

No. A09-349

STATE OF MINNESOTA
IN SUPREME COURT

GORDON WILLIAM ANGELL
Appellant,

vs.

LORETTA MARIE ANGELL
Respondent.

APPELLANT'S RESPONSIVE BRIEF

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I. PREEMPTION AND FAMILY SUPPORT OBLIGATIONS:

No Minnesota precedent has been established for this type of case. The U.S. Supreme Court has established that federal anti-attachment provisions do not preempt state domestic relations laws involving family support obligations. (App. Brief pg 14-23). **That is the situation here.** Gordon Angell's whole argument is that the divorce decree creates a family support obligation (i.e. a legal duty imposed by law) by awarding non-marital funds to prevent an undue hardship under Minn. Stat. §518.58 subd. 2. Therefore, under established U.S. Supreme Court precedence, the support award made to Gordon Angell is not preempted by federal law.

When Congress enacted the anti-attachment provisions that apply to the Servicemembers' Group Life Insurance Act (SGLI) payments and the death gratuity payments, Congress clearly stated that such payments should be treated as any other veteran's benefit were treated. (App. Brief, pg 12, 23). Case law from the United States Supreme Court holds that these anti-attachment provisions do not apply to family support obligations. (App. Brief, pg 14-23).

SGLI proceeds and death gratuity payments are not periodic in nature and are not veteran's disability payments. But simply because the payments are not 'periodic' is not determinative of whether federal law preempts state law. What controls is two fold: (1) the type of benefit involved in the case, i.e. a federal benefit protected by anti-attachment provisions; and (2) the reason the claimant is seeking a portion of it, i.e. a claim of ownership of property versus a claim of family support. Case law makes it clear that other veteran's benefits, such as disability benefits, are not exempt from family support obligations. In addition, when Congress enacted the anti-attachment provision of SGLIA,

Congress was clear that these benefits were being provided to benefit the deceased member's family, and that those benefits were to be treated just like any other veteran benefit when it comes to the anti-attachment provision. (App. Brief pg 12 and 23); *See Rose*, 481 U.S. 619 (1987); *Schwagel v. Ward*, 2007 WL 2600747 (Minn. App. Sept. 11, 2007) (No. A06-1812); *Schlaefel v. Schlaefel*, 112 F.2d 117 (D.C. Cir., 1940); *See Wissner v. Wissner*, 338 U.S. 655 (1950); and *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979).

II. STATUTORY CONSTRUCTION: MINN. STAT. §518.58, SUBD. 2

Minnesota has three types of family support obligations. The most common forms of support are child support and spousal maintenance; however, Minn. Stat. §518.58 subd 2 creates a *unique third form of support*. This statute may *look* like a property division because the statute's subdivision is labeled "Award of non-marital property;" but the statute's subdivision label has no substantive meaning, it is the plain language of the statute itself that controls. *See Landreth Timber Co. v. Landreth*, 471 U.S. 681 (1985) (stating that the starting point in every case involving construction of a statute is the language itself); *Occhino v. Grover*, 640 N.W.2d 357 (Minn. App. 2002) (stating that the plain meaning is drawn from the full act context of the statutory provision); and *Christensen v. Dep't of Conservation, Game & Fish*, 285 Minn. 493 (1970) (observing that statutes must be read as a whole and that the meaning should be ascertained by context). The clear and plain language of Minn. Stat. §518.58 indicates that the statute creates a family support obligation. Just because an award of non-marital funds awards 'property' does not mean the Court's action is a property division. For example, a Court ordering child support or alimony is essentially awarding 'property' (i.e money) but is

clearly not a property division under the law- it's a family support obligation. The same is true for an award under the hardship rule, as is the case here.

A reading of the plain language of the hardship rule statute in its entirety, and not a piecemeal reading, is what proves this statute is one of a family support obligation. The 'hardship rule', Minn. Stat. §518.58, subd. 2, provides:

If the court finds that either spouse's resources or property, including the spouse's portion of the marital property...are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property under section 518.003, subd. b, clauses (a) to (d), to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

First, when the Court apportions property to a spouse under this statute, the Court must consider the spouse's portion of the marital property divided in the divorce proceeding. Therefore, the division of property – the mere dissolving of the business-like relationship—has already occurred by the time the Court considers the unfair hardship rule. Case law cited in the briefs concludes that federal law will not prevail when the statute involves an obligation beyond dissolving the business-like relationship of a marriage. *Rose*, 481 U.S. 619 (1987); *See Wetmore v. Markoe*, 196 U.S. 68 (1904); *Schwagel v. Ward*, 2007 WL 2600747 (Minn. App. Sept. 11, 2007) (No. A06-1812); *Schlaefer v. Schlaefer*, 112 F.2d 117 (D.C. Cir., 1940); *See Wissner v. Wissner*, 338 U.S. 655 (1950); and *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979).

Second, under the hardship rule, the Court apportions non-marital property. Non-marital property is property that is normally not subject to divorce proceedings – it is

outside of the marriage. It is property to which one spouse has absolutely no legal right or ownership, and to which the Court has no authority to distribute in a dissolution proceeding- unless the Court applies the unfair hardship rule. The only legal duty one spouse owes to another that survives outside of the marriage relationship is a legal duty of support imposed by law. *See* Minn. Stat. §518C.101 (c); *See Warner v. Warner*, 219 Minn. 59 (1945) (stating that an alimony is a substitute for one spouse's legal duty to support the other spouse that continues after the dissolution of the marriage.)

Third, the Court applies the unfair hardship rule on the receiving spouse, i.e. it avoids placing a party in situation where that party cannot support themselves. Under the unfair hardship statute, the Court must considering factors to determine whether that party is able to adequately support themselves. If the Court determines that the party cannot provide his or her own support, the unfair hardship rule allows the Court to reach into non-marital property to ensure that the other party can support himself and does not become a public burden. In other words, the statute allows the Court to impose a legal duty of an obligor spouse to support the obligee spouse because the obligee cannot support themselves. The statute imposes that legal duty by allowing the Court to apportion the obligor's non-marital property to support the obligee. By the plain language of the statute, it is clear that this statute is a family support obligation and not a mere division of property.

Respondent's brief mentions that the payment is not a periodic payment. Nowhere in Minnesota law does it state that support obligations must be 'periodic'. In fact, the definition of income includes "earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law

of this state.” (emphasis added) Minn. Stat. §518C.101(e). Gordon Angell was awarded a portion of non-marital property (“any other property”) under the unfair hardship rule. In making this award the trial court created this non-marital property to be subject to withholding for support under Minnesota law. There is no statute requiring that support obligations come in the form of a periodic payment.

II. LEGAL DUTY OF SUPPORT:

A duty of support is an “obligation imposed or imposable by law to provide support for a child, spouse, or former spouse.” Minn. Stat. §518C.101. A divorce decree granting an award of support to a former spouse evidences a legal duty of support. *See Wetmore v. Markoe*, 196 U.S. 68 (1904). The divorce decree ordering support does not evidence a debt owed; rather, the divorce decree evidences a legal duty of support imposed by law that survives after the marriage has been dissolved. *See, id.* Gordon Angell was awarded a portion of Loretta Angell’s non-marital property under Minn. Stat. §518.58, subd. 2. The divorce decree clearly grants Gordon Angell this award. (See App. Brief App. A1-A8). Minn. Stat. §518.58 subd. 2 is a support obligation imposed by law. Therefore, Loretta Angell owes Gordon Angell a legal duty of support that continues beyond the dissolution of the marriage.

It is true that Gordon Angell was not seeking alimony at trial. However, this case is not a question of ‘spousal maintenance’. It is a case of ‘unfair hardship’. It is clear that this matter went to trial because Gordon Angell believed that he had a legal right to the funds his son left his family after his son’s tragic death in Iraq, based on the unfair hardship rule. Gordon Angell has never wavered from that position, and the trial court agreed.

Further, the Appellant never stipulated to divest the court of jurisdiction to modify the award of maintenance as required under *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989) (superseded by statute); and under *Loo v. Loo*, 520 N.W.2d 740 (Minn. 1994), and now Minnesota law (§518.552 subd. 5). Further, the trial court never made the specific findings required under Minnesota law. Therefore, the trial court still retains jurisdiction over spousal maintenance.

This Court needs to clarify that the funds awarded by the trial court are ‘support’ funds in nature, not a ‘property division.’ If this Court rules that the funds are a family support obligation, then those funds are not protected by federal anti-attachment statutes and affirming the trial court’s award to Gordon Angell is appropriate.

CONCLUSION

Minn. Stat. §518.58, subd. 2 creates a support obligation. Gordon Angell was awarded \$150,000 under this provision in a decree of the court; therefore, a legal duty of support is owed to him by Loretta Angell. Federal anti-attachment provisions do not preempt state domestic relations law when those laws involve an obligation of support. The court should affirm the district courts award of these funds to Gordon Angell.

Respectfully submitted,



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