the hands of the employer, before they reached employee debtor. West's RCWA 6.27.010(1), 6.27.150(4).

Cases that cite this headnote

[10] **Exemptions**
Ownership or possession of property in general

Law enforcement officers' and firefighters (LEOFF) retirement system pension exemption statute does not exempt retirement funds from garnishment after they have been paid to the retiree. West's RCWA 41.26.053(1).

1 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

CHAMBERS, J.

***753** ¶ 1 Bonnie Anthis won a civil suit against Walter Copland for the wrongful death of her husband, ***754** Harvey Anthis. Anthis sought to collect Copland' only known asset, his retirement pension, to satisfy the judgment. Copland, a retired police officer, argued that his Law

Enforcement Officers' and Firefighters Retirement System (LEOFF) pension money cannot be garnished even after it has been deposited into his personal bank account. The trial court disagreed and ruled that the money in the account could be garnished. Copland appealed, and the Court of Appeals certified the question to this court. We accepted certification and now affirm the trial court.

FACTS

¶ 2 Sometimes lives are altered, even destroyed, so suddenly and unexpectedly as to defy explanation. Copland, a retired police officer from the city of Tacoma, spent the day with a friend, John Stevens, in Kennewick, Washington. They spent some time at the Burbank Tavern in nearby Walla Walla County and then returned to Stevens' house in Kennewick. *In re Copland*, No. 09-47782, 2010 WL 4809327, at *1 (Bankr.W.D.Wash. Sept. 23, 2010) (unpublished).

¶ 3 On the way, Copland stopped to buy whiskey and vodka. At Stevens' house Stevens' longtime friend Anthis joined the pair. The three passed the afternoon on Stevens' outdoor deck drinking and eating and enjoying conversation about upcoming fishing trips. That evening, in events described as "stunning both in their rapidity and unexpectedness," Copland said to Anthis, " 'I could shoot and kill you,' " and Anthis responded, " 'bring it on.' " *Id.* Copland produced a .22 derringer and placed it up to Anthis' right temple. No argument preceded the exchange, and Anthis did not move. Stevens saw the flash, heard the shot, and saw Anthis fall off his chair to the floor. Copland then returned to his seat, put the gun in his back pocket, placed his head in his hands and said, " 'Oh, my God, I've killed *755 Al.' " *Id.* In a flash, two lives were destroyed.

¶ 4 Copland was convicted of first degree manslaughter and is serving time in prison. *See State v. Copland*, noted at 140 Wash.App. 1006, 2007 WL 2254420. Separately, the Estate of Harvey Anthis obtained a civil judgment against Copland for the shooting death of Anthis. *See Anthis v. Copland*, noted at 146 Wash.App. 1020, 2008 WL 2933716. After the civil judgment was upheld, Anthis attempted to collect Copland's pension funds. Copland claimed his pension funds were exempt **576 from garnishment or attachment. The trial court disagreed and ruled that the funds were not exempt once deposited into Copland's personal bank account. Copland appealed the trial court's ruling to the Court of Appeals. Br. of Appellant at 2. Copland also filed bankruptcy and attempted to discharge the estate's judgment. Resp't's Suppl. Br. (Ex. 1) at 7. The Court of Appeals stayed Copland's case pending determination of whether the bankruptcy proceedings precluded the Court of Appeals from asserting jurisdiction. *See id.* at 1–3. The parties provided documentation showing that the bankruptcy proceeding did not preclude the Court of Appeals from asserting jurisdiction. *See id.; see also* Appellant's Suppl. Br. App. (Decl. of Lisa Worthington–Brown). The Court of Appeals lifted the stay but certified the matter to this court, and we accepted certification.[1] We affirm the trial court.

STANDARD OF REVIEW

[1] [2] [3] [4] [5] [6] ¶ 5 Construction of a statute is a question of law reviewed de novo. *State v. Wentz*, 149 Wash.2d 342, 346, 68 P.3d 282 (2003) (citing *City of Pasco v. Pub. Emp't Relations Comm'n*, 119 Wash.2d 504, 507, 833 P.2d 381 (1992)). A court *756 interpreting a statute must discern and implement the legislature's intent. *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003) (citing *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wash.2d 9, 19, 978 P.2d 481 (1999)). Where the plain language of a statute is unambiguous and legislative intent is apparent, we will not construe the statute otherwise. *Id.* Plain meaning may be gleaned "from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 11, 43 P.3d 4 (2002) (citing *Cockle v. Dep't of Labor & Indus.*, 142 Wash.2d 801, 808, 16 P.3d 583 (2001)). If the statute is still "susceptible to more than one reasonable interpretation, then a court may resort to statutory construction, legislative history, and relevant case law for assistance in determining legislative intent." *Christensen v. Ellsworth*, 162 Wash.2d 365, 373, 173 P.3d 228 (2007) (citing *Cockle*, 142 Wash.2d at 808, 16 P.3d 583). Exemption statutes should be liberally construed to give effect to their intent and purpose. *In re Elliott*, 74 Wash.2d 600, 620, 446 P.2d 347 (1968) (citing *N. Sav. & Loan Ass'n v. Kneisley*, 193 Wash. 372, 378, 76 P.2d 297 (1938)).

STATUTORY CONSTRUCTION

a. *Plain Meaning of the Statute*

[7] ¶ 6 Chapter 41.26 RCW lays out the LEOFF retirement system. The statute at issue in this case states:

> Subject to subsections (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 of this chapter, and the moneys 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.

*757 RCW 41.26.053(1). The question is whether this statute exempts the listed benefits from legal process even after the benefits have been distributed to the beneficiary. Copland argues that it does. Br. of Appellant at 5–6. But the statute by its terms does not indicate whether the legislature intended the various exempted rights listed to extend protection to the money after it has been distributed.

¶ 7 Other benefits exemption statutes in Washington are similar, but not identical, to the LEOFF exemption statute. RCW 41.40.052(1) exempts retirement benefits of members of the Public Employees' Retirement System (PERS): [2]

> **577 Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, 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 other process of law whatsoever, and shall be unassignable.

There are several differences in language between the PERS statute and the LEOFF exemption statute. Most significantly, the LEOFF statute exempts both the right "to a retirement allowance" and the right "to ... *the* retirement ... allowance *itself*." RCW 41.26.053(1) (emphasis added). But some exemption statutes exempt only the right "to a ... retirement allowance." *See, e.g.*, RCW 41.40.052(1) (PERS); RCW 2.12.090 (judicial pension exceptions).

¶ 8 The exemption statute relating to private pension plans contains language similar to the PERS exemption statute:

> The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any *758 optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever.

RCW 6.15.020(3). [3] Again, like the PERS statute, this statute exempts only the right "to a ... retirement allowance." Unlike the LEOFF statute, it does not exempt the right to the allowance itself.

¶ 9 Yet another statute lays out exemptions for federal benefits:

> 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 loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever....

RCW 6.15.020(2). The difference in this language is immediately apparent; it plainly states that federal pensions are exempt whether they are "in the actual possession of [the pensioner] or be deposited or loaned." That language is conspicuously absent in the nongovernment benefits subsection (3) above, which is essentially the same as the public employee statute in giving an exemption for the "right" to a "retirement allowance." RCW 6.15.020(3).

¶ 10 Copland in his briefing relies in part on the fact that the LEOFF exemption statute contains different language

—"the right to *the* retirement allowance *itself* "—than the PERS and other exemption statutes for both public and private employees. Br. of Appellant at 4–6 (emphasis added). An examination of other state exemption statutes containing similar language reveals this is not a principled basis upon which to make a distinction.

*759 ¶ 11 Nearly all exemption statutes contain the same language, or substantially similar language, as the PERS or LEOFF statutes that exempt either the right to "a retirement allowance" or the retirement allowance "itself," and do not contain any language similar to that in the federal exemption statute suggesting that funds remain exempt postdistribution. *E.g.*, RCW 2.10.180 (judicial pensions); RCW 2.12.090 (same); RCW 6.15.020(3) (pension money from employee benefit plan); RCW 41.20.180 (police pensions in first-class cities); RCW 41.28.200 (public employees in certain first-class cities); RCW 41.32.052 (teacher pensions); RCW 41.34.080 (Plan 3 pension funds); RCW 41.35.100 (school employee pensions); RCW 41.37.090 (public safety employee pensions); RCW 41.44.240 (city employee pensions); RCW 43.43.310 (Washington State Patrol).[4] Some of the **578 exemption statutes contain the "allowance itself" language. *E.g.*, RCW 2.10.180 (judicial pensions); RCW 41.26.053 (LEOFF); RCW 41.28.200 (public employees in certain first-class cities). Some contain only the "right to a retirement allowance" language. *E.g.*, RCW 41.32.052 (teachers); RCW 41.37.090 (public safety employees); RCW 41.40.052 (PERS). We perceive no reason why the legislature would provide substantially different protections for these various groups of beneficiaries.

¶ 12 The legislature has given us no justification for treating the LEOFF statute differently from other benefits exemption statutes. The question therefore becomes whether the language in the LEOFF exemption statute and the PERS and other exemption statutes—"the right to the retirement allowance itself" or "the right to a retirement allowance"—means the same thing as the language in the federal benefits exemption statute—"whether ... in actual possession ... or be deposited or loaned." *Compare* RCW 41.26.053(1), *and* RCW 41.40.052(1), *with* RCW 6.15.020(2).

*760 **b. *Case Law*** [5]

¶ 13 This is a question of first impression in Washington.[6] Because of the lack of Washington case law, we find it useful to explore how other federal and state courts have dealt with benefits exemption statutes in other jurisdictions to aid our interpretation of the statute at issue here.

¶ 14 Courts in other jurisdictions have generally, but not universally, held that some unambiguous reference to money actually paid to or in the possession of the pensioner is necessary in order to find that pension funds retain their exempt status postdistribution. For example, in the federal courts, the language in the Social Security Act prohibiting garnishment of " 'the moneys paid or payable' " to a beneficiary has been held protected even after deposit. *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415–17, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973) (social security funds on deposit retain protection as " 'moneys paid' " (quoting Social Security Act of 1935, ch. 531, § 208, 49 Stat. 620, 625 (1935))). Similarly, language in the World War Veterans' Act of 1924[7] that funds were exempt " 'either before or after *761 receipt by the beneficiary' " has been held to protect funds postdistribution. *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 160–62, 82 S.Ct. 1231, 8 L.Ed.2d 407 (1962) (veterans' benefits paid into savings and loan account were readily withdrawable and therefore retained protection (quoting World War Veterans' Act of 1924, ch. 510, § 3, 49 Stat. 607, 609 (1935))).

¶ 15 In contrast, the 1st, 2nd, 3rd, 9th, and 10th Circuits hold that language in the ERISA (Employee Retirement Income Security Act) statutes stating that " '[e]ach pension **579 plan shall provide that benefits provided under the plan may not be assigned or alienated' " does permit garnishment after the funds are deposited into the personal accounts of pensioners. *Hoult v. Hoult*, 373 F.3d 47, 51 (1st Cir.2004) (alteration in original) (quoting 29 U.S.C. § 1056(d)(1)); *see also id.* at 54 ("If Congress had intended [the ERISA antialienation provision] to reach that far, it could easily have employed the type of language found, for example, in the Veterans Benefits Act ... which prohibits attachment of benefits 'either before or after receipt by the beneficiary.' That Congress chose not to do so is significant." (citation omitted)). *But see U.S. v. Smith*, 47 F.3d 681, 684 (4th Cir.1995) ("The government should not be allowed to do indirectly what it cannot do directly; it cannot require Smith to turn over his pension benefits in a lump sum, nor can it require him to turn over his benefits as they are paid to him.").[8,9]

*762 ¶ 16 Cases decided under state law have tended to follow the federal holdings requiring explicit language to exempt benefit payments deposited into a personal bank account or otherwise placed into the personal possession of

the debtor.[10] A federal bankruptcy court applying Indiana law, for example, held that the Indiana statute at issue did not exempt funds postdistribution to the beneficiary because there was "no clear, explicit statement in [the statute] that the exemption provided for in an interest in a retirement fund applies to a distribution from such a fund in the hands of the participant." *In re Miller*, 435 B.R. 561, 568 (Bankr.N.D.Ind.2010). In an earlier case also applying Indiana law, the court noted that "[w]here the legislature of Indiana has given exemptions [to money in the hands of the debtor] it has chosen statutory language which is clear and unequivocal." *In re Weaver*, 93 B.R. 172, 174 (Bankr.N.D.Ind.1988).

¶ 17 Courts in Michigan, Tennessee, and Kansas have similarly held explicit language is required. A Michigan court of appeals recently held that garnishment was permissible after deposit of funds into the beneficiary's account where the exemption statute did "not include an express prohibition against garnishment of 'moneys paid' as retirement benefits, but instead only protects a retiree's *right* to a benefit." *Whitwood, Inc. v. S. Blvd. Prop. Mgmt. Co.*, 265 Mich.App. 651, 655, 701 N.W.2d 747 (2005). A federal bankruptcy court applying Tennessee law held that where one Tennessee statute expressly exempted all moneys received as a pension " 'before receipt, *or while in the resident's hands or upon deposit in the bank,*' " another Tennessee exemption statute that did not contain such express ***763** language did not protect money after it came into the possession of the beneficiary. *In re Lawrence*, 219 B.R. 786, 794 (Bankr.E.D.Tenn.1998) (quoting Tenn.Code Ann. § 26–2–104(a)). A bankruptcy court in Kansas adopted the reasoning of the *Lawrence* court in interpreting similar state statutes. *In re Adcock*, 264 B.R. 708, 711–12 (Bankr.D.Kan.2000).[11]

****580** ¶ 18 Both federal and state cases generally indicate that statutorily exempt funds, whatever their predistribution nature, may be garnished after they come into the personal possession of the beneficiary, including deposit into a personal account, unless the legislature provides some express language to the contrary.[12]

c. Other Exemptions in Washington

¶ 19 In addition to the statutes already examined, other exemption statutes in Washington support the claim that the LEOFF exemptions do not continue once pension funds are deposited into the personal account of the beneficiary. First, the personal property exemption statute, which lists ***764** personal items exempt from attachment, does not mention money from retirement benefits.[13] RCW 6.15.010.

¶ 20 Second, the statute establishing the form that must be served as notice of garnishment to a debtor does not mention state pensions of any kind. The codified form in part tells the debtor what funds in a bank account may be claimed as exempt:

> 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.

RCW 6.27.140(1). None of the funds mentioned include any state pensions. Moreover, everything on the list is related to a federal program, which accords with the unambiguous statutory exemption of federal pension money even after deposit. *See* RCW 6.15.020(2).

[8] ¶ 21 We emphasize that the legislature may expressly extend exemption protection to state pension funds after they come into the personal possession of the beneficiary. But here the legislature had a clear blueprint for express language that would grant pension moneys such protection. Federal benefits are exempt "whether the same be in the actual possession of [the beneficiary] or be deposited or loaned." RCW 6.15.020(2). That language has been in place for well over a century. Laws of 1890, § 1, at 88. The legislature chose to use different language for protection of state retirement benefits, granting only a "right" to the benefits. *E.g.*, RCW 41.26.053(1) (LEOFF exemption statute); RCW 41.40.052(1) (PERS exemption statute). Other related exemption statutes similarly contain no indication ***765** that the state benefits exemptions continue beyond the point when the State disburses the funds.[14] Federal and state case law ****581** interpreting similar statutes in other jurisdictions have required express language for such heightened protection, especially where other statutes in the same jurisdiction explicitly and unambiguously grant that protection. We recognize the general principle that exemption

statutes are to be liberally construed. *Elliott*, 74 Wash.2d at 620, 446 P.2d 347. But we decline to read into the statute language the legislature has omitted, whether intentionally or inadvertently, unless it is required to make the statute rational or to effectuate the clear intent of the legislature. *See State v. Taylor*, 97 Wash.2d 724, 728–29, 649 P.2d 633 (1982). We hold that absent express statutory language to the contrary, Copland's LEOFF pension is not exempt from garnishment once it has been deposited into his personal account.

EARNINGS EXEMPTIONS

[9] ¶ 22 Finally, Copland argues that even if his funds are not exempt once placed in his personal account, he is entitled to an earnings exemption under chapter 6.27 RCW. RCW 6.27.010(1) defines "earnings" as "compensation paid or payable to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise ... includ[ing] periodic payments pursuant to a nongovernmental pension or retirement program." Since ***766** Copland's pension is a state pension, he cannot claim it as earnings. Any other interpretation is contrary to the plain language of the statute and leads to absurd results. The statute by its terms applies only to "a *nongovernmental* pension." RCW 6.27.010(1) (emphasis added). In addition, "earnings" can be partially garnished while still in the hands of the employer, before it reaches the employee debtor. RCW 6.27.150(4). But the state pension exemption statutes plainly prohibit any garnishment at all of pension funds while still in the hands of the State. *E.g.*, RCW 41.40.052. Thus Copland's state pension cannot be earnings. [15]

CONCLUSION

[10] ¶ 23 Washington has one statute that exempts a beneficiary's money "whether [it] be in the actual possession of such person or be deposited or loaned." RCW 6.15.020(2). Other exemption statutes exempt only "[t]he right ... to a ... retirement allowance." RCW 6.15.020(3). The survey of case law and the plain language in the LEOFF and related exemption statutes indicate that the latter statutes exempt funds before they are given into the hands of the beneficiary, but not after receipt. We hold that the LEOFF exemption statute does not exempt retirement funds from garnishment after they have been paid to the retiree. If the legislature wants to give such a privilege to police officers and firefighters, or indeed to any state employee, it must say so with the same unequivocal language used in the federal pensions exemption statute. Copland's right to the retirement allowance itself was not disturbed—the "allowance itself" was deposited into his personal checking account. At that point, his right was satisfied and does not ***767** extend so far as to provide a permanent shield from all his debts. Moreover, Copland's pension moneys are not earnings and are therefore not entitled to any earnings exemption. The trial court is affirmed, and the case remanded for further proceedings consistent with this opinion.

WE CONCUR: CHARLES W. JOHNSON, JAMES M. JOHNSON, and CHARLES K. WIGGINS, Justices, and GERRY L. ALEXANDER, Justice Pro Tem.

STEPHENS J. (dissenting).

¶ 24 This case concerns RCW 41.26.053, the antigarnishment provision of the Washington Law Enforcement Officers' and Firefighters' ****582** Retirement System Act (LEOFF or Act). The question presented is whether LEOFF benefits lose their exempt status under RCW 41.26.053 upon being deposited into the beneficiary's personal bank account. The majority holds the exempt status evaporates the moment the benefit is paid to the beneficiary. This holding frustrates the entire purpose and policy of the Act. The Act is designed to safeguard a degree of economic security for the pensioner and dependent family members. The antigarnishment provision is critical to achieving the legislative purpose. Because the majority places a construction upon RCW 41.26.053 that runs contrary to the logic, letter, and spirit of the Act, I respectfully dissent.

GOVERNING PRINCIPLES OF INTERPRETATION

¶ 25 Our paramount duty in interpreting a statute is to ascertain and give effect to the intent of the legislature. *State v. Johnson*, 119 Wash.2d 167, 172, 829 P.2d 1082 (1992) (citing *City of Yakima v. Int'l Ass'n of Fire Fighters, AFL–CIO, Local 469*, 117 Wash.2d 655, 669, 818 P.2d 1076 (1991)). We interpret each statute in light of the entire statutory scheme. *Christensen v. Ellsworth*, 162 Wash.2d 365, 373, 173 P.3d 228 (2007) (citing *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9–12, 43 P.3d 4 (2002)). And ***768** where the legislature has prefaced an enactment with a declaration of purpose, the declaration serves "as an important guide in determining the intended effect of the operative sections." *Hearst Corp. v. Hoppe*, 90

Wash.2d 123, 128, 580 P.2d 246 (1978) (citing *Hartman v. Wash. State Game Comm'n*, 85 Wash.2d 176, 179, 532 P.2d 614 (1975)). If an examination of the operative section at issue leaves "alternative interpretations ... possible, the one that best advances the overall legislative purpose should be adopted." *Anderson v. Morris*, 87 Wash.2d 706, 716, 558 P.2d 155 (1976).

¶ 26 Proper interpretation of RCW 41.26.053 begins with the rule "that pension legislation must be liberally construed most strongly in favor of the beneficiaries." *Hanson v. City of Seattle*, 80 Wash.2d 242, 247, 493 P.2d 775 (1972). Similarly, exemption statutes require liberal construction so their underlying intent and purpose may be given effect. *In re Elliott*, 74 Wash.2d 600, 620, 446 P.2d 347 (1968) (citing *N. Sav. & Loan Ass'n v. Kneisley*, 193 Wash. 372, 76 P.2d 297 (1938)). Liberal construction in favor of pension beneficiaries is particularly important here because we are dealing with an exemption statute contained in pension legislation.

A TEXTUAL EXAMINATION

¶ 27 The antigarnishment provision, RCW 41.26.053(1), states:

> Subject to subsections (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 of this chapter, and the moneys 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.

***769** The statute is written in broad terms. The text shows the legislature exempted both pension money in the fund and pension money after distribution from any process of law whatsoever.

¶ 28 Germane to this case, the statute exempts (1) "the right of a person to a retirement allowance," (2) "the retirement ... allowance itself," (3) "*and* the moneys in the fund created under [the Act]." RCW 41.26.053(1) (emphasis added). This last clause—"and moneys in the fund"—refers to pension money not yet received by a beneficiary. By including this clause, the legislature distinguished pension money remaining "in the fund," and therefore not yet received, from the other exempt items articulated in the statute. In light of this legislative distinction, the phrases "right ... to a retirement allowance" and "the retirement ... allowance itself," must be read as referring not only to undistributed pension money but also to pension money received by the beneficiary. ****583** *See Whatcom County v. City of Bellingham*, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996) ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.").

¶ 29 This reading is bolstered by the legislature's use of the word "allowance" when referring to the retirement benefit. The word allowance means "[a] share or portion, esp. of money that is assigned or granted." BLACK'S LAW DICTIONARY 89 (8th ed. 2009). Because words used in a statute are given their ordinary meaning, *State v. Smith*, 117 Wash.2d 263, 271, 814 P.2d 652 (1991), the word "allowance" in RCW 41.26.053(1) can mean nothing less than "a share of money." Thus, the legislature exempted the share of money itself, whether or not it has been received by the beneficiary. Indeed, to read the statute otherwise, as the majority does, flouts well-established principles because it makes most of the exemptions enumerated in the statute redundant. *See Whatcom County*, 128 Wash.2d at 546, 909 P.2d 1303 ("Statutes must be interpreted and construed so that all the ***770** language used is given effect, with no portion rendered meaningless or superfluous."). The pension money *itself* is what the statute shields from any legal process whatsoever. The money is protected both while it is in government hands and after it has been disbursed to the pensioner. This reading of the statute best effectuates the policies and purposes of the Act as a whole.

THE OVERARCHING PURPOSE OF THE ACT

¶ 30 The overarching legislative purpose of the Act is found at RCW 41.26.020:

> The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and firefighters, and to beneficiaries of such employees, *thereby enabling such employees to provide for themselves and their dependents* in case of disability or death, and effecting a system of retirement from active duty.

(Emphasis added.)

¶ 31 By these words, the legislature made plain that the principal objective of the Act is to ensure the pensioner and dependent family members are provided for when the pensioner enters retirement or his or her years of productivity are cut short by disability or death. The declared policy serves as the key to ascertaining the meaning of the antigarnishment provision. By shielding the pensioner and dependents from claims of creditors, RCW 41.26.053(1) operates as a critical mechanism to achieving the overall legislative purpose.

¶ 32 Courts have long recognized the purpose of safeguarding a pensioner's family from want as the animating force behind state antigarnishment statutes and have interpreted them in this light. So powerful is the policy, a considerable majority of courts have carved out a common law exception to pension antigarnishment statutes to accommodate claims for child support and spousal maintenance. ***771** *See, e.g., Faus v. Faus*, 319 N.W.2d 408 (Minn.1982); *Fischer v. Fischer*, 13 N.J. 162, 98 A.2d 568 (1953); *Mahone v. Mahone*, 213 Kan. 340, 517 P.2d 131 (1973); *Collida v. Collida*, 546 S.W.2d 708 (Tex.Civ.App.1977); *Saunders v. Saunders*, 243 Wis. 94, 9 N.W.2d 629 (1943); *Hodson v. New York City Employees' Retirement Sys.*, 243 A.D. 480, 278 N.Y.S. 16 (1935); *Courtney v. Courtney*, 251 Wis. 443, 29 N.W.2d 759 (1947). Indeed, "[e]ven where the exemption provision is absolute on its face, it has been held that exemptions contained in pension statutes are inapplicable to a claim for alimony or child support." *Faus*, 319 N.W.2d at 411. As one court has explained:

> Underlying these decisions is the reasoning that the funds involved, pension funds and disability insurance, are created for the protection, not only of the employee or insured, but for the protection of his family. Similarly, the purpose of exemptions is to relieve the person exempted from the pressure of claims that are hostile to his and his dependents' essential needs.

Courtney, 29 N.W.2d at 762.

¶ 33 These courts have chosen to animate the spirit of the statute, understood from its ****584** context, despite any discerned inartfulness in its drafting. *See, e.g., Mahone*, 517 P.2d at 134 ("we have applied the principle that a statute is not to be given an arbitrary construction, according to the strict letter, but one that will advance the sense and meaning fairly deducible from the context"). "The spirit of a statute gives character and meaning to particular terms. The reason of the law, i.e., the motive which led to the making of it, is one of the most certain means of establishing the true sense." *Fischer*, 98 A.2d at 571.

¶ 34 The overriding policy of the Act is reflected in our own legislature's decision to except maintenance and child support from the scope of the antigarnishment provision. *See* RCW 41.26.053(1)-(3). By excepting such claims, the legislature made clear that RCW 41.26.053(1) is not intended to function at odds with the declared purpose of the ***772** Act but operates consonant with the spirit of the Act, as set forth in the legislative declaration. If the statute functions to jeopardize the needs of the petitioner's dependents—as the majority allows—the purpose of the Act is undermined.

¶ 35 In holding that Walter Copland's pension money, though exempt from the reach of creditors while in the hands of the government, becomes subject to seizure the moment it is paid, the majority reduces the Act's protection to a meaningless formality, easily circumvented by creditors. Courts have long recognized the problem with such an interpretation. In *Surace v. Danna*, 248 N.Y. 18, 161 N.E. 315 (1928), New York's court of last resort addressed the question whether a state antigarnishment statute, which exempted "benefits due under this chapter," continued to exempt the benefits after being paid to the beneficiary. Speaking for the court, Justice Cardozo noted:

> By concession the moneys due under the award would have been exempt from the pursuit of creditors before they reached the judgment debtor. The argument is, however, that they became subject to seizure the instant they were paid. If this is so, the exemption is next to futile. All that

> a creditor has to do is to obtain an order in supplementary proceedings, containing, like the order in this proceeding, the usual provision restraining the judgment debtor from making any transfer or disposition of his property until further directions in the premises. Then, as the installments of an award are paid, the injunction will tie them up. They may be appropriated to the last dollar in satisfaction of an ancient debt. They will no longer be a fund for the support of the indigent and helpless.
>
> So narrow a construction thwarts the purpose of the statute.

Id. at 20, 161 N.E. 315.

¶ 36 It is telling that the majority is completely silent as to LEOFF's declaration of purpose. Ignoring the purpose of the Act, the majority incorrectly assumes that RCW 41.26.053(1) embodies a legislative intent to protect only the retirement fund, specifically those who manage the retirement system, from the administrative burdens of execution *773 and garnishment. While this is no doubt part of what the statute accomplishes, to conclude it does nothing more puts the majority at odds with the broad and clearly expressed declaration set forth in RCW 41.26.020. The legislature made clear the ultimate aim of the Act is to enable law enforcement officers and firefighters to provide for themselves and their dependents, not to ease administrative burdens. We must give effect to the intent of the legislature by liberally construing RCW 41.26.053(1) to further the declared policy. While the majority gives lip service to liberal construction, the rule it announces in fact *strictly* construes the LEOFF exemption statute. *See* majority at 581 ("We hold that absent express statutory language to the contrary, Copland's LEOFF pension is not exempt from garnishment once it has been deposited into his personal account.").

CASE LAW

¶ 37 The majority believes the legislature needed to use language such as that found in certain federal antigarnishment statutes if it wanted to protect retirement funds from creditors. *See* majority at 581. In addition to disregarding liberal construction, this holding is founded on an erroneous reading of cases that have examined the issue. According **585 to the majority, there exists a general consensus among courts that "some unambiguous reference to money actually paid to or in the possession of the pensioner is necessary in order to find that pension funds retain their exempt status postdistribution." *Id.* at 578. Not true. Decisions addressing the issue do not turn on the incantation of magic words, but rather ground their analysis in legislative intent reflected in the breadth of the statute.

¶ 38 The majority observes that "in the federal courts, the language in the Social Security Act prohibiting garnishment of ' "the moneys paid or payable" ' to a beneficiary has been held protected even after deposit." *Id.* (quoting *774 *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415–17, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973) (quoting Social Security Act of 1935, ch. 531, § 208, 49 Stat. 620, 625 (1935))). It also notes that "[s]imilarly, language in the World War Veterans' Act of 1924 [also known as "Veterans' Benefits Act"] that funds were exempt ' "either before or after receipt by the beneficiary" ' has been held to protect funds post-distribution." *Id.* (footnote omitted) (quoting *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 160–61, 82 S.Ct. 1231, 8 L.Ed.2d 407 (1962) (quoting World War Veterans' Act of 1924, ch. 510, § 3, 49 Stat. 607, 609 (1935))). The majority then contrasts the Social Security Act and the Veterans' Benefits Act with the antialienation statute of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1056(d)(1), which courts have largely held does not protect funds postdistribution. *Id.* at 578–79.

¶ 39 The majority, however, fails to note the unique narrowness of ERISA's language as compared to other acts. Even the one cited federal decision that supports the majority's view recognizes the language of ERISA's antialienation statute was not "written broadly," as are other federal provisions, but clearly "governs only the plan itself." *Hoult v. Hoult*, 373 F.3d 47, 54–55 (1st Cir.2004). The majority gleans the wrong rule from these cases. The general rule is not that "some unambiguous reference to money actually paid to or in the possession of the pensioner is necessary in order to find that pension funds retain their exempt status postdistribution." Majority at 578. Instead, courts have determined that pension funds retain their exempt status postdistribution when the language of the statute shows the exempt status attaches to the benefit itself as opposed to the benefit only while held by the government. *See, e.g.*, *Waggoner v. Game Sales Co.*, 288 Ark. 179, 702 S.W.2d 808, 809 (1986); *Philpott*, 409 U.S. at 415–17, 93 S.Ct. 590.

¶ 40 This principle is illuminated by examining what the majority overlooks. Although it discusses the antigarnishment *775 statutes of the Social Security Act, the Veterans' Benefits Act, and ERISA, the majority fails to mention the antigarnishment statutes of other similar federal

schemes. The Civil Service Retirement Act, 5 U.S.C. § 8346(a), for example, provides that "[t]he money mentioned by this subchapter is not assignable, either in law or equity, ... or subject to execution, levy, attachment, garnishment, or other legal process." Though § 8346(a) does not contain the explicit language found in the antigarnishment statutes of the Social Security Act and the Veterans' Benefits Act, a majority of courts recognize its protections continue to apply even after the money is received by the beneficiary. *See State ex rel. Nixon v. McClure*, 969 S.W.2d 801, 806 (Mo.Ct.App.1998) ("A majority of courts considering the issue hold that the protection afforded by § 8346(a) continues to apply to the funds even after they are in possession of the payee."); *Tom v. First Am. Credit Union*, 151 F.3d 1289, 1293-94 (10th Cir.1998) ("Although not as precisely drafted as [42 U.S.C.] § 407, the broad language of § 8346 offers no hint that its protections are any narrower than those afforded to Social Security payments or that Congress intended to treat future payments any differently than payments already received."); *In re Anderson*, 410 B.R. 289 (Bankr.W.D.Mo.2009) (same); *Waggoner*, 702 S.W.2d at 809 (noting that only "[t]wo courts have reached the opposite result").

¶ 41 These courts properly focus on the breadth of an antialienation provision, not whether its wording explicitly mentions benefits ****586** postdistribution. The reasoning of the *Waggoner* court is instructive:

> By this clearly expressed provision Congress makes the exemption applicable to "the money mentioned in this subchapter." The statute, unlike some others, does not base the exemption upon whether the government holds the money. Under this broad grant of immunity, the exemption attached to the money itself and, when the money was paid to the recipient, it was free from garnishment by a judgment creditor.

Id.

***776** ¶ 42 The United States Supreme Court's decision in *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979), endorses a similar approach with respect to the Railroad Retirement Act's antigarnishment provision, 45 U.S.C. § 231m. This statute prohibits annuity funds from being subject to "garnishment, attachment, or other legal process under any circumstances whatsoever." 45 U.S.C. § 231 m. The Supreme Court made clear the provision continues in force even after the funds are received by the beneficiary. *Hisquierdo*, 439 U.S. at 583, 99 S.Ct. 802. The court noted that any other holding would "run[ ] contrary to the language and purpose of § 231m and would mechanically deprive petitioner of a portion of the benefit Congress in § 231d(c)(3), indicated was designed for him alone." *Id.* Speaking to the breadth of the statute, the Court observed that "[s]ection 231m goes far beyond garnishment. It states that the annuity shall not be subject to any 'legal process under any circumstances whatsoever,...' " *Id.* at 586, 99 S.Ct. 802.

¶ 43 The majority also cites a handful of decisions interpreting antigarnishment provisions of other states for the proposition that explicit language is required to exempt a benefit after it has been received by the beneficiary. Yet, even some of those cases lend support to the view that proper analysis hinges not so much on whether there exists specific language proscribing garnishment postdistribution, but on whether the language of the statute is sufficiently comprehensive to evidence an intent to protect the money both pre- and postdistribution. *See, e.g., Whitwood, Inc. v. S. Blvd. Prop. Mgmt. Co.*, 265 Mich.App. 651, 701 N.W.2d 747, 749 (2005) (noting that the language of the state antigarnishment statute at issue was "less comprehensive" than that contained in the federal Social Security Act because the state statute protected only the "retiree's *right* to a benefit"); *In re Lawrence*, 219 B.R. 786, 792-93 (Bankr.E.D.Tenn.1998) (noting the statute at issue was ***777** "fundamentally different from ... other Tennessee exemption statutes" because it did "not contain similar broad language," but "merely limit[ed] ... the amount of disposable earnings that may be subjected to garnishment").

¶ 44 *In re Miller*, 435 B.R. 561 (Bankr.N.D.Ind.2010), provides perhaps the strongest support for the majority's position. But there, the court characterized the issue as whether Indiana's exemption statute was "broad enough" to protect the pension funds after they came into the possession of the beneficiary. *Id.* at 563. The court held it was not because the property protected under the statute was only the "*interest* ... that the debtor has *in a retirement plan or fund*." *Id.* at 564 (alteration in original). The scope of the state exemption statute was too narrow. By its clear language, the statute was limited to money "in a retirement plan." *Id.*

¶ 45 The *Miller* court did note that "the legislature can only grant exemptions in proceeds *by explicitly stating that the proceeds are exempt*." *Id.* at 567 n. 6. But, this observation must be read in light of Indiana's particular history of interpreting government exemption statutes. Courts in Indiana long ago established the common law rule that government exemption statutes do not protect money postdistribution. *See id.; Sohl v. Wainwright Trust Co.*, 76

Ind.App. 198, 130 N.E. 282 (1921); *Faurote v. Carr*, 108 Ind. 123, 9 N.E. 350 (1886). It appears the rule was rooted in cases interpreting a 19th century federal exemption statute, U.S.Rev.Stat. § 4747 (1873), 18 pt. 1 Stat. 931 (1875), *recodified at* 44 pt. 1 Stat. 1194, § 51, *repealed by* Act of Aug. 12, 1935, § 3, 49 Stat. 609. *See Cavanaugh v. Smith*, 84 Ind. 380 (1882); *see also Faurote v. Carr*, 108 Ind. 123, 9 N.E. 350 (1886). This statute provided, ****587** "No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the pension office, or any officer or agent thereof, or is in course of ***778** transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner." U.S.Rev.Stat. § 4747. Because the particular words of this statute—"money due, or to become due"—clearly limited the exemption to an undelivered sum of money, the courts held the exemption was inapplicable once the money had been transmitted to the pensioner. *See, e.g., Cavanaugh*, 84 Ind. at 386. Moreover, the purpose of the statute was narrow: "to prevent the machinery of government from being stopped by a withdrawal of compensation from those charged with the administration of government affairs." *Id.* It was in this context the Indiana legislature developed a practice of expressly distinguishing between pre- and postdistribution scenarios. *See In re Miller*, 435 B.R. at 567 n. 6.

¶ 46 Washington's history is dissimilar. Before today, our legislature had no need to unequivocally distinguish between pre- and postdistribution in its antigarnishment statutes. It is therefore inappropriate to construe them by looking to how some courts in other jurisdictions have interpreted antigarnishment statutes of states that have historically made the distinction. [1]

¶ 47 We should focus on the fact that RCW 41.26.053 is worded similarly to provisions that have been recognized as sufficiently comprehensive to protect benefits both pre- and postdistribution. Indeed, RCW 41.26.053 is arguably stronger than the Railroad Retirement Act's antigarnishment provision, which prohibits annuity funds from being subject to "garnishment, attachment, or other legal process under ***779** any circumstances whatsoever." 45 U.S.C. § 231m. Also, RCW 41.26.053 is more comprehensively worded than the antigarnishment statute contained in the Civil Service Retirement Act. As noted, both have been consistently construed to protect benefits after distribution. Unlike some other statutes, RCW 41.26.053 does not base the exemption upon whether the government holds the money. Under the statute's broad grant of immunity, the exemption attaches to the retirement allowance itself and, when the allowance is paid to the recipient, it is shielded from any process of law whatsoever.

¶ 48 The recent case of *J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011), is particularly instructive in achieving a proper statutory construction. In that case, the Supreme Court of Nebraska addressed the issue whether the antigarnishment provision of its State Patrol Retirement Act (Neb.Rev.Stat. §§ 81–2014 to 81–2041) continued to exempt benefits after they had been received by the beneficiary. *Id.* Like this case, that case involved a civil judgment creditor. Billy Hobbs was a former state trooper who was convicted of sexually assaulting a minor child. *Id.* at 228. The guardian of the minor child, J.M., brought suit on the child's behalf and won a substantial civil judgment. *Id.* The guardian sought to execute the judgment against Hobbs' retirement pension. *Id.* The court was asked to decide whether Hobbs' pension benefits were exempt from execution, even after the funds passed into his hands. *Id.* at 228–29. The Nebraska antigarnishment statute provides:

> "All annuities or benefits which any person shall be entitled to receive under [the Act] shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be ****588** assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act."

Id. at 229 (quoting Neb.Rev.Stat. § 81–2032).

***780** ¶ 49 The court rejected J.M.'s argument that the statute draws an implicit distinction between the funds a beneficiary " 'shall be entitled to receive' " and funds the beneficiary already has received. *Id.* J.M. argued the distinction was warranted because the statute uses the words " 'annuities' " and " 'benefits,' " which J.M. alleged "refer to a right to payment, not to the payment or proceeds themselves." *Id.* The court reasoned that "[t]here is simply no merit to J.M.'s argument that 'annuities' and 'benefits' in [the statute] refer to something other than payments of money." *Id.* at 230. The court, therefore, rejected the notion that the Nebraska legislature intended only to "protect the Nebraska

State Patrol Retirement System from having to deal with the administrative burdens of execution and garnishment," and not to protect the money received by the beneficiary of the act. *Id.* at 229. In respect to whether the pension money retained its exempt character upon passing to the beneficiary, the court reasoned that the presence or absence of specific language referencing postdistribution benefits was unimportant: "[T]his distinction has been consistently rejected by courts discussing statutes, such as § 81–2032, that do not contain such language. The language of § 81–2032 is still clearly intended to protect benefits under the Act from legal process." *Id.* at 230 (footnote omitted).

¶ 50 Acknowledging that antialienation provisions may sometimes serve to cut off possible avenues of recovery for victims, the court noted that "courts have held that antiattachment provisions are to be given effect even where a creditor is attempting to collect restitution for a criminal act, or a tort judgment." *Id.* at 230–31 (citing *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 110 S.Ct. 680, 107 L.Ed.2d 782 (1990); *Higgins v. Beyer*, 293 F.3d 683 (3d Cir.2002); *E.W. v. Hall*, 260 Kan. 99, 917 P.2d 854 (1996); *Younger v. Mitchell*, 245 Kan. 204, 777 P.2d 789 (1989)). The court looked to the United States Supreme Court, which has explained that "it is not appropriate for a ***781** court to approve any generalized equitable exception to an antigarnishment provision, even for criminal misconduct, despite a 'natural distaste for the result.' " *Id.* at 231 (quoting *Guidry*, 493 U.S. at 377, 110 S.Ct. 680). An antigarnishment provision

> reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them. If exceptions to this policy are to be made, it is for Congress to undertake that task.
>
> As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text. The creation of such exceptions, in our view, would be especially problematic in the context of an antigarnishment provision. Such a provision acts, by definition, to hinder the collection of a lawful debt.

Id. (quoting *Guidry*, 493 U.S. at 376–77, 110 S.Ct. 680). The Nebraska court correctly held the antigarnishment statute at issue precluded the relief sought by J.M. *Id.* at 232. We should similarly construe RCW 41.26.053 consistent with its broad language and clear statutory purpose and hold the pension benefits at issue are not subject to garnishment.

¶ 51 As a final note, this liberal construction avoids the conundrum the majority's view creates but cannot explain. In a footnote, the majority acknowledges that the pension exemption statute for volunteer firefighters and reserve officers is worded differently from the LEOFF statute, in that it references benefits " 'paid or payable.' " Majority at 580 n. 13. Because this language is all-important under the majority's strict construction, the majority is left to conclude that volunteer firefighters and reserve officers have been granted greater protection than regularly employed firefighters, law enforcement officers, and other state and local government workers. *Id.* Yet, the majority recognizes that "[n]either the statute nor the legislative history offers any reason why the legislature would provide greater ***782** protection...." *Id.* In my view, there is ****589** no reason. The legislature has not treated these employees differently because it has not required the magic "paid or payable" language to effectuate the clear purpose of antigarnishment provisions. [3] Rather than looking for significance in language variations where none was intended, we should read the LEOFF antigarnishment provision with a steady eye on its important purpose.

CONCLUSION

¶ 52 The purpose of LEOFF is to preserve pension benefits so that employees may provide for themselves and dependent family members. RCW 41.26.053 must be liberally construed to achieve this important purpose. The majority reduces the antigarnishment provision to a meaningless protection for pensioners when it holds that benefits may be attached the instant the money leaves the government's hands and passes to the pensioner. Consistent with the statutory language and its clear purpose, and guided by the weight of judicial authority interpreting similar statutes, ***783** I would hold that benefits paid under the Act retain their exempt status under RCW 41.26.053 after being deposited into the beneficiary's personal bank account. I respectfully dissent.

WE CONCUR: BARBARA A. MADSEN, Chief Justice, SUSAN OWENS, and MARY E. FAIRHURST, Justices.

Parallel Citations

270 P.3d 574

Footnotes

1 The bankruptcy court eventually ruled the debt "arises from a willful and malicious injury and is not dischargeable." *Copland*, 2010 WL 4809327, at *3.

2 The language used is identical to several other exemption statutes for other non-LEOFF public employee pensions. *See* RCW 41.37.090 (public safety employees); RCW 41.32.052 (public school teachers).

3 This statute, like several others in this opinion, was changed in a recent legislative session. Some changes have already become effective while others are delayed until 2018. *See* Laws of 2011, ch. 162. None of the changes are relevant to our analysis.

4 One exemption statute in Washington contains language found by the United States Supreme Court to protect funds after disbursement to the beneficiary in the context of Social Security. RCW 41.24.240 (volunteer firefighter and reserve officer pensions). This is discussed further below at n. 12.

5 An extensive review of the legislative history of the exemption statutes sheds little light on the issue of whether funds may be garnished postdistribution. We therefore do not address legislative history. Similarly, there is no particular canon of construction that will aid us in determining whether language exempting a "right" to benefits continues to protect funds once they are in the beneficiary's bank account.

6 In its amicus brief, the Washington State Patrol Troopers Association directs the court's attention to a Court of Appeals case interpreting the PERS (rather than LEOFF) benefits exemption statute, which contains substantially similar language granting the "right" to a "retirement allowance." RCW 41.40.052(1). In *Boronat*, the Court of Appeals held that Mr. Boronat's pension could not be attached by Mrs. Boronat. *Boronat v. Boronat*, 13 Wash.App. 671, 674, 537 P.2d 1050 (1975). But Mrs. Boronat "filed and served a writ of garnishment on the Washington State Employees Retirement System, seeking to recover from [Mr. Boronat's] contributions the amount owed her." *Id.* at 672, 537 P.2d 1050. That is precisely the kind of action that the statute here plainly prohibits. The question is whether such funds *remain* exempt once they leave the possession of the State and come into the possession of the beneficiary.

7 Since its inception, the World War Veterans Act of 1924 has undergone many amendments and now carries the popular name of "Veterans Benefits Act" or "Veterans' Benefits Act." The act is referred to in other cases cited herein by these later names, but the exemption language at issue has remained the same.

8 Only the 1st, 2nd, 3rd, 4th, 9th, and 10th Circuits have addressed the issue. The Fourth Circuit stands alone in its disagreement.

9 Although it has been characterized as dicta and thus not binding, the United States Supreme Court also appears to disagree with the Fourth Circuit, stating that "[The ERISA exemption statute] bars the assignment or alienation of pension plan benefits, and thus prohibits the use of state enforcement mechanisms only insofar as they prevent those benefits from being paid to plan participants." *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 836, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988) (emphasis omitted).

10 Some courts have also found significant language stating that an interest shall not be subject " 'to garnishment, attachment or other legal process *under any circumstances whatsoever* ....' " *See In re Miller*, 435 B.R. 561, 567 n. 5 (Bankr.N.D.Ind.2010) (emphasis added) (quoting 45 U.S.C. § 231m(a) (Railroad Retirement Act)). This does at first seem similar to provisions in several of our state exemption statutes, which contain some variation of "or any other process of law whatsoever." *E.g.*, RCW 41.26.053(1). But this argument fails because "any process whatsoever" is entirely different from "any circumstances whatsoever."

11 Ohio is an exception to the general consensus. The state courts there have held, even where the statutory language is somewhat ambiguous, that "statutorily exempt funds do not lose their exempt status by voluntary deposit into a checking account, as long as the source of the exempt funds is known or is reasonably traceable." *Haggerty v. George*, No. 00-C.A.-86, 2001-Ohio-3481, 2001 WL 1647216 (Ohio Ct.App. Dec. 13, 2001) (unpublished) (citing *Daugherty v. Cent. Trust Co. of Ne. Ohio, N.A.*, 28 Ohio St.3d 441, 504 N.E.2d 1100 (1986)). However, Ohio's statutory scheme is different from our own. There, exempt funds are expressly listed under "*property* exempt from execution, garnishment, attachment, or sale." Ohio Rev.Code Ann. § 2329.66(A) (emphasis added). In Washington, however, the list of exempt property is separated from the pension exemption statutes. *Compare* RCW 6.15.010, *with* RCW 6.15.020. West Virginia has similarly held that placement of funds in a bank does not strip them of their protected character. *See Billingsley v. Tartell*, 127 W.Va. 750, 759-60, 35 S.E.2d 89 (1945).

12 The dissent gives a long list of cases purportedly holding that the "exemption status of money is not destroyed upon its deposit in a bank." Dissent at 587 n. 1. Those cases are distinguishable because all but one of them interprets statutes that do not use the ambiguous language used by the Washington legislature. Moreover, none of those cases address circumstances like those here, where another state exemption statute clearly and unambiguously exempts funds after deposit.

13 The statute lists "personal property [that shall] be exempt from execution, attachment, and garnishment." RCW 6.15.010(1). It includes items such as "wearing apparel," "private libraries," and "family pictures and keepsakes." RCW 6.15.010(1)(a), (b).

14 One exemption statute in Washington contains the "paid or payable" language found by the United States Supreme Court in *Philpott* to protect funds after disbursement to the beneficiary in the context of Social Security. *Compare* RCW 41.24.240 (volunteer firefighter and reserve officer pensions), *with Philpott*, 409 U.S. at 415 n. 3, 416–17, 93 S.Ct. 590. As noted above, all other exemption statutes are written in substantially similar language exempting either the right to "a retirement allowance" or to the "allowance itself" and do not contain the phrase "paid or payable." *E.g.*, RCW 2.10.180 (judicial pensions); RCW 41.26.053 (LEOFF); RCW 41.28.200 (public employees in certain first-class cities); RCW 41.32.052 (teacher pensions); RCW 41.37.090 (public safety employees pensions); RCW 41.40.052 (PERS). Neither the statute nor the legislative history offers any reason why the legislature would provide greater protection to volunteer firefighters' and reserve officers' pensions than to full time firefighting and law enforcement employees, or other state and local government employees.

15 The word "nongovernmental" was inserted in 2003. Laws of 2003, ch. 222, § 16. According to the House Bill Report, it was added for clarity in light of the fact that government pensions are not subject to garnishment, at least while still in the hands of the State. *See* H.B. Rep on Substitute S.B. 5592, 58th Leg., Reg. Sess. (Wash. 2003).

1 At any rate, in contrast to *Miller*, the weight of authority holds, without requiring unequivocal language, that the exemption status of money is not destroyed upon its deposit in a bank. *See, e.g., J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011); Annotation, *Deposit of Exempt Funds as Affecting Debtor's Exemption*, 67 A.L.R. 1203 (1930) (citing cases); *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 521 P.2d 441, 113 Cal.Rptr. 449 (1974); *Surace*, 248 N.Y. 18, 161 N.E. 315; *In re Hunt*, 250 B.R. 482 (Bankr.E.D.N.Y.2000); *Waggoner*, 288 Ark. 179, 702 S.W.2d 808; *In re Bresnahan*, 183 B.R. 506 (Bankr.S.D.Ohio 1995); *Sears, Roebuck & Co. v. Harris*, 854 P.2d 921 (Okla.Civ.App.1993); *State ex rel. Nixon*, 969 S.W.2d 801; *Tom v. First Am. Credit Union*, 151 F.3d 1289 (10th Cir.1998); *United States v. Smith*, 47 F.3d 681 (4th Cir.1995); *In re Williams*, 171 B.R. 451 (Bankr.D.N.H.1994).

2 The majority makes a similar error when it relies on RCW 6.15.020 to conclude the pension money here is not as protected as federal pension money. Majority at 577. It identifies a simple contrast in the statute's language dating from 1890 in subsection (2), applicable to federal benefits received by Washington citizens, and language crafted in 1987 in subsection (3), applicable to private employee pension plans. What gets lost in this casual reference to RCW 6.15.020 is the purpose of that statute. It was enacted pursuant to authority granted in the United States Bankruptcy Code, to strengthen the exempt status of both public and private pension plans in response to changes in federal bankruptcy law. *See* RCW 6.15.020(1); FINAL LEGISLATIVE REPORT, 50th Leg., at 193–94 (Wash. 1987). (explaining this purpose to restore prior protections to private plans under ERISA). Importantly, the legislature recognized when it added subsection (2) that it was equalizing the treatment of similar plans, not distinguishing between them, as the majority suggests. In fact, the 1987 *Final Legislative Report* emphasized that "[c]urrent state law protects the pension benefits of federal and state employees from creditors, whether in or outside bankruptcy." FINAL LEGISLATIVE REPORT, 50th Leg., at 193. The importance of RCW 6.15.020 has nothing to do with the proper interpretation of RCW 41.26.053, but rather resides in its interface with federal bankruptcy law—and, not inconsequentially, federal tax law. *See* RCW 6.15.020(3), (4), (5) (referencing Internal Revenue Code provisions). As amicus curiae, Washington State Patrol Troopers Association aptly observe, "Judicial erosion of Washington's antialienation statutes endangers the tax exempt status of Washington's public pension plans." Br. of Amicus Curiae at 13.

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APPENDIX D

Code of Federal Regulations
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter G. Financial Activities
Part 115. Trust Funds for Tribes and Individual Indians (Refs & Annos)
Subpart B. Iim Accounts

25 C.F.R. § 115.104

§ 115.104 Restrictions.

Currentness

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code. Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded and filed with the records of the account. For rules governing the payment of judgments from individual Indian money accounts, see § 11.208 of this chapter.

SOURCE: 66 FR 7094, Jan. 22, 2001, unless otherwise noted.

AUTHORITY: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub.L. 87–283; Pub.L. 97–100; Pub.L. 97–257; Pub.L. 103–412; Pub.L. 97–458; 44 U.S.C. 3101 et seq.

Current through June 26, 2014; 79 FR 36240.

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APPENDIX E

Code of Federal Regulations
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter G. Financial Activities
Part 115. Trust Funds for Tribes and Individual Indians (Refs & Annos)
Subpart E. Iim Accounts: Hearing Process for Restricting an Iim Account

25 C.F.R. § 115.601

§ 115.601 Under what circumstances may the BIA restrict your IIM account through supervision or an encumbrance?

Currentness

(a) The BIA may restrict your IIM account through supervision if the BIA:

(1) Receives an order from a court of competent jurisdiction that you are non-compos mentis; or

(2) Receives an order or judgment from a court of competent jurisdiction that you are an adult in need of assistance because you are "incapable of managing or administering property, including your financial affairs;" or

(3) Determines through an administrative process that you are an adult in need of assistance based on a finding by a licensed medical or mental health professional that you are "incapable of managing or administering property, including your financial affairs;" or

(4) Receives information from another federal agency that you are under a legal disability and that the agency has appointed a representative payee to receive federal benefits on your behalf.

(b) The BIA may restrict your IIM account through an encumbrance if the BIA:

(1) Receives an order from a court of competent jurisdiction awarding child support from your IIM account; or

(2) Receives from a third party:

(i) A copy of the original contract between you and the third party in which you used your IIM funds as security/collateral for the transaction;

(ii) A copy of the document showing that the BIA approved in advance the use of your IIM funds as security/collateral for the contract;

(iii) Proof of your default on the contract according to the terms of the contract; and

(iv) A copy of the original assignment of IIM income as security/collateral for the contract that is signed and dated by you and is notarized;

(3) Receives a money judgment from a Court of Indian Offenses pursuant to 25 CFR 11.208 or under any tribal law and order code;

(4) Is provided documentation showing that BIA or OTFM caused an administrative error which resulted in a deposit into your IIM account, or a disbursement to you, or to a third party on your behalf; or

(5) Is provided with proof of debts owed to the United States pursuant to § 115.104 of this part.

SOURCE: 66 FR 7094, Jan. 22, 2001, unless otherwise noted.

AUTHORITY: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub.L. 87–283; Pub.L. 97–100; Pub.L. 97–257; Pub.L. 103–412; Pub.L. 97–458; 44 U.S.C. 3101 et seq.

Current through June 26, 2014; 79 FR 36240.

DAVIES PEARSON PC

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Transmittal Letter

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