STATE OF MICHIGAN

COURT OF APPEALS

ASSET ACCEPTANCE CORPORATION,

Plaintiff-Appellant,

v

GAYLA L. HUGHES,

Defendant-Appellee,

and

DEPARTMENT OF TREASURY,

Garnishee-Defendant.

FOR PUBLICATION
September 6, 2005
9:00 a.m.

No. 251798
Washtenaw Circuit Court
LC No. 03-000511-AV

Official Reported Version

Before: Fort Hood, P.J., and Meter and Schuette, JJ.

FORT HOOD, J. (*dissenting*).

I respectfully dissent. Plaintiff filed a complaint alleging that defendant failed to make payments on her Montgomery Ward and Saks Fifth Avenue credit cards. Plaintiff alleged that it purchased the outstanding accounts, and defendant failed to make periodic payments. On May 5, 2000, plaintiff obtained a default judgment against defendant in the amount of $1,738.63 to cover the outstanding balance, interest, and costs. To recover the judgment amount, plaintiff sought writs of garnishment directed to Huron River Credit Union and Michigan's Department of Treasury. Defendant objected to the garnishment, alleging that her only sources of income were exempt from garnishment. Specifically, defendant alleged that she was disabled, had received Social Security disability payments since 1984, and the payments were used to pay her rent. Her other source of income consisted of adoption support subsidies from the state. Defendant alleged that the funds constituted exempt property and that exempt property did not lose its exempt status when deposited into a bank account.

The district court held a hearing and denied the objections to the garnishment directed to the state treasury department.[1] On appeal, the circuit court reversed the district court's holding, concluding that the homestead property tax credit was exempt from garnishment. This Court granted plaintiff 's application for leave to appeal.

Issues of statutory construction present questions of law that are reviewed de novo. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). The goal of statutory construction is to discern and give effect to the intent of the Legislature by examining the most reliable evidence of its intent, the words of the statute. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). If the statutory language is unambiguous, appellate courts presume that the Legislature intended the plainly expressly meaning and further judicial construction is neither permitted nor required. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000).

Federal law limits the transfer and acquisition of disability insurance benefits:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [42 USC 407(a).]

Despite the federal statute holding that disability insurance benefits are not subject to garnishment and despite the fact that defendant's rent was paid through receipt of these benefits, plaintiff alleges that it may garnish the Homestead Property Tax Credit on the basis of the following statute:

> The state treasurer shall intercept a state tax refund or *credit* that is subject to a writ of garnishment served upon the state treasurer pursuant to section 4061. [MCL 600.4061a(1) . . . . (Emphasis added).]

Although MCL 600.4061a provides that it is applicable to a state refund or credit, the plain language of the homestead property tax credit statute expressly provides "Only the renter or lessee shall claim a credit on property that is rented or leased as a homestead." MCL 206.520(5). See *Neal, supra* at 665 (The task in construing a statute is to discern and give effect to the intent of the Legislature.).

The tax credit retains its essence or quality as money only if it was not invested or utilized for a subsequent purchase. In *Lawrence v Shaw*, 300 US 245, 246; 57 S Ct 443; 81 L Ed 623 (1937), the petitioner was appointed the guardian of a war veteran with claims against the United Sates for unpaid compensation and insurance. The petitioner initially listed the property

[1] The parties resolved the writ of garnishment directed to the credit union account, and it is not at issue on appeal.

of his ward when reporting taxes, but the tax paid was refunded on the basis of a ruling of the state attorney general. Consequently, the petitioner, in subsequent years, did not list or pay taxes on property of the ward. After five years, the respondent tax official assessed the ward's property for that period. The property consisted of deposits in banks and real estate loans, although the issue of the loans was resolved before appeal. The parties stipulated that the "deposits in bank" consisted of collections from warrants or checks drawn and issued by the federal government. *Id.* at 247. These collections were deposited into the bank by the guardian and constituted "unexpended and uninvested balances." *Id.* The petitioner paid the taxes under protest and demanded a refund, which demand was refused. *Id*.

The United States Supreme Court reversed the collection of taxes and, in doing so, made a distinction between a deposit or credit of money and an investment:

> The state court found no distinction with respect to taxability "between stocks and bonds, and notes and bank deposits and other solvent credits." Amplifying this position, counsel for respondent at this bar, while conceding that the warrants or checks issued by the Government would be exempt, and that if they were cashed the moneys thus received would likewise be exempt until they were invested, contended that if the guardian instead of cashing the warrants or checks deposited them in bank, the resulting bank credits would be taxable. We think that this contention is inadmissible. Congress has declared that the payments of benefits by the Government shall be exempt not only before but "after receipt by the beneficiary." We cannot conceive that it was the intent of Congress that the veteran should lose the benefit of this immunity, which would attach to the moneys in his hands, by depositing the government warrants or checks in bank to be collected and credited in the usual manner. *These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof. As the immunity from taxation is continued after the payments are received, the usual methods of receipt must be deemed available so that the amounts paid by the Government may be properly safeguarded and used as the needs of the veteran may require.*
>
> The provision of the [World War Veterans Act as amended in] 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the *Trotter* case [*Trotter v Tennessee*, 290 US 354; 54 S Ct 138; 78 L Ed 358 (1933)]. It is of course true that deposits in bank may be made under a special agreement by which the deposits assume the character of investments and would lose immunity accordingly. No such agreement is shown here. Nor are the bank balances shown to be the proceeds of investments. They are stipulated to be "uninvested balances" of the government payments. Some reference was made at the bar to the possible effect of an allowance of interest upon bank deposits. It does not appear that there was such an allowance in this instance and we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach. We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do

> not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. . . . [*Lawrence, supra* at 249-250 (emphasis added).]

In the present case, defendant utilized her Social Security benefits to pay rent and the payment of rent resulted in the homestead property tax credit, a credit issued from the state that was not yet expended by defendant. Defendant did not have other revenue sources with which to commingle her tax credit. Moreover, plaintiff does not allege any entitlement to the adoption subsidies. Defendant did not invest the credit. Therefore, she was not required to keep the money in her hands or under her roof in order to maintain the exemption benefit of 42 USC 407. Consequently, I would affirm the circuit court decision.

/s/ Karen M. Fort Hood