

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MICHAEL K. DUGDALE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case Nos. 07-2540  
 ) 07-2541  
 DEPARTMENT OF REVENUE, CHILD )  
 SUPPORT ENFORCEMENT PROGRAM, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in these cases before Jeff B. Clark, Administrative Law Judge of the Division of Administrative Hearings, on August 16, 2007. The hearing was held by video teleconferencing between Tampa and Tallahassee, Florida.

APPEARANCES

For Petitioner: Michael Moran, Esquire  
Law Offices of Michael Moran  
2197 Ringling Boulevard  
Sarasota, Florida 34237

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

STATEMENT OF THE ISSUES

The issues for determination are: (1) whether Petitioner is delinquent in child support payments; and (2) whether

Respondent is authorized to levy Petitioner's two bank accounts and apply the funds to reduce Petitioner's past due child support obligation.

PRELIMINARY STATEMENT

On September 15, 2006, Respondent, Department of Revenue, Child Support Enforcement Program ("Department"), sent two Notices of Intent to Levy to Petitioner, Michael K. Dugdale ("Petitioner"). In the notices, the Department advised Petitioner that it intended to levy Petitioner's bank accounts at Bank of America and Regions Bank. According to each notice, the levy was being taken because of Petitioner's nonpayment of child support in the amount of \$25,725.76 as of August 4, 2006. On October 2, 2006, Petitioner filed two Petitions for Administrative Hearing each contesting one of the Notices of Intent to Levy. On June 7, 2007, the Department referred the matter to the Division of Administrative Hearings to conduct an administrative hearing in each case.

On June 8, 2007, an Initial Order was sent to both parties requesting mutually convenient dates for a final hearing. On June 11, 2007, the cases were consolidated. On June 26, 2007, the cases were scheduled for final hearing on August 16, 2007, in Bradenton, Florida. On August 6, 2007, an Amended Order changed the site of the hearing to Tampa, Florida, and allowed appearances by teleconference.

The final hearing took place as scheduled. Petitioner testified on his own behalf. Respondent presented the testimony of Darlene Collier-Erby and Tammy Carr and offered 22 exhibits, which were admitted into evidence and marked Respondent's Exhibits 1 through 22.

The parties agreed that proposed recommended orders would be filed no later than 20 days following the filing of the transcript of the proceedings. The Transcript of the proceedings was filed with the Clerk of the Division of Administrative Hearings on September 6, 2007. Both parties filed Proposed Recommended Orders.

All references are to Florida Statutes (2006), unless otherwise noted.

#### FINDINGS OF FACT

Based on the evidence and testimony of the witnesses presented and the entire record in this proceeding, the following Findings of Fact are made:

1. Petitioner is the father of a child born in Connecticut in 1986. On May 2, 1990, a Connecticut court ordered Petitioner to pay child support of \$72.00 per week for the support of his child. The court also found that Petitioner had a child support arrearage of \$3,797.11 and ordered that he pay an additional \$15.00 per week to reduce the arrearage.

2. Petitioner moved to Florida in early 1994.

3. On November 13, 2001, the Clerk of the Circuit Court of Manatee County, Florida, received a request from the State of Connecticut to register and enforce a foreign support order against Petitioner. The adjudicated arrearage in child support was \$25,179.87, as determined by the State of Connecticut.

4. On December 11, 2001, Petitioner was sent a Notice of Registration of Foreign Support Order. The notice, sent by certified mail, was received at Petitioner's then current residence address.

5. On January 23, 2002, an Order Confirming Registration of Foreign Support Order was entered; Petitioner was ordered to pay \$90.48 per week beginning January 25, 2002.

6. On July 12, 2007, the State of Connecticut certified that as of July 12, 2007, Petitioner had a \$23,853.56 child support arrearage. Petitioner stipulated that the child support arrearage was at least \$23,000.00.

7. On September 8, 2006, the Department sent a Notice to Freeze to the Bank of America; on the same day a Notice of Freeze was sent to Regions Bank. In the notices, sent by certified mail, the Department advised the banks to hold up to \$25,725.26 of Petitioner's funds until further notice.

8. Bank of America responded indicating that Petitioner had \$1,270.95 in his account; Regions Bank reported \$591.42.

9. On September 15, 2006, the Department sent two Notices of Intent to Levy by certified mail to Petitioner. The notices provided, in pertinent part, the following:

You are hereby notified that pursuant to Section 409.25656, Florida Statutes, the Department of Revenue intends to levy on credits or personal property belonging to the obligor named above [Petitioner], or debts owed to the obligor. This property consists of liquid assets and is in the control of [appropriate bank].

This action is taken for nonpayment of child support by the obligor in the amount of \$25,725.26 as of [appropriate date].

You are hereby notified that you may contest the agency's action to levy on the above referenced property. You may do so by either filing a petition in the existing Circuit Court case, . . . or by requesting an administrative hearing. If you wish to request an administrative hearing, you must file your petition for hearing, in writing, in accordance with the Notice of Rights attached to this Notice.

10. Although Petitioner testified that he did not receive the notices, neither was returned by the postal service.

11. On October 2, 2006, Petitioner filed a Petition for Administrative Hearing (Petition), in response to each Notice of Intent to Levy.

12. In October 2006, the Department issued and sent Notices of Extension of Freeze to each bank indicating that Petitioner was challenging the Notices of Intent to Levy.

13. The monies on deposit in each bank were the result of payments received by Petitioner for his labors as a lawn caretaker.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2007).

15. The Department is the state agency responsible for the administration of the Child Support Enforcement Program. § 409.2557(1), Fla. Stat.

16. Subsection 409.2557(2), Florida Statutes, provides, in pertinent part, the following:

The department in its capacity as the state Title IV-D agency shall have the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department's authority shall include, but not be limited to, the establishment of paternity or support obligations, as well as the modification, enforcement, and collection of support obligations.

17. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in the proceeding. Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, the Department seeks

to levy the overdue child support from Petitioner's bank accounts. Therefore, to prevail in this proceeding, the Department must establish by a preponderance of evidence the alleged facts necessary to show that the proposed levy is authorized by Section 409.25656, Florida Statutes. Petitioner seeks to contest the Department's levy. To prevail in this proceeding, Petitioner must show that the Department's levy is not authorized by Section 409.25656, Florida Statutes, or that the funds on deposit with the banks were exempt from garnishment or other defenses raised in his Petitions for Administrative Hearing.

18. Pertinent parts of Chapter 88, Florida Statutes, the "Uniform Interstate Support Act" states, as follows:

88.2051 Continuing exclusive jurisdiction.--

\* \* \*

(4) A tribunal of this state shall recognize the continuing exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this act or a law substantially similar to this act.

88.2071 Recognition of controlling child support order.--

(1) If a proceeding is brought under this act and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

\* \* \*

(4) The tribunal that issued the controlling order under subsection (1), subsection (2), or subsection (3) is the tribunal that has continuing, exclusive jurisdiction under s. 88.2051.

88.6011 Registration of order for enforcement.--A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

88.6021 Procedure to register order for enforcement.--

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

(a) A letter of transmittal to the tribunal requesting registration and enforcement.

(b) Two copies, including one certified copy, of all orders to be registered, including any modification of an order.

(c) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage.

(d) The name of the obligor and, if known:

1. The obligor's address and social security number.

2. The name and address of the obligor's employer and any other source of income of the obligor.

3. A description and the location of property of the obligor in this state not exempt from execution.



(e) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

88.6031 Effect of registration for enforcement.--

(1) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

19. The Department and the Circuit Court in and for Manatee County, Florida, correctly followed the statutory dictates in registering and enforcing the Connecticut child support order and arrearage. See § 88.6031(3), Fla. Stat.; Department of Revenue v. Cuevas, 862 So. 2d 810 (Fla. 4th DCA 2003); Department of Revenue v. Cooper, et al., 861 So. 2d 519 (Fla. 4th DCA 2003).

20. Section 409.25656, Florida Statutes, provides, in pertinent part, the following:

Garnishment.--

(1) If a person has a child support obligation which is subject to enforcement by the department as the state Title IV-D program, the executive director or his or

her designee may give notice of past due and/or overdue support by registered mail<sup>[1/]</sup> to all persons who have in their possession or under their control any credits or personal property, including wages, belonging to the support obligor, or owing any debts to the support obligor at the time of receipt by them of such notice. Thereafter, any person who has been notified may not transfer or make any other disposition, up to the amount provided for in the notice, of such credits, other personal property, or debts until the executive director or his or her designee consents to a transfer or disposition, or until 60 days after the receipt of such notice. If the obligor contests the intended levy in the circuit court or under chapter 120, the notice under this section shall remain in effect until final disposition of that circuit court or chapter 120 action. Any financial institution receiving such notice will maintain a right of setoff for any transaction involving a debit card occurring on or before the date of receipt of such notice.

(2) Each person who is notified under this section must, within 5 days after receipt of the notice, advise the executive director or his or her designee of the credits, other personal property, or debts in their possession, under their control, or owed by them and must advise the executive director or designee within 5 days of coming into possession or control of any subsequent credits, personal property, or debts owed during the time prescribed by the notice. Any such person coming into possession or control of such subsequent credits, personal property, or debts shall not transfer or dispose of them during the time prescribed by the notice or until the department consents to a transfer.

(3) During the last 30 days of the 60-day period set forth in subsection (1), the

executive director or his or her designee may levy upon such credits, personal property, or debts. The levy must be accomplished by delivery of a notice of levy by registered mail, upon receipt of which the person possessing the credits, other personal property, or debts shall transfer them to the department or pay to the department the amount owed to the obligor.

\* \* \*

(7)(a) Levy may be made under subsection (3) upon credits, other personal property, or debt of any person with respect to any past due or overdue support obligation only after the executive director or his or her designee has notified such person in writing of the intention to make such levy.

(b) Not less than 30 days before the day of the levy, the notice of intent to levy required under paragraph (a) must be given in person or sent by certified or registered mail to the person's last known address.

(c) The notice required in paragraph (a) must include a brief statement that sets forth:

1. The provisions of this section relating to levy and sale of property;
2. The procedures applicable to the levy under this section;
3. The administrative and judicial appeals available to the obligor with respect to such levy and sale, and the procedures relating to such appeals; and
4. The alternatives, if any, available to the obligor which could prevent levy on the property.

\* \* \*

(8) An obligor may contest the notice of intent to levy provided for under subsection (7) by filing a petition in the existing circuit court case. Alternatively, the obligor may file a petition under the applicable provisions of chapter 120. After an action has been initiated under chapter 120 to contest the notice of intent to levy, an action relating to the same levy may not be filed by the obligor in circuit court, and judicial review is exclusively limited to appellate review pursuant to s. 120.68. Also, after an action has been initiated in circuit court, an action may not be brought under chapter 120.

21. Petitioner's child support obligation, as of July 20, 2007, was \$23,853.56.

22. Petitioner had \$1,270.95 on deposit with Bank of America that was subject to garnishment; Petitioner had \$591.42 on deposit with Regions Bank that was subject to garnishment.

23. Petitioner has urged that Respondent did not follow the procedural requirements of Chapter 77, Florida Statutes (Garnishment). Had the Florida Legislature desired to require Respondent to be limited by Chapter 77, Florida Statutes, it would not have enacted Section 409.25656, Florida Statutes (Garnishment), which Respondent has correctly utilized.

24. Petitioner has urged that the levy is inappropriate because the funds on deposit, \$1,270.95 in a checking account (Bank of America) and \$591.42 in a savings account (Regions Bank), were generated from his labors as a lawn caretaker.

25. Title 15 U.S.C. Section 1673, reads, in pertinent part, as follows:

(a) Maximum allowable garnishment.  
Except as provided in subsection (b) and in section 305 [15 USCS § 1675], the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) The amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 USCS § 206(a)(1)] in effect at the time the earnings are payable whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

\* \* \*

(b) Exceptions.

(1) The restrictions of subsection (a) do not apply in the case of--

(A) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

\* \* \*

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to

enforce any order for the support of any person shall not exceed--

(A) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) Where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

26. The protection afforded by Title 15 U.S.C.

Section 1673 (Consumer Credit Protection - Restrictions on Garnishment), is directed at "disposable earnings of a workweek," not funds on deposit in a checking or savings account generated by individual labors. No evidence was presented that the funds on deposit were, or were not, any portion of Petitioner's "disposable earnings of a workweek." General Motors Acceptance Corp. v. Metropolitan Opera Association, Inc., 98 Misc.2d 307; 413 N.Y.S.2d 818.

27. Petitioner urges entitlement to the protection of Subsection 222.11(3), Florida Statutes, which states:

(3) Earnings that are exempt under subsection (2) and are credited or deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings. Commingling of earnings with other funds does not by itself defeat the ability of a head of family to trace earnings.

28. Because Subsection 222.11(3), Florida Statutes, refers to "earnings that are exempt under subsection (2)" and "head of family," those portions of the Statute must be examined.

29. Subsection 222.11(2)(a), Florida Statutes, states, in pertinent part:

All of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$500 a week are exempt from attachment or garnishment.

30. Subsection 212.11(1)(c), Florida Statutes, defines "head of family" to include "any natural person who is providing more than one-half of the support for a child or other dependent." No evidence was presented to establish that Petitioner was a "head of family," nor was a time of receipt of identifiable funds established. No exemption was established.

31. The Department has met its burden of proof in this proceeding. Petitioner has not met his burden. Therefore, the Department is authorized to levy on Petitioner's two

aforementioned bank accounts in an amount not to exceed \$23,853.56 and to apply those funds to his past due child support obligation.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent, Department of Revenue, enter a final order that: (1) levies an amount up to \$23,853.56 in each of the Petitioner, Michael K. Dugdale's, two bank accounts at Bank of America, N.A. and Regions Bank; (2) applies the funds to reduce Petitioner's past due child support obligation; and (3) credits Petitioner for said payment.

DONE AND ENTERED this 18th day of October, 2007, in Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of October, 2007.



ENDNOTES

1/ Subsection 1.01(11), Florida Statutes, states: The words "registered mail" include certified mail with return receipt requested.

COPIES FURNISHED:

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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.