

NO. A10-1241

State of Minnesota
In Court of Appeals

Midland Credit Management,

Respondent,

vs.

Eldridge Chatman,

Appellant.

RESPONDENT'S BRIEF

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STATEMENT OF LEGAL ISSUE

Are the proceeds from Appellant's personal injury settlement with the City of Minneapolis exempt under Minnesota Statutes section 553.07 subdivision 22?

STATEMENT OF FACTS

The parties have stipulated to the facts in this matter. On June 30, 2006, Midland Credit Management (Respondent) obtained a default judgment against Eldridge Chatman (Appellant) in the amount of \$32,101.72. (Ct. Order ¶ 2, June 21, 2010.)¹ On May 17, 2010, Respondent's counsel, Messerli & Kramer P.A., sent a garnishment summons to U.S. Federal Credit Union in an attempt to satisfy the judgment. (Ct. Order ¶ 7, June 21, 2010.)

On June 1, 2010, Respondent garnished \$20,870.14 from Appellant's bank account held at Federal Credit Union. (*Id.*) On June 4, 2010, Appellant served an exemption claim upon Respondent, claiming that the funds attached were exempt because they were from social security, accident, disability and/or retirement pension. (Ct. Order ¶ 8, June 21, 2010.) Respondent served and filed an objection to Appellant's exemption claim because Appellant had failed to meet his statutory burden demonstrating that the funds attached were from an exempt source. Minn. Stat. § 550.37 subd. 20.

A hearing was held on June 15, 2010. Counsel for both parties stipulated that the source of the levied funds was Appellant's personal injury proceeds. (Ct. Order ¶ 6, June

¹ Appellant did not order a hearing transcript and Respondent chose not to request one. Therefore, citations are being made to the District Court's Findings of Fact, Conclusions of Law and Order entered on June 21, 2010, to support the factual references. The District Court's Order has been previously produced by Appellant in the Appendix to his brief.

21, 2010.) Counsel for both parties agreed to brief the issue of whether personal injury proceeds are exempt from garnishment pursuant to Minnesota Statutes section 550.37 subdivision 22. The District Court properly ruled in Respondent's favor, holding that Minnesota Statutes section 550.37 subdivision 22 does not exempt the lump-sum settlement proceeds from a cause of action that was previously disbursed in full. (Ct. Order ¶ 10, June 21, 2010.)

STANDARD OF REVIEW

On questions of law, the standard of review is *de novo*. *McGlothlin v. Steinmetz*, 751 N.W.2d 75, 79 (Minn. 2008). Here, there are no questions of fact because the parties stipulated to the relevant facts. "The application of the law to the stipulated facts is a question of law, and thus is freely reviewable." *Morton Bldgs., Inc. v. Comm'r of Revenue*, 488 N.W.2d 254, 257 (Minn. 1992). The sole issue on appeal is whether settlement proceeds from a personal injury cause of action are exempt under Minnesota law.

ARGUMENT

I. The Plain Language of Minnesota Statutes section 550.37 subdivision 22 Governs This Action.

"When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language is subject to more than one reasonable interpretation." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (citation and quotations omitted). Because the provision

at issue is clear and unambiguous, the Court should look no further than the plain language to resolve this matter.

Appellant's original claim and argument rely heavily on Minnesota Statutes section 550.37 subdivision 22 which exempts "[r]ights of action for injuries to the person of the debtor or of a relative whether or not resulting in death." The plain language of the provision mandates only that "rights of action" are exempt – not the proceeds received from the rights of action.

A "right of action" is defined as "[t]he right to bring suit in a particular case. A present right to commence and maintain an action at law to enforce the payment or collection of a debt or demand." *Ballentine's Law Dictionary* 1190 (3d ed. 1969); *see In re Gagne*, 163 B.R. 819, 823 (Minn. 1994) (holding that because debtor no longer had a claim for compensation, rather only had proceeds arising out of the settlement, debtor's proceeds do not constitute a right of action); *see also In re Carlson*, 40 B.R. 749 (Minn. 1984) (holding that the statute only covers pending rights of action); *see also In re Medill*, 119 B.R. 685 (Minn. 1990) (holding that disputed, unliquidated claims for damages are exempted by the statute). Courts have consistently defined "rights of action" to only include pending or future unliquidated claims. *Gagne*, 163 B.R. at 823.

The District Court in this case ruled that proceeds from personal injury settlements are not exempt, because no such exemption exists. The plain language of the provision does not include any such exemption. In *Procter*, this issue was addressed. "The plain language of the statute is clear. It speaks only to the debtor's 'rights of actions,' not proceeds from the settlement of those rights." *In re Procter*, 186 B.R. 466, 469 (Minn.

1995). Furthermore, "[s]ettlement proceeds paid in full, by its own terms, negate the concept of 'rights of actions' as the paid party no longer has any 'rights' against the defending party." *Id.* There is a clear distinction between a claim to compensation and the compensation proceeds that were actually received by the injured. *Gagne*, 163 B.R. at 819. Appellant's "settlement of [the] personal injury action transforms the exempt 'right of action' into non-exempt 'proceeds' available to creditors." *Johnson v. Iannacone*, 314 B.R. 779, 781 (Minn. 2004). Further, there is no language in the provision to suggest a legislative intent to exempt "proceeds," "funds," "monies," "awards," or "settlements" arising out of rights of action. Instead, the legislature chose to exempt rights of action.

Here, Appellant previously did have a "right of action" against the City of Minneapolis for his injuries. However, Appellant satisfied his claim by receiving a lump sum payment. Once he received the settlement proceeds, his right of action was extinguished. Instead, he had the settlement proceeds themselves. Once the settlement was made and the proceeds realized, his right of action ceased to exist. Because he no longer has a valid right of action against the City of Minneapolis, Appellant is no longer entitled to the benefits provide by Minnesota Statutes section 550.37 Subdivision 22. *Proctor*, 186 B.R. at 470.

Although the cases that examine the plain language of the provision are bankruptcy cases, they all analyze the same statute and subdivision for the same general purpose. Appellant attempts to argue that bankruptcy courts are different from district courts. However, the only difference between the two forums in this context is that bankruptcy courts consider an exemption claim before property is attached whereas district courts

consider an exemption claim after the property has been attached. The results achieved in both forums are the same; if the exemption claim stands the debtor keeps the asset. If the exemption claim does not stand, the asset goes to the creditors, either directly or through the trustee. Therefore, Appellant's argument that bankruptcy cases are distinguishable is unpersuasive.

Appellant further claims that because his right of action for personal injury arose after default judgment was entered, that right of action should be exempt. This is an unsupported argument. The garnishment lien was not attached until the garnishment summons was served on Appellant's bank. Regardless, Appellant's right of action was exempt until it was converted into realized settlement funds.

Appellant seemingly confused garnishment liens with liens of judgment on real property. This case deals with garnishment liens and is governed by Minnesota Statutes section 571.81. Under Minnesota Statutes section 571.81 subdivision 1, the statute applicable here, the lien attaches at "the time of service of a garnishment summons upon a garnishee." Real property liens are governed by Minnesota Statutes section 548.09 subdivision 1. Under Minnesota Statutes section 548.09 subdivision 1, the lien attaches at "the time of docketing the judgment." These two statutes function differently.

In this case, the garnishment summons was served on Appellant's bank in June 2010. Only after service of the garnishment summons, when the lien attached, could Appellant claim an exemption. Nevertheless, at the time that he claimed an exemption, he no longer had a right of action because the settlement funds had been disbursed in full.

II. Case Law Declines to Extend the Provision to Include Personal Injury Settlement Proceeds.

A. Minnesota Case Law.

Recent Minnesota cases construing this exemption have carefully delineated the distinction between the right of action and the proceeds flowing from the settlement of the right of action. Only the former is exempt under Minnesota Statutes section 550.37 subdivision 22.

In *Procter*, the debtor received \$67,000 from a personal injury settlement. 186 B.R. at 467. Thereafter, the debtor listed the proceeds as exempt on his Schedule C for bankruptcy. *Id.* The court concluded that because the personal injury settlement proceeds were paid and received in full prior to filing for bankruptcy, the proceeds were not exempt under Minnesota Statutes section 550.37 subdivision 22. The court clearly abided by the plain language of the provision. The court stated that "'personal injury settlements are final and complete' and by inference, they are not exempt if they are paid in full" *Id.* at 468 (*quoting Gagne v. Christians*, 172 B.D. 50, 54 (Minn. 1994)). "Such 'rights of action' may either be a contingent claim or a pending settlement agreement not yet paid out or finalized" *Id.* at 469. The court held that:

In light of the case law's construction of the term, "rights of action," the plain language of the statute, and the legislature's public policy decision regarding the exemption of proceeds from personal injury settlement, the debtor is not entitled to claim the proceeds from his personal injury settlement as exempt.

Id. at 467-70.

In *Gagne*, the court also was faced with the task of construing Minnesota Statutes section 550.37 subdivision 22. The court was forced to determine whether the proceeds from a lump sum workers' compensation claim were exempt under the provision. *In re Gagne*, 163 B.R. 819, 822 (Minn. 1994). This court delineated between the right to action and the compensation proceeds actually received from the realization of that right to action. *Id.* at 821. Because the right of action was realized, and the money was disbursed to the injured, the debtors' right of action was relinquished. The court held, "they no longer have a claim for compensation. Instead, they have the proceeds arising out of the settlement." *Id.* at 823. Thus, the court held that the settlement proceeds were not exempt under Minnesota law.

Other courts have reached similar conclusions, although determining that unrealized funds were exempt, as opposed to a lump sum, since the right of action had not been fully extinguished. These cases are instructive to show that proceeds not yet realized may fall under the exemption in Minnesota Statutes section 550.37 subdivision 22. In *Dulas*, the debtor claimed an exemption for a structured settlement agreement for a personal injury claim. *In re Dulas*, 177 B.R. 897, 898 (Minn. 1995). The court in *Dulas* was called upon to determine whether the structured settlement, paid in installments over time, was exempt as a "right of action." The court held that the structured settlement was exempt and that "there is a clear distinction between payment of a settlement in a lump-sum as opposed to payment in a structured settlement over time." *Id.* at 899 n.1. Therefore, the court's decision turned on the fact that it was a payment over time, and the right of action

had not completely been relinquished since the debtor had not been fully compensated yet.

In *Medill*, the court also grappled with the right of action exemption. The debtor was awarded damages after a jury trial for a personal injury action. *In re Medill*, 119 B.R. 685, 687 (Minn. 1990). The debtor had not yet received the monetary award, and the judgment was subject to an appeal. *Id.* The debtor sought to claim an exemption to those damages in bankruptcy. The court stated that disputed, unliquidated claims fall "squarely within the ambit of the statute." *Id.* at 687.

Therefore, the courts are consistent in that they are willing to treat unrealized proceeds as a right of action, but not the realized paid in full settlement like the one received by Appellant. The exceptions carved out in *Dulas* and *Medill* are clearly distinguishable because Appellant received a lump-sum settlement, extinguishing his right of action. Thus, Appellant's exemption claim under Minnesota Statutes section 550.37 subdivision 22 is not applicable.

B. Other Jurisdictions' Case Law.

Half of the states in our country do not allow an exemption for personal injury rights of action. *In re Webb*, 210 B.R. 266, 272 (E.D. Vir. 1997). The other half allow some form of exemption for personal injury or wrongful death rights of actions. Minnesota is one of the twenty-five states that has an exemption, albeit it is limited to "[r]ights of action for injuries to the person of the debtor or of a relative whether or not resulting in death." Minn. Stat. § 550.37, subd. 22. Other states have similar limitations and have

also refused to extend their respective provisions to include the settlements flowing from personal injury actions.

In Mississippi, there is an exemption for the "proceeds of any judgment," not to exceed \$10,000, "recovered by any person on account of personal injuries sustained" Miss. Cod. Ann. § 85-3-17 (2010). In *Marshall v. Pongetti*, the debtor claimed an exemption in bankruptcy in the amount of \$16,000 in personal injury settlement funds. 332 B.R. 284, 284-85 (N.D. Miss. 2005). The court interpreted the plain language of the statute to "limit exceptions to 'the proceeds of any judgment' and not to 'settlement' which is not a term used in the statute." *Id.* at 285. Despite the explicit reference to "proceeds" in the statute, the court declined to extend the exemption to apply to *settlement* proceeds. In the court's order affirming the refusal to extend the exemption, the judge concluded that "permitting the exemption sought would represent an impermissible judicial broadening of the statute." *Id.* Therefore, the court dismissed the appellant's appeal and declined to extend the provision to reach settlement proceeds.

In *Searcy*, a bankruptcy case out of Missouri, the court was called upon to construe the Missouri statute regarding exemptions of personal injury settlement proceeds. *In re Searcy*, 193 B.R. 895, 896 (W.D. Mo. 1996). Under Missouri statute, exemptions are allowed for "property that is specified under [the Bankruptcy Code]." Mo. Stat. Ann. § 513.427 (2010). The court determined that property in Missouri is exempt if "it is not subject to attachment and execution." *Id.* at 896. Particularly, the court reasoned that because the realized settlement proceeds were not "assignable," they were not exempt. If one had a cause of action for personal injury, they could not assign that cause of action to

another. However, if the settlement proceeds were paid out to the individual, those proceeds could be transferred to another. *See Scarlett v. Barnes*, 121 B.R. 578, 581 n.4 (W.D. Mo. 1990) ("[o]nce the unassignable claim is reduced to a money judgment, then the judgment itself may be assigned, and it is subject to attachment and execution.") The court concluded that "[a]t the time of settlement debtor no longer possessed a claim for personal injury, and the proceeds he received in settlement thereof were not exempt." *Searcy*, 193 B.R. at 897.

The New York legislature decided to opt-out of the federal exemptions under the federal bankruptcy code and enact its own exemption statutes. New York allows an exemption for "personal injury recoveries" up to \$7,500. N.Y. Debt. & Cred. Law § 282(3)(iii) (McKinney 1992). New York has also construed its statutory provision narrowly, holding that the settlement proceeds from a personal injury claim are not exempt from creditors' claims. *In re Corbi*, 149 B.R. 325, 334 (E.D.N.Y. 1993).

III. Public Policy Mandates that Personal Injury Settlement Proceeds not be Exempt.

Under common law, all of the debtor's property was subject to execution for payment of his debts. *Ward v. Huhn*, 16 Minn. 159, 161 (1870). Any statutory exemptions should be read with that history in mind. Furthermore, as many courts have pointed out, whether particular funds should be exempted from garnishment is purely a matter of public policy. Matters of public policy can "under our constitutional system, be fixed only by the people acting through their elected representatives . . ." *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 524 (1959). As such, courts are reluctant to enter into

the public policy arena, leaving that task to the legislature. The court's role is purely of statutory interpretation, and should look only to the plain language of the statute and the established precedent on the issue. Therefore, the judiciary must defer to the legislature's public policy decisions.

Here, the Minnesota legislators chose not to enact an exemption for the settlement proceeds resulting from personal injury claims. *Procter*, 186 B.R. at 469. Their purposeful decision not to address this issue establishes that they made a conscious decision not to exempt settlement proceeds. Furthermore, the courts in Minnesota have been adjudicating this matter since at least 1994. *Id.* Courts have continually held that personal injury settlement proceeds are not exempt, and the legislature has essentially acquiesced to the precedent that has been set. *Id.* If the legislature intended for Minnesota Statutes section 550.37 subdivision 22 to have a different meaning, they have had every opportunity to amend the provision to include personal injury settlement proceeds as well. *Id.* Nevertheless, they have not done so. Therefore, the established precedent stands.

Based upon the public policy considerations and the clear language of the statute that the legislature crafted, the Court should affirm the District Court's holding that Minnesota Statutes section 550.37 subdivision 22 does not allow an exemption for the settlement proceeds stemming from a personal injury claim.

CONCLUSION

The plain language of Minnesota Statutes section 550.37 subdivision 22 mandates that settlement proceeds are not exempt under Minnesota exemption law. Furthermore,

Minnesota case law is in resounding concurrence with the plain language of the statute. Minnesota is not alone in this sentiment; there are many other states which have declined the extend their right of action exemptions to include personal injury settlement proceeds. For all of the foregoing reasons, the District Court's ruling should be affirmed.

Dated: This 7 day of October, 2010



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Pursuant to Rule 132.01 subdivision 3 of the Minnesota Rules of Appellate Procedure, I hereby certify that this brief was prepared for submission using Microsoft Word 2002, that it complies with the typeface requirements of the Rule, and that it contains 3486 words.

Respectfully submitted,


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