FILED BY CLERK
APR 26 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBERT W. NICHOLS and MARY ANN NICHOLS, husband and wife, Plaintiffs/Appellants, v. W. DAVID WESTON, assignee of EDSON WHIPPLE and LOUISE WHIPPLE, husband and wife, Defendant/Appellee.	2 CA-CV 2010-0189 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C312608

Honorable Stephen C. Villarreal, Judge

AFFIRMED

Gibson, Nakamura & Green, P.L.L.C.
By Scott D. Gibson — Tucson
Attorneys for Plaintiffs/Appellants

W. David Weston — Salt Lake City, Utah
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Judgment debtors Robert Nichols and Mary Ann Nichols ("the Nichols") appeal from the trial court's order finding appellee W. David Weston's writ of

garnishment had priority over voluntary payments the Nichols had been making to the Internal Revenue Service (IRS). For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's ruling. *Double AA Builders, Ltd. v. Grand State Constr. L.L.C.*, 210 Ariz. 503, ¶ 9, 114 P.3d 835, 838 (App. 2005). In July 2001, Edson Whipple and his wife obtained a judgment against the Nichols and others for the sum of $848,947.10. In 2004, the Whipples filed applications for writs of garnishment, which the trial court granted, imposing continuing liens against the Nichols' earnings with their respective employers. The Whipples subsequently assigned the judgment and collection rights to Weston. On April 9, 2010, Weston filed applications for writs of garnishment of the Nichols' earnings.

¶3 The Nichols apparently also owed $50,000 to the IRS and had begun making voluntary payments to the IRS by wage assignments of fifteen percent of their disposable earnings in order to prevent the IRS from levying against their income. The Nichols moved to quash Weston's writs of garnishment, arguing the payments to the IRS had priority, and the Nichols' remaining earnings were thus exempt from garnishment. After a hearing, the trial court signed orders of continuing liens against the Nichols' earnings. The court concluded that the funds being transferred to the IRS were "by virtue of a voluntary payment, which is not a levy," and entered judgment finding Weston's

writs of garnishment had priority over the Nichols' wage assignments to the IRS. This appeal followed.

Discussion

¶4 On appeal, the Nichols argue that, because they were making voluntary payments of fifteen percent of their disposable earnings to the IRS in order to avoid a larger tax levy, the voluntary payments were the equivalent of an IRS levy and should have been given priority over Weston's writ pursuant to A.R.S. § 12-1598.14. They also contend A.R.S. § 33-1131 caps at twenty-five percent the amount of a debtor's disposable earnings that can be "subject to process." And, they maintain that Weston's garnishment, when combined with the IRS payments, would exceed the twenty-five percent cap. We review issues of statutory interpretation de novo. *See Hobson v. Mid-Century Ins. Co.*, 199 Ariz. 525, ¶ 6, 19 P.3d 1241, 1244 (App. 2001).

¶5 "When interpreting a statute, 'our primary goal is to ascertain the legislature's intent.'" *Thompson v. Pima County*, 226 Ariz. 42, ¶ 7, 243 P.3d 1024, 1026 (App. 2010), *quoting State ex rel. Ariz. Registrar of Contractors v. Johnson*, 222 Ariz. 353, ¶ 5, 214 P.3d 441, 442 (App. 2009). "[T]he best and most reliable index of a statute's meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute's construction." *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991). Thus, "when the statute's language 'is not ambiguous, it must be interpreted according to its plain meaning.'" *Thompson*, 226 Ariz. 42, ¶ 7, 243 P.3d at 1027, *quoting Rineer v. Leonardo*, 194 Ariz. 45, ¶ 7, 977 P.2d 767, 768 (1999).

I. A.R.S. § 12-1598.14

¶6 Section 12-1598.14 provides generally that "conflicting wage garnishments and levies rank according to priority in time of service." The statute does not provide a definition of garnishment or levy. But *Black's Law Dictionary* 750 (9th ed. 2009) defines "garnishment" as "[a] judicial proceeding in which a creditor . . . asks the court to order a third party who is indebted to . . . the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party." *See also* A.R.S. §§ 12-1598 through 12-1598.17 (garnishment of earnings). And the term "levy" is defined in pertinent part as "[t]he legally sanctioned seizure and sale of property."[1] *Id.* at 991; *see, e.g.*, A.R.S. § 12-1559 (instructions to officer who makes levy).

¶7 A voluntary payment made to avoid a future levy fits neither of these definitions. Thus, under the plain language of § 12-1598.14, the Nichols' voluntary wage assignments to the IRS did not have priority over Weston's garnishment. And although, as the Nichols point out, their tax expert testified at the hearing that she would consider the voluntary payments to be the equivalent of a levy, she later clarified that a levy is involuntary and that the payments being made by the Nichols were made voluntarily "in order to prevent a levy."

[1]"In the absence of a statutory definition, a dictionary may be consulted to determine the ordinary meaning of words used in a statute." *In re Pinal County Mental Health No. MH-201000029*, 225 Ariz. 500, n.4, 240 P.3d 1262, 1266 n.4 (App. 2010). *See also* A.R.S. § 1-213.

II. A.R.S. § 33-1131

¶8 Section 33-1131(B) states that "the maximum part of the disposable earnings of a debtor . . . which is subject to process may not exceed twenty-five per cent of disposable earnings." "Process" is defined as "execution, attachment, garnishment, replevin, sale or any final process issued from any court or any other judicial remedy provided for collection of debts." A.R.S. § 33-1121(2). Thus, according to the plain language of § 33-1131(B), the trial court properly rejected the Nichols' contention that the voluntary wage assignments should be considered in a determination of the maximum amount of their earnings "subject to process." Had the legislature intended to include such voluntary payments in its definition of process, it would have done so. *See Progressive Cas. Ins. Co. v. Estate of Palomera-Ruiz*, 224 Ariz. 380, ¶ 14, 231 P.3d 384, 387 (App. 2010) (if legislature intended term to include certain meaning, it would have said so).[2]

¶9 Further, we are unpersuaded by the Nichols' contention that, because they had no choice but to make the voluntary payments to avoid an IRS tax levy, the payments should be treated as the functional equivalent of a levy, and § 33-1131(B) should apply. We find this court's analysis in *Fuentes v. Fuentes*, 209 Ariz. 51, 97 P.3d 876 (App. 2004), particularly instructive. In that case, the trial court ordered the husband to pay

[2]Notably, the IRS was never directly involved in the wage assignment agreements, which were made solely by the Nichols and their respective employers. The definition of "process" under A.R.S. § 33-1121(2) suggests the existence of some kind of judicial action initiated by the creditor to reach the debtor's assets. Here, the IRS was merely the passive beneficiary of the agreement between the Nichols and their employers.

child support and spousal maintenance that exceeded fifty percent of disposable earnings that could be "subject to process" under § 33-1131(C). 209 Ariz. 51, ¶ 9, 97 P.3d at 879. We determined that § 33-1131(C) did not apply because a court order requiring the husband to pay support did not fall under the definition of "process" in § 33-1121. 209 Ariz. 51, ¶ 13, 97 P.3d at 880. And, even though the husband arguably would have been "subject to process" had he ignored the court order, this did not make the court order the functional equivalent of "process." Similarly here, the mere fact that the Nichols eventually may have become "subject to process" had they stopped making the voluntary payments does not make such payments the equivalent of an IRS levy.

¶10 Finally, the Nichols urge us to hold on public policy grounds that the payments were the functional equivalent of a levy. However, where a statute's language is plain, we need not turn to secondary methods of statutory interpretation. *See U.S. West Commc'ns v. Ariz. Dep't of Revenue*, 193 Ariz. 319, ¶ 12, 972 P.2d 652, 655 (App. 1998); *see also State v. Hinden*, 224 Ariz. 508, ¶ 9, 233 P.3d 621, 623 (App. 2010) (court looks no further than plain language when statute unambiguous).

Disposition

¶11 For the reasons stated, we affirm the trial court's order finding Weston's writ of garnishment has priority over the voluntary wage assignments made by the Nichols in favor of the IRS.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge