

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2504

September Term, 2014

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BYRON ALEXANDER KELLY

v.

MONTGOMERY COUNTY OFFICE  
OF CHILD SUPPORT ENFORCEMENT,  
*ET AL.*

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Kehoe,  
Leahy,  
Raker, Irma, S.  
(Retired, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: December 28, 2015

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Code of the Public General Laws of Maryland is a formidable creature. Even after a forty year effort to clarify and shorten it, the Annotated Code consists of 51 printed volumes. The average length of each volume is about 500 pages. Ambiguities are bound to occur in so massive an undertaking. This case is about one of them.

The chain of events giving rise to this appeal began in 2014 when the Montgomery County Office of Child Support Enforcement Office (the “Office”) sought to collect on a judgment of \$9,866.80 against Byron Alexander Kelly for unpaid child support. At the request of the Office, the Circuit Court for Montgomery County issued a writ of garnishment against Capital One Bank, N.A. There were two accounts in Kelly’s name at the bank with a combined balance of \$2,705.05. The bank reported this information to the court and suspended activity in the accounts pending a court order.

Kelly then filed a motion to release the two accounts from the levy.<sup>1</sup> Kelly based his motion on Courts and Judicial Proceedings Article (“CJP”) § 11-504(b)(5), which permits a judgment creditor under certain circumstances to elect to exempt up to \$6,000 in cash or other property from a levy to satisfy a money judgment. After an evidentiary

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<sup>1</sup>Md. Rule 2-643 states in pertinent part (emphasis added):

Rule 2-643. Release of Property from Levy.

\* \* \* \*

(c) Upon Motion of Judgment Debtor. Upon motion of the judgment debtor, the court may release some or all of the property from a levy if it finds that (1) the judgment has been vacated, has expired, or has been satisfied, (2) *the property is exempt from levy*, . . . .

hearing, the Circuit Court for Montgomery County denied Kelly’s motion and separately ordered Capital One to pay the account proceeds to the Office.

Kelly has appealed both orders and presents four questions to us. We have consolidated and reworded them as follows:

- (1) Did the trial court correctly interpret the exemption contained in Md. Code Ann. (1974, 2013 Repl.) § 11-504(b)(5) of the Courts & Judicial Proceedings Article (“CJP”) to be inapplicable to action to collect child support arrears?
- (2) Were the trial court’s findings as to the source of the funds in the accounts clearly erroneous?

We will affirm the trial court’s judgment.

### **Analysis**

#### **1. Were the account proceeds exempt from garnishment?**

##### **1.1 Statutory Construction**

The interpretation of a statute is a purely legal question, and thus subject to a *de novo* standard of review. *Bord v. Baltimore County*, 220 Md. App. 529, 544 (2014). “*De novo*” review means that we reach our own conclusions without giving any deference to the trial court’s legal analysis.

In interpreting a statute, courts heed the following guidelines:

- (1) Our purpose is to “ascertain and effectuate the real and actual intent of the Legislature.” *Employees’ Ret. Sys. of City of Baltimore v. Dorsey*, 430 Md. 100, 112 (2013);

(2) In this context, “intent” means “the legislative purpose, [that is] the ends to be accomplished, or the evils to be remedied” by the statute in question. *Id.*;

(3) We usually identify the legislative purpose by considering the plain language of the statute “within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.” *State v. Johnson*, 415 Md. 413, 421–22 (2010); and

(4) In the process of discerning the “statutory scheme” to which a particular statute belongs, we bear in mind that, laws passed by the General Assembly are usually written so that no provision of any statute is superfluous or meaningless. *Moore v. State*, 424 Md. 118, 127 (2011).

Steps 1 through 4 resolve most questions of statutory interpretation. When they do not, courts may consider the consequences resulting from competing interpretations and choose the interpretation that, in the minds of the judges makes the most sense.

*Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC*, 412 Md. 308, 315 (2010).

## 1.2. Two Statutes and Two Statutory Schemes

The question before us is how to reconcile two apparently conflicting statutes. The first is Courts Article § 11-504.<sup>2</sup> The “statutory scheme” which contains this statute

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<sup>2</sup>The statute reads in pertinent part:

§ 11-504. Items excluded from execution of judgment.

\* \* \* \*

(b) *Items exempt from execution on judgment.* – The following items are exempt from execution on a judgment:

(4) The debtor's interest, not to exceed \$1,000 in value, in household

(continued...)

pertains to means by which judgments can be enforced by judgment creditors. Section 11-504 itself sets out various exemptions that judgment debtors may exercise to shelter assets from being seized to pay the judgment. Section 11-504(b)(5) states (emphasis added):

The following items are exempt from execution on a judgment:

. . . .

(5) Cash or property of any kind equivalent in value to \$6,000 is exempt, if within 30 days from the date of the attachment or the levy by the sheriff, *the debtor* elects to exempt cash or selected items of property in an amount not to exceed a cumulative value of \$6,000.

The second statute is Family Law Article (“FL”) § 10-108.3(b)(1). It provides in pertinent part (emphasis added):

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<sup>2</sup>(...continued)

furnishings, household goods, wearing apparel, appliances, books, animals kept as pets, and other items that are held primarily for the personal, family, or household use of the debtor or any dependent of the debtor.

(5) Cash or property of any kind equivalent in value to \$6,000 is exempt, if within 30 days from the date of the attachment or the levy by the sheriff, the debtor elects to exempt cash or selected items of property in an amount not to exceed a cumulative value of \$6,000.

(6) Money payable or paid in accordance with an agreement or court order for child support.

\* \* \* \*

(i) *Net recovery defined.* – (1) In this subsection, “net recovery” means the sum of money to be distributed to the debtor after deduction of attorney’s fees, expenses, medical bills, and satisfaction of any liens or subrogation claims arising out of the claims for personal injury,

. . . .

(2) Twenty-five percent of the net recovery by the debtor on a claim for personal injury is subject to execution on a judgment for a child support arrearage.

If *an obligor* [who is more than \$500 in arrears in child support payments] has not paid child support for more than 60 days, the Administration may institute an action to attach and seize the amount of the arrearage in one or more of the accounts of *the obligor* with a financial institution to satisfy the amount of arrearage *owed by the obligor*.<sup>3]</sup>

However, § 10-108.3(h)(4) permits an obligor to “challenge the [collections] actions of the [Office] based on an exemption in [CJP] § 11-504 . . . or for any other good cause[.]”

Section 10-108.3 inhabits a “statutory scheme” which establishes the Child Support Enforcement Administration and grants to that agency broad powers to collect overdue child support payments. Among other things, Subtitle 10 authorizes the Motor Vehicle Administration to suspend the driver’s license of persons who is 60 days or more behind in his or her support obligation (§ 10-119); authorizes other licensing agencies to suspend licenses for professional occupations for persons, including, incidently, lawyers, who are 120 days behind in child support payments (§ 10-119.3); grants the Child Support Enforcement Administration, and its local surrogates such as the Office, to obtain orders withholding up to 25% of the salaries and wages in order to satisfy unpaid child support obligations (§§ 10-120–138); and criminalizes the wilful failure to pay child support (§ 10-203). Read together, the provisions of Family Law Article Title 10 demonstrate a strong public policy to provide multiple enforcement tools by which child

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<sup>3</sup>Kelly concedes that he is such an obligor.

support orders can be enforced. These orders are enforced to “preserve and promote the best interests of the child” for whom support is to be paid (§ 10-118).

### **1.3 The Parties’ Contentions**

Kelly’s argument is quite simple: he concedes that the Office has the authority to garnish bank accounts but, pointing to FL § 10-108.3(h)(4), asserts that he is entitled to exempt up to \$6,000 of personal property pursuant to CJP § 11-504(b)(5). However, we conclude that the exemption in CJP § 11-504(b)(5) does not apply to efforts to collect unpaid child support payments.

Our conclusion is based on a subtle, but very significant, difference in terminology between CJP § 11-504 and FL § 10-108.3(b)(1). Section 11-504(b) permits a “debtor” to claim an exemption of up to \$6,000. Section 10-108.3 authorizes the Office to collect unpaid child support from “obligors.” In the purview of § 10-108.3, Kelly is certainly an “obligor.” Does this make him a “debtor” for the purposes of § 11-504? The answer to the question is “no.” Maryland courts have long distinguished between a “debtor,” who is someone that simply owes money to another, and an “obligor” who must pay money arising out of a separate, and separately enforceable, legal duty.

This principle was first applied in Maryland in *Safe Deposit & Trust Co. v. Robertson*, 192 Md. 653, 662–63 (1949). At issue in that case was whether income generated by a spendthrift trust could be attached to collect unpaid alimony. The Court

recognized that income from a spendthrift trust was not subject to attachment for the beneficiary's debts but the Court drew a distinction between the obligation to pay a debt and the obligation to support a spouse or minor child. The latter obligation "is a *duty*, not a *debt*. . . . We think the rule that gives legal effect to spendthrift provisions as against contract creditors should not be extended to claims for support or alimony." (Emphasis added.)

The distinction between an individual's debts—owed to third parties—and his or her duty to support dependent children and spouses has been repeatedly recognized in different legal and factual contexts by the Court of Appeals. *See United States v. Williams*, 279 Md. 673, 678 (1977) (Military retirement pay is not subject to attachment for payment of a debt but is subject to attachment for unpaid alimony because "the underlying obligation is for intra-familial support and the very purpose of the statutory exemptions is to protect a family from being deprived of all support by attachment proceedings brought by an outsider."); *Pope v. Pope*, 283 Md. 531, 537 (1978) (Unemployment benefits are subject to attachment for payment of a debt but are attachable for payment of alimony because "the legislative purpose underlying such statutes [prohibiting attachment of various benefits] is the protection of the various types of benefits involved from the claims of creditors not from the claim of a former wife for

alimony, which often, as in Maryland, is not considered a debt.”<sup>4</sup> This leads us to conclude that, when the General Assembly used the term “debtor” in CJP § 10-504(b)(4), the Legislature did not intend to permit persons who were obligated to pay child support to escape their legal duty. *See Pye v. State*, 397 Md. 626, 635 (“The General Assembly is presumed to be aware of this Court’s interpretation of its enactments and, if such interpretation is not legislatively overturned, to have acquiesced in that interpretation.”) (internal quotations omitted.)

Our interpretation of the subsection is consistent with other provisions of § 11-504(b) which extend protections not only to the debtor but the debtor’s family as well. For example, CJP § 11-504(b)(3) (emphasis added) exempts “[p]rofessionally prescribed health aids for the debtor *or any dependent of the debtor*[;]” (b)(4) protects up to \$1,000 of household items of the debtor *or any dependent of the debtor*; (b)(6) protects money designated for payment of child support; and (b)(7) protects money designated for payment of alimony.

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<sup>4</sup>Kelly argues that this line of cases—including *Pope*, *Williams*, and *Blum v. Blum*, 295 Md. 135 (1983)—are inapplicable to the present case because all three of those cases pertained to claims for alimony rather than child support. The distinction is not significant. All three cases, although specifically pertaining to alimony, framed their analyses in terms of “intra-familial support,” *see Pope*, 283 Md. at 536 (“[T]he underlying obligation is for intra-familial support . . . .”); *Williams*, 279 Md. at 678 (same); *Blum*, 295 Md. at 142 (describing the obligation to provide contractual alimony as a duty to provide intra-familial support). We conclude their holdings are equally applicable to claims for child support.

Our interpretation of CJP § 10-504(b)(5) is also in harmony with FL § 10-108.3(b)(1). Title 10 of the Family Law Article establishes a broad panoply of collection techniques, such as suspending drivers' and professional licenses, that are unavailable to those who collect debts. Indeed, a court may even incarcerate a recalcitrant obligor for child support as part of a contempt proceeding—a remedy that is specifically denied to those who seek to collect debts.<sup>5</sup> It would be anomalous, to say the least, for the General Assembly to give the Office such far-reaching powers to collect unpaid child support from a delinquent parent but to allow that same parent to place \$6000 beyond the reach of the Office.

Kelly cites *Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC*, 412 Md. 308 (2010), in support of his argument. *Roseman* specifically pertained to a child support enforcement action, where the obligor relied on the personal injury compensation exemption contained in CJP § 11-504(b)(2)<sup>6</sup> to claim that the

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<sup>5</sup>See Maryland Constitution Article III § 38.

No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for the support of a spouse or dependent children, or for the support of an illegitimate child or children, or for alimony (either common law or as defined by statute), shall not constitute a debt within the meaning of this section.

<sup>6</sup>CJP § 11-504(b)(2) states:

(continued...)

Administration could not collect child arrears from her settlement proceeds from a personal injury action. 412 Md. at 313. In that case, the Court concluded that the reasoning in the *Williams* line of cases did not apply to this exemption, because the exemptions discussed in those cases were enacted to “protect a family from being deprived of all support by attachment proceedings brought by an outsider[,]” while the exemption in CJP § 11-504(b)(2) was enacted to “make the injured person whole.” *Roseman*, 412 Md. at 325. The Court reasoned that the money from the personal injury settlement was “not meant to support directly the injured party’s family,” but to “pay medical bills and compensate for loss of future earnings and pain and suffering.” *Id.* Thus, it concluded that the exemption was applicable to claims for intra-familial support. *Id.* at 326–37.

We do not believe the reasoning in *Roseman* is applicable to the exemption contained in CJP § 11-504(b)(5) for two reasons. First, the \$6,000 exemption in § 11-

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<sup>6</sup>(...continued)

The following items are exempt from execution on a judgment:

(2) Except as provided in subsection (i) of this section, money payable in the event of sickness, accident, injury, or death of any person, including compensation for loss of future earnings. This exemption includes but is not limited to money payable on account of judgments, arbitrations, compromises, insurance, benefits, compensation, and relief. Disability income benefits are not exempt if the judgment is for necessities contracted for after the disability is incurred.

504(b)(5) is available only to debtors. There is no similar limitation in subsection (b)(2), the provision at issue in *Roseman*. Second, the General amended CJP § 11-504(i)<sup>7</sup> in 2011 in response to *Roseman*, authorizing the execution of up to 25% of a personal injury award to be applied to a child support arrearage.

## 2. Substantial Evidence

Kelly presents two arguments concerning the trial court’s factual conclusions. We review the court’s findings for clear error and give deference to the trial court’s opportunity to gauge the credibility of witnesses. *See* Md. Rule 8-131(c). (“When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence

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<sup>7</sup>CJP § 11-504(i) states (emphasis added):

### **Net recovery defined**

(i)(1) In this subsection, “net recovery” means the sum of money to be distributed to the debtor after deduction of attorney's fees, expenses, medical bills, and satisfaction of any liens or subrogation claims arising out of the claims for personal injury, including those arising under:

- (i) The Medicare Secondary Payer Act, 42 U.S.C. § 1395y;
- (ii) A program of the Department of Health and Mental Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1 of the Health--General Article;
- (iii) An employee benefit plan subject to the federal Employee Retirement Income Security Act of 1974; or
- (iv) A health insurance contract.

(2) *Twenty-five percent of the net recovery by the debtor on a claim for personal injury is subject to execution on a judgment for a child support arrearage.*

unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.”)

At the hearing, Kelly testified that he was not employed. The trial court did not believe this testimony. Assessing the credibility of witnesses is a matter reserved to the trial court and we defer to the trial court in this matter.

Kelly also asserts that the funds in the two accounts in question did not entirely belong to him, but were commingled with his mother’s funds. The trial court was not convinced and Kelly challenges the court’s conclusions on appeal. Again, we defer to the trial court’s factual determinations.

Finally, Kelly argues that the Office withheld “crucial evidence” from the trial court. He does not specify what that evidence was and we will not speculate on the matter. To the extent that Kelly is referring to evidence regarding his mother’s interest in the account proceeds, it was his burden to prove that the funds were his mother’s by clear and convincing evidence. *See Morgan Stanley & Co. v. Andrews*, 225 Md. App. 181, 189 (2015).

### **3. Additional Motions**

Kelly has filed a motion pursuant to Rule 1-341 to request an award of costs and expenses. Rule 1-341(a) states the circumstances in which this Court may award costs and expenses to a party when the opposing party acted in bad faith or without substantial

justification. Normally, this determination must be made by the trial court but we can save a step in this case. There is absolutely no basis to impute bad faith to the Office and it certainly acted with substantial justification.<sup>8</sup>

**THE JUDGMENT OF THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY IS AFFIRMED.  
APPELLANT TO PAY COSTS.**

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<sup>8</sup>Our denial of Kelly's Rule 1-341 motion renders moot his pending motion to defer filing of supporting statements for cost and expense until we have decided his Rule 1-341 motion.