

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY HARMON TRUAX,
Plaintiff-Appellee,

UNPUBLISHED
March 17, 2011

v

CARYN MARIE LOEFFLER-TRUAX,
Defendant-Appellant.

No. 294837
Bay Circuit Court
LC No. 07-007124-DM

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order granting plaintiff a creditor's lien on a worker's compensation claim filed by defendant. We reverse and remand.

The parties were divorced pursuant to a judgment entered May 2, 2008. Plaintiff was ordered to pay child and spousal support to defendant. Defendant was awarded a 2007 Ford Fusion automobile, subject to all debts and free and clear of any claim from plaintiff. The parties had financed the vehicle jointly and the divorce judgment provided that defendant was to assume all indebtedness on the vehicle and to hold plaintiff harmless. Defendant was to make good faith attempts to refinance to remove plaintiff's name from the loan. Until the refinancing, defendant was required to make all payments in a timely fashion. If she became two months behind in the payments, plaintiff was entitled to take possession of the vehicle with 14 days' written notice. The judgment of divorce also stated that if plaintiff took possession, defendant would be entitled to "whatever equity she has in the vehicle subject to any charges or costs associated with any untimely payments." The judgment did not include a provision regarding what was to happen if plaintiff had any other out-of-pocket expenses associated with the vehicle, such as storage, towing, or repairs.

Defendant did not make any payments on the car or successfully refinance the loan, and plaintiff moved to enforce the judgment. On September 22, 2008, the trial court entered an order granting plaintiff immediate and exclusive possession of the vehicle. The order required plaintiff to provide defendant with notification of the sale and sale price three days before completion of a sale. Plaintiff negotiated a sale with Hagen Ford, but defendant objected to the terms. The sale was not completed and Ford Motor Credit Company demanded that plaintiff surrender the vehicle. Ford Motor Credit sold the vehicle and assessed the parties a deficiency of \$8,421.02. Plaintiff moved for a monetary judgment against defendant. On June 22, 2009, the court entered

a judgment in favor of plaintiff in the amount of \$12,863.27. This amount included the loan deficiency as well as \$4,442.25 for attorney fees, costs, tires, and mileage.

Plaintiff discovered that defendant had filed a worker's compensation claim based on a fall outside her work place in January 2009. On July 13, 2009, plaintiff filed a petition for a lien on defendant's worker's compensation benefits. The circuit court heard argument on the petition on August 10, 2009 and September 16, 2009. In an October 8, 2009 order, the court granted plaintiff a lien in the amount of \$12,863.27, plus 3.7% interest, on any worker's compensation award, settlement, voluntary payment, or redemption of defendant. The lien amount was to be modified by spousal support offsets entered by the court.¹

On appeal, defendant argues that her worker's compensation claim arises from an injury that occurred after the divorce was final and, thus, is not a marital asset. She further contends that the debt on the vehicle is not spousal support or child support; it is a civil debt and, thus, the exclusion of MCL 418.821 applies to prevent the lien.

We review de novo a trial court's decision involving statutory interpretation. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). MCL 418.821(1) provides in relevant part, "[a] payment under this act shall not be assignable or subject to attachment or garnishment or be held liable in any way for a debt." The statute does not provide a definition of "debt." We hold that the trial court erred in concluding that caselaw allowed it to place a lien on defendant's worker's compensation award for this purpose.

Although this Court has held that "payments ordered by a judgment of divorce are not 'debts' as that term is used in the Workmen's Compensation Act," *Hagen v Hagen*, 202 Mich App 254, 259; 508 NW2d 196 (1993), quoting *Petrie v Petrie*, 41 Mich App 80, 82; 199 NW2d 673 (1972), those cases concerned support and alimony payments, rather than property settlements. In *Petrie*, the Court found that the lien could be applied for support payments, but that it could not be applied to an attorney fee award, which was in effect a civil debt. *Petrie*, 41 Mich App at 84.

In the present case, the judgment of divorce did not order plaintiff to pay defendant the outstanding debt amount; that was entered in a separate judgment. The judgment of divorce also did not provide for such a payment if defendant owed plaintiff a debt related to the vehicle, except for an offset of defendant's equity for "any charges or costs associated with untimely payments." In *Hagen*, this Court explained the principle behind allowing liens on worker's compensation awards for the purposes of support: "It would indeed be a queer inversion of statutory construction to hold that an act passed for the benefit of a workman and his dependents

¹ Although the lien order references the trial court's order awarding offsets against spousal support and the trial court's statement on the record that it was granting the lien occurred at the alimony offset hearing, defendant has not appealed that order and nothing in this opinion shall be read to affect its validity.

places the amounts paid under an award of the commission beyond the reach of the dependents it is supposed to help support.” *Hagen*, 202 Mich App at 260, quoting *Petrie*, 41 Mich App at 83. Plaintiff is not defendant’s dependent. The loan on the vehicle was a civil debt, incurred by the parties when they were married. Similarly, the attorney fees and other expenses adding to the judgment amount are neither support, nor were they payments ordered by a judgment of divorce. Consequently, MCL 418.821 precludes the imposition of a lien on defendant’s award for this purpose.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro

/s/ Joel P. Hoekstra

/s/ Michael J. Talbot