

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 12-402
	:	
of	:	December 20, 2013
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THE HONORABLE KATHLEEN HREPICH, INTERIM DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES, has requested an opinion on the following question:

When the Department of Child Support Services has issued a withhold order on the bank account of a debtor owing delinquent child support, and funds in the debtor's account are eligible for protection under three different exempting provisions (California Code of Civil Procedure section 704.080, California Family Code section 17453(j)(2), and 31 Code of Federal Regulations Part 212, section 212.6), should the responding bank "stack" the exemptions—that is, add together the amounts that would be protected under each exemption—to calculate the amount protected, or is the debtor's protection limited to the amount excluded under the largest of the three individual exemptions?

CONCLUSION

When the Department of Child Support Services has issued a withhold order on the bank account of a debtor owing delinquent child support, and funds in the debtor's account are eligible for protection under each of the three exempting provisions mentioned above, the total amount protected is not determined by adding together, or "stacking," the three exemptions; rather, the debtor's funds are protected only up to the amount excluded under the largest of the three individual exemptions.

ANALYSIS

Created in 1999, the Department of Child Support Services ("Department" or "DCSS") administers the state's Child Support Services Program, which includes "a network of 52 county and regional child support agencies" and which operates in conjunction with parents and guardians to ensure that "children and families receive court-ordered financial and medical support."¹ DCSS "shall administer all services and perform all functions necessary to establish, collect, and distribute child support,"² and is designated by the Legislature as "the single organizational unit whose duty it shall be to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity" in compliance with federal law.³ The Department is managed by a Director, who is appointed by the Governor with the consent of the Senate.⁴

The Department's mission is significant, and the parental duty to provide child support is a matter of compelling public policy. As courts have observed, "[t]he duty to support children of any age is legislatively designed 'to protect the public from the burden of supporting a person who has a parent . . . able to support him or her.'"⁵ The purpose of child-support enforcement orders is not to vindicate parental rights, but to

¹ See the Department's website, at <http://www.childsup.ca.gov/Home.aspx>; see also Fam. Code §§ 17200-17210; see generally Fam. Code §§ 17000-17804.

² Fam. Code § 17200.

³ Fam. Code § 17202. Title IV-D of the Social Security Act (42 U.S.C §§ 651-669(b)) conditions states' receipt of certain federal funding upon their compliance with federally established requirements for centralized state-run child-support-enforcement programs. See e.g. *Blessing v. Freestone*, 520 U.S. 329, 333-335 (1997).

⁴ Fam. Code §§ 17300 & 17302.

⁵ *In re Marriage of Drake*, 53 Cal. App. 4th 1139, 1154 (1997) (internal citations omitted).

protect “the right of the *child* to continued support.”⁶ Hence, the duty is enforceable even when the non-custodial parent’s child-visitation rights have been violated by the custodial parent,⁷ and a child support order even survives as a charge against the paying parent’s estate after that parent’s death.⁸ In addition, in light of the strong public policy in favor of the child’s right to receive support, courts have concluded that “an agreement between parents purporting to modify the child’s right to support is not binding on the court or the child.”⁹ Insofar as the child’s welfare is concerned, the recovery of a delinquent parent’s past-due payments may be just as important as the enforcement of his or her current obligations:

The failure of a non-custodial spouse promptly to pay child support impoverishes the child by forcing the custodial spouse to defer some expenses, to borrow to pay those expenses which cannot be deferred, or to deplete savings earmarked for future security. Arrearages, when finally collected, do not somehow lose their character as being necessary to support the child’s welfare. On the contrary, access to these arrearages may be as critical to the child’s welfare as are access to current payments, because arrearages may be the only source available for the family to replenish their depleted resources.¹⁰

Among the programs administered by the Department is the Financial Institution Data Match System (or “FIDM”), a special bank-account program established in 2004 to facilitate the collection of delinquent child-support payments.¹¹ FIDM is operated in coordination with financial institutions doing business in the state, and it relies to a great extent on automated data exchanges. Under this program, the Department provides financial institutions with the names and other identifying information of “past-due

⁶ *In re Marriage of Ryall*, 154 Cal. App. 3d 743, 751 (1980) (emphasis added).

⁷ Code Civ. Proc. § 1218(b); *see also e.g. Moffat v. Moffat*, 27 Cal. 3d 645, 653 (1980); *In re Marriage of Ciganovich*, 61 Cal. App. 3d 289, 294 (1976).

⁸ *Taylor v. George*, 34 Cal. 2d 552, 556 (1949); *Kelly v. Bank of America Natl. Trust & Savings Assn.*, 225 Cal. App. 2d 193, 194 (1964).

⁹ *Armstrong v. Armstrong*, 15 Cal. 3d 942, 947 (1976); *Hoover-Reynolds v. Super. Ct.*, 50 Cal. App. 4th 1273, 1279 (1996); *In re Marriage of O’Connell*, 80 Cal. App. 3d 849, 856 (1978).

¹⁰ *Hoover-Reynolds*, 50 Cal. App. 4th at 1280 (holding that “public policy precludes an attorney’s charging lien from being enforced against court-ordered child support payments.”).

¹¹ 2004 Stat. ch. 806, § 6 (Assembly 2358).

support obligors”—that is, parents who are in arrears on their court-ordered child-support payments—and the financial institutions cross-check that information against their own lists of accountholders to determine whether any of the identified debtors holds an account at the institution.¹² In that event, the institution provides that name and account number to DCSS,¹³ and DCSS may issue a levy, or “notice or order to withhold,” on that account in the amount of the delinquency. The financial institution must then withhold that amount from the obligor’s account and transmit it to DCSS.¹⁴

In some cases, however, the identified support obligor’s account may be eligible for one or more “exemptions,” under which some amount of the assets in that account would be immune from the Department’s order to withhold. It is those cases—more specifically, the circumstances identified in Family Code section 17453(j)(1)—that are the subject of this opinion. We are asked how an obligor’s total exemption amount is calculated when he or she qualifies not only for the exemption afforded under Family Code section 17453(j)(2), but also for the additional exemptions provided in section 704.080 of the Code of Civil Procedure and in 31 Code of Federal Regulations, section 212.6.

The Exemptions

1. Family Code Section 17453

Under section 17453(j) of the Family Code, \$3,500 of an obligor’s assets is automatically exempt from collection—that is, without the obligor’s having to file any claim for protection—if: (1) the obligor is in compliance with a court-ordered payment schedule for child-support arrearages; (2) the obligor’s employment earnings are already being withheld (or “garnished”) to repay the arrearages pursuant to an existing order; or (3) at least half of the obligor’s earnings are already being withheld for support.¹⁵ The

¹² Fam. Code § 17453(a).

¹³ Fam. Code § 17453(d)(1).

¹⁴ Fam. Code § 17453(d)(2) and § 17454; *see also In re Marriage of Lamoure*, 198 Cal. App. 4th 807, 815-816 (2011).

¹⁵ Family Code section 17453(j) provides, in its entirety:

(1) Each county shall notify the department upon the occurrence of the circumstances described in the following subparagraphs with respect to an obligor of past-due support:

(A) A court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the obligor is in compliance with that order.

purpose of this exemption is to provide the obligor with means to take care of his or her “*essential needs*” without unduly thwarting court-issued support orders or undermining the obligation to make ongoing child-support payments.

2. 31 Code of Federal Regulations, Section 212.6

Part 212 of the Code of Federal Regulations governs bank accounts into which protected federal benefit payments are directly deposited.¹⁶ As to each such account, section 212.6 automatically exempts from any withhold order, levy, or garnishment a variable “protected amount”¹⁷ that is the lesser of (a) the total “benefit payments” that were directly deposited into the account during a two-month “lookback period,” or (b) the account’s balance on a specified date.¹⁸ Under this regulation, a financial institution receiving a levy or other garnishment order must promptly undertake an “account review” to determine whether the targeted account received qualifying payments during the lookback period.¹⁹ If qualified deposits were made during that time, then the levy can

(B) An earnings assignment order or an order/notice to withhold income that includes an amount for past-due support has been served on the obligated parent’s employer and earnings are being withheld pursuant to the earnings assignment order or an order/notice to withhold income.

(C) At least 50 percent of the obligated parent’s earnings are being withheld for support.

(2) Notwithstanding section 704.070 of the Code of Civil Procedure, if any of the conditions set forth in paragraph (1) exist, the assets of an obligor held by a financial institution are subject to levy as provided by paragraph (2) of subdivision (d). However, the first three thousand five hundred dollars (\$3,500) of an obligor’s assets are exempt from collection under this subdivision without the obligor having to file a claim of exemption.

¹⁶ In this context, “protected federal benefit payments” include specified Social Security Administration payments (*see* 42 U.S.C. §§ 407 & 1383(d)(1)); Veterans Affairs payments (*see* 38 U.S.C. § 5301(a)); Railroad Retirement Board payments (*see* 45 U.S.C. §§ 231m (a) & 352(e)); and Office of Personnel Management payments (*see* 5 U.S.C. §§ 8346 & 8470). 31 C.F.R. §§ 212.2(b) & 212.3.

¹⁷ 31 C.F.R. § 212.6(a), (b), and (c).

¹⁸ 31 C.F.R. § 212.3; *see also* 31 C.F.R. § 212.6.

¹⁹ 31 C.F.R. § 212.5; *see also* 31 C.F.R. § 212.3, which defines “account review” as “the process of examining deposits in an account to determine if a benefit agency has deposited a benefit payment into the account during the look back period.”

be applied only to funds in the account that exceed the “protected amount.” As the federal regulations explain,²⁰ the purpose of this exemption is to “protect Federal benefits from garnishment by establishing procedures that a financial institution must follow.”²¹

3. Code of Civil Procedure Section 704.080

California’s Code of Civil Procedure sets forth various categories of property that are exempt from the enforcement of money judgments. Specifically, Code of Civil Procedure section 704.080 concerns bank accounts into which the government directly deposits “public benefits or social security benefits.”²² Subdivision (b) of this section automatically exempts specific amounts (between \$1,225 and \$3,650) of specific kinds of deposits.²³ Subdivision (d) of this section provides a supplementary exemption insofar as

²⁰ 31 C.F.R. § 212.1.

²¹ We note that, under another provision of federal law, this exemption does not extend to most otherwise-eligible federal benefit payments when the garnishment order has been issued pursuant to an approved state program to recover child-support arrearages. *See* 42 U.S.C. § 659; *see also e.g. DeTienne v. DeTienne*, 815 F. Supp. 394, 395-397 (D.C. Kan. 1993); *Metz v. Metz*, 101 P.3d 779, 784-786 (Nev. 2004).

Subdivision (a) of 42 U.S.C. section 659 thus provides:

Notwithstanding any other provision of law . . . , moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject . . . to withholding by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

Moneys subject to this exception specifically include, for example: compensation for personal services; retirement pay and pensions; survivors’ benefits; workers’ compensation benefits; death benefits; certain compensation for service-connected disabilities; and benefits payable under the Railroad Retirement System. 42 U.S.C. § 659(h)(1). We do not explore the nature and scope of this exception here, however, because we have been asked to assume for purposes of this inquiry that a targeted account qualifies for the exemption.

²² Code Civ. Proc. § 704.080(a)(1); *see also* Code of Civ. Proc. § 704.080(a)(2), in which the terms “social security benefits” and “public benefits” are defined.

²³ Code Civ. Proc. § 704.080(b) provides:

the account balance beyond those amounts is attributable to payments of the eligible benefits.²⁴

The “social security benefits” covered by these provisions are “payments authorized by the Social Security Administration for regular retirement and survivors’ benefits, supplemental security income benefits, coal miners’ health benefits, and disability insurance benefits”²⁵—revenue sources that appear also to be encompassed by the exemption provided in 31 Code of Federal Regulations section 212.6. Therefore, to the extent that there is any overlap or inconsistency between the two schemes, the state’s exemption provision may be a nullity under the doctrine of federal preemption.²⁶ We

(b) A deposit account is exempt without making a claim in the following amount:

(1) One thousand two hundred twenty-five dollars (\$1,225) where one depositor is the designated payee of the directly deposited public benefits payments.

(2) Two thousand four hundred twenty-five dollars (\$2,425) where one depositor is the designated payee of directly deposited social security payments.

(3) One thousand eight hundred twenty-five dollars (\$1,825) where two or more depositors are the designated payees of the directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under paragraph (1) applies.

(4) Three thousand six hundred fifty dollars (\$3,650) where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under paragraph (2) applies.

²⁴ Code Civ. Proc. § 704.080 (c) provides:

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments of public benefits or social security benefits.

²⁵ Code Civ. Proc. § 704.080(a)(2).

²⁶ See e.g. *Lopez v. Washington Mut. Bank*, 302 F.3rd 900, 906-907 (9th Cir. 2002); amended on denial of rehrg., 311 F.3d 928 (9th Cir. 2002) (Code Civ. Proc. § 704.080 is preempted by 12 C.F.R. §§ 557.11-557.13 [regulations promulgated by the federal Office of Thrift Supervision (“OTS”)] because the state statute purports to (1) impose requirements governing “checking accounts;” (2) impose requirements regarding “funds

need not address that issue here, however, because we have been asked to assume for purposes of our analysis that Code of Civil Procedure section 704.080 is valid.

So, assuming that all three kinds of exemptions applied to a given bank account, the question is how the exemptions would work together, and how a financial institution should calculate the total amount that is to be protected from a child-support withhold order issued by the Department.

“Stacking” Exemptions

One approach currently followed by many banks, we are told, is to “stack” the exemptions to calculate the total amount of protected funds. We conclude, however, that stacking is not the appropriate method to determine an obligor’s total protection in these situations.

The term “stacking” is routinely used in the insurance context when an insured has more than one policy covering the damage or injury in question. The California Supreme Court recently explained this meaning of “stacking” in a case where hazardous waste had invaded a site for many years and during many policy periods:

“Stacking” generally refers to the stacking of policy limits across multiple policy periods that were on a particular risk. In other words, “Stacking policy limits means that when more than one policy is triggered by an occurrence, each policy can be called upon to respond to the claim up to the full limits of the policy.” [Citation.] “When the policy limits of a given insurer are exhausted, [the insured] is entitled to seek indemnification from any of the remaining insurers [that were] on the risk. . . .” [Citations.] The all-sums-with-stacking indemnity principle . . . “effectively stacks the insurance coverage from different policy periods to form one giant ‘uber-policy’ with a coverage limit equal to the sum of all purchased insurance policies. . . .” [Citation.]²⁷

In our present context, the Department and interested financial institutions use the

availability;” and (3) impose requirements governing “service charges and fees”—matters expressly reserved for exclusive regulation by the OTS).

²⁷ *State v. Continental Ins. Co., et al.*, 55 Cal. 4th 186, 200-201 (2012), citations omitted; see also *Black’s Law Dictionary* (9th ed. 2009) at 1534 (“stacking”), def. 1: “Insurance. The process of obtaining benefits from a second policy on the same claim when recovery from the first policy alone would be inadequate.”

term “stacking” to mean adding together all available asset-protection rules to arrive at the sum of all the individual exemptions. Thus, if an obligor’s account had a substantial balance when a child-support withhold order arrived, this bank-created cumulative exemption would shield not just the greatest of the exemption amounts for which the account was qualified, but the sum total of all possible exemption amounts for which the account was qualified. While we can understand why a bank might adopt this “stacking” approach as a defensive measure to avert potential legal challenges from its account holders, we find no basis for it either in the statutes themselves or in the policies they are designed to advance.

It makes sense to recognize the “all-sums-with-stacking indemnity principle” in the insurance context, where the insured’s recovery from any single policy may be inadequate to cover the insured’s losses.²⁸ Here, in contrast, all three exemptions are aimed at achieving essentially the same end: a balance between providing for the “essential needs” of a parent in arrears on child-support payments on the one hand, and the rights of the children to receive both past-due and ongoing financial support from the parent. There is no suggestion here that account holders’ essential needs are any greater when they qualify for three different statutory exemptions than when they qualify for only one. To the contrary, the kinds of exemptions for which a single account may qualify appear to be largely redundant. Thus, we conclude that employing the stacking approach is contrary to the compelling public policy of enforcing parents’ responsibility for the support of their children.

To be sure, the exemption provisions in question do not expressly mention one another, nor do they include specific instructions concerning whether or how to combine overlapping protections. Each of the three exemptions features its own formula for calculating the amount of an exemption. Each may also advance a somewhat different legislative purpose. But none of these details undermines our conclusion, which is grounded in California’s policy favoring “rigorous enforcement of the child support obligation,”²⁹ and in recognition of the general principle that laws affecting child-support awards should not be interpreted in a manner that would frustrate the purpose of those awards;³⁰ rather, they should be “liberally construed” to achieve their intended objective.³¹

²⁸ *State v. Continental Ins. Co.*, 55 Cal.4th at 200-201.

²⁹ *In re Marriage of Ryall*, 154 Cal. App. 3d at 751.

³⁰ *Hoover-Reynolds*, 50 Cal. App. 4th at 1278-1280; *In re Marriage of Ryall*, 154 Cal. App. 3d at 751.

³¹ *In re Marriage of Ryall*, 154 Cal. App. 3d at 751. The priority accorded to legal child-support obligations is further reflected in 42 U.S.C. section 659(a), discussed *supra*

We believe that the letter of all three laws, as well as the overarching policies of the state, would be best served if a financial institution, upon determining that an account subject to a DCSS withhold order is eligible for more than one of the exemptions in question, were to (1) calculate the amount that would be protected under each exemption, and (2) accord protection to the obligor's funds only up to *the largest* of those amounts. Protecting funds in that amount would satisfy the largest exemption while providing the obligor with *greater* protection than would be required under the remaining exemptions. This approach would advance the purposes and satisfy the requirements of the applicable exemptions, and it would do so without unduly subordinating the financial needs of children.

For the foregoing reasons we conclude that, when DCSS has issued a withhold order on the bank account of a debtor owing delinquent child support, and funds in the debtor's account are eligible for protection under each of the three exempting provisions discussed above, the total amount protected is not determined by adding together, or "stacking," the three exemptions; rather, the debtor's funds are protected only up to the amount excluded under the largest of the three individual exemptions.

at footnote 21.