

SUPREME COURT OF FLORIDA

FILED  
AUG 15 1996  
CLERK OF THE COURT

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

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PETITIONER'S REPLY BRIEF

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## ARGUMENT

Respondent argues that the instant case is controlled by Hertz vs. Fisher, 339 So.2d 1148 (Fla. 1st DCA 1976), which held that the Head of Household exemption under Florida Statutes §222.11 is lost when wages are received and placed into a bank account by the head of a family. As explained hereinbelow, Respondent's reliance on the holding in Hertz is misplaced because of the absence of the word "payable" from the Head of Household statute, F. S. §222.11.

In Hertz, Mr. Fisher obtained a judgment against Mr. Hertz and later attempted to garnish funds Mr. Hertz had in his bank account. Mr. Hertz objected and argued that his bank account was exempt under F.S. §222.11 because he was the head of his family and his bank account consisted of payments he received for services rendered. The Court noted that the protection under Florida Statutes §222.11 extended only to money or things **due**:

No writ of attachment or garnishment or 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 §222.11(1974) (emphasis supplied). The court held that once Mr. Hertz received the money and placed it in a bank account, it was no longer "due," and therefore lost its exempt status. The court concluded, however, that the funds held in Mr. Hertz's bank account remained "payable":

[The money] is not now due for personal services but is **payable** to him by the bank by virtue of it being held by the bank to his credit in his bank account.

Hertz at 1149 (emphasis supplied). Unlike the Head of Household exemption, the Workers' Compensation exemption under Florida Statute §440.22 extends its protection to funds which are not only "due" but also "payable":

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)(emphasis supplied). By extending its protection to things that are "due or payable," the Workers' Compensation exemption provides broader protection than the Head of Household exemption, which protects only things that are "due." The court in Hertz characterized the funds held in Mr. Hertz's bank account as "payable" but no longer "due." Had the Head of Household statute contained language extending its protection to things "due or payable," Hertz clearly would have been decided differently. Because in the instant case Mr. Broward's workers compensation proceeds were placed into a bank account where they remained payable to him, the funds should continue to be exempt under Florida Statutes §440.22, especially if this Court were to apply the rationale announced in the Hertz decision.

Notwithstanding the court's analysis of the term "due" in Hertz, the Florida Legislature after the Hertz decision defined "due" to include funds received and placed in a bank account. This was discussed more thoroughly in Petitioner's Initial Brief beginning at page 10.

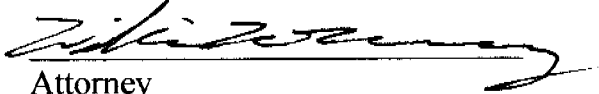
Respectfully submitted



William W. Massey, III

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy hereof has been furnished by mail this 14<sup>th</sup> day of August, 1996, to SIDNEY E. LEWIS, Esquire, 24 North Market Street, Jacksonville, Florida 32202.

  
Attorney