

NO. A09-13

State of Minnesota
In Court of Appeals

Russell's AmericInn, LLC,

Respondent,

v.

Eagle General Contractors, LLC, Wert Properties, LLC,

Defendants,

Dale J. Werth,

Appellant.

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

Michael C. Glover (#185401)
Jason E. Engkjer (#318814)
KALINA, WILLS, GISVOLD
& CLARK, P.L.L.P.
6160 Summit Drive, Suite 560
Minneapolis, MN 55430
(763) 789-9000

Attorneys for Respondent

John R. Neve (#278300)
NEVE & ASSOCIATES, PLLC
8500 Normandale Lake Boulevard
Suite 1080
Minneapolis, MN 55437
(952) 929-3232

Attorney for Appellant

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).

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF LEGAL ISSUES 1

STATEMENT OF THE CASE AND FACTS..... 2

ARGUMENT 4

I. STANDARD OF REVIEW.....4

II. THE DISTRICT COURT ERRED WHEN IT CONCLUDED THAT MINNESOTA STATUTE § 550.37, SUBDIVISION 24 DOES NOT EXEMPT WERTH'S IRA ACCOUNTS FROM ATTACHMENT BY THE JUDGMENT CREDITOR.....4

III. THE DISTRICT COURT ERRED BY DENYING WERTH'S CLAIM OF EXEMPTION FOR THE JOINT M&I BANK ACCOUNT PURSUANT TO MINNESOTA'S MULTI-PARTY ACCOUNTS ACT BECAUSE THE FUNDS IN THE ACCOUNT DO NOT BELONG TO HIM.....10

CONCLUSION 13

TABLE OF AUTHORITIES

Cases

| | |
|--|------|
| <i>A.J. Chromy Construction Co. v. Commercial Mechanical Services, Inc.</i> , 260 N.W.2d 579, 582 (Minn.1977)..... | 4 |
| <i>Bank Leumi Trust Co. of New York v. Dime Sav. Bank of New York</i> , 650 N.E.2d 846 (N.Y. 1995)..... | 9 |
| <i>Clark v. Lindquist</i> , 683 N.W.2d 784, 786 (Minn. 2004)..... | 4, 6 |
| <i>Deretich v. City of St. Francis</i> , 128 F.3d 1209 (8th Cir. 1997) | 7 |
| <i>Edina Cmty. Lutheran Church v. State</i> , 673 N.W.2d 517, 523 (Minn. Ct. App. 2004) | 10 |
| <i>Enright v. Lehmann</i> , 735 N.W.2d 326 (Minn. 2007)..... | 11 |
| <i>Estate of Jones by Blume v. Kvamme</i> , 529 N.W.2d 335, 339 (Minn. 1995)..... | 4 |
| <i>Homart Dev. Co. v. County of Hennepin</i> , 538 N.W.2d 907, 911 (Minn. 1995) | 5 |
| <i>Hyland v. Metropolitan Airports Com'n</i> , 538 N.W.2d 717, 720 (Minn. Ct. App. 1995).... | 8 |
| <i>In re Anderson</i> , 269 B.R. 27 (8th Cir. BAP 2001)..... | 8 |
| <i>In re Estate of Jones by Blume v. Kvamme</i> , 529 N.W.2d 335, 339 (Minn. 1995) | 10 |
| <i>In re Raymond</i> , 71 B.R. 628, 630 (Bankr. D. Minn. 1987)..... | 7, 8 |
| <i>Kersten v. Minn. Mut. Life Ins. Co.</i> , 608 N.W.2d 869, 874-75 (Minn. 2000) | 6 |
| <i>Lewis-Miller v. Ross</i> , 710 N.W.2d 565, 568 (Minn. 2006)..... | 4 |
| <i>Regner v. Northwest Airlines, Inc.</i> , 652 N.W.2d 557, 563 (Minn. Ct. App. 2002) | 7 |
| <i>Westinghouse Credit Corp. v. J. Reiter Sales, Inc.</i> , 443 N.W.2d 837 (Minn. Ct. App. 1989)..... | 7 |

Statutes

| | |
|----------------------------------|----|
| 26 U.S.C. § 408 (a)..... | 7 |
| 26 U.S.C. § 408 (c)..... | 7 |
| Minn. Stat. § 524.6-203(a) | 12 |

| | |
|---|---------------|
| Minn. Stat. § 550.37, subd. 24 | <i>passim</i> |
| Minn. Stat. § 645.16 | 6 |
| Minn. Stat. § 645.49 | 10 |
| Other Authority | |
| Internal Revenue Publication 590 (2008) | 7, 11 |

STATEMENT OF LEGAL ISSUES

1. **Did the District Court err when it held that the exemption in Minn. Stat. § 550.37, subd. 24, did not apply to Werth's individual retirement accounts or Roth IRAs where Werth's IRAs were within the scope of protection of the plain meaning of the statute and were derived from employment activities?**

The trial court wrongly determined that Werth was not entitled to the exemptions under the statute.

Authorities:

Minn. Stat. § 550.37, subd. 24

Minn. Stat. § 645.16

Minn. Stat. § 645.49

Clark v. Lindquist, 683 N.W.2d 784, 786 (Minn. 2004)

2. **Did the district court err by denying Werth's claim of exemption in the M&I bank account pursuant to Minnesota's Multi-Party Accounts Act because the unrebutted evidence submitted to the district court established that the funds do not belong to Werth?**

The trial court incorrectly held that the funds in the M&I Account were not protected by the Act.

Authorities:

Minn. Stat. § 524.6-203 (a)

Enright v. Lehmann, 735 N.W.2d 326 (Minn. 2007)

STATEMENT OF THE CASE AND FACTS

A. Background.

This is a collection matter arising from an action filed in Kansas by Respondent Russell's AmericInn, LLC ("Respondent" or "Judgment Creditor") against Appellant Dale J. Werth ("Werth") and two other companies. (Appellant's Appendix ("App.") at 10.) As has become all too common in these troubled economic times, the Judgment Creditor managed to obtain a default judgment against Werth when he failed to submit a timely answer to the complaint. On March 13, 2007, the Judgment Creditor docketed its judgment in Washington County District Court in the principal amount of \$260,760.06. (App. at 10.)

B. Respondent's Collection Efforts.

After the judgment was docketed, Respondent soon began attempts to satisfy the judgment entered as a result of Werth's failure to answer. On June 6, 2008, the Judgment Creditor served non-earnings garnishments on TD Ameritrade. (App. at 11.) Werth maintained a traditional individual retirement account ("IRA"), Account No. _____ ("Werth IRA"), and a Roth IRA, Account No. _____ ("Werth Roth IRA"), with TD Waterhouse. (*Id.*) At the time of the garnishment, the Werth IRA contained \$42,808.00 and the Werth Roth IRA contained \$1,501.00. (*Id.*) Approximately \$18,000.00 was rolled over into the Werth IRA from Werth's wife's IRA following her death in 2003. (Tr. at 3.) As required by law, the funds invested in the IRAs were derived from wages and self-employment income earned over the years. (Tr. at 16.)

The Judgment Creditor also served, on June 6, 2008, a non-earnings garnishments on M&I Bank. (App. at 11.) Werth's son, Bradley Werth, made several loans to his father over the years. (App. at 2, 6.) All of these loans were reduced to promissory notes which were signed by Werth and Bradley Werth. (App. at 3-5.) To set up an easier means to make the sporadic repayment on these loans, they opened the joint M&I Account. (App. at 2, 7.) Werth contributed funds to this account to repay the loans and every dollar he deposited went toward the balance on the promissory notes. (App. at 2.) In addition, all funds deposited in the M&I Account were derived from Werth's social security payments. (*Id.*) Once Werth made a payment to the M&I Account, the money become the property of Bradley Werth. (App. at 2, 7.) Bradley Werth claimed the interest on the entire amount in the M&I Account as income on his tax returns. (App. at 7-9.)

As a result of the garnishment, M&I held \$18,035.06, which was the account balance at the time of the garnishment. (App. at 14.) Werth objected to the garnishment and those funds were eventually released to Bradley Werth. Based upon an agreement with Respondent's counsel, those funds are now deposited in the trust account of Appellant's counsel.

C. The District Court Proceedings.

Werth filed a Motion for Claim of Exemption in Washington County District Court on September 26, 2008. The district court heard arguments on October 10, 2008. At the hearing, the district court ruled from the bench and signed the proposed order submitted by Respondent denying Werth's motion. (Tr. at 17.) The district court did not

issue any memorandum of law explaining the legal basis for its decision. The proposed order, however, contained an error identifying the amount in the M&I Account as \$18,939.50, rather than \$18,035.06. Respondent's counsel served a notice of filing order on October 29, 2008. Werth then timely filed this appeal from district court's denial of his motion for Claim of Exemption.

ARGUMENT

I. STANDARD OF REVIEW

The issues presented in this appeal are legal issues, and this Court needs to accord no deference to the trial court's determination on a question of law. *A.J. Chromy Construction Co. v. Commercial Mechanical Services, Inc.*, 260 N.W.2d 579, 582 (Minn.1977). Construction of a statute on appeal is a legal question subject to de novo review. *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006).

II. THE DISTRICT COURT ERRED WHEN IT CONCLUDED THAT MINNESOTA STATUTE § 550.37, SUBDIVISION 24 DOES NOT EXEMPT WERTH'S IRA ACCOUNTS FROM ATTACHMENT BY THE JUDGMENT CREDITOR

Minnesota Statute § 550.37 provides a list of property that is exempt from attachment by creditors. Included in this list are individual retirement accounts such as the ones at issue here. *See* Minn. Stat. § 550.37, subd. 24. The legislative intent for Subdivision 24 was to exempt *all* retirement income up to a certain threshold so as "to insure that debtors, despite their debts, will nevertheless have a reasonable means to support themselves and their dependents" *Clark v. Lindquist*, 683 N.W.2d 784, 786

(Minn. 2004) (quoting *Estate of Jones by Blume v. Kvamme*, 529 N.W.2d 335, 339 (Minn. 1995)). Specifically, the statute states:

Subdivision 1. **Exemption.** The property mentioned in this section is not liable to attachment, garnishment, or sale of any final process, issued from any court.

...

Subdivision 24. **Employee Benefits.** (a) The debtor's right to receive present or future payments, or payments received by the debtor, under a stock bonus, pension, profit sharing, annuity, *individual retirement account*, *Roth IRA*, individual retirement annuity, simplified employee pension, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent of the debtor's aggregate interest under all plans and contracts up to a present value of \$30,000 and additional amounts under all the plans and contracts to the extent reasonably necessary for the proper support of the debtor and any spouse or dependent of the debtor.

Minn. Stat. § 550.37, subd. 24 (a). (Emphasis added.)

The text of the statute contains no language requiring that the funds in an IRA or Roth IRA must be derived from employment related activity. Instead, the plain language of the statute states that all individual retirement accounts and Roth IRAs are protected under the statute up to the threshold amount plus any additional amount for the "proper support of the debtor."¹ The purpose of statutory interpretation is to ascertain the legislature's intent. When the words of a law as applied to an existing situation are free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing its spirit. See Minn. Stat. § 645.16; see also *Homart Dev. Co. v. County of Hennepin*, 538 N.W.2d 907, 911 (Minn. 1995) (stating that if a statute is free from

¹ The threshold amount was increased to \$60,000.00 at the time of the garnishment. Therefore, the entire balance of the Werth IRA and Werth Roth IRA are below the threshold amount and completely exempt.

ambiguity, court looks only at a statute's plain meaning). If the language of a statute is plain, that meaning is applied as a manifestation of legislative intent. *Kersten v. Minn. Mut. Life Ins. Co.*, 608 N.W.2d 869, 874-75 (Minn. 2000). The language of Minn. Stat. § 550.37, subd. 24, plainly states that all IRAs and Roth IRAs – up to the threshold amount – are exempt from execution and attachment. *See Clark*, 683 N.W.2d at 787 (“our legislature clearly intended that IRAs *generally* be exempt by expressly listing them” in Minn. Stat. § 550.37, subd. 24. (Emphasis added.)).

The intent of the legislature to protect from attachment all IRAs and Roth IRAs below the threshold amount is supported by reference to federal law. The Minnesota Legislature specifically used the term “individual retirement account” when it drafted Subdivision 24, which Congress had defined as:

Individual retirement account.—For purposes of this section, the term “individual retirement account” means a trust created or organized in the United States for *the exclusive benefit of an individual or his beneficiaries*, but only if the written governing instrument creating the trust meets the following requirements . . . [listing requirements]

26 U.S.C. § 408 (a). (Emphasis added.) In contrast, the same federal statute defines employer accounts as follows:

Accounts established by employers and certain associations of employees.—A trust created or organized in the United States *by an employer for the exclusive benefit of his employees or their beneficiaries*, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account . . . [listing requirements]

26 U.S.C. § 408 (c). (Emphasis added.) That Congress specifically listed individual retirement accounts separately from employer accounts shows that the term “individual

retirement accounts” presumes accounts that are set up outside a direct employment relationship. But all IRAs will be related to employment in some way because such accounts can only be funded by wages, salaries, commissions, self-employment income, alimony and separate maintenance, and nontaxable combat pay. *See* Internal Revenue Publication 590 at 8 (2008).

The district court erred in denying Werth’s claim for an exemption for his IRA and Roth IRA by narrowly construing the statute and requiring Werth to show that the funds in his IRAs were directly derived from employment activities. (Tr. at 17.) Again, there is no textual support for this holding in the text of the statute. Further, there are no published decisions by Minnesota state appellate courts supporting the interpretation advanced by the Judgment Creditor and erroneously adopted by the district court. To the extent that Respondent relies on federal bankruptcy decisions, those cases are not binding precedent, were wrongly decided and should be rejected.² *See Regner v. Northwest Airlines, Inc.*, 652 N.W.2d 557, 563 (Minn. Ct. App. 2002) (the Court of Appeals is not bound to follow Eighth Circuit precedent; it is merely persuasive authority).

Consequently, the district court wrongly adopted the reasoning of *Deretich v. City of St. Francis*, 128 F.3d 1209 (8th Cir. 1997). In that case, the Eighth Circuit held that

² Respondent will likely rely on *Westinghouse Credit Corp. v. J. Reiter Sales, Inc.*, 443 N.W.2d 837 (Minn. Ct. App. 1989), to support their claim that Werth’s IRAs are not exempt assets. While the Court in *Westinghouse* did cite approvingly to *In re Raymond*, 71 B.R. 628, 630 (Bankr. D. Minn. 1987), the case turned on whether a deferred compensation plan was within the list of enumerated retirement account in the statute. The case did not address individual retirement accounts. Therefore, the scope of protection offered by Subdivision 24 still has not been squarely addressed by the Minnesota appellate courts. This case provides this Court with such an opportunity and to clarify the broader scope of protections to debtors that the legislature clearly intended.

the exemption in Minn. Stat. § 550.37, subd. 24 required that “assets be directly derived from the debtor’s employment in order for the employee benefits to apply.” *Id.* at 1211. *But see, In re Raymond*, 71 B.R. at 630 (exempt funds have to be derived from “an employment relationship or any self-employment endeavor” (Emphasis added.)). In *In re Anderson*, 269 B.R. 27 (8th Cir. BAP 2001), the Court expanded the holding in *Deretich* and held that where a debtor obtained an interest in funds through a divorce decree and not through his own employment, such funds held in an IRA were not exempt. *Id.* The *Anderson* court, however, was clearly uncomfortable with its ruling and the harsh results from its application in *Deretich*. *Id.* at 32-33. The court qualified its holding by stating that if its interpretation of *Deretich* was incorrect or produced an unintended result, “that is a matter for the Eighth Circuit to straighten out.” *Id.* Fortunately, this Court now has the opportunity to “straighten out” this area of law.

Respondent’s entire argument – as well as the reasoning implicit in *Deretich* and *Anderson* – rests upon the flawed assertion that the heading “Employee Benefits” in Subdivision 24 creates an enormous exception to the plain language of the statute. Such a statutory interpretation should be avoided, however, because a heading is not a part of the statute itself. *See* Minn. Stat. § 645.49 (“The headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are *mere catchwords* to indicate the contents of the section or subdivision and are not part of the statute.” (Emphasis added.)). Similarly, this Court in *Hyland v. Metropolitan Airports Com’n*, 538 N.W.2d 717, 720 (Minn. Ct. App. 1995), held that although the title of a statute may be considered, “it is not of decisive significance and cannot be used to alter the plain import

of a statute's explicit language within the scope of the title.” Both Respondent and the federal courts have relied on the statute’s heading – a mere catchword – as decisive and used it to alter the plain meaning of Subdivision 24. There is nothing in the text of the main statute that requires funds in an IRA to be employment related. The federal courts have created this exception out of thin air by reading too much into the words “Employee Benefits.” As a result, the district court erred when it adopted the reasoning in *Deretich* and *Anderson*. Werth’s interest in the IRA accounts is exempt from attachment by the Judgment Creditor and the decision of the district court should be reversed.

Nevertheless, even if this Court adopts the reasoning in *Deretich* and *Anderson*, the district court’s decision still should be reversed. Under federal law, Werth’s IRA had to originate from “an employment relationship or any self-employment endeavor.” As summarized by IRS Publication 590, IRAs can only be wages, salaries, commissions, and self-employment income³ which is exactly what Werth identified as sources of the IRAs at the district court. All of the funds in the IRA accounts were derived from employment endeavors of either Werth or his wife. It is irrelevant that Werth received a portion of the IRA when his wife passed away. At the time of the garnishment, the IRA funds in their entirety were owned by Werth and Werth was the individual who possessed the right to receive payment of the IRA funds. See *Bank Leumi Trust Co. of New York v. Dime Sav. Bank of New York*, 650 N.E.2d 846, 846 (N.Y. 1995).

³ Werth did not fund his IRAs with alimony and separate maintenance, or nontaxable combat pay.

The total value of Werth's IRA accounts is less than \$45,000.00. This is significantly less than the allowable amount of the \$60,000 which is exempt from attachment by creditors. *See* Minn. Stat. § 550.37, subd. 4a (2008). Based upon this, Werth does not have to show that the amount is reasonably necessary for his support. *In re Estate of Jones by Blume v. Kvamme*, 529 N.W.2d 335, 339 (Minn. 1995). If he was required to make such a showing, he easily could. Werth is of retirement age collecting social security and is saddled with a considerable judgment. The relatively small amount of money in the IRAs will likely only support him for a few years.

Finally, the district court denied Appellant's motion for an exemption by ruling from the bench and signing Respondent's proposed order without amendment. (Tr. at 17.) It failed to draft any memorandum of law explaining the legal basis for its decision. To the extent that this Court has any difficulty determining the basis for the district court's decision, it should remand this matter for further proceedings. *See Edina Cmty. Lutheran Church v. State*, 673 N.W.2d 517, 523 (Minn. Ct. App. 2004) (remanding for further proceedings when district court failed to make findings permitting meaningful appellate review).

III. THE DISTRICT COURT ERRED BY DENYING WERTH'S CLAIM OF EXEMPTION FOR THE JOINT M&I BANK ACCOUNT PURSUANT TO MINNESOTA'S MULTI-PARTY ACCOUNTS ACT BECAUSE THE FUNDS IN THE ACCOUNT DO NOT BELONG TO HIM

The uncontroverted evidenced submitted to the district court was that all payments made by Werth into the M&I Bank Account were in repayment of promissory notes to

his son, Bradley Werth.⁴ The Multi-Party Accounts Act (“MPAA”), Minn. Stat. § 524.6-203(a), states that “A joint account belongs, during the lifetime of all parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.” In this case, such evidence of a “different intent” is present. Even though Werth did make contributions to the joint account, the intent of Werth and his son Bradley Werth was that every dollar he contributed was meant as repayment to Bradley Werth on amounts he loaned to Werth.⁵ (App. at 2, 7.)

Without any evidence to the contrary, the district court wrongly held that Werth had not shown that the money in the M&I Account was not his. (Tr. at 17.) Werth’s sworn testimony to the district court, however, was that any deposits made into the M&I Account were to repay his debt to Bradley Werth and that those funds were no longer his. (App. at 2, 7.) The un rebutted evidence submitted to the district court of this arrangement include: the promissory notes which show the loaned amounts; the fact that Bradley claims the account in its entirety on his income tax returns; and the sworn statements of both Werth and Bradley Werth confirming that this was their arrangement.

⁴ Although not formally a party to this matter, Bradley Werth has retained the undersigned to advance these arguments before this Court.

⁵ It is permissible for Werth to give a preference to the debt he owes his son:

Payment of an honest debt is not fraudulent under the general statutes against fraudulent conveyances although it operates as a preference, the rule being that a preference by an insolvent debtor of one of his creditors can be avoided only by appropriate proceedings under the bankruptcy law and is not open to attack in an action brought by another creditor.

Johnson v. O’Brien, 275 N.W.2d 720, 722 (Minn. 1966).

(App. at 1-9.) Therefore, under the MPAA, those funds are no longer available for attachment because Werth no longer owns them. *See Enright v. Lehmann*, 735 N.W.2d 326 (Minn. 2007) (intent of the joint account holders is key in determining ownership of funds).

Even if this Court rejects Werth's claim of exemption regarding the M&I Account, the Court should correct the district court's order garnishing \$18,939.50 from the account. The correct amount in the account at the time of the garnishment was \$18,035.06. (App. at 14.) At a minimum, the district court's order should be corrected to state the proper amount.

CONCLUSION

It is time for this Court to “straighten out” the erroneous interpretations of the plain language of Minn. Stat. § 550.37, subd. 24. Werth should be permitted to use his modest IRA accounts to support himself in his retirement years even despite his debt. This was the clear intent of the Legislature and its intent is buttressed by this State’s strong public policy favoring reasonable exemptions for debtors. The district court relied on erroneous, non-binding authority in reaching its decision and should be reversed. Further, the funds in the M&I Account do not belong to Werth and, thus, Respondent cannot be allowed to attach to it. Werth’s IRA accounts and his joint M&I Account are both legally exempt from attachment by Respondent and the district court decision should be reversed in its entirety with instructions to the district court that Werth’s claimed exemptions be granted.

NEVE & ASSOCIATES, PLLC

Dated: March 9, 2009

By



John R. Neve (#278300)
8500 Normandale Lake Blvd.
Suite 1080
Minneapolis, MN 55437
(952) 929-3232

**ATTORNEY FOR APPELLANT
DALE J. WERTH**