

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.

RESPONDENT'S BRIEF AND APPENDIX

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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).

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LEGAL ISSUES

1. **Did the Honorable Susan R. Miles ("Judge Miles") err in holding that Appellant Dale J. Werth ("Werth") failed to satisfy his burden of proving his individual retirement accounts ("IRAs") were exempt under Minn. Stat. § 550.37, Subd. 24?**

No. Judge Miles correctly held that IRAs must directly derive from an employment relationship and that Werth failed to satisfy his burden of proving the IRA funds exempt under Section 550.37, Subd. 24.

Authorities

Minn. Stat. § 550.37, Subd. 24

Westinghouse Credit Corporation v. J. Reiter Sales, Inc., 443 N.W.2d 837 (Minn. Ct. App. 1989)

Deretich v. City of St. Francis, 128 F.3d 209 (8th Cir. 1997)

2. **Did Judge Miles err in holding that Werth failed to satisfy his burden of proving by clear and convincing evidence that he intended the funds in an M&I Bank account be transferred to his son Brad Werth ("B. Werth") pursuant to Minnesota's Multi-Party Accounts Act, Minn. Stat. §524.6-203(a) (the "MMPA")?**

No. Judge Miles correctly held that Werth failed to satisfy his substantial burden of proving by clear and convincing evidence that he intended to transfer the M&I Bank funds to B. Werth.

Authorities

Minn. Stat. § 524.6-203

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

STATEMENT OF FACTS

I. The Judgment.

Respondent, Russell's AmericInn, LLC ("AmericInn"), holds a substantial civil judgment against Appellant in the amount of \$276,082.41 as of June 17, 2008 (the "Judgment"). RA-00002, 00020. This appeal relates to Appellant's exemption claims on two (2) pending garnishments. See App. Mem.

II. The Werth Garnishments.

AmericInn obtained a Judgment against Werth in the State of Kansas. On March 13, 2007 AmericInn docketed its foreign Kansas judgment within the Minnesota state court system. RA at 00002.¹ In an effort to collect on the Judgment, on June 6, 2008, AmericInn served non-earnings garnishments on TD Ameritrade and M&I Bank, among others. Id. AmericInn successfully garnished \$44,309.00 total from the Werth IRA Accounts - \$42,808.00 from the _____ IRA ("497 IRA") and \$1,501.00 from the _____ IRA ("483 IRA"). Id. AmericInn also successfully garnished \$18,939.50 that Werth deposited into an M&I Bank account (the "M&I Account"). RA-00004, 00012.

¹ References to "RA-____" throughout this Brief are citations to pages of Appellant's Appendix.

Werth claimed the garnished funds in the Werth IRA Accounts and M&I Account were completely exempt. Id. Specifically, Werth claimed both Werth IRA Accounts were generally exempt under Minn. Stat. 550.37, Subd. 24. Id. Werth further asserted that the M&I Account was a joint account held by him and his son, B. Werth. Id. Werth claimed the garnished funds were owned by B. Werth and, therefore, exempt under the MMPA. Id.

AmericInn timely objected to Werth's claimed exemptions. RA-00003. AmericInn asserted that Werth failed to satisfy his burden of proving the funds in the 497 IRA and 438 IRA (collectively the "Werth IRAs") were directly derived from an employment relationship as required by Section 550.37, Subd. 24 and attendant case law. RA-00006-00011, 00016-00018, 00034-00056. AmericInn further asserted that Werth failed to satisfy his substantial burden of clear and convincing evidence that he intended to transfer the M&I Account funds to B. Werth. RA-00011-00014.

III. The Exemption Hearing and Order.

Judge Miles conducted a hearing on October 10, 2008 to consider Werth's claimed exemptions. RA-00058. During argument, Werth conceded that he had the burden of proving that the funds were exempt. RA-00061. Werth contended that the Werth IRAs are exempt under Section 550.37, Subd. 24 up to \$60,000 "regardless of where the funds came from." RA-00060.

Werth reasoned that although courts "may" consider the heading - "Employee Benefits" - when construing the statute, the text of the statute should still control. RA-00062.

With respect to the M&I Account, Werth acknowledged that he was obligated to show, by clear and convincing evidence, that the funds in the M&I account were owned by Werth's son, B. Werth in order for the funds to be exempt under the Minnesota Multi Parties Act ("MMPA"). RA-00062. Werth contended that he intended to defer ownership of the M&I Account to B. Werth to repay certain promissory notes. RA-00063. Werth argued that the mere existence of the promissory notes and his self-serving affidavits satisfied his burden of clear and convincing evidence. RA-00063-RA-00064.

AmericInn responded to Werth's claims by bringing the following facts to the court's attention. First, the Werth IRAs was funded by two (2) transactions: (1) a rollover in 1999 from a Prudential Securities IRA (the "Prudential Account") investment account; and (2) an inheritance from his Werth's in 2003. RA-00066-00068. Second, Werth deposited all of the funds in the M&I Account. RA-00069. Third, other than the promissory notes, Werth failed to provide any evidence linking the M&I Account to the promissory notes, including any repayment on the alleged notes. RA-00070. Third, there was no plausible reason for Werth and B. Werth to have set up a

joint account to simply payoff a loan. RA-00071. There were enumerable other ways to pay the loan without the necessity of a joint account. Id.

Following argument Judge Miles held that based on the submissions and argument, Werth had wholly failed to satisfy his burden of proof. RA-00074. Judge Miles noted that accepting Werth's position would be "tantamount to saying that any IRA is, ipso facto, the product of employment wages or earnings." Id. Judge Miles further held that Werth had done nothing to satisfy his substantial burden of clear and convincing evidence to prove the M&I Account funds were not his. Id. Accordingly, Judge Miles denied Werth's exemption claims in total. Id.

ARGUMENT

I. Standard of Review.

The issue raised by Werth with respect to Section 550.37, Subd. 24 is a question of statutory interpretation and is subject to a de novo standard of review. In re Adoption of C.H. and A.H., 554 N.W.2d 737, 742 (Minn. 1996). However, the issues raised by Werth with respect to Minnesota's Multi-Party Accounts Act raise questions of fact and the decision of the lower court should not be set aside unless clearly erroneous. Bains v. Piper, Jaffray & Hopwood, Inc., 497 N.W.2d 263, 268 (Minn. Ct. App. 1993).

II. The Werth IRAs Are Not Exempt Under Minnesota Statute Section 550.37, Subd. 24.

A. Section 550.37, Subd. 24 Applies Only To Accounts That Are Employment Related.

Werth urges this Court to "straighten out" a perceived erroneous interpretation of Minnesota's garnishment exemption statute, Minn. Stat. § 550.37, Subd. 24. Section 550.37 states in pertinent part:

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

...

Subd. 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 support of the debtor and any spouse or dependent of the debtor.

(emphasis added). The judgment debtor bears the burden of proving entitlement to an exemption from garnishment. See Minn. Stat. § 550.37, Subd. 20 (1990) (the burden of establishing that funds are exempt rests upon the debtor).

Judge Miles denied Werth's Section 550.37, Subd. 24 exemption because he failed to satisfy his burden of proving the Werth IRAs directly derived from an employment relationship. Werth insists that Judge Miles erred because Section 550.37, Subd. 24 exempts all retirement income from garnishment up to a certain threshold. App. Mem. at 4. Werth again takes several strained legal and factual positions in an attempt to save his claimed exemption, each of which will be discussed below.

First, Werth contends that the intent of the Minnesota legislature was to generally exempt all IRAs is supported by federal law. App. Mem. at 6. Specifically, Werth "presumes" IRAs are naturally separate from employee benefits because Congress defined IRAs, 26 U.S.C. § 408(a), separate from employer accounts, 26 U.S.C. § 408(c). Id. at 7. Werth's presumption is based on the false premise that IRAs "can only be funded by employment based compensation." Id., See Infra Resp. Mem., at 15-16. Werth's reliance on the Internal Revenue Code's (the "Code") definition of an "individual retirement account" to construe Section 550.37 is misplaced.

How Congress defined terms in the Code has no bearing on how terms should be interpreted in Minnesota Statute Section 550.37. The Code is designed to raise revenue. Section 550.37 is concerned with exempting specific assets from garnishment. Although both the Code and Section 550.37

have provisions dealing with individual retirement accounts, the scope, direction and reasons for the provisions are almost wholly unrelated. Hodgson v. American Hardware Mut. Ins. Co., 329 F.Supp. 225, 229 (D. Minn. 1971).

In addition, Werth's logic actually supports the position that the Minnesota legislature intended to require IRAs be derived from an employment relationship for the exemption to apply. As Werth points out, the Code separates the definition of an IRA from the definition of an employment account. On the other hand, Section 550.37, Subd. 24 incorporates IRAs into the single category of "employee benefits." Unlike the Code, this indicates a clear intent by the legislature to tie IRAs to an employment relationship.

Second, Werth argues that the Judge Miles wrongly adopted the reasoning of Deretich v. City of St. Francis, 128 F.3d 209 (8th Cir. 1997) because Minnesota Courts are not bound to follow Eighth Circuit precedent. App. Mem. at 7-8. Werth asserts this case is an opportunity for this Court to "straighten out" the federal courts because "there are no published decisions by Minnesota state appellate courts supporting the interpretation" that the benefit must be derived from an employment related endeavor. Id. at 7-8, 13. This is patently false.

This Court in Westinghouse recognized that Section 550.37, Subd. 24 "exempts certain *employee benefits*." Westinghouse Credit Corporation v. J.

Reiter Sales, Inc., 443 N.W.2d 837, 839 (Minn. Ct. App. 1989). The Westinghouse decision is not limited in scope, but rather stands for the general rule that all "[b]enefits which are exempt under subdivision 24 are those *derived from an employment relationship or from self-employment endeavors.*" Id. (quoting In re Raymond, 71 B.R. 628, 630 (Bankr. D. Minn. 1987) (emphasis added). Notwithstanding the short thrift given to it in Werth's footnote, the Westinghouse decision squarely addressed and clarified the scope of Section 550.37, Subd. 24. App. Mem. at 7, fn. 2. The Westinghouse decision is precedent² and should stand as a guide for this Court to affirm Judge Miles' decision.

Finally, Werth argues that the courts have wrongly interpreted the exemption by placing too much emphasis on the "Employee Benefits" heading. App. Mem. at 8. Werth seeks to convince this Court that every court before it, including its own precedent, has wrongly decided this issue.

Courts have long recognized that "[t]he heading of the statute may be used to indicate what benefits the Minnesota legislature intended to exempt." In re Martin, 297 B.R. 750, 752 (8th Cir. BAP 2003). Indeed, "headings are relevant to legislative intent where they were present in the bill during the

² Even if Westinghouse were not binding, Werth admits that the Eighth Circuit is persuasive authority. See App. Mem. at 7 (citing Regner v.

legislative process.” Enright v. Lehmann, 735 N.W.2d 326, 334 (Minn. 2007) (quoting Minnesota Express, Inc. v. Travelers Ins. Co., 333 N.W.2d 871, 873 (Minn.1983)).

Werth relies on Minn. Stat. § 645.49 for the proposition that the "Employee Benefits" heading should not be considered. App. Mem. at 9-10 (citing Minn. Stat. Minn. Stat. § 645.49). However, Section 645.49 does not prohibit courts from considering the heading when construing a statute. Instead, the "Employee Benefits" serves to indicate that the legislature was aware that exempted benefits must be derived from an employment relationship. See Minn. Laws 1983, c. 235; See also Thompson v. Commissioner of Public Safety, 567 N.W.2d 280, 283 (Minn. Ct. App. 1997) (holding amendment to statute heading is indicator of legislative intent). Every state and federal court that has considered Section 550.37, Subd. 24 has expressly or implicitly held that the "Employee Benefits" heading is not a "mere catchword," but rather serves the important purpose of explaining the limitations of the exemption. Westinghouse, 443 N.W.2d at 839; Deretich, 128 F.3d at 1212; In re Martin, 297 B.R. at 752; In re Anderson, 269 B.R. at 31; In re Raymond, 71 B.R. at 630. The Westinghouse and In re Raymond decisions,

Northwest Airlines, Inc., 652 N.W.2d 557, 563 (Minn. Ct. App. 2002).

and their progeny, have correctly interpreted the statute by considering the "Employee Benefits" heading.

The courts have properly construed Section 550.37, Subd. 24 to require that benefits must be directly derived from an employment relationship or from self-employment endeavors to be exempt. Judge Miles rightly adopted the reasoning in these decisions by holding that Werth possessed the burden of proving the Werth IRAs were directly derived from an employment relationship. Judge Miles' decision should be affirmed.

B. Werth Failed to Satisfy his Burden of Proving that the Funds Are Employment Related.

Werth asserts that even if the Werth IRAs must be employment based, they still "derived from employment endeavors of either Werth or his wife." Mem. at 9. Specifically, Werth claims Internal Revenue Service Publication 590 ("IRS Pub. 590") proves that the Werth IRAs "had to originate" from an employment endeavor. Id. This claim is not supported by the law or the record.

Werth's assertion that all IRAs can only be "wages, salaries, commissions, and self employment income" is incorrect. App. Mem. at 7, 9. Werth confuses the qualifications necessary set up an IRA as opposed to how

IRAs can be funded. IRS Pub. 590 at 8. A person is qualified to set up an IRA if:

1. that person (or, if filing a joint return, the person's spouse) received taxable "compensation" during the year, and
2. that person was not age 70½ by the end of the year.

IRS Pub. 590 at 7-8. This is where Werth confuses the issue. Werth blurs the qualifying "compensation" referenced above with how an IRA can be funded. App. Mem. at 9. Specifically, the "compensation" referred to by Werth is a qualification issue, not a contribution issue. IRS Pub. 590 at 7-8, App. Mem. at 9. Contributions are a separate issue and can be made from any source, employment or non-employment, as long as the contribution consists of cash or cash equivalents. See 26 U.S.C. § 408(a)(1); IRS Pub. 590 at 20, 23, 29-30 (IRA transfers from inheritance, between retirement plans, and divorce). There are limitations associated with IRA contributions, but IRAs do not have to be funded solely through employment related sources. Id., App. Mem. at 9.

Notwithstanding Werth's flawed legal position, Werth failed to satisfy his burden of proving contributions to the Werth IRAs can be traced to an employment relationship. Instead, the record shows that Werth contributed non-exempt funds to the Werth IRAs. Specifically, the 497 IRA can be traced to two (2) separate sources of funding. First, Werth opened the 497 Account

by transferring approximately \$23,537.00 from the Prudential Account. Werth did not submit any evidence to trace the funds from the Prudential Account to an arguably exempt employment relationship. Second, Werth invested an inheritance from his wife to further fund the 497 IRA. Werth then funded the 438 IRA with funds from the non-exempt 497 IRA.

Werth asserts it is "irrelevant" that he funded a portion of the 497 IRA with an inheritance from his wife. App. Mem. at 9. As stated in Deretich, however, the funds must be "directly derived" from the debtor's employment, not the debtor's spouse. Deretich, 128 F.3d at 1212; See also, In re Anderson, 269 B.R. 27 (8th Cir. BAP 2001) (holding that IRA funds obtained through a divorce decree are not entitled to an exemption); See also, IRS Pub. 590 at 20, 23, 29-30 (IRA transfers from inheritance, between retirement plans, and divorce). Like the debtor in Deretich, Werth funded the Werth IRA Account with an inheritance from his wife and cannot claim those funds exempt under Section 550.37, Subd. 24.

There is no evidence in the record that the Werth IRAs were funded through a qualified self-employment endeavor or any other kind of employment relationship. To the contrary, the record proves that the Werth IRA Account funds are traceable to an inheritance and former investment account - both non-exempt sources of income. Werth failed to satisfy his

burden of proving that the Werth IRAs are exempt pursuant to Minn. Stat. Section 550.37, Subd. 24. Judge Miles decision should be affirmed.

III. Werth's M&I Account Funds, Although Jointly Held, are Not Exempt under the MMPA.

Werth next claims that the funds jointly held with B. Werth in the M&I Account are exempt. As Judge Miles properly recognized, the MMPA and settled case law, together with the specious circumstances underlying the alleged "loans" between Werth and his son, prove the M&I Account funds are not exempt.

Under Minnesota's Multiparty Accounts Act:

a joint account belongs, during the lifetime of all parties, to the 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.

Minn. Stat. 524.6-203(a) (emphasis added). The purpose of the statute is clear. A creditor seeking to garnish a debtor's jointly held account can only garnish funds in the account that were deposited by the debtor, as long as there is clear and convincing proof as to who made the deposits. Id. If the debtor deposits all the funds, those funds are available for garnishment absent "clear and convincing" evidence to the contrary. Id.

Werth argues that every dollar he deposited in the M&I Account was intended to repay certain loans between him and his son. Mem. At 11. Werth

asserts the promissory notes and the fact his son claimed the interest on the M&I Account on his taxes establishes by clear and convincing evidence B. Werth's ownership in the funds. As recognized by Judge Miles, Werth's submissions were woefully insufficient to satisfy his substantial burden of proof.

The Enright case addressed the issue of the intention of the creator in multiparty accounts and account fund ownership. The Enright court, in citing cases from many other jurisdictions, held that contributors to multi-party accounts of joint tenancy generally do not intend any "change in beneficial ownership." Id. at 332. Rather, the intention of such accounts is generally "testamentary" and the non-contributor of the account has "at most . . . a mere expectation of a right of survivorship." Id. In other words, a non-contributor, like B. Werth, does not own the funds Werth deposited. B. Werth can only claim a future interest in these funds. For Werth, the fact that he continues to maintain, as sole contributor, a joint account with his son supports the statement by the Enright court.

Werth submits the promissory notes alone satisfy his burden of proving by clear and convincing evidence an intent to transfer. Putting aside the promissory notes for a moment, the more problematic issue for Werth are the documents he failed to submit to support his claims. For example, Werth did

not submit a single document including any M&I Bank statements, deposit slips, cancelled checks or similar documents to prove: (1) that B. Werth actually loaned money to Werth; or (2) that the M&I Account was used to repay any such loan. The record is devoid of any documents to prove Werth only deposited, and never withdrew, funds from the M&I Account. There is no documentation to show when, where and how Werth allegedly made payments. Other than the self-serving affidavits, Judge Miles could not tell if payments were ever made on the alleged promissory notes. RA-00063. As recognized by Judge Miles, the record is completely devoid of any documentation that would serve to link any loan repayment to the M&I Account.

In addition to the complete lack of documentation, the existence of a joint account to pay a loan raised the specter of, perhaps, an account created in an attempt to protect funds that would have been available to creditors - especially in light of the substantial Judgment entered against Werth. RA-00071-00072. As pointed out by AmericInn, there is no conceivable reason the Werths needed a joint account to repay these "generous" loans. There is no requirement that Werth hold a joint account with his son to deposit money into his son's account. RA-00013. M&I Bank has locations in both Minnesota and Kansas. Id. Werth could have electronically transferred funds to an individual account belonging to his son. Id. They could have set up periodic ACH or

wire transfers. Id. Werth could have simply sent B. Werth a check. Id. Simply put, Werth presented no conceivable or plausible reason for him and his son to have a joint account to repay these purported loans.

Werth woefully failed to meet his substantial burden of proof by clear and convincing evidence that these funds are intended to belong exclusively to his son. Judge Miles' decision should be affirmed.

CONCLUSION

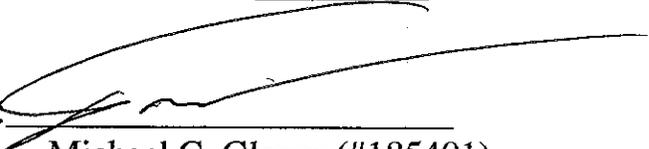
Judge Miles applied the correct legal standard in holding that Werth failed to satisfy his burden of proving the Werth IRAs were derived from an employment relationship. Judge Miles further appropriately held that Werth woefully failed to satisfy his substantial burden of clear and convincing

evidence that he intended to transfer the M&I Account funds to B. Werth under the MMPA. Judge Miles' Order should be affirmed in its entirety.

Respectfully submitted,

Date: April 9, 2009

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