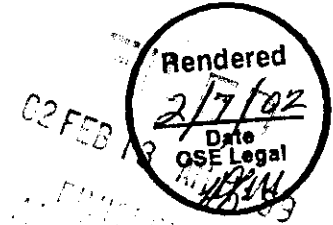


12-3-01

STATE OF FLORIDA
DEPARTMENT OF REVENUE



MARGARET HARTIGAN,
Petitioner,

AT

vs.

Case No. DOR-00-2961-FIDM
DOAH Case No. 01-3656

EJD-clw

DEPARTMENT OF REVENUE,
CHILD SUPPORT ENFORCEMENT PROGRAM,
Respondent.

_____)

FINAL ORDER

Lillie Bogan, Director of the Department of Revenue, Child Support Enforcement Program (CSE), enters this Final Order as required by Chapter 120, Florida Statutes.

PRELIMINARY STATEMENT

On November 16, 2000, CSE mailed a Notice of Intent to Levy to Mr. Donald F. Ziesmer, Jr., a non-custodial parent allegedly who owed past-due child support, regarding his accounts with Florida Federal Credit Union, Gainesville, Florida. In response to this notice, Petitioner Margaret Hartigan, a joint account owner of the accounts with Mr. Ziesmer, through counsel, filed a timely Petition for Administrative Hearing on November 29, 2000.

An administrative hearing was held before Administrative Law Judge Ella Jane P. Davis, in Ocala, Florida on October 26, 2001. No transcript of

the hearing was prepared. Judge Davis issued a Recommended Order, which included specific findings of fact and conclusions of law, on December 3, 2001. CSE filed Exceptions to Judge Davis' Recommended Order on December 21, 2001.

EVALUATION OF CSE'S EXCEPTIONS

In its Exceptions, CSE excepted to four (4) of Judge Davis' findings of fact. As no hearing transcript has been prepared, the undersigned cannot determine the merits of three (3) of CSE's exceptions to Judge Davis' findings of facts, and therefore CSE's exceptions 2, 3, and 4 are denied. With regard to CSE's exception to Judge Davis' Findings of Fact No. 10, Petitioner's Exhibit B, without any explanatory testimony which could be included in the hearing transcript (had one been prepared), partially supports this exception to the extent of the amount of the September 2000 deposit into Petitioner's EBT account, i.e., the deposit amount was \$653.00, not \$659.00 as set out in Judge Davis' finding of fact; therefore, CSE's exception is partially granted to the extent of correcting what may have been a clerical error by Judge Davis, and the balance of the exception, which, again, cannot be evaluated in the absence of a hearing transcript, is denied.

CSE's seven (7) additional exceptions to Judge Davis' Recommended Order pertain to her conclusions of law, and, to some extent, to "mixed" factual findings/legal conclusions within her conclusions of law, e.g., whether Petitioner established, by clear and convincing evidence, that she never intended to give her income (account deposits) to Mr. Ziesmer, as set

forth in Conclusion of Law No. 41. To the extent that CSE has excepted to “mixed” factual findings/legal conclusions within Judge Davis’ conclusions of law, the undersigned, again, cannot evaluate these portions of CSE’s exceptions as no transcript was prepared; therefore, these portions of CSE’s exceptions are denied.

Pursuant to Section 120.57(1)(l), Florida Statutes, “[an] agency in its final order, may (only) reject or modify the (ALJ’s) conclusion of law over which it has substantive jurisdiction . . .”. (Emphasis and parentheses added.) None of CSE’s remaining exceptions to Judge Davis’ conclusions of law pertain to areas of law over which the Department of Revenue has substantive jurisdiction or specific expertise; the conclusions of law to which CSE excepted relate to the laws of evidence, debtor-creditor law, and laws concerning financial institutions. Consequently, the undersigned, on behalf of the agency, has no power to grant any of CSE’s remaining exceptions, and therefore all must be denied. Barfied v. Department of Health, 27 Fla.L.Weekly D24, 2001 WL1613979 (Fla. 1st DCA, December 19, 2001).

ORDER

BASED UPON the Recommended Order of Administrative Law Judge Ella Jane P. Davis issued on December 3, 2001, which is attached hereto, incorporated by reference herein, and adopted by the agency in toto (with the exception of the correction to Finding of Fact No. 10, as hereinabove set forth), it is:

ORDERED that Respondent shall release its freeze upon the joint accounts of Petitioner Margaret Hartigan and Donald F. Ziesmer, Jr. with Florida Credit Union Florida, Gainesville, Florida, and shall further request that the financial institution release all previously frozen funds to Petitioner alone.

DONE AND ORDERED in Tallahassee, Florida, this 6th day of February, 2002.


LILLIE BOGAN, Director
Department of Revenue
Child Support Enforcement Program
Post Office Box 8030
Tallahassee, Florida 32314-8030

Copies furnished to:

Suzanne K. Edmunds, Esquire
Attorney for Petitioner
Withlacoochee Area Legal Services, Inc.
222 Southwest Broadway Street
Ocala, Florida 34474

Robert Lehrer
Senior Attorney
Department of Revenue
Child Support Enforcement Program
Post Office Box 8030
Tallahassee, Florida 32314-8030

Administrative Law Judge Ella Jane P. Davis
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing Final Order has been filed in the official records of the Department, this 7 day of February, 2002.



EUREKA JENKINS
Deputy Agency Clerk

NOTICE OF RIGHT TO APPEAL

PETITIONER IS ADVISED THAT WITHIN THIRTY (30) DAYS OF THIS FINAL ORDER SHE MAY SEEK JUDICIAL REVIEW OF THIS FINAL ORDER BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE FIRST DISTRICT COURT OF APPEAL, 300 MARTIN LUTHER KING JR. BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR WITH THE CLERK OF THE DISTRICT COURT WHEREIN THE PETITIONER RESIDES WITH APPROPRIATE FILING FEE, AND BY SERVING A SECOND COPY OF SUCH NOTICE OF APPEAL UPON EUREKA JENKINS, DEPUTY AGENCY CLERK, POST OFFICE BOX 8030, TALLAHASSEE, FLORIDA 32314-8030.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was duly sent by U.S. Mail to: Suzanne K. Edmunds, Esquire, Attorney for Petitioner, Withlacoochee Area Legal Services, Inc., 222 Southwest Broadway Street, Ocala, Florida 34474, and a copy was also faxed to her at (352) 629-8877, this 7 day of February, 2002.


EUREKA JENKINS
Deputy Agency Clerk