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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-747**

Daniel Lang d/b/a Dan Lang Construction,
Respondent,

vs.

Deanna Dorosh,
Appellant.

**Filed December 28, 2010
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-CV-09-974

Daniel Lang, Sandstone, Minnesota (pro se respondent)

Floyd E. Siefferman, Jr., Richard A. Saliterman, Brett M. Larson, Saliterman & Siefferman, P.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Worke, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's denial of her levy-exemption claim under Minn. Stat. § 550.37, subd. 24 (2010), arguing that a plain reading of the statute grants

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

her exemption claim or precludes the district court from considering respondent's untimely objection. Appellant also argues that she is entitled to costs under Minn. Stat. § 550.143, subd. 10 (2010). We affirm.

FACTS

On February 19, 2010, respondent Daniel Lang d/b/a Dan Lang Construction served a writ of execution upon appellant Deanna Dorosh's financial institution, Fidelity Investments, in an attempt to recover an outstanding judgment. Appellant served an exemption form on March 8, claiming that "ALL the money being frozen by the bank is protected" as an individual retirement account (IRA), and attached an account statement for a Fidelity Rollover IRA valued at \$7,746.75. On March 15, Fidelity filed a financial-institution-execution disclosure with the district court, indicating that appellant maintained another IRA with Fidelity valued at \$42,074, and claiming that the entire amount was exempt from respondent's levy. Respondent filed a creditor's notice of objection on March 23 and scheduled a hearing for March 30. The district court granted appellant a one-week continuance until April 6, and continued the hearing a second time until April 9 upon appellant's request. Following the hearing, the district court concluded that appellant has "provided documentation that \$7,746.75 of her account at Fidelity [] is an IRA rollover. That amount is exempt. [Appellant] has not established that the remainder of the \$42,074.00 is exempt from levy." The district court noted that, although respondent did not timely file his creditor's objection, appellant was not prejudiced. The district court ordered that the levied funds be released to respondent, and this appeal follows.

DECISION

“On appeal, a [district] court’s findings of fact are given great deference, and shall not be set aside unless clearly erroneous.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). However, “[a]n appellate court is not bound by, and need not give deference to, the district court’s decision on a question of law.” *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001). Statutory interpretation is a question of law that this court reviews de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007).

Appellant first argues that the district court erred in interpreting the exemption statute and that the \$42,074 account should be exempt. The objective in analyzing statutory construction is “to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). If that intent is clear from the plain and unambiguous language of the statute, we will apply the plain meaning of the statute. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). “Under the basic canons of statutory construction, we are to construe words and phrases according to rules of grammar and according to their most natural and obvious usage.” *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005).

A debtor’s property is subject to attachment unless a specific exemption applies. Minn. Stat. § 550.37 (2010). Certain retirement savings plans are exempted from levy, including IRAs, depending on the value of the account. *Id.*, subd. 24(a). But the

exemption process from a levy against a financial institution is very meticulous, with the requisite documents and instructions listed specifically under the statute. *See* Minn. Stat. § 550.143, subds. 1-3 (2010). Once the debtor receives the notice of the creditor’s writ of execution from the financial institution, the debtor must follow a specific process in order to claim an exemption:

[T]he judgment debtor shall complete the exemption notice . . . and deliver one copy to the financial institution and one copy to the attorney for the judgment creditor within 14 days of [service of] the exemption notices. The judgment debtor is also required to include copies of bank statements for the prior 60 days . . . delivered to the attorney for the judgment creditor. . . . [or] directly to the judgment creditor.

Id., subd. 4 (2010).

A plain reading of the statute reveals two important requirements for a debtor completing an exemption form. First, timing: the debtor must deliver one copy of the completed exemption notice to the financial institution and the creditor within 14 days of receiving the writ of execution. *See id.* Second, disclosure: the debtor must deliver one copy of the exemption form to both the financial institution and the creditor, “includ[ing] copies of bank statements for the prior 60 days.” *Id.* Neither requirement is susceptible to multiple interpretations.

Here, appellant provided only an account statement for the \$7,746.26 account, not the \$42,047 account. Appellant tries to circumvent the disclosure requirement by relying on the statutory language providing that the “[f]ailure of the [] debtor to deliver the executed exemption notice or copies of the required bank statements . . . does not constitute a waiver of any claimed right to an exemption.” *Id.* But this language pertains

only to the *delivery* of the account statements to the creditor—not the *inclusion* of the statements with the exemption form. *See id.* Thus, even if appellant satisfied the timing requirement of the statute, she failed to meet the disclosure mandate to properly exempt the \$42,074 account. Accordingly, the district court did not err by concluding that appellant’s account is not exempt from levy.

Appellant also challenges the timeliness of respondent’s objection under Minn. Stat. § 550.143, subd. 5(a) (2010), which requires that “[a]n objection [] be interposed within six business days of receipt by the creditor of an exemption claim from the debtor.” Appellant asserts that respondent’s objection was due within six business days of her serving the exemption notice on March 8. Because respondent did not serve his objection until March 23, appellant argues that the district court should have dismissed respondent’s objection as untimely. But respondent was unaware of appellant’s intent to exempt the \$42,074 account until Fidelity filed the financial-institution-execution disclosure on March 15. Respondent filed his objection on March 23—within six business days of Fidelity filing the disclosure. Respondent’s delay was reasonable, considering appellant’s failure to explicitly identify the \$42,074 account in her exemption form. Additionally, appellant was not unduly prejudiced by the delay; the hearing was not scheduled sooner than five business days from the objection, and appellant was granted multiple continuances. *See id.*, subd. 5(b) (2010) (hearing may not be scheduled sooner than five business days from the filing of the objection, and debtor must be granted a one-week continuance upon request). The district court did not err by refusing to dismiss respondent’s objection as untimely.

Finally, appellant asserts that she is entitled to costs, reasonable attorney fees, and damages. “If the claim of exemption is upheld, and the court finds that the judgment creditor disregarded the claim of exemption in bad faith, the judgment debtor shall be awarded costs, reasonable attorney fees, actual damages, and an amount not to exceed \$100.” *Id.*, subd. 10 (2010). Because appellant failed to demonstrate that the \$42,074 account is exempt from levy and also failed to demonstrate that respondent acted in bad faith, this argument fails.

Affirmed.