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Opinion No. 07-10

Superiority of a Properly Perfected Lien of the Department of Human Services ("DHS") for Overdue Child Support under Tenn. Code Ann. § 36-5-901(a)(1) with respect to Attorney's Fees

QUESTIONS

1. Is a lien of DHS for overdue child support under Tenn. Code Ann. § 36-5-901(a)(1) superior to the fees to which an attorney is otherwise entitled for services to a client who may also have overdue child support?

2. If the answer to Question 1 is in the affirmative, is the same true of the statutory maximum fee to which an attorney is entitled for services in a workers' compensation case under Tenn. Code Ann. § 50-6-226?

OPINIONS

1. Yes. A properly perfected lien of DHS for overdue child support under Tenn. Code Ann. § 36-5-901(a)(1) is superior to the fees to which an attorney is otherwise entitled for services to a client who may also have overdue child support.

2. Yes. A properly perfected lien of DHS for overdue child support under Tenn. Code Ann. § 36-5-901(a)(1) is also superior to the statutory maximum fee to which an attorney is entitled for services in a workers' compensation case under Tenn. Code Ann. § 50-6-226.

ANALYSIS

1.

Tennessee is a participant in the federally funded child and spousal support program created by Title IV-D of the Social Security Act ("Title IV-D"), 42 U.S.C. § 651 *et seq.* To receive federal funds under Title IV-D, Tennessee is required to implement a plan for "spousal and child support" that must meet numerous requirements, including the enactment of laws "to improve child support enforcement effectiveness." 42 U.S.C. § 654(20)(A). To satisfy this particular requirement, federal

law requires that Tennessee have enacted, *inter alia*, procedures through which "liens arise by operation of law against real and personal property for amounts of overdue support by a noncustodial parent who resides or owns property in the State[.]" 42 U.S.C. § 666(a)(4).

Acting in accordance with this federal mandate, the General Assembly enacted a law through which a lien will arise, by operation of law, against all real and personal property for overdue support owed by the obligor in child or spousal support cases enforced by DHS or its contractors under Title IV-D:

> In any case of child or spousal support enforced by the department of human services or its contractors under Title IV-D of the Social Security Act in which overdue support is owed by an obligor who resides or owns property in this state, *a lien shall arise by operation of law against all real and personal property, tangible or intangible, then owned or subsequently acquired by the obligor against whom the lien arises for the amounts of overdue support owed or the amount of penalties, costs or fees as provided in this chapter*. The personal or real property, tangible or intangible, of the obligor that is subjected to the lien required by this part shall include all existing property at the time of the lien's perfection, or acquired thereafter, even if a prior order for overdue support or arrears only specifies a certain amount of overdue support or arrears that was owed by the obligor at the time of such order.

Tenn. Code Ann. § 36-5-901(a)(1) (emphasis added).[1]

Tennessee law defines "overdue" child support as follows:

> "Overdue support" is defined, for purposes of this part, as any occasion on which the full amount of ordered support for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in § 36-5- 101(f)(1) unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-101(g). "Overdue support" shall include all amounts of support that are in arrears as defined in § 36-5-101(f)(1) and that remain unpaid by the obligor at the time the lien is perfected or that become due as arrears subsequent to the perfection of the lien.

Id. at § 36-5-901(a)(2). *See also* 42 U.S.C. § 666(e).

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[1]We note that some personal property (such as furniture or personal effects) subject to this lien is exempt from sale, Tenn. Code Ann. § 36-5-906(a), and must be returned to the owner. *Id.* at § 36-5-906(b).

In Tennessee, a lien for overdue child support may be perfected in two ways. DHS may record or file the lien "as appropriate in the appropriate place for the filing of a judgment lien or security interest in the property." Tenn. Code Ann. § 36-5-901(b)(1)(A). In the alternative, DHS or its authorized representative may perfect the lien by sending a notice of lien "by any appropriate means, including by any automated means . . . to any person or entity that holds or that may hold any assets payable or due to be paid or transferred to an obligor of overdue support to notify the person or entity of the existence of a lien for overdue support." *Id.* at § 36-5-901(b)(1)(B).

Tennessee law also specifies that a lien for overdue child support is "superior to all liens and security interests created under Tennessee law except":

> (1) County and municipal ad valorem taxes and special assessments upon real estate by county and municipal governments;
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> (2) Deeds of trust that are recorded prior to the recordation of notice of the department's lien;
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> (3) Security interests created pursuant to Article 9 of the Uniform Commercial Code, compiled in title 47, chapter 9, that require filing for perfection and that are properly filed prior to recordation of the notice of the department's lien;
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> (4) Security interests perfected under the Uniform Commercial Code without filing, as provided in title 47, chapter 9, that are properly perfected prior to recordation of the notice of the department's lien;
>
> (5) The lien or security interest of a financial institution against an obligor's interest in a deposit account at that institution for any indebtedness to the institution, including but not limited to, that institution's security interest in accounts pledged for loans, its rights under the Uniform Commercial Code or by contract to charge back uncollected deposits, revoke settlements or take other action against the account, its right to recover overdrafts and fees, and its right of offset for mature indebtedness;
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> (6) Other security interests in deposit accounts at a financial institution when such interests are reflected in the records of that financial institution prior to the receipt of an administrative order of seizure;
>
> (7) Other liens recorded prior to the recordation of the department's lien, or concerning which a judicial proceeding was initiated prior to recordation of the department's lien;

> (8) Vendors' liens on real estate provided for in title 66, chapter 10 that are recorded prior to the recordation of notice of the department's lien; and
>
> (9) The tax liens of the department of revenue filed pursuant to title 67 prior to the department's child support lien.

Id. at § 36-5-901(c).

The question posed is one of statutory interpretation, requiring us to determine whether a lien of DHS for overdue child support under Tenn. Code Ann. § 36-5-901(a) is superior to the fees to which an attorney is otherwise entitled for services to a client who may also have overdue child support. In construing statutes, we must "ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the statute's plain and ordinary meaning of the language used. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter are supposed to be read in *pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). We must "construe the statute so that no part will be inoperative, superfluous, void or insignificant." *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978).

Applying these principles of statutory interpretation, we conclude that a properly perfected DHS lien for overdue child support under Tenn. Code Ann. § 36-5-901(a)(1) is superior to the fees to which an attorney is otherwise entitled for services to a client who may also have overdue child support. Because we find that the provisions at issue are unambiguous, we determine legislative intent from the plain meaning of the statutes' language. *Freeman*, 27 S.W.3d at 911. The plain text of § 36-5-901(a)(1) creates a lien, as required by federal law, in Title IV-D support cases in which an obligor, who resides or owns property in Tennessee, owes "overdue support." The lien arises "by operation of law against all real and personal property, tangible or intangible, then owned or subsequently acquired by the obligor . . . ." Tenn. Code Ann. § 36-5-901(a)(1). The term "by operation of law" means that the lien "is created for a party regardless of the party's actual intent." *Black's Law Dictionary* 1124 (8th ed. 2004). Therefore, whenever an obligor owes "overdue support" as defined in Tenn. Code Ann. § 36-5-901(a)(2), the lien automatically arises in DHS's favor. In order, however, for DHS to *enforce* the lien for overdue support, DHS must perfect it following the procedures set forth in § 36-5-901(b)(1)(A) or § 36-5-901(b)(1)(B).

When the DHS lien is properly perfected in accordance with the pertinent statutory provisions, it will be "superior to all liens and security interests created under Tennessee law" subject to certain enumerated exceptions. Tenn. Code Ann. § 36-5-901(c). Because the list in § 36-5-901(c) *excludes* attorney's fees, we conclude that a properly perfected lien for overdue child

support is indeed superior to the fees to which an attorney may be entitled for services to a client. We reach this conclusion relying on the legal maxim *inclusio unius est exclusio alterius*, which provides that "where general words are used followed by a designation of particular things or subject to be included or excluded as the case may be, the inclusion or exclusion will be presumed to be restricted to the particular thing or subject." *City of Knoxville v. Brown*, 260 S.W.2d 264, 268 (Tenn. 1953) (opinion on petition for rehearing). This principle leads us to conclude that the inclusion of specific exceptions in which a properly perfected DHS lien for overdue support will *not* be superior to other liens and security interests necessitates the exclusion of other instances not mentioned.[2]

2.

In Question 2, we are asked whether a DHS lien for overdue child support under Tenn. Code Ann. § 36-5-901(a)(1) is also superior the statutory maximum fee to which an attorney is entitled for services in a workers' compensation case under Tenn. Code Ann. § 50-6-226. We reach the same Opinion as in Question 1.

Under Tennessee's workers' compensation law, the maximum fee to which an attorney is entitled is "twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney. All attorney's fees for attorneys representing employers shall be subject to review for reasonableness of the fee and shall be subject to approval by a court when the fee exceeds ten thousand dollars ($10,000)." Tenn. Code Ann. § 50-6-226(a)(1).[3] The list in § 36-5-901(c) excludes attorney's fees of *all* types. Accordingly, as we reasoned above, we conclude that a properly perfected DHS lien for overdue child support under Tenn. Code Ann. § 36-5-901(a)(1) is also superior to the statutory maximum fee to which an attorney is entitled for services in a workers' compensation case under Tenn. Code Ann. § 50-6-226.

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[2]We note, however, that an attorney's fees' lien could be superior to a perfected DHS lien for overdue support if the attorney's fees' lien is "recorded prior to the recordation of [DHS]'s lien." Tenn. Code Ann. § 36-5-901(c)(7).

[3]In permanent total disability cases, however, attorney's fees are "calculated upon the first four hundred (400) weeks of disability only." Tenn. Code Ann. § 50-6-207(4)(a)(iii).

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