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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1190**

County of Anoka,
Respondent,

Carolyn Ann Halberg,
Respondent,

vs.

Robert David Storberg,
Appellant.

**Filed February 13, 2012
Affirmed
Peterson, Judge**

Anoka County District Court
File No. 02-F0-97-051762

Tony Palumbo, Anoka County Attorney, Paul C. Clabo, Assistant County Attorney,
Anoka, Minnesota (for respondent county)

Carolyn Ann Halberg, Wadena, Minnesota (pro se respondent)

Robert David Storberg, Arden Hills, Minnesota (pro se appellant)

Considered and decided by Johnson, Chief Judge; Peterson, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this child-support-collections dispute, appellant-obligor-father argues that the district court erred in applying *Gerber v. Gerber*, 714 N.W.2d 702 (Minn. 2006), to this case because the judgment against him was established by judicial action and was not renewed, which means that the judgment expired ten years after it was entered. We affirm.

FACTS

In 1997, respondent County of Anoka initiated a paternity action against appellant Robert David Storberg and requested judgment in the amount of \$801.50 as reimbursement for public assistance the county had paid for support of the subject minor child. In October 1997, judgment against appellant was entered in the amount of \$801.50.¹ The judgment was never renewed.

Appellant brought a motion under Minn. Stat. § 548.091, subd. 4 (2010), requesting that the judgment be vacated pursuant to Minn. Stat. § 541.04 (2010) because it had expired. *See also* Minn. Stat. § 548.091, subd. 1a(a) (2010) (making past-due child-support payment judgment by operation of law). The child support magistrate (CSM) concluded that the “[c]ounty is not barred from seeking administrative enforcement remedies for child support arrearages[,] which include judgments for reimbursement for public assistance expended,” and denied appellant’s motion.

¹ As of February 28, 2011, the amount of debt remaining, after accounting for payments and accrued interest, was \$1,330.08.

Appellant filed a motion for review by the district court, assigning as error the CSM's conclusion of law that administrative enforcement is not barred and requesting that the district court issue an amended order that removes \$1,330.08 from his public-assistance arrears. Appellant argued that the judgment for reimbursement of public assistance was not a judgment for child support within the meaning of *Gerber*. The district court denied appellant's request to modify the CSM's order. The district court concluded that a judgment for reimbursement of public assistance for the benefit of a child is a judgment for child-support arrears and that, under *Gerber*, wage withholding to obtain payment is proper. This appeal followed.

D E C I S I O N

Appellant argues that this case is different from *Gerber* because the county provided funds for the support of the minor child without first establishing paternity and then used a paternity action, which appellant acknowledges was a judicial action, to establish a judgment against appellant for the support provided. In *Gerber*, appellant contends, the county² did not have to use a judicial action to obtain a judgment because the judicial action had already occurred in a completed marital-dissolution proceeding.

Appellant contends:

After the conclusion of that [marital-dissolution] proceeding, the County was not required to initiate any further judicial action against the obligor to collect or to obtain a child support judgment because [Minn. Stat. § 548.091, subd. 1a,] establishes that any past due support automatically becomes a child support judgment of law. Therefore, the establishment

² As in this case, Anoka County was the county involved in the collection proceeding in *Gerber*. 714 N.W.2d at 703.

of the *Gerber* judgment did not require a judicial “action,” and collection of it was an “administrative process.”

Appellant concludes that because the judgment against him was established by using a judicial action, rather than the child-support administrative process, the judgment against him, unlike the judgment in *Gerber*, is subject to the ten-year expiration provision under Minn. Stat. § 541.04.

Appellant is correct that, under Minn. Stat. § 548.091, subd. 1a(a), a past-due child-support payment becomes a judgment as a matter of law.³ But appellant is incorrect when he concludes that, under *Gerber*, the manner in which a judgment is established determines whether Minn. Stat. § 541.04 applies to the judgment.

In *Gerber*, the district court entered a default judgment for past-due child support against the obligor on September 13, 1993. 714 N.W.2d at 703. No action was taken to renew the judgment before September 13, 2003. *Id.* In May 2001, Anoka County initiated an administrative proceeding to withhold payments from the obligor’s income, and the obligor made 36 consecutive payments through income withholding. *Id.* On

³ That statute provides:

Any payment or installment of support required by a judgment or decree of dissolution or legal separation, determination of parentage, an order under chapter 518C, an order under section 256.87, or an order under section 260B.331 or 260C.331, that is not paid or withheld from the obligor’s income as required under section 518A.53, or which is ordered as child support by judgment, decree, or order by a court in any other state, is a judgment by operation of law on and after the date it is due, is entitled to full faith and credit in this state and any other state, and shall be entered and docketed by the court administrator on the filing of affidavits as provided in subdivision 2a.

Minn. Stat. § 548.091, subd. 1a(a).

May 4, 2004, the obligor made a motion requesting an order that no further actions be taken to collect on the 1993 judgment and that he be reimbursed for all payments made since September 13, 2003, which was the date he claimed the judgment expired. *Id.*

The statute of limitations in effect at that time provided that “[n]o action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within 10 years after the entry of such judgment.” *Gerber*. 714 N.W.2d at 704 (quoting Minn. Stat. § 541.04 (2004)). The supreme court identified the issue before it as whether the administrative proceeding to withhold payments from the obligor’s income was an “action” within the meaning of Minn. Stat. § 541.04. *Id.* The supreme court held “that administrative income withholding initiated by a county to collect child support arrearages is not a judicial proceeding, it is not an ‘action’ within the meaning of Minn. Stat. § 541.04, and thus is not subject to its 10-year limitation period.” *Id.* at 706.

Nothing in *Gerber* suggests that the supreme court’s holding depended in any way on the manner in which the 1993 default judgment was established. The opinion states only that a default judgment was entered and then analyzes only whether the administrative proceeding to withhold income was an action upon a judgment. Contrary to appellant’s understanding, the “action” referred to in Minn. Stat. § 541.04 is the action to enforce the judgment, not the action that established the judgment. Under *Gerber*, the administrative child-support-enforcement proceeding is not an action, and, therefore, it is not barred by the ten-year statute of limitations in Minn. Stat. § 541.04, which, under the

plain language of the statute, only applies to actions.⁴ See *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W. 2d 294, 300 (Minn. 2010) (“If the meaning of a statute is unambiguous, we interpret the statute’s text according to its plain language.”).

Appellant argues that if the legislature had intended that child-support judgments do not expire after ten years, it would not have enacted Minn. Stat. § 548.091, subd. 3b (2010), which allows child-support judgments to be renewed.⁵ But the enactment of Minn. Stat. § 548.091, subd. 3b, shows only that the legislature recognized that, under Minn. Stat. § 541.04, a child-support judgment could be enforced by an action only if the action was commenced within ten years after the judgment was first entered. Allowing a

⁴ Appellant’s misunderstanding appears to arise, at least in part, from his belief that a judgment, if not renewed, expires ten years after it was entered. But, as the supreme court made clear in *Gerber*, section 541.04 does not say that the judgment expires ten years after it was entered; it says that the statute of limitations for an action to enforce the judgment expires ten years after the judgment was entered.

⁵ That statute states:

Child support judgments may be renewed by service of notice upon the debtor. Service must be by first class mail at the last known address of the debtor, with service deemed complete upon mailing in the manner designated, or in the manner provided for the service of civil process. Upon the filing of the notice and proof of service, the court administrator shall administratively renew the judgment for child support without any additional filing fee in the same court file as the original child support judgment. The judgment must be renewed in an amount equal to the unpaid principal plus the accrued unpaid interest. Child support judgments may be renewed multiple times until paid.

Minn. Stat. § 548.091, subd. 3b.

child-support judgment to be renewed extended the period during which the judgment could be enforced by an action.⁶

Appellant also argues that a legislative amendment to Minn. Stat. § 541.04 enacted in 2010 indicates that child-support judgments expire after a certain amount of time. The 2010 amendment added the underlined language below, and the statute now reads as follows:

No action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment or, in the case of a judgment for child support, including a judgment by operation of law, unless begun within 20 years after entry of the judgment.

2010 Minn. Laws ch. 238, § 4, at 388.

One of the presumptions that may guide a court when ascertaining the intention of the legislature is that “when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language.” Minn. Stat. § 645.17(4) (2010). In *Gerber*, the supreme court construed Minn. Stat. § 541.04 (2004) and held that administrative income withholding initiated by a county to

⁶Minn. Stat. § 548.091, subd. 3b, existed in its current form when the supreme court issued its decision in *Gerber*. Minn. Stat. § 548.091, subd. 3b (2004). In responding to the child-support obligor’s argument that by creating a simple administrative renewal process, the legislature indicated an intent that the section 541.04 statute of limitations should apply to administrative income withholding, the supreme court stated that section 548.091, subd. 3, “shows nothing more than the legislature recognized that *judicial remedies* on child support judgments are subject to the statute of limitations, and that there must be an expedited process to avoid its application.” 714 N.W.2d at 705.

collect child-support arrearages is not an “action” within the meaning of Minn. Stat. § 541.04. 714 N.W.2d at 706. The 2010 amendment does not affect the meaning of “action.” Therefore, we presume that the legislature intended that administrative income withholding is not an “action.” Consequently, increasing the statute of limitations for child-support judgments indicates only that the period for maintaining an action to enforce a child-support judgment expires after a certain amount of time. It does not indicate that a child-support judgment expires after a certain amount of time and, therefore, cannot be enforced in an administrative proceeding.

Affirmed.