

IN THE UTAH COURT OF APPEALS

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Carolina G. Bless,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20100334
v.)	
)	F I L E D
Luis A. Aguilera,)	(December 16, 2010)
)	
Respondent and Appellant.)	2010 UT App 368

Fourth District, American Fork Department, 074100004
The Honorable Christine S. Johnson

Attorneys: Luis A. Aguilera, Eagle Mountain, Appellant Pro Se
 Ronald D. Wilkinson, Orem, for Appellee

Before Judges Thorne, Voros, and Christiansen.

PER CURIAM:

Respondent Luis A. Aguilera appeals an order denying his objection to garnishment of his bank account to collect an unsatisfied award of attorney fees in this domestic case and ordering that the seized funds be released to Petitioner Carolina G. Bless.

Bless caused a writ of garnishment to garnish funds from Aguilera's bank account to be served on Aguilera's bank, which resulted in his account being frozen. Aguilera requested a hearing on his objection, which occurred on April 5, 2010. Aguilera argued that the funds in his bank account were exempt from garnishment under one or more provisions of Utah Code section 78B-5-505. The statute exempts from garnishment benefits that an individual has received or is entitled to receive because of unemployment. See Utah Code Ann. § 78B-5-505(1)(a)(iii)(C) (2008). However, at the time of the garnishment and the hearing on his objection, Aguilera was employed and the funds in the bank account were not attributable to unemployment compensation benefits. The garnishment statute also exempts "money or property received, and rights to receive money or property for child support." Id. § 78B-5-505(1)(a)(vii). Aguilera was not receiving child support and the money in his bank account was not attributable to child support. He argued that because his wages

were being garnished for the payment of child support to Bless and because Aguilera expected to become unemployed at the end of the month, the money in his account was exempt because it would be used to pay child support to Bless in the future. Aguilera claimed that the money in his account was also exempt because it consisted of "provisions sufficient for 12 months actually provided for individual or family use." Id. § 78B-5-505(1)(viii)(C). Aguilera argued that because he expected to be unemployed at the end of the month, the money in his bank account was exempt because he would use it in the future to purchase provisions that would be exempt from garnishment. The district court properly rejected Aguilera's claims that the money in his account at the time of the garnishment or garnishment hearing was exempt under the Utah statute.

Aguilera also claimed that funds in his account were exempt from garnishment under a federal statute, which states that "no grant, loan, or work assistance awarded under this title, or property traceable to such assistance, shall be subject to garnishment or attachment in order to satisfy any debt owed by the student awarded such assistance, other than a debt owed to the Secretary," 20 U.S.C.S. § 1095a(d) (Lexis-Nexis 2010). Only in another objection that was filed after the garnishment hearing and the district court's ruling did Aguilera attach documents that demonstrated his receipt of student loans. However, even if that material had been presented at the hearing, it did not trace student loan funds to the money in his bank account. Thus, the district court did not err in refusing to reconsider its ruling allowing the garnishment to proceed.

Aguilera's brief does not comply with many requirements of rule 24 of the Utah Rules of Appellate Procedure. See Utah R. App. P. 24(a). In addition, Aguilera filed a lengthy addendum containing documents that were not presented to the district court and are not found in the district court record. These documents include (1) a July 28, 2010 letter from Utah Valley University (UVU) describing financial aid received for 2009-2010; (2) an undated document captioned "Award Package by Award Year 2009-2010;" (3) a May 1, 2010 statement from Fed Loan Servicing; (4) a December 22, 2009 document captioned Income Withholding for Support; (5) three Direct Deposit Statements from UVU; (6) a Personnel Action Form from UVU; and (7) documents with handwritten notations "School Loan Documentation Proof" and "Pell Grant Information." Because this material was not presented to the district court and is not a part of the record on appeal, these documents are stricken as inappropriate for inclusion in the addendum and we do not consider them. Nevertheless, we note that although Aguilera apparently received student loans, he did not produce any evidence in the district court to demonstrate that his student loans were the source of the money seized from

his bank account. Ultimately, Aguilera's brief fails to marshal the evidence or contain factual and legal analysis that demonstrates error in the district court's rulings.

Accordingly, we affirm the judgment of the district court. The award of attorney fees that was the subject of the garnishment was made under the authority of Utah Code section 30-3-3. See Utah Code Ann. § 30-3-3(2) (Supp. 2010) ("In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense."). "In domestic cases, when a party has prevailed below and the trial court has awarded attorney fees, we will generally award the same party attorney fees when he or she prevails on appeal." Smith v. Smith, 1999 UT App 370, ¶ 18, 995 P.2d 14. We remand this case to the district court for an award of attorney fees and costs reasonably incurred by Bless on appeal.

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge

Michele M. Christiansen, Judge