STATE OF TENNESSEE
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Opinion No. 13-62

Cash Bonds for Child Support Attachments Under Tenn. Code Ann. § 36-5-101(f)(2)

QUESTION

If a court issues an attachment for a parent who is more than thirty days in arrears for a child support payment pursuant to Tenn. Code Ann. § 36-5-101(f)(2), is the court required to set a cash-only bond of no less than $250 and no more than the total amount of arrears?

OPINION

No.

ANALYSIS

Tennessee Code Annotated § 36-5-101(f)(2) provides as follows:

> In addition to the remedies provided in part 5 of this chapter, but not as an alternative to those provisions, if a parent is more than thirty (30) days in arrears, the clerk of the court may, upon written application of the obligee parent, a guardian or custodian of the children, or the department of human services or its contractors in Title IV-D support cases, issue a summons or, in the discretion of the court, an attachment for such parent, setting a bond of not less than two hundred fifty dollars ($250) or, in the discretion of the court, up to the amount of the arrears, for such other proceedings as may be held in the matter. In addition, the court may, at any time, require an obligor parent to give security by bond, with sufficient sureties approved by the court, or, alternatively, in the absence of the judge from the court, approved by the clerk of the court, for payment of past, present, and future support due under the order of support. If the obligor parent thereafter fails to appear or fails without good cause to comply with the order of support, such bonds may be forfeited and the proceeds from the bonds paid to the court clerk and applied to the order of support.

In construing statutes such as Tenn. Code Ann. § 36-5-101(f)(2), courts will "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 plain and ordinary meaning of the language used in the statute. *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." *Nat'l Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991).

Neither the plain language of Tenn. Code Ann. § 36-5-101(f)(2) nor any other portion of Tenn. Code Ann. § 36-5-101 requires the conclusion that a "bond of not less than two hundred fifty dollars ($250) or, in the discretion of the court, up to the amount of the arrears" means only a cash bond. This conclusion is supported by Article I, Section 15, of the Tennessee Constitution, which provides "[t]hat all prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great." This Office has previously opined that proposed legislation "permitting a judge to restrict the type of bail that a defendant may post to a cash deposit bond" violated the Tennessee Constitution's requirement of bail by "sufficient sureties," as "the legislation could effectively deny bail to those defendants who have property available or who have the ability to secure the help of a professional bondsman or other responsible individuals, but who do not have the requisite cash." Tenn. Att'y Gen. Op. 03-054 at 3 (Apr. 30, 2003).

Based upon the plain language of Tenn. Code Ann. § 36-5-101 and the protection afforded by of Article I, Section 15, of the Tennessee Constitution, a court is not required to set a cash-only bond when issuing an attachment pursuant to Tenn. Code Ann. § 36-5-101(f)(2).

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