

Garnishment Statute Declared Unconstitutional By Dodie Sachs

The United States District Court for the Northern District of Georgia issued a ruling on September 8, 2015 declaring that Georgia's garnishment statute is unconstitutional, and issued an injunction to the Clerk of Court in Gwinnett County to stop issuing Summons of Garnishment. This injunction only applies to Gwinnett County as the underlying case arises from our County. A summary of the case follows, but the whole opinion can be found in the case Tony W. Strickland v. Richard T. Alexander, Clerk of Court of the State Court of Gwinnett County, Georgia, Civil Action File No. 1:12-CV-02735-MHS.

Tony Strickland was diagnosed with cancer in 2004. Mr. Strickland survived cancer, but as a consequence of his chemotherapy treatments, he was not able to work as many hours as he previously was able. Due to his reduced income, he defaulted on a Discover Credit Card. Mr. Strickland subsequently developed other health issues. In 2009, Mr. Strickland injured his back at work and as a consequence received a lump sum settlement for worker's compensation benefits. This settlement was placed in a separate bank account at JP Morgan Chase. In 2011, Mr. Strickland's health issues progressed to the point that he received Social Security Disability Insurance payments.

In April 2012, Discover sued Mr. Strickland for the unpaid balance on his credit card account, and secured a default judgment against him in Fulton County. In July 2012, Discover filed a garnishment action against Mr. Strickland in the State Court of Gwinnett County. Discover served the garnishment action on Chase, who was the holder of a bank account containing solely workers' compensation benefits. Chase filed an Answer in the garnishment action and paid the entire balance of Mr. Strickland's account into the Registry of the Court as proceeds relating to the Garnishment.

Mr. Strickland, through his Gwinnett Legal Aid attorney, filed a Claim for Funds with the Court asserting that Mr. Strickland had a superior claim to the funds and that they were exempt from garnishment as they were workers' compensation proceeds. While initially Discover opposed the Claim, they dismissed the garnishment. The day after the dismissal, the Court released the funds, but they weren't received by Mr. Strickland's attorney until November 2, 2012. In all, Mr. Strickland was deprived of his funds for 115 days, nearly four months.

While the garnishment action was still pending, Mr. Strickland filed an action in federal court against Richard Alexander, as Clerk of State Court, Discover, Chase, and Discover's attorneys alleging that Georgia's post-judgment garnishment statute was unconstitutional. Mr. Strickland asserted two claims for the Defendants unconstitutionally depriving him of his property; one under the Due Process Clause of the 14th Amendment to the United States Constitution, and one under the Due Process Clause of the Georgia Constitution.

Mr. Strickland alleges that O.C.G.A. § 18-4-64 does not comply with due process requirements because it does not require that notice be provided of the statutory exemptions. Mr. Strickland claimed that the entire garnishment process fails to comply with due process requirements as it does not provide a prompt procedure for the debtor to claim an exemption and regain possession of protected property. Finally, he alleges that O.C.G.A. § 18-4-83 fails to comply with due process requirements as it does not require that notice of the Garnishment Answer be served upon the debtor, even though the debtor only has 15 days to file a traverse of the Answer.

The Court agreed with Mr. Strickland and declared that Georgia's post-judgment garnishment

procedures, O.C.G.A. §18-4-80 et. Seq., are unconstitutional. The Court enjoined Mr. Alexander as Clerk of Court from issuing any Summons of Garnishment pursuant to the existing forms and procedures.

At this time, in Gwinnett County no summons will be issued and no disbursements will be issued in pending cases until further order of the Court. If funds are paid into the Registry of the Court after September 8, 2015, they will be returned. These procedures can change as new information becomes available. The Gwinnett County Courts' website, www.gwinnettcourts.com, will continue to be updated with additional information regarding garnishments as it becomes available. It is unknown at this time how other counties are addressing the garnishment procedures, and whether they will continue to issue Garnishment Summons.