

STATE OF MICHIGAN
COURT OF APPEALS

VIRGINIA L. CROPSEY,

Plaintiff-Appellant,

v

FEI INCORPORATED,

Defendant-Appellee.

UNPUBLISHED

September 20, 2002

No. 225762

Genesee Circuit Court

LC No. 98-064124-CK

Before: O’Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff commenced this action for breach of contract, injunctive relief, and a declaratory judgment, alleging that defendant, her employer, violated its contractual obligation to pay her wages when it (1) complied with a notice of a tax levy against her wages; and (2) began withholding taxes from her paycheck. Plaintiff appeals as of right from the trial court’s order granting defendant summary disposition and dismissing plaintiff’s complaint under MCR 2.116(C)(7) and (10). We affirm.

Although plaintiff advances several reasons why she believes the notice of tax levy issued by the Internal Revenue Service is illegal, we agree that, in the context of this case, the only material issue is whether the trial court correctly determined that defendant is immune from liability for complying with the IRS levy. We find no error.

We review a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Guerra v Garrat*, 222 Mich App 285, 288; 564 NW2d 121 (1997). When reviewing a motion under MCR 2.116(C)(7) (claim barred because of immunity granted by law), this Court accepts all well pleaded factual allegations as true, unless contradicted by the evidence submitted by the parties, and construes them in favor of the nonmoving party. *Maiden, supra* at 119; *Guerra, supra* at 289. If no material facts are in dispute, then the question whether the claim is barred is an issue of law. *Maiden, supra* at 122; *Guerra, supra* at 289.

Similarly, when reviewing a motion under MCR 2.116(C)(10), this Court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). If there is no issue of material fact

and the moving party is entitled to judgment as a matter of law, the motion is properly granted. *Id.* at 363.

Questions of statutory interpretation are also reviewed de novo. *Heinz v Chicago Rd Investment*, 216 Mich App 289, 295; 549 NW2d 47 (1996). “When a statute is clear and unambiguous, judicial construction or interpretation is unnecessary and therefore, precluded.” *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992). The rules of statutory construction also apply to administrative rules. *Port Huron v Amoco Oil Co*, 229 Mich App 616, 631; 583 NW2d 215 (1998).

26 USC 6332(e) provides:

Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

When a taxpayer fails to pay taxes after assessment and demand, “a lien in favor of the United States attache[s] to ‘all property and rights to property, whether real or personal, belonging to (the taxpayer).’” *Phelps v United States*, 421 US 330, 334; 95 S Ct 1728; 44 L Ed 2d 201 (1975), quoting 26 USC 6321. The IRS can recover the deficiency by, among other things, attaching the taxpayer’s property by an administrative levy pursuant to 26 USC 6331(a). See *United States v Rodgers*, 461 US 677, 682; 103 S Ct 2132; 76 L Ed 2d 236 (1983); see also *American Trust v American Comm Mut Ins Co*, 142 F3d 920, 922-923 (CA 6, 1998).

Section 6331 provides that, “[i]f a person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax,” plus expenses, “by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person” 26 USC 6331(a). An “[a]dministrative levy, unlike an ordinary lawsuit, and unlike [a tax lien foreclosure], does not require any [prior] judicial intervention, and it is up to the taxpayer, if [s]he so chooses, to go to court if [s]he claims that the assessed amount was not legally owing.” *Rodgers, supra* at 682-683; see also *American Trust, supra* at 923.

The term “levy” includes the power of distraint and seizure by any means. 26 USC 6331(b). “Historically, service of notice has been sufficient to seize a debt . . . and notice of levy and demand are equivalent to seizure.” *Phelps, supra* at 337 (citation omitted); see also *Sims v United States*, 359 US 108, 112-113; 79 S Ct 641; 3 L Ed 2d 667 (1959). Accordingly, the IRS regulations provide that “[l]evy may be made by serving a notice of levy on any person in possession of or obligated with respect to, property or rights to property subject to levy, including . . . wages” 26 CFR 301.6331-1(a); see also *Phelps, supra* at 335.

As noted by plaintiff, the statute provides that, as to federal and District of Columbia employees, “[l]evy may be made . . . by serving a notice of levy on the employer” 26 USC 6331(a). However, the United States Supreme Court has specifically rejected the argument that a

bare “notice of levy” can only be used against such employees. See *Sims, supra* at 112-113. Rather, that sentence was added to overcome precedent requiring “express congressional authorization[] [to] set off an indebtedness of a federal employee,” and “to subject the salaries of federal employees *to the same collection procedures that are available against all other taxpayers . . .*” *Id.* (emphasis added).

Generally, “a levy shall extend only to property possessed and obligations existing at the time thereof.” 26 USC 6331(b). However, “[t]he effect of a levy *on salary or wages* payable to or received by a taxpayer *shall be continuous* from the date such levy is first made until such levy is released . . .” 26 USC 6331(e) (emphasis added); see also 26 CFR 301.6331-1(b).

Salaries and wages are exempt from levy “to the extent that the total of such amounts . . . does not exceed the applicable exempt amount under subsection (d).” 26 USC 6334(a)(9); see also 26 CFR 301.6334-3(a). Subsection (d) provides:

In the case of an individual who [like plaintiff] is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt under subsection (a)(9) shall be the exempt amount. [26 USC 6334(d)(1).]

Additionally, subsection (d)(2) provides that, “[f]or purposes of paragraph 1, the term ‘exempt amount’ means an amount equal to . . . (A) the sum of . . . the standard deduction, and . . . the aggregate amount of the deductions for personal exemptions . . . divided by . . . (B) 52.” 26 USC 6334(d)(2); see also 26 CFR 301.6334-3(b). However, “[u]nless the taxpayer submits to the Secretary a written and properly verified statement specifying the facts necessary to determine the proper amount under subparagraph (A), subparagraph (A) shall be applied as if the taxpayer were a married individual filing a separate return with only 1 personal deduction.” 26 USC 6334(d)(2).

Contrary to plaintiff’s argument, the law clearly prescribes that her wages, even her unearned wages, are “property subject to levy” to the extent they exceed the applicable exempt amount. 26 USC 6331(d)(1) and (e). It is undisputed that defendant received a notice of levy stating that a levy had been made upon plaintiff’s wages, and demanding that defendant turn over her non-exempt weekly wages. That procedure effected a lawful seizure. *Phelps, supra* at 336-337; *Sims, supra* at 112-113. It is also undisputed that defendant turned over plaintiff’s non-exempt wages, as demanded. See 26 USC 6334(d)(2).

The undisputed facts establish that defendant complied with the statute and was thereby “discharged from any obligation or liability to [plaintiff] . . . with respect to such property or rights to property arising from such surrender or payment.” 26 USC 6332(e); see also *Phelps, supra* at 335 (“[w]ith surrender, . . . any duty owed to the taxpayer is extinguished”); 26 CFR 301.6332-1(c). The trial court properly determined that plaintiff’s claim was “barred because of . . . immunity granted by law,” and that defendant was therefore entitled to summary disposition under MCR 2.116(C)(7) and (10).

Plaintiff next argues that defendant acted illegally when it withheld taxes from her paycheck. We disagree. Again, as correctly framed by defendant, the material issue is whether

the trial court correctly determined that defendant is immune from liability for withholding taxes. We find no error.

26 USC 3402(a)(1) provides, in pertinent part:

Except as otherwise provided in this section, every employer making payment of wages *shall* deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. . . . [Emphasis added.]

26 USC 3403 provides:

The employer shall be liable [to the IRS] for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of such payment.

Here, the undisputed facts disclose that plaintiff revoked her withholding exemption certificate that was previously on file with defendant. By doing so, plaintiff triggered § 3402(a) which, contrary to her arguments, clearly required defendant to withhold taxes from plaintiff's wages. See *Maxfield v United States Postal Service*, 752 F2d 433, 434 (CA 9, 1984). Under the IRS regulations, if an employee "fails to furnish such certificate, such employee shall be considered as a single person claiming no withholding exemptions." 26 CFR 31.3402(f)(2)-1(a); see also 26 USC 3402(a)(1). 26 USC 3403 clearly insulates defendant from liability in connection with its statutory withholding obligations. See *Maxfield*, *supra* at 434. The trial court properly granted defendant's motion for summary disposition with regard to this issue.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra