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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0313

In re the Marriage of:
James Richard Huntsman, petitioner,
Appellant,

vs.

Zenith Annette Huntsman, f/k/a Zenith Annette Morgan,
Respondent,
and
County of Washington, intervenor,
Respondent.

Filed January 20, 2009
Affirmed in part, reversed in part, and remanded
Stoneburner, Judge

Washington County District Court
File No. 82F798002231

James R. Huntsman, 2570 Moundsview Drive, Mounds View, MN 55112-4110 (pro se appellant)

Brad C. Eggen, 1100 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55401 (for respondent)

Doug Johnson, Washington County Attorney, Maura J. Shuttleworth, Assistant County Attorney, 14949 62nd Street North, Box 6, Stillwater, MN 55082-0006 (for respondent/intervenor)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant, in this most recent of several appeals, challenges the district court's denial of his motion to vacate respondent county's income-withholding order, and, alternatively, to require withholding of health-insurance premiums. We affirm the district court's denial of the motion to vacate the income-withholding order. But we reverse the district court's denial of the alternative motion to require withholding of health-insurance premiums that are designated as maintenance, and remand to the district court with instructions to order county to withhold the full amount of court-ordered maintenance.

FACTS

The marriage of appellant James Huntsman (husband) and respondent Zenith Huntsman (wife) was dissolved in 2000 by a judgment that required husband to pay child support and spousal maintenance. Husband's maintenance obligation specifically included health-insurance premiums for wife. Shortly after the judgment was entered, wife applied to the Minnesota Department of Human Services for support and collection services, administered by respondent Washington County (county). Wife's application reflects that she requested "[f]ull [s]ervices," including enforcement and collection of child support, spousal maintenance, and medical support.

Based on wife's application, county issued an income-withholding order to collect all of husband's support obligations. Husband moved to vacate the order on various grounds. The district court denied the motion, and husband appealed. Husband's child-

support obligation ended while this matter was on appeal. For a time, county continued to withhold husband's maintenance obligation, including insurance premiums, without imposing a collection fee, but while the appeal was pending, county withdrew the income-withholding order.

This court subsequently affirmed the district court's denial of husband's motion to vacate the withholding order. This court specifically rejected husband's challenge to county's standing and authority to continue to withhold his maintenance obligation from his income after his child-support obligation ended.[1]

After the decision was final, county issued an amended income-withholding order to collect only husband's maintenance obligation excluding amounts for health-insurance premiums (the July 2007 income-withholding order). The July 2007 income-withholding order imposed a $15 monthly service fee.

Husband moved to vacate the July 2007 income-withholding order. The district court denied the motion, and this appeal followed.

D E C I S I O N

I. Relevant statutory framework for income withholding

Every support order is subject to income withholding from the income of the obligor. *See* Minn. Stat. § 518A.53, subd. 3 (2008). On application of either party, the applicable public authority must withhold "the full amount of the support order . . . from the income of the obligor . . . ." *Id.*

[1] *Huntsman v. Huntsman*, No. A06-1064, 2007 WL 1815757 (Minn. App. June 26, 2007) (*Huntsman VI*).

Minnesota law provides for "[i]ncome withholding only services " and "IV-D case" withholding. *See* Minn. Stat. § 518A.26, subd. 9 (2008) (defining "income withholding only services" as collection by public authority of support-order payments without enforcement services provided in IV-D cases) and Minn. Stat. § 518A.26, subd. 10 (defining "IV-D case" as, in relevant part, a case where a party has applied for services under title IV-D of the Social Security Act, 42 U.S.C. § 654(4)). Collection of a maintenance obligation only is not a IV-D case. Minn. Stat. § 518A.26, subds. 9, 10. When an applicant requests "full services," as wife did in this case, county classifies the case as IV-D. No monthly service fee is imposed on IV-D cases, but a $15 service fee must be charged to the obligor for income-withholding-only services. Minn. Stat. § 518A.53, subd. 4(c) (2008).

II. Claim preclusion

Husband argues that any standing and authority that county had to withhold income in this case ended when his child-support obligation ended. County asserts that these claims are barred by the res judicata effect of *Huntsman VI*, in which this court rejected husband's identical argument that once his child-support obligation ended, county lost intervenor status resulting from the IV-D case and lost authority to impose income withholding for maintenance only.

The doctrine of res judicata bars claims that were litigated as well as issues that could have been litigated when: (1) the earlier claim involved the same set of factual circumstances as the current claim; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; and (4) the estopped party had a full

and fair opportunity to litigate the matter. *Nelson v. Short-Elliot-Hendrickson, Inc.*, 716 N.W.2d 394, 398 (Minn. App. 2006), *review denied* (Minn. Sept. 19, 2006).

Here, the element of claim identity for purposes of res judiciata is met because husband's challenges to county's standing and authority asserted in *Huntsman VI* and in this action are identical. Additionally, the parties in both actions are identical, *Huntsman VI* was not appealed and therefore constituted a final judgment on the merits,[2] and husband had a full and fair opportunity in *Huntsman VI* to litigate county's standing and authority to withhold income for maintenance only. Therefore, all of the elements of res judicata are met. We conclude that husband's current challenges to county's standing and authority to withhold income for his ongoing maintenance obligation are barred by the doctrine of res judicata.[3]

II. County's authority to impose $15 service fee

County acknowledges that husband's challenge to county's authority to impose the $15 service fee provided for in Minn. Stat. § 518A.53, subd. 4(c), is not barred by the doctrine of res judicata because county was not assessing the fee under its IV-D withholding order, therefore the issue was not litigated in *Huntsman VI*.[4]

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[2] In his reply brief, husband ignores the finality of this court's opinion in *Huntsman VI* and mistakenly focuses on the district court's orders, arguing that those orders were not final orders.

[3] The doctrine of law of the case also precludes husband's relitigation of the same issues decided in *Huntsman VI*. In general, the law-of-the-case doctrine requires that when a court has decided an issue, "that decision should continue to govern the same issues in subsequent stages in the same case." *Kornberg v. Kornberg*, 525 N.W.2d 14, 18 (Minn. App. 1994), *aff'd*, 542 N.W.2d 379 (Minn. 1996) (quotation and emphasis omitted).

[4] At the time of *Huntsman VI*, county was withholding income as a residual of its IV-D authority that does not require a service fee.

Husband acknowledges that if wife applied for income-withholding-only services, county would be required to impose the service fee, but he disputes county's authority to automatically convert wife's application for "[f]ull [s]ervices" to withholding-only services on termination of husband's child-support obligation. Husband argues that wife must reapply for withholding-only services before county can impose the service fee.

County correctly notes that there is no statutory support for husband's argument that wife must reapply for services. It is county's practice to automatically convert a case from a IV-D full-service case to a maintenance-obligation-withholding-only case by sending out an amended notice and income-withholding order as was done in this case.[5]

Minn. Stat. § 518A.53, subd. 3, requires income withholding of the full amount of court-ordered support on application for either IV-D services or for income-withholding-only services, and does not require a party to reapply for income-withholding-only services when the party has already applied for full services. *See* Minn. Stat. § 518A.50(b) (2008) (stating that "all payments ordered for maintenance or support . . . so long as the obligee . . . has applied for child support *or* maintenance collections services" shall be submitted to the public authority). (Emphasis added.) As county notes, an obligee might not be aware that a case has ceased to be a IV-D case, for example, when child-support arrearages have been paid in full. And county is not required by statute to give notice to the parties of a change from IV-D status to income-

[5] County asserts that the gap in this case between withdrawal of the IV-D order and issuance of the income-withholding-only order was due to the effect of husband's supersedeas bond which stayed enforcement action until husband's prior appeal was final.

withholding-only status. Based on the statutory scheme for income withholding, we find no merit in husband's claim that wife was obligated to reapply for income-withholding-only services before county could convert the case from IV-D to income-withholding only and impose the $15 service fee required by law.

III. Constitutional challenges

Husband argues that Minn. Stat. §§ 518.68, subd. 2(1), (7) (2008); 518A.50(b); 518A.53, subd. 3; and Minn. R. Civ. P. 24, violate his procedural and substantive due-process rights under the federal and state constitutions. County argues that husband raised a substantially similar argument in his prior appeal, therefore these claims should also be barred by the doctrine of res judiciata. Husband's constitutional challenges are based on his assertion that county failed to meet "conditions prerequisite to the exercise of [its] conditional authority [to withhold income] . . . prior to . . . withholding [husband's] income." Because we have concluded that husband's challenges to county's standing and authority to withhold his income are barred by res judicata and the law-of-the-case doctrine, we conclude that there is no basis for his current constitutional challenges to the withholding statutes.

Additionally, county objects to this court's consideration of husband's constitutional challenges because husband failed to give the required notice to the Office of the Attorney General. *See* Minn. R. Civ. App. P. 144 (providing that when the state is not party to an action, a party challenging the constitutionality of a statute "shall notify the attorney general within time to afford an opportunity to intervene").

Lack of notice to the attorney general is not an absolute bar to this court's consideration of constitutional issues, but we will only consider the constitutionality of statutes as applied, and only if the issues have been adequately raised and considered at the district court and the appellate record is sufficient for review. *See Elwell v. Hennepin County*, 301 Minn. 63, 73, 221 N.W.2d 538, 545 (1974) (holding that failure to serve notice upon the attorney general does not preclude addressing constitutional questions on appeal); *see also Erickson v. Fullerton*, 619 N.W.2d 204, 208–09 (Minn. App. 2000) (recognizing that notice to the attorney general at the district court level is "not an absolute precondition to appellate consideration of important constitutional issues that are adequately briefed," but declining to address the constitutional issue on an insufficient record). In this case, husband challenged only the constitutionality of Minn. R. Civ. P. 24 (intervention) at the district court. We have held that husband's challenge to the county's status as an intervenor is barred, and an additional basis for declining to consider husband's constitutional challenges are his failure to give notice to the attorney general and failure to make an adequate record for appellate review.

Even if we were to reach the merits of husband's constitutional claims, we would conclude that husband has failed to demonstrate that any of these provisions are unconstitutional as applied to him. When considering a procedural due-process challenge, we evaluate the procedure in question by balancing the private interest at stake, the risk that the procedure used will result in erroneous derivation of that private interest, the probable value of additional procedural safeguards, and the state's interest in the procedures provided, including the administrative burden and expense that additional

procedures would require. *In re Conservatorship of Foster*, 547 N.W.2d 81, 85 (Minn. 1996). Here, the state has a continuing interest in assuring that wife receives timely support to limit the possibility that she will require unnecessary public assistance. Husband has been in arrears with support payments prior to the implementation of income withholding, giving the state a valid interest in income withholding that outweighs husband's asserted concern that income withholding carries a stigma akin to garnishment proceedings.

Husband also argues that his right to equal protection under the federal and state constitutions is violated by the imposition of the $15 service fee. As discussed above, because this issue was not raised in the district court, we need not consider it. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court will generally not consider matters not argued to and considered by the district court). And husband has not demonstrated how the fee provision applies differently to him than to any other similarly situated obligor. Therefore, even if we reached the issue, husband has failed to show an equal-protection violation.

IV. Withholding of health-insurance premiums designated as maintenance

Husband argues, in the alternative, that if county has standing and authority to withhold income for maintenance, it should be required to withhold the amounts ordered for wife's health-insurance premiums that were specifically designated by the district court to be part of his maintenance obligation. County argues that in non-IV-D cases it is only authorized to withhold spousal maintenance and is not authorized to withhold extraneous payments such as health-insurance premiums. The district court did not

specifically address but implicitly rejected husband's argument by denying "[a]ll other requested relief."

Husband correctly notes that the district court's order of January 14, 2000, and amended order of April 7, 2003, include wife's health-insurance premiums as part of husband's maintenance obligation. Minn. Stat. § 518A.53, subd. 3, provides that "the full amount of the support order must be withheld from the income of the obligor . . ." And county, citing *Gerber v. Gerber*, 714 N.W.2d 702, 704–05 (Minn. 2006), concedes in its brief on appeal that, once a support order has been entered by a court, "[county] simply withholds the ordered amount" and does not have any discretion to vary the amount of withholding. We conclude that county should be required to withhold the entire court-ordered maintenance award that includes the health-insurance premiums.[6] We remand to the district court with instructions to order county to withhold the entire maintenance award, including that portion designated for payment of health-insurance premiums.

Affirmed in part, reversed in part, and remanded.

[6] There is no merit, however, in husband's implied assertion that county's failure to withhold the health-insurance premiums relieves him of the obligation to pay that portion of court-ordered maintenance.