

A04-1538

STATE OF MINNESOTA

IN SUPREME COURT

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IN RE THE MARRIAGE OF:

DARLENE GERBER,

RESPONDENT

VS.

JOHN TRUMAN GERBER,

RESPONDENT,

COUNTY OF ANOKA,

APPELLANT.

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APPELLANT'S BRIEF AND APPENDIX

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LEGAL ISSUE

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Darlene Gerber receives child-support-arrearage payments from her former spouse, John Gerber, through wage withholding. Minnesota courts have consistently held that administrative collection remedies are not subject to any statute of limitations. Can the County of Anoka continue to collect child-support payments on an expired judgment through the administrative process that is not subject to statute of limitations? The child support magistrate ruled in the affirmative. The Court of Appeals ruled in the negative.

Minn. Stat. § 518.6111 (2004).

Minn. Stat. § 518.5513 (2004).

42 U.S.C. § 666 (2005)

45 C.F.R. § 303.100 (2005).

*Bednarek v. Bednarek*, 430 N.W.2d 9 (Minn. Ct. App. 1988).

*Har-Mar, Incorporated v. Thorsen & Thorshov, Inc.*, 218 N.W.2d 751  
(Minn. 1974).

### STATEMENT OF THE CASE

This matter came before the child support magistrate on May 27, 2004, pursuant to John Gerber's motion to terminate income withholding for payment of his child support judgment. See Resp't Notice of Mot. and Mot. dated May 4, 2004.<sup>1</sup> The court issued its Order dated May 31, 2004, granting John Gerber's request to stay interest and denying his motion to stop automatic income withholding. See ¶ 1 of Findings of Fact of Anoka County Child Supp. Mag. Order dated May 31, 2004.<sup>2</sup> The child support magistrate based its decision on the following: (1) the underlying court orders mandated income withholding and (2) automatic income withholding is an administrative remedy, not barred by the age of the debt. *Id.*

John Gerber appealed the magistrate's decision to the Minnesota Court of Appeals. See Resp't Notice of Appeal to Ct. of Appeals dated Aug. 13, 2004.<sup>3</sup> The Court of Appeals reversed, concluding that income withholding is a judicial remedy because it needs "a court order to authorize the remedy of wage withholding to collect child support and child-support arrearages." Therefore, the continued collection of the child support arrears through income withholding after the expiration of the judgment is barred by the ten-year statute of limitations on the collection of judgments under Minn. Stat. § 541.04. See *In Re the Marriage*

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<sup>1</sup> A copy of this Motion is reprinted in Appellant's Appendix at page 1.

<sup>2</sup> A copy of this Order is reprinted in Appellant's Appendix at page 5.

<sup>3</sup> A copy of this Notice is reprinted in Appellant's Appendix at page 13.

*of Gerber v. Gerber and County of Anoka*, 694 N.W.2d 573, 576 (Minn. Ct. App. 2005), review granted (Minn. Apr. 12, 2005).<sup>4</sup>

The County petitioned for review to the Minnesota Supreme Court and review was granted through its Order dated June 28, 2005. This Court also granted the motion of the Minnesota Commissioner of Human Services to serve and file a brief as amicus curiae in this matter.

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<sup>4</sup> A copy of this Opinion is reprinted in Appellant's Appendix at page 15.

### STATEMENT OF FACTS<sup>5</sup>

The case began 24 years ago in November 1981, when an Anoka County District Court issued an Order for Temporary Relief dated November 17, 1981, in the pending divorce of Darlene Gerber and John Gerber who had five minor sons.<sup>6</sup> The Order required John Gerber to pay child support totaling \$900 per month or 45 percent of his net income per month, whichever was greater, and ordered it to be withheld from his wages. See ¶ 1 of the Anoka County Dist. Ct. Order for Temporary Relief dated Nov. 17, 1981. At the time of the final Judgment and Decree, John Gerber agreed, and the court ordered, that child support continue to be withheld from his net income at the same rate as ordered in the Order for Temporary Relief. See ¶ 2 of the Conclusions of Law from the Anoka County Dist. Ct. Order for Judgment dated Feb. 12, 1982.<sup>7</sup>

Two years later, in February 1984, John Gerber brought a motion to reduce his child support. The court modified his child support obligation to a flat \$900 per month, and ordered, consistent with the prior orders, child support to be withheld from his net income. See Anoka County Dist. Ct. Findings and Order dated Apr. 19, 1984.<sup>8</sup>

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<sup>5</sup> A transcript of the proceedings is not available as neither party nor the County ordered a transcript be prepared.

<sup>6</sup> A copy of this Order is reprinted in Appellant's Appendix at page 21.

<sup>7</sup> A copy of this Order is reprinted in Appellant's Appendix at page 22.

<sup>8</sup> A copy of this Order is reprinted in Appellant's Appendix at page 27.

Three years later, in September 1987, John Gerber brought a motion to reduce his child support and forgive some of his arrearages based on a change of employment. *See* Resp't Notice of Mot. and Mot. dated Sept. 8, 1987.<sup>9</sup> In its Order dated November 9, 1987, the court denied his motion and entered judgment against him, in favor of Darlene Gerber, for \$3,600 for child-support arrears that accrued from June 1, 1987, through September 30, 1987. *See* Anoka County Dist. Ct. Findings of Fact, Conclusions of Law, and Order dated Nov. 9, 1987.<sup>10</sup>

For more than nine years, from April 19, 1984, through May 31, 1993, Darlene Gerber did not receive any child-support payments from John Gerber to raise their five sons in Darlene Gerber's care. *See* the Anoka County Dist. Ct. Findings of Fact, Conclusions of Law, and Order dated Nov. 9, 1987; Aff. of Default dated<sup>11</sup> Aug. 20, 1993; Ex. 1 of Resp't Aff. dated May 4, 2004.<sup>12</sup>

Darlene Gerber applied for county child-support services. The Anoka County Office of Child Support (the "County") attempted to collect child support through various tools (generally credit bureau reporting, student grant hold, state and federal tax refunds) with little to no effect.<sup>13</sup> The youngest of the parties' five

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<sup>9</sup> A copy of this Motion is reprinted in Appellant's Appendix at page 31.

<sup>10</sup> A copy of this Order is reprinted in Appellant's Appendix at page 33.

<sup>11</sup> A copy of this Affidavit is reprinted in Appellant's Appendix at page 35.

<sup>12</sup> A copy of Respondent's Affidavit, including Exhibit 1, Payment History, is reprinted in Appellant's Appendix at page 37.

<sup>13</sup> *See* Respondent's Affidavit, Exhibit 1, page 6, entry A0223164001 showing \$69 tax intercept on August 13, 1990. Appellant's Appendix at page 44.

children emancipated on June 20, 1993, and John Gerber's ongoing child-support obligation terminated July 1, 1993. See Anoka County Child Supp. Mag. Order dated May 31, 2004.

Arrears amassed in principal totaling \$98,450. See the Ancillary Judgment dated Nov. 12, 1987, entering judgment totaling \$3,600 and the Judgment dated Sept. 13, 1993, totaling \$94,850.<sup>14</sup> Darlene Gerber hired a private attorney and sought a judgment for past due support. John Gerber did not request a hearing or contest the amount of arrears or the entry of the judgment. The court entered Judgment against John Gerber on September 13, 1993, in the amount of \$94,850, for past due child support from April 19, 1984, through May 31, 1993, (excepting out the four-month time period that the court had entered judgment by its Ancillary Judgment dated November 12, 1987). See Judgment dated Nov. 12, 1987.

The public authority continued its collection services with minimal success until mid-2001. In 2001, the County located a payer of funds and sent Notice of Income Withholding. Beginning May 7, 2001, the County has consistently received payments through automatic income withholding.

The Judgment dated November 12, 1987, in the amount of \$3,600 was paid in full. However, John Gerber still owed significant arrears. The public authority did not renew the September 13, 1993, judgment. See Anoka County

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<sup>14</sup> Copies of these Judgments are reprinted in Appellant's Appendix at pages 54 and 56.

Child Supp. Mag. Order dated May 31, 2004. The judgment expired September 2003. *Id.* Anoka County did not terminate income withholding previously in place. Payments continued to be withheld from John Gerber's payer of funds and distributed to Darlene Gerber to offset the child support arrears. *Id.*

Darlene Gerber is finally receiving the financial support that John Gerber was court ordered to provide. But John Gerber wants to stop paying his child support, not because he does not owe it, but because the debt is old and he evaded collection of it for so long.

John Gerber brought his motion to terminate collection actions by automatic income withholding on the expired judgment in May of 2004. See Resp't Notice of Mot. and Mot. dated May 4, 2004.<sup>15</sup> Anoka County intervened and was made a party. See Anoka County Notice of Intervention dated May 18, 2004.<sup>16</sup> The child support magistrate denied John Gerber's motion. See Anoka County Child Supp. Mag. Order dated May 31, 2004. Mr. Gerber appealed to the Court of Appeals. See Resp't Notice of Appeal to Ct. of Appeals dated Aug. 13, 2004. On April 12, 2005, the Court of Appeals issued a published opinion reversing the magistrate's order. *Gerber*, 694 N.W.2d 560. Intervener Anoka County now seeks reversal of the Court of Appeals' decision.

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<sup>15</sup> Appellant's Appendix at page 1.

<sup>16</sup> A copy of this Notice is reprinted in Appellant's Appendix at page 57.

## ARGUMENT

### STANDARD OF REVIEW

On appeal from a child-support magistrate's ruling, the standard of review is the same as it would be if the decision had been made by a district court. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. Ct. App. 2002). The construction and applicability of a statute of limitation is a question of law, which this Court reviews de novo. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998).

#### I.

### **INCOME WITHHOLDING IS A LEGISLATIVELY CREATED ADMINISTRATIVE REMEDY DESIGNED TO ENHANCE CHILD SUPPORT COLLECTION EFFORTS AND CAN BE IMPLEMENTED INDEPENDENTLY BY THE PUBLIC AUTHORITY.**

In a long line of cases, Minnesota courts have consistently held that administrative remedies are not time barred. *See, e.g., Har-Mar, Inc. v. Thorsen & Thorshov, Inc.*, 218 N.W.2d 751 (Minn. 1974); *Spira v. Am. Standard Ins. Co.*, 361 N.W.2d 454 (Minn. Ct. App. 1985); *In Re the Matter of Wage and Hour Violations Holly Inn, Inc.*, 386 N.W.2d 305 (Minn. Ct. App. 1986); *Bednarek v. Bednarek*, 430 N.W.2d 9 (Minn. Ct. App. 1988). Over the last 30 years, Minnesota courts have defined administrative remedies through case law. Determining whether a remedy is administrative or judicial is undertaken by analyzing statutes, the remedy's intent, and the remedy's process. Income

withholding in conjunction with the federal code is an administrative remedy and should be treated as such.

**A. The County Can Implement Income Withholding Independent Of A Court Order.**

Two Minnesota statutes are on point. The first, Minn. Stat. § 518.5513, subd. 5(a)(5) (2004), authorizes the public authority responsible for child-support enforcement to implement income withholding as part of its administrative function.

The second statute, Minn. Stat. § 518.6111 (2004), mandates the public authority to implement income withholding if the public authority is providing services.

Minn. Stat. § 518.5513, subd. 5(a)(5) grants the public authority the administrative ability to implement income withholding without obtaining a court order. This statute was enacted by the legislature in 1999 when it created the expedited process for establishing and enforcing child support orders: “The public authority may take the following actions relating to establishment of paternity, or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any judicial or administrative tribunal: . . . (5) order income withholding of child support under section 518.6111 . . .” Minn. Stat. § 518.5513, subd. 5(a)(5) (2004).

The second statute authorizes the public authority to automatically implement income withholding when the county is servicing the case, irrespective of whether the court addressed income withholding in its support order. Minn. Stat. § 518.6111, subd. 7(a) (2004). Specifically, this provision provides:

This subdivision applies to support orders that do not contain provisions for income withholding. (b) For cases in which the public authority is providing child support enforcement services to the parties, the income withholding under this subdivision shall take effect without prior judicial notice to the obligor and without the need for judicial or administrative hearing. Withholding shall result when . . . (3) the public authority commences withholding according to section 518.5513, subdivision 5, paragraph (a), clause (5).

*Id.*

The current statutory scheme grants the public authority the administrative powers to notice or order income withholding. Consistent with this grant of power, it authorizes the public authority to implement this collection remedy even if the court fails to address income withholding. The state income-withholding statute clearly applies to “orders for or notices of withholding issued by the public authority” and court ordered income withholding. Minn. Stat. § 518.6111, subd. 2 (2004).

While this is the current law, when Darlene Gerber was awarded child support, income withholding was the exception, not the rule. In 1981, when the court first ordered income withholding for Darlene Gerber, the statute provided a

cause of action for income withholding. See Minn. Stat. § 518.611 (Supp. 1981). “[T]he obligee or the public authority may at any time move the court to order, and the court shall order the employer, trustee or other payer of funds to withhold from the obligor’s income, regardless of source, an amount equal to the court’s order for support or maintenance.” *Id.*

As early as the 1981 and 1982 session laws, the revisions and amendments to the income withholding statute demonstrates a shift away from utilizing withholding as a discretionary judicial remedy to an automatic, administrative remedy. In 1981 the session laws amended the statute requiring the court to order withholding in all orders issued as a result of a support modification hearing. 1981 Minn. Laws, Ch. 360, art. 2, § 47, subd. 3. The following year, the legislature enacted a similar withholding requirement for orders initially addressing support in dissolution, legal separation or parentage actions that addressed child support. 1982 Minn. Laws, Ch. 488, § 6, subd. 1.

The 1987 session laws brought additional revisions and amendments to the withholding statute. The legislature passed an amendment allowing withholding to occur without a court order in certain situations. 1987 Minn. Laws, Ch. 403, art. 3, § 89. See Minn. Stat. § 518.611 (Supp. 1987) (authorizing withholding when the public agency serves notice of withholding on obligor and obligor does not petition district court for an order denying withholding). It also revised the language of Minn. Stat. § 518.611, subd. 2 from its 1981 version

which stated, in essence, “[T]he obligee shall also serve . . . a copy of the *court’s withholding order . . .*” to read as follows: “[T]he obligee serves a *copy of the notice of income withholding, a copy of the court’s order . . .*” 1981 Minn. Laws, Ch. 360, art. 2, § 47, subd. 3 and 1987 Minn. Laws, Ch. 403, art. 3, § 83, subd. 2(4) (emphasis added). Again, these revisions evidence the shift from viewing withholding as a judicial determination and order to an administrative remedy.<sup>17</sup>

Significantly, the state passed amendments reflected in the 1990 and 1997 session laws that changed the meaning of income withholding. The 1990 provisions required that withholding would remain in place after an ongoing support order would otherwise terminate, until child support arrears are fully paid. 1990 Minn. Laws, Ch. 568, art. 2, § 74, subd. f. In 1997, the statute delegated to the public authority the responsibility to administratively implement income withholding without further judicial determination or order when child support enforcement is servicing the case and there is an existing court ordered support obligation. 1997 Minn. Laws, Ch. 203, art. 6, § 48, subd. 7.

In 1999, the legislature created a new expedited process for establishing and enforcing child support orders. See Minn. Stat. § 518.5513 (Supp. 1999). The legislation creating the new expedited system specifically required that the process comply with federal law. *Id.* at subd. 1. It also gave the child support

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<sup>17</sup> Income withholding provisions were located at Minn. Stat. § 578.611 and automatic income withholding at Minn. Stat. § 578.613. In 1997, these two sections were repealed and codified at Minn. Stat. § 518.6111.

enforcement agency the specific authority to order income withholding. See Minn. Stat. § 518.5513 (Supp. 1999). The statute establishing the income-withholding requirement applies to both withholding initiated by the child-support enforcement agency and court-ordered support. Minn. Stat. § 518.6111, subd. 2 (2004).

Finally, in 2001, the state legislature enacted subdivision 19 of the income withholding statute. This statute requires that the public authority make reasonable efforts to ensure that automated enforcement remedies take into consideration the time periods allowed under this section. 2001 Minn. Laws, Ch. 134, § 2, subd. 19.

As such, income withholding has evolved to be the rule, not the exception. Over the past two decades Minnesota has enacted a series of laws to bring its child support statutes into compliance with federal requirements. Essentially, if the public authority is servicing the enforcement of the support obligation, income withholding is mandatory. Minn. Stat. § 518.6111, subd. 3 (2004). Income withholding can be waived only by the court, and even then the court must find good cause and make written findings that income withholding is not in the best interests of the child. *Id.* at subd. 16(a).

Taken as a whole, income withholding has become the default standard. While the statute requires all support orders to address income withholding and

provide notice of income withholding through Appendix A,<sup>18</sup> the public authority is charged with what has become essentially a ministerial function; that is, implementing income withholding regardless of whether the court specifically addresses the issue. *See* Minn. Stat. § 518.68 (2004) (setting forth required notices that must be attached to every court order or judgment and decree that provides for child support).

All of these income-withholding tools, created by the legislature, were available to Darlene Gerber. The public authority could implement these withholding tools irrespective of whether child-support arrears had been reduced to judgment by court order or by operation of law.

**B. Federal Law Requires Minnesota To Use Income Withholding As An Administrative Remedy To Collect Both Ongoing And Past-Due Child Support.**

The state income-withholding laws comport with federal mandates and are virtually identical to their federal counterparts. Compare Minn. Stat. § 518.5513, subd. 5(a)(1) (2004) with 42 U.S.C. § 666(c)(1)(F) (2005) (authorizing agency to administratively order income withholding); Minn. Stat. § 518.6111, subd. 3 (2004) with 45 C.F.R. § 303.100(a)(4) (2005) (requiring provision for income withholding in all support orders); and Minn. Stat. § 518.6111, subd. 7 (2004) with 42 U.S.C. § 666(b)(2) and 45 C.F.R. § 303.100(g) (2005) (requiring agency

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<sup>18</sup> A copy of Appendix A is reprinted in Appellant's Appendix at page 59.

to order income withholding in IV-D cases without the need for further court action).

A brief history of the federal regulations and code in this area illustrates the similarities between state and federal law. Additionally, it provides insight into the intent of the federal government to deem income withholding an administrative remedy.

**1. Title IV-D of the Social Security Act.**

In 1975, Congress enacted Title IV-D of the Social Security Act in an effort to significantly strengthen state enforcement of child support obligations.

*See Social Services Amendments of 1974, Pub.L. 93-647, § 101, 1974*

*U.S.C.C.A.N. (88 Stat. 2337) 2716, 27332-40 (codified at 42 U.S.C. § 651-60).*

In establishing the child-support enforcement program, Congress recognized the close relationship between the receipt of welfare and the nonpayment of support:

The problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by their absent parent. Of the 11 million recipients who are now receiving Aid to Families With Dependent Children (AFDC), 4 out of every 5 are on the rolls because they have been deprived of the support of a parent who has absented himself from the home.

*S. Rep. No. 93-1356 (1974), reprinted in 1974 U.S.C.C.A.N. 8133, 8145.*

Title IV-D strengthened state child-support collection efforts and federal oversight. It gave the federal office of child-support enforcement broad authority to establish the standards state programs must meet. *See 42 U.S.C. §*

652(a). The law placed primary responsibility on the states for establishing paternity, obtaining support orders and collecting the ordered child support. See 42 U.S.C. §§ 654, 666 (2005). It also greatly increased the federal government's role in funding, monitoring and evaluating state child support programs. See 42 U.S.C. §§ 652, 655 (2005).

## 2. 1984 Amendments.

In 1984 Congress again made major changes to the federal child-support enforcement statutes to strengthen state collection efforts. These amendments first required states to implement income withholding administratively without judicial action. “[w]ithholding must occur without the need for any amendment to the support order involved or for any further action . . . by the court or other entity which issued the order.” Child Support Enforcement Amendments of 1984, § 3(b)(2), 1984 U.S.C.C.A.N. (98 Stat.) 1305, 1308 (codified at 42 U.S.C. § 666 (b)(2)). The Senate and the House report outlining the 1984 amendments provides insight into the purpose for the new legislature:

*Withholding must occur without amendment of the order or further action by the court. The committee believes that this requirement is particularly crucial to the effectiveness of any income withholding provision because it means that the custodial parent will not have to experience the costs and delays involved in returning to court to get a garnishment decree or a new support order. Under the committee provision, the required withholding procedures must be provided without the need for any application therefore on behalf of all IV-D (both AFDC and non-AFDC) families. Families who are*

*not receiving IV-D services may file an application for such services to trigger the initiation of withholding by the agency on their behalf.*

S. Rep. No. 98-387, at 27 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2397, 2423 (emphasis added).

### **3. The Family Support Act of 1988.**

This Act significantly increased federal pressure on states to pursue child support actions against obligors. It required states to establish procedures for “automatic” and “immediate” deductions from wages as a nonpunitive support measure. 42 U.S.C. §§ 651-669 (1988).

These measures standardized child support and family obligations as an income deduction identical to income tax or military deductions. In 1988 Congress mandated income withholding for virtually all child support cases. It required that all new or modified orders issued after November 1, 1990 provide for immediate income withholding without the need to wait until payments were delinquent. Family Support Act of 1988, Pub. L. 100-485 Title I, § 101, 1988 U.S.C.C.A.N. (102 Stat.) 2343, 2344-45 (codified at 42 U.S.C. §§ 666(a)(8)(B)(i), 666 (b)(3)(A)).

### **4. 1996 Welfare Reform Act.**

In 1996, as part of its extensive welfare-reform legislation, Congress required states to enact laws authorizing state child-support enforcement agencies to initiate income withholding as part of its expedited procedures. *See*

1996 Welfare Reform Act, Pub. L. 104-193. The House Report set out the rationale for the change:

Cumbersome court procedures have been a major impediment to the efficient operation of child support systems. Along with automation, expanded sources of information, and the state and national registries and directories, providing child support officials with the authority to bypass court procedures in some cases is a central feature of the committee proposal. If child support agencies can . . . *issue income withholding notices* . . . their ability to quickly and efficiently obtain support payments will be greatly improved.

H. Rep. No. 104-651 at 1415, *reprinted in* 1996 U.S.C.C.A.N. 2474-75.

#### **5. Current Federal Law.**

Federal regulations implementing Title IV-D of the Social Security Act requires that state child-support enforcement agencies implement income withholding on their own initiative without resorting to court proceedings. 42 U.S.C. § 666(c) (2005). The Social Security Act clearly requires Minnesota to promulgate such laws. *Id.* Under the federal regulations, income withholding must be used to collect both current and past due support. 45 C.F.R. § 303.100(a) (2004). Although federal regulations now require all child support orders to provide for income withholding, that requirement does not negate the state child-support enforcement agency's ability to institute income withholding on its own initiative:

*Provision for withholding in child support orders.* Child support orders issued or modified in the State whether

or not being enforced under the State IV-D plan must have a provision for withholding of income. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that *enforcement under the state plan must proceed without the need for a withholding provision in the order.*

45 C.F.R. § 303.100(g) (2004) (emphasis added). Federal law clearly requires Minnesota to use income withholding as an administrative remedy to collect both ongoing and past due child support.

**C. Income Withholding Is Not A Judicial Proceeding.**

Although Minnesota has not specifically analyzed whether income withholding is an administrative versus a judicial remedy, it has analyzed the tax intercept remedy, another child support collection tool, and determined it to be an administrative remedy. *Bednarek v. Bednarek*, 430 N.W.2d 9 (Minn. Ct. App. 1988). Other state courts have analyzed income withholding, concluding, in published decisions by the states' highest courts, that income withholding is an administrative remedy. The federal court has weighed in on child support collection tools and its opinions run parallel to Minnesota and other state court decisions.

The Minnesota cases began with this Court's holding in *Har-Mar, Incorporated v. Thorsen & Thorshov, Inc.*, 218 N.W.2d 751 (Minn. 1974). In that case, in which the court concluded that "action" both by statutory definition and at common law, was intended by Minn. Stat. § 541.05 to be confined to judicial

proceedings. While actions cannot be maintained on a debt that expired by the statute of limitations, administrative collection is not restricted by this time period. *Har-Mar*, 218 N.W.2d 751 (Minn. 1974). The *Har-Mar* court concluded that arbitration has many characteristics common to judicial proceedings such as depositions, hearings, recommendations, orders and an appeal to the judiciary. *Id.* The court also noted that the true intent of arbitration is to encourage voluntary, speedy, inexpensive, private and out-of court resolution. *Id.* at 754. Based upon the special nature of arbitration and the meaning of the term “action,” the court held that the statute of limitations was not intended to time-bar arbitration and that arbitration was an administrative remedy. *Id.*

More recent cases in this line of authority follow *Har-Mar's* lead. In *Bednarek v. Bednarek*, the Court of Appeals held that the ten-year statute of limitations did not bar the administrative remedy of intercepting an obligor's tax refund to satisfy arrearages validly established. 430 N.W.2d 9 (Minn. Ct. App. 1988). In that case, the court found persuasive the reasoning of the North Dakota Supreme Court in *Guthmiller* and the federal court in *Gerrard* and followed their lead:

[A]ttempted collection of child support arrearages through the tax intercept procedures is not an ordinary proceeding in a court of justice, but rather is in the form of an administrative proceeding conducted before the agency. There the statute of limitations imposed by Section 28-01-16, N.D.C.C., does not apply to the tax intercept procedure.

*Guthmiller v. North Dakota Dep't of Human Services*, 421 N.W.2d 469, 471 (N.D. 1988).

It also relied on *Gerrard v. United States Office of Education*:

[S]ection 2415(a) in particular cuts off the remedy of a civil action on a debt brought by the government, but leaves open many other means of enforcing the government's right. The government can proceed by administrative offset . . . The phrase "legally enforceable" therefore does not mean "not barred by the statute of limitations."

*Gerrard v. United States Office of Education*, 656 F.Supp. 570, 574 (Cal. Dist. Ct. 1987).

Three other states have weighed in on the administrative nature of child-support collection remedies. Specifically, the highest courts in Alaska, Arizona and Montana have definitively determined income withholding as an administrative remedy. All affirmatively declared income withholding to be an administrative remedy not restrained by the statute of limitations. Notably, each of the courts that has reviewed and rendered an opinion regarding income withholding under the administrative versus judicial remedy test has concluded that it is an administrative remedy.

In Alaska, the highest court concluded that administrative collections are not subject to the statute of limitations on the collection of judgments.

[L]egislature has granted CSED<sup>19</sup> an array of independent powers to collect child support payments . . . . CSED may issue administrative orders to garnish wages and attach property, including tax refunds . . . . CSED does not waive or relinquish any statutory powers when it seeks to reduce arrearages to judgment under AS 25.27.226. Instead [statutes] provide remedies in addition to and not as a substitute for any other remedies available to the parties.

*State of Alaska, Department of Revenue, Child Support Enforcement Division, ex rel. Gerke v. Gerke*, 942 P.2d 423, 426 (Alaska 1997). *See also, Koss v. State of Alaska, Department of Revenue, Child Support Enforcement Division*, 981 P.2d 106, 107-09 (Alaska 1999):

CSED's primary collections power . . . are independent powers . . . as effective as those available in the courts. They are meant to supplement judicial powers of enforcement . . . We hold that AS 09.10.040 [statute of limitations] does not apply to CSED's collection of child support judgments. The agency's administrative collections are not "actions upon a judgment."

*Id.*

That same year, the Montana court reached the same conclusion:

CSED is authorized to collect past-due child support amounts through various administrative remedies. For example, § 40-5-412, MCA, authorizes CSED to collect child support arrearages through income withholding . . . . Other administrative remedies include license suspension . . . state debt offsets.

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<sup>19</sup> "CSED" refers to the Child Support Enforcement Department.

*Emery v. State of Montana Dep't. of Pub. Health and Human Serv., Child Supp. Enforcement Division*, 950 P.2d 764, 768 (Mont. 1997).

More recently, in July 2005, the Arizona Supreme Court followed suit, stating "the legislature has provided ADES<sup>20</sup> with a variety of administrative remedies to collect child support arrearages." *State of Arizona, ex rel. Depart. of Economic Security v. Hayden*, 115 P.3d 116 (Ariz. 2005). See also A.R.S. § 25-505.01(B) (Supp. 2004) (income withholding order); A.R.S. § 25-516 (2000) (lien on property of obligor); A.R.S. § 25-521 (2000) (levy on obligor's rights to property).

In Minnesota, as in Alaska, Montana and Arizona, income withholding is an administrative remedy. The intent of income withholding supports that conclusion; moreover, it functions like other processes determined by this Court to be administrative. Withholding has little, if anything, in common with judicial proceedings.

The purpose of income withholding is to collect child support at the level and duration ordered by the court. Its goal is to enforce child support and increase support collections. It is also designed to reduce potential litigation by ensuring, to the extent possible, prompt payment through the collecting agency. Its streamlined nature reduces the questions about current support obligations and past support. Income withholding is a tool used to route financial support to

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<sup>20</sup> "ADES" refers to Arizona Department of Economic Security.

the family quickly and reliably and to reduce the chance of accruing uncollectible arrears.

While income withholding failed Darlene Gerber while she raised her five sons, its very purpose is to avoid these situations by streamlining the system so that income withholding can be administered automatically and immediately. Income withholding is intended to prevent collateral attacks on court-ordered child support and distribute payments automatically and immediately to the children. Considering the required time lines the employer has to implement withholding, the frequency with which people change employment and the lag time in reporting new hires, income withholding is one of the more effective tools to collect support. It is effective, however, only if it can be implemented quickly.

Income withholding is not intended to be a court proceeding. Historically, income withholding could only be implemented through a court order. This judicial remedy simply did not work and led to revisions in the federal regulations which the states adopted, almost verbatim.

The income-withholding process has very little in common with a court process. It is not commenced through a summons and complaint. Rather, it is initiated by the county. Unlike the arbitration in *Har-Mar*, it does not have judicial components. Considering the intent of income withholding and the realities of our mobile society, this enforcement tool can only work if it is administrative in nature. Income withholding is most clearly akin to tax intercepts as an agency-

initiated administrative remedy, rather than a judicial proceeding. Accordingly, it should be treated the same way.

**D. The Process Of Implementing Income Withholding Is Essentially Ministerial, And Is Not A “Judicial Proceeding.”**

Income withholding does not create a judicial right or impose a judicial liability. It does not remove cases from district court jurisdiction. The office of child support is essentially serving a clerical function at the behest of the legislature and court system. It is a legislatively created ministerial function that carries out the judicial intent of the order.

The process of implementing income withholding is simple. Once an application for services is received, the public authority enters the employment information and the child support order provisions into the statewide computer system. The system generates and prints the “Order/Notice to Withhold Income”<sup>21</sup> with the case specific information overnight. The following morning, the child support worker reviews the notice for accuracy and sends it to the obligor’s employer. The public authority, in performing its ministerial functions of processing income withholding, does not and cannot modify the court’s order in any respect. Income withholding collects the child support that is established by a court order.

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<sup>21</sup> A copy of this “Order/Notice” is reprinted in Appellant’s Appendix at page 60.

Income withholding can only be effective if it is an administrative function. Thousands of families rely on the public authority to enforce and distribute child support. The sheer volume alone requires a clerical-type of process to collect support ordered by the court.

Furthermore, this is a mobile society. In this case, Darlene Gerber moved from Anoka County to Wright County and back to Anoka County. There are frequent and multiple changes in the amount of support, the payee or the employer. The public authority has the ability to send out the notice for automatic income withholding, change the payee of funds, increase the amount of monthly support payments to accommodate arrearages or cost of living adjustments, and decrease the amount of monthly support payments in accordance with the emancipation of a child or if arrears are paid in full. Without the ability to make these types of clerical changes, the court system would be clogged with motions regarding changes in income withholding provisions, and income withholding would be largely ineffective given the time delays in implementation.

From a practical standpoint, income withholding is not generally a contested or negotiated issue. The statute governs when income withholding applies and oftentimes income withholding provisions become part of the court order through standard, boiler-plate language. It is widely known among family law attorneys that discretion about when income withholding applies has largely been removed by the statute. Since the enactment of this statute, parties

receiving IV-D services generally accept that income withholding will be used and do not challenge or negotiate it.

The current statutory scheme requires a court order, complete with findings, if a party does not wish to implement income withholding. Assuming a case is a IV-D case or the county is providing enforcement services, income withholding is mandatory. Minn. Stat. § 518.6111, subd. 3 (2004). “[T]he full amount of the support order must be withheld from the income of the obligor and forwarded to the public authority.” *Id.*

If by clerical error the court fails to address income withholding, parties are given notice of automatic income withholding through Appendix A. Every order must have Appendix A attached. Minn. Stat. § 518.68, subd. 2 (2004). If the court fails to address income withholding and a copy of Appendix A is not attached to the order, state law mandates the public authority to implement income withholding by serving notice. See Minn. Stat. §§ 518.5513, subd. 5, and 518.6111, subd. 7 (2004).

Furthermore, there are adequate checks and balances by the judiciary on the process. If a party disputes the implementation of automatic income withholding, the obligor may contest on the limited grounds of mistake of fact. Minn. Stat. § 518.6111, subd. 8 (2004). The obligor is entitled to a hearing, and the court will hear the merits of the obligor’s motion. *Id.* In addition, the obligor

may seek a waiver of income withholding pursuant to Minn. Stat. § 518.6111, subd. 16 (2004).

II.

**EVEN IF THIS COURT DEEMS WAGE  
WITHHOLDING TO BE A JUDICIAL REMEDY,  
INCOME WITHHOLDING CAN CONTINUE SINCE IT  
IS BASED ON A VALID COURT ORDER.**

Traditionally, public policy dictated a prescribed period within which to bring an action maintained against a judgment to preserve facts and ensure witnesses and necessary documents were available. *Backertz v. Hayes-Lucas Lumber Co.*, 275 N.W. 694 (Minn. 1937); *Nebola v. Minnesota Iron Co.*, 112 N.W. 880 (Minn. 1907); *Brasie v. Minneapolis Brewing Co.*, 92 N.W. 340 (Minn. 1902). Child-support judgments are governed by such a statute of limitations. See Minn. Stat. § 541.04 (2004) (“[no] action shall be maintained upon a judgment . . . unless begun within ten years after entry of such judgment.”) *Id.* If the court deems income withholding an action or judicial remedy, whether income withholding can be maintained depends on whether income withholding was commenced prior to the running of the statute of limitations. *Id.*

The facts in this case are undisputed. Income withholding first began as mandated by the court in its Order for Temporary Relief dated November 17, 1981. It was again ordered by the court in its Judgment dated February 12, 1982, and again court ordered April 19, 1984. Income withholding began in

Darlene Gerber's case long before September 2003, when her child-support judgment expired.

Moreover, a court order is inherently final and remains so until modified by further court order. A judgment is the final decision of the court and confers legal duties and liabilities on the parties. It is the law's last word in a judicial controversy, it being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding. *Towley v. King Arthur Rings, Inc.*, 351 N.E.2d 728, 730 (N.Y. 1976).

A judgment is a judicial action of the court and is the court's official and final consideration and determination of the respective rights and obligations of the parties. *See* 46 Am.Jur.2d *Judgments* § 1 (2005). For Darlene Gerber, the court's judgment and orders requiring income withholding for child support remain in place until modified by the court. Furthermore, if the court uses the judicial or administrative remedy test, income withholding in Darlene Gerber and John Gerber's case properly began prior to September 13, 2003, and should remain in place until the judgment is paid in full.

The public authority or a parent may collect child support arrears through two distinct methods – either through administrative remedies or through court executions on judgments. Under state law, each unpaid installment of child support becomes a judgment by operation of law. Minn. Stat. § 548.091, subd. 1(a) (2004). These monthly installments are treated “independently and

separately and recovery allowed only for those payments which accrue within ten years from the date of the commencement of the action.” *Dent v. Casaga*, 208 N.W.2d 734, 735 (Minn. 1973). As a result, one case may have multiple judgments, reflecting each unpaid installment of weekly, bi-monthly or monthly ordered child support, all expiring on different dates.

The Minnesota Court of Appeals suggests that renewing judgments is a simple procedure. In reality, the process is much more complex. Child-support arrearages 30 days past due are deemed a judgment by application of the statute, rather than by court determination and order. Minn. Stat. § 548.091, subd. 2(a) (2004). While the judgment occurs by operation of law automatically, it requires action for these judgments to be entered, filed and docketed. To effect a renewal, the public authority or obligee must prepare an accounting including the dates payment was due and amounts not received, and contained within an affidavit. In addition, they must draft other required documents, file, and serve all of the above, within the rolling time limitations of each monthly installment. *Id.*

By creating a judgment by operation of law, Minnesota law treats child-support judgments different than money judgments. The legislature gave special effect to reducing child support arrears to judgment. Essentially, it provides obligees with a facilitated process to enter judgment and, once entered, confers on obligees all the additional judicial remedies to collect past due child support.

Darlene Gerber took the time and expense to convert child support monies due her into judgment form. Darlene Gerber earned the benefit of all the additional judicial remedies that correspond to execution of judgments (e.g., the ability to place lien on property, Minn. Stat. § 548.09, subd. 1 (2004); priority on garnishments, Minn. Stat. § 550.136 (2004)). When the judgment expired, with it expired all of those supplemental methods of collecting the debt that had been made available as the result of the judgment having been entered and docketed.

What did not expire was the district court's income-withholding order, which originated before, and was enforced independent of, the money judgment. Even if the child support judgment had never been entered against Respondent, court-ordered income withholding was established as a collection remedy. By entering judgment, the Court of Appeals holds Darlene Gerber has narrowed her ability to collect. Entering judgment adds additional collection methods. It does not serve to limit the available collection tools to judicial remedies.

## CONCLUSION

State law clearly gives the child-support enforcement agency the authority to independently institute income withholding without the necessity of obtaining a court order. Income withholding under both federal and state law is administrative collection. The process of implementing income withholding is clerical in nature.

Since first considering the issue 17 years ago, Minnesota courts have consistently held that the word “actions” – as used in executing judgments – means an ordinary proceeding in a court of justice, not administrative remedies implemented by the agency. The Minnesota Department of Human Services and counties throughout the state have widely relied on this interpretation when collecting child support through its various tools (e.g., tax offsets, credit bureau reporting, denial of passport, suspension of occupational driver’s licenses and recreational and sporting licenses, lump sum payments).

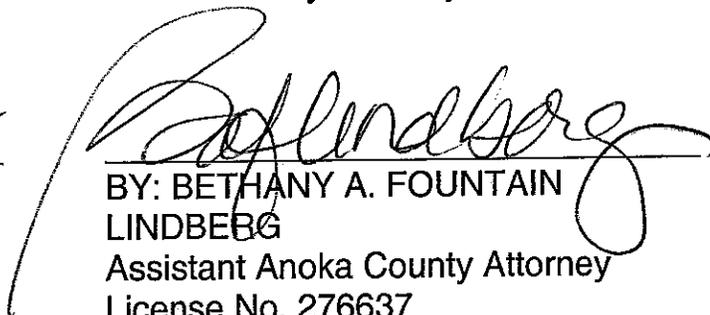
Anoka County urges this Court to allow income withholding and decline to abandon decades of reliance on well-established, analytically sound case law and relevant child support statutes that analyze remedies such as this as administrative. If this Court now adopts a novel interpretation on administrative remedies, it would cast doubt on the validity of collection remedies of thousands of child support dollars. Moreover, issuing a judicial decision that declares income withholding barred by the statute of limitations will impede the legitimate

societal goal of ensuring families' self-sufficiency. The County respectfully requests that the decision of the Court of Appeals be reversed.

Respectfully submitted,

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).