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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Joseph H. Holmes

v.

Alabama Department of Human Resources

Appeal from Montgomery Circuit Court  
(CV-17-901808)

THOMAS, Judge.

In August 2017, Joseph H. Holmes sought an administrative review from the Alabama Department of Human Resources ("DHR") seeking to challenge DHR's intent to levy United States Veterans' Administration ("VA") disability benefits that had

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been deposited into Holmes's credit-union account to pay Holmes's child-support obligation. According to the information contained in the administrative record, which contains only filings by Holmes and his counsel and replies by DHR, Holmes is a disabled veteran who received a lump-sum payment of VA disability benefits in March 2017. Holmes contended that, pursuant to 38 U.S.C. § 5301(a)(1), his disability benefits were not subject to levy either before or after his receipt of those benefits. DHR concluded its administrative review, sending notice to Holmes of its decision that "VA benefits are not exempt from lien/levy process" and declining to release the levy of the benefits.

Holmes timely requested an administrative hearing from DHR. However, DHR denied Holmes's request, citing Ala. Admin Code (DHR), Rule 660-1-5-.05(f), which allows the request for an administrative hearing to be denied "[w]hen protective or child support services are provided as required by law or by court order." In compliance with Ala. Code 1975, § 41-22-20, a part of the Alabama Administrative Procedure Act, codified at Ala. Code 1975, § 41-22-1 et seq., Holmes then filed a

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timely notice of appeal with DHR and a petition for judicial review in the Montgomery Circuit Court ("the circuit court").<sup>1</sup>

In his petition for judicial review, Holmes set out the following facts. He explained that he had served in the United States Navy between September 1973 and 1976; that, in March 20, 2017, the VA determined that Holmes had been 100% disabled since December 3, 2010, as the result of a service-connected condition; and that, on March 23, 2017, the VA deposited a lump-sum VA disability benefit into Holmes's credit-union account. According to Holmes, DHR served a notice of levy of those benefits on him on July 27, 2017. Holmes also stated that he had sought a stay of the seizure of his benefits but that DHR had seized \$46,035 in VA disability benefits from his account on October 25, 2017.

The parties filed briefs before the circuit court, laying out their respective positions. In his initial brief before the circuit court, Holmes argued that § 5301(a)(1) exempts his VA disability benefits from "attachment, levy, or seizure by or under any legal or equitable process whatever, either

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<sup>1</sup>Holmes later amended his petition to include claims under 42 U.S.C. § 1983. However, in his brief to the circuit court, he withdrew his § 1983 claims, and, thus, the circuit court did not address them.

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before or after receipt by the beneficiary." He admitted that federal law provides that certain benefits may be subject to income withholding, garnishment, or other legal process brought by a state agency seeking to enforce payment of a child-support obligation. See 42 U.S.C. § 659(a). However, he contended that only those VA disability benefits received in lieu of retirement or retention benefits may be subject to attachment or levy for payment of child support. See 42 U.S.C. § 659(h)(1)(A)(ii)(V). Thus, he argued, because his disability benefits were not received in lieu of retirement or retention pay, DHR could not lawfully seize his VA disability benefits.

In response, DHR, relying first on § 659(a), argued that Holmes's VA disability benefits were, in fact, subject to levy or attachment under federal law. DHR further relied on Rose v. Rose, 481 U.S. 619 (1987), in which the United States Supreme Court determined that a state court could hold a child-support obligor in contempt for refusing to pay child support out of his VA disability benefits, and Nelms v. Nelms, 99 So. 3d 1228, 1232-33 (Ala. Civ. App. 2012), in which this court concluded that a trial court could consider VA

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disability benefits in determining the amount of alimony to award. Based on those cases, DHR concluded, DHR was entitled to levy Holmes's VA disability benefits. DHR also noted that it had, in compliance with 42 U.S.C. § 666, properly sought to enforce Holmes's child-support obligation under Ala. Code 1975, § 30-3-192, which requires DHR to seek out information from financial institutions regarding the account balances of noncustodial parents with past-due child-support obligations, and Ala. Code 1975, § 30-3-197 and -198, which permit DHR to impose liens against the personal or real property owned by noncustodial parents with child-support arrearages.<sup>2</sup>

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<sup>2</sup>The full text of § 30-3-197(a)(6) reads:

"In cases in which there is a support arrearage, [certain agencies, including DHR, are permitted] to secure assets to satisfy the arrearage by intercepting or seizing periodic or lump-sum payments from a state or local agency, including unemployment compensation, worker's compensation, and other benefits; by attaching judgments, settlements, and lottery winnings and other lump-sum payments; attaching and seizing assets of the obligor held in financial institutions; attaching public and private retirement funds; and imposing liens in accordance with [Ala. Code 1975,] Section 30-3-198 and, in appropriate cases, to force sale of property and distribution of proceeds."

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Holmes filed a reply brief in the circuit court, in which he argued that DHR had ignored relevant provisions of § 659. Holmes contended that his VA disability benefits were not subject to legal process under § 659 because his benefits were not "based upon remuneration for employment." He explained that § 659(h) (1) (A) (ii) (V) provided:

"(h) moneys subject to process (1) Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section -- (A) consist of -- (ii) periodic benefits (including a periodic benefit as defined in section 428(h) (3) of this title) or other payments -- (V) by the Secretary of Veterans Affairs as compensation for a service connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation."

(Emphasis in original.) Based on this argument, Holmes again argued that his VA disability benefits could not be levied by DHR.

On April 16, 2018, the circuit court entered a one-line order affirming DHR's decision to seize Holmes's VA disability benefits. Holmes filed a timely notice of appeal. In his appellate brief, Holmes argues that DHR's decision to seize his VA disability benefits violated statutory or

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constitutional provisions, including § 5301(a) (1), was clearly erroneous, and was arbitrary and capricious. He also complains that DHR violated his rights under the due-process clause of the 14th Amendment to the United States Constitution. We disagree.

The circuit court's review of a decision of a state agency is governed by § 41-22-20(k), which provides:

"Except where judicial review is by trial de novo, the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been prejudiced because the agency action is any one or more of the following:

"(1) In violation of constitutional or statutory provisions;

"(2) In excess of the statutory authority of the agency;

"(3) In violation of any pertinent agency rule;

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"(4) Made upon unlawful procedure;

"(5) Affected by other error of law;

"(6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

"(7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion."

Our standard of review of the agency's decision is the same as the standard employed by the circuit court. Alabama State Pers. Bd. v. Clements, 161 So. 3d 221, 227 (Ala. Civ. App. 2014) (quoting Alabama State Pers. Bd. v. Dueitt, 50 So. 3d 480, 482 (Ala. Civ. App. 2010)) ("The standard of appellate review to be applied by the circuit courts and by this court in reviewing the decisions of administrative agencies is the same.").

On appeal, Holmes again relies on § 5301(a)(1) and § 659(h)(1)(A)(ii)(V) to contend that his VA disability benefits, because they were not "based upon remuneration for employment," are exempt from all legal process. Although Holmes is correct that his VA disability benefits, because he did not waive a portion of his retired or retainer pay to receive them, do not fall within the exception from direct



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levy while those benefits are in the possession of the VA, see § 659(h)(1)(A)(ii)(V), this fact does not prevent DHR from seizing Holmes's benefits from his credit-union account. This is so because § 659(a) creates a "limited waiver of sovereign immunity" of the United States, Rose, 481 U.S. at 635, and, therefore, the requirement in § 659(a) that the benefits to be seized be "based upon remuneration for employment" does not prevent the states from enforcing child-support orders by ordering that payment be made from VA disability benefits.

The appellant in Rose, Charlie Rose, was a totally disabled United States military veteran living in the State of Tennessee. Rose, 481 U.S. at 622. When Charlie divorced his wife, the Tennessee court calculated his child-support obligation based upon his income, which was composed entirely of VA disability benefits. Id. Charlie did not pay child support as ordered, and the Tennessee court held him in contempt for his failure to comply with the child-support order. Id. at 623. Charlie appealed the contempt judgment, arguing that Tennessee could not order that he pay child support out of his VA disability benefits, relying in large part on the idea that federal law governing VA benefits,

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which, at that time included the precursor to § 5301(a)(1), namely, 38 U.S.C. § 3101, and the provisions of the Child Support Enforcement Act, codified at 42 U.S.C. § 651 et seq., preempted Tennessee's authority over his VA benefits. Id. at 625.

The United States Supreme Court explained that former § 3101 (which exists currently in similar form in § 5301(a)(1)) "provide[d] that '[p]ayments of benefits ... under any law administered by the Veterans' Administration ... made to, or on account of, a beneficiary ... shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.'" Rose, 481 U.S. at 630. However, the Rose Court concluded that requiring Charlie, through a contempt proceeding, to pay his child-support obligation out of his VA disability benefits did not run afoul of that anti-assignment provision. Id. at 635. The Court explained that the anti-assignment provision had two purposes: "to 'avoid the possibility of the Veterans' Administration ... being placed in the position of a collection agency' and to 'prevent the deprivation and depletion of the means of subsistence of

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veterans dependent upon these benefits as the main source of their income.'" Id. at 630 (quoting S. Rep. No. 94-1243, pp. 147-48 (1976)). Because the VA was neither made a party to the contempt proceedings nor required to pay Charlie's VA benefits directly to Charlie's ex-wife, the Rose Court noted, the first purpose was not frustrated by the state court's assertion of its contempt or enforcement powers over Charlie. Id. at 635.

Regarding the second purpose -- protecting the "'means of subsistence'" for disabled veterans -- the Rose Court came to the same conclusion: "the exercise of state-court jurisdiction over [Charlie's] disability benefits [did not] deprive [Charlie] of his means of subsistence contrary to Congress' intent, for these benefits are not provided to support [Charlie] alone." Rose, 481 U.S. at 630. The Rose Court noted that

"[v]eterans' disability benefits compensate for impaired earning capacity, H.R. Rep. No. 96-1155, p. 4 (1980), U.S. Code Cong. & Admin. News 1980, p. 3307, and are intended to 'provide reasonable and adequate compensation for disabled veterans and their families.' S. Rep. No. 98-604, p. 24 (1984) (emphasis added), U.S. Code Cong. & Admin. News 1984, pp. 4479, 4488."

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Id. The fact that VA disability "benefits are intended to support not only the veteran, but the veteran's family," said the Rose Court, required the Court to "[r]ecogniz[e] an exception to the application of § 3101(a)'s prohibition against attachment, levy, or seizure in this context [to] further, [and] not undermine, the federal purpose in providing these benefits." Id. at 634. Thus, the Rose Court concluded that the anti-assignment provision "does not extend to protect a veteran's disability benefits from seizure where the veteran invokes that provision to avoid an otherwise valid order of child support." Id.

Regarding Charlie's argument that the requirement in § 659(a) that benefits be "based upon remuneration for employment" prevented the Tennessee court from "diverting [his VA disability benefits] for child support," the United States Supreme Court explained in Rose that

"§ 659(a) does not refer to any legal process. The provision was intended to create a limited waiver of sovereign immunity so that state courts could issue valid orders directed against agencies of the United States Government attaching funds in the possession of those agencies:

"The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment ...

issued by [a state court] ... and ... directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support....' § 662(e) (emphasis added).

"See also 5 CFR § 581.102(f) (1986); S. Rep. No. 93-1356, pp. 53-54 (1974). Waivers of sovereign immunity are strictly construed, and we find no indication in the statute that a state-court order of contempt issued against an individual is precluded where the individual's income happens to be composed of veterans' disability benefits. In this context, the Veterans' Administration is not made a party to the action, and the state court issues no order directing the Administrator to pay benefits to anyone other than the veteran. Thus, while it may be true that these funds are exempt from garnishment or attachment while in the hands of the Administrator, we are not persuaded that once these funds are delivered to the veteran a state court cannot require that veteran to use them to satisfy an order of child support."

Rose, 481 U.S. at 635.

Like Charlie's VA disability benefits in Rose, the VA disability benefits in the present case have been delivered to Holmes. The purpose of those benefits is to support Holmes and his family, i.e., his dependent children. DHR has not attempted to direct the VA to make any payment of Holmes's benefits to it or to any other person. Thus, according to

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Rose, neither the anti-assignment provision now found in § 5301(a)(1) nor the requirements of § 659(a) are relevant to determining whether the state can seize, or prevent DHR from seizing, Holmes's VA disability benefits from his credit-union account.<sup>3</sup>

Holmes also contends that this court's decision in J.W.J. v. Alabama Department of Human Resources ex rel. B.C., 218 So. 3d 355 (Ala. Civ. App. 2016), supports a conclusion that his VA disability benefits are not subject to being seized for the payment of child support. In J.W.J., we determined that an order requiring a father to pay his child-support arrearage from his Supplemental Security Income ("SSI") benefits under threat of contempt violated federal law. We construed 42

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<sup>3</sup>Furthermore, the existence of 42 U.S.C. §§ 654 and 666 and Ala. Code 1975, § 30-3-190 et seq., undercuts Holmes's argument that DHR has no authority to levy against his credit-union account. States are required to establish and provide services relating to the enforcement of child-support obligations, including locating parents, accessing financial information relating to noncustodial parents with outstanding child-support obligations, and establishing liens on real and personal property of parents with overdue support obligations. To require the state to go to great lengths to secure the payment of child-support obligations certainly supports the conclusion that benefits intended to serve as income to support a veteran's family can be attached to serve that purpose.

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U.S.C. § 407(a), which prevents the transfer, assignment, levy, attachment, or garnishment of Social Security benefits. We also considered the effect of § 659(a) on § 407, determining that, because § 659(a) permitted withholding of federal benefits for payment of child-support or alimony obligations when "the entitlement to [those benefits] is based upon remuneration for employment," § 659(a) did not permit the use of SSI, which was not based upon remuneration for employment, to meet child-support obligations. We also relied on Department of Public Aid ex rel. Lozada v. Rivera, 324 Ill. App. 3d 476, 479, 755 N.E.2d 548, 550, 258 Ill.Dec. 165, 167 (2001), which had held "that section 407(a) forbids ordering child support that burdens any SSI benefits, even those that the beneficiary has already received."

What Holmes fails to recognize is the distinction between his VA disability benefits and SSI benefits. SSI is a means-tested public-assistance program that has as one of its purposes to provide a subsistence allowance to those meeting certain eligibility requirements. See J.W.J., 218 So. 3d at 356-57. Unlike Holmes's VA disability benefits, SSI benefits are not intended to be used as a means of support for the

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families of its recipients. See Rose 481 U.S. at 630; Becker County Human Servs., Re Becker Cty. Foster Care v. Peppel, 493 N.W.2d 573, 576 (Minn. Ct. App. 1992) ("SSI benefits are designed to provide for the minimum needs of the individual recipient, and should not be considered income for any other purpose."); and Tennessee Dep't of Human Servs. ex rel. Young v. Young, 802 S.W.2d 594, 599 (Tenn. 1990) ("SSI payments are for the benefit of the recipient alone."). Thus, the holding of J.W.J. is inapplicable in the context of VA disability benefits.

Insofar as Holmes challenges DHR's denial of his request for an administrative hearing as violating of his due-process rights, we must disagree. First, we note that Holmes's brief relies on only general principles of law regarding due process; he does not develop an argument tailored to the specific denial of an administrative hearing in the present case. White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008) ("Rule 28(a)(10)[, Ala. R. App. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position."). He simply argues that DHR's "policy" that VA



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disability benefits are not exempt from lien or levy influenced its decision not to provide him an administrative hearing, and, he states, "[i]t is axiomatic that denial of [an administrative] hearing is a fundamental violation of minimal due process under the 14th amendment." Thus, we may affirm the judgment of the circuit court on this issue without further considering Holmes's due-process argument.

Were we to consider Holmes's due-process argument further, we would still affirm the judgment of the circuit court. DHR denied Holmes's request for a hearing based on its determination that it had been providing "child support services as required by law." See Rule 660-1-5-.05(f). Because the facts are not in dispute, the only question presented by Holmes's request for a hearing was a legal one: whether federal law prevented the seizure of his VA disability benefits. A hearing would have been of no benefit to any party, and DHR was permitted to deny the request for a hearing because it had seized Holmes's VA disability benefits in compliance with both state and federal law. In addition, Holmes was permitted to seek further review of the seizure of his VA disability benefits through his petition for judicial

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review and his appeal to this court, which afforded him additional due process. Thus, even were we to consider the merits of Holmes's due-process argument, we would reject his claim that he was denied due process.

Holmes's arguments regarding § 5301(a)(1) and § 659 do not compel reversal. DHR's seizure of his VA disability benefits does not violate federal law, and, therefore, DHR's decision in Holmes's case was not in violation of law, clearly erroneous, or arbitrary and capricious. In addition, Holmes's due-process argument was not sufficiently developed for our consideration. Having considered and rejected each of Holmes's arguments, we affirm the judgment of the circuit court affirming DHR's decision to levy Holmes's VA disability benefits to satisfy his child-support obligation.

AFFIRMED.

Thompson, P.J., and Pittman, Moore, and Donaldson, JJ., concur.