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Opinion No. 06-135

Collection of Fines and Court Costs in General Sessions Criminal Cases

QUESTIONS

1. Is a writ of scire facias a statutorily authorized procedure for the collection of litigation taxes, court costs, and fines in a criminal case?

2. Is contempt a statutorily authorized procedure for the collection of litigation taxes, court costs, and fines?

3. Is it unlawful to imprison a person for non-payment of court costs and litigation taxes whether by contempt, violation of probation, or some other procedure regardless of whether such non-payment was willful?

4. Is it unlawful to imprison a person for non-payment of fines without a finding that such person had the means to pay such fines and that the non-payment was willful?

5. Is the state barred from punishing the defendant under Tenn. Code Ann. § 40-24-104 for non-payment of the fine when the defendant pays an amount of money equal to the fine imposed but the court clerk allocates that money to court costs and litigation taxes pursuant to Tenn. Code Ann. 40-24-105(a)?

OPINIONS

1. No. The writ of scire facias is not a statutorily authorized procedure for the collection of litigation taxes, court costs, and fines. Litigation taxes, court costs, and fines "may be collected in the same manner as a judgment in a civil action." Tenn. Code Ann. § 40-24-105. Money judgments may only be enforced by execution, garnishment, and judgment liens. Tenn. R. Civ. P. 69; Tenn. Code Ann. § 26-1-101; *Kuykendall v. Wheeler,* 890 S.W.2d 785 (Tenn. 1994).

2. No. Contempt is not a statutorily authorized procedure for the collection of litigation taxes, court costs, and fines. Litigation taxes, court costs, and fines "may be collected in the same manner as a judgment in a civil action." Tenn. Code Ann. § 40-24-105. Money judgments may only be enforced by execution, garnishment, and judgment liens. Tenn. R. Civ. P. 69; Tenn. Code Ann. § 26-1-101; *Kuykendall v. Wheeler*, 890 S.W.2d 785 (Tenn. 1994).

3. Yes. It is unlawful to imprison a criminal defendant for non-payment of court costs and litigation taxes. Tenn. Code Ann. § 40-24-105(a).

4. Yes. It is unlawful to imprison a criminal defendant for non-payment of fines without a finding that the defendant had the means to pay the fine and willfully failed to pay the fine. Tenn. Code Ann. § 40-24-104.

5. No. The allocation of money according to Tenn. Code Ann. § 40-24-105 affects neither the defendant's obligation to pay a fine nor the State's authority to punish the defendant for failing to do so pursuant to Tenn. Code Ann. § 40-24-104.

ANALYSIS

The questions presented concern the proper procedure for collection of litigation taxes, court costs, and fines that have been imposed as part of the judgments of the general sessions courts in criminal cases. The resolution of this issue begins with Tennessee Code Annotated § 40-24-105. That statute reads, in pertinent part:

> Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action. Costs and litigation taxes due may be collected in the same manner as a judgment in a civil action, but shall not be deemed part of the penalty. . . .

Tenn. Code Ann. § 40-24-105(a); *see* Tenn. Code Ann. § 67-4-603 (collection of litigation taxes).

Generally, execution of civil judgments is governed by Rule 69 of the Rules of Civil Procedure. That rule reads, in pertinent part:

> This rule applies to executions and garnishments on legal and equitable interests in personalty, including intangibles, and realty to satisfy judgments in all courts in Tennessee. A Circuit Court judgment will reach equitable interests without a Chancery Court action to enforce the judgment.

Id. Rule 69 provides for garnishment, execution on realty, and execution on personalty. *Id.* This rule was amended, effective July 1, 2004, "to consolidate [enforcement] procedures established by statute, court precedent, and custom into a single orderly rule." *Id.*, Advisory Comm'n Comment to 2004 Amendment. Accordingly, it is the opinion of this Office, that a general sessions court clerk seeking to collect litigation taxes, court costs, and fines should proceed in accordance with Rule 69.

However, the statutes, court precedents, and customs previously employed have not been formally repealed, overruled, or invalidated. *See* L. Pivnick, *Tennessee Circuit Court Practice* § 29:5 (2005). Nevertheless, prior to the effective date of Rule 69, the enforcement of money judgments was limited to execution, garnishment, and judgment liens. *Kuykendall v. Wheeler*, 890 S.W.2d 785 (Tenn. 1994); *see* Tenn. Code Ann. § 26-1-101, *et seq.*; *see also Clinard v. Clinard*, No.

01S01-9502-CV-00021, 1995 WL 563858 (Tenn. Sept. 25, 1995) ("trial courts have no common law power to enforce payment of money judgments by contempt, and no applicable statute authorizes enforcement of money judgments by contempt"); *Silverstein v. Rice*, No. W1999-01336-COA-R3-CV, 2000 WL 33146933 (Tenn. Ct. App. Oct. 20, 2000) (app. denied April 9, 2001) (discussing *Clinard* holding).

Scire facias is a procedure that may be used to reduce an obligation or a conditional judgment to a final judgment. Tenn. Code Ann. § 29-32-101, *et. seq*. The writ of scire facias is generally issued on conditional judgments, "on forfeited bonds, recognizances, subpoenas, summons, and other like obligations." Tenn. Code Ann. § 29-32-108. Historically, the writ has been used to enforce civil judgments against the defendant's special bail. *See Denton v. Buckingham and Compton*, 1 Tenn. 76, 1 Overt 76, 1804 WL 2584 (Tenn. Super. L. & Eq. 1799). The writ was also used to revive a civil judgment to enable execution. *See* Abraham Caruthers, *The History of a Law Suit* 343-345 (5th ed. 1933). More recently, the writ has been used to reduce child support arrearages to final judgment and cite the defendant for contempt for failing to pay child support as ordered by the trial court, *see* 19 Tenn. Prac., Divorce, Alimony & Child Custody § 29:84, and to reduce the surety's obligation on a bail bond to a final judgment. *See* Tenn. Code Ann. § 40-11-202. However, the writ of scire facias has not been used as a means of executing a judgment for monetary damages. *See* Abraham Caruthers, *The History of a Law Suit* 348-374 (5th ed. 1933) (discussing execution of judgments). Accordingly, it is the opinion of this office that the writ of scire facias may not be employed as a means to collect court costs, litigation taxes, and fines.

Contempt of court is a remedy that empowers a trial court to issue an attachment and punish, among other things, the "willful disobedience or resistance" of any person "to any lawful writ, process, order, rule, decree, or command of such courts." Tenn. Code Ann. § 29-9-102(3); *Nashville Corporation v. United Steelworkers of America*, 187 Tenn. 444, 215 S.W.2d 818 (1948); *Frye v. Frye*, 80 S.W.3d 15, 18 (Tenn. Ct. App. 2002) (discussing contempt of court). However, as previously noted, our supreme court has held that the enforcement of money judgments is limited to execution, garnishment, and judgment liens and that trial courts have no authority to enforce payment of money judgments by contempt. *Kuykendall v. Wheeler*, 890 S.W.2d 785 (Tenn. 1994); *Clinard v. Clinard*, No. 01S01-9502-CV-00021, 1995 WL 563858 (Tenn. Sept. 25, 1995). Accordingly, it is the opinion of this office that contempt of court is not a remedy through which a trial court may collect court costs, litigation taxes, and fines.

During the process of collecting delinquent fines, court costs, and litigation taxes, it is unlawful to imprison a criminal defendant for non-payment of court costs and litigation taxes, which are not considered part of the penalty. Tenn. Code Ann. § 40-24-105(a). However, a defendant may be imprisoned for failure to pay a fine. *See* Tenn. Code Ann. § 40-24-104(a). If the defendant fails to pay the fine as ordered by the court, the trial court must inquire into the cause of the defendant's failure to pay, including whether the defendant's omission resulted from willfulness or poverty. *Id.*; *see Bearden v. Georgia*, 130 U.S. 660 (1983) (probation may not be revoked for failure to pay fine and restitution absent inquiry into the cause of the non-payment). Upon completion of its inquiry, the trial court may enter a new order regarding the manner in which payment is required, reduce the fine in accordance with the defendant's ability to pay, or "may direct that the defendant be

imprisoned until the fine . . . is paid." *Id.* If the trial court elects to imprison the defendant until the fine is paid, the defendant is entitled to a "pro rata credit" for any time that has already been served in lieu of payments. *Id.* Additionally, if the defendant is sentenced to imprisonment for defaulting on his required payments, the trial court is limited to imposing a term of incarceration of thirty days. *Id.*; Tenn. Code Ann. § 40-35-111.

When a defendant is obligated to pay fines, court costs, and litigation taxes, the distribution of partial payments paid into the court is established by statute. *See* Tenn. Code Ann. § 40-24-105(a). According to that statute, "the first moneys (sic) paid in any case shall first be credited toward payment of litigation taxes and once litigation taxes have been paid, the next moneys (sic) shall be credited toward payment of costs; then additional moneys (sic) shall be credited toward payment of the fine." *Id.* There is no statutory authority that relieves the defendant of his obligation to pay the fine assessed by the trial court. Nor is there any constitutional authority for such relief. Hence, there is no authority to support a claim that the allocation of money mandated by § 40-24-105 has any effect on the trial court's authority under § 40-24-104. Our reading of these two statutes must presume that the General Assembly had full knowledge of these sections when enacting them. *See Equitable Life Ins. Co. of U.S. v. Odle*, 547 S.W.2d 939 (Tenn. 1977); *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992); Op. Tenn. Attny. Gen. 95-076. Accordingly, those statutes must be construed together, meaning they may coexist without conflict. Thus, it is the opinion of this office, that the statutory allocation of a defendant's underpayment has no effect on the trial court's authority to address the defendant's failure to pay fines.

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