

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TONY W. STRICKLAND,)	
)	
Plaintiff,)	Civil Action No.
v.)	1:12-cv-02735-MHS
)	
RICHARD T. ALEXANDER,)	
Clerk of Court of the State Court)	Judge Marvin H. Shoob
of Gwinnett County, Georgia,)	
)	
Defendant.)	

**STATE OF GEORGIA’S BRIEF IN SUPPORT OF MOTION TO ALTER
OR AMEND JUDGMENT**

The State of Georgia, by and through counsel, Samuel S. Olens, Attorney General of the State of Georgia, has moved this Court, pursuant to Fed. R. Civ. P. 59 (e), to alter or amend the Order entered by this Court on September 8, 2015 declaring Georgia’s post-judgment garnishment statute unconstitutional and enjoining Defendant from issuing any summons of garnishment that are inconsistent with the Court’s Order. The State of Georgia submits that reconsideration of the Court’s prior ruling is necessary and appropriate under Fed. R. Civ. P. 59 (e) because of additional authority that was not previously brought to the Court’s attention regarding timely procedures which exist for resolving debtors claims of exemption.

INTRODUCTION

On September 8, 2015, this Court entered an Order declaring Georgia's post-judgment garnishment statute, O.C.G.A. § 18-4-60 et seq., unconstitutional and enjoining Defendant from issuing any summons of garnishment pursuant to the existing forms and procedures insofar as they are inconsistent with the Court's Order. (Order of September 8, 2015). The Court declared the garnishment statute unconstitutional on three grounds. First, the Court concluded that the garnishment statute is constitutionally deficient because it fails to require that debtors be notified of the existence of exemptions under state and federal law which the debtor may be entitled to claim with respect to their garnished property. (Order, pp. 20-30). Second, the Court determined that the statute is unconstitutional because it fails to require debtors to be notified of the procedure for claiming exemptions. (Order, pp. 30-40). Finally, the Court declared that the statute fails to pass constitutional muster, as it does not provide for a timely procedure for the adjudication of debtors' exemption claims. (Order, pp. 40-46).

Since the Court issued its Order on September 8, 2015, superior, state and magistrate courts throughout the State have scrambled to comply with the Court's sweeping mandate. As a result of the Court's declaration and injunction, clerks of

court, including Defendant, have entirely ceased issuing summons of garnishments, and some have refused to issue any pending disbursements until further order of this Court.¹ Due to the drastic effects this Court's order has had, and will continue to have, on post-judgment garnishment actions in this State, the State urges the Court to reexamine its Order in light of the new authority identified and explained in detail below.

¹ On September 9, 2015, Richard T. Alexander, Jr., Clerk of Court of the Superior, State and Magistrate Courts of Gwinnett County, Defendant herein, issued a news release stating that as a result of this Court's Order, "no summons will be issued and no disbursements will be issued in pending cases until further order of the Court." (*See* Exhibit A attached hereto). On September 14, 2015, Cassandra Kirk, Chief Magistrate Judge of the Magistrate Court of Fulton County issued a standing order directing the clerk of court to accept garnishment case filings, but to stay and withhold the issuances of all summons and notices until further order of this Court. (*See* Exhibit B attached hereto). On September 14, 2015, the State Court of Cobb County issued a standing order which orders that upon filing of a garnishment action, plaintiff will be provided with a "Notice of Garnishment to Debtor," and a "Notice of Garnishment to Garnishee," which the plaintiff must serve along with the Summons and Complaint. The plaintiff must then file a Return of Service Form with the court showing that the debtor has been served with said documents. Further, the standing order provides that a debtor may raise an exemption claim by filing a claim under O.C.G.A. § 18-4-95 followed by a traverse under O.C.G.A. § 18-4-86, and that the court will schedule a hearing within ten days. (*See* Exhibit C attached hereto). Similar to the order issued in Cobb County, on September 21, 2015, the State Court of DeKalb County issued a standing order requiring "Notice of Garnishment to Debtor," and a "Notice of Garnishment to Garnishee," which the plaintiff must serve along with the Summons and Complaint, as well as the requirement that plaintiff file a return of service. In addition, the court ordered that debtors may assert exemption claims by filing a traverse of the garnishee's answer under O.C.G.A. § 18-4-86 or a claim pursuant to O.C.G.A. § 18-4-95, before the garnishee files an answer. The order states that the court will set a hearing within four days of either filing. (*See* Exhibit D attached hereto).

ARGUMENT AND CITATION TO AUTHORITY

A. Standard for Motion to Alter or Amend under Rule 59 (e)

Motions to alter or amend a judgment under Fed. R. Civ. P. 59 (e) are committed to the sound discretion of the court. *See America Home Assurance Co. v. Glenn Estess & Assoc.*, 763 F.2d 1237, 1238-39 (11th Cir. 1985). In order to succeed on a motion for reconsideration under Fed. R. Civ. P. 59 (e), the moving party must “point to controlling decisions or data that the court overlooked, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (reconsideration granted when court failed to consider legislative history and relevant case law); *see also Metropolitan Entertainment Co., Inc. v. Koplík*, 25 F. Supp. 2d 367, 368 (D. Conn. 1998) (reconsideration granted when court’s decision was based on false belief that plaintiff’s claims were based on two separate agreements rather than a single agreement).

B. Georgia law currently provides a number of remedies for debtors to claim exemptions in a post-judgment garnishment action and be entitled to a ten day hearing

In this case, there are controlling authorities, not previously brought to the Court’s attention, that impact the conclusion reached by the Court with regard to the need for a timely procedure for the adjudication of debtors’ exemption claims.

This additional authority demonstrates that Georgia law currently provides procedures for debtors to utilize in post-judgment garnishment actions to claim exemptions. Further, the authority shows that these procedures entitle debtors to a hearing within ten days, which is a constitutionally sufficient time period.

Specifically, there are additional cases in which debtors challenged garnishment actions by way of traverse under O.C.G.A. § 18-4-65 as the defendant did in *Citizens Bank of Ashburn v. Shingler*, 173 Ga. App. 511 (1985), and were entitled to a hearing within 10 days. These cases provide additional support for the State's interpretation of the statute, which the Court previously declined to adopt, and demonstrate that the traverse procedure pursuant to O.C.G.A. § 18-4-65 provides a constitutionally adequate procedure for debtors to raise exemption claims.

In addition to these cases, there is a Georgia Court of Appeals case which provides that the 10-day hearing requirement set forth in O.C.G.A. § 18-4-65 is triggered both when a debtor files a traverse of the creditor's affidavit and when the debtor files a claim pursuant to O.C.G.A. § 18-4-95. Thus, when a debtor files a claim under O.C.G.A. § 18-4-95, he or she should be entitled to a hearing within ten days. Finally, a third method that debtors may utilize to challenge a garnishment action is by filing a motion to dismiss pursuant to the Georgia Civil

Practice Act. Should a debtor choose to elect this method of raising exemptions, the court can order that the debtor be provided with a hearing within 10 days. Like the aforementioned cases, this method of challenging a garnishment action was not previously brought to this Court's attention.

In light of this new authority, explained more fully below, this Court should revisit and alter or amend its Order by declaring that Georgia's post-judgment garnishment statute provides timely procedures for debtors to claim exemptions in post-judgment garnishment actions.² In addition, this Court should also alter or amend its Order in such a manner as to limit the scope and application of the Order to garnishment proceedings filed against a financial institution holding a judgment

² The State is aware that the availability of these remedies does not alone satisfy the requirements of the Constitution under this Court's Order of September 8, 2015. In order to satisfy such requirements, the other issues addressed in this Court's Order must be addressed. Specifically, in garnishments in which exemptions could be implicated, defendants in garnishment must be provided with notice of "at least a partial list of 'those essential federal and state exemptions that provide the basic necessities of life . . .'" (Order, p. 28 n. 5) (*quoting Harris v. Bailey*, 574 F. Supp. 966 (W.D. Va. 1983)). Debtors in garnishment where exemptions could be implicated must also be provided with notice of the available remedies for asserting exemptions under O.C.G.A. §§ 18-4-65 and 18-4-95. (Order, p. 32). Further, debtors must be served with the affidavit filed by the plaintiff. As mentioned above, several courts have acted swiftly to adopt procedures for providing such notices. (*See Exhibits C and D attached hereto*). Such notices appear to be in compliance with the Court's finding that notice of exemptions and the applicable procedures to claim said exemptions is required.

debtor's property under a deposit agreement or account, and specifically except from the Order's scope and coverage, commercial garnishments, continuing wage garnishments and child support garnishments.

1. A debtor may use the traverse procedure provided in O.C.G.A. § 18-4-93 to claim exemptions in a post-judgment garnishment action, and thereby be entitled to a hearing within 10 days.

This Court rejected the State's argument that a debtor may file a traverse of the creditor's affidavit pursuant to O.C.G.A. § 18-4-93. (Order, p. 42). Instead, the Court held that this traverse procedure is not available to a debtor who contends that garnished property is exempt from garnishment, because a claim of exemption does not challenge either the existence or the amount of the judgment, nor does it seek to bar the judgment. *Id.* In reaching this conclusion, this Court declined to follow *Citizens Bank of Ashburn v. Shingler*, cited by the State, which affirmed a trial court's decision sustaining a traverse to an affidavit of garnishment based on an assertion of an exemption. 173 Ga. App. 511 (1985). This Court determined that because no issue was raised in *Shingler* regarding the appropriate procedure for asserting an exemption claim, and the court's order did not contain any analysis of the post-judgment garnishment statute, the case did not provide authority so support the State's interpretation of the statute. (Order, p. 43).

However, since the issuance of this Court's Order, the State has identified additional cases which support the argument that debtors may traverse a creditor's affidavit on the grounds that the garnished property is exempt. In *Harp v. Winkles*, a judgment creditor obtained a judgment against a police officer arising from an arrest that occurred while the officer was responding to an "officer down" call. 255 Ga. 42, 42 (1985). The judgment creditor subsequently filed a garnishment proceeding against the officer's employer as garnishee. *Id.* The officer/debtor challenged the garnishment action by filing a traverse to the judgement creditor's affidavit claiming that his wages were exempt from garnishment under O.C.G.A. § 18-4-21, because the judgment which was the basis of the garnishment arose out of liability incurred in the scope of his employment while responding to an emergency. *Id.* at 42-43. The trial court sustained the traverse and held that the officer's wages were exempt from garnishment, which the Supreme Court of Georgia affirmed.³ This method of raising an exemption claim by traversing the creditor's affidavit is identical to the method used by debtor in *Shingler*.

³ The officer's employer also raised the claim of exemption in its answer to the garnishment action, which was filed before the officer traversed the creditor's affidavit. It is unclear whether the trial court dismissed the garnishment based on the employer's answer or the officer's traverse. However, the Supreme Court makes clear that its opinion is based on the officer's traverse of the creditor's affidavit. *See Harp*, 255 Ga. at 43 ("We are not called upon to decide whether the city had standing to raise the defense of O.C.G.A. § 18-4-21 because after the city

Similarly, in *Tate v. Burns*, a debtor challenged a garnishment action by filing a traverse of the creditor's affidavit. 172 Ga. App. 688 (1984). Thereafter, a hearing was conducted on the traverse wherein the debtor raised the applicability of O.C.G.A. § 9-11-62 (a), which provides that a judgment creditor may not take action to collect on a judgment until ten days after entry of the judgment. Finally, in *Landmark Capital Investments, Inc. v. Savannah Nephrology*, a defendant in garnishment challenged an affidavit of garnishment by way of traverse alleging that Georgia's post-judgment garnishment procedure is unconstitutional. All three of the above-discussed cases reiterate and support the State's previous argument that a debtor may challenge a garnishment action by filing a traverse of the creditor's affidavit pursuant to O.C.G.A. § 18-4-93, and thereby be entitled to hearing within ten days.⁴

answered the garnishment petition Winkles filed a traverse to the plaintiff's affidavit and raised the code section himself.”).

⁴ O.C.G.A. § 18-4-93 provides in pertinent part: “Upon the filing of the defendant's traverse, and at the defendant's application therefor, a judge of the court in which the case is pending shall order a hearing to be held not more than ten days from the date the traverse is filed.”

2. The claim procedure set forth in O.C.G.A. § 18-4-95 provides an expeditious procedure for debtors to claim exemptions in a post-judgment garnishment action, which entitled them to a hearing within 10 days.

In its September 8, 2015 Order, this Court also rejected the State's argument that the claim procedure set forth in O.C.G.A. § 18-4-95 constitutes an adequate remedy for debtors to resolve exemption claims. (Order, pg. 45). Relying on the complex process laid out by the Georgia Court of Appeals in *Terrell v. Fuller*, 160 Ga. App 56 (1981), this Court determined that the claim procedure does not provide for a sufficiently expeditious process for resolving exemption claims. (Order, pp. 44-45). In *Terrell*, the court held that in order for a debtor to resolve a claim of exemption, he or she must engage in a two-step process. According to the court in *Terrell*, the debtor must first assert a claim under O.C.G.A. § 18-4-95. After doing so, the debtor must wait for the garnishee to file an answer, which the debtor may not receive notice of, and then traverse the answer of the garnishee. O.C.G.A. § 18-4-85. This Court determined that the process laid out in *Terrell* was insufficient, as it exceeded the constitutional time limit to resolve exemption claims. (Order, pg. 45). This Court reasoned that the debtor must wait upwards of 45 days to traverse the garnishee's answer, and after waiting for such an extended period of time, there is no statutory requirement that the court conduct an expedited hearing on the matter. (Order, pp. 44-45).

However, in a case decided after *Terrell*, not previously brought to this Court's attention, the Georgia Court of Appeals appears to have abandoned the two-step requirement laid out in *Terrell*. In *A.M. Buckler & Associates, Inc. v. Sanders*, the Court of Appeals recognized that “[i]f a defendant or other claimant files a *traverse or adverse claim* in a garnishment proceeding, the trial court must conduct an evidentiary hearing to determine the rights of the parties to the money or other property at issue.” 305 Ga. App. 704, 705 (2010) (emphasis added). As authority for this proposition, the Court of Appeals cited O.C.G.A. § 18-4-93, which is the mandatory hearing provision related to defendant's traverse of an affidavit of garnishment. *Id.* This code section expressly mandates that a hearing must be held within ten days. O.C.G.A. § 18-4-93. Therefore, according to the Georgia Court of Appeals' opinion in *Buckler*, the ten-day hearing requirement set forth in O.C.G.A. § 18-4-93 is triggered when a debtor files a traverse of the creditor's affidavit or when the debtor files a claim pursuant to O.C.G.A. § 18-4-95.

In *Buckler*, a golf supplier obtained a judgment against a corporation, and subsequently filed a garnishment action against a garnishee to collect on the judgment. 305 Ga. App. at 706. The garnishee answered and deposited funds it owed to the corporation into the court registry. *Id.* A sole proprietorship related to

the corporation filed a traverse to the creditor's affidavit seeking to become a party to the garnishment action, and subsequently filed a claim to the garnished funds under O.C.G.A. § 18-4-95. *Id.* at 707. The trial court granted the traverse and claim filed by the sole proprietorship. *Id.* The corporation appealed, arguing, among other things, that the claim filed by the sole proprietorship was untimely. *Id.* at 709. The corporation relied on O.C.G.A. § 18-4-85, which provides the procedure for traverse of the garnishee's answer within fifteen days after the answer is served. The corporation argued that because the sole proprietorship failed to file a claim within fifteen days of the garnishee's answer, the claim was not properly before the court and should not have been granted. *Id.*

The Court of Appeals rejected this argument and held that because the sole proprietorship was not yet a party to the garnishment action when the garnishee filed its answer, O.C.G.A. § 18-4-85 did not apply. *Id.* Rather, the applicable code section was the claim procedure found in O.C.G.A. § 18-4-95, which provides that "[a]t any time before judgment is entered on the garnishee's answer or money or other property subject to garnishment is distributed, any person may file a claim in writing under oath stating that he has a claim superior to that of the plaintiff to the money or other property in the hands of the garnishee subject to the process of

garnishment," and, upon the filing of such a claim, "the claimant shall [become] a party to all further proceedings upon the garnishment." *Id.*

Conspicuously absent from the Court's opinion in *Buckler*, is any mention of the two-step process discussed in *Terrell*, which required a debtor to file both a claim under O.C.G.A. § 18-4-95 and then traverse the garnishee's answer under O.C.G.A. § 18-4-86 in order to assert an exemption claim. Therefore, the most current, and correct, statement of the law, according to the Georgia Court of Appeals, is that a defendant in garnishment need only file a claim under O.C.G.A. § 18-4-95 in order to assert an exemption from garnishment. After filing said claim, the debtor is entitled to a hearing on the matter within ten days. *See Buckler*, 305 Ga. App. at 705. Certainly, this ten-day time period satisfies the various views of promptness of the circuit courts cited by the parties in this case. *See Brown v. Liberty Loan Corp.*, 539 F. 2d 1355, 1368 (1976) (observing that due process does not require an immediate hearing on an exemption issue and found that two weeks was sufficient). *Finberg v. Sullivan*, 634 F.2d 50, 59 (1980) (found fifteen days to be too long to withstand constitutional scrutiny). Therefore, both the claim procedure under O.C.G.A. § 18-4-95 and the traverse procedure under O.C.G.A. § 18-4-65 unequivocally meet the due process requirements of the Fourteenth Amendment.

3. A debtor in a garnishment action may move to dismiss the garnishment under the Georgia Civil Practice Act.

In addition to the procedures to claim exemptions contained in O.C.G.A. § 18-4-93 and O.C.G.A. § 18-4-95, a debtor may also challenge a garnishment action by filing a motion to dismiss pursuant to the Georgia Civil Practice Act. “The Civil Practice Act . . . applies in garnishment proceedings except as otherwise provided in Title 18, Chapter 4 of the Code, the provisions of which specifically govern such proceedings.” *Lewis v. Capital Bank*, 311 Ga. App. 795 (2011) (quotations omitted). It follows that a debtor in a garnishment action who asserts that an exemption applies, may move to dismiss the action on the basis that the court lacks jurisdiction over the debtor’s exempt property.⁵ In *Birchfield v. Birchfield*, 165 Ga. App. 101 (1983), the debtor did just that. In *Birchfield*, an ex-wife initiated a continuing garnishment action seeking to recover on a default judgment for an arrearage of child support and alimony. 165 Ga. App. at 101. The garnishee, a military finance center, filed an answer to the action and deposited certain sums into the registry of the court. *Id.* The husband/debtor filed a motion to dismiss the

⁵ Prior to filing motion to dismiss, the debtor would have to become a party to the garnishment action pursuant to O.C.G.A. § 18-4-93.

garnishment action for lack of jurisdiction over his person and property. The debtor argued that the trial court lacked a res sufficient to confer jurisdiction, as the garnished funds were exempt from garnishment pursuant to O.C.G. A. § 18-4-22, because they were the benefits of a retirement plan that never reached the debtor. The trial court granted the debtor's motion and dismissed the garnishment. The Georgia Court of Appeals affirmed the trial court's dismissal, reasoning that because the only property that the garnishment action attempted to levy, was exempt from garnishment, the trial court lacked jurisdiction. *Id.* at 102.

In the instant case, Plaintiff could have moved to dismiss the garnishment action on the basis that the State Court of Gwinnett County lacked jurisdiction to hear the case. Plaintiff could have argued, like the debtor in *Birchfield*, that the court lacked a res sufficient to confer jurisdiction upon the court, as workers' compensation benefits, the garnished funds were exempt from garnishment pursuant under O.C.G.A. § 34-9-84. Thus, like the procedures to claim exemptions contained in O.C.G.A. § 18-4-93 and O.C.G.A. § 18-4-95, filing a motion to dismiss the garnishment action is another expeditious procedure debtors may utilize to claim exemptions in a post-judgment garnishment action. Further, should a debtor choose to elect this method of raising exemptions, the court can order that the debtor be provided with a hearing within 10 days.

C. The Court's Order should not apply to commercial garnishments, continuing wage garnishments, or child support garnishments

In addition to altering or amending its Order declaring that Georgia's post-judgment garnishment statute provides a constitutionally sufficient mechanism for debtors to claim exemptions, the State also requests that this Court alter or amend its Order in such a manner as to limit the scope and application of the Order to garnishment proceedings filed against a financial institution holding a judgment debtor's property under a deposit agreement or account. Further, the State requests that this Court alter or amend its Order to specifically exempt from the Order's scope and coverage, commercial garnishments, continuing wage garnishments and child support garnishments.

The case brought by Plaintiff involved a bank garnishment filed pursuant to O.C.G.A. § 18-4-60 *et seq.* The judgment creditor in this case sought to collect on its judgment by garnishing the funds in Mr. Strickland's account with J.P. Morgan Chase Bank. In addition to a bank garnishment action, like the action involved in this case, Georgia law also provides for a number of other garnishment actions that were not addressed by the Court's Order.

For example, this Court's Order did not address continuing wage garnishments, which are garnishment actions against a judgment debtor's employer, whereby a portion of the judgment debtor's wages are paid into court in order to satisfy the judgment. *See* O.C.G.A. §§18-4-110 *et seq.* Likewise, the Order did not address child support garnishment actions, whereby the creditor seeks to garnish the wages of the debtor to collect outstanding child support obligations. *See* O.C.G.A. §§18-4-130 *et seq.* Georgia law provides strict guidelines in wage and child support garnishments to protect debtors, which dictate the percentage of the debtors' income that may be garnished. Further, commercial garnishments, whereby a creditor seeks garnish the funds of a corporate or institutional debtor, were not addressed by this Court's Order. Unlike individual debtors, like Plaintiff, corporate and institutional debtors do not have statutory exemptions.

This Court's Order does not apply to commercial, continuing wage, or child support garnishment actions for at least two reasons. First, Plaintiff lacks standing to challenge the statutes implicated by these other types of garnishment actions, because he did not allege that a continuing wage or child support garnishment action was filed against his employer, nor is he a corporate or institutional debtor. Second, the parties did not address, and this Court did not consider, the type of exemptions and the notice and hearing procedures that apply to continuing wage

and child support garnishment proceedings. Having never considered the terms of those statutory provisions, the Court should make it clear that no injunction has been issued against those two types of post-judgment garnishment proceedings, and that O.C.G.A. §§18-4-110 and 18-4-130 et seq. have not been declared unconstitutional. Further, summons of garnishment may be issued to corporate or institutional debtors without raising the same due process concerns as would issuance of such summons to individual debtors such as Plaintiff. Therefore, this Court should also make it clear that no injunction has been issued to prohibit commercial garnishment actions.

CONCLUSION

The State of Georgia respectfully requests that this Court reexamine and modify its order by declaring that Georgia's post-judgment garnishment statute meets constitutional muster as the statute provides a prompt mechanism to claim exemptions to garnishment and obtain the return of any wrongfully garnished exempt property.

This 25th day of September, 2015.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as approved by the Court in L.R. 5.1.C, and comports with the page limitations of L.R. 7.1(D).

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing STATE OF GEORGIA'S MOTION TO ALTER OR AMEND JUDGMENT AND SUPPORTING BRIEF, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States mail, properly addressed upon:

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This 25th day of September, 2015.

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