

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KIM SHELDON, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 00-4615  
 )  
 DEPARTMENT OF REVENUE, CHILD )  
 SUPPORT ENFORCEMENT PROGRAM, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On January 9, 2001, a formal administrative hearing in this case was held by videoconference in Tampa and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, of the Division of Administrative Hearings. Due to technical problems with the conferencing equipment, the hearing was interrupted and was subsequently completed by videoconference in Tampa and Tallahassee on March 16, 2001.

APPEARANCES

For Petitioner: Manuel V. Fajardo, Esquire  
610 West Azeele Street  
Tampa, Florida 33606-2273

For Respondent: Albert Thorburn, Esquire  
Department of Revenue  
Post Office Box 8030  
4070 Esplanade Way  
Tallahassee, Florida 32314-8030

STATEMENT OF THE ISSUE

The issue in the case is whether, under the provisions of Section 409.25656, Florida Statutes, the Department of Revenue may apply bank account funds identified as belonging to Kim Sheldon towards an unpaid child support obligation.

PRELIMINARY STATEMENT

By Notice of Intent to Levy dated July 14, 2000, the Department of Revenue informed Kim C. Sheldon that "liquid assets" located at the MacDill Federal Credit Union were being levied to satisfy unpaid child support debt. Ms. Sheldon requested a formal hearing. The Department forwarded the request for hearing to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

During the hearing, the Petitioner presented the testimony of three witnesses and had Exhibits numbered 1-5 and 7 admitted into evidence. The Respondent presented the testimony of two witnesses and had Exhibits numbered 1-8 admitted into evidence. No transcript of the hearing was filed. The parties filed Proposed Recommended Orders.

FINDINGS OF FACT

1. By Final Judgment of Dissolution of Marriage dated August 9, 1995 (Case No. 95-742-CA-01, Fifth Judicial Circuit, Hernando County, Florida), Kim C. Meccariello was divorced from Dale W. Meccariello.

2. Kim C. Meccariello subsequently remarried and is known as Kim C. Sheldon.

3. As part of the settlement agreement in the 1995 divorce, Kim C. Sheldon (Petitioner) became obligated to pay monthly child support in the amount of \$472.82.

4. On November 1, 1999, the Department of Revenue (Department) became involved in this matter when the Petitioner's former husband apparently filed a "Request for Participation in Central Depository Program Pursuant to Florida Statute 61.13" seeking to have the Department collect unpaid child support on his behalf.

5. By form letter dated December 1, 1999, the Department notified the supervisor of the Support Division, Hernando County that payments in the case should be redirected to the Department. The Petitioner asserts that she did not get a copy of this notice. The certificate of service indicates a copy was mailed to her.

6. The Petitioner asserts that because she did not get the notice, the child support debt accounting fails to include payments made directly to her former husband, but has no documentation of the form or amount of such payments. There is no documentation that any direct payments were made. The evidence fails to establish that such direct payments occurred.

7. Although the exact amount of unpaid child support owed by the Petitioner is disputed, the evidence clearly establishes that her unpaid child support debt clearly exceeds the amount of funds at issue in this proceeding.

8. By Notice of Freeze dated July 7, 2000, the Department directed the MacDill Federal Credit Union to freeze the Petitioner's funds in the institution based on an unpaid child support obligation in the amount of \$6,619.48.

9. The Department subsequently received a letter on MacDill Federal Credit Union letterhead, dated July 11, 2000, and indicating that the Petitioner had two accounts at the institution: a savings account (#126552-01) containing \$495.65; and a checking account (#126552-15) containing \$1,123.42.

10. By Notice of Intent to Levy dated July 14, 2000, the Department notified the Petitioner that the funds had been frozen and advised her of her right to challenge the action. The Petitioner requested a formal hearing.

11. A letter from Strategic Outsourcing, Inc., dated July 18, 2000, states that the Petitioner's husband is an employee of Nikon, Inc., and that his wages are direct deposited into MacDill Federal Credit Union account #126522 on a weekly basis. Strategic Outsourcing, Inc., apparently handles payroll processing for Nikon, Inc.

12. By Notice of Special Account release dated July 26, 2000, the Department notified the MacDill Federal Credit Union that all but \$550.00 in the checking account (#126552-15) was released. The \$495.65 in the savings account remained frozen. The total amount of currently frozen funds is \$1,045.65.

13. By Notice of Extension of Freeze dated July 27, 2000, the Department notified the MacDill Federal Credit Union that the Petitioner was challenging the Department's freeze and that the funds should remain frozen until the matter is resolved.

14. The Petitioner and her current spouse are joint holders of the accounts at the MacDill Federal Credit Union. Because her husband did not have time to open the accounts, the Petitioner opened the accounts by herself, and her husband was added about a week later.

15. The Department's decision to release the checking account funds (except for \$550.00) was apparently based on conversations with the couple and upon receipt of the letter from Strategic Outsourcing, Inc. The funds were released based on the Department's determination that, other than \$550.00, the checking account funds were directly attributable to the Petitioner's husband's income.

16. The Department asserts that the currently frozen funds should be used to satisfy, in part, the Petitioner's unpaid child support obligation.

17. The Petitioner asserts that since February 2000, she has been unemployed, that none of the funds in the accounts are attributable to her earnings, and that the funds should not be used to satisfy her unpaid child support obligation.

18. According to the bank statement for the period March 1, 2000, to March 31, 2000, the balance in the checking account on March 1, 2000, was \$862.10. There is no evidence that the March 1 balance did not include funds earned by and attributable to the Petitioner.

19. According to account statements, a total of \$2,170.97 in unidentified deposits were made to the account between March 1, 2000, and July 15, 2000, including a \$958.97 cash deposit on April 24, 2000, a \$162.00 cash deposit on May 8, 2000, a \$500.00 check deposit on June 8, 2000, and a \$550 deposit of unidentified type on July 3, 2000.

20. At the hearing, the Petitioner and her husband testified that deposits into the checking account not directly attributable to his income were made by grown children residing at home and contributing towards household expenses which were allegedly paid from the husband's income. Other deposits were claimed to be small loans or gifts from family members.

21. There was no documentation offered at the hearing to support the testimony. None of the children or relatives testified at the hearing. The evidence fails to establish that

the deposits in the joint account came from adult children or other relatives.

22. According to the bank statement for the period April 1, 2000, to April 30, 2000, a deposit on April 21, 2000, of \$627.00 described as "US TREASURY 220" was a tax refund. The Petitioner's husband asserted that based on income, the refund was "90 percent" attributable to him. There was no documentation offered at the hearing to support the testimony. The evidence fails to establish that the tax refund deposited into the joint account is not attributable to the Petitioner.

#### CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

24. The Department has the burden of proving by a preponderance of the evidence, that the Petitioner owes an unpaid child support obligation and that there are funds belonging to the obligor which may be appropriately applied towards satisfaction of the debt. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In this case, the evidence establishes that the Department acted pursuant to the

statute and that the funds should be applied to satisfy the Petitioner's unpaid child support obligation.

25. Section 409.25656, Florida Statutes, sets forth the legal procedure by which funds belonging to a person with an unsatisfied child support obligation may be garnished by the Department of Revenue. Essentially, the statute requires that the Department direct financial institutions to match accountholders against a list of persons owing unpaid child support. The financial institutions notify the Department where a match is found. The Department issues a notice garnishing the funds in the account and then notifies the account holder that the funds have been frozen and that the Department intends to apply the funds to an unpaid child support obligation. The account holder may challenge the action in either a circuit court action or in an administrative proceeding under Chapter 120, Florida Statutes. Although Section 409.25656(11), Florida Statutes, authorizes the Department to "adopt rules to implement this section" no rules have yet been adopted.

26. The Petitioner asserts that the funds remaining frozen in the accounts are not attributable to her and may not be applied towards the satisfaction of the unpaid child support debt. The evidence fails to support the assertion.

27. The testimony of the Petitioner as to deposits by grown children living at home was unsupported by documentation.



None of the children testified at the hearing. As to deposits of gifts or loans from family member, there was likewise no testimony or documentation offered to support the assertion. The testimony is not credible and is rejected.

28. Assertions that the tax refund was based almost entirely on the husband's income were unsupported by tax or income records. The testimony is not credible and is rejected.

29. During the hearing, the Department asserted that in situations involving a jointly held bank account, the Department will release funds if the Department becomes "convinced" that the frozen funds are attributable to a depositor other than the party under the child support obligation.

30. In the Department's Proposed Recommended Order, the Department asserts that because the Respondent's current spouse was added as a signatory to the accounts after the accounts were opened, requirements established in case law for a joint tenancy of the entireties are not met (specifically, the simultaneous creation of the asset) and, therefore, their joint assets (including the husband's earnings) may be attached.

31. The issue of whether the Respondent and her current husband intended to create a tenancy by the entireties when the joint accounts were opened was not properly raised during this proceeding. To determine intent sufficient to classify the

accounts requires the production of evidence beyond that offered by either party in this hearing.

32. The Department's assertion is also contrary to the position taken by the Department during earlier conversations with the Petitioner and her husband and articulated at the hearing, which resulted in the earlier release of joint checking account funds directly attributable to earnings deposited by the husband.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Revenue issue a FINAL ORDER directing that \$1,045.65 currently held at the MacDill Federal Credit Union be applied towards meeting the Petitioner's unpaid child support obligation.

DONE AND ENTERED this 20th day of April, 2001, in Tallahassee, Leon County, Florida.

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WILLIAM F. QUATTLEBAUM  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of April, 2001.

COPIES FURNISHED:

Manuel V. Fajardo, Esquire  
610 West Azeele Street  
Tampa, Florida 33606

Albert Thorburn, Esquire  
Florida Department of Revenue  
Post Office Box 8030  
4070 Esplanade Way  
Tallahassee, Florida 32314-8030

Linda Lettera, General Counsel  
Department of Revenue  
204 Carlton Building  
Tallahassee, Florida 32399-0100

James Zingale, Executive Director  
Department of Revenue  
104 Carlton Building  
Tallahassee, Florida 32399-0100

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.