

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 REPLY BRIEF

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES **ii**

ARGUMENT **1**

 I. THE DISTRICT COURT SHOULD BE REVERSED BASED ON THE PLAIN
 LANGUAGE OF MINN. STAT. § 550.37 AND THE CLEAR POLICY
 ALLOWING REASONABLE EXEMPTIONS OF RETIREMENT INCOME.....1

 A. The Plain Language of Minn. Stat. § 550.37, subd. 24, Supports Reversal of
 the District Court.....1

 B. The Policy Behind Minn. Stat. § 550.37 Supports Reversal of the District
 Court4

 II. THE FUNDS IN THE M&I ACCOUNT CANNOT BE GARNISHED
 BECAUSE THE FUNDS DO NOT BELONG TO APPELLANT, BUT TO HIS
 SON BRADLEY WERTH5

CONCLUSION..... **6**

TABLE OF AUTHORITIES

Cases

<i>Clark v. Lindquist</i> , 683 N.W.2d 784	5
<i>Downing v. Ind. School Dist. No. 9</i> , 291 N.W. 613	2
<i>Lee v. Regents of the University of Minnesota</i> , 672 N.W.2d 366	1
<i>Myers v. Nwokedi</i> , 759 N.W.2d 426	2
<i>Poznanovic v. Maki</i> , 296 N.W. 415	5
<i>State v. Iverson</i> , 664 N.W.2d 346	1
<i>Westinghouse Credit Corp. v. J. Reiter Sales, Inc.</i> , 443 N.W.2d 837	3, 4

Statutes

26 U.S.C. § 408	3
Minn. Stat. § 524.6-203	5
Minn. Stat. § 550.37	<i>passim</i>
Minn. Stat. § 645.49	2

ARGUMENT

The plain language of Minn. Stat. § 550.37, subd. 24, requires that all individual retirement accounts be exempt from garnishment up to a certain threshold. Likewise, the legislative purpose behind the exemption also requires the same result. Mr. Werth's IRA and Roth IRA fall below that threshold and, therefore, are exempt. Federal decisions to the contrary are wrongly decided and not binding on this Court. Furthermore, Respondent's brief mischaracterizes Minnesota Appellate Court precedent.

I. THE DISTRICT COURT SHOULD BE REVERSED BASED ON THE PLAIN LANGUAGE OF MINN. STAT. § 550.37 AND THE CLEAR POLICY ALLOWING REASONABLE EXEMPTIONS OF RETIREMENT INCOME

A. The Plain Language of Minn. Stat. § 550.37, subd. 24, Supports Reversal of the District Court

The Respondent, and the nonbinding federal court cases on which it relies, takes the position that a headnote to a Minnesota statute should trump the plain language of the text of the statute itself. However, Minnesota does not interpret its statutes in that way. Rather, "(a) court must give effect to the plain meaning of statutory language." *Lee v. Regents of the University of Minnesota*, 672 N.W.2d 366, 373 (Minn. Ct. App. 2003). This is because "the best method of determining legislative intent is by relying on the plain meaning of the statute." *Id.* (citing *State v. Iverson*, 664 N.W.2d 346, 350-51 (Minn. 2003)). "If the statute is unambiguous when we apply the rules of ordinary usage and grammar, we have no authority to construe it further, but rather we apply its plain meaning." *Myers v. Nwokedi*, 759 N.W.2d 426, 429 (Minn. Ct. App. 2009).

In *Downing v. Ind. School Dist. No. 9*, 291 N.W. 613, 616 (Minn. 1901), the Court said that cardinal rules of contract interpretation also apply to the interpretation of statutes. The Court also said that one such rule is that “by what name an instrument is labeled is unimportant.” *Id.* Therefore, titles and headings are unreliable indicators of the meaning of substantive language. With respect to statutory headnotes, the Minnesota Legislature has codified this principle in Minn. Stat. § 645.49, which reads “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.”

The text of the statute (omitting all headnotes as they are not part of the statute) reads as follows.

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

...

Subdivision 24. (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 proper support of the debtor.

Minn. Stat. § 550.37.

Applying the ordinary rules of usage and grammar, the statute clearly exempts all individual retirement accounts and Roth IRA's up to the threshold amount. Therefore, it is unnecessary to look at headnotes or anything else outside the four corners of the language of the statute itself. The Respondent's reliance on the headnote "Employee Benefits" is misplaced. To the extent that federal courts have allowed that headnote to trump the statute itself, those decisions are contrary to Minnesota law and not binding on this Court. Further, the term "individual retirement account" is a term that was created by Congress. See 26 U.S.C. § 408(a). IRAs are accounts created for the "exclusive benefit of an individual" not an "employee." This Court can presume that the Minnesota Legislature was aware of Congress' definition when it enacted Minn. Stat. § 550.37.

Respondent has cherry-picked certain misleading dicta from *Westinghouse Credit Corp. v. J. Reiter Sales, Inc.*, 443 N.W.2d 837 (Minn. Ct. App 1989) in an attempt to support its position. The *Westinghouse* decision, however, does not control in this case. In *Westinghouse*, the debtor's funds were derived from self-employment endeavors. *Id.* at 839. Therefore, the Court in *Westinghouse* never addressed the issue of whether or not Minn. Stat. § 550.37, subd. 24, requires that the debtor derive the funds from employment. That was never an issue in *Westinghouse*. Rather, the Court in *Westinghouse* denied the Minn. Stat. § 550.37, subd. 24, exemption because the money was not set aside in a separate account specifically for the debtor. *Id.* at 840-41. *Westinghouse* also denied the exemption because the debtor already had other substantial retirement benefit plans. *Id.*

Unlike the debtor in *Westinghouse*, Werth has set aside the money in a separate individual retirement account specifically to support himself in retirement. Also, unlike the debtor in *Westinghouse*, all the combined money in Werth's IRA and his Roth IRA falls below the threshold of \$60,000.00 that is exempt from garnishment. Therefore, the *Westinghouse* decision is distinguishable and the plain language of the statute should control, not the flawed reasoning of nonbinding federal cases.

B. The Policy Behind Minn. Stat. § 550.37 Supports Reversal of the District Court

“The humane and enlightened purpose of an exemption [from attachment or garnishment] is to protect a debtor ... against absolute want by allowing ... out of his property some reasonable means of support ... and the maintenance of the decencies and proprieties of life.” *Poznanovic v. Maki*, 296 N.W. 415 (Minn. 1941). Likewise, the specific exemption in Minn. Stat. § 550.37, subd. 24, reflects “the legislative aim of exempting retirement income 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, 787 (Minn. 2004). In support of this purpose, “our legislature clearly intended that IRAs generally be exempt by expressly listing them.” *Id.*

In light of the purpose of the exemption, which is to allow debtors to retain the means to support themselves in retirement, it does not matter where the funds in an IRA were derived. What matters is the fact that the legislature has decided that up to \$60,000.00 in an IRA should be exempt from garnishment to allow individuals like Mr. Werth to support themselves in their retired years. Therefore, in addition to the

mandate of the text of the statute, the purpose of the statute also requires that all IRAs are exempt up to the threshold amount.

II. THE FUNDS IN THE M&I ACCOUNT CANNOT BE GARNISHED BECAUSE THE FUNDS DO NOT BELONG TO APPELLANT, BUT TO HIS SON BRADLEY WERTH

Because Bradley Werth, and not debtor Dale Werth, owned the funds in the M&I account, the district court erred by garnishing that account. The M&I Account is a joint account in the name of both Dale Werth and his son Bradley Werth. 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*” (emphasis added). In this case, there is clear and convincing evidence that every dollar which Appellant deposited into that account was intended to belong to Bradley Werth to repay promissory notes. Specifically, Dale and Bradley Werth submitted to the district court the promissory notes themselves, Bradley Werth’s tax returns which claimed the entire account as income, and the sworn testimony of both Bradley and Dale Werth as to their arrangement. (App. at 2 - 9). Werth also submitted an uncontested affidavits that the fund in the M&I Account were derived from his social security payments, which are also exempt. In contrast, Respondent did not submit so much as a scintilla of evidence to the district court in rebuttal. Nonetheless, the district court, without explaining its reasoning, ruled that the funds in the M & I Account were subject to garnishment. This ruling was completely contrary to the evidence and this Court should reverse it.

Finally, the district court erred once more when it garnished \$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).

CONCLUSION

Based upon the foregoing and the arguments in his opening brief, Appellant Dale Werth respectfully requests that the decision of the district court be reversed.

NEVE & ASSOCIATES, PLLC

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

Dated: April 20, 2009

ATTORNEY FOR APPELLANT