

No. 1-14-2419

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CRAIG B. HAMMOND, LTD.,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
v.)	No. 01 D6 31358
)	
RANDY SMITH,)	
)	
Respondent-Appellee,)	
)	
(Tanya Smith,)	Honorable
)	Patrick W. O'Brien,
Plaintiff).)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed order of the circuit court requiring a judgment creditor to return funds from the debtor's bank account, as well as order denying reconsideration, where those funds were traceable solely to Social Security benefits and were, therefore, exempt from garnishment under section 407(a) of the Social Security Act.

¶ 2 Petitioner-appellant, Craig B. Hammond, Ltd. (Hammond), a law firm, sought to garnish a JPMorgan Chase Bank (Chase) account of respondent-appellee, Randy Smith (Mr. Smith), to satisfy a judgment relating to unpaid attorney fees. Mr. Smith's Social Security benefits were

No. 1-14-2419

directly deposited into his Chase bank account (the Chase account). Initially, the circuit court ordered a turnover of the funds to counsel for Hammond and Chase complied with the order. Mr. Smith then moved for the return of the funds, arguing that Social Security benefits were exempt from any collection attempts. The circuit court granted the motion, ordered the return of the funds, and denied Hammond's motion to reconsider. We affirm those orders, as the funds in the Chase account were traceable exclusively to Social Security benefits and were, therefore, exempt from garnishment under section 407(a) of the Social Security Act (Act). 42 U.S.C. § 407(a) (2006).

¶ 3 On December 14, 2001, Tanya Smith filed a petition against Mr. Smith, seeking the dissolution of their marriage. The petition alleged that, at that time, Mr. Smith was employed full-time with the Illinois Department of Children and Family Services (DCFS). Hammond filed an appearance on behalf of Mr. Smith on May 1, 2002.

¶ 4 The divorce matter continued for several years as the parties engaged in discovery and mediation, and litigated various petitions for rule to show cause and contested motions. The record on appeal does not include all of the orders and pleadings relating to the divorce proceedings. As relevant to the issue on appeal, the record shows that disputes arose as to Mr. Smith's child support obligations based on his "disability income."

¶ 5 A memorandum of judgment in the amount of \$35,467.90 was entered in the case on May 30, 2007, and was filed with the Cook County Recorder of Deeds. The memorandum stated that, on March 29, 2007, a judgment had been entered in favor of Hammond and against Mr. Smith. The underlying judgment is not contained in the record and the memorandum does not specify its nature. However, Hammond asserts that the judgment was related to attorney fees owed to Hammond for its representation of Mr. Smith in the divorce suit.

¶ 6 On September 18, 2009, Hammond, by his counsel, filed a wage deduction summons with affidavit which had been served on DCFS, seeking to garnish Mr. Smith's wages to satisfy the judgment for attorney fees. The amount of the judgment at that time was \$43,809.76, which included costs and interest. DCFS responded to the wage deduction summons by answering interrogatories. DCFS's answers showed \$436.29 of Mr. Smith's semimonthly pay was available to be applied against the attorney fees judgment. Based on the answers provided by DCFS, the circuit court subsequently entered a wage deduction order/turnover order on October 21, 2009.

¶ 7 On January 30, 2014, in a further attempt to collect on the judgment for attorney fees, Hammond filed an affidavit for nonwage garnishment and summons, which were both served on a branch of Chase, alleging Chase was in possession of funds belonging to Mr. Smith and available to satisfy the outstanding amount of the judgment. That amount then equalled \$30,368. According to the garnishment affidavit, Hammond had collected \$7,420.96 in satisfaction of its attorney fees judgment. The record does not include a response to the garnishment affidavit by Chase, nor any objections by Mr. Smith.

¶ 8 Pursuant to Hammond's garnishment action, on March 4, 2014, the circuit court entered an order (turnover order) which stated:

"1. That the Citation respondent [Chase] is ordered to turn over funds of the defendant [Mr. Smith] that it is currently holding pursuant to a served Citation in the amount of \$14,053.00.

2. That said funds shall be turned over to the plaintiff [Hammond] through its attorneys to satisfy in part the judgment entered herein.

3. That a judgment in the sum of 10,053.00 is hereby entered against RANDY SMITH and in favor of JP MORGAN CHASE BANK f/u/o CRAIG HAMMOND.

4. That any and all funds in excess of the amount indicated in this order are to be returned to the account holder, that the freeze on said account is lifted, and the Citation is dismissed."

The record does not include a transcript of the proceedings from the March 4, 2014, hearing and does not show whether Mr. Smith or Chase was present at that time. On that date, the attorney for Hammond wrote a letter to Chase stating that the turnover order required the bank to turn over \$10,053 from Mr. Smith's account, which held \$14,053 according to the turnover order, and instructed that a check in that amount should be made payable to Hammond's attorney. Chase complied with the turnover order.

¶ 9 On April 2, 2014, Mr. Smith, through counsel, filed a motion seeking the return of the Chase funds paid to Hammond's attorney pursuant to the turnover order, arguing that all of the monies in the Chase account were exempt Social Security Disability (SSDI) payments. The motion was noticed for hearing on April 22, 2014.

¶ 10 In an affidavit attached to his motion, Mr. Smith averred that in 2010, he suffered an incapacitating stroke and, as a result, his mother cares for him and he resides in her home. Mr. Smith further averred that he "began to receive SSDI" in May 2011, and that all of the monies in the Chase account "were received from SSDI." Mr. Smith stated that "[t]he [SSDI] funds have accrued as my mother has been caring for me and uses some of the funds where I am in need of them and are saved for when she will no longer be able to care for me," and that "no other funds were comingled with these [SSDI] funds [in the Chase account]."

¶ 11 Mr. Smith also submitted with his motion copies of monthly Chase records, from March 2013 through February 2014, which showed direct deposits to a Chase checking account. The statement labeled the deposits as: "SSA Treas310 xxsoc Sec." The bank records show no other

No. 1-14-2419

deposits were made to the Chase account. The holders on the account were Mr. Smith and Inez Smith-Lowe.

¶ 12 On April 22, 2014, the circuit court entered a briefing schedule on the motion to return funds. Hammond responded to the motion arguing that: neither Mr. Smith, nor Chase, had asserted that the funds were exempt at the time the turnover order was entered; only direct Social Security benefits are exempt from garnishment under state law; and, under federal regulations relating to the garnishment of Social Security benefits, the turnover was proper. Hammond attached to his response a document entitled: "Guidelines for Garnishment of Accounts Containing Federal Benefit Payments Per Issuance of Title 31 of the Code of Federal Regulations, Part 212 (Final Rule)" (guidelines). The guidelines "are for use by financial institutions when a garnishment order is received for an account into which Federal benefit payments have been directly deposited." When a garnishment order is received, the financial institution must "determine the sum of protected Federal benefits deposited to the account during a two month period, and to ensure the account holder has access to an amount equal to that sum or to the current balance of the account, whichever is lower." The guidelines apply to Social Security and Supplemental Security Income benefits. The guidelines defined a "garnishment order" as:

"Garnishment order or order means a writ, order, notice, summons, judgment, levy or similar written instruction issued by a court, a State, or State agency, a municipality or municipal corporation or a State child support enforcement agency, including a lien arising by operation of law for overdue child support of an order to freeze the assets in an account, to effect a garnishment against a debtor."

The guidelines also state that federal benefits which are exempt from garnishment "encode an

No. 1-14-2419

'xx' in positions 54-55 of the 'Company Entry Description Field' " included in the description of the payments, and a chart included as part of the guidelines state that exempt Social Security benefits payments would include in the direct deposits an "xxsoc Sec" notation. Mr. Smith's deposits included such a notation.

¶ 13 On June 4, 2014, the circuit court ordered Hammond to return the funds after "having heard oral argument and the court being fully advised in the premises." The circuit court found that all but \$125 of the monies in the Chase account were exempt as being "SSDI funds." The record does not include a transcript of the proceedings from that date.

¶ 14 Hammond moved for reconsideration of this order, arguing that while under section 5/12-1001(g)(1) of the Code of Civil Procedure (Code) (735 ILCS 5/12-1001(g)(1) (West 2012)), a debtor's right to receive various benefits, including Social Security benefits, is exempt from collection, and that exemption did not apply to Mr. Smith's Chase account, even if it held Social Security benefits. After oral argument, the circuit court denied the motion. Hammond now appeals.

¶ 15 On appeal, Hammond argues that the monies in the Chase account subject to the turnover order were not exempt under section 1001(g) of the Code and the guidelines.

¶ 16 Mr. Smith has not filed an appellee's brief. Nevertheless, we will decide the matter under the standards set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). A reviewing court may decide the merits of a case, provided that the record is simple and the issues can be decided without the aid of an appellee's brief, or the court may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Id.* at 133.

¶ 17 This appeal raises an issue as to the interpretation of statutes relating to exemptions from

No. 1-14-2419

garnishment, a question of statutory construction which we review *de novo*. *Nelson v. Kendall County*, 2014 IL 116303, ¶ 22. Additionally, because Hammond argued in his motion to reconsider that the circuit court erred in its application of existing law, we review *de novo* the order denying the motion to reconsider. *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 433 (2005).

¶ 18 Before addressing the issue of whether the funds in Mr. Smith's Chase account were exempt, we first note that Hammond does not dispute the Chase account contained funds exclusively traceable to Mr. Smith's Social Security benefits. Mr. Smith averred in this affidavit that his SSDI payments were directly deposited into his Chase account, and that no other monies from other sources were commingled with his Social Security benefits. The Chase bank records corroborate his averments as they show monthly Social Security benefit deposits to the account and no other deposits. Hammond presented no contrary evidence.

¶ 19 Additionally, we are without a report of proceedings from the hearing on Mr. Smith's motion seeking the return of the monies from his Chase account on his claim the funds were exempt or, in the absence of such a report, a bystander's report or agreed statement of facts filed pursuant to Illinois Supreme Court Rule 323(c). Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). The circuit court found that the funds were exempt after the hearing on that date and after being advised in the premises. Without transcripts, we do not have a full record of the arguments, nor any evidence which was presented and considered by the circuit court in making this finding. As the appellant, Hammond "has the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error." *Midstate Siding and Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) and *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 63 (2001)). In the absence of

a complete record, a reviewing court presumes that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. Moreover, based on the undisputed facts and the applicable law, we find the circuit court correctly found that funds in Mr. Smith's Chase account were exempt.

¶ 20 "Section 12-1001 [of the Code] sets forth the personal property owned by a debtor which is exempt from judgment, attachment or distress for rent." *Fayette County Hospital v. Reavis*, 169 Ill. App. 3d 246, 249 (1988). Section 12-1001 provides, in relevant part:

"Personal property exempt. The following personal property, owned by the debtor, is exempt from judgment, attachment, or distress for rent

(g) The debtor's *right to receive*:

(1) a social security benefit, unemployment compensation, or public assistance benefit;

* * *

(h) The debtor's *right to receive, or property that is traceable to*:

(1) an award under a crime victim's reparation law[.]" (Emphasis added.) 735 ILCS 5/12-1001(g)(1), (h)(1) (West 2012).

¶ 21 Hammond argues that the exemption provided by section 12-1001(g) is limited to Mr. Smith's "right to receive" Social Security benefits, but does not protect his Social Security benefits after they were deposited into his account. On this point, we must agree.

¶ 22 Illinois courts have interpreted the plain language of section 12-1001(g) as providing an exemption for a debtor's "right to receive" certain benefits, such as Social Security, rather than any property derived from an exempt source of funds. See *In re Marriage of Pope-Clifton*, 355 Ill. App. 3d 478, 481 (2005) and *Fayette County Hospital*, 169 Ill. App. 3d at 249; see also,

No. 1-14-2419

Schoonover v. Karr, 285 B.R. 695, 699 (Bankr. S.D. Ill. 2002). Additionally, in construing the extent of the exemptions in section 12-1001(g), courts have considered the language of section 12-1001(h) which distinguishes benefits yet to be received and funds traceable to benefits already received, and treats them differently. Based on the difference in language in those two subsections, courts have presumed that the legislature intended to exempt only the right to receive those benefits listed in section 12-1001(g) and not the actual receipt or traceable proceeds of those benefits. *Fayette County Hospital*, 169 Ill. App. 3d at 249-50; *In re Marriage of Pope-Clifton*, 355 Ill. App. 3d at 481. See also, *In re Austin*, 2014 WL 3695370, at *3 (Bankr. C.D. Ill. 2014); *In re Bowen*, 458 B.R. 918, 922 (Bankr. C.D. Ill. 2011); *In re McQuaid*, 492 B.R. 514, 516-17 (Bankr. N.D. Ill. 2013).

¶ 23 The holding in *Fayette County Hospital*, is instructive. In that case, the creditor sought to garnish the debtors' checking account which contained funds traceable to Social Security benefits and a certificate of deposit which had been purchased by one of the debtors with Social Security benefits. *Id.* at 248. This court found the certificate of deposit, which held funds "traceable exclusively to the Social Security benefits," was not exempt under section 12-1001(g) and explained:

"Although the language of section 12-1001(g) which exempts a debtor's 'right to receive' [Social Security] benefits does not clearly indicate whether the legislature intended to exempt a debtor's funds which are traceable solely to social security benefits, section 12-1001(h) expressly exempts a 'debtor's right to receive, or property that is traceable to' certain awards and payments [citation]. However, section 12-1001(h) does not exempt a debtor's property that is traceable to social security benefits. It is well established that an expression of certain exceptions in a statute is construed as an

exclusion of all others. [Citation.] As a result, we conclude that the Illinois legislature did not intend to exempt property which is traceable to social security benefits and the certificate of deposit in this case is not exempt under section 12-1001." *Id.* at 249-50; see also *Marriage of Pope-Clifton*, 355 Ill. App. 3d at 482 (finding that monies in account traceable to veteran's disability payments were not exempt under section 12-1001(g)(3)).

Thus, the Chase account was not exempt under section 12-1001(g).

¶ 24 However, we must also consider whether the funds in the Chase account were exempt under federal law. Section 407(a) of the Act provides that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. § 407(a) (2006). This section gives protection from creditor collection rights for Social Security benefits paid or payable. *In re Franklin*, 506 B.R. 765, 776 (Bankr. C.D. Ill. 2014). "The exemption covers social security disability payments." *In re Marriage of Truhlar*, 404 Ill. App. 3d 176, 179 (2010) (citing *DeTienne v. DeTienne*, 815 F. Supp. 394, 396 (1993)); *In re Marriage of Crook*, 211 Ill. 2d 437, 443-44 (2004) (noting that "section 407(a) 'imposes a broad bar against the use of any legal process to reach all social security benefits.'" (quoting *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973))).

¶ 25 Again, *Fayette County Hospital* is helpful on the question of whether section 407(a) protected the funds in Mr. Smith's Chase account. This court in *Fayette County Hospital*, considered whether the debtors' checking account and certificate of deposit at issue were exempt under section 407(a) and, in doing so, relied on the holding in *Philpott*. *Fayette County Hospital*, 169 Ill. App. 3d at 250. We noted that the United States Supreme Court in *Philpott* had concluded that a bank account holding Social Security disability funds could not be garnished

No. 1-14-2419

under section 407(a), because the funds "were readily withdrawable, retained 'the quality of money' and had not become a permanent investment." *Id.* (citing *Philpott*, 409 U.S. at 416). Under the standards set forth in *Philpott*, the debtors' checking account and the certificate of deposit in *Fayette County Hospital* were found to be exempt under section 407(a). *Id.* at 251; accord *In re Estate of Merritt*, 272 Ill. App. 3d 1017, 1021 (1995) (finding that funds in a bank account traceable to Social Security benefits were exempt).

¶ 26 Here, Mr. Smith's Chase account consisted solely of funds traceable to Social Security benefits, those funds were readily withdrawable, retained the quality of money, and had not become a permanent investment in his Chase account. Therefore, those monies were exempt from garnishment under section 407(a).

¶ 27 Hammond argues that, under the guidelines, only two months of Mr. Smith's Social Security benefits were exempt and that the turnover order recognized this protection by leaving approximately \$4,000 in Mr. Smith's Chase account which, according to Hammond, was the equivalent of two months of benefits. A review of the guidelines themselves, however, indicates that they only apply to a financial institutions *initial* handling of a garnishment order and that they recognize that a debtor may be able to claim other exemptions in addition to the two months of benefit exemption contained therein. In fact, the guidelines purport to implement Part 212 of Title 31 of the Code of Federal Regulations. Part 212.8 thereof specifically provides:

"*** Nothing in this part shall be construed to limit an individual's right under Federal law to assert against a creditor a further exemption from garnishment for funds in excess of the protected amount, or to alter the exempt status of funds that may be protected from garnishment under Federal law." 31 C.F.R. § 212.8.

As explained above, Section 407(a) of the Act provides a complete exemption.

No. 1-14-2419

¶ 28 For the reasons stated, we find the funds in Mr. Smith's Chase account were exempt from garnishment under section 407(a) of the Act. Therefore, the orders of the circuit court directing the return of those funds to Mr. Smith and denying reconsideration of that order are affirmed.

¶ 29 Affirmed.