

SUPREME COURT OF FLORIDA

JUL 13 1998
CLERK OF THE SUPREME COURT
STATE OF FLORIDA

DANIEL EDWARD BROWARD, *

Petitioner, *

vs. *

JACKSONVILLE MEDICAL CENTER, *
INCORPORATED, and FIRST UNION *
NATIONAL BANK OF FLORIDA, *
a national banking association *

Respondents, *

* * * * *

CASE NO. 88,251

District Court of Appeal,
1st District - No. 95-3400

On Appeal From The District Court of Appeal
First District of Florida

PETITIONER'S AMENDED INITIAL BRIEF

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CERTIFIED QUESTION

DOES THE "DUE OR PAYABLE" LANGUAGE OF SECTION 440.22, FLORIDA STATUTES, MEAN THAT ONCE COMPENSATION BENEFITS HAVE BEEN PAID TO AN INJURED WORKER OR HIS OR HER BENEFICIARIES THAT SUCH BENEFITS ARE NO LONGER EXEMPT FROM ALL CLAIMS OF CREDITORS?

BASIS FOR INVOKING JURISDICTION

Petitioner seeks review of Broward vs. Jacksonville Medical Center, 21 FLW D1232 (Fla. 1st DCA, Opinion filed May 23, 1996) which certified the above question to this Court pursuant to Rule 9.030(a) (2)(A) (v), Florida Rules of Appellate Procedure, as a matter of great public importance. This Court has jurisdiction pursuant to Article V, §3(b)(4) of the Florida Constitution

NATURE OF RELIEF SOUGHT

Petitioner requests this Court to answer the above certified question in the negative and to reverse the decisions below. Specifically, Petitioner requests that the workers' compensation benefits garnished from his bank account in the amount of \$4,245.12 be returned to him along with statutory interest.

STATEMENT OF THE FACTS AND OF THE CASE

Petitioner accepts the Background Facts and Procedural History as recited in Judge Olliff's opinion below [Appendix-2 and 3]. The facts are summarized as follows:

On March 22, 1990, Respondent Jacksonville Medical Center obtained a judgment against the Petitioner, Mr. Broward, in the amount of \$2,605.05 representing the unpaid portion of a bill for medical services Mr. Broward received in 1989. Subsequently, Mr. Broward suffered a work-related injury, and as a result, has been unemployed since. On February 15, 1994, Mr. Broward received a lump sum settlement from his workers' compensation carrier for the release of all future compensation and medical benefits. Mr. Broward placed the proceeds of his workers' compensation settlement in a savings account with First Union National Bank of Florida. The funds held in the savings account were exclusively workers' compensation proceeds and were unmingled with other funds.

On April 20, 1994, Jacksonville Medical Center filed a Motion for Writ of Garnishment seeking to execute on the workers' compensation funds held in Mr. Broward's bank account. Mr. Broward objected to the garnishment proceedings, arguing that his workers' compensation benefits were exempt from the claims of creditors under the provisions contained in F.S. Section 440.22 (1990). The trial found that because the exemption statute protects workers' compensation benefits which are "due or payable," the funds lost exempt status once received by Mr. Broward. Accordingly, the trial judge allowed Jacksonville Medical Center to take \$4,245.12 from Mr. Broward's workers' compensation settlement held in his First Union Bank Account.

An appeal was taken in Circuit Court before the Honorable R. Hudson Olliff. On August 24, 1995, Judge Olliff affirmed the opinion reached by the trial judge. A Petition For Certiorari was then filed with the First District Court of Appeal which affirmed and certified the above question to this Court as a matter of great public importance.

SUMMARY OF ARGUMENT

Florida Statutes §440.22 exempts workers' compensation benefits from the claims of creditors. Because this exemption refers to benefits that are "due or payable," the lower courts in this case found that when Mr. Broward received his workers' compensation benefits and placed them in a savings account, the exemption was lost. There is only one reported case in Florida directly on point addressing a creditor's claim to workers' compensation benefits received by an injured worker. In that case, it was held that workers' compensation benefits remain exempt even after the injured worker places those funds in a bank account. Courts outside of Florida have also declined to interpret workers' compensation exemption statutes so narrowly as to defeat the purpose of the exemption which is to protect an injured worker's source of support while he is disabled. Accordingly, statutes containing "benefits due" clauses have been broadly construed to exempt workers' compensation benefits from claims of creditors even after they have been received by the injured worker and placed into a bank account.

This Court has held that when ambiguity exists in the provisions of the Florida Workers' Compensation Act, the language should be construed in favor of protecting the injured worker. Because the language of the exemption under F.S. §440.22 is capable of different constructions, and has in fact been construed inconsistently by Florida courts, adherence to this Court's policy on statutory ambiguity would favor a construction preserving the interest of the injured worker. The certified question should, therefore, be answered in the negative, and the decisions rendered below in this case should be reversed.

ARGUMENT

POINT I: BECAUSE THE PURPOSE OF THE EXEMPTION STATUTE IS TO PROTECT THE INJURED WORKER'S SOURCE OF SUPPORT WHILE HE IS DISABLED, FLORIDA STATUTES §440.22 SHOULD BE CONSTRUED TO EXEMPT WORKERS' COMPENSATION BENEFITS BEYOND THE MOMENT THEY ARE PLACED IN THE HANDS OF THE INJURED WORKER.

The Florida Legislature has exempted workers' compensation benefits from creditor's claims based on the following statutory language:

No assignment, release, or commutation of compensation or benefits due or payable under this Chapter except as provided by this Chapter shall be valid, and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of a debt, which exemption may not be waived.

Florida Statutes Section 440.22 (1990). Because the Florida Legislature used the phrase "due or payable" in the above language, the courts below in the instant case concluded that Mr. Broward's workers' compensation benefits lost their exempt status the moment he received them. Accordingly, \$4,245.12 of Mr. Broward's workers' compensation proceeds were ordered by the trial court to be paid over to Jacksonville Medical Center. By focusing on the remedial design of workers' compensation and exemption laws, the courts in the decisions cited in this brief have determined that workers' compensation benefits, once in the hands of the injured worker, remain exempt, even when exemption statutes contain "due or payable" clauses.

In the only reported case in Florida directly addressing the issue, Judge Proctor held that a lump-sum settlement of workers' compensation benefits remains exempt after payment to the injured worker, despite the "due or payable" language contained in Section 440.22. In Re Fraley, 148 B.R. 635 (Bkrtcy. M.D. Fla. 1992). The debtor in Fraley

received a lump-sum workers' compensation payment and placed \$5,000.00 of the proceeds into a checking account. The trustee in bankruptcy argued that the workers' compensation settlement proceeds should not be exempt because the statute only refers to benefits that are "due or payable" and therefore does not protect funds once received and deposited in a bank account. Judge Proctor noted the inherent ambiguity in the statute which is broadly framed to protect all workers' compensation benefits from all claims of creditors, but also seems to limit its protection to benefits which the injured worker has not even received. In resolving the ambiguity and in finding the settlement proceeds still exempt, Judge Proctor reasoned that the purpose of the workers' compensation laws and the exemption statute is to ensure that an injured worker is able to meet the expenses of daily living:

Given the broad scope and the intention to protect beneficiaries, this Court cannot construe the "due or payable" phrase to have the far-reaching, restrictive meaning advanced by the trustee. The statute was designed to protect workers' compensation claimants' source of support from the claims of creditors.

Fraley, 148 B.R. at 637.

Outside of Florida, similar exemption statutes have been construed to exempt lump-sum payments of workers' compensation benefits from the claims of creditors, even when the statutory language appears to protect benefits only until the injured worker receives them. Most notably, in Surace vs. Danna, 248 N.Y. 18, 161 N.E. 315 (1928), Justice Benjamin Cardozo held that the following New York Statute provided an exemption for workers' compensation benefits even after the benefits were received by the injured worker:

Compensation or **benefits due** under this Chapter shall not be assigned, released or commuted except as provided by this Chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

Surace, at 18, 161 N.E. at 315 (citing N.Y. Work. Comp. Law 33)(emphasis supplied). In Surace, Mr. Danna owed Surace \$558.15 for a past debt. Mr. Danna was later injured at work and subsequently settled his workers' compensation claim for \$3,500.00, of which \$2,600.00 was placed in a bank account. Surace obtained a judgment against Mr. Danna for the past debt and sought to execute on the workers' compensation settlement proceeds Mr. Danna had in his bank account. Mr. Surace was successful at the trial and intermediate appellate levels, having argued that the exempt status of Mr. Danna's workers' compensation benefits was lost when those benefits were paid to Mr. Danna. In Mr. Danna's appeal to the Court of Appeals of New York, Chief Justice Cardozo expressed his reasons for reversing the findings of the lower courts as follows:

The argument is, however, that [workmen's compensation benefits] became subject to seizure the instant they were paid. If this is so, the exemption is next to futile. . . . They will no longer be a fund for the support of the indigent and helpless So narrow a construction thwarts the purpose of the statute. The workmen's compensation law was framed to supply an injured workman with a substitute for wages during the whole or at least a part of the term of disability. he was to be saved from becoming one of the derelicts of society, a fragment of human wreckage.

Surace, 161 N.E. at 315. Justice Cardozo reasoned that to give the term "compensation due" the narrow construction suggested by Mr. Surace would render the exemption meaningless. He concluded that the term "compensation due" was intended to include "a payment of compensation presently owing, or one to become due in the future, or one already made, but made because due, i.e. required or commanded." Surace, 161 N.E at 316.

In Vukovich vs. Ossic, 50 Ariz. 194, 70 P.2d 324 (Ariz. Sup. Ct. 1937), a bank account consisting of workers' compensation benefits was held to be exempt from creditors' claims under an Arizona exemption statute, reading as follows:

Compensation, whether determined or not, shall not, **prior to the delivery of the warrant therefor** be assignable; it shall be exempt from attachment, garnishment and execution, and shall not pass to another person by operation of law.

Vukovich at 195, 70 Pl.2d at 325 (citing Ariz. Rev'd. Code, Chapt. 24, Art. 5 Section 442)(emphasis supplied). In Vukovich, Mr. Vukovich obtained a judgment against Mr. Ossic for money loaned and meals furnished. Mr. Vukovich attempted to garnish the workers' compensation funds held in Mr. Ossic's bank account and argued that the workers' compensation exemption ended when Mr. Ossic received the funds. Mr. Ossic claimed that the funds continued to be exempt after he received them as long as they could be traced. The Arizona Supreme Court resolved the argument by examining the purpose behind the workers' compensation laws and concluded that the exemption continues after benefits are paid:

Keeping in mind that the purpose of [the workers' compensation act] is to compel industry to take care of those injured in its service . . . it is inconsistent with the act itself and utterly out of harmony with the end it was enacted to accomplish to hold that compensation is not exempt after it reaches the employee but may be taken by creditors in payment of other debts.

Vokovich, 70 P.2d at 326. The courts in Fraley, Surace, and Vukovich gave careful consideration to the purpose of these exemption statutes and held that for the exemption to serve any useful purpose, it must exist after an injured worker receives his compensation.

Similar results have been reached in New Jersey, General Motors Acceptance Corporation vs. Falcone, 130 N.J. Super. 517, 327 A.2d 699 (App. Ct. 1974), (where the exemption statute referred to "payments due," the exemption was found to continue after payment of benefits to the injured worker); in Kentucky, Matthews vs. Lewis, 617 S.W.3d 43 (Ky. Sup. Ct. 1981), (where it was determined that workers' compensation

proceeds held in a checking account remained exempt, the court found "It would be sheer, ineffectual folly to argue that compensation is exempt until it touches the hands or the bank checking account and from that instant is completely available to the creditor." 617 S.W.2d at 45); and in New Mexico, Waldman vs. Nolen, 65 B.R. 594 (N.M. Bkrcty. 1986), (holding that workers' compensation proceeds are exempt after receipt by the injured worker).

The policy for the broad protection afforded injured workers as announced in Surace and Vukovich has been solidly embraced by the courts of Florida. The purpose of Florida's workers' compensation law and more specifically, the §440.22 exemption, is to "protect the injured workman or his family from destitution by providing for a bare minimum income to survive." Kennedy vs. Estate of Beasley, 318 So.2d 496 (Fla. 2d DCA 1975). As explained by Judge Joanos in Sam Rogers Enterprises vs. Williams, 401 So.2d 1388 (Fla. 1st DCA 1981), "every provision of the Workers' Compensation Act should be construed in keeping with the remedial purpose of the Act as a whole. As a primary function, the Act was intended to place the burden of supporting an injured worker on industry rather than society." Williams at 1390. This Court has also recognized that the general purpose of exemption is to prevent a dependent party from becoming a burden to society or an object of charity. Exemption statutes should, therefore, be liberally construed in favor of the debtor. Killian vs. Lawson, 387 So.2d 960, 962 (Fla. 1980).

By concluding that the protection provided by Florida Statutes §440.22 was terminated the instant that Mr. Broward received his settlement check, the District Court below eviscerated the exemption. If the statute is to be given the protection it was intended to have, the "due or payable" language contained in F.S. §440.22 should be defined similarly to the way Justice Cardozo defined "due": "a payment . . . already made, but made because due, i.e. required or commanded." Surace vs. Danna, 248 N.Y. at 18, 248 N.E. at 315.

**POINT II: BECAUSE AMBIGUITY EXISTS IN F.S. SECTION 440.22,
THE STATUTE SHOULD BE CONSTRUED IN FAVOR OF
PROTECTING THE INJURED WORKER.**

This Court has held that when ambiguity exists in the provisions of the Florida Workers' Compensation Act, the law should be construed in favor of protecting the interests of the injured worker:

Florida workers' compensation laws are remedial in nature and the courts should resolve any doubts as to statutory construction in favor of providing benefits to the injured worker.

Daniel vs. Holmes Lumber Company, 490 So.2d 1252, 1256 (Fla. 1986). Although in the instant case the 1st DCA held that the clear language of F.S. Section 440.22 removes the exemption the moment an injured worker receives his settlement check, a different construction was reached by the Second District Court of Appeal. Because Florida courts have reached contrasting opinions regarding the construction of Section 440.22, the statute should be considered ambiguous, and under the authority of Holmes, should be construed in favor of preserving the exemption.

In Bryant vs. Bryant, 621 So. 2d 574 (Fla. 2d DCA 1993), the Second District Court of Appeal held that workers' compensation settlement proceeds, once paid, remain exempt, with the exception of claims for child support. In that case, Mr. Bryant received a workers' compensation settlement check. Mrs. Bryant had obtained a prior judgment against Mr. Bryant for child support and attorney's fees. She then sought an injunction to require Mr. Bryant to pay past child support and attorney's fees from the proceeds of the settlement. The court held that with respect to the wife's claim for child support, the settlement proceeds are not exempt. With respect to the claim for attorney's fees, however, the court held that the workers' compensation benefits remain exempt, even after the settlement proceeds have been paid to the husband. The court reasoned that

because the workers' compensation Act is designed to compensate the injured worker as well as his family, the wife has an interest in the workers' compensation proceeds as a beneficiary rather than a creditor. The court held that workers' compensation settlement proceeds remain exempt as to other claims such as attorney's fees.

In the decision reached in the instant case by the District Court, Judge Kahn felt constrained to apply the same construction to the workers' compensation exemption (Florida Statutes Section 440.22) as the court had earlier applied to the head of household exemption (Florida Statutes Section 222.11). Both exemptions refer to money that is "due". In 1976, the First District Court of Appeal held that because the head of household exemption referred to a payment of money "due", the exemption is lost when the money is received by the individual. Hertz vs. Fisher, 339 So.2d 1148 (Fla. 1st DCA 1976). The statute then read as follows:

No writ of attachment or garnishment where other process shall issue from any of the courts of this state to attach or delay **payment** of any money or other things **due to any person** who is the head of a family residing in this state, when the money or other things due is for personal labor or services of such person.

Florida Statutes Section 222.11(1974). In 1985 the Legislature defined "due" to mean that money held in a bank account is still "due" and not subject to creditor's rights:

No writ of attachment or garnishment where other process shall issue from any of the courts of this state to attach or delay **payment** of any money or other things **due to any person** who is the head of a family residing in this state, when the money or other things due is for personal labor or services of such person . . . **this exemption shall apply to any wages deposited in any bank account maintained by the debtor** when said funds can be traced and properly identified as wages.

Florida Statutes Section 422.11(1985)(emphasis supplied). When the last sentence was added to the original exemption statute in 1985, the Legislature chose to keep the word

"due" intact. Accordingly, money "due" includes money that is paid to the individual and placed in a bank account. The Florida Legislature has, therefore, defined "due" the same way the term was defined by Justice Cardozo: "a payment presently owing, one to become due in the future, or **one already made**, but made because due, i.e. required or commanded." Surace vs. Danna, 248 N.Y. 18, 161 N.E. 315, emphasis supplied. A payment "due", then remains due after it is received.

The courts in Fraleigh, Bryant, Hertz, and in the instant case below have defined the term "due" in exemption statutes to mean different things. Because the statute is apparently capable of inconsistent construction, any doubts as to construction should be resolved in favor of the injured worker as announced by this Court in Daniel vs. Holmes Lumber Company.

CONCLUSION

The opinions below construed the workers' compensation exemption statute very narrowly, and in so doing, removed the protection the statute was designed to provide. The settlement proceeds that the Petitioner received were intended to be a fund to provide for his support and medical needs relating to his work injury. If the statute is to serve its intended purpose, then workers' compensation benefits must be protected beyond the moment they are received by the individual who depends on those benefits. Because the language of the exemption statute is capable of different interpretations, and has in fact been construed inconsistently by Florida courts, adherence to this Court's policy on statutory ambiguity would favor a construction preserving the interest of the injured worker. It is, therefore, respectfully requested that this Court answer the question certified by the District Court in the negative and reverse the decisions reached below.

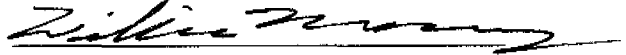
Respectfully Submitted,



William W. Massey, III

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy hereof has been furnished by mail this 16th day of July, 1996, to SIDNEY E. LEWIS, Esquire, 24 North Market Street, Jacksonville, Florida 32202.


Attorney

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IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

APPELLATE CASE NO.: 94-59-AP

LOWER CASE NO.: 89-8792-SP

DIVISION: CR-F

DANIEL EDWARD BROWARD,

Defendant/Appellant,

v.

JACKSONVILLE MEDICAL CENTER
INCORPORATED,

Plaintiff/Appellee.

William W. Massey, III, Esq., Attorney for Appellant

Sidney E. Lewis, Esq., Attorney for Appellee

OPINION ON APPEAL

This is an appeal by Appellant, Daniel Edward Broward, from the County Court of Duval County. On appeal, Appellant contends that the lower court abused its discretion by finding that Section 440.22, *Florida Statutes*, does not exempt workers' compensation benefits from claims of creditors after such benefits are received by the injured worker and placed in a bank account.

This Court has jurisdiction pursuant to Fla. R. App. P. 9.030 (c) (1) (a).

I. Background Facts and Procedural History

On March 22, 1990, Jacksonville Medical Center, Incorporated ("JMC") obtained a judgment against Mr. Broward in the amount of \$2,605.05 representing the unpaid portion of a

bill for medical services Mr. Broward received in 1989. (R. 1-8).¹ Subsequently, Mr. Broward suffered a work-related injury. (R. 23, 24). On February 15, 1994, Mr. Broward's workers' compensation carrier made a lump-sum payment totaling \$42,150.00 for release of all future compensation and medical benefits. (R. 31). After attorney's fees and costs were deducted, Mr. Broward received \$36,000.00 of which he placed \$34,500.00 in a savings account with First Union National Bank of Florida. (R. 36). The funds held in the First Union account were exclusively workers' compensation benefits. (R. 36, 37).

On April 20, 1994, JMC filed a motion for writ of garnishment seeking to execute on the workers' compensation funds held in Mr. Broward's bank account. (R. 9). Mr. Broward objected to the garnishment proceedings, arguing that his workers' compensation benefits were exempt from the claims of creditors under the provisions contained in Section 440.22, *Florida Statutes*. (R. 14, 31). After two hearings had taken place addressing the applicability of Section 440.22, the lower court found that the exemption for workers' compensation benefits did not protect the funds received by Mr. Broward and placed in his bank. Accordingly, the lower court ordered First Union to pay JMC \$4,245.12 of the workers' compensation proceeds Mr. Broward had placed in savings. (R. 41, 42). As a result of the Order, Mr. Broward filed this appeal.

II. DISCUSSION

The Florida Workers' Compensation law contains an exemption provision that provides as follows:

"No assignment, release, or commutation of compensation or benefits due or payable under this chapter except as provided by this chapter shall be valid,

¹ Hereafter, references to the record on appeal shall be designated as "R. ____."

and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of a debt, which exemption may not be waived."

Section 440.22, *Florida Statutes*. (emphasis added). In the present case, the issue is not whether workers' compensation benefits are exempt, for Section 440.22 clearly confers some degree of exemption on such benefits. Instead, the narrow issue is whether settlement proceeds arising from a workers' compensation claim are exempt once the proceeds are in the possession of the intended recipient. The appellee claims that the proceeds are not exempt. The appellee focuses on the phrase "benefits due or payable," and asserts a distinction between benefits due and benefits actually received by the injured employee.

The appellant contends that such a narrow interpretation of the Workers' Compensation Law would defeat the intent of the Statute which is to protect the injured workman or his family from destitution by providing for a bare minimum income to survive. See Kennedy v. Estate of Beasley, 318 So.2d 496, 498 (Fla. 2nd DCA 1975). Therefore, the appellant asserts that the phrase "benefits due or payable" should be interpreted broadly to include both the expectation of payment and the receipt of such payment. In support of his position, the Appellant relies on the case of In Re Fraley, 148 B.R. 635 (Bankr.. M.D. Fla. 1992) and several cases from outside the State of Florida². In Fraley, the debtor in bankruptcy received a settlement of her workers'

² The appellant cites to other courts who found workers' compensation settlement proceeds exempt. See Surace v. Danna, 248 N.Y. 18, 161 N.E. 315 (1928) (allowing exemption under a statute that provided: "Compensation or benefits due under this Chapter shall not be assigned, released or commuted...and shall be exempt from all claims of creditors and from levy..."); Yukovich v. Ossic, 50 Ariz. 194, 70 P.2d 324 (1937) (allowing exemption under a statute that provided: "Compensation, whether determined or not...it shall be exempt from attachment, garnishment and execution...").

compensation claim and deposited the proceeds in a bank account. The Trustee sought to acquire the funds in the bank account, arguing that the Statute only refers to benefits "due or payable" and does not protect funds once received and deposited in a bank account. The Bankruptcy Court examined what it perceived to be the legislative intent of the statute and found the exemption to follow the workers' compensation proceeds into the bank.

In opposition to the appellant's position and the decision in Fraley, the appellee relies on the legislative history of a similar exemption provision, Section 222.11, *Florida Statutes* and a number of decisions from outside the State of Florida³. Prior to 1985, Section 222.11, *Florida Statutes*, provided as follows:

"No writ of attachment or garnishment or other process shall issue from any of the courts of this State to attach or delay the payment of any money or other thing due to any person who is the head of a family residing in this State, when the money or other things due for the personal labor or services of such person." (emphasis added).

In Hertz v. Fisher, 339 So.2d 1148 (Fla. 1st DCA 1976), the First District Court of Appeal, interpreting Section 222.11, held that although the money in the defendants bank account was paid to him for personal services, such money is no longer due to him for personal services because it has been paid by those for whom he performed the personal services. Further, in Holmes v. Blazer Financial Services, Inc. 369 So.2d 987 (Fla. 4th DCA 1979), the Fourth District Court of Appeal, based on the clear language of Section 222.11, reversed the trial court's finding that wages paid to the head of a household and placed in a bank account were exempt

³ Merchants Bank v. Weaver, 213 N.C. 767, 197 S.E. 551 (N.C. 1938); Ohio Bell Telephone Co. v. Antonelli, 29 Ohio St. 3d 9, 504 N.E.2d 717 (1986); In Matter of Wickstrom, 113 B.R. 339 (Bankr. W.D.Mich 1990); Recor v. Commercial Savings Bank of St. Clair, 106 N.W. 82 (Mich. 1905); Martin v. Lamb, Circuit Judge, 200 N.W. 160 (Mich. 1924).

from garnishment. The court addressed the conflict posed by the petitioners between the specific language of the statute and the alleged underlying legislative intent in enacting the law. Holmes, 369 So.2d at 989. The court found that the clear language must prevail over the petitioners' attempt to perceive the legislative intent. Id. The court stated the following:

"It would appear that the legislature intended that there be no interference with the *receipt* by the head of a family of money due him for personal labor or services. Hence, the use of the phrase "to attach or *delay*" (emphasis supplied). However, the legislature made no provision to protect the money once it was received. We are bound to give effect to the clear words the legislature chose to use. Heredia v. Allstate Insurance Co., 358 So.2d 1353 (Fla. 1978). Our examination of those words reveals no ambiguity. The ambiguity, if any, is only present in the attempts to identify the legislature's specific purpose in enacting the law.

Id.

In 1985, the Legislature provided expanded language for the exemption in Section 222.11 with the inclusion of the last sentence which provides that "[t]his exemption shall apply to any wages deposited in any bank account maintained by the debtor when said funds can be traced and properly identified as wages." Then in 1993, the legislature expanded the exemption statute with the use of the term "financial institution" in lieu of "bank accounts"; provided that the funds are exempt for 6 (six) months after the earnings are received by the financial institution if the funds can be traced and properly identified; and provided that co-mingling of earnings with other funds does not by itself defeat the ability of the head of a family to trace earnings.

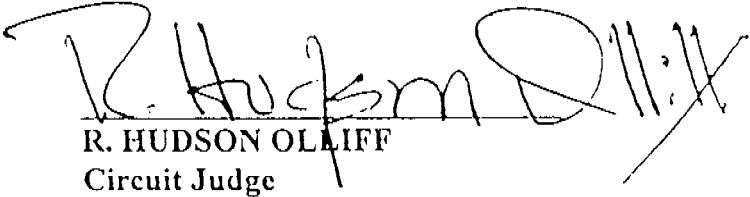
The legislature has found no necessity to insert into the Workers' Compensation exemption statute additional language that would prescribe a tracing provision similar to the one inserted into Section 222.11. Where the words selected by the Legislature are clear and

unambiguous, judicial interpretation is not appropriate to displace the expressed intent. Heredia v. Allstate Insurance Company, 358 So.2d 1353, 1355 (Fla. 1978). It is neither the function nor prerogative of the courts to speculate on constructions more or less reasonable, when the language itself conveys an unequivocal meaning. Id. Therefore, the court concludes that no error occurred when the lower court, relying on the plain meaning of Section 440.22, *Florida Statutes*, found that the workers' compensation exemption shall not apply to workers' compensation awards deposited into any bank account.

As Appellant failed to establish error or an abuse of discretion by the lower court, the final judgment against garnishee entered on May 20, 1994 is **AFFIRMED**.

The Court finds that the issue on appeal in this case is not one of great public importance. Therefore, the appellant's request to certify the issue on appeal in this case to the First District Court of Appeal is **DENIED**.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 24 day of August 1995.


R. HUDSON OLLIFF
Circuit Judge

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DANIEL EDWARD BROWARD,

Petitioner,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JACKSONVILLE MEDICAL CENTER,
INC. and FIRST UNION
NATIONAL BANK OF FLORIDA, a
national banking
association,

CASE NO. 95-3400

Respondents.

Opinion filed May 23, 1996.

Petition for Writ of Certiorari

William W. Massey, III, P.A., Jacksonville, for petitioner.

No appearance for respondents.

KAHN, J.

We have before us Daniel Broward's petition for a writ of certiorari to review an order of the Circuit Court in and for Duval County, sitting in its appellate capacity. We approve the order of the circuit court and deny the petition.

On March 22, 1990, appellee Jacksonville Medical Center, Inc. (JMC), obtained a judgment against Mr. Broward in the amount of \$2,605.05 representing the unpaid portion of a bill for medical services incurred by Broward in 1989. Two years later Broward suffered a work-related injury and, on February 15, 1994, received

a lump sum payment of \$42,150.00 in a washout settlement. After deducting fees and expenses, Broward deposited \$34,500.00 in a savings account at First Union National Bank of Florida in Jacksonville. The funds in this account consisted exclusively of the workers' compensation settlement proceeds.

JMC then sought a writ of garnishment in the County Court of Duval County to reach the funds held in the First Union account. The county court decided that the exemption of section 440.22, Florida Statutes (1993), did not protect the funds received by Broward and deposited in a savings account. Broward appealed the decision to the circuit court.

The circuit court agreed with the lower court's construction of section 440.22, and affirmed. Section 440.22, Florida Statutes, provides:

Assignment and exemption from claims of creditors.--No assignment, release, or commutation of compensation or benefits due or payable under this chapter except as provided by this chapter shall be valid, and such compensation and benefits shall be exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of a debt, which exemption may not be waived.

In determining that this statute did not apply to exempt workers' compensation settlement funds received and deposited into a bank account, the circuit court compared section 440.22 to section 222.11, Florida Statutes.

Prior to 1985, section 222.11 provided that no writ of attachment or garnishment or other process would reach any money or

other thing "due to any person" who is the head of a family residing in Florida, when the money or other things "due" are for the personal labor or services of such person. In Hertz v. Fisher, 339 So. 2d 1148 (Fla. 1st DCA 1976), and Holmes v. Blazer Financial Services, Inc., 369 So. 2d 987 (Fla. 4th DCA 1979), reviewing courts held that the plain wording of that statute did not apply to funds received for personal services and then deposited in a bank account. Thereafter, the Legislature twice amended section 222.11. The current version of the statute provides that the exemption applies to any wages deposited in any financial institution when the funds can be traced and properly identified as wages, and further that such funds are exempt for six (6) months after the earnings are received by the financial institution. § 222.11(3), Fla. Stat. (1993). The circuit court concluded that "the [L]egislature has found no necessity to insert into the Workers' Compensation exemption statute additional language that would prescribe a tracing provision similar to the one inserted into Section 222.11."

We recognize that the bankruptcy court in In re Fraley, 148 B.R. 635, 637 (M.D. Fla. 1992), relied upon policy grounds and "the intention to protect beneficiaries" to construe the "due or payable" phrase in section 440.22 to exempt settlement funds that have already been deposited into a bank account. We are constrained, however, by the Florida decisions interpreting the previous version of section 222.11, and by the Legislature's

failure to modify the "due or payable" language of section 440.22 in the face of those decisions. Moreover, we note that the six-month limitation inserted by the Legislature when it amended section 222.11 is an integral part of the extension of the exemption to bank accounts. The six-month provision places a reasonable limitation upon the ability to exempt funds that have lost their character as "due or payable."

The parameters of the exemption of section 440.22 are clear. Indeed, although petitioner urges us to construe the statute on the public policy grounds identified by the bankruptcy court in Fraley, he does not point to any ambiguity in the terms of the statute. See City of Miami Beach v. Galbut, 626 So.2d 192, 193 (Fla. 1993) (where a statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent); State, Dep't of Agric. & Consumer Servs. v. Quick Cash of Tallahassee, Inc., 609 So.2d 735, 738 (Fla. 1st DCA 1992) (courts do not have power to construe an unambiguous statute in way which would extend, modify, or limit its express terms or obvious implications). We do not have the prerogative to construe the statute to provide a result different from that contemplated by its clear language.

Our construction of section 440.22 will apply beyond the area of workers' compensation law, an area entrusted to this court, and moreover differs with a federal court's view of the same statute. Accordingly, pursuant to Rule 9.030(a)(2)(A)(v), we certify that we have passed upon the following question of great public importance:

Does the "due or payable" language of section 440.22, Florida Statutes, mean that once compensation benefits have been paid to an injured employee or his or her beneficiaries that such benefits are no longer exempt from all claims of creditors?

Petition for writ of certiorari DENIED; question certified.

ERVIN and BARFIELD, JJ, CONCUR.