

SHORT TITLE: Civil procedure; changing procedure for release of certain judgment liens; requiring garnishment payment to judgment creditor; allowing court to make certain orders relating to certain garnishment monies; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 118

By: Smith

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 1172.2, as amended by Section 8, Chapter 343, O.S.L. 1994, 1173.4 and 1770, as amended by Section 28, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1994, Sections 1172.2 and 1770), which relate to notice of garnishment and payment of funds by garnishee, continuing wage garnishments and small claims judgment liens; changing certain duties of court clerk; allowing court to make certain orders relating to garnishments; requiring payment to judgment creditor; changing procedure for release of small claims judgment liens; providing for Certificate of Release; providing for payment of fees and costs; 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, as amended by Section 8, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1994, Section 1172.2), is amended to read as follows:

Section 1172.2 A. When a garnishment summons is issued in any action ~~subsequent to~~ after judgment, the court clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by subsection C of Section 1174 of 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~~ the duty by mailing the required items 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 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 to the judgment creditor or into the court. In issuing the order to the garnishee to pay money to the judgment creditor or into the court, 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 judgment 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.~~ At the conclusion of the exemption hearing, the court may make appropriate orders to the parties regarding the distribution of the funds and to prevent subsequent garnishment, if property is deemed to be exempt.

B. When a garnishment summons is issued in any action ~~subsequent to~~ after 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 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 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 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, the garnishee shall pay the funds directly to the judgment creditor, unless otherwise

ordered by the court upon good cause shown, to pay the funds directly 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. AMENDATORY 12 O.S. 1991, Section 1173.4, is amended to read as follows:

Section 1173.4 A. Any judgment creditor may obtain a continuing lien on wages. For the purposes of this section, "wages" or "earnings" means any form of periodic payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursements for travel expenses for state employees.

B. A continuing wage garnishment shall be commenced by filing the affidavit provided for by Section 1172 of ~~Title 12 of the Oklahoma Statutes~~ this title.

C. The summons required by this section shall be on a form prescribed by the Administrative Office of the Courts.

D. The summons required by ~~subsection C of~~ this section shall be served upon each of the garnishees, together with a copy of the plaintiff's affidavit, a garnishee's affidavit form, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for in Section 2004 of ~~Title 12 of the Oklahoma Statutes~~ this title and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Administrative Office of the Courts.

F. Within seven (7) days after the end of each pay period, the garnishee shall pay the amount withheld ~~into court, to the plaintiff or the plaintiff's attorney~~ to the judgment creditor or attorney for the judgment creditor together with an affidavit which shall state:

1. Whether ~~he~~ the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the entire pay period, and all the facts and circumstances necessary to a complete understanding of ~~such~~ the indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness ~~he~~ the garnishee may set forth all the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, any other indebtedness, liability, any lien, or claim to ~~such~~ the property, ~~he~~ the garnishee shall set forth the facts and circumstances in the affidavit;

3. The garnishee may, but shall have no obligation to, state any claim of exemption from execution on the part of the defendant, or other objection known to him against the right of the plaintiff to apply upon ~~his~~ demand the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant, and any other person as well, makes claim, ~~he~~ the garnishee may set forth the names and residences of ~~such~~ other claimants and, so far as known, the nature of their claims;

5. The garnishee shall state that ~~he~~ the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, and application for hearing, as required by this section and state the manner and date of compliance; and

6. The affidavit of the garnishee shall be on a form prescribed by the Administrative Office of the Courts.

G. The garnishment summons, affidavit and answer served on the garnishee under this section are a lien on the defendant's property

due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt property until: ~~(a) the~~

1. The total property subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff; ~~(b) the~~

2. The employment relationship is terminated; ~~(c) the~~

3. The judgment against the defendant is vacated, modified, or satisfied in full; ~~(d) the~~

4. The summons, affidavit and answer to garnishment lien are dismissed; or ~~(e) until~~

5. Until one hundred eighty (180) days from the date of service of the affidavit and summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty-day period even if the conclusion extends beyond the end of the period; whichever occurs first.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect.

2. a. When a garnishment summons and answer are served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer ~~this~~ the subsequent garnishment lien or garnishment summons by stating ~~he~~ that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.

b. The subsequent summons and answer are not effective if a summons or lien on the same cause of action is pending at the time of service.

I. A continuing wage garnishment may be suspended or modified for a specific period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.

J. Any garnishment issued against a debtor already subject to a continuing wage garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1770, as amended by Section 28, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1994, Section 1770), is amended to read as follows:

Section 1770. A. A judgment granted under the Small Claims Procedure Act, Section 1751 et seq. of Title 12 of the Oklahoma Statutes, shall become a lien on the real property of the judgment debtor within a county, ~~and may thereafter be released, by following the procedure that is prescribed for other judgments in Section 706 of this title~~ only from and after the time a Statement of Judgment has been filed in the office of the county clerk of that county.

When requested the court clerk shall prepare a Statement of Judgment for the judgment creditor on ~~the a form of Statement of Judgment~~ provided by the Administrative ~~Director~~ Office of the Courts of Oklahoma and ~~said Statement of Judgment shall have printed thereon~~ which shall include instructions advising the judgment creditor to file the Statement of Judgment in the office of the county clerk.

B. The lien of any small claims judgment when satisfied by payment or otherwise discharged shall be released by the court clerk upon written application by the judgment debtor. The court clerk shall mail notice of the judgment debtor's application to the judgment creditor at the last-known address of the judgment

creditor. If there is no response or objection from the judgment creditor within ten (10) days after the notice is mailed, the judgment shall be released. No hearing shall be required unless requested by a party to the action. When requested, the court clerk shall prepare a Certificate of Release for the judgment debtor on a form provided by the Administrative Office of the Courts. The Certificate of Release shall include instructions advising the judgment debtor to file the Certificate of Release in the office of the county clerk. The lien of the judgment shall be released once the Certificate of Release is filed in the office of the county clerk.

C. The party filing the application for release shall pay all recording fees and other costs.

SECTION 4. This act shall become effective November 1, 1995.

45-1-0301

KSM