

### **EXAMINER'S ANALYSIS OF QUESTION NO. 11**

A judgment creditor like Hi-Time has various legal options for collecting on a civil judgment entered by Michigan courts, one of which is the garnishment of assets of or payments due judgment debtors like Darla and Bernard. MCR 3.101. Judgment debtors may file objections to garnishments, but such objections must be based on one or more of the following seven 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;
- (g) the balance on the statement sent pursuant to MCL 600.4012(5)(a) is incorrect.

Further, an installment payment order from the court protects only the wages of the defendant and does not extend to any other type of asset subject to any other type of garnishment. MCL 600.6245. Also, MCL 600.6215(2) 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."

Additionally, 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 because the cited federal statute extends the protection to benefits already paid. *Whitwood, Inc v South Boulevard Property Management Co*, 265 Mich App 651, 654 (2005). Conversely, although retirement pension benefits are generally exempt from garnishment

at the source of the payout, once those funds are paid to the beneficiary, the exemption protection is extinguished because the applicable laws do not include safeguards for benefits already received by the payee. See *Whitwood*, at 655-656, involving the Michigan Public Employee Retirement Benefit Protection Act, MCL 38.1683, and referencing pension plans covered by the federal Employee Retirement Income Security Act ("ERISA"), 29 USC 1056 (d) (1).

Based upon this law, the following applies:

(1) **Darla**: Hi-Time is unable to garnish that portion of Darla's bank account comprised of social security benefits. *Whitwood*, 265 Mich App at 654. MCR 3.101(K)(2)(a). It is entitled to the amount in Darla's account consisting of her public employee retirement pension benefits because those funds are considered paid and unprotected once deposited. *Whitwood*, 265 Mich App at 655-656.

Lastly, Darla's emotional plea of financial hardship to avoid a state income tax refund garnishment is not a legal basis for an objection. MCR 3.101(K)(2). Therefore, Hi-Time is entitled to those funds if a refund to Darla is forthcoming.

(2) **Bernard**: Hi-Time cannot garnish Bernard's wages because it is expressly barred by the current installment payment order from the court. MCR 3.101(K)(2)(c). However, such an order does not prevent Hi-Time from garnishing any 2021 state income tax refund due Bernard, which category of funds is specifically excluded from that legal safeguard along with any other assets other than wages. MCR 3.101(N)(1).