

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1275

By: Smith of the Senate

and

Hastings of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2001, Sections 706.2, 842, 990.4, 1172, 1173.4, 1174, and 2004, as amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 2004), which relate to appeal from money judgment, judgment debtors, garnishment proceedings and process; providing that certain money amount be determined by court order upon application; requiring submission of certain statement; establishing certain duty of judgment debtor; adding recipient of certain mailed notice; extending number of days to object under certain circumstances; providing certain restriction on extension; allowing a judge to issue certain citation or warrant under specified circumstances; establishing certain actions as contempt of court; expanding applicability of certain bond limitation; modifying information to be included in affidavit in certain proceedings; clarifying priority of certain garnishment lien; modifying certain procedure for providing notice; amending 31 O.S. 2001, Section 1.1, which relates to personal earnings; updating reference; clarifying court authority for certain orders or modifications; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 706.2, is amended to read as follows:

Section 706.2 In the event of an appeal from a money judgment granted by a court of this state, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was granted, shall cease when the judgment debtor or debtors deposit with the clerk of the court in which such

judgment was granted cash sufficient to cover the whole amount of the judgment, including interest, costs, and any ~~attorneys~~ attorney fees, together with costs and interest on the appeal. ~~Such cash deposit shall be accompanied by a written statement executed by the judgment debtor or debtors~~ This amount shall be determined by court order upon application of the judgment debtor indicating that such deposit is made to discharge the lien of the judgment and any lien by virtue of an attachment issued and levied in the action. The cash deposit shall be accompanied by the statement of ownership required pursuant to Section 151.1 of Title 28 of the Oklahoma Statutes.

It shall be the duty of the judgment debtor to deliver the court order of deposit to the court clerk, department head or supervisor. Upon receipt of such a cash deposit, statement of ownership and ~~written statement~~ an order of the court directing deposit, it shall be the duty of the court clerk to immediately record receipt of the ~~statement~~ order and the amount of the cash deposit upon the appearance docket in the cause. It also shall be the duty of the court clerk to place the cash deposit in the court clerk's official depository account and to hold the deposit in an interest-bearing account, unless otherwise ordered by the court, pending final determination of the action. The court clerk shall mail notice of receipt of the cash deposit to counsel for the judgment creditor or, if the judgment creditor is not represented by counsel, to the judgment creditor at the last-known address of the judgment creditor, which provided by the judgment debtor's application. The notice shall contain a statement that, if the judgment creditor does not file with the court a response or objection to the cash deposit within ~~fifteen (15)~~ twenty (20) days after the mailing of the notice to the judgment creditor, the judgment lien may be released. This objection period shall not be extended because of mailing time or for intervening weekends or holidays.

If no objection is filed with the court by the judgment creditor within ~~fifteen (15)~~ twenty (20) days after the mailing of the notice, the court clerk, upon request of the judgment debtor, shall prepare a Release of Judgment Lien for the judgment debtor on the form provided by the Administrative Director of the Courts. Instructions shall be printed on the Release of Judgment Lien advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated. The lien of the judgment upon real estate of the judgment debtor in a county shall be released when the Release of Judgment Lien is filed in the office of the county clerk of that county. The judgment debtor making the deposit shall pay all costs and recording fees relating to the release procedure.

Upon final determination of the appeal, the court may order the deposit together with accrued interest to be applied to any final judgment granted against the depositor or depositors, and refund any balance in excess of the judgment to the depositor or depositors. In the event judgment against the depositor or depositors is reversed in its entirety, the whole amount of the cash deposit together with accrued interest shall be refunded to the depositor or depositors.

A judgment debtor may also apply to the district court where the judgment was rendered for an order releasing a judgment lien to permit a particular transfer of property otherwise subject to the judgment lien on such terms as the court deems proper for the protection of the parties. Such a release of judgment lien may be granted only upon notice to the judgment creditor and hearing, and if granted the court shall endeavor to fully protect the rights of the judgment creditor to the security otherwise afforded by the judgment lien, for example, by determining the adequacy of consideration for the property and directing that such consideration be deposited into the court registry as security for the judgment.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 842, is amended to read as follows:

Section 842. A. At any time after a final judgment, order, or decree is filed, on application of the judgment creditor, a judge of the court in which the final judgment, order, or decree was rendered shall order the judgment debtor to appear before the judge, or a referee appointed by the judge, at a time and place specified in the order, to answer concerning the judgment debtor's property. The judge may, by order, enjoin the judgment debtor from alienating, concealing, or encumbering any of the judgment debtor's nonexempt property pending the hearing and further order of the court. Upon the judgment debtor's disclosure of any nonexempt property, proceedings as provided by law may be had for the application of the property to the satisfaction of the judgment. If the judgment debtor is personally served with an order to appear pursuant to this section, the judge issuing the order may authorize the issuance of either a contempt citation or a bench warrant for the judgment debtor's failure to comply with the order. If the judgment debtor is served by other than personal service, the judge may authorize the issuance of a contempt citation for the judgment debtor's failure to comply with the order.

B. At any time after a final judgment, order, or decree is filed, an attorney for a judgment creditor may:

1. Subpoena the judgment debtor, pursuant to Section 2004.1 of this title, to appear at any place in the county in which the judgment, order, or decree was rendered, or the judgment debtor's county of residence, to answer concerning the judgment debtor's property, income, or liabilities, or to produce documents concerning the debtor's property, income, or liabilities. The judgment debtor shall not be entitled to an attendance fee or mileage;

2. Subpoena any person, pursuant to Section 2004.1 of this title, to appear at any place in the county where the person is

located, or where service may otherwise be had on the person, to answer concerning the judgment debtor's property, income, or liabilities, or to produce documents concerning the judgment debtor's property, income, or liabilities; or

3. Serve interrogatories, requests for admissions, or request for production of documents, pursuant to Section 3224 et. seq. of this title, upon the judgment debtor, concerning the judgment debtor's property, income, or liabilities.

C. Failure by any person, without good cause, to obey a subpoena issued and served pursuant to this section by personal service may be deemed a contempt of the court from which the subpoena issued.

D. In addition to sums otherwise due under a final judgment, order, or decree if an order, subpoena, or discovery request is served upon the judgment debtor or any person under this section, the judgment creditor shall be entitled to costs of service and, if represented by an attorney, to an ~~attorney's~~ attorney fee of Seventy-five Dollars (\$75.00); provided, ~~attorney's~~ attorney fees awarded pursuant to this subsection relating to a judgment, order, or decree shall not exceed One Hundred Fifty Dollars (\$150.00) in any calendar year.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 990.4, is amended to read as follows:

Section 990.4 A. Except as provided in subsection C of this section, a party may obtain a stay of the enforcement of a judgment, decree or final order:

1. While a post-trial motion is pending;
2. During the time in which an appeal may be commenced; or
3. While an appeal is pending.

Such stay may be obtained by filing with the court clerk a written undertaking and the posting of a supersedeas bond or other security as provided in this section. In the undertaking the appellant shall

agree to satisfy the judgment, decree or final order, and pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas bond or security may be given at any time. The stay is effective when the bond and the sufficiency of the sureties are approved by the trial court or the security is deposited with the court clerk. The enforcement of the judgment, decree or order shall no longer be stayed, and the judgment, decree or order may be enforced against any surety on the bond or other security:

1. If neither a post-trial motion nor a petition in error is filed, and the time for appeal has expired;
2. If a post-trial motion is no longer pending, no petition in error has been filed, and the time for appeal has expired; or
3. If an appeal is no longer pending.

B. The amount of the bond or other security shall be as follows:

1. When the judgment, decree or final order is for payment of money:
 - a. The bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma.
 - b. Instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion to accept United States Treasury notes or general obligation bonds of the State of Oklahoma in lieu of cash. If the court accepts such notes or bonds, it

shall make appropriate orders for their safekeeping and maintenance during the stay;

2. When the judgment, decree or final order directs execution of a conveyance or other instrument, the amount of the bond shall be determined by the court. Instead of posting a supersedeas bond or other security, the appellant may execute the conveyance or other instrument and deliver it to the clerk of the court for deposit with a public or private entity for safekeeping, as directed by the court in writing;

3. When the judgment, decree or final order directs the delivery of possession of real or personal property, the bond shall be in an amount, to be determined by the court, that will protect the interests of the parties. The court may consider the value of the use of the property, any waste that may be committed on or to the property during the pendency of the stay, the value of the property, and all costs. When the judgment, decree or final order is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the bond must also provide for the payment of the deficiency;

4. When the judgment or final order directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment or order was rendered, for deposit with a public or private entity for safekeeping during the pendency of the stay, as directed by the court in writing, or the bond shall be in such sum as may be prescribed by the court; or

5. In order to protect any monies payable to the Tobacco Settlement Fund as set forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or litigation brought under any legal theory involving a tobacco product manufacturer that is a party signatory, successor of a signatory or an affiliate of a signatory to the Master Settlement Agreement dated November 23, 1998, or a party signatory, successor of a signatory or an affiliate

of a signatory to the Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of interest and costs, or Twenty-five Million Dollars (\$25,000,000.00), whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this paragraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section. For purposes of this paragraph, "Master Settlement Agreement" ~~and "tobacco product manufacturer"~~ shall have the same ~~meanings~~ meaning as ~~those terms are~~ that term is defined in ~~paragraphs~~ paragraph 5 ~~and 9~~ of Section 600.22 of Title 37 of the Oklahoma Statutes, and "Smokeless Tobacco Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and leading United States smokeless tobacco product manufacturers.

C. Subsections A and B of this section shall not apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile matters, post-decree matrimonial proceedings or habeas corpus proceedings. The trial or appellate court, in its discretion, may stay the enforcement of any provision in a judgment, decree or final order in any of the types of actions or proceedings listed in this subsection during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties. If a temporary or permanent injunction is denied or dissolved, the trial

or appellate court, in its discretion, may restore or grant an injunction during the pendency of the appeal and while any post-trial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

D. In any action not provided for in subsections A, B or C, the court may stay the enforcement of any judgment, decree or final order during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

E. The trial court shall have continuing jurisdiction during the pendency of any post-trial motion and appeal to modify any order it has entered regarding security or other conditions in connection with a stay.

F. The execution of a supersedeas bond shall not be a condition for the granting of a stay of judgment, decree or final order of any judicial tribunal against any county, municipality, or other political subdivision of the State of Oklahoma.

G. Executors, administrators and guardians who have given bond in this state, with sureties, according to law, are not required to provide a supersedeas bond if they are granted a stay of enforcement of a judgment, decree or final order.

H. After an appeal has been decided, but before the mandate has issued, a party whose trial court judgment has been affirmed, may move the appellate court to order judgment on the bond or other security in the amount of the judgment plus interest, appeals costs and allowable appeal-related attorney's fees. After mandate has issued, a party who has posted a bond or other security may move for exoneration of the bond or other security only in the trial court; and all motions concerning the bond or other security must be addressed to the trial court.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 1172, is amended to read as follows:

Section 1172. A. Garnishment proceedings, whether prejudgment or postjudgment, shall be commenced by the filing of an affidavit, on a form prescribed by the Administrative Director of the Courts, stating:

1. The name(s) of the plaintiff(s);

2. The name(s) of the defendant(s);

3. ~~The~~ In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant or defendants over and above all offsets;

4. In the case of postjudgment garnishments, the amount of ~~any interest, court costs and attorneys' fees awarded, stated separately~~ the interest-bearing balance;

5. In the case of postjudgment garnishments, the rate and the date the interest begins to accrue; and

6. That the plaintiff verily believes that some person, naming him, whether within or without the county, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

B. The affidavit may be filed by the plaintiff or the plaintiff's attorney at or before the time of filing of a garnishment summons.

C. Only one garnishee may be embraced in any affidavit or garnishment summons.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 1173.4, is amended to read as follows:

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

but does not include reimbursements for travel expenses for state employees.

B. A continuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of 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 this section shall be served upon each of the garnishees, together with a copy of the judgment creditor's affidavit, 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 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, or, if the judgment debtor does not have regular pay periods, after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the court clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, together with a copy of the answer which shall state:

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

circumstances concerning the same, and submit the question to the court;

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

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of their claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is 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 earnings until one of the following occurs:

1. The total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;

2. The employment relationship is terminated;

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

4. The summons is dismissed; or

5. 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.

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, regardless of whether the amounts withheld by the garnishee are reduced by the court or by agreement of the parties.

2. a. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating 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 is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-fiftieth day of the previous garnishment lien.

I. 1. When a postjudgment wage garnishment under Section 1173 of this title or a continuing earnings garnishment under this section is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

J. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment 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.

K. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings 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 6. AMENDATORY 12 O.S. 2001, Section 1174, is amended to read as follows:

Section 1174. A. In all cases of garnishment before judgment, the defendant in the principal action shall be given notice of the issuance in said action of any garnishee summons, the date of issuance of said summons, and the name of the garnishee.

B. In all cases of garnishment for the collection of child support, the defendant shall be given notice as required by this section.

C. In all cases of postjudgment garnishment, the court clerk shall ~~issue~~ attach notice, in a form prescribed by the Administrative Director of the Courts, with the garnishment, in the manner provided by Section 1172.2 of this title that the defendant

may be entitled to claim an exemption for any assistance received pursuant to the terms of the Federal or Oklahoma Social Security Act and other exemptions that may be available to the defendant, and that any such claim should be filed with the court clerk within five (5) days from receipt of notice in a form prescribed by the Administrative Director of the Courts, requesting a hearing as to the status of any assets which the defendant asserts are exempt. Any proceeding to claim an exemption initiated subsequent to five (5) days after receipt of notice shall be by motion unless otherwise agreed by the parties.

D. Said notification may be accomplished by:

1. Serving a copy of the garnishee summons on the defendant or on his attorney of record in the manner provided for the service of summons; or

2. Sending the notice or a copy of the garnishee summons to the defendant or his attorney of record by registered or certified mail with return receipt requested, which receipt shall be filed in the action; or

3. ~~Endorsing~~ Attaching the notice on the summons issued in the principal action prior to its service; or

4. Including the notice in the publication notice when service in the principal action is by publication; or

5. Publication one time in a newspaper of general circulation in the county in which the action is filed at least five (5) days prior to the date on which the garnishee's answer is due if the defendant is a nonresident or if the defendant's whereabouts are unknown to plaintiff.

SECTION 7. AMENDATORY 31 O.S. 2001, Section 1.1, is amended to read as follows:

Section 1.1 A. Following the issuance of an execution, attachment, or garnishment, except process to collect a judgment or order for child support or maintenance of children or in cases in

which the court has limited or reduced the application of this section pursuant to Section 142.18 of Title 21 of the Oklahoma Statutes, the debtor may file with the court an application requesting a hearing to exempt from such process by reason of undue hardship that portion of any earnings from personal services necessary for the maintenance of a family or other dependents supported wholly or partially by the labor of the debtor. A debtor with no family or other dependents may not claim an exemption under this section. A hearing on the application shall be set and conducted in the manner provided by Section 1172.2 of Title 12 of the Oklahoma Statutes and subsection D C of Section 1174 of Title 12 of the Oklahoma Statutes.

B. In determining the existence of an undue hardship, the court should consider the income and expenses of the family and other dependents, and the standard of living created by the income and expenses. The court should also consider the standard of living in relationship to the minimal subsistence needs of the debtor's family and other dependents, with comparison to the minimal subsistence standards in the community, in regard to basic shelter, food, clothing, personal necessities and transportation. The court should then determine if the lack of the funds sought to be exempt would be an undue hardship by creating less than a minimal level of subsistence. If deprivation of these earnings would create an undue hardship on the debtor and the family or other dependents the debtor supports, the court may:

1. Order all or a portion of the personal ~~wages~~ earnings exempt; or

2. In the case of a continuing ~~wage~~ earnings garnishment pursuant to Section 1173.4 of Title 12 of the Oklahoma Statutes, exempt all or a portion of the personal earnings withheld within the thirty (30) days preceding the filing of the claim for exemption or

modify or stay the garnishment for a period of time not to exceed the remainder of the term of the garnishment.

SECTION 8. This act shall become effective November 1, 2004.

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