

Judgments & Child Support
Post *Gerber*

MCAA Roundtable
MFSRC Conference
October 17, 2006

Minn. Stat. 548.091

- Process for obtaining judgments on maintenance and child support that is unpaid
- Subd. 1a – Child Support Judgment by Operation of Law
- Subd. 2a – Entry & Docketing of Child Support Judgment
 - Identifying Statement, Affidavit of Default, and Affidavit of Service of a Notice of Intent to Enter and Docket

548.091 cont'd

- Subd. 3a – Entry, Docketing & Survival of Child Support Judgments
- Subd. 3b – Administrative Renewals of Child Support Judgments
 - Child support judgments can be renewed multiple times
 - Must be renewed in an amount equal to the unpaid principle plus accrued unpaid interest
 - Renewed upon service of notice at last known address by first class mail

548.091 cont'd

- Subd. 4 – Child Support Hearing
 - obligor can request hearing
- Subd. 5a – Additional Child Support Judgments
- Subd. 12 – Correcting Errors
 - Public Authority responsibilities

Post Gerber: Why continue to Enter & Docket Judgments?

- Definition of “Action” – Minn. Stat. 541.04
 - 10 year statute of limitations
- *Gerber* – scope of decision is limited
 - Footnote 4: other child support enforcement “mechanisms” require:
 - A motion by the obligee to the court
 - Proof of nonpayment in a specified amount, and
 - A court order imposing the remedy
 - The Court the lists the enforcement tools – DL suspension, occupational license suspension, recreation license suspension, motor vehicle lien, reinstatement of interest on arrears after court order stopped it, etc.

Post Gerber: Why?

- For the “big guns” of enforcement – need judicial action – contempt, employer contempt, etc.
- FIDM is limited to the collection of judgments – a judgment that is barred by the statute of limitations may constitute an arrearage debt, not an enforceable judgment. See Minn. Stat. 522.06

Practice Tips

- Prism automatically creates a worklist message for the CSO to renew the judgment one year before the 10 years expires – the filing date is the trigger
- If obligor owns property in a county other than the county of the child support action, will want to enter and docket judgments in the other county

Tips

- In legal actions, use full names including suffix (i.e. Jr., Sr., etc.) – errors are made by persons who search judgment rolls by not looking close enough at the action/judgment. Dads are upset that the abstract company finds a lien on property because of their son's unpaid child support. See 548.091 subd. 12 for public authority requirements.

- Driver's license suspension concerns – expired judgments and DL suspensions

Sequestration/ Writ of Execution/ Affidavit of Lump Sum Arrears/ QDRO

Probate estates, insurance settlements, lawsuit damage awards, real estate sales, trust funds, annuities, retirement accounts, or investments.

Common Third Parties

- Banks and investment firms
- Personnel representatives or administrators of estates
- Real estate agents
- Employers
- Trustees
- Insurance companies
- Attorneys (in their capacity as controller of funds)

Sequestration

518.24. Security; sequestration; contempt

In all cases when maintenance or support payments are ordered, the court may require sufficient security to be given for the payment of them according to the terms of the order. Upon neglect or refusal to give security, or upon failure to pay the maintenance or support, the court may sequester the obligor's personal estate and the rents and profits of real estate of the obligor, and appoint a receiver of them. The court may cause the personal estate and the rents and profits of the real estate to be applied according to the terms of the order. The obligor is presumed to have an income from a source sufficient to pay the maintenance or support order. A child support or maintenance order constitutes prima facie evidence that the obligor has the ability to pay the award. If the obligor disobeys the order, it is prima facie evidence of contempt. The court may cite the obligor for contempt under this section, section 518.617, or chapter 588.

**Restraining Order / Sequestration
Motion**

Time is a factor: Ex Parte

*genuine emergency exists

*irreparable harm

*Rule 65.01 Minn Rules of Civil Procedure

This protects the asset from dissipation between service and time of hearing.

Time is not a factor: Restraining Order

**Restraining Order/ Sequestration
Motion Pleadings**

- Notice of Motion and Motion
- Supporting Affidavit
 - Judgment info
 - Current balance
 - Affirm arrears remain unpaid
- With Ex Parte prepare a Temporary Restraining Order
- Join the third party for limited purpose of collecting funds

Case law

- **Peterson v. Peterson** 231 N.W.2d 85, 87 (Minn 1975)
 - Enjoins personal injury settlement
- **Ulrich v. Ulrich**, 400 N.W.2d 213 (Minn. Ct. App. 1987)
 - Real property
- **Lukaswicz v. Lukaswicz**, 494 N.W.2d 507 (Minn. Ct. App. 1993)
 - Workman’s comp

Contempt

- May plead out sequestration in Contempt documents

Affidavit of Arrears

- CSO prepares
- Serve together with or after income withholding notice
- 518.6111 sub. 11
- Transmittal of \$500 or more to obligor
- Hold for 30 days
- Out of State 518.6111 sub. 12 & 518C.505
 - Enforcement may be a problem
 - 518C.505 Penalties for noncompliance

Writ of Execution

- Must have docketed valid Judgments
- Contact Court Admin ask for a Writ
- Court Admin delivers to Sheriff
- Sheriff service on Third Party
- Personal property and Real property

Qualified Domestic Relations Order

- *If funds are held by a third party subject to the federal ERISA statutes
- * Call the administrator they will tell you exactly what format they require
- * Do not do a RO or TRO
 - Join the third party for limited purpose of directing funds
 - Pension funds
 - Financial institutions

Decisions

- Do we have jurisdiction?
- In Minnesota?
- Two state action
- Register our Order in another state
 - Enforcement issues
- ERISA?
- Should a third party be joined?
- How must parties be served?
- Who has the money? Cash Bail!

Attachments

- A: Ex Parte Motion for QDRO
- B: QDRO
- C: Writ of Execution
- D: Ex Parte Motion to Hold Funds Drug Task Force
- E: Affidavit of CSO above
- D: Ex parte Order above
- F: Memo in Support above
- G: Order for Release above
- H: General CSO Affidavit
- I: General Memo in support of sequestration
- J: Work Comp Procedure
- K: Letters to third parties
