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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____



No. 28169-8

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

BONNIE ANTHIS, individually, and as Personal Representative of the
Estate of HARVEY ALLEN ANTHIS, Respondent,

v.

WALTER WILLIAM COPLAND, Appellant

REPLY BRIEF OF APPELLANT

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Wark v. Wash. Nat'l Guard, 87 Wn.2d 864, 867 (1976), at p. 9;

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RCW 41.26.053, at p.1, 2, 6, 8, 9, 10, 11;

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QUESTION PRESENTED

IS A LEOFF-1 PENSION ALLOWANCE SUBJECT TO EXECUTION, WHEN THE UNAMBIGUOUS STATUTE THAT CREATED THE FUND ALSO PROTECTS FROM JUDICIAL PROCESS NOT ONLY THE FUND ITSELF BUT ALSO THE RIGHT TO AN ALLOWANCE THEREFROM?

FACTS

The relevant facts are that Respondent has obtained a judgment against Appellant and seeks to satisfy the judgment by garnishing a LEOFF-1 pension allowance. In addition to permitting garnishment of the pension allowance, this ruling below denied Appellant statutory garnishment exemption for income. Respondent concedes that the funds are not subject to execution when they are held in the pension fund itself and urges the court to affirm the trial court ruling that they are subject to garnishment immediately upon deposit into a bank account.

ARGUMENT

- I. THE PLAIN LANGUAGE OF RCW 41.26.053 PROTECTS APPELLANT'S PENSION ALLOWANCE FROM GARNISHMENT.

The bank account at issue in this appeal receives payments deposited direct from the LEOFF-1 pension fund into Appellant's bank account. LEOFF pensions are created by RCW 41.26. The pension, and the right to receive an allowance from it, is exempt from judicial process:

Subject to subsections (2) and (3)¹ 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. The trial court erred by disregarding the plain language of the LEOFF-1 statute. Title 41 created and governs pensions such as the one that exists for the sole benefit of pensioners and their families to compensate them for a life of loyal public service fraught with danger to the pensioner. As previously noted in Appellant's brief, exemption laws are favored in the law and are to be liberally construed. *White v. Douglas*, 6 Wn.2d 356 (1941). Also, the law is well established that pension legislation must be liberally construed most strongly in favor of the beneficiaries. *Hanson v. City of Seattle*, 80 Wn.2d 242, 247(1972).

The LEOFF-1 statute provides exemption for both the "right to a retirement allowance" and the right to the "retirement allowance itself." The ruling which Respondent urges this court to affirm would render this language redundant; the Legislature intended a distinction between the

¹ Subsections (2) and (3) of RCW 41.26.053 provide an exhaustive list of the exceptions to the rule prohibiting execution of LEOFF-1 pensions, and relate to family obligations and voluntary insurance deductions.

right to a retirement allowance and the right to the retirement allowance itself. A plain reading of the statute reveals that the Legislature intended to protect not only the moneys in the fund, but also the right of the pensioner to receive an allowance from the fund. The ruling below disregards these distinct provisions and, if adopted by this court, would effectively delete the entire first portion of the statute, because under the ruling the money is only protected when it is actually held by the pension fund.

Respondent asserts that LEOFF-1 pensions are not included in or otherwise exempted by RCW 6.15.020, and therefore are not protected.

Brief of Respondent, 3-4. That statute provides the general rule that pension moneys are exempt from garnishment:

“The right of a person to a pension, annuity, or retirement allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, 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). Respondent’s assertion is incorrect. In using the conjunction “or” to distinguish between the various types of benefits identified in RCW 6.15.020(3), the Legislature established a series of independent clauses, with each clause able to stand distinct from the others. This subsection, therefore, establishes that “(t)he right of a person

to a pension...shall be exempt..." Similarly, "(t)he right of a person to an annuity...shall be exempt..." Finally, (t)he right of a person to any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan...shall be exempt..." The language of the statute does not, as Respondent claims, fail to protect Appellant's pension; rather, the statute merely clarifies that Appellant's LEOFF-1 pension is separate and distinct from the definition of an "employee benefit plan."² Although state-employee pensions are excluded from the definition of "employee benefit plan," nothing in the statute purports to exclude them from the definition of "pension" as the word is used in subsection 3, above.

RCW 6.15.020(3) also excludes from the definition of employee benefit plan "any employee benefit plan that is established or maintained for its employees by the government of the United States..." Under Respondent's proposed interpretation, a U.S. government pension would also be subject to garnishment, because it is not an employee benefit plan under subsection (4). Even if Appellant's pension is not protected by the garnishment exemptions in RCW 6.15.020; the provisions of the LEOFF-1

² The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

statute cited above (RCW 46.21) are not affected by or negated by that statute.

A. *Respondent's reliance on unrelated statutory authority is misguided, because the plain language of the LEOFF statute does not lend itself to construction by analogy.*

In the face of unambiguous statutory authority, Respondent relies on unsavory but irrelevant facts to support affirmation of the trial court's error. Rather than analyze the plain language of the controlling statute, Respondent turns to statutes governing benefits unrelated to LEOFF-1 pension benefits, and factual scenarios that are equally unresponsive. *Brief of Respondent* 9, 10. Respondent suggests that the absence of specific protection for LEOFF-1 pension funds in RCW 6.15.025 is persuasive authority to support the trial court's ruling that LEOFF pension allowances are subject to execution. *Id.*, 10. RCW 6.15.025 protects pension beneficiaries from judgments on unpaid foreign-state taxes on benefits received while the beneficiary resides in the State of Washington. Respondent does not offer an explanation or analysis to support her assertion that LEOFF benefits do not enjoy the protection of RCW 6.15.025. There is no reason to believe, under the plain language of the

statute, that a LEOFF-1 pension allowance would not be protected from tax judgments of other states that result from a receipt of the allowance.³

Respondent next attempts to carve out an exception to the plain and unambiguous language of RCW 41.26.053 for the nature of the judgment which forms the basis upon which Respondent seeks to execute against a LEOFF-1 pension allowance. *Brief of Respondent*, 10.

Respondent claims that RCW 6.15.010(3) “states: ‘[n]o property may be exempt under RCW 6.15.010 from legal process issued upon a judgment for restitution ordered by a court to be paid for the benefit of a victim of a criminal act.’” *Id.* RCW 6.15.010(3) does not contain the language quoted by Respondent. The language cited by Respondent appears to be the same as 6.15.050(3), which precludes exemption of personal property sought to be garnished, when the judgment is for court-ordered restitution in a criminal matter. This dispute is a civil suit and the judgment does not involve restitution for a criminal matter.

³ RCW 6.15.025 reads: Where a judgment is in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, all property in this state, real or personal, tangible or intangible, of a judgment debtor shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her spouse and dependents any property exempted by this section, the same shall be exempt to the surviving spouse and dependents.

The exhaustive list of exceptions found in RCW 41.26.053 (2) and (3) does not include an exception for judgments that are the result of a criminal conviction. Respondent again relies on irrelevant facts to encourage affirmation of a trial court ruling that is without basis in law. Under Washington law with respect to execution of LEOFF-1 pensions, all unsecured judgments are treated equally except those rooted in child support or family obligations.

Respondent also claims support for the attachment of LEOFF-1 pension allowances in the garnishment statute governing attachment of deposits in bank accounts. *Brief of Respondent*, 11-12. According to that statute:

A writ naming the financial institution as the garnishee defendant shall be effective only to attach deposits of the defendant in the financial institution and compensation payable for personal services due the defendant from the financial institution. A writ naming a branch as garnishee defendant shall be effective only to attach the deposits, accounts, credits, or other personal property of the defendant (excluding compensation payable for personal services) in the possession or control of the particular branch to which the writ is directed and on which service is made.

RCW 6.27.080(3). This statute provides for garnishment of bank accounts but does not address any funds that are exempt from garnishment, and does not support the decision below. This statute is silent regarding any

funds that are exempt from garnishment, including ERISA funds (29 U.S.C. §1056(d)), Social Security (42 U.S.C. §407), Veteran's Benefits (38 U.S.C. §5301), judicial pensions (RCW 2.10.180), teacher pensions (RCW 41.32.055), or city employee pensions (RCW 41.44.240). If affirmed, the ruling below would have widespread consequences affecting nearly every employee of Washington State, regardless of the nature of the judgment against them.

II. RCW 41.26.053 IS THE SPECIFIC, CONTROLLING STATUTE THAT ADDRESSES THE ISSUE OF WHETHER APPELLANT'S PENSION FUND ALLOWANCE IS EXEMPT FROM JUDICIAL PROCESS AFTER DEPOSIT IN APPELLANT'S BANK ACCOUNT.

Respondent urges that the trial court correctly gave preference to the garnishment statute over the LEOFF-1 statute under the "general-specific" rule of statutory construction. *Brief of Respondent*, 13. Reliance on the canons of construction is not appropriate because the unambiguous language of RCW 46.21 protects not only the assets in the LEOFF-1 pension fund, but also a pensioner's right to receive those funds. The statutes do not conflict; the plain language of RCW 6.15.020 protects pensions from garnishment.

If the court does find the separate provisions in RCW 6.15 and RCW 41.26 conflict, the latter should control because it is the specific

statute that created and governs LEOFF-1 pensions. As mentioned, ambiguous provisions in pension statutes should be construed most favorably to the pensioner. *Hanson v. City of Seattle*, supra.

Respondent concedes common law authority that, under the general-specific rule, a specific statute will prevail over a general statute when the two statutes are *in pari materia* and conflict. *Wark v. Wash. Nat'l Guard*, 87 Wn.2d 864, 867 (1976). *Brief of Respondent*, 13. The two statutes in question are *in pari materia* to the extent they both provide exemptions from garnishment. The garnishment statute, RCW 6.15, is the general statute because it deals with garnishment in a general sense. RCW 41.26, the LEOFF-1 statute, should be considered the specific statute for the purposes of the general-specific rule, as it created LEOFF pensions and it governs and offers specific exceptions to the rule that the funds are not to be subject to judicial process. The parties agree that the specific statute controls when conflicting with the general statute, because the specific statute is to be read as an exception to the general rule. *Brief of Respondent*, 13-14.

Here, the LEOFF statute is the specific statute. RCW 41.26.053 offers exceptions to the garnishment rules that are separate and distinct from those exceptions and exemptions found in the garnishment statute. Although application of the general-specific rule is inappropriate in that

the two statutes do not conflict, (RCW 6.15.020, if it omits LEOFF-1 pensions from its list of exemptions, does not specifically exclude them) if applied to this dispute application should favor Appellant, because RCW 41.26 specifically governs the treatment of LEOFF-1 in the context of judgment enforcement. This dispute concerns the right of a LEOFF-1 pensioner to an allowance earned under the fund, and RCW 41.26.053 specifically protects that right from judicial process.

III. PUBLIC POLICY FAVORS PROTECTION OF THE FUNDS, AND RESPONDENT URGES THIS COURT TO AFFIRM AN ABSURD RESULT.

It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. RCW 6.15.020. An absurd result was achieved by the trial court in that the court ruled that LEOFF-1 pension funds are subject to garnishment by virtue of their deposit into a bank account. It is not alleged that the funds are co-mingled in the account; indeed, the allowance Appellant receives from his pension is Appellant's sole source of income.

The ruling of the trial court is absurd because it protects the funds from judgment creditors only until the funds are deposited in a pensioner's bank account. If the Legislature intended that the funds should be subject to execution upon deposit, they would not be protected while

held by the pension fund and the fund itself would be subject to garnishment, similar to wages that are subject to garnishment while held by an employer or the exhaustive list of statutory exceptions to LEOFF exemption from process in RCW 41.26.053(2) and (3). The LEOFF-1 statute unambiguously protects the right to an allowance, the right to the allowance itself, and the money in the funds itself. The strained interpretation offered by Respondent would have the practical effect of making redundant those three distinct provisions of the same statute. The right to an allowance and the right to the allowance itself provisions can not logically be interpreted to mean pre-distribution moneys.

IV. EVEN IF THE COURT FINDS THE PENSION ALLOWANCE IS SUBJECT TO EXECUTION UPON DISTRIBUTION, APPELLANT IS ENTITLED BY STATUTE TO AN INCOME-BASED EXEMPTION FOR PART OF HIS PENSION ALLOWANCE.

Pensions are deferred compensation for work performed.

Bakenhus, v. City of Seattle, 48 Wn.2d 695, 698 (1956). As income from the work performed by Appellant, the pension allowance qualifies for a statutory exemption under RCW 6.27.150. Under that statute, 75 percent of Appellant's pension allowance is exempt from garnishment:

(1) Except as provided in subsection (2) of this section, if the garnishee is an employer owing the defendant earnings, then for each week of such earnings, an amount shall be exempt from garnishment which is the greatest of the following:

(a) Thirty times the federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 of the United States Code in effect at the time the earnings are payable; or

(b) Seventy-five percent of the disposable earnings of the defendant

RCW 6.27.150. To deny a pensioner an income-based exemption is fundamentally unfair, because any other employment income subject to garnishment would be entitled to that exemption. Although RCW 6.27.150 applies to garnishee employers, in this case Respondent concedes that she may not garnish the LEOFF-1 pension fund directly in the manner typical when attempting to attach funds for work performed; that is why she seeks to garnish the bank account in which Appellant's allowance is deposited. To permit a judgment creditor to bypass the standard income garnishment exception by garnishing the debtor's bank account rather than employer would be unfair, offend the public policy unambiguously expressed in the earnings exception, and achieve an absurd result. If the court rules that Appellant's LEOFF-1 pension allowance is not protected from garnishment, he is, at the very least, entitled to

income exemption of the garnishment amount, and the ruling below erred in denying the Appellant the exemption.

CONCLUSION

Appellant respectfully requests reversal of the trial court ruling that a LEOFF-1 pension allowance is subject to attachment and garnishment once the allowance is deposited into a bank. The facts behind Respondent's judgment are not relevant to the disposition of the allowance, because the plain language of RCW 41.26 protects Appellant's right to an allowance from the fund as well as the allowance itself. Affirmation of the ruling would have a widespread effect on numerous other public pensions. The ruling below offends public policy, disregards a statute that is plain on its face, and should be reversed.

Respectfully submitted this ___ day of December, 2009

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