

EXAMINERS' ANALYSIS OF QUESTION 8

A judgment creditor like U-New has the legal right to employ several different methods of collecting on a civil judgment entered by Michigan courts, one of which is the garnishment of the assets of, or payments due, judgment debtors like Adele, Brian and Colby who have not yet satisfied the judgments against them. Michigan Court Rule (MCR) 3.101. Judgment debtors may file objections to garnishments, but those objections "may only be based on defects in or the invalidity of the garnishment proceeding itself, and may not be used to challenge the validity of the judgment previously entered." MCR 3.101(K) (1). Additionally, any objections must be based on one or more of the following six reasons specifically set forth in MCR 3.101(K) (2):

- (a) the funds or property are exempt from garnishment by law;
- (b) garnishment is precluded by the pendency of bankruptcy proceedings;
- (c) garnishment is barred by an installment payment order;
- (d) garnishment is precluded because the maximum amount permitted by law is being withheld pursuant to a higher priority garnishment or order;
- (e) the judgment has been paid;
- (f) the garnishment was not properly issued or is otherwise invalid.

Further, an installment payment order from the court protects *only* the wages of the defendant, not any other type of asset subject to any other type of garnishment. MCL 600.6245. See MCL 600.6215(2) which provides that a court order allowing the judgment to be paid in installments "shall stay the issuance of any writ of garnishment for work and labor during the period that the defendant complies with the order." See also, MCR 3.101(N) (1) which specifically instructs that an installment payment order "suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the

garnishee. An order for installment payments does not suspend the effectiveness of a writ of garnishment of nonperiodic payments or of an income tax refund or credit."

Finally, social security funds are exempt by law from garnishment. 42 USC 407(a). That exemption applies even after the funds are received by the judgment debtor and deposited in a bank account. *Whitwood, Inc v South Boulevard Property Management Co*, 265 Mich App 652, 654 (2005).

Based upon the above law, the following applies:

(1) A

dele: U-Knew would have no recourse against Adele's valid objection that the funds in her bank account comprised solely of social security benefits are exempt from garnishment. *Whitwood, Id.* MCR 3.101(K) (2) (a).

(2) B

rian: U-Knew would be able to garnish Brian's wages because his objection attacking the underlying judgment as invalid is specifically improper under MCR 3.101(K) (1). Also, while a pending bankruptcy proceeding is a valid basis for a garnishment objection pursuant to MCR 3.101(K) (2) (b), a mere intention to institute such a proceeding in the future is not.

(3) C

olby: U-Knew would be able to garnish Colby's state income tax refund. As noted above, while an installment payment order from the court stays and/or prevents any periodic garnishment of wages, it does not protect any other assets of the judgment debtor from garnishment, in particular state income tax refunds. MCR 3.101(N) (1). Since Colby's state income tax refund is the subject of the writ of garnishment and not her wages, her objection based upon compliance with an installment payment order is invalid.