

IN THE MISSOURI SUPREME COURT

Cause No. SC98501

RANDALL GRAVES,

Appellant,

v.

THE MISSOURI DEPARTMENT OF CORRECTIONS,
The Division of Probation and Parole,

Respondent.

Appeal from the Circuit Court of Cole County
The Nineteenth Judicial Circuit
The Honorable Daniel Green

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

Appellant, Randall Graves, appeals from the Judgment granting Respondent's Motion to Dismiss entered on July 25, 2019. This Court has authority to hear this appeal pursuant to Rule 87.11, which provides that "All orders, judgments and decrees under Rule 87 may be reviewed as other orders, judgments and decrees."

Jurisdiction of this appeal was originally in the Missouri Court of Appeals, Western District, pursuant to Mo. Const. Art. V, § 3. Following an opinion by the court of appeals, this Court granted Appellant's Application for Transfer and jurisdiction is therefore proper in this Court, pursuant to Mo. Const. Art. V, § 10.

STATEMENT OF FACTS

On January 10, 2019, Appellant was sentenced to six years in the Missouri Department of Corrections for the class C felony of receiving stolen property in *State v. Randall Graves*, Cause No. 16AE-CR02214-01. Legal File, D3, p. 3.

The execution of that sentence was suspended and Appellant was put on probation with the Missouri Board of Probation and Parole (Respondent herein).¹

Appellant is being required by Respondent to pay monthly intervention fees in the amount of \$30.00 as a condition of his supervised probation. Legal File, D3, p. 5. As of April 16, 2019, Appellant had “an overdue balance of \$60.00” Legal File, D3, p. 5.

Respondent states on its website that possible sanctions for failure to pay intervention fees include “Court hearing or review” and “Shock incarceration.” Legal File, D3, p. 17. See also Legal File, D3, p. 20.

Additionally, on April 16, 2019, Respondent sent correspondence to Appellant stating that failure to pay the monthly intervention fee may place him in “violation status.” Legal File, D3, p. 5.

¹ Appellant was also ordered to “pay restitution in the amount of \$960.00; to be paid \$50.00 per month, effective 04/01/19.” Legal File, D3, p. 4. Incidentally, Appellant has also filed and argued a “Motion to Modify Conditions of Probation” applying the same legal analysis in this brief to the payment order of restitution. That motion was denied by the trial court by an order entered on January 17, 2020.

A “booklet” published by Respondent entitled “Rules and Regulations Governing the Conditions of Probation and Parole” states in relevant part as follows,

“On August 28, 2005 House Bill 700 was passed granting the Division of Probation and Parole authority to collect an intervention fee from offenders. The fees will be used to support services for offenders under the Agency’s jurisdiction, as well as address the public expectation that offenders help offset the costs of intervention services to the State.”
Legal File, D3, p. 20.

The “booklet” further states that Respondent has the authority to “pursue income tax interception, and other authorized collection activities, in order to satisfy the obligation of this fee.” Legal File, D3, p. 20.

The Sentencing Assessment Report prepared in Appellant’s criminal case lists Appellant as “Disabled.” Legal File, D3, p. 10. The report further states that “Graves receives Social Security benefits in the amount of \$750.00 per month.” Legal File, D3, p. 9.

Appellant currently receives Supplemental Security Income (SSI) in the amount of \$771.00 per month by the Social Security Administration due to this disability. Legal File, D3, p. 14. And, importantly, this source of income is Appellant’s *sole* source of income. Legal File, D3, p. 15.

Appellant is currently 63 years old. He additionally qualifies for “Sec. 8” for housing and receives food stamps. Legal File, D3, p. 15.

On May 17, 2019, Appellant filed his Petition for Declaratory Judgment, claiming that federal law prohibits Respondent from subjecting his social security benefits to other legal process. Appellant also filed a Certificate of Inability to Pay Costs, pursuant to Mo. Rev. Stat. § 514.040.3. On June 19, 2019, Respondent filed its Motion to Dismiss. On July 25, 2019, after hearing and argument, the Motion to Dismiss was granted with prejudice by the trial court.

This appeal follows.

POINTS RELIED ON

- I. The trial court erred in granting Respondent’s Motion to Dismiss, because Appellant’s Petition adequately states a claim upon which relief can be granted, in that requiring Appellant to pay monthly intervention fees as a condition of his probation is an improper attempt to subject Appellant’s social security benefits to ‘other legal process’ in violation of 42 U.S.C. § 407(a).**

State v. Catling, 438 P.3d 1174 (Sup. Ct. Wash. 2019)

City of Richland v. Wakefield, 380 P.3d 459 (Sup. Ct. Wash. 2016)

State v. Eaton, 99 P.3d 661 (Sup. Ct. Mont. 2004)

In re Michael S., 524 S.E.2d 443 (Sup. Ct. W. Va. 1999)

42 U.S.C. § 407(a)

42 U.S.C. § 1383(d)(1)

Mo. Rev. Stat. § 513.430(10)

ARGUMENT

- I. The trial court erred in granting Respondent’s Motion to Dismiss, because Appellant’s Petition adequately states a claim upon which relief can be granted, in that requiring Appellant to pay monthly intervention fees as a condition of his probation is an improper attempt to subject Appellant’s social security benefits to ‘other legal process’ in violation of 42 U.S.C. § 407(a).**

Standard of Review & Preservation of Error

“Appellate review of a trial court's grant of a motion to dismiss is *de novo*. A motion to dismiss for failure to state a claim is solely a test of the adequacy of the plaintiff's petition. A court reviews the petition in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. The court treats the plaintiff's averments as true and liberally grants the plaintiff all reasonable inferences. The credibility or persuasiveness of the facts alleged are not weighed.” *Gordon v. City of Kansas City*, 450 S.W.3d 793, 798 (Mo. App. W.D. 2014). “If under the facts averred in the motion the movant would be entitled to relief, then the motion states a claim.” *McBride v. McBride*, 288 S.W.3d 748, 751 (Mo. App. S.D. 2009).

Additionally, the issue presented in this appeal is a question of statutory interpretation. “Questions of statutory interpretation ... are reviewed *de novo*.” *Brainchild Holdings, LLC v. Cameron*, 534 S.W.3d 243, 245 (Mo. banc 2017).

And “[w]here as here the language of the statute is clear, it is not our prerogative to second-guess the wisdom of the legislature in enacting it.” *Pavlica v. Director of Revenue*, 71 S.W.3d 186, 190 (Mo. App. W.D. 2002).

Moreover, “in questions of law, our review is *de novo*, and we give no deference to the trial court. Statutory construction is a question of law, as is the issue of whether a state statute conflicts with federal law.” *J.P. v. Missouri State Family Support Div. & Its Director*, 318 S.W.3d 140, 144 (Mo. App. W.D. 2010).

Specifically, “[a]s the question presented in regard to title 42 U.S.C. § 407 is a question of federal law, decisions of the United States Supreme Court interpreting that statute are binding on this court.” *Collins, Webster, and Rouse v. Coleman*, 776 S.W.2d 930, 931 (Mo. App. S.D. 1989). Moreover, “the trial court under the supremacy clause is obliged to apply federal law, and may not apply state law, substantive or procedural, which is in derogation of federal law.” *State ex rel. Nixon v. McClure*, 969 S.W.2d 801, 804 (Mo. App. W.D. 1998).²

Finally, “[a]lthough I find no Missouri case on point, there are several state supreme court cases from other jurisdictions that I find persuasive.” *Branson v. State*, 145 S.W.3d 57, 62 (Mo. App. S.D. 2004) (Garrison, J., dissenting).

A notice of appeal was timely filed thus preserving these issues for appeal.

² To be sure, Missouri has a comparable “antiattachment” provision in Mo. Rev. Stat. § 513.430(10), but our cases make clear that “Section 407 preempts § 513.430(10)(a) as a result of the Supremacy Clause of the United States Constitution.” *Hatfield v. Christopher*, 841 S.W.2d 761, 767 (Mo. App. W.D. 1992). For this reason, Appellant limits his analysis to 42 U.S.C. § 407(a).

Analysis and Argument

The trial court erred in granting Respondent's Motion to Dismiss because Appellant sufficiently pleaded facts demonstrating a justiciable controversy entitled him to a declaration of rights as a matter of law, pursuant to Rule 87.02.

Under the authority of 42 U.S.C. § 1381(a), Appellant is determined to be a "disabled individual" and is therefore paid benefits by the Commissioner of Social Security in the form of "supplemental security income" (SSI). Legal File, D4, p. 2.

This form of income is Appellant's *sole* source of income, for which he receives "\$771.00 per month." Legal File, D4, p. 2.

42 U.S.C. § 407(a), commonly called the Act's "antiattachment" provision, provides as follows,

"[t]he right of any person to any future payment under this subchapter shall not be transferrable or assignable, at law or in equity, and 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."³

³ 42 U.S.C. § 1383(d)(1) incorporates this provision by reference and applies it to Title XVI of the Act. Title XVI of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, creates the Supplemental Security Income (SSI) program, which provides a "guaranteed minimum income level" for financially needy individuals - like Appellant - who are aged, blind, or disabled. *Sullivan v. Zebly*, 493 U.S. 521, 524 (1990). *See also State ex rel. Dept. of Social Services Div. of Child Support Enforcement v. Kost*, 964 S.W.2d 528, 530 (Mo. App. W.D. 1998), "[t]he Supplemental Security Income Program, Title XVI of the Social Security Act, is a social welfare program for the aged, blind, and disabled."

In Appellant's petition, he claims that he is being ordered as a condition of probation to pay monthly intervention fees in the amount of \$30.00. Appellant's "disabled" status, and the fact that he "receives Social Security benefits," is known to Respondent. Legal File, D4, p. 2. See also Legal File, D3, pp. 9-10.

Because social security benefits are Appellant's *only* asset, any funds used to satisfy this monthly financial intervention fee requirement would have to come from these social security benefits. The Social Security Act, however, exempts these benefits from "legal process." Indeed, the restrictions on "other legal process" contained in 42 U.S.C. § 407(a) helps to ensure that cash assistance remains available for the beneficiaries' basic needs and is not diverted for other purposes, including "offset[ing] the costs of intervention services to the State." Legal File, D3, p. 20.

It cannot be disputed that Respondent's efforts at collecting these probation intervention fees constitutes "other legal process" because it "would seem to require utilization of some judicial or quasi-judicial mechanism ... to discharge or secure discharge of an allegedly existing or anticipated liability." *Washington State Dept. of Soc. & Health Services v. Guardianship Estate of Keffeler*, 537 U.S. 371, 385 (2003). Indeed, the Commissioner's own interpretation of "other legal process" in *Keffeler* was given deference by the Supreme Court and was understood "as the means by which a court (or agency or official authorized by law) compels compliance with its demand; generally, it is a court order." *Id.*

In this case, Respondent (a state agency) is attempting to compel compliance with its demand of a payment order of \$30.00 per month through threatened violation status of Appellant's probation in his criminal case in Platte County "pursuant to an order of a court of competent jurisdiction." *Id.*

Other states have held that use of the courts to enforce a legal financial obligation (LFO) is considered "other legal process." *See, e.g., Sears, Roebuck and Co. v. Harris*, 854 P.2d 921, 923 f.n.1 (Okla. Civ. App. 1993). Moreover, "[a]n express or implied threat to use a judicial or quasi-judicial process to seize exempt funds is also 'other legal process.'" *See* R. Hobbs, *Fair Debt Collection*, National Consumer Law Center (5th ed. 2004), p. 518.

Accompanying state code regulations in Missouri provide that "[w]hen willful nonpayment [of intervention fees] occurs over a period of ninety (90) consecutive days, the supervision officer *shall* submit a notice of citation or violation report." *See* 14 CSR 80-5.020(1)(I)4. (Emphasis mine.)

The law is clear that 42 U.S.C. § 407(a) provides broad protection from any practice rendering benefits subject to legal process. A. Myers, *Untangling the Safety Net: Protecting Federal Benefits from Freezes, Fees, and Garnishment*, 66 WASH. & LEE L. Rev. 371, 382 (2009). This is especially true for SSI. *Id.* at 383.

For this reason, Respondent's reliance on *Keffeler* is misplaced. While a state may bill beneficiaries or their representative payees for the costs of foster care, as was done in *Keffeler*, it may not threaten legal action, a tax intercept, or

other collection methods to compel “turnover of exempt benefits.” Hobbs, *Fair Debt Collection*, at p. 518. This is repeated in *Keffeler*: “It is true that the State could not directly compel [any person] to pay Social Security benefits over to the State.” *Keffeler*, 537 U.S. at 389. It is also significant that the alleged “other legal process” in *Keffeler* “involved no resort whatsoever to the judicial process. For that reason, the Court contrasted the situation before it with one where there was ‘utilization of some judicial or quasi-judicial mechanism.’” *Accord In re Lampart*, 856 N.W.2d 192, 199 (Mich. App. 2014).

Accordingly, the threat of subjecting Appellant to “violation status” was an effort to “gain control over” a portion of Appellant’s cash assistance in order to “secure discharge” of his monthly payment order of \$30.00 in intervention fees. This is in violation of the “antiattachment” provision under 42 U.S.C. § 407(a). *Accord Keffeler*, 537 U.S. at 386.

Numerous other state and federal cases that have addressed this issue have reached the same conclusion asserted by Appellant in his petition.

In *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973), the United States Supreme Court held that this “broad bar against the use of any legal process to reach all social security benefits ... is broad enough to include all claimants, including a State.” Indeed, “[t]he language in [42 U.S.C. § 407(a)] is all-inclusive ... [and] we see no reason why a State ... should be in a preferred position as compared with any other creditor.” *Id.* at 415-16.

A similar issue was presented in the criminal justice context in *Bennett v. Arkansas*, 485 U.S. 395 (1988). Again, citing to Congress’ “clear intent” in 42 U.S.C. § 407(a), the United States Supreme Court rejected Arkansas’ attempt to “seize” these benefits “in order to help defray the costs of maintaining its prison system.” *Id.* at 396.

Other state supreme courts and state appellate courts also recognize that individuals cannot be required to use protected federal benefits to satisfy required monthly fees and other related LFO’s as part of the state’s effort to “offset the costs of intervention services to the State.” Legal File, D3, p. 20.

Some examples will suffice:

1. “The order is an improper attempt to subject Eaton’s social security benefits to ‘other legal process.’” *State of Montana v. Myles Eaton*, 99 P.3d 661, 666 (Sup. Ct. Mont. 2004).
2. “The issue before this Court is limited to the specific question of whether the circuit court erred in ordering restitution to be paid from Appellant’s SSI benefits. Both Appellant and Appellee argue that federal law prevents such an order.” *In re Michael S.*, 524 S.E.2d 443, 445 (Sup. Ct. W. Va. 1999).
3. “Accordingly, we hold that federal law prohibits courts from ordering defendants to pay LFOs if the person’s only source of income is social security disability.” *City of Richland v. Briana Wakefield*, 380 P.3d 459, 466 (Sup. Ct. Wash. 2016).

4. “Consequently, if the trial court were in fact to use its contempt powers in a manner as would compel Alexandroni to satisfy her restitution obligations using her SSDI benefits, we would find that the process employed falls within the definition of ‘other legal process’ as the term is used in 42 U.S.C. § 407(a).” *In re Lampart*, 856 N.W.2d 192, 200 (Mich. App. 2014).
5. “[T]he trial court’s order setting a \$25 per month payment schedule ... was issued as part of the sentencing hearing - a judicial proceeding transferring property, thus meeting the ‘other legal process’ prong of § 407(a). ... [T]he trial court’s payment order indeed violated § 407(a).” *State v. Catling*, 438 P.3d 1108, 1118 (Sup. Ct. Wash. 2019).

Simply put, “[i]t is illegal for the State to collect money from a defendant to pay fines and fees from his government assistance for disability.” *Conroy-Perez v. State*, 440 P.3d 64, 68 (Okla. Crim. App. 2019) (Kuehn, V.P.J., dissenting).⁴

The reason for this rule is simple: “Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the *same opportunities* that are available to others to participate meaningfully in the life of the community.” *Goldberg v. Kelly*, 397 U.S. 254, 265 (1970). (Emphasis mine.)

⁴ To be clear, the majority opinion in *Conroy-Perez* found that the trial court “erred by revoking Appellant’s probation without making findings regarding his ability to pay.” The dissenting opinion notes only that the evidence of the defendant’s government assistance for disability was enough to show that his failure to pay was not willful, which is necessary in the ability to pay inquiry. According to the dissent, remand for further inquiry of ability to pay is unnecessary given this fact. “All paths led to Rome ... [and] the trial court abused its discretion here.” *Id.* at 69.

Appellant's petition also presents a real, substantial, and presently existing controversy regarding the application of the Social Security Act's "antiattachment" provision under 42 U.S.C. § 407(a). Appellant seeks to exempt his social security disability benefits from the 'other legal process' of Respondent's "payment order" of \$30.00 per month, as authorized by Mo. Rev. Stat. § 217.690.3, which provides that "[t]he fees collected may otherwise be used to provide community corrections and intervention services for offenders."

Additionally, the "payment order" in the amount of \$30.00 per month demanded by Respondent in this case renders Appellant's claim ripe for judicial determination. Again, some examples will suffice:

1. "[T]he trial court's payment order indeed violated § 407(a)." *Catling*, at 1179.
2. "The order is an improper attempt to subject Eaton's social security benefits to 'other legal process.'" *Eaton*, at 666.
3. "Restitution was ordered ... in the amount of \$250 per month. ... On remand, the trial court should be careful to avoid any order that in fact would compel Alexandroni to satisfy her restitution obligation from the proceeds of her SSDI benefits." *In re Lampart*, at 229, 241.
4. "On remand, the sentencing court should revise the ... repayment order to state that funds protected under the antiattachment statute should not be used toward payment of legal financial obligations." *State v. Gallegos*, No. 36387-2-III, (Wash. App. June 23, 2020).

Aside from seeking declaratory judgment to determine his rights under the Social Security Act's "antiattachment" provision, Appellant has no adequate remedy under the law for challenging the payment order of a state agency. *See, generally, Missouri State Conference of the National Association for the Advancement of Colored People v. State of Missouri*, SC98536 (June 23, 2020), Slip Op. at 8-9.

Accordingly, Appellant's petition sufficiently states a claim for declaratory judgment, and this Court should hold that Respondent is not permitted to order Appellant to pay his monthly intervention fees from his social security benefits, to the extent that Respondent's argument in the Motion to Dismiss "relates to the merits of Appellant's claim rather than the sufficiency of the petition in stating a claim." *Leuchtmann v. Missouri Dept. of Corrections*, 86 S.W.3d 475, 480 (Mo. App. W.D. 2002). Additionally, "in lieu of remanding this matter for the entry of a judgment consistent with this Opinion, we [request that this Court] exercise [its] authority under Rule 84.14 to 'give such judgment as the court ought to give' as to dispose finally of this case." *Am. Civil Liberties Union of Mo. v. Ashcroft*, 577 S.W.3d 881, 899 (Mo. App. W.D. 2019). *See also Schweich v. Nixon*, 408 S.W.3d

769, 779 (Mo. banc 2013) (“Accordingly, pursuant to Rule 84.14, this Court will issue the ruling that the trial court should have entered.”)⁵

But at the very least, because Appellant’s petition sufficiently states a claim for declaratory judgment, this Court should reverse the trial court’s judgment which granted Respondent’s Motion to Dismiss and remand with directions “to permit the parties to properly submit the issue for adjudication in a manner consistent with this opinion, either by a motion for summary judgment or by [other appropriate means][.]” *Leuchtmann*, 86 S.W.3d at 480.

⁵ “The appellate court shall award a new trial or partial new trial, reverse or affirm the judgment or order of the court, in whole or in part, or give such judgment as the court ought to give. Unless justice otherwise requires, the court shall dispose finally of the case.” Rule 84.14.

CONCLUSION

WHEREFORE, based on the foregoing reasons, Appellant prays that this Court reverse the trial court judgment granting Respondent's Motion to Dismiss because Appellant's petition states a viable claim for a declaration of rights as a matter of law, and further prays that this Court remand this case back to the trial court for further proceedings consistent with the opinion by this Court.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief complies with the information required by Rule 55.03, that it complies with the limitations contained in Rule 84.06(b), and that it contains 4,323 words in the brief as determined by the word count of the word-processing system used to prepare this brief.

Respectfully submitted,

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