S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 07-16

Employer's Fee for Compliance with Garnishment

QUESTION

Under Tennessee law, may an employer charge a fee to an employee for complying with a garnishment of the employee's wages?

OPINION

Ordinarily, the rights between the employer and employee regarding such a fee would be governed by the employment contract. But the employer's rights and duties with respect to wages subject to a garnishment are governed by statute. State law authorizes a garnishee to recover costs through the court for appearing as a witness. No statute authorizes a court to assess any other garnishment expenses incurred by an employer/garnishee against the judgment debtor/employee as part of the judgment. State law authorizes the Commissioner of Finance and Administration to withhold a processing fee of five dollars when responding to a garnishment. But the fee cannot be withheld where non-exempt wages do not satisfy the judgment. Similarly, a private employer may not withhold a fee for processing a garnishment from the funds otherwise subject to that garnishment. Once a garnishment has expired, however, an employer may be authorized to withhold fees for complying with prior garnishment orders from funds subject to later garnishments.

ANALYSIS

This opinion addresses the rights of an employer required to comply with garnishment proceedings with respect to wages owing an employee. The question is whether the employer may charge the employee a fee for this compliance.[1] This opinion is confined to garnishment by execution authorized under Tennessee state law. We have found no Tennessee statute directly addressing this issue with regard to a private employer. Ordinarily, the rights between the employer and employee regarding such a fee would be governed by the employment contract. The employer's right to withhold such a fee from wages subject to a garnishment lien, however, or to receive such a fee as part of costs assessed by the court, is governed by state garnishment statutes.

[1] Under Tenn. Code Ann. § 36-5-501(l), an employer ordered to pay an income assignment for child support obligations on behalf of an individual is authorized to charge the obligor parent a monthly fee of up to five percent, not to exceed five dollars per month for the service. An "income assignment" under this statute, however, does not appear to be a garnishment by execution under Tennessee law.

Garnishment by execution is governed by two statutory schemes, which must be read together. A garnishment action against an employer as garnishee would ordinarily be brought by a creditor of one of the employer's employees. The action targets wages that the employer owes the employee when the garnishment is served. Under Tenn. Code Ann. § 26-1-103, all money judgments of any court of the state may be enforced by execution. Under Tenn. Code Ann. § 26-2-202, all property, debts, and effects of a debtor in the possession of a third party — the garnishee — are liable to satisfy a creditor's judgment. Tenn. Code Ann. §§ 29-7-101, *et seq.*, govern attachment by garnishment. Under Tenn. Code Ann. § 26-2-220, the provisions regarding garnishment on attachments also regulate proceedings under Tenn. Code Ann. §§ 26-2-201, *et seq.*, whenever applicable. When a garnishee receives a garnishment summons, the garnishee must determine if he or she has money of the judgment debtor and furnish copies of the summons to the judgment debtor.

No statute authorizes a court to include a processing fee to be paid an employer/garnishee as part of a garnishment judgment. Costs are created by statute and where they are not given by statute, they may not be imposed. *Person v. Fletcher,* 582 S.W.2d 765 (Tenn. Ct. App. 1979). In responding to a garnishment, the garnishee may be subject to examination in court. Tenn. Code Ann. § 26-2-204. Tenn. Code Ann. § 29-7-108 provides that, "[t]he garnishee is allowed the compensation and privileges of a witness, for the garnishee's attendance and answer, and all costs to be paid by the plaintiff." Tenn. Code Ann. § 26-2-106(c) provides:

> The debtor shall pay the costs of any and all garnishments on each debt on which suit is brought.

Tenn. Code Ann. § 26-2-206 provides:

> If, upon the answer and the examination of the garnishee, it appears that the garnishee has property, debts, or effects in the garnishee's hands or under the garnishee's control, liable for the plaintiff's debt, judgment may be entered, and execution awarded for the property, money, or effects, as the case may be, or so much thereof as will be sufficient to satisfy the plaintiff's debt and costs and all charges incident to the proceedings.

These statutes refer to court costs expressly authorized by statute. No statute, however, authorizes a court to award a processing fee or other garnishee expense besides witness fees as part of its judgment against a judgment debtor in a garnishment proceeding. *Mayer v. Mayer*, 532 S.W.2d 54, 61 (Tenn. Ct. App. 1975), *p.t.a. denied* (1975) (trial court was not authorized to award garnishee a $250 fee and attorneys' fees).

Nor do the applicable statutes authorize a private employer/garnishee to withhold a fee for processing a garnishment from the funds otherwise subject to that garnishment. A garnishment is a lien against non-exempt wages that the garnishee/employer owes the judgment debtor when the garnishment is served. Tenn. Code Ann. § 26-2-214 and Tenn. Code Ann. § 26-2-216 apply specifically to garnishment of compensation. Tenn. Code Ann. § 26-2-214 provides in relevant part:

> (a) Upon the garnishment of salaries, wages or other compensation due from the employer garnishee, the garnishee shall:
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> (1) Pay the judgment debtor *the amount of such debtor's exempt salaries, wages or other compensation*;
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> * * * *
>
> (b)(1) To the extent of the amount due upon the judgment and costs, the employer garnishee shall hold, subject to the order of the court, any non-exempt wages due or which subsequently become due. The judgment or balance due thereon is a lien on salaries, wages, or other compensation *due at the time of the service of the execution.* Such lien shall continue as to subsequent earnings until the total amount due upon the judgment and costs is paid or satisfied, or until the expiration of the employer's payroll period immediately prior to six (6) calendar months after service of the execution, whichever occurs first. Such lien on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated or modified.
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> (2) A lien obtained hereunder shall have priority over any subsequent liens obtained hereunder.

(Emphasis added). The employer/garnishee must pay the court moneys withheld under this statute at least once each thirty days. Tenn. Code Ann. § 26-2-215. Tenn. Code Ann. §§ 26-2-101, *et seq.*, provide that certain personal property is exempt from garnishment. Tenn. Code Ann. § 26-2-106 (a) sets a maximum amount of aggregate disposable earnings subject to garnishment. Under Tenn. Code Ann. § 26-2-116(b)(2), the officer serving a garnishment summons on an employer must provide a notice that describes these limits on earnings subject to garnishment.

Under Tenn. Code Ann. § 26-2-222, amounts due an officer, employee, contractor, or vendor of the State are subject to garnishment. The garnishment notice must be served on the commissioner of the department in which the officer, employee, contractor, or vendor is engaged, or with which the garnishee is connected. The commissioner must withhold the amounts due the judgment debtor up to the amount of the judgment and costs on which the garnishment proceedings were predicated. The commissioner is directed to pay any amounts remaining to the judgment debtor. Tenn. Code Ann. § 26-2-222(b) provides:

> In addition to the amount of the disposable earnings subject to garnishment, the state department of finance and administration shall be entitled to retain an administrative fee of five dollars ($5.00) due from the judgment debtor at the time of each payment made to the court as a result of the garnishment. The five dollar ($5.00) fee will be retained from the balance of the judgment debtor's earnings remaining after deducting the payment made to the garnishing court. If the maximum garnishable amount has been reached prior to retaining the five dollar ($5.00) fee, then such amount due shall remain owing to the state until paid.

Under this statute, therefore, the Department of Finance and Administration is expressly authorized to withhold a five-dollar administrative fee from funds due the judgment debtor. The fee cannot be taken until the judgment and costs have been paid from non-exempt funds.

Since the obligations of a private employee and employer are governed by their contract, no express statutory authority is necessary for a private employer to charge an employee an administrative fee. But an employer may not withhold the fee from non-exempt wages otherwise due under the garnishment. As noted above, a garnishment is a lien on wages due at the time the execution is served. A fee for responding to a garnishment order does not reduce the wages the employer owes the employee at the time the garnishment is served. The employer, therefore, cannot withhold this fee from the employee's non-exempt wages. Once the garnishment expires or is satisfied, however, it appears that the employer could withhold the fee for complying with it from wages subject to a garnishment served later. In that case, the earlier assessed fee would reduce the wages the employer owes the employee when the later garnishment is served.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Jim T. Hamilton
Circuit Judge, Twenty-Second Judicial District, Division I
22 Public Square, Suite 3, P.O. Box 413
Columbia, TN 38402-0413