

IN THE COURT OF CLAIMS OF OHIO

MICHAEL D. DORF	:	
Plaintiff	:	
v.	:	CASE NO. 2002-10488-AD
OHIO BUREAU OF WORKERS' COMPENSATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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{¶ 1} Plaintiff, Michael D. Dorf, an attorney licensed to practice law in Ohio, represented a person identified as Steven Mueller-Null in a Workers' Compensation (claim #00-497251) matter before the Industrial Commission of Ohio at the Toledo service office. Plaintiff and Mr. Mueller-Null had previously entered into a contingency fee agreement entitling plaintiff to one-third of any compensation award granted to Mr. Mueller-Null. On November 4, 2002, a District Hearing Officer of the Industrial Commission allowed a 16% permanent partial disability award for Mueller-Null in the amount of \$6,282.56. Additionally, the Record of Proceedings drafted by the District Hearing Officer noted the disability award was "subject to any applicable family support court order." On November 26, 2002, defendant, Ohio Bureau of Workers' Compensation (BWC), paid the entire \$6,282.56 awarded to Mueller-Null to the Michigan DIS Unit Central Lansing, a child support enforcement and collection agency. Defendant directed the entire compensation award payment to Michigan, apparently in response to a November 22, 2002, order issued from the Circuit Court For Branch County, Michigan.

{¶ 2} On November 22, 2002, the Circuit Court For Branch County, Michigan, issued an Ex Parte Order Appointing Receiver in a

proceeding involving delinquent child support owed by Steven Mueller-Null to Tammie Mueller. As part of this order, the Circuit Court appointed a "Receiver for funds due to the above named Defendant, Steven Mueller-Null as a result of a Workers' Compensation claim #00-497251." The Circuit Court further ordered any funds due from the Steven Mueller-Null Workers' Compensation claim to, "be delivered by Steven Mueller-Null or ITS EMPLOYEES, ATTORNEYS OR AGENTS," to the court appointed receiver. The Receiver was directed to deposit all funds delivered and provide notice of a hearing before the Circuit Court for disposition of the funds unless a settlement had occurred. A copy of this order was served upon Steven Mueller-Null and his attorney, the plaintiff in the instant action.

{¶ 3} On November 26, 2002, plaintiff directed correspondence to Shelly R. Madden, identified as the Enforcement Officer, Fifteenth Judicial Circuit Friend of the Court from Branch County, Michigan.

In this correspondence plaintiff explained Madden's office was to receive a check from defendant, BWC representing the entire amount of the disability award for Steven Mueller-Null. The proceeds of this check \$6,282.56, were to be applied to Mueller-Null's delinquent child support obligation owed under Michigan law. Plaintiff requested Madden's office, after negotiating the check from BWC, send him an amount equal to his attorney fees owed by Mueller-Null, plus expenses. Plaintiff related he should receive, "the agreed one-third fee in the amount of \$2,094.00 plus the costs expended for the examination by Toledo Medical Evaluations in the

{¶ 4} amount of \$150.00 for a total of \$2,244.00." Plaintiff did not receive any money from Madden's office, In fact, on November 27, 2002, plaintiff was send a letter from the Fifteenth Judicial Circuit Friend of the Court office notifying him that all Workers' Compensation award payments issued in the name of Steven Mueller-Null would be used to satisfy delinquent child support arrearages Mueller-Null owed in Michigan. Funds used to pay child

support obligations obviously included any and all attorney fees owed to plaintiff by Mueller-Null.

{¶ 5} Plaintiff argued defendant, BWC, acted in contravention of Ohio law by not deducting his attorney fees and expenses from the lump sum compensation award which was ultimately sent to Michigan to satisfy a child support arrearage owed by Steven Mueller-Null. Plaintiff cited the case of *Rowan v. Rowan* (1995), 72 Ohio St. 3d 486, to support his contention that under Ohio law BWC was required to deduct attorney fees from a workers' compensation award and forward those fees to the proper payee before remitting the remainder of the award to a court or collection agent in satisfaction of a child support obligation. In *Rowan*, id, BWC, acting under a Lake County Common Pleas Court order, remitted an entire lump-sum workers' compensation award to the Lake County Child Support Enforcement Agency (LCCSEA) to apply the award towards child support arrearage owed by the injured worker, Edwin Rowan, Jr. BWC did not deduct attorney fees and related expenses, before sending the entire lump-sum award to LCCSEA, although Rowan had been represented by an attorney under a contingent fee agreement during the workers' compensation proceedings. Rowan's attorney, James W. Tekavec, filed a motion in the Lake County Common Pleas Court to intervene in the proceedings involving conveyance of the lump-sum compensation award, asserting his right to receive his attorney fee from the award amount. The attorney also requested a restraining order to prevent LCCSEA from disbursing the entire amount of Rowan's lump-sum award conveyed by BWC. The Lake County Common Pleas Court ordered LCCSEA to release to Tekavec the portion of the conveyed lump-sum award representing his attorney fee. Subsequently, this decision was affirmed on appeal by the Lake County Court of Appeals and the Supreme Court of Ohio. In the instant action, plaintiff was not involved in any proceedings in the Circuit Court For Branch County, Michigan, which exercised jurisdiction over Steven Mueller-Null's entire lump-sum

compensation award, including attorney fees and expenses owed. Plaintiff, Dorf, chose to file a complaint in this court claiming his entitlement to recover from defendant, BWC, fees owed under a contingent fee agreement with Steven Mueller-Null.

{¶ 6} Plaintiff, Dorf, asserted defendant, BWC, was charged with a duty to forward the portion of Mueller-Null's compensation award which represented fees and expenses. Plaintiff maintained this duty was expressed in the November 4, 2002, decision of the District Hearing Officer granting a permanent partial disability award to Steven Mueller-Null. The District Hearing Officer's decision noted the permanent partial disability award was "to be paid in accordance with the applicable provisions" of R.C. 4123.57 (Partial Disability Compensation) and the award was "subject to any applicable family support court order." The decision did not address payment of attorney fees to plaintiff.

{¶ 7} Plaintiff contended workers' compensation awards under R.C. 4123.67<sup>1</sup> are exempt from all claims of creditors and from attachment or execution except as expressed in R.C. 3119.80, R.C. 3119.81, R.C. 3121.02, and R.C. 3121.03. These statutory exceptions deal with court ordered collection and enforcement of child support obligations and arrearages in Ohio jurisdictions. Plaintiff, in the instant action, argued defendant lacked the "authority to honor child support orders from the State of Michigan without an Ohio court order or Ohio Administrative agency child support order." Plaintiff related the support order relied upon is from a Michigan court which did not have jurisdiction over BWC, and therefore, could not compel BWC, an Ohio entity, to remit an entire workers' compensation award to satisfy a child support arrearage owed in Michigan.

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<sup>1</sup> R.C. 4123.67 states in pertinent part:

"Compensation exempt from attachment of execution.

"Except as otherwise provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to the employees or their dependents.

{¶ 8} Furthermore, plaintiff maintained defendant, "was also negligent in failing to assure that the attorney fees and costs would be honored by the Michigan court or agency prior to issuing the entire check to Michigan." Plaintiff has essentially claimed defendant wrongfully collected his attorney fees and costs. Plaintiff has, consequently, filed this complaint seeking to recover \$2,244.00, an amount representing his fees and costs collected by BWC and forwarded to Michigan to satisfy a child support debt owed by plaintiff's client, Steven Mueller-Null.<sup>2</sup>

{¶ 9} Defendant denied it is charged with any legal duty to directly pay legal fees in workers' compensation awards. Defendant maintained that BWC will send a compensation award warrant to an injured worker's attorney upon request of the worker. However, defendant stated, "BWC is not legally permitted to split payments between an injured worker and their counsel, pursuant to R.C. 4123.67, absent a court order compelling such action."

{¶ 10} Defendant acknowledged in a situation where an injured worker's compensation award is subject to an out-of-state collection order for child support arrearages, BWC will honor that collection order and remit the award to the appropriate child support enforcement agency. Defendant also acknowledged, "BWC will honor an out-of-state court order for attorney fees, but Attorney Dorf has not provided any such foreign court order." In fact, defendant explained, plaintiff admitted the Circuit Court For Branch County, Michigan declined to issue a particular order for attorney fees out of the Mueller-Null compensation award. Defendant declared BWC does not issue any attorney fee payment directly to the legal representative of an injured workers' compensation participant, absent a valid court order directing such fee payment to the legal representative.

{¶ 11} Furthermore, defendant stated, "jurisdiction for

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<sup>2</sup> The requisite material filing fee was paid.

disputes involving attorney fees in workers' compensation matters rests with the Ohio Industrial Commission, and not the Bureau of Workers' Compensation." Defendant asserted that R.C. 4123.06 grants jurisdiction for these attorney fee disputes to the Ohio Industrial Commission. The relevant cited language of R.C. 4123.06 contains the following: "The industrial commission shall adopt rules concerning the payment of attorney fees and shall protect parties against unfair fees. The commission shall fix the amount of fees in the event of a controversy in respect thereto."

{¶ 12} Plaintiff contended BWC erroneously forwarded the entire Mueller-Null compensation award to the Michigan DIS Unit Central, because that Michigan office failed to comply with statutory mandates to receive the award. Specifically, plaintiff asserted non-compliance with registration procedures under the Uniform Interstate Family Support Act provided in R.C. 3115 et al., should have prevented BWC from remitting any compensation award to Michigan. Plaintiff argued BWC paid the Mueller-Null compensation award to Michigan without any legal authorization and in violation of law. Plaintiff related the out-of-state creditor in the instant action failed to comply with registration requirements of R.C. 3115.39(A)(1) and R.C. 3115.39(B).<sup>3</sup> Plaintiff maintained any child support order from Michigan had to be registered with the tribunal requesting enforcement and the registering tribunal was required to file the order. Despite the fact that registration of a withholding order appears to be discretionary, see R.C. 3115.38<sup>4</sup>

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<sup>3</sup> R.C. 3115.39(A)(1) and (B) state:

"3115.39 Procedure for registering order in Ohio.

"(A) A support order or income withholding order of another state may be registered in this state by sending all of the following documents and information to the appropriate tribunal in this state:

"(1) A letter of transmittal to the tribunal requesting registration and enforcement;

"(B) On receipt of a request for registration, the registering tribunal shall cause the order to be filed, together with one copy of the documents and information, regardless of their form."

<sup>4</sup> R.C. 3115.38 states:

"3115.38 Administrative enforcement without registration of order.

and R.C. 3115.39, plaintiff has professed the registration procedure is mandatory. Furthermore, plaintiff asserted the claimant (Steven Mueller-Null) was not sent required notice under R.C. 3115.42<sup>5</sup> of the withholding order and was, consequently, deprived of his right to contest the validity of the withholding order under R.C. 3115.43<sup>6</sup>. Both plaintiff and Steven Mueller-Null

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"A party seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order pursuant to sections 3115.39 to 3115.51 of the Revised Code to a support enforcement agency of this state. On receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to sections 3115.39 to 3115.51 of the Revised Code."

<sup>5</sup> R.C. 3115.42 states:

"3115.42 Notice to nonregistering party; issuance of withholding notice to payor.

"(A) When a support order or income withholding order issued in another state is registered, immediately on registration the registering tribunal shall send notice to the nonregistering party of the registration. The notice must be accompanied by a copy of the registered order and the documents and relevant information described in division (A) of section 3115.39 of the Revised Code.

"(B) The notice must inform the nonregistering party of all of the following:

"(1) That a registered order that is confirmed pursuant to section 3115.43 or 3115.44 of the Revised Code is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

"(2) That a hearing to contest the validity or enforcement of the registered order must be requested pursuant to section 3115.43 of the Revised Code no later than twenty days after the date of mailing or personal service of the notice;

"(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

"(4) The amount of any alleged arrearages under the support order.

"(C) On registration of an income withholding order for enforcement, the registering tribunal or a support enforcement agency of this state shall issue a withholding notice to the obligor's payor pursuant to Chapter 3121. of the Revised Code."

<sup>6</sup> R.C. 3115.43(A) states:

"3115.43 Request for hearing to contest validity or enforcement of order.

"(A) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing no later than twenty days after the date of mailing or personal service of the notice of the registration by filing a motion with the registering tribunal. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section

received notice that the entire workers' compensation award was subject to be forwarded to Michigan. However, the entire award was

{¶ 13} forwarded to Michigan by BWC before plaintiff had a reasonable time or opportunity to act in Ohio prior to the funds being sent to Michigan.

{¶ 14} Notwithstanding plaintiff's contentions regarding the applicability of R.C. 3115.38 through R.C. 3115.45 (Registration of Orders), the court finds R.C. 3115.32 through R.C. 3115.37 is more applicable under the facts of the instant action. R.C. 3115.32 provides, "[a]n income withholding order issued in another state may be sent to the obligor's payor without first filing a complaint or comparable pleading or registering the order with a tribunal or support enforcement agency of this state."<sup>7</sup> R.C. 3115.33 lists the duties of an obligor's payor such as BWC upon receiving a withholding order such as the order received from the Circuit Court For Branch County, Michigan. BWC, acting as a payor of the compensation award of obligor Steven Mueller-Null was required to comply with the statutory requirements of R.C. 3115.32 through R.C.

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3115.44 of the Revised Code."

<sup>7</sup> R.C. 3115.01 states in pertinent part:

"(F) 'Income withholding order' means an order or other legal process directed to an obligor's payor to withhold support from the income of the obligor.

"(M) 'Obligor' means an individual, or the estate of a decedent to which any of the following applies:

"(1) The individual or estate owes or is alleged to owe a duty of support;

"(2) The individual is alleged but has not been adjudicated to be a parent of a child;

"(3) The individual or estate is liable under a support order.

"(N) 'Payor' has the same meaning as in section 3121.01 of the Revised Code."

R.C. 3121.01(E) provides:

"(E) 'Payor' means any person or entity that pays or distributes income to an obligor, including an obligor if the obligor is self-employed; an employer; an employer paying an obligor's workers' compensation benefits; the public employees retirement board; the governing entity of a municipal retirement system; the board of trustees of the Ohio police and fire pension fund; the state teachers retirement board; the school employees retirement board; the state highway patrol retirement board; a provider, as defined in section 3305.01 of the Revised Code; the bureau of workers' compensation; or any other person or entity other than the department of job and family services with respect to unemployment compensation benefits paid pursuant to Chapter 4141. of the Revised Code."



3115.37.

{¶ 15} Plaintiff professed BWC was charged with a duty to pay him directly the amount of Mueller-Null's compensation award representing attorney fees. Plaintiff related his contingent fee agreement with Mueller-Null represented a valid lien on the workers' compensation award which should have been honored by defendant. Plaintiff further related his lien attached on November 4, 2002 when the judgment to grant Mueller-Null a permanent partial disability award was made. Plaintiff declared that under the authority of *Rowan, id.*, he was entitled to receive his attorney fees from a workers' compensation award before the award funds were collected to satisfy a back child support obligation. Plaintiff related his attorney fee lien attached several weeks before BWC received a withholding order from Michigan and therefore, BWC had a duty to deduct an amount representing attorney fees before payment was made to an out-of-state entity.

{¶ 16} Furthermore, plaintiff asserted defendant was required under R.C. 3115.34 to pay his attorney fee lien as a priority before remitting any funds to Michigan. R.C. 3115.34 titled, compliance with multiple orders, states: "[i]f an obligor's payor receives multiple income withholding orders with respect to the earnings of the same obligor, the payor satisfies the terms of the multiple orders if the payor complies with the law of the state of . . . the payor's principal place of business . . . to establish the priorities for withholding and allocating income withheld for multiple support obligees." Plaintiff contended his contingency fee agreement for attorney fees took priority over any creditor owed by Mueller-Null. The court does not find plaintiff's argument well taken concerning the applicability of R.C. 3115.34 to an attorney fee agreement. Plaintiff's attorney fee agreement with

{¶ 17} Steven Mueller-Null does not satisfy the definition of a withholding order as expressed in R.C. 3115.01(F) and, consequently, is not compatible with the provisions of R.C.

3115.34.

{¶ 18} Plaintiff initially contested defendant's position regarding the Industrial Commission having jurisdiction over disputes involving attorney fees in workers' compensation matters.

Plaintiff cited *Falk v. Wachs* (1996), 116 Ohio App. 3d 716, that the Industrial Commission's jurisdiction over attorney fee disputes is intended to involve fee contests between the attorney and his client. Under the facts of this instant action, the fee dispute is between plaintiff and BWC. Therefore, plaintiff asserted the Industrial Commission does not have jurisdiction over his dispute with defendant. The court agrees the Industrial Commission does not have jurisdiction over this matter.

{¶ 19} Conversely, plaintiff stated BWC should have referred the matter of his attorney fees to the Industrial Commission considering BWC knew of potential conflict with the Michigan support order and plaintiff's contingency fee agreement. Plaintiff maintained he should at the least have received timely notice from BWC of its intent to honor the Michigan support order and, consequently, exclude payment to plaintiff. Plaintiff contended defendant, by not providing timely notice of its intent to withhold his attorney fee payment, deprived him of his opportunity to be heard on the issue.

{¶ 20} Plaintiff stated the Court of Claims of Ohio, "is the sole court with jurisdiction to issue any order related to attorney fees." Plaintiff did not cite any statute or prior authority to support this proposition. Plaintiff explained no Ohio support enforcement entity is involved in this matter and he is not required to pursue his dispute in a Michigan jurisdiction. Plaintiff argued BWC failed to follow Ohio law in depriving him of his earned attorney fees and jurisdiction concerning that deprivation rests in this court.

{¶ 21} The facts of the present action establish plaintiff's claim is solely based on the wrongful collection of funds pursuant

to a court withholding order issued in a Michigan jurisdiction. Since this particular action is for the recovery of an alleged wrongful collection, the claim is grounded solely in equity. *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.* (1991), 62 Ohio St. 3d 97. "The reimbursement of monies withheld pursuant to an invalid administrative rule is equitable relief, not money damages." *id.* at 105. "Thus, for restitution to lie in equity, the action generally must seek not to impose liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession." *Great-West Life & Annuity Co. v. Knudson* (2002), 534 U.S. 204, at 214, 122 S. Ct. 708, 151 L. Ed 2d 635.

{¶ 22} "A suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity." *Santos et al. v. Ohio Bur. of Workers' Compensation*, 101 Ohio St. 3d 74, 2004-Ohio-28 at paragraph one of the syllabus. R.C. 2743.03(A)(1) and (2) states:

{¶ 23} "(A)(1) There is hereby created a court of claims. The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code, exclusive jurisdiction of the causes of action of all parties in civil actions that are removed to the court of claims, and jurisdiction to hear appeals from the decisions of the court of claims commissioners. The court shall have full equity powers in all actions within its jurisdiction and may entertain and determine all counterclaims, cross-claims, and third-party claims.

{¶ 24} "(2) If the claimant in a civil action as described in division (A)(1) of this section also files a claim for a declaratory judgment, injunctive relief, or other equitable relief against the state that arises out of the same circumstances that gave rise to the civil action described in division (A)(1) of this section, the court of claims has exclusive, original jurisdiction to hear and determine that claim in that civil action. This

division does not affect, and shall not be construed as affecting, the original jurisdiction of another court of this state to hear and determine a civil action in which the sole relief that the claimant seeks against the state is a declaratory judgment, injunctive relief, or other equitable relief."

{¶ 25} Additionally, R.C. 2743.10(A) states in pertinent part: "Civil actions against the state for two thousand five hundred dollars or less shall be determined administratively by the clerk of the court of claims . . ." R.C. 2743.10 does not confer equity jurisdiction at the Administrative Determination level of this court. Administrative Determination actions are solely for money damages. Equity jurisdiction in matters involving the state are reserved for judicial review. Although plaintiff, in the instant claim, is seeking to recover funds he asserted were wrongfully withheld, the funds sought for recovery represent a claim for equitable relief and not money damages. Consequently, this court at the Administrative Determination level has no jurisdiction over claims grounded in equity.

{¶ 26} In essence the jurisdiction of the entire Court of Claims is based upon the type of relief sought, either money damages or equity. In *Parsons v. Ohio Bur. of Workers' Compensation*, Franklin App. No. 03AP-772, 2004-Ohio-4552, the 10th District Court of Appeals further addressed the issue of jurisdiction on equitable relief claims stating: ". . . the Court of Claims' jurisdiction is limited, in pertinent part, only to civil actions against the state permitted by the waiver of immunity contained within R.C. 2743.02. Thus, if the state consented to suit upon a claim prior to the enactment of the waiver contained in R.C. 2743.02, then the Court of Claims' jurisdiction does not extend to that claim. *Knecht v. Ohio Dept. of Rehab. & Corr.* (1992), 78 Ohio App. 3d 360, 365; *Upjohn Co. v. Ohio Dept. of Human Services* (1991), 77 Ohio App. 3d 827, 834. See, also, R.C. 2743.02(A)(1) ('To the extent that the state has previously



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