

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 9, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2081

Cir. Ct. No. 2010CV853

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JONATHAN E. DEBAUCHE AND NATHANIEL D. DEBAUCHE,

PLAINTIFFS-RESPONDENTS,

V.

DAVID D. DEBAUCHE,

DEFENDANT-APPELLANT,

WISCONSIN DEPARTMENT OF CORRECTIONS,

GARNISHEE.

APPEAL from an order of the circuit court for Brown County:
WILLIAM M. ATKINSON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. David DeBauche appeals an order granting garnishment of his prison account with the Department of Corrections in order to

pay judgments that he owes his children. DeBauche argues: (1) the action is barred by issue preclusion; (2) the action should have been dismissed because the Department did not receive a copy of a temporary injunction; and (3) the court erroneously failed to apply exemptions under WIS. STAT. § 815.18 (2009-10).¹ We reject these arguments and affirm the order.

BACKGROUND

¶2 A jury convicted DeBauche of intentionally killing his wife and her parents. His wife's probate court ordered him to turn over all assets including his bank accounts, brokerage accounts, stocks and bonds. His two sons' wrongful death action resulted in a judgment against DeBauche for \$418,506 to be split evenly between them.

¶3 A garnishment action was then commenced against DeBauche's attorneys requiring them to turn over checks and stock certificates to partially satisfy the wrongful death judgment. Due to a procedural error, the initial garnishment order was vacated, but the error was eventually corrected through a second garnishment action and the assets were turned over to the children. However, DeBauche also had his attorney deposit two checks totaling \$15,000 from the sale of stock that neither DeBauche nor his attorneys brought to the court's attention.

¶4 A third garnishment action was then commenced against the Department of Corrections when the children's attorney learned that DeBauche

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

had significant cash assets in his prison account. At that time, DeBauche still owed each of his children \$206,202.85. The trial court granted summary judgment in the children's favor, finding that DeBauche was not entitled to any exemption under WIS. STAT. § 815.18.

DISCUSSION

¶5 Issue preclusion does not bar this garnishment action. DeBauche contends the earlier garnishment orders preclude this garnishment proceeding. Garnishment actions are separate actions that are distinct from the underlying actions that form the basis for garnishment. *See* WIS. STAT. § 812.01(2)(a). Under § 812.01(3), a plaintiff may pursue multiple garnishment actions, even against the same garnishee. The present action is the only garnishment action that involves assets held by the Department. The earlier litigation involving funds held by DeBauche's attorneys has no preclusive effect.

¶6 DeBauche's argument that he did not receive proper notice of a temporary injunction in the probate case for his wife's estate fails for several reasons. First, any relief regarding that issue would have to be raised on appeal in the probate case. Second, the argument is apparently based on DeBauche's misreading of the Department's amended answer which says "the Garnishee Defendant does not have a copy of the injunction" DeBauche contends this statement shows he was not served with all of the documents in this case. The "Garnishee Defendant," however, is the Department, not DeBauche. The Department was not a party to the action in which the injunction was issued and therefore was not served with the injunction. Third, DeBauche was served with all of the pleadings in the garnishment action. Therefore, there is no basis for challenging the garnishment order based on any failure to serve documents.

¶7 Finally, DeBauche is not entitled to use the exemptions set out in WIS. STAT. § 815.18. In the exercise of its discretion, the circuit court may deny any exemption based on a finding that the debtor concealed or transferred assets with the intention of defrauding creditors. *See* WIS. STAT. § 815.18(10). DeBauche presents no evidence to refute the finding that he violated the court order to turn over all of his assets to his children.

¶8 DeBauche claims his prison account should be exempt because it consists of assets he obtained either before the marriage or through inheritance and they should not be considered marital property. There is no exemption for non-marital property in a garnishment action. In any event, it was not for DeBauche to determine whether the property was exempt. That was the court's function, and DeBauche interfered with that function by concealing the assets. Finally, allowing DeBauche to keep these funds in his prison account would contradict the purpose of the exemption statute. The purpose is to preserve a humane standard of living for debtors and their dependents to prevent them from becoming public charges. *See* WIS. STAT. § 815.18(1). As a prisoner serving life sentences, DeBauche is already a ward of the State. Seizure of the money rather than allowing him to spend it promotes the interests of his dependents.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

