

STATE OF MICHIGAN

32<sup>ND</sup> CIRCUIT COURT, FAMILY DIVISION

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In the matter of: **ROBBY LAMPART**

case no. 07-87 DL

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**OPINION AND ORDER**

This case is back before the Court on an issue of restitution. The issue centers on whether the Court is barred from seeking restitution from the mother under the Social Security Act. The issue had been previously raised and the Court issued an opinion on April 27, 2011, holding that there was no bar. A copy of that opinion is attached. No appeal was taken from that opinion.

As noted in that opinion, section 207 of the Social Security Act, 42 U.S.C. 407(a) indicates that any payments pursuant to the Act are not “subject to execution, levy, attachment, garnishment or *other legal process.*” (emphasis added) The crux of this case boils down to whether the Court’s action in enforcing a restitution order subject to contempt is “other legal process.” This Court has taken no direct garnishment type action as to the mother’s bank accounts or assets.

Counsel for the mother cites a number of cases which present a sensible argument that the Act’s intention was to protect all Social Security benefits as a safety net. However, the fact remains that all of these cases involve some direct garnishment like process to reach the benefits. None of them are analogous to this situation. United States v. Chorney, 453 Fed Appx 4 (2011), may be the closest since it involves payment of restitution for a federal criminal conviction. That case, however, does not hold the benefits protected but affirms the lower court sentence and allows the Defendant to possibly pursue the restitution issue again in the trial court. It notes that “the point is an obscure one, raised more by case law than statutory language...” and relevant case law does not appear to yield a clearcut answer.” This was this Court’s conclusion in the last opinion, that this appeared to be a case of first impression in Michigan.

In the US Supreme Court case cited, Washington State Department of Social and Health service v. Keffeler, 537 U.S. 371 (2003), the state of Washington was allowed to become a representative payee to capture Social Security benefits for children in its care. The issue turned

on the phrase "other legal process." In his analysis, Justice Souter writing for the Court noted, "The statute, however, uses the term 'other legal process' far more restrictively, for under the established interpretative canons of *noscitur a sociis and ejusdem generis*, 'where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.' ...and ..."other legal process' should be understood to be process much like the processes of execution, levy, attachment and garnishment, and at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability." 537 U.S. at 384-385. As held in the last opinion, this Court has not pursued garnishment or attachment like actions in enforcement.

Besides this narrow analysis, as stated in the last opinion and in open court, the Court cannot reconcile the arguments with a common sense result. That is, how can a Social Security Disability recipient (as opposed to a recipient of SSI, which is minimal and means tested) be exempt when often their income is greater than the working poor who are subject to enforcement. The guidelines promulgated by the collection statute for juvenile courts, MCL 712A.18(6), specifically mention Social Security Disability benefits as income that can be considered. *SEE*, Guidelines for Court Ordered Reimbursement, Michigan Supreme Court, State Court Administrative Office, publication at p. 5. Those guidelines also start collecting SOMETHING on incomes as low as \$100 per week. To allow the exemption argued for would mean that no individual with any court obligation, no speeder, no drunk driver, no felon whose only income was Social Security Disability would ever have to pay restitution or court costs or fines of any nature. That result simply does not make sense.

Therefore, based upon the above analysis, the motion to modify or cancel obligation is again denied. Since Robby is currently in placement and his portion of SSD is being captured by the State, his mother has suffered a reduction in house hold income. The Court will therefore again review the monthly payment status at the next review hearing.

Date:

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Joel L. Massie      p30622  
Family Court Judge