

SHORT TITLE: Civil procedure; requiring garnishee to pay funds directly to plaintiff under certain circumstances; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1150

By: Smith

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Section 1172.2, which relates to garnishment; requiring garnishee to pay funds directly to plaintiff under certain circumstances; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1172.2, is amended to read as follows:

Section 1172.2 A. When a garnishment summons is issued in any action subsequent to judgment, the court clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by subsection C of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ this title and an application for the defendant to request a hearing. If the garnishee is indebted to or holds property or money belonging to the defendant, the garnishee shall immediately mail by first-class mail a copy of the notice of garnishment and exemptions and the application for hearing to the defendant at the last-known address of the defendant shown on the records of the garnishee at the time the garnishment summons was served on the garnishee. If more than one address is shown on the records of the garnishee at the time of service of the summons, the garnishee shall discharge his duty by mailing to any one of the addresses shown on its records. In lieu of mailing, the garnishee may hand-deliver a copy

of the notice of garnishment and exemptions and the application for hearing to the defendant. The garnishee shall have no liability except for willful failure to mail or hand-deliver the copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The affidavit of the garnishee required by Section 1178 of ~~Title 12 of the Oklahoma Statutes~~ this title should contain a statement indicating substantial compliance with this section. If an application claiming an exemption and requesting a hearing is not filed within ten (10) days from the answer date of the garnishee, the court or court clerk shall issue an order to the garnishee to pay money into the court ~~for disbursement to the plaintiff~~. In issuing the order to the garnishee to pay money into the court ~~for disbursement to the plaintiff~~, the court clerk shall not have the duty to determine whether or not the garnishee has complied with the mailing or hand-delivery requirement of this section or be held liable for complete or partial noncompliance with the notice delivery requirement by the garnishee or be held liable if the garnishee pays funds into the court prior to issuance of an order to pay. If the garnishee pays funds into the court prior to issuance of an order to pay, the plaintiff, creditor, or court clerk should hold the funds until such time as the order to pay would regularly issue. If the application requesting a hearing is filed, the court shall set the matter for hearing within not less than two (2) nor more than ten (10) days from receipt of the returned application, and the court clerk shall give notice of the hearing to each of the parties by first-class mail. If the defendant proves that any assets are exempt from garnishment, the court shall issue an order to the garnishee releasing such assets. If the court finds that the assets are not exempt, it shall issue an order to pay money into court for the funds found to be nonexempt. The court may direct such other orders to the plaintiff as are necessary to prevent subsequent garnishment of the exempt property.

B. When a garnishment summons is issued in any action subsequent to judgment, the garnishee is a financial institution, and the garnishment summons is not for the wages of an employee of the financial institution, the notice of garnishment and exemptions required by subsection C of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ this title and an application for the defendant to request a hearing shall also be prepared by the judgment creditor and issued from the office of the court clerk to the defendant in the manner provided for in paragraphs 1, 2 or 5 of subsection D of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ this title. The sending of the notice of garnishment and exemptions and the application for the defendant to request a hearing to the last-known address of the defendant in the manner provided for in paragraph 2 of subsection D of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ this title shall constitute compliance with this subsection, and no further act or service of notice under this subsection shall be necessary.

C. In any case in which the garnishee is required by law or by order of the court to pay garnishment funds into court, the garnishee shall pay the funds directly to the plaintiff or creditor or, if otherwise ordered by the court upon good cause shown, to the court clerk. Any funds paid to the court clerk pursuant to a garnishment summons shall be paid to the garnishor within twenty-one (21) days from receipt by the court clerk, notwithstanding the various times set forth above unless otherwise directed by the court.

SECTION 2. This act shall become effective September 1, 1994.

44-2-1740

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