



# THE ENFORCER

BY DAVID FINDLING  
THE FINDLING LAW FIRM

It is always a novel argument when the support payer claims that he should be insulated from paying support due to statutory anti-alienation clauses. There is a valid social policy consideration for anti-alienation clauses; a debtor should not have to lose his social security, ERISA or workman's compensation benefit to his creditors. However, this argument almost always is trumped by the obligation to support your dependents.

Can worker's compensation benefits be reached to fulfill spousal and child support obligations? The answer, at least in Michigan, is yes. Although statutes seemingly clash in this area, the conflict has been decisively addressed by the courts. The Worker's Disability Compensation Act prohibits attaching debts to compensation awards. The pertinent section, MCL §418.821(1), provides:

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...

Conversely, MCL §552.27, which is known well to family law practitioners, allows for the attachment of a lien upon the real and personal property of a payer when spousal or child support is awarded.<sup>1</sup> Both statutes intend to assure that people in need of support receive it. Nevertheless, sometimes a person who needs support (in the form of worker's disability compensation benefits), is also obliged to give support to others. Who prevails?

The leading case is *Petrie v Petrie*, 41 Mich App 80; 199 NW2d 673 (1972). In *Petrie*, the trial court awarded the wife alimony and child support, and attached a lien to the husband's worker's compensation benefits. Mr. Petrie appealed claiming that MCL §418.821 placed the benefits beyond the reach of any liability. The Court of Appeals affirmed, and concluded that there was no real conflict between worker's compensation and support statutes. Relying upon two United States Supreme Court cases, the court reasoned that support obligations are not "debts" as the term is used in the Worker's Disability Compensation Act.<sup>2</sup>

The *Petrie* court also looked at the Michigan Supreme Court's discussion of the legislative intent behind the Worker's

Disability Compensation Act in *Lahti v Fosterling*, 357 Mich 578, 585; 99 NW2d 490, 493 (1959). The Court said that the intent was to place the burden of contributing to the sustenance of an injured employee *and his dependents* on the industry that employs him. This being the case, the court stated,

It would indeed be a queer invasion of statutory construction to hold that an act passed for the benefit of a workman and his dependents places the amounts paid under an award of the Commission beyond the reach of the dependents it is supposed to help support. *Petrie*, pg 83.

After *Petrie*, the rule in Michigan is that spousal and child support obligations are not "debts" as stated within MCL 418.821, and therefore may be attached to worker's compensation awards. Courts have extended the rule beyond alimony and child support orders and have held that worker's compensation awards should be considered a marital asset when splitting up property in a divorce judgment.<sup>3</sup>

The rule is not the same in every state. Some states refuse to allow any support judgment to attach to worker's compensation benefits unless it is expressly provided in the statute. Ohio is one such state. The court looked at the Ohio Worker's Compensation Statute, R.C. 4123.67, in *Kilgore v Kilgore et al*, 5 Ohio App 3d 137; 449 NE2d 802 (1982). The language is similar to the Michigan statute but the court did not allow attachment. It found the term "dependents" within the act meant dependents of an employee *after his death*. Therefore only two classes of people could receive payments: living employees and their dependents after death.

This issue does not just affect the employees and their dependents. Potentially, there are consequences for employers and attorneys in this area. Courts have held against employers which have paid the employee after they had received notice of an order directing the funds to be paid to a receiver. This means that an employer which ignores a court order directing worker's compensation benefits to be paid out to someone other than the disabled employee may have to pay twice.



Even attorneys have been sued for malpractice for failing to place a lien on a worker's compensation award before it was paid out. The Plaintiff in one case claimed that such action was necessary to secure payment of that portion of the compensation awarded to her under the parties' judgment of divorce. The financial obligation in this case was termed "property settlement." The court reasoned that since *Petrie* provides that financial obligations imposed by a judgment of divorce are not debts under MCL §418.821, such obligations may be enforced by placing a lien against the obligor's worker's compensation award. The court found that an attorney of ordinary learning, judgment, or skill would take this action before the award was paid out. *Peterson v Simasko, Simasko, Simasko, PC, et al.*, 228 Mich App 707; 579 NW2d 469 (1998).

### Endnotes

1. MCL §552.27. If alimony or an allowance for the support and education of children is awarded to either party, the amount of the alimony or allowance constitutes a lien upon the real and personal estate of the adverse party as provided in section 25a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.65a. The court may do 1 or more of the following if the party defaults on the payments of the amount awarded:
  - (a) Order the sale of the property against which the lien is adjudged in the same manner and upon the same notice as in suits for the foreclosure of mortgage liens.
  - (b) Award an execution for the collection of the judgment.
  - (c) Order the sequestration of the real and personal estate of either party and may appoint a receiver of the real estate or personal estate, or both, and cause the personal estate and the rents and profits of the real estate to be applied to the payment of the judgment.
  - (d) Award a division between the husband and wife of the real and personal estate of either party or of the husband and wife by joint ownership or right as the court considers equitable and just.
2. See *Audubon v Shufeldt*, 181 US 575; 21 S Ct 735 (1900) and *Wetmore v Markoe*, 196 US 68; 25 S Ct 172 (1904)
3. *Evans v Evans*, 98 Mich App 328; 296 NW2d 248 (1980) and *Hagen v Hagen*, 202 Mich App 254; 508 NW2d 196 (1993)
4. *Allen and City of Detroit v Allen and Friend of the Court*, 141 Mich App 105; 366 NW2d 88 (1985); *In Re Contempt of Cornbelt Beef Corporation*, 164 Mich App 114; 416 NW2d 696 (1987)



**Smith Mediation Center** specializes in providing domestic relations facilitation, mediation and parenting coordination services that efficiently and effectively resolve client issues while accommodating the procedural needs of their attorneys. The Center is designed to provide these services in a timely manner for a reasonable fee.

**BARBARA B. SMITH, J.D.**  
COURT-APPROVED DOMESTIC RELATIONS MEDIATOR

Tel. 248-290-5186 • Fax. 248-646-7224  
31700 Telegraph Road, Suite 250  
Bingham Farms, Michigan 48025

