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.

SCHUETTE, J.

In this garnishment action, plaintiff appeals by leave granted from an order granting defendant's objection to garnishment of her state of Michigan homestead property tax credit. We reverse and remand.

I. FACTS

This case arises out of a collections action. Defendant Gayla L. Hughes entered into agreements for credit cards with Montgomery Ward and Saks Fifth Avenue. Defendant then defaulted on each of these cards, owing $535.41 on the Montgomery Ward card and $1,053.30 on the Saks Fifth Avenue card. Plaintiff Asset Acceptance Corporation is the owner and holder of each of these credit accounts.

On March 6, 2000, plaintiff filed a complaint against defendant in connection with the past due accounts. A default judgment was entered against defendant on May 8, 2000. The 15th District Court then authorized garnishments against defendant's bank account at the Huron River Credit Union and against defendant's state of Michigan homestead property tax credit.

Defendant filed objections to the latter garnishment on the grounds that the funds plaintiff sought to garnish were exempt from garnishment because defendant paid her rent solely from

Social Security disability benefits and adoption support subsidies. A hearing was held on these objections on April 17, 2003. After hearing arguments, the court denied defendant's objections to the garnishment of her homestead property tax credit on the ground that defendant had not provided any legal authority demonstrating that a tax refund or credit was exempt. The court entered an order reflecting this ruling on April 28, 2003. The court also set a hearing date for defendant's objection to the garnishment of her credit union account. The parties subsequently stipulated the entry of an order regarding defendant's objection to the credit union garnishment and that issue is not before this Court.

Defendant appealed in the circuit court the district court's denial of her objection to the garnishment of her tax credit. A hearing was held on this question on September 19, 2003. On October 9, 2003, the circuit court entered an opinion and order vacating the district court's ruling and remanding for entry of an order granting defendant's objection to the garnishment of her tax credit.

II. STANDARD OF REVIEW

This issue presents a question of law. This Court reviews de novo questions of law. *Bennett v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

III. ANALYSIS

Defendant acknowledges that in general, under Michigan law, a homestead property tax credit may be garnished. MCL 205.30a, 600.4061a. However, defendant argues that when, as here, a source of funds itself exempt from garnishment is used to pay rent, which rent subsequently results in a tax credit, then the tax credit should also be exempt from garnishment. We disagree.

The parties to this action do not dispute that the Social Security benefits received by defendant are themselves exempt from garnishment. Moreover, in *Philpott v Essex Co Welfare Bd*, 409 US 413, 416-417; 93 S Ct 590; 34 L Ed 2d 608 (1973), the Supreme Court held that Social Security funds deposited in a savings and loan association retain their exempt status. The Court based its ruling on the fact that, when deposited in a savings and loan association, the funds retain the "quality of monies." *Id*. at 416. Funds retain the "quality of monies" when they remain subject to demand and use as the needs of the beneficiary for support and maintenance require. *Porter v Aetna Cas & Surety Co*, 370 US 159, 161; 82 S Ct 1231; 8 L Ed 2d 407 (1962).

In the present case, defendant argues that the tax credit retains the quality of monies because, although separated from defendant for up to a year, the credit, once received, will be subject to demand and use as the needs of defendant require. However, such an assertion is simply incorrect. Without question, the Social Security benefits, when placed in defendant's credit union account, retained the quality of monies. However, once defendant paid the money to her landlord in rent, it no longer retained the quality of monies. Once paid to the landlord, the rent money was in the landlord's control; indeed, it became entirely the landlord's property and was no longer subject to demand and use by the defendant.

Moreover, following defendant's theory, the funds originating from Social Security and paid to defendant then underwent several more changes of hands, from the landlord to the

municipality and from the municipality to the state. In each of these instances, the funds became intermingled with other funds and lost any ability to be directly traced back to any one individual. As a result, the funds defendant received as a homestead property tax credit cannot be said to have come from the same source as the original Social Security benefits. The source of the funds had changed entirely. For these reasons, defendant's argument is without merit.

Defendant has also asserted that, even if the homestead property tax credit did not retain its exempt status based on its origination in Social Security benefits, nonetheless the credit should still be found to be exempt on the basis that it constitutes, essentially, a form of public assistance benefit under the Michigan Social Welfare Act, MCL 400.1 *et seq*. This argument too is without merit.

It is true, as our Supreme Court has recognized, that the homestead property tax credit primarily benefits senior citizens, veterans, the blind or disabled, or those with low incomes. *Butcher v Dep't of Treasury*, 425 Mich 262, 274; 389 NW2d 412 (1986). However, even the very wealthy are potentially entitled to some benefit from the homestead property tax credit program. They may claim the credit on their tax returns just as any other property owner or renter may, subject to a limitation on the percentage they may claim depending on their incomes. MCL 206.520(8), 206.522. In light of this fact, the credit cannot be considered a form of public assistance benefit. Thus, this argument, too, is without merit.

In summary, the circuit court committed error mandating reversal when it found that defendant's homestead property tax credit was exempt from garnishment. These funds, although arguably originally derived from Social Security benefits, did not retain their exempt status because their character changed once they were spent. Moreover, a homestead property tax credit is not a form of public assistance relief.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

Meter, J., concurred.

/s/ Bill Schuette
/s/ Patrick M. Meter