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NO. A06-0347

State of Minnesota
In Supreme Court

Ronald Enright, as attorney in fact
for S.E. and Marlys Enright, dba
Pride-One Co. and Associated Bank,

Respondents

vs.

Robert H. Lehmann,

Appellant

APPELLANT'S REPLY BRIEF

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Summary of Argument

Respondent's insistence that Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951) retains the same vitality it had in 1951 in spite of subsequent statutes and case law flies in the face of the plain language and legislative intent of the Minnesota Multi-Party Accounts Act (hereinafter "MPAA"), as well as the line of cases originating with Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. (2d) 349 (1969) holding that the Constitution requires minimum procedural safeguards prior to garnishment or attachment. The MPAA was intended to bring more certainty to the determination of the rights involved in a multi-party account and to more closely reflect parties' actual intentions when opening such accounts. (See App. Br. at 15)

If Respondent's position were adopted, these intentions would be defeated and the vast numbers of parents, grandparents, aunts, uncles, spouses and others who daily open and deposit money into joint accounts in Minnesota will have unwittingly made their funds available to future creditors of their children, grandchildren, nieces, nephews and spouses, to be taken without any prior notice to the contributing owner or opportunity to be heard. This will impact elderly Minnesotans of scant and moderate means who rely on social security and modest pensions to pay for their groceries and rent.[1] These are the

[1] Although social security benefits are exempt from execution under federal law and pension benefits have a limited exemption under Minnesota law, there is no requirement that anyone other than the debtor be served with an Exemption Notice to claim such exemptions. 42 U.S.C. §407(a) (2005); Minn. Stats. §550.37 Subd. 24 (2006); Minn. Stats. §551.04 Subd. 3 (2006); Minn. Stats. §551.05 (2006); Minn. Stats. §571.72 (2006); Minn. Stats. §571.912 (2006). Even if the non-debtor owner is able to prove that the funds are social security or pension benefits, this simply means that the funds may be released at some time after they have been frozen, effectively preventing the non-debtor from using his or her money to buy food and other necessities of life.

Minnesotans who are most likely to use joint bank accounts as a "poor man's will," not intending to make a gift of the funds during their lives, but as a means of accomplishing estate planning objectives without the expense of legal fees. These are the people least able to deal with a temporary or permanent loss of the money they need to live.

Not content with a non-debtor's lack of notice and opportunity to be heard regarding the garnishment of his or her own funds in a joint account, Respondent would go even further and asks this Court to rule that the debtor has no standing to raise the issue of whether the garnished funds belong to the non-debtor contributing owner, effectively preventing anyone from claiming that the funds are not subject to garnishment for the non-contributing owner's debt, whether the funds are exempt from execution or not.

While creditors should be able to obtain payment of legitimate debts from the assets of their debtors, they should not be able to confiscate the assets of non-debtors simply because the non-debtors placed funds in a joint account in reliance on principles of equity as well as the provisions of the MPAA which sought to protect their reasonable expectation and intention that they would retain ownership of the funds during their lives.

Respondent has offered absolutely no interpretation of the MPAA provisions at issue here that would give those provisions any meaning at all. Instead, he prefers to simply ignore them and pretend that the state of the law in Minnesota remains as it was in 1951.

Respondent's subrogation argument is a transparent attempt to defeat the clear distinction made in the MPAA between the rights of account owners and their creditors

on the one hand, and the financial institution on the other. Respondent seeks to equate the rights of creditors with the protected status of financial institutions, ignoring the well-established principle that a creditor cannot acquire any greater rights than those possessed by his debtor. If a non-contributing debtor used the funds in a joint account to pay his creditor without the consent of the contributing owner, the contributing owner would have a claim against the non-contributing debtor for conversion. If the creditor wishes to step into the shoes of his debtor, then the creditor's claim should also be subject to the rights of the contributing owner.

Respondent has not advanced any viable arguments in opposition to Appellant's position and for this reason, Appellant respectfully requests this Court to reverse the lower courts' decisions and vacate the garnishments.

Argument

I. THE CASES CITED BY RESPONDENT REGARDING STATUTORY CONSTRUCTION ARE INAPPOSITE

A. The Anderson Case Is Inapposite.

Respondent cites Anderson v. Federated Mut. Ins. Co., 481 N.W.2d 48 (Minn. 1992), which held that the Uniform Arbitration Act, as adopted in Minnesota, did not supersede common law arbitration. That case concerned enforceability of an oral agreement to arbitrate. Although the result would have been the same under either the arbitration act or common law, the court specifically stated that, "In our view, the oral agreement is unenforceable at common law, not because common law arbitration was "superseded" by the Act, but because at common law an oral agreement is revocable at

any time before the matter is deemed submitted to the arbitrator." Anderson at 50. In reaching this conclusion, the Court found it significant that ". . . the Committee of the Whole on the Uniform Arbitration Act has stated that the Uniform Act was not intended to abrogate common law arbitration." Id.

The Anderson case is inapposite for several reasons. The Anderson Court found no evidence that the statute was intended to change common law on the issue before it. In fact, the result under either the statute or common law was exactly the same. The committee report cited clearly stated that the uniform act was not intended to abrogate common law arbitration, and prior to enactment of the uniform act, statutory arbitration and common law arbitration had existed side by side.

Here, however, the clear language of the statute directly conflicts with Respondent's interpretation of Park Enterprises. Respondent urges the Court to go beyond the facts in Park Enterprises and hold that a creditor may, in all cases, garnish the entire balance of a joint account, even where the debtor contributed none of the funds in the account, and regardless of the account owners' intentions. Minn. Stats. §524.6-203(a) (2005), however, clearly states that during the account owners' lives, a non-contributing owner has no right to funds in a joint account absent clear and convincing proof of intent to the contrary. Unlike the situation in Anderson, supra, the application of this statute would not have the same result as the application of Park Enterprises, and nothing in the legislative history states an intention to leave prior conflicting case law in place.

The MPAA provision governing ownership of joint accounts during the owners' lives does not, however, conflict with any provisions of the garnishment statute. Those

provisions do not address joint accounts or the rights of joint account owners. See, §571.71 et seq.; §551.01 et seq.

The issues here more closely resemble those in Hapka v. Paquin Farms, 458 N.W.2d 683 (Minn. 1990), where the Court held that the Uniform Commercial Code exclusively controls damages issues in a commercial transaction involving only property damage, and held that to the extent the prior case Superwood Corp. v. Siempelkamp Corp., 311 N.W.2d 159 (Minn. 1981), and its progeny were inconsistent, they were expressly overruled. See also Olson v. Olson, 534 N.W.2d 547 (1995) (1976 legislation granting grandparents visitation rights supplanted prior common law).

Nothing in the Anderson case cited by Respondent prevents this Court from giving effect to the provisions of the MPAA governing the rights of account owners and their creditors during the owners' lives.

B. Respondent's Stare Decisis Argument Must Fail.

Similarly, Respondent's reliance on In the Matter of the Petition of Collier, 726 N.W.2d 799 (Minn. 02/01/2007), applying stare decisis, is also misplaced. That case focused on statutory interpretation and the meaning "good faith," the phrase used in the torrens statute at issue. The Court pointed to a 1913 decision discussing the meaning of the statute, and the long line of cases decided since then construing the statute. The court discussed the amicus brief submitted on behalf of the Hennepin County Examiner of Titles stating that prior case law had provided "sound guidance for the operation of the Torrens system for over 75 years" and concluded that it would not change the prior case

law that had been relied upon by courts and real estate practitioners for so many years without a compelling reason.

Here, Respondent relies not on a long line of prior case law spanning almost one hundred years, but on dictum from a single case from 1951. Unlike the facts in Collier, here there is no amicus brief or any other source to support Respondent's bald statement that his interpretation of Park Enterprises "has been relied upon by the legal community and the financial community for over half a century." (Resp. Br. at 11).

In fact, after the Court of Appeals decision in this case was published, Appellant's counsel received phone calls from attorneys practicing in the debtor/creditor area expressing surprise and bewilderment at the Court of Appeals' opinion in this case, because they had read the MPAA as superceding the result in Park Enterprises. One such caller was a staff attorney at the Department of Revenue, who stated that the Department routinely permitted taxpayers to present proof of who made contributions to joint accounts because the MPAA prevents garnishment of funds not contributed by the taxpayer. Apparently, the Department of Revenue had not been relying on the continued vitality of Park Enterprises.

Stare decisis applies only where the prior decision concerns the precise question at issue in the current case. Fletcher v. Scott, 201 Minn. 609, 277 N.W. 270 (1938) Here, there are a number of significant differences. Unlike the facts in Park Enterprises, (a) here there is uncontroverted evidence that all of the funds in the joint accounts at issue were contributed by someone other than the debtor; (b) subsequent statutes have altered the respective rights of parties to a joint account, making Park Enterprise's rationale no

longer applicable; and (c) subsequent case law has held that a creditor may not garnish funds belonging to an individual without minimum procedural safeguards required by due process. For these reasons, the doctrine of stare decisis does not apply here.

II. THE STANDING DOCTRINE DOES NOT PREVENT APPELLANT FROM OBJECTING TO GARNISHMENT OF HIS WIFE'S FUNDS.

Although Respondent did not seek conditional review of the Court of Appeals' holding rejecting his standing argument, he raises it here. Respondent not only seeks to garnish funds not belonging to the debtor without giving the true owner notice and an opportunity to be heard, he goes even further and asks this Court to rule that the debtor may not even raise the issue that the funds belong to someone else.

If the Court wishes to consider this standing issue, respondent's argument should be rejected because (a) Appellant does not have to establish standing in order to object to the garnishment of these accounts; (b) Respondent could have joined Appellant's wife as a party, but he did not do so; and (c) Appellant does, in fact, have standing under the applicable garnishment statutes and case law.

A. A Defendant does not have to Establish Standing in order to Defend against a Garnishment.

Respondent cannot cite any authority for this novel position that a *defendant* must have standing to object to garnishment of his wife's funds in a joint account. Standing relates to whether a would-be plaintiff or non-party has standing to bring a claim. Appellant is not a non-party. Appellant merely objects to Respondent's garnishment of the joint accounts on the basis that the funds in the accounts do not belong to him.

The only case Respondent cites to support his standing argument has no facts that are even remotely similar to the facts here. State by Humphrey v. Philip Morris, 551 N.W.2d 490 (Minn. 1996), concerns whether Blue Cross and Blue Shield may bring claims against tobacco companies based on various common law and statutory theories.

As the United States Supreme Court explained in Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942 (U.S. 1968), :

> The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.

88 S.Ct. at 1952, 392 U.S. at 99. (emphasis added). See, 59 Am. Jur. 2d Parties §35. (the purpose of the law of standing is to protect against improper plaintiffs.)

In this case, Appellant is already a party. Respondent is trying to use the standing doctrine to limit the issues Appellant wishes to have adjudicated. To use the standing doctrine to try to prevent him from objecting to the garnishment of his wife's funds from their joint account is not only unsupported by any authority whatsoever, it runs counter to all existing authority on the issue of standing.

In addition, such a result would violate due process under Endicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924). In that case, the U.S. Supreme Court stated that due process requires a proceeding which gives parties the opportunity to be heard respecting the justice of the remedy sought. Respondent, however, seeks to silence Appellant and prevent him from being heard regarding the justice of the remedy Respondent seeks.

B. Respondent Could have Joined Appellant's Wife as a Party but did not do so.

A party who complains that a necessary party has not been joined should not be rewarded for not having joined that party himself. Serr v. Biwabik Concrete Aggregate Company, 202 Minn. 165, 278 N.W. 355 (1938). Respondent could have joined Appellant's wife as a party under Minn. Stats. §571.83 but did not do so. By its clear language, this statute permits, but does not require, that such a person be joined as a party to the garnishment. Under this statute, Mrs. Lehmann is not a necessary party, and Respondent should not be able to use his own choice not to join Mrs. Lehmann as a party as a reason to prevent Appellant from being able to defend against the garnishment.

C. Appellant has Standing under the Garnishment Statute and he has a Sufficient Stake in the Matter to Satisfy any Standing Requirement.

Even if Appellant must demonstrate that he has standing to object to the garnishment, the garnishment statute has given him standing, and, in addition, he has a sufficient stake in the matter to satisfy that requirement under applicable case law.

Minnesota garnishment statutes contain a procedure by which a debtor can claim that some or all of the funds in a bank account sought to be garnished are exempt from garnishment, and if the creditor objects, the statute provides a mechanism for the debtor to request a hearing on any exemption claim. Minn. Stats. §§571.911 - 571.914 (2005) Although Minn. Stats. §§551.04 Subd. 3 and 550.37, along with the statutory exemption form, contain lists of possible exemptions, nothing in these statutes indicates that these lists are an exhaustive, exclusive or complete list of the objections that a debtor may have

to garnishment of funds. See, Minn. Stats. §551.04 Subd. 2 ("Subject to the exemptions provided by subdivision 3 and Section 550.37 *and any other applicable statute*. . . "). Because these statutory provisions specifically allow the debtor to utilize these procedures, the statutes give the debtor standing to use the statutory procedure to object to garnishment of funds in the collection of his obligation to the creditor.

Moreover, parties with far less at stake than Appellant have been held to have standing. An individual has standing to maintain a suit by showing an "injury to some interest, economic or otherwise, which differs from injury to the interests of other citizens generally." Channel 10, Inc. v. Independent Sch. Dist. No. 709, 298 Minn. 306, 313, 215 N.W.2d 814, 820 (1974).

The injury may be difficult or impossible to trace back to the act complained of with any exactitude, and that will not defeat standing. Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942, (U.S. 1968) , (Taxpayers had standing to challenge the appropriation of federal funds). The injury may have been suffered by persons affiliated with the prospective plaintiff. Blue Cross and Blue Shield was held to have "associational" standing to permit it to pursue equitable relief against tobacco companies. State by Humphrey v. Philip Morris, supra. See 59 Am. Jur. 2d Parties §38 (standing to assert the rights of third parties is appropriate if the litigant can show a sufficient personal stake and adverseness so that the court is not asked to render an advisory opinion); The Beaconsfield, 158 U.S. 303, 15 S. Ct. 860, 39 L. Ed. 993 (1895) (non-owner bailees of cargo damaged in collision can sue for damages to the cargo); Jersey Shore Medical Center-Fitkin Hospital v. Estate of

Sidney Baum, 84 N.J. 137, 417 A.2d 1003 (1980), (hospital has standing to assert deceased husband's claim for medical expenses against widow).

Like the bailee in The Beaconsfield, Appellant has liability exposure arising from his wife's loss of funds paid to satisfy a judgment against Appellant. This could arise from an equitable claim for indemnity. See, e.g., Hendrickson v. Minnesota Power & Light Company, 258 Minn. 368, 104 N.W.2d 843 (1960). ; Zontelli & Sons v. City of Naswauk, 373 N.W.2d 744 (Minn. 1985).

For all of these reasons, Respondent's standing argument fails.

III. RESPONDENT'S INTERPRETATION OF THE MINNESOTA MPAA AND RELATED STATUTES RENDERS THE STATUTORY LANGUAGE MEANINGLESS.

Words, phrases, or sentences in a statute should not be construed as superfluous, void, or insignificant. Amaral v. Saint Cloud Hospital, 598 N.W.2d 379 (Minn. 1999). Minn. Stats. §645.17 (2) (2005). Respondent's arguments simply ignore the plain language of Minn. Stats. §§524.6-202, 524.6-203(a) and the related bank protection statutes referencing the MPAA and in doing so, render them superfluous. Although he acknowledges that at the time of Park Enterprises, Minn. Stat. §48.30 (1951) governed multi-party bank accounts, Respondent ignores the fact that the successor to §48.30 specifically directs that the MPAA provisions be consulted in determining the parties' rights to the funds in a joint account. (Resp. Br. at 5); Minn. Stats. §48.301 (2005).

By ignoring the plain language of sections 524.6-202 and 524.6-203(a), Respondent tries to pretend that the law governing the rights of joint account owners continues to be as murky as it was when Park Enterprises was decided. It simply is not

the same. A joint account owner no longer has "the absolute right to withdraw any or all of the funds" in the account, as Respondent argues. (Resp. Br. at 5, 7). Joint accounts are no longer a type of ownership which "defies classification," forcing the Court to treat the issue as "a contract question." Park Enterprises v. Trach, 233 Minn. 467, 470, 47 N.W.2d 194, 196 (1951). In short, Respondent's arguments completely ignore the clear and unambiguous language of sections 524.6-202 and 524.6-203(a), which have rendered the contract analysis in Park Enterprises irrelevant.

The Act by its terms clearly applies to creditors. Minn. Stats. §524.6-202 (2005). Respondent offers no alternative interpretation of these statutes that might support his arguments. Instead, he simply ignores them. This is contrary to the canon of statutory construction that words, phrases, or sentences should not be construed as superfluous, void, or insignificant. Amaral, *supra*; Minn. Stats. §645.17 (2) (2005).

Although respondent argues that the legislature was "opaque and obscure" he does not explain why he thinks the phrase "relevant to controversies between these persons and their creditors and other successors" is difficult to understand, and offers no alternative interpretation that would give any meaning at all to this statutory language.

Respondent argues that "out-of-state court decisions cited by Appellant" do not support abrogation of Park Enterprises. (Resp. Br. at 12). These out of state decisions are relevant because the MPAA is a uniform law, and under Minn. Stats. §524.1-102(b)(4) (2005) and §645.22 (2005), these provisions are to be interpreted and construed as to be uniform with the laws of the other states that have enacted them.

Respondent also contends that Appellant "has not cited a single financial institution that has not been following the Park Enterprises rule since it was enunciated." (Resp. Br. at 15) Respondent apparently misunderstands Appellant's arguments. It is clear from the bank protection provisions of the MPAA that financial institutions are not obliged to police the respective rights of their account holders under the MPAA when a creditor serves garnishment papers, and are simply required to abide by applicable garnishment statutes and other applicable law.

For these reasons, Respondent's arguments regarding interpretation of the MPAA are without merit.

IV. RESPONDENT'S SUBROGATION ARGUMENT IGNORES THE FACT THAT A CREDITOR CANNOT ACQUIRE ANY GREATER RIGHTS THAN THE DEBTOR POSSESSES.

Respondent's subrogation argument attempts to equate the rights of creditors with the rights of financial institutions. Creditors, however, cannot acquire any greater rights in property than the debtor possesses. Kipp v. Sweno, 683 N.W.2d 259 (Minn. 2004); Polzin v. Merila, 258 Minn. 93, 103 N.W.2d 198 (1960), Douglas State Bank v. Meyers, 182 Minn. 178, 233 N.W. 864 (1930).

A debtor's rights to funds in a joint account, during the debtor's life, are limited by the provisions of §524.6-203(a). Clearly, if a non-contributing debtor withdrew funds from a joint account, the contributing account owner would have a claim against the debtor unless the debtor could prove by clear and convincing evidence that the contributing owner had intended to make a gift of the funds to the debtor. See, e.g., Shourek v. Stirling, 621 N.E.2d 1107 (Ind. 1993); Craig v. Hastings State Bank, 221 Neb.

746, 380 N.W.2d 618 (1986); Vaughn v. Bernhardt, 345 S.C. 196, 547 S.E.2d 869 (2001); Estate of Maxfield, 210 Utah Adv. Rep., 856 P.2d 1056 (1993). The contributing account owner would not have a claim against the financial institution, however, because §524.6-208 protects the financial institution from liability. This is a policy choice to protect the financial institution and does not rest on whether or not the withdrawal was otherwise permitted by law.

If a creditor wishes to step into the shoes of its debtor by garnishing funds in a joint account, then both logic and the clear language of the statute mandate that the creditor would be subject to the same claim by a contributing owner as the non-contributing debtor would be for an unauthorized withdrawal. In view of the non-contributing debtor's potential liability, either or both of the owners should be able to assert this claim. Because Respondent cannot acquire any greater rights than Appellant had in these joint accounts, Respondent's garnishment is subject to the rights of the non-debtor contributing owner, Mrs. Lehmann.

Respondent does not seem to understand how the provisions of the MPAA create a distinction between the rights of the account owners on the one hand and the financial institution on the other. (Resp. Br. at 11). Minn. Stats. §524.6-202 makes this distinction:

> The provisions of sections 524.6-203 to 524.6-205 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 524.6-208 to 524.6-212 govern the

> liability of financial institutions who make payments pursuant thereto, and their setoff rights.

Minn. Stats. §524.6-202 (2005). The first sentence of this provision specifically distinguishes between the ownership rights of §§524.6-203 through 524.6-205, applicable to controversies between account owners/beneficiaries and their creditors and other successors on the one hand, and the bank protection provisions regarding the power of withdrawal on the other hand. This sentence means that creditors are not accorded the same protections as the financial institutions are, and the "power of withdrawal . . . determined by the terms of account contracts," while relevant to issues of financial institution liability, is not relevant in controversies between account owners/beneficiaries and their creditors and other successors. Had the legislature intended the result desired by Respondent, it would not have included "creditors" in the same class as "parties and P.O.D. payees or beneficiaries" and their successors.

Respondent attempts to distinguish Craig v. Hastings State Bank, 221 Neb. 746, 380 N.W.2d 618 (1986), where the Nebraska Supreme Court held that a bank had no right of set off against a jointly owned money market certificate for the debt of an owner who had not contributed any funds to the account, by arguing that set off is not garnishment. (Resp. Br. at 14-15). As Respondent states, a bank's set off rights are governed by §524.6-212, which states:

> Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before death a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is, or was immediately before death, beneficially entitled, and in

the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

Minn. Stats. §524.6-212 (2006). It is interesting that, when the financial institution itself is in the position of a creditor of one of the account owners, it does not have the unlimited right to seize all of the money in the account that Respondent demands under his subrogation theory.

For all of these reasons, Respondent's subrogation argument must fail.

V. ADOPTION OF RESPONDENT'S POSITION WOULD LEAD TO UNCONSTITUTIONAL DENIAL OF DUE PROCESS OWED TO ANY NON-DEBTOR CONTRIBUTING JOINT ACCOUNT OWNER.

Respondent's position regarding Park Enterprises would allow a creditor to use the garnishment statutes to take property belonging to a contributing non-debtor without giving the non-debtor any prior notice or opportunity to be heard. This would violate the contributing non-debtor's due process rights. Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. (2d) 349 (1969); Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972); Jones Press, Inc. v. Motor Travel Services, Inc., 286 Minn. 205, 176 N.W.2d 87 (1970).

The garnishment and execution statutes do not contain any provision expressly applicable to joint bank accounts. See, §571.71 et seq.; §551.01 et seq. Their notice requirements simply require that notice be given to the debtor, and do not require notice to be given to a non-debtor who may have contributed funds to a joint account sought to be garnished. Minn Stats. §§571.72; 571.74; 571.911 - 571.914; 551.05; 551.06 (2005). Sniadach and its progeny, on the other hand, require that, with few exceptions,

individuals be given prior notice and an opportunity to be heard before their assets are seized. For these reasons, if Respondent's position is accepted, the existing garnishment statutes would fail to provide constitutionally required procedural safeguards to contributing joint account owners who are not debtors.

When faced with alternative statutory interpretations, one of which would be unconstitutional, and the other not, the construction which would be constitutional should be chosen. Minn. Stats. §645.17 (3) (2005); Wichelman v. Messner, 250 Minn. 88, 83 N.W.2d 800, (1957). Adopting Respondent's position would significantly increase the likelihood that Minnesota garnishment statutes would be vulnerable to a constitutional challenge on this issue.[2]

VI. RESPONDENT'S OTHER ARGUMENTS ARE WITHOUT MERIT.

Respondent makes a number of other meritless arguments and mischaracterizes Appellant's arguments. Page limitations prevent addressing all of them in this Reply Brief.

A. Respondent Misinterprets MSBA's 1992 Study Committee Report.

Respondent seems confused by the 1992 MSBA's Study Committee Report included in the Appendix to the amicus brief of the MSBA Probate and Trust Law Section. He quotes the statement from page 53 of the Amicus' Appendix that "[T]he rights of creditors are not addressed in the provision," in an apparent attempt to argue that

[2] Even if Respondent's position is not adopted, the lack of notice to non-debtors who happen to have an interest in joint accounts is troublesome under Sniadach and its progeny.

the MPAA does not address creditors' rights. (Resp. Br. at 8). The quoted statement, however, refers to a version of the MPAA that the legislature did not enact.

There is more than one version of the Uniform Multiple Party Accounts Act. In 1973, Minnesota adopted the 1969 version. Act of May 23, 1973, ch. 619, §§1-16, 1973 Minn. Laws 1472 (reproduced at Amicus App. at 1); 8 U.L.A. 459 ("Pre-1989 version") (West 1998); See, 8 U.L.A. 425 ("Revised 1989 version") (West 1998). The 1992 MSBA's Study Committee Report considered whether to adopt the subsequent 1989 version. (Amicus App. at 177-179). The Report recommended against adopting the 1989 version, and instead simply recommended that the Act be moved from Chapter 528 and re-codified as Article 6 Part 2 of the Minnesota Probate Code. (Amicus App. at 166 - 179). The comment quoted by Respondent referred to the 1989 version of the Act being studied by the committee, which was not adopted by the Minnesota legislature. (Amicus App. at 53) Contrary to Respondent's implication, the Study Committee's comment that the newer 1989 version did not address the rights of creditors supports the position that the Minnesota version of the MPAA did, in fact, address creditors' rights.

B. The Legislature had the Power to Enact the MPAA.

Respondent states, without any authority, that "[m]odification of the law requires the input from the creditor, debtor, and banking communities in the legislative process." Although constitutional provisions restrict legislative power, Respondent's complaint here certainly does not rise to that level, and the legislature is empowered to enact legislation without input from any particular communities. National Tea Co. v. State, 205 Minn. 443, 286 N.W. 360 (1939); Lyons v. Spaeth, 220 Minn. 563, 20 N.W.2d 481

(1945); Jasperson v. Jacobson, 224 Minn. 76, 27 N.W.2d 788 (1947). Even if Respondent's complaint were well founded, he presents no evidence to indicate that the legislature did not have input from such sources.

C. The Connecticut Fleet Bank Case is Inapplicable.

Respondent cites the case of Fleet Bank Connecticut, N.A. v. Carillo, 240 Conn. 343, 691 A.2d 1068 (1997) (Resp. Br. at 15). Because Connecticut has not adopted the uniform multiple party act provisions contained in the statutes at issue here, that decision is inapplicable.

D. Reversing the Lower Courts Will not Cause Undue Burden on the Courts.

Respondent argues that, if his position regarding Park Enterprises is not adopted, the courts will be burdened with the bookkeeping of joint accounts. Had Respondent initially acknowledged application of the MPAA in this case when Appellant presented him with documentary proof of the contributions to the joint accounts at issue here, the courts would no doubt have been involved far less in this case, if any. A prime cause of burdens on the courts is patently unfair treatment and unreasonable refusal to acknowledge statutes that have been a part of Minnesota law for over thirty years, not to mention basic due process guarantees.

Conclusion

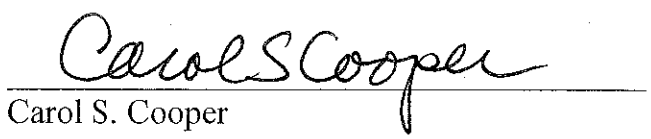
Respondent's arguments should be rejected because they render the provisions of the MPAA governing the rights of account owners and their creditors during the owners' lives meaningless. His standing argument is completely without merit, because the

standing doctrine does not prevent a defendant who is already a party from defending against claims made by a plaintiff; Respondent could have brought Appellant's wife in as a party but did not do so; the garnishment statute gives Appellant standing, and Appellant does have sufficient stake in the issues to have standing.

Respondent's subrogation argument must fail because it seeks to equate a creditor's rights with those of a financial institution, even though it is well-established that a creditor cannot acquire any greater rights than the debtor himself possesses. Adoption of Respondent's position on Park Enterprises would deny basic due process rights to non-debtors who have contributed money to joint accounts without intending to make a gift of those funds. This will especially impact those with the least resources or ability to deal with the devastating impact of having their meager bank accounts frozen by a creditor of a joint owner. For all of these reasons, the lower courts' decisions should be reversed and the garnishments vacated.

Respectfully submitted,

Date: 4/26, 2007



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