

STATE OF MICHIGAN
COURT OF APPEALS

AMERIBANK,

Plaintiff-Appellant,

v

VICKI BUFORD,

Defendant-Appellee.

UNPUBLISHED

May 11, 2001

No. 222186

Muskegon Circuit Court

LC No. 99-039299-AV

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the circuit court's affirmance of the district court's order prohibiting garnishment of defendant's state income tax refund. We reverse.

On October 3, 1998, plaintiff, a judgment creditor of defendant, filed with the district court a request for a writ of garnishment of defendant's state income tax refund. The deputy court clerk issued the writ of garnishment on October 13, 1998, and it was received by the Financial Operations Division of the Michigan State Department of Treasury on November 4, 1998. In January 1999, the district court entered an order allowing defendant to make monthly installment payments on the judgment. Thereafter, defendant received notice of the writ of garnishment and filed a motion to prevent garnishment of her income tax refund.

Defendant argued that her income tax refund is not subject to garnishment. Defendant maintained that her income tax refund consists of an excessive withholding of her wages, and therefore is exempt from garnishment pursuant to MCL 600.6231; MSA 27A.6231, which prohibits the garnishment of "any money due or to become due for the personal work and labor of the defendant" upon the court's entry of the installment payment order. The district court agreed and ruled that defendant's income tax return was exempt from garnishment pursuant to MCL 600.6231; MSA 27A.6231. The circuit court affirmed.

On appeal, plaintiff contends that the installment payment order does not preclude garnishment of defendant's income tax refund. Plaintiff's argument is premised on MCL 600.6231; MSA 27A.6231. Defendant argues that the statute should be interpreted to protect her income tax refund from garnishment because the refund reflects money due for defendant's personal work and labor. The statute is silent with regard to garnishment of an income tax refund, nor does the statute define "money due . . . for the personal work and labor of the

defendant[.]” Although not cited by plaintiff nor raised below, defendant also discusses the applicability of MCR 3.101(N)(1), which addresses the effect of installment payments upon garnishment after judgment, and argues that it does not apply to the facts of this case. The interpretation and application of court rules and statutes present a question of law that is reviewed de novo. *Colista v Thomas*, 241 Mich App 529, 535; 616 NW2d 249 (2000).

The district court and the circuit court unnecessarily engaged in statutory interpretation of MCL 600.6231; MSA 27A.6231 to determine whether an income tax refund constituted money due for work or labor such that its garnishment is prohibited. We conclude that MCR 3.101(N)(1) is controlling and dispositive of this issue. The court rule provides:

An order for installment payments under MCL 600.6201 et seq.; MSA 27A.6201 et seq. suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the garnishee. *An order for installment payments does not suspend the effectiveness of a writ of garnishment of nonperiodic payments or of an income tax refund or credit.* [MCR 3.101(N)(1) (emphasis added).]

Pursuant to this rule, the entry of the order for installment payments in this case did not suspend the effectiveness of the writ of garnishment of defendant’s income tax refund. MCR 3.101(N)(1). See also, *Meyer Jewelry Co v Johnson*, 229 Mich App 177, 180-181; 581 NW2d 734 (1998). Accordingly, the district court and the circuit court erred in determining that defendant’s income tax refund is not subject to garnishment.

Reversed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Jane E. Markey