IN THE MISSOURI SUPREME COURT

Cause No. SC98501

RANDALL GRAVES,

Appellant,

v.

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 REPLY BRIEF

MATTHEW G. MUELLER, MBE # 66097
3407 SOUTH JEFFERSON AVENUE
SAINT LOUIS, MISSOURI 63118
PHONE: 573-823-3180
FAX: 314-632-6488
E-MAIL: mueller@mgmlawstl.com
ATTORNEY FOR APPELLANT
SPECIAL PUBLIC DEFENDER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes & Other Authorities

Argument

1. This appeal presents the issue of the applicability of 42 U.S.C. § 407(a)

Appellant appreciates that Respondent has taken the position in its Brief that it "does not revoke the probation of indigent offenders for failure to pay their intervention fees." Resp. Br., p. 1. But it is incorrect to conclude from this statement that "[n]or does [Respondent] employ 'other legal process' to collect intervention fees from Social Security disability benefits ... because the record contains no evidence that Graves has engaged in 'willful' failure to pay." Resp. Br., pp. 1-2.

Simply put, the determination by Respondent of 'willful' nonpayment is distinct from the act of engaging in process to secure discharge of an allegedly existing or anticipated liability. For this reason, Respondent's attempt to conflate 'other legal process' with instances of 'willful' nonpayment such that *only* the act of "submit[ting] a notice of citation or violation report" will constitute 'other legal process' is incorrect and should not be adopted by this Court. *Cf.* Resp. Br., p. 1.

Additionally, for this same reason, Respondent's attempt to re-characterize this issue as one of waiver of the intervention fee under 14 CSR 80-5.020(1)(H) is also incorrect. According to Respondent, because "Graves has not applied for a waiver based on indigency, ... the case [thus] presents no issue ripe for review." Resp. Br., p. 1. And because "Graves' income of $771 per month ... is well below the federal poverty guidelines thresholds[,] ... Graves [in any event clearly] meets

the income criteria for an intervention fee waiver, 14 CSR 80-5.020(1)(H)(1)." Resp. Br., pp. 7, 9.

But the issue presented in this appeal concerns the application of the federal anti-attachment statute, 42 U.S.C. § 407(a), *not* whether Mr. Graves meets the "insufficient income criteria" to qualify for a waiver of the intervention fee.

As an example, consider the correspondence Appellant filed in the court of appeals on September 9, 2019, in which he brought to the attention of the court the continuing efforts by Respondent at collecting payment of the intervention fee from persons receiving social security benefits. *See* Case Record, p. 2.

According to Respondent, the person in that case (Alex Mason) did not qualify for a waiver because his "full monthly benefits ... from the Social Security Administration ... are $1264.40", which exceeds the maximum monthly income set by "the current guidelines" at $1,040.040.[1]

But even assuming that Mr. Graves and this other person (Alex Mason) may be distinguished by their 'income' as provided in 14 CSR 80-5.020(1)(H)(1) for purposes of meeting the criteria for waiver of the intervention fee, it is still true that *neither* of their incomes can be subject to 'other legal process' insofar as both currently receive "monthly benefits ... from the Social Security Administration[.]"

---

[1] 14 CSR 80-5.020(1)(H)(1) provides that "An offender's income is considered insufficient if it is at or below the most recent Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services." According to the definitions provided in 14 CSR 80-5.010(1)(E), the term 'income' includes "Social Security."

Mr. Graves should *not* be required to establish that he meets the criteria for a waiver in order to exempt him from the intervention fee because his status as a recipient of social security necessarily exempts him from this fee regardless of what his 'total verified income' is calculated to be. The applicability of the anti-attachment provision, unlike the waiver criteria, is *not* income dependent.

For this same reason, the 'ability to pay' inquiry established by our cases in the failure to pay context also does not apply in this scenario because the issue presented in this appeal rather is whether Mr. Graves is exempt by virtue of 42 U.S.C. § 407(a). And, importantly, this federal statute extends to *all* moneys received from the Social Security Administration, not just those falling "below the federal poverty guidelines thresholds for 2019 and 2020." *Cf.* Resp. Br., p. 7.[2]

Accordingly, this Court should reject the argument that Appellant's claim is not ripe because he has never sought a waiver due to indigency. This has no applicability to claims presented specifically under 42 U.S.C. § 407(a).

---

[2] Although this issue is not presented directly in this appeal, this conclusion does raise interesting questions with respect to the application of the anti-attachment statute, 42 U.S.C. § 407(a), in our probation revocation cases involving the failure to pay from persons receiving social security benefits. In *State ex rel. Fleming v. Mo. Bd. of Prob. & Parole*, 515 S.W.3d 224, 233-34 (Mo. banc 2017), this Court held that the trial court improperly revoked Mr. Fleming's probation for failure to pay without first inquiring into his "ability to pay" or the reasons for his failure to pay, notwithstanding that "his only source of income was his monthly SSI benefits." Ultimately, this Court remanded the case in *Fleming* so that the trial court (or the State) could elect whether to reinitiate revocation proceedings; but it is obvious (and obviously conceded by Respondent here) that such revocation proceedings for failure to pay would be improper given the fact that Mr. Fleming's "only source of income was his monthly SSI benefits." *Id*. at 233.

2. The probation intervention fee clearly constitutes 'other legal process'

Respondent also mischaracterizes Mr. Graves' claim in this appeal that the 'other legal process' at issue in this case is the "threatened violation status" of his probation in his criminal case. Resp. Br., p. 8.

Mr. Graves, however, has repeatedly urged that it is the "payment order" that constitutes the 'other legal process' at issue here. App. Subst. Br., p. 20. S*ee also* Amicus Brief, ACLU of Missouri, p. 7, "[t]he Board's *assessment of monthly intervention fees* ... implicates the anti-attachment provision's prohibition of 'other legal process.'" (Emphasis mine.) At its core, the anti-attachment statute prohibits the use of judicial (or quasi-judicial) means to secure the discharge of an allegedly existing or anticipated liability. *Accord Wash. State Dept. of Social & Health Servs. v. Estate of Keffeler*, 537 U.S. 371, 384 (2003).

For this reason, the two cases cited by Respondent are not apposite. Importantly, neither case involved "judicially enforced transfers[.]" *Reed v. Taylor*, 923 F.3d 411, 417 (5th Cir. 2019). And although *Reed* faced the threat of criminal prosecution, the "specter of prosecution is not 'other legal process.'" *Id*.

Specifically, "[a]n executive (or private) threat of future action is not the same as the concrete 'writ[s],' 'order[s],' or 'summons' analogized in *Keffeler*, which generally would have been approved by a court." *Id.* at 420 f.n. 47.

Wojchowski v. Daines, 498 F.3d 99, 101 (2nd Cir. 2007) is also inapplicable because that case involved the mere "attribution" of social security benefits.

To be clear,

> "Three essential characteristics define an impermissible 'legal process': (1) the process is 'judicial or quasi-judicial'; (2) the process transfers 'control of property ... from one person to another'; and (3) the process is applied 'in order to discharge or secure discharge of an allegedly existing or anticipated liability.'" *Wojchowski*, 498 F.3d at 109 (quoting *Keffeler*, *supra*, at 384).

In *Keffeler*, the Court explained that "the State has no enforceable claim against its foster children." *Wojchowski*, 498 F.3d at 108. Additionally, "the [State's] reimbursement scheme [in *Keffeler*] operates on funds already in the [State's] possession and control, held on terms that allow the reimbursement." *Id*. The Court in *Keffeler* distinguished its two earlier cases in *Philpott* and *Bennett* "because both cases 'involved judicial actions in which a State sought to attach a beneficiary's Social Security benefits as reimbursement for the costs of the beneficiary's care and maintenance' - 'forms of legal process expressly prohibited by § 407(a).'" *Wojchowski*, 498 F.3d at 108 (quoting *Keffeler*, *supra*, at 388).

This case is clearly more analogous to *Philpott* and *Bennett* than to *Keffeler*. The fact that the monthly payment order is a condition of Mr. Graves' probation is clearly a form of "judicial authorization." *Accord Keffeler*, *supra*, at 383.

Mr. Graves received a suspended execution of sentence and was placed on five years' probation. "Probation is a privilege, not a right. A defendant's acceptance of probation subjects him or her to the conditions imposed by the circuit court." *State ex rel. Delf v. Missey*, 518 S.W.3d 206, 211 (Mo. banc 2017).

The circuit court determines the conditions of probation. *See State ex rel. Johnston v. Berkemeyer*, 165 S.W.3d 222, 224 (Mo. App. E.D. 2005), "'Probation' is defined as a procedure under which a defendant who has been found guilty of a crime by either a verdict or a guilty plea and is released by the trial court without being imprisoned, subject to conditions imposed by the trial court and subject to the supervision of the State's board of probation and parole[.]" (Emphasis deleted.)

And, importantly, "[w]hen the probation term ends, so does the court's authority to revoke probation." *State ex rel. Amorine v. Parker*, 490 S.W.3d 372, 375 (Mo. banc 2016). (So, too, does the authority of supervision by Respondent.)

In addition to involving "judicial actions", the monthly payment order of the intervention fee also clearly constitutes an act "in which a State sought to attach a beneficiary's Social Security benefits as reimbursement for the costs of the beneficiary's care and maintenance[.]" *Wojchowski*, at 108 (quoting *Keffeler*, *supra*, at 388). Specifically, in this case, the State seeks to attach Mr. Graves' Social Security benefits as reimbursement for the costs of "community corrections and intervention services for offenders." *See* Mo. Rev. Stat. § 217.690.3.

And, as stated in *Wojchowski*, this is all a "form of legal process expressly prohibited by § 407(a)." *Wojchowski*, 923 F.3d at 108. *See also Reed*, at 417.

Finally, Respondent briefly argues in passing that Appellant's claim on appeal "is not supported by the well-pled factual allegations of the Petition." *See* Resp. Br., p. 9. This is clearly incorrect. *See* Petition, at Legal File, D4, p. 2.

3. This Court has authority to decide the merits of this appeal

Respondent urges this Court to follow its recent opinion in *Missouri State Conference of Nat'l Ass'n for Advancement of Colored People v. State*, Cause No. SC98536 (June 23, 2020), and to forgo any analysis of "the merits" of the petition. (Hereafter referred to as "*NAACP*"). Resp. Br., p. 11.

To be sure, as a general statement of law, this Court did hold that "[a] motion to dismiss does not permit the circuit court - or this Court on appeal - to determine the merits of a claim." *Id*. at slip op. at 7. But this Court has also recently held that when "[t]he parties simply disagree about the legal effect of [a section of a particular statute] ... further proceedings in the circuit court are unnecessary, and, under Rule 84.14, this Court may enter ... the judgment the trial court should have entered." *Woods v. Mo. Dep't of Corr.*, Cause No. SC97633 (February 4, 2020), slip op. at 3.

Remand was appropriate in *NAACP*, *supra*, because it would have enabled "the parties and the circuit court [to] address the significant changes in circumstances that have occurred after the petition was filed and judgment dismissing the petition was entered[.]" Slip op. at 9. In this case, however, like the case in *Woods*, there is no further factual development needed to address the purely legal effect of the probation intervention fee under 42 U.S.C. § 407(a).

Consequently, further proceedings in the circuit court are unnecessary, and, under Rule 84.14, this Court should enter the judgment the trial court should have

entered. *Accord Woods*, *supra*, at 4. *See also Norman v. Mo. Dep't of Corr.*, Cause No. WD82057 (April 28, 2020), slip op. at 7 (citing *Woods*, *supra*); *French v. Mo. Dep't of Corr.*, Cause No. WD81747 (May 5, 2020), slip op. at 4; *Livingston v. Mo. Dep't of Corr.*, Cause No. WD81789 (July 28, 2020), slip op. at 1; *Riley v. Mo. Dep't of Corr.*, Cause No. WD81743 (April 28, 2020), slip op. at 6 (also citing *Woods*, *supra*); and *Union Manor v. Mo. Dep't of Health & Senior Servs.*, Cause No. WD82776 (March 31, 2020), slip op. at 15 (involving a "purely legal issue").

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 and/or to enter the judgment the trial court should have entered, pursuant to Rule 84.14.

Respectfully submitted,

MGM LAW LLC

by: /s/ Matthew Mueller

Matthew G. Mueller, MBE# 66097
3407 South Jefferson Avenue
Saint Louis, Mo 63118
Phone: 573-823-3180
Fax: 314-632-6488
Email: mueller@mgmlawstl.com
Attorney for Appellant
Special Public Defender

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 2,656 words in the brief as determined by the word count of the word-processing system used to prepare this brief.

Respectfully submitted,

MGM LAW LLC

by: /s/ Matthew Mueller

Matthew G. Mueller, MBE# 66097
3407 South Jefferson Avenue
Saint Louis, Mo 63118
Phone: 573-823-3180
Fax: 314-632-6488
Email: mueller@mgmlawstl.com
Attorney for Appellant
Special Public Defender