

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000452-MR

STEPHEN R. NUNN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NOS. 09-CI-05104 AND 10-CI-04148

DIANA M. ROSS, AS PERSONAL
REPRESENTATIVE OF ESTATE
OF AMANDA ROSS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CHIEF JUDGE ACREE; STUMBO AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Stephen R. Nunn brings this *pro se* appeal from an October 30, 2013, order of the Fayette Circuit Court denying Nunn's challenge to garnishment of his inmate account at Green River Correctional Complex. We affirm.

On September 11, 2009, Nunn murdered Amanda Ross near her residence in Lexington, Kentucky. Nunn pleaded guilty to the crime and was sentenced to life imprisonment without the possibility of parole by judgment entered June 28, 2011. Thereafter, Diana M. Ross, as personal representative of the estate of Amanda Ross, instituted a wrongful death action in the Fayette Circuit Court against Nunn. By order and judgment entered August 20, 2013, the circuit court determined that Nunn was liable for the wrongful death of Amanda and awarded her estate a total of \$24,253,298.85 in damages, which included twenty million dollars in punitive damages.¹

In an effort to enforce the August 20, 2013, judgment, Ross filed an Order of Garnishment with the Fayette Circuit Court Clerk. Kentucky Revised Statutes (KRS) 425.501(1). The order of garnishment sought to garnish the proceeds deposited into Nunn's inmate account at the Green River Correctional Complex. Thereafter, Nunn filed an Affidavit to Challenge the Garnishment and claimed that the proceeds in his inmate account were exempt from garnishment under KRS 21.470, as proceeds from his legislative retirement plan. KRS 425.501(4).

By order entered October 30, 2013, the circuit court concluded that the proceeds in Nunn's inmate account were not exempt per KRS 21.470 and ordered garnishment of the inmate account. In particular, the circuit court held:

¹ The compensatory portion of the judgment was apportioned ninety percent to Stephen R. Nunn and ten percent to Opera House Square Townhouse Association, Inc.

1. That the Court finds that proceeds of the Defendant Stephen R. Nunn's legislative retirement pension lose any exempt status that may be conferred by KRS 21.470 upon such proceeds being disbursed by the Kentucky Legislators Retirement Plan to Mr. Nunn or his designee or agent;

2. That funds in Mr. Nunn's prison trust account are not exempt from garnishment[.]

This appeal follows.

Nunn contends that the circuit court erred by ordering garnishment of his inmate account. Nunn maintains that the proceeds deposited into his account were pension benefits paid from his legislative retirement plan. Nunn argues that such legislative pension benefits are specifically exempt from garnishment under KRS 21.470. We disagree.

When interpreting a statute, it is well-established that legislative intent is paramount. *Hoy v. Ky. Indus. Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995); *Lynch v. Com.*, 902 S.W.2d 813 (Ky. 1995); *Hause v. Com.*, 83 S.W.3d 1 (Ky. App. 2001). Legislative intent may be gleaned from the particular terms utilized in a statute. *Revenue Cabinet v. Comcast Cablevision of the South*, 147 S.W.3d 743 (Ky. App. 2003). Where a term has acquired a particular meaning, the court should interpret the term accordingly. *Payton v. Norris*, 42 S.W.2d 723 (Ky. 1931); *Hause v. Com.*, 83 S.W.3d 1. And, the interpretation of a statute presents an issue of law. *Floyd Cnty. Bd. of Educ. v. Ratliff*, 955 S.W.2d 921 (Ky. 1977).

KRS 21.470 reads, in relevant part:²

² KRS 21.470 is related to judicial retirement plans but is made applicable to legislative retirement plans by KRS 6.525.

All retirement allowances and other benefits accrued or accruing to any person under the provisions of KRS 21.350 to 21.510 are hereby exempted from any state, county or municipal tax, and shall not be subject to execution, attachment, garnishment or any other process whatsoever, nor shall any assignment thereof be enforceable in any court. Except retirement benefits accrued or accruing to any person under the provisions of KRS 21.350 to 21.510 on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

Under KRS 21.470, “retirement allowances and other benefits accrued or accruing” are not subject to execution or garnishment. As to retirement plans like Nunn’s legislative retirement plan, the term “accrual” has acquired a particular meaning. Recently our Supreme Court observed that “accrual” of benefits means “the process of accumulating pension credit for years of credited service.” *Bd. of Tr. of the Judicial Form Ret. Sys. v. Attorney Gen. of Com.*, 132 S.W.3d 770, 774 (Ky. 2003). Also, the term “accrued” has a distinctive meaning relating to financial matters. For example, “accrued compensation” is “[r]emuneration that has been earned but not yet paid.” *Black’s Law Dictionary* 277 (7th ed. 1999). And, “accrued interest” is “[i]nterest that is earned but not yet paid[.]” *Black’s Law Dictionary* 816 (7th ed. 1999). Consistent therewith, we interpret the terms accrued and accruing in KRS 21.470 as referring to retirement benefits and allowances that are still accumulating or have been earned but not yet paid to a recipient. Stated simply, KRS 21.470 merely exempts from execution or garnishment those retirement benefits and allowances that are held by the retirement system and have not been paid to a recipient. Once paid to a recipient,

these retirement benefits lose their exempt status under KRS 21.470 and may be properly subject to garnishment. Hence, we hold that the circuit court properly interpreted KRS 21.470 as not exempting the proceeds in Nunn's inmate account from garnishment.

We view any remaining contentions as moot or without merit.

For the foregoing reasons, order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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