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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

COUNTY OF FRESNO, Plaintiff and Respondent, v. DAVID ALLEN GUNTHER, Defendant and Appellant.	F039800 (Super. Ct. No. 339980-5) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Glenda Allen-Hill, Commissioner.

Marc Angelucci, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, James Humes, Assistant Attorney General, and Frank S. Furtek and Mary Dahlberg, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Buckley, A.P.J., Cornell, J., and Gomes, J.

David Allen Gunther appeals from an order of the trial court, on his motion to determine child support arrearages, that found that the Family Support Division of the Fresno County District Attorney (County) did not err in calculating interest on his arrearages. Gunther contends the finding was erroneous in two regards: (1) County erred by continuing to assess interest on the entire arrearage amount pursuant to Code of Civil Procedure section 685.020, subdivision (a),[1] because a 1999 wage assignment order constituted an installment judgment that superceded prior orders; and (2) County erred by crediting a federal income tax refund intercept on the day it was received by County rather than seven weeks earlier when it was intercepted by the Internal Revenue Service (IRS). We will affirm the order.

FACTS & PROCEDURAL HISTORY

The record on appeal omits pertinent background information such as the underlying child support orders and Gunther's child support payment history. However, from the record provided, we glean that Gunther had a 16 year-old daughter, for whom he had been ordered to pay child support. In 1989, he stipulated to pay $167 per month. At some point, his payments began going to County as reimbursement of public assistance paid on behalf of his child (Family Code § 17402).

In March 24, 1999, County obtained a wage assignment that ordered an unnamed "payor" to withhold a portion of Gunther's earnings and to pay $167 per month for child support and $133 per month for child support arrears to County. The order included a finding that the total child support arrearage was $22,160.65, not including interest, as of March 3, 1999.

On October 19, 2001, the court heard Gunther's motion to determine arrearages. County opined that Gunther owed arrears of $16,978.47; Gunther opined that he owed

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[1] Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

arrears of $8,594.73. In support of his figure, Gunther argued that the County had improperly continued to assess interest on the entire amount of indebtedness, rather than assessing interest only on missed installments under the 1999 wage assignment order. Further, County had credited a $4,696 Franchise Tax Board intercept on the date County received the money rather than seven weeks earlier when it was intercepted, resulting in the accrual of additional, "unfair" interest.

The trial court rejected both arguments and found that Gunther's arrearage totaled $16,978.47, and that County had properly credited the intercepted tax refund on the date it was received. Gunther appeals those determinations.

DISCUSSION

1. The Wage Assignment Order was not an installment judgment within the meaning of section 685.020.

Gunther contends the 1999 wage assignment order was an installment judgment for purposes of calculating interest on his arrearages. He argues the trial court's finding to the contrary misapplies the holdings of *County of Alameda v. Weatherford* (1995) 36 Cal.App.4th 666 and *Dupont v. Dupont* (2001) 88 Cal.App.4th 192. He is mistaken.

We review the issue - whether the wage assignment order was an installment judgment for purposes of calculating interest under section 685.020 - under the de novo standard of review. (*Colvig v. RKO General, Inc.* (1965) 232 Cal.App.2d 56, 65 [a judgment or order is interpreted using the same rules that apply in ascertaining the meaning of other writings]; *YMCA of Metropolitan Los Angeles v. Superior Court* (1997) 55 Cal.App.4th 22, 26 [where there is no conflicting parol evidence concerning the interpretation of a document, construction of the instrument is a question of law, which the appellate court reviews de novo.]

Section 685.020, which addresses the accrual of interest on money judgments, provides:

> "(a) Except as provided in subdivision (b), interest commences to accrue on a money judgment on the date of entry of the judgment.
>
> (b) Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due."

Weatherford and *Dupont*, the cases on which Gunther relies, involved child support judgments or orders that established lump-sum arrearages owed pursuant to previous child support orders and required those arrearages to be repaid in monthly installments. In pertinent part, Weatherford was ordered to reimburse Alameda County $28,740 in bimonthly installments for back AFDC payments paid on his behalf. (*County of Alameda v. Weatherford*, *supra*, 36 Cal.App.4th at p. 668.) Dupont was ordered to pay arrearages of $9,000 in $15 monthly installments by way of wage assignment. (*Dupont v. Dupont*, *supra*, 88 Cal.App.4th at p. 195.) In both cases, the courts held that the judgments fell within section 685.020, subdivision (b), as they were money judgments payable in installments and did not otherwise provide for the payment of postjudgment interest. (*County of Alameda v. Weatherford*, *supra*, 36 Cal.App.4th at pp. 670-671; *Dupont v. Dupont*, *supra*, 88 Cal.App.4th at p. 201.) Thus, the Counties were precluded from assessing post judgment interest on the entire amount of the arrearage from the date of its entry and were limited to assessing interest on missed installment payments. *(Ibid.)*

In so holding, the *Dupont* court rejected San Diego County's argument that there was but one child support judgment and subsequent orders entered in response to OSC's regarding contempt or modification of support that set new total amounts of arrearages payable in installments were not judgments subject to section 685.020. (*Dupont v. Dupont*, *supra*, 88 Cal.App.4th at p. 197.) The court found this premise inconsistent with the law regarding child support judgments under the Family Law Act. (*Id.* at p. 199.) Gunther urges this court to find *Dupont's* language and rationale applicable to the 1999 wage assignment order; we do not.

The 1999 wage assignment order was not a support order directing Gunther to do anything. Rather, it was an enforcement mechanism that obligated his employer to withhold a portion of Gunther's wages to pay child support and arrearages that Gunther owed to County under some previous order that obligated Gunther to pay child support. While the wage assignment set forth an arrearage amount, it did not reflect a litigated arrearage finding, but merely provided the employer a parameter with which to calculate his obligations to withhold and pay County under the wage assignment order.

The previous child support order is the relevant order to which section 685.020 applies. While that order is not included in the appellate record, the parties referred to prior orders during argument at the hearing. They described a 1986 stipulated judgment and a 1989 stipulated child support order that obligated Gunther to pay $167 per month and provided that a wage assignment shall issue for child support and arrearages in the event Gunther was in arrears. The order did not address arrears.

This record supports but one conclusion. The 1999 wage assignment order did not convert the underlying 1989 child support order and its substantial accumulated arrearages to an installment judgment. Thus, Gunther was required to pay interest on the entire amount of his support arrearages for as long as the arrearage remains unpaid. (*County of Los Angeles v. Salas* (1995) 38 Cal.App.4th 510, 513-514; *Marriage of Perez* (1995) 35 Cal.App.4th 77, 81.)

The trial court properly found that the wage assignment order was not a judgment within the meaning of section 685.020 and the *Dupont* and *Weatherford* cases did not apply. Therefore, interest continued to accrue on the entire amount owing rather than only on past due installments to be collected pursuant to the wage assignment.

2. The tax intercept was properly credited to Gunther's account on the day it was received by County.

Gunther next contends the County improperly credited a $4,696 tax refund intercept to his arrearage account on the date County received the money rather than seven weeks earlier when the IRS notified him of the intercept, resulting in the accrual of additional, "unfair" interest. Gunther's contention is based on an April 28, 2000, letter from the Department of Treasury informing him that the Department had intercepted his tax refund to pay a debt he owed to County. The letter states: "We will forward the money taken from your Federal payment to the Agency to be applied to your debt balance; however, the Agency may not receive the funds for several weeks after the payment date." Gunther's statement of account with the County indicates the payment was received and credited on June 16, 2000.

Gunther argues it is improper and unjust for County to charge interest on money the IRS has already intercepted from him. He submits that the IRS was acting as an agent of County, analogous to a levying officer acting pursuant to section 699.020. That section provides:

> "At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the money judgment. The levying officer shall give a receipt for the amount paid and such receipt is a discharge for the amount paid."

Gunther argues the IRS acted as a levying officer by intercepting a specific dollar amount for and at the request of the County. And, the "Payment Summary" [letter] the IRS sent him constituted a "receipt" within the meaning of section 699.020, which served to discharge his debt. Thus, interest should have ceased to accrue on $4,696 of the debt on April 28, 2000. Gunther's arguments are not persuasive.

First, the IRS intercept is not a levy under section 699.020. It is a unique enforcement mechanism created by federal law. The tax refund intercept program is a

federal program which permits tax refunds to be intercepted to satisfy a variety of obligations owed by taxpayers, including child support obligations owed by delinquent parents. (*Rogers v. Bucks County Domestic Relations Section* (3rd Cir. 1992) 959 F.2d 1268, 1270.) Upon notice by a state agency enforcing child support that a parent is delinquent on support payments, the IRS must withhold the arrearage amount from any income tax refund due the parent and pay the amount withheld to the state agency. (26 U.S.C. § 6402 (c); 42 U.S.C. § 664.)

Second, the notice letter, which Gunther refers to as a "Payment Summary," clearly indicated that the money had not yet been paid. "We will forward the money taken …however, the Agency may not receive the funds for several weeks after the payment date." The letter cannot reasonably be construed as a "receipt" under section 699.020 that discharged $4696 of Gunther's arrearages as of the date of the letter.

Third, we found no case law addressing when interest should cease to accrue on the amount the arrearage is reduced by the tax return intercept. However, in *Rogers v. Bucks County Domestic Relations Section*, *supra*, 959 F.2d 1268, the court held that child support payees who have a claim to intercepted tax monies for the satisfaction of past-due child support have no enforceable right against state agencies to receive interest on the funds for the period the funds are held before being turned over to the payee parent. (*Id.* at p. 1270.) The court reasoned that neither the statutes creating the federal tax refund intercept program nor the regulations promulgated thereunder required the payment of interest on funds collected or held under the program to the child support payee. (*Id.* at pp. 1272-1274.)

By analogy, Gunther had no converse "right" to have interest on the $4,696 amount of his arrearage cease once he was notified of the intercept. Rather, because Gunther was required to pay interest on the entire amount of his support arrearages for as long as the arrearage remains unpaid (*County of Los Angeles v. Salas*, *supra*, 38 Cal.App.4th at pp. 513-514; *Marriage of Perez*, *supra*, 35 Cal.App.4th at p. 81), the

County properly assessed interest until it actually received the funds from the IRS. Only at that time was the arrearage paid.

Accordingly, Gunther has not shown that the trial court erred in concluding that the 2000 tax intercept was properly credited on the day it was received by County, rather than on the date he was notified of the intercept by the IRS.

DISPOSITION

The order determining arrearages is affirmed.