NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

GREGORY MAKI and ELIZABETH MAKI, Appellants, v. MULTIBANK 2009-1 RES-ADC VENURE, LLC, Appellee.	)	Case No. 2D19-2060

Opinion filed November 13, 2020.

Appeal from the Circuit Court for Lee County; Robert J. Branning, Judge.

Gregory Maki, pro se, and Elizabeth Maki, pro se.

Michael Anthony Shaw, Stephen Drobny, and Jerrod Maddox of Jones Walker LLP, Miami, for Appellee.

NORTHCUTT, Judge.

Gregory and Elizabeth Maki appeal the circuit court's final order overruling their objection to the garnishment of Gregory's wages. We reverse because the court erred by failing to apply an amended version of the garnishment exemption statute.

In 2017, Multibank 2009-1 RES-ADC Venture, LLC, obtained a judgment against the Makis in an action for breach of a home equity line of credit agreement. In its effort to enforce the judgment, Multibank eventually sought a continuing writ of garnishment of Gregory Maki's wages. The Makis objected and asserted Gregory's entitlement to the head-of-family exemption provided by section 222.11, Florida Statutes. The circuit court overruled the objection.

The Makis raise two issues in this appeal: (1) which version of section 222.11 applies in this case, and (2) how much of Gregory's disposable income is subject to garnishment.

Vis-à-vis the first question, the Makis entered into their contract with Multibank in 2005. At that time, section 222.11 provided, in relevant part, as follows:

> (2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to $500 a week are exempt from attachment or garnishment.
>
> (b) Disposable earnings of a head of a family, which are greater than $500 a week, may not be attached or garnished unless such person has agreed otherwise in writing. In no event shall the amount attached or garnished exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

This section was amended in 2010 to increase the garnishment exemption from $500 to $750 and to impose more specific and stringent requirements for waiving the garnishment exemption (amendments emphasized):

> (2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to <u>$750</u> a week are exempt from attachment or garnishment.
>
> (b) Disposable earnings of a head of a family, which are greater than <u>$750</u> a week, may not be attached or garnished unless such person has agreed otherwise in writing. <u>The</u>

agreement to waive the protection provided by this paragraph must:

1. Be written in the same language as the contract or agreement to which the waiver relates;

2. Be contained in a separate document attached to the contract or agreement; and

3. Be in substantially the following form in at least 14-point type:

IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR A CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR INCOME IS EXEMPT FROM GARNISHMENT UNDER FLORIDA LAW. YOU CAN WAIVE THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT. BY SIGNING BELOW, YOU AGREE TO WAIVE THE PROTECTION FROM GARNISHMENT.

(Consumer's Signature) (Date Signed)

I have fully explained this document to the consumer.

(Creditor's Signature) (Date Signed)

~~In no event shall~~ The amount attached or garnished may not exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

The Makis do not argue for the application of the new waiver requirements. But they maintain that the 2010 amendment and its $750 exemption threshold should be applied in this case because the amendment was remedial in nature and because public policy favors preventing debtors such as the Makis from becoming charges of the state. Multibank, on the other hand, contends that retroactive application of the higher statutory exemption would unlawfully impair the terms of the parties' 2005 contract.

In support of its argument, Multibank cites Hart v. Wachovia Bank, N.A., 159 So. 3d 244, 246 n.2 (Fla. 1st DCA 2015), in which the First District declined to

retroactively apply the 2013 version of section 222.11, with the 2010 amendments, to a 2005 contract. But Hart addressed only one aspect of the retroactivity issue, concerning the legal sufficiency of a contractual exemption waiver. The general waiver language in the 2005 contract at issue there clearly would not have satisfied the more explicit requirements of the 2013 version of the statute. See id. The court held that retroactive application of the amendment "would allow the 2010 amendments to be an unlawful impairment of contracts in violation of Article I, Section 10, of the Florida Constitution." Id. That passage in the constitution provides that "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." Art. I, § 10, Fla. Const.; see generally Searcy, Denney, Scarola, Barnhart & Shipley v. State, 209 So. 3d 1181, 1191 (Fla. 2017) ("To impair a preexisting contract, a law must 'have the effect of rewriting antecedent contracts' in a manner that 'chang[es] the substantive rights of the parties to existing contracts.' " (quoting Manning v. Travelers Ins. Co., 250 So. 2d 872, 874 (Fla. 1971))).

The Makis acknowledge that applying the 2010 exemption waiver requirements to their contract is constitutionally barred. But the increased exemption threshold is another matter. As a general rule, remedial amendments are to apply retrospectively. State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So. 2d 55, 61 (Fla. 1995). And we have previously stated that "[g]arnishment is a remedial tool available to further an existing right; therefore, the rule against retrospective application of a statute does not apply." USAmeriBank v. Klepal, 100 So. 3d 56, 60 n.4 (Fla. 2d DCA 2011). While it is true that a remedial or procedural statutory provision may not be applied retroactively when it affects substantive rights, see Hampton v. Cale of Ft. Myers, Inc.,

964 So. 2d 822, 825 (Fla. 4th DCA 2007), that is not the case with respect to the new exemption-threshold component of the statute because its application would not impair Multibank's substantive right to garnish Gregory's wages.

The Supreme Court of Louisiana has addressed this precise issue and held that retroactively applying an increased statutory garnishment exemption threshold would not unconstitutionally impair the creditor's contract. See Hooter v. Wilson, 273 So. 2d 516, 522 (La. 1973). The court explained that the creditor had a vested right only in garnishing nonexempt income generally; it did not have a vested right in garnishing a particular amount. Id. The court further explained:

> When the state changed the remedy by increasing the exemption, it did not abrogate the remedy; it did not make the remedy any less certain tha[n] it was at the time of the contract; it simply in the interest of public welfare increased the debtor's exemption so that he and his family might be saved from being a charge upon the state.

Id.

We agree with the Hooter court's reasoning. Applying the new, higher exemption threshold in this case would not impair Multibank's vested contractual right to garnish Gregory Maki's wages. Rather, it merely would affect the bank's garnishment remedy. As such, it applies retroactively. The $750 threshold contained in the 2010 amendment should have been applied in this case.

We must now decide how much of Gregory Maki's disposable income is subject to garnishment. The 2013 version of section 222.11 again provides:

> (2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to $750 a week are exempt from attachment or garnishment.

> (b) Disposable earnings of a head of a family, which are greater than $750 a week, may not be attached or garnished unless such person has agreed otherwise in writing.
>
> . . . .
>
> The amount attached or garnished may not exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

Section 1673 of Title 15 of the United States Code, in turn, provides as follows:

> (a) Maximum allowable garnishment
>
> Except as provided in subsection (b) and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed
>
> (1) 25 per centum of his disposable earnings for that week, or
>
> (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable,
>
> whichever is less. . . .

The Makis contend that together these laws protect all of Gregory's disposable income up to the $750 threshold and that Multibank may only recover 25% of the disposable income above that threshold. Multibank counters that the $750 protection only applies if the debtor's entire disposable income is $750 or less, and that because Gregory's disposable income of $754.79 exceeds that threshold, it is entitled to garnish 25% of all of Gregory's disposable income, i.e., $188.70 (25% of $754.79).

Again, we agree with the Makis. We note that a close reading of the plain language of the statute does not furnish a clear resolution of this issue. See Daniels v. Florida Dep't of Health, 898 So. 2d 61, 64 (Fla. 2005) ("In construing a statute we are to give effect to the Legislature's intent. In attempting to discern legislative intent, we first

look to the actual language used in the statute. When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." (citations omitted)). Subsection (2)(a) states definitively that a debtor's entire disposable income is protected from garnishment if his or her total disposable income is $750 per week or less. And subsection (2)(b) provides that any disposable income above that threshold may only be garnished if the debtor signs a written waiver. The statute, then, fully addresses debtors whose wages are less than the $750 threshold, but it only partially addresses debtors whose wages exceed that threshold, in that it does not clearly indicate whether the first $750 of the latter's income is protected if he or she signs a garnishment exemption waiver.

However, when considering the subsections together and when factoring in the practical and policy considerations at play, we have little trouble concluding that the legislature intended to shield a debtor's first $750 in disposable income from garnishment even if the debtor's total disposable income exceeds that threshold. Thus, when describing this statutory scheme in Klepal, we wrote:

> Under section 222.11(2)(a) [(2007)], all of the disposable earnings of a head of a family less than or equal to $500 a week are exempt from attachment or garnishment. No waiver of the exemption by a head of family is permitted for disposable earnings up to and including the amount of $500. In accordance with section 222.11(2)(b), the disposable earnings of a head of a family which are greater than $500 a week are also exempt from attachment or garnishment "unless a written agreement allowing garnishment is executed" by the head of the family.

Klepal, 100 So. 3d at 59 (emphasis added) (quoting Williams v. Espirito Santo Bank of Fla., 656 So. 2d 212, 213 (Fla. 3d DCA 1995)); see also Ulisano v. Ulisano, 154 So. 3d

507, 508 (Fla. 4th DCA 2015) (stating that section 222.11 "exempts the head of family's disposable earnings of $750 a week or less from garnishment and likewise exempts disposable earnings greater than $750 per week, unless the debtor agrees to waive the protection from garnishment in writing").

Subsection (2)(a)'s total exemption for debtors whose disposable income is less than $750 per week clearly indicates the legislature's intention to ensure that the debtor has at least that sum to pay for the basic necessities of life. Allowing a creditor to eat into that base amount by seizing a quarter of it if the debtor's income exceeds the threshold by as little as $4.79 (as is the case here), thus leaving the debtor with less than $750, would undermine the public policy served by the statute. See Ulisano, 154 So. 3d at 508 (stating that "the exemption's purpose 'is to prevent the families of debtors from becoming public charges' " and noting that "it should be liberally construed in favor of the debtor" (quoting Killian v. Lawson, 362 So. 2d 1007, 1007 (Fla. 4th DCA 1978))).

For the foregoing reasons, we reverse the order overruling the Makis' objection. We remand for the circuit court to amend the final judgment to permit Multibank to garnish only 25% of the portion of Gregory Maki's disposable income that exceeds the $750 threshold.

Reversed and remanded.

LaROSE, J., Concurs.
ATKINSON, J., Concurs in result only.