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Washington State Supreme Court
JAN 25 2016
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Supreme Court No. 92565-8

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

CERTIFICATION FROM THE EASTERN DISTRICT OF
WASHINGTON, UNITED STATES DISTRICT COURT

IN

PATRICIA M. CARTER, and all others similarly situated,

Plaintiff,

vs.

PETERSON ENTERPRISES, INC. a Washington Corporation,
doing business as VALLEY EMPIRE COLLECTION,

Defendant.

United States District Court Eastern District of Washington Case
No. 2:15-CV-257-RMP

DEFENDANT PETERSON ENTERPRISES, INC. a Washington
Corporation, doing business as VALLEY EMPIRE COLLECTION's
RESPONSIVE BRIEF

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 ORIGINAL

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A. INTRODUCTION

The certified questions from the United States District Court for the Eastern District of Washington present questions about the interpretation of Washington garnishment statutes as they relate to a District Court garnishment issued by the attorney for the judgment creditor.

The plain language of *RCW 6.27.020 (2)* requires an affirmative answer to Question 1 that an attorney of record for a judgment creditor can issue a legally enforceable writ of garnishment without an application by affidavit under *RCW 6.27.060* in garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment. An application for a writ of garnishment is not required for an attorney issued garnishment.

Likewise, the plain language of *RCW 6.27.070* requires a negative answer to Question 2. *RCW 6.27.070* does not require an application by affidavit where the writ of garnishment is issued by the attorney of record for the judgment creditor in garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment.

These outcomes are consistent with the plain language of the statutes, and consistent with the difference between the clerk of the court

issuing a District Court writ of garnishment, and the attorney of record for the judgment creditor issuing a District Court garnishment.

An affirmative answer to Question 3 is also required even if an application by affidavit is required for an attorney issued garnishment. A writ of garnishment issued by a judgment creditor's attorney of record is legally enforceable if the application for writ of garnishment does not state that "the plaintiff has reason to believe, and does believe that the garnishee ... is indebted to the defendant **in amounts exceeding those exempted from garnishment by any state or federal law**, or that the garnishee has possession or control of personal property or effects belonging to the defendant **which are not exempted from garnishment by any state or federal law**" in garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment.

Since the attorney for the judgment creditor has the power to issue a writ of garnishment in district court if there is an unsatisfied judgment, the garnishment is legally enforceable even if it is issued based on an the application by affidavit that omits a representation

In Washington, substance prevails over form. An application by affidavit that omits a representation does not materially prejudice a judgment debtor, and does not materially prejudice the rights of a judgment debtor. The affidavit is not served on the garnishee. The

affidavit's only purpose is to inform the Court or issuing attorney (under this question) of certain facts. In the case of the issuing attorney, the attorney would already be aware of the facts of the representation before the garnishment is issued, and the omission would not change either the garnishee's or debtor's rights or remedies.

B. CERTIFIED QUESTIONS

The United States District Court certified the following questions of state law for this Court's consideration (Dkt. # 12):

QUESTION NO. 1: In garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment, can the attorney of record for a judgment creditor issue a legally enforceable writ of garnishment under *RCW 6.27.020(2)* without an application by affidavit under *RCW 6.27.060*?

QUESTION NO. 2: In garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment, does *RCW 6.27.070* require an application by affidavit under *RCW 6.27.060* where the writ of garnishment is issued by the attorney of record for the judgment creditor under *RCW 6.27.020(2)*?

QUESTION NO. 3: If the answer to Question No. 2 is yes, then please answer whether, in garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment, a writ

of garnishment issued by a judgment creditor's attorney of record pursuant to *RCW 6.27.020(2)* is legally enforceable if the application for writ of garnishment by affidavit under *RCW 6.27.060* does not state that "the plaintiff has reason to believe, and does believe that the garnishee . . . is indebted to the defendant **in amounts exceeding those exempted from garnishment by any state or federal law**, or that the garnishee has possession or control of personal property or effects belonging to the defendant **which are not exempted from garnishment by any state or federal law**"?

C. STANDARD OF REVIEW

The Court reviews certified questions of law de novo. *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 334 P.3d 529, 533 (2014) citing *Carlesen v. Global Client Solutions, LLC*, 171 Wn.2d 486, 493, 256 P.3d 321 (2011)). The Court considers the questions presented "in light of the record certified by the federal court." *Id.*

D. STATEMENT OF THE CASE

Peterson Enterprises, Inc. ("Peterson") accepts Plaintiff Patricia M. Carter's ("Carter") Statement of the Case set forth in Section II of Plaintiff's Opening Brief.

The Federal Court stated "the following shall constitute the "record" pursuant to *RCW 2.60.010 (4) and RCW 2.60.030 (2)*". Dkt. #

12, p. 2. Carter has not submitted a supplemental record such that certain purported facts asserted by Carter should not be considered.

Clearly, by the use of facts and arguments that are not in the record before the Court, Carter is attempting to exact sympathy from this Court to the prejudice of Peterson. The Court should consider sanctions under *RAP 18.9* for the wrongful references in Carter's Opening Brief. In any event, the following should be stricken.

Peterson objects to the following:

Peterson does not accept the purported statements that "The consequence of the omission and modification was that the entire balance of the Plaintiff's bank account was frozen. Every penny of Ms. Carter's bank account was exempt. While the judgment may have been comparatively small, it was and is a judgment of substantial weight for her." Plaintiff's Opening Brief, p. 17. These were not facts certified to this Court by the Federal Court, and should not be considered by this Court, and are irrelevant.

Further, it is irrelevant that Peterson is a collection agency (Plaintiff's Opening Brief, p. 17) as that fact was not certified to this Court by the Federal Court, and should not be considered by this Court, and is irrelevant. The issues in this case relate to a judgment creditor.

Further, Peterson does not accept the statement “As an apparent substitute for the clear statutory requirement, the Defendant states in its application ‘That this garnishment is not out to injure either Defendant/s or the Garnishee’”, and argues about that language. Plaintiff’s Opening Brief, pp. 13-14. This is not a fact certified to this Court by the Federal Court, and neither the argument based on the irrelevant fact nor the fact itself should not be considered by this Court because they are irrelevant.

Further, Peterson does not accept the conclusion that collection agencies “obtain thousands of judgments against Washington consumers each year, intend to utilize the garnishment statutes, then they must be required to strictly comply with *RCW 6.27.060* as a minimal check and balance on this extraordinarily harsh remedy” is also not a fact that was not certified to this Court by the Federal Court, and should not be considered by this Court, and is irrelevant. Plaintiff’s Opening Brief, p. 17.

The facts in this case are limited to the Statement of the Case provided by the Federal Court. Dkt. # 12, pp. 2-3.

E. ARGUMENT

- 1. An attorney for a judgment creditor has grounds to issue a writ of garnishment based on a district court judgment so long as the form of the writ is substantially the same as the form of the writ of garnishment issued by the Court.**

RCW 6.27.020 states:

Grounds for issuance of writ—Time of issuance of prejudgment writs.

(1) The clerks of the superior courts and district courts of this state may issue writs of garnishment returnable to their respective courts for the benefit of a judgment creditor who has a judgment wholly or partially unsatisfied in the court from which the garnishment is sought.

(2) Writs of garnishment may be issued in district court with like effect by the attorney of record for the judgment creditor, and the form of writ shall be substantially the same as when issued by the court except that it shall be subscribed only by the signature of such attorney.

(3) Except as otherwise provided in *RCW 6.27.040* and *6.27.330*, the superior courts and district courts of this state may issue prejudgment writs of garnishment to a plaintiff at the time of commencement of an action or at any time afterward, subject to the requirements of chapter *6.26 RCW*. [For Emphasis].

Plain language that is not ambiguous does not require statutory construction. *State v. Delgado*, 148 Wash.2d 723, 727, 63 P.3d 792 (2003). *RCW 6.27.020* is not ambiguous.

To discern and implement the legislature's intent, we begin by looking at the statute's plain language and ordinary meaning. Where a

statute's plain language is unambiguous, we must give effect to that plain meaning as an expression of legislative intent. *Davis v. Cox*, 183 Wn.2d 269, 280 (Wash. 2015).

“When statutory language is unambiguous, we look only to that language to determine the legislative intent without considering outside sources.” *State v. Delgado*, 148 Wash.2d at 729.

“Language is unambiguous when it is not susceptible to two or more interpretations.” *State v. Delgado*, 148 Wash.2d at 728.

“We cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language. We assume the legislature ‘means exactly what it says.’” *State v. Delgado*, 148 Wash.2d at 728.

To express one thing in a statute implies the exclusion of the other. *State v. Delgado*, 148 Wash.2d at 729.

RCW 6.27.020 (2) does not require an application by affidavit under *RCW 6.27.060*. By its plain language, under *RCW 6.27.020 (2)*, the attorney for a judgment creditor has grounds to issue a writ of garnishment so long as the form of the writ is the same as the court form, and the judgment creditor has a wholly or partially unsatisfied judgment—facts that are present in this case.

In fact, in *RCW 6.27.020*, there is absolutely no reference to an application by affidavit.

In this case, the writ of garnishment issued by the judgment creditor's attorney is legally enforceable based on *RCW 6.27.020*.

Carter has failed to argue any ambiguity in *RCW 6.27.020*.

Carter's brief concentrates on the content required in an application by affidavit under *RCW 6.27.060*. The content of the application by affidavit is irrelevant if the application by affidavit is not required when under *RCW 6.27.020 (2)*, the attorney for the judgment creditor issues a writ of garnishment.

Carter fails to develop any argument as to whether an application by affidavit is required under *RCW 6.27.020 (2)* when an attorney for the judgment creditor issues a garnishment.

Under Carter's brief, the best that can be stated as to the issue of ambiguity is that Carter wrongly argues that this Court is asked to determine whether *RCW 6.27.020 (2)* supersedes the *RCW 6.27.060* obligation to apply for a writ of garnishment. Plaintiff's Opening Brief, p. 4. However, this argument fails to show any ambiguity in *RCW 6.27.020*.

The plain language of *RCW 6.27.060* shows that *RCW 6.27.060* sets forth the content of an application if the affidavit is required. For example, an affidavit under *RCW 6.27.060* is required for the clerk of the

Court to docket the garnishment; and to issue and deliver the Court garnishment to the judgment creditor. *RCW 6.27.070 (1)*.

There is no obligation to apply for a writ of garnishment under *RCW 6.27.060*. The obligation to apply for a writ of garnishment comes as a result of other statutes. More importantly, *RCW 6.27.020 (2)* does not supersede *RCW 6.27.060*. Carter's point does not show any ambiguity in *RCW 6.27.020 (2)*.

Unlike a garnishment issued by the clerk of the court, there is no purpose for the judgment creditor's attorney to represent the facts set forth in *RCW 6.27.060* to himself/herself by affidavit.

Unlike a garnishment issued by the clerk of the court where the clerk of the court relies on certain information from a judgment creditor to issue a garnishment, when the attorney for a judgment creditor issues a garnishment, the attorney for a judgment creditor would conduct an investigation so as to not violate any rules of professional conduct.¹ No additional requirement on an attorney serves the purpose of the statute.

¹ "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." *RPC 3.1*.

"In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, ..." *RPC 4.4 (a)*.

The legislative intent of the garnishment statutes are:

The legislature recognizes that a garnishee has no responsibility for the situation leading to the garnishment of a debtor's wages, funds, or other property, but that the garnishment process is necessary for the enforcement of obligations debtors otherwise fail to honor, and that garnishment procedures benefit the state and the business community as creditors. The state should take whatever measures that are reasonably necessary to reduce or offset the administrative burden on the garnishee consistent with the goal of effectively enforcing the debtor's unpaid obligations. *RCW 6.27.005*.

In the situation of an attorney issued garnishment, the affidavit would not be a measure that is reasonably necessary to reduce the administrative burden on the garnishee. In fact, the affidavit is not even served upon the garnishee.

The issuance of a writ by an attorney is consistent with other proceedings within a lawsuit. An attorney, being an officer of the court, is granted a level of discretion not afforded pro se litigants. For example, under *Wash. CR 45*, an attorney of record is allowed to issue a subpoena to compel witnesses to appear at legal proceedings. The process does not require the attorney to file a praecipe before he can issue the subpoena. The matter is left to the attorney's discretion and the subpoena has the full force and effect as a subpoena issued by the clerk of the court.

(4) A subpoena may be issued by the court in which the action is pending under the seal of that court or by the

clerk in response to a praecipe. An attorney of record of a party or other person authorized by statute may issue and sign a subpoena, subject to *RCW 5.56.010*.

Wash. CR 45 (a) (4).

The plain language of *RCW 6.27.020 (2)* requires an affirmative answer to Question 1 that an attorney of record for a judgment creditor can issue a legally enforceable writ of garnishment without an application by affidavit under *RCW 6.27.060* in garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment.

2. **Under *RCW 6.27.070*, an application by affidavit is not required where a writ of garnishment is issued by the attorney of record for the judgment creditor.**

An attorney for a judgment creditor is not required to obtain an affidavit under *RCW 6.27.060* to issue a writ of garnishment. *RCW 6.27.020 (2)*. Likewise, *RCW 6.27.070* does not require an attorney for a judgment creditor to obtain an affidavit under *RCW 6.27.060* to issue a writ of garnishment.

RCW 6.27.070 states:

Issuance of writ—Form—Dating—Attestation.

(1) *When application for a writ of garnishment is made by a judgment creditor and the requirements of *RCW 6.27.060* have been complied with, the clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the*

garnishee as garnishee defendant, *and shall immediately issue and deliver a writ of garnishment to the judgment creditor* in the form prescribed in *RCW 6.27.100*, directed to the garnishee, commanding the garnishee to answer said writ on forms served with the writ and complying with *RCW 6.27.190* within twenty days after the service of the writ upon the garnishee. *The clerk shall likewise docket the case when a writ of garnishment issued by the attorney of record of a judgment creditor is filed.* Whether a writ is issued by the clerk or an attorney, the clerk shall bear no responsibility for errors contained in the writ.

(2) The writ of garnishment shall be dated and attested as in the form prescribed in *RCW 6.27.100*. The name and office address of the plaintiff's attorney shall be indorsed thereon or, in case the plaintiff has no attorney, the name and address of the plaintiff shall be indorsed thereon. The address of the clerk's office shall appear at the bottom of the writ. *[For Emphasis.]*

RCW 6.27.070 is not ambiguous.

Under *RCW 6.27.070*, an affidavit under *RCW 6.27.060* is only required for two reasons: (1) for the clerk of the court to docket a Court issued writ of garnishment, and (2) for the clerk of the court to issue and deliver a writ of garnishment to the judgment creditor.

As to a garnishment issued by the attorney for a judgment creditor, the language is unambiguous.

Carter has failed to argue any ambiguity in *RCW 6.27.070*.

By its plain language, *RCW 6.27.070* does not require an application under *RCW 6.27.060* for the Court to docket a writ of garnishment issued by the attorney for the judgment creditor. In fact, the

language of that statute presumes issuance of the writ of garnishment by the attorney of record for the judgment creditor under *RCW 6.27.020 (2)* in directing the clerk to docket the writ of garnishment.

In this case, since the attorney for the judgment creditor issued the garnishment, an application under *RCW 6.27.060* is not required under *RCW 6.27.070*.

The plain language of *RCW 6.27.070* requires a negative answer to Question 2. *RCW 6.27.070* does not require an application by affidavit where the writ of garnishment is issued by the attorney of record for the judgment creditor in garnishment of the property of a judgment debtor by a judgment creditor based on a District Court judgment.

3. **Even if this Court were to find an application by affidavit under *RCW 6.27.060* is required when a writ of garnishment is issued by the attorney for a judgment creditor, a writ of garnishment that includes an application that does not state that “the plaintiff has reason to believe, and does believe that the garnishee . . . is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law” is legally enforceable.**

The Court need not answer Question 3 since an application by affidavit under *RCW 6.27.060* is not required when a writ of garnishment is issued by the attorney for the judgment creditor.

However, even if this Court determines that an application by affidavit under *RCW 6.27.060* is required for a garnishment issued by the attorney for a judgment creditor, the garnishment by issued by the attorney for the judgment creditor would be legally enforceable even if it fails to state some of the statutory language because substance prevails over form in Washington; the omission is not jurisdictional; and the failure of the affidavit to state some of the statutory language does not prejudice the judgment debtor, or the garnishee.

The argument under this section assumes that an application by affidavit is required.

(a) A garnishment of exempt funds is legally enforceable.

For its argument to this Court, Carter relies on the false premise that garnishment of exempt funds by a judgment creditor is forbidden.

In fact, a Washington garnishment that garnishes exempt funds is a legally enforceable garnishment. *Bour v. Johnson*, 80 Wn.App. 643, 910 P.2d 548 (1996). Garnishment of exempt funds of a judgment debtor may be undesirable but, nonetheless, that garnishment is legally enforceable.

Washington has a statutory procedure for the judgment debtor to claim garnished property as exempt. See *RCW 6.27.140*; *RCW 6.27.150*; *RCW 6.27.160*; *RCW 6.15.010*; and *RCW 6.15.060*.

As a result, Carter's premise is false that garnishment of legally exempt funds is prohibited. A garnishment that garnishes exempt property is legally enforceable.

(b) Interpretation of Washington law as to an affidavit omitting language.

The legislative intent of the garnishment statutes are set forth at *RCW 6.27.005*, and stated earlier in this brief.

The purpose of the chapter is to protect the garnishee. The application by affidavit does not protect the garnishee in any way. A judgment creditor could garnish funds—exempt or non-exempt—with an attorney issued garnishment.

There is no legislative intent to allow a judgment debtor to avoid paying the debtor's obligations based on a perceived procedural issue that was never raised during the garnishment process by any judgment debtor. Instead, the goal is to effectively enforce the debtor's unpaid obligations.

As a result, the legislative intent supports the argument that a garnishment issued based on an incomplete affidavit is legally enforceable since enforceability is consistent with the goal of effectively enforcing the debtor's unpaid obligations. Further, the omission from the affidavit does not affect the administrative burden on the garnishee.

The trend of the law in this state is to interpret rules and statutes to reach the substance of matters so that substance prevails over form. *First Federal Sav. & Loan Asso. v. Ekanger*, 22 Wn.App. 938, 944, 593 P.2d 170 (1979), aff'd, 93 Wn.2d 777, 613 P.2d 129 (1980). *First Federal Sav. & Loan Asso. v. Ekanger*, supra, was a case involving omissions from an affidavit of information required by statute. See also *Lawyer Land Co. v. Steel*, 41 Wash. 411, 83 Pac. 896 (1906) (Court denied motion to dismiss based on defective garnishment affidavit).

In *First Federal Sav. & Loan Asso. v. Ekanger*, supra, First Federal's action was one for foreclosure, and service by publication was authorized by statute when a defendant cannot be found in the state and an affidavit is filed setting forth that fact. The affidavit was required to be filed prior to commencement of publication. The affidavit's only purpose is to inform the court that the conditions necessary for publication exist. The statute requires that a copy of the summons and complaint be mailed to the defendant at their last known address.

Ekanger received notice of the proceeding. In fact, the court found that Ekanger received exactly the same notice she would have received had there been no omissions in the affidavit. *Id.*, 22 Wn.App. at 945. With actual notice, Ekanger chose to remain silent.

The Court found that under these circumstances, the requirement that the affidavit state that the summons and complaint has been mailed to the defendant's last address is a technicality that should not prevent the court from recognizing the substance of what occurred. The absence of this language in the affidavit did not materially prejudice Ekanger's rights because these documents had in fact been sent to her. *Id.*, 22 Wn.App. at 945.

Like Ekanger, the only purpose of the affidavit is to inform the court of specific facts prior to the court's issuance of a garnishment. In fact, the application representation itself is a fact related to Peterson's belief about the garnishee, not a belief about Carter.² Like Ekanger, the absence of the language in the affidavit did not materially prejudice Carter's rights. Peterson had the right to garnish exempt property, and Carter had the right to claim garnished party is exempt whether the language was in the affidavit or the language was absent from the affidavit. Even if Peterson's belief was wrong as to whether the garnishee was holding property of the defendant that is not exempt, Peterson's

² [T]he plaintiff has reason to “**believe**”, and does “**believe**” that “**the garnishee**” ... is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that “**the garnishee**” has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law. *RCW 6.27.060 (3)*.

garnishment was and is legally enforceable, and the Court, or, in this case, the judgment creditor's attorney, must issue the garnishment. Substance prevails over form.

- (c) **A garnishment based on an affidavit that omits a representation is not void, and is legally enforceable. Even if it is voidable, that garnishment the garnishment is legally enforceable unless a proper objection to the garnishment is filed by the garnishee or the judgment debtor.**

A judgment is void if a court is without subject matter jurisdiction, or if it is entered by a Court that lacks the inherent power to enter the particular order involved. *In re Ortiz*, 108 Wn.2d 643, 649, 740 P.2d 843 (1987) (citing *Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490 (1968)). See *Bour v. Johnson*, 80 Wn.App. 643, 647 n. 5, 910 P.2d 548 (1996).

Subject matter jurisdiction is the authority to hear and determine the class of action to which a case belongs, not the authority to grant the relief requested, or the correctness of the decision. *Bour v. Johnson*, 80 Wn.App. at 647.

If the type of controversy is within the subject matter jurisdiction of a court, then all other defects or errors go to something other than subject matter jurisdiction. *Okanogan Wilderness League, Inc. v. Town of Twisp*, 133 Wn.2d 769, 947 P.2d 732 (1997).

A judgment that is merely erroneous is not void. It may be voidable. See *In re Ortiz*, 108 Wn.2d at 649.

In Washington, a garnishment proceeding takes its jurisdiction from the main suit: "As a general rule, a garnishment proceeding is not an original proceeding. Rather, it is ancillary to and dependent upon a principal action between a creditor and debtor." *North Sea Prods., Ltd. v. Clipper Seafoods Co.*, 92 Wn.2d 236, 239, 595 P.2d 938 (1979); *RCW 6.27.060* (plaintiff must have unsatisfied judgment in court where writ sought). *Bour v. Johnson*, 80 Wn.App. at 648.

When the garnishee is not subject to suit, a judgment sought to be enforced is void. *When the court otherwise has subject matter jurisdiction and renders a judgment upon a complaint that does not state a cause of action, the judgment is not void but simply erroneous.* *Bour v. Johnson*, 80 Wn.App. at 649. [*For Emphasis.*]

The legislature has expressly given attorneys of record for the judgment creditor authority to issue writs of garnishment in district court. *RCW 6.27.020 (2)*; see *Bour v. Johnson*, 80 Wn.App. at 648.

Therefore, the attorney for the judgment creditor has the inherent (in this case statutory) power to issue a writ of garnishment in district court if there is an unsatisfied judgment. Even absent a proper affidavit, the garnishment is legally enforceable.

Carter's argument is more akin to moving to dismiss a Complaint based on failure to state a cause of action because the application by affidavit omits a representation. However, failure to state a cause of

action does not make a garnishment void. See *Bour v. Johnson*, 80 Wn.App. at 649. In fact, the garnishment is legally enforceable.

Since the attorney for the judgment creditor (like the district court itself) otherwise has subject matter jurisdiction, failing to state the statutory language in the affidavit gives the judgment debtor the argument that the affidavit does not state a cause of action. An affidavit that does not state a cause of action makes the writ of garnishment erroneously issued, or voidable. However, the garnishment erroneously issued is not void. See *Bour v. Johnson*, 80 Wn.App. at 649.

This case is distinguishable from *Watkins v. Peterson Enterprises, Inc.*, 137 Wn.2d 632, 973 P.2d 1037 (1999). In *Watkins v. Peterson Enterprises, Inc.*, supra, the garnishment procedures adopted by the district court had evolved into a practice which the statute did not allow. This Court found that the use of a pay order to award costs and attorney fees was a practice that was not specifically allowed by the statute. The garnishment statutes provide that a judgment is necessary for the award of costs and fees, not a pay order. However, in this case, the garnishment statute specifically allows the attorney for the judgment creditor to issue writs of garnishment in district court. *RCW 6.27.020*.

However, in this case, the attorney for the judgment creditor has authority to issue writs of garnishment in district court under *RCW* 6.27.020 (2).

In *Bour v. Johnson*, supra, Deep Pacific Fishing Co. (“Deep”) was the garnishee. Nadine Bour (“Bour”) was the judgment creditor. Michael Johnson (“Johnson”) was the judgment debtor. Bour obtained a judgment against Johnson, an employee of Deep. Johnson’s seaman’s wages were exempt from garnishment proceedings by Federal Law. Bour served a garnishment on Deep for Johnson’s wages. When Deep did not timely respond to the garnishment, Bour obtained judgment against Deep. Deep argued that the garnishment was void. The Court found that the Federal Statute did not deny the Superior Court subject matter jurisdiction to issue a writ of garnishment; rather, the Federal statute provided an exemption defense that was waived by not being raised in the trial court. Therefore, the garnishment judgment against the garnishee was not void.

There is support in other garnishment statutes that the garnishment is legally enforceable even if the application by affidavit omits a representation.

A garnishment is legally enforceable even if the judgment debtor is not properly sent notice of the garnishment by the judgment creditor. The

requirement of properly serving the judgment debtor with a garnishment is not jurisdictional under *RCW 6.27.130 (2)*³.

³ *RCW 6.27.130* states:

Mailing of writ and judgment or affidavit to judgment debtor—Mailing of notice and claim form if judgment debtor is an individual—Service—Return.

(1) When a writ is issued under a judgment, on or before the date of service of the writ on the garnishee, the judgment creditor shall mail or cause to be mailed to the judgment debtor, by certified mail, addressed to the last known post office address of the judgment debtor, (a) a copy of the writ and a copy of the judgment creditor's affidavit submitted in application for the writ, and (b) if the judgment debtor is an individual, the notice and claim form prescribed in *RCW 6.27.140*. In the alternative, on or before the day of the service of the writ on the garnishee or within two days thereafter, the stated documents shall be served on the judgment debtor in the same manner as is required for personal service of summons upon a party to an action.

(2) The requirements of this section shall not be jurisdictional, but (a) no disbursement order or judgment against the garnishee defendant shall be entered unless there is on file the return or affidavit of service or mailing required by subsection (3) of this section, and (b) if the copies of the writ and judgment or affidavit, and the notice and claim form if the defendant is an individual, are not mailed or served as herein provided, or if any irregularity appears with respect to the mailing or service, the court, in its discretion, on motion of the judgment debtor promptly made and supported by affidavit showing that the judgment debtor has suffered substantial injury from the plaintiff's failure to mail or otherwise to serve such copies, may set aside the garnishment and award to the judgment debtor an amount equal to the damages suffered because of such failure.

(3) If the service on the judgment debtor is made by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the copy of the writ was accompanied by a copy of a judgment or affidavit, and by a notice and claim form if required by this section, and shall note thereon fees for making such service. If service is made by any person other than a sheriff, such person shall file an affidavit including the same information and showing qualifications to make such service. If service on the judgment debtor is made by mail, the person making the mailing shall file

Instead, the judgment debtor has the remedy to obtain relief from the Court from the irregularity by motion if the judgment debtor has “suffered substantial injury” from the judgment creditor’s failure to send notice to the judgment debtor. *RCW 6.27.130 (2)*.

Clearly, notice to the judgment debtor that a writ of garnishment has been issued against the judgment debtor’s property is more important than the content of an affidavit. After all, notice is a constitutional issue. If failure to provide notice under *RCW 6.27.130* is not jurisdictional, the failure to make a particular representation in an affidavit prior to issuance of a writ of garnishment cannot be jurisdictional.

RCW 6.27.130 enforces the premise that even if the application by affidavit omits a representation, the writ of garnishment is legally enforceable.

RCW 3.62.050 is another statutory provision that recognizes that the filing of an attorney issued writ of garnishment is a separate event than the filing of an affidavit for a writ of garnishment. *RCW 3.62.050 (b)* requires the clerk of the district court to charge a fee of twelve dollars “[f]or issuing a writ of garnishment or other writ, or *for filing an attorney*

an affidavit including the same information as required for return on service and, in addition, showing the address of the mailing and attaching the return receipt or the mailing should it be returned to the sender as undeliverable.

issued writ of garnishment[.]” (emphasis added.) If the attorney issued writ of garnishment required an affidavit or application, it would not necessitate the language which requires a fee for filing an attorney issued writ.

Further, like *RCW 6.27.130*, *RCW 6.27.110* also enforces the conclusion that a writ of garnishment is legally enforceable even if the application by affidavit omits a representation.

RCW 6.27.110 (1) makes service of a writ of garnishment invalid unless the writ is served together with: (a) An answer form; and (b) a \$20 check or money order payable to the garnishee for the answer fee. *RCW 6.27.110 (1)*.

Unlike *RCW 6.27.110 (1)*, there is no statute that makes invalid a writ of garnishment that is issued based on an application by affidavit that omits a representation.

If the legislature intended for a writ of garnishment to be invalid when the writ of garnishment is issued based on an application by affidavit that omits a representation, the legislature would have stated that in the law like it did in *RCW 6.27.110*.

The legislature did not so state. Therefore, the writ of garnishment issued based on an application by affidavit that omits a representation is NOT invalid, and is legally enforceable.

(d) The procedure for challenging an insufficient affidavit is Controversion.

Controversion of a garnishment includes any defenses a defendant might have to a garnishment like a claim of exemption. This would include a challenge to the application by affidavit. In a controversion proceeding, the prevailing party is entitled to costs and attorney fees. See *Watters v. Doud*, 92 Wn.2d 317, 324, 596 P.2d 280 (1979).

Carter had the right to controvert the garnishment if Carter thought the affidavit was incorrect.

This right of controversion is consistent with the conclusion that the garnishment was legally enforceable.

(e) Summary as to Question 3.

For all these reasons, a garnishment based on an application by affidavit that omits a representation is legally enforceable. Jurisdiction to issue the writ exists even without the representation.

F. CONCLUSION

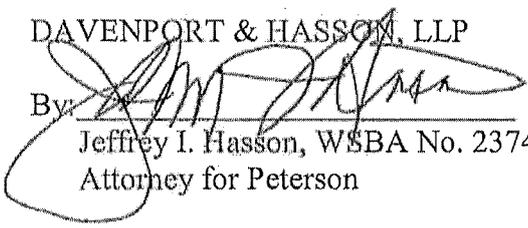
For the reasons outlined above, Peterson respectfully requests that this Court answer the first question posed by the District Court, "Yes", and the second question posed by the District Court, "No", and conclude that an attorney for a judgment creditor can issue a legally enforceable writ of garnishment without an application by affidavit in garnishment of the property of a judgment debtor by a judgment creditor based on a District Court Judgment.

If this Court determines that an application by affidavit is required when a writ of garnishment is issued by the attorney for the judgment creditor, Peterson also respectfully requests the Court answer the third question posed by the District Court, "Yes", and conclude that a writ of garnishment that omits a representation required by *RCW 6.27.060* is legally enforceable.

Dated this 25th day of January, 2016.

Respectfully submitted,

DAVENPORT & HASSON, LLP

By: 

Jeffrey I. Hasson, WSBA No. 23741
Attorney for Peterson

G. DECLARATION OF SERVICE

I, Elizabeth Dusky, declare that on this 25th day of January, 2016, I placed in the mails of the United State Postal Service an original and one copy of **Defendant Peterson Enterprises, Inc. a Washington Corporation, doing business as Valley Empire Collection's Responsive Brief**, addressed to the Supreme Court, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929, and served upon the parties indicated below by Mail and Email:

Kirk D. Miller
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Kirk D. Miller, P.S.
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Spokane, WA 99201

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Attorney for Carter

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 25th day of January, 2016 at Portland, Oregon.



Elizabeth Dusky
Legal Assistant
Davenport & Hasson, LLP

OFFICE RECEPTIONIST, CLERK

To: Liz Dusky
Cc: kmiller@millerlawspokane.com; Jeffrey Hasson
Subject: RE: Patricia M. Carter v. Peterson Enterprises, Inc. dba Valley Empire Collection Supreme Court No. 92565-8

Received on 01-25-2016

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Liz Dusky [mailto:Liz@dhlaw.biz]
Sent: Monday, January 25, 2016 2:01 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: kmiller@millerlawspokane.com; Jeffrey Hasson <Hasson@dhlaw.biz>
Subject: Patricia M. Carter v. Peterson Enterprises, Inc. dba Valley Empire Collection Supreme Court No. 92565-8

Good afternoon,

Please find attached a scanned copy of Defendant Peterson Enterprises, Inc., dba Valley Empire Collection's Responsive Brief.

The original and a copy will be placed in the mail today.

Thank you,

Elizabeth Dusky

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