In the
Indiana Supreme Court

In re Petition to the Indiana Supreme Court to Engage in Emergency Rulemaking to Protect CARES Act Stimulus Payments From Attachment or Garnishment From Creditors

Supreme Court Case Nos.
20S-MS-258
20S-CB-123

Published Order

On April 14, 2020, Indiana Legal Services, Prosperity Indiana, Neighborhood Christian Legal Clinic, and Indiana Institute for Working Families (collectively "Petitioners") filed a petition for emergency rulemaking. The petition aims to protect the stimulus payments to individuals that are authorized by Section 2201 of the federal Coronavirus Aid, Relief, and Economic Security Act ("stimulus payments") from attempts by private creditors to attach or garnish those payments during the 2019 novel coronavirus ("COVID-19") emergency.

We invited responsive briefing and received responses from the creditors' bar, including Rubin & Levin, P.C. (joined by Blitt and Gaines, P.C. and Stenger & Stenger, P.C.); Perry Law Office, P.C.; and Wanda Borges, counsel for the International Association of Commercial Creditors. Although responses objected to the breadth of some relief sought, all responses agree the stimulus payments should be protected against garnishment by judgment creditors. We also received a copy of a letter sent by the American Bankers Association, Bank Policy Institute, Consumer Bankers Association, The Financial Services Forum, and The Clearing House addressed to the Leadership of Congress, also urging Congress to clarify that stimulus payments are exempt from garnishment by creditors.

The Court has reviewed these materials. Each Justice has had the opportunity to voice that Justice's views on this matter in conference with the other Justices, and each has voted on the petition.

This Court has original jurisdiction in, among other things, supervision of the exercise of jurisdiction by the other courts of the State and issuance of writs necessary or appropriate in aid of its jurisdiction. Ind. Const. art. 7, § 4. In accordance with that jurisdiction, this Court "has authority to adopt, amend, and rescind rules of court that govern and control practice and procedure in all the courts of Indiana." Ind. Code § 34-8-1-3; *see, e.g.*, Ind. Trial Rule 64 (attachments and garnishments). Our rulemaking authority includes authority to act on an emergency basis. *See* T.R. 80(D).

This petition invokes that original jurisdiction and emergency rulemaking authority. The petition seeks several forms of relief, including primarily a request for this Court to order that "[c]ourts shall issue no orders placing a hold on or attaching judgment-debtors' accounts in depository institutions pursuant to the Depository Financial Institutions Adverse Claims Act, I.C. § 28-9-1-1, or any other legal authority for the duration of the public health emergency in Indiana," excepting judgments or orders for the payment of child support. Pet. p.6. Although responses received from members of the creditors' bar agree the stimulus payments should be protected against judgment creditors, they object that the relief requested is overbroad, encompassing all judgment defendants, all bank attachments and garnishments, and all sources of deposited funds—rather than being tailored to the stimulus payments.

This Court has recently invoked its supervisory authority to order that, absent an emergency basis, Indiana's "courts shall issue no new writs of attachment, civil bench warrants, or body attachments pursuant to Trial Rule 64 until the expiration of the public health emergency," and to temporarily stay service of those issued before April 3. *Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, No. 20S-CB-123, — N.E.3d —, 2020 WL 1648746 (Ind. Apr. 3, 2020). Similarly, this Court could invoke its rulemaking authority to suspend issuance of **all** hold, attachment, or garnishment orders during this emergency—although that relief would sweep far too broadly in impeding legitimate collection efforts. But as the Court can rightfully take that drastic step, it does not overstep the judicial role to order a much narrower and more carefully tailored subset of that relief during the period of this national and state public health emergency.

The Court GRANTS IN PART and DENIES IN PART the requested relief and ORDERS as follows. Until expiration of the COVID-19 public health emergency as declared by Governor Holcomb, or until this Court may earlier order,

1. Courts shall issue **no new orders** placing a hold on, attaching, or garnishing funds in a judgment-debtor's account in a depository institution as defined in the Depository Financial Institutions Adverse Claims Act, I.C. § 28-9-1-1, et seq., if those funds are attributable to a stimulus payment, except that this prohibition shall not apply to judgments or orders for payment of child support.
2. As for any **previously issued court orders** placing a hold on a judgment-debtor's account in a depository institution, the judgment-debtor shall be entitled, upon request, to a hearing (either in-person or remotely, as local circumstances permit), within two business days of the court's receipt of said request, to determine what funds in the account are attributable to a stimulus payment and for the judgment-debtor to assert any exemption(s) under state or federal law. Courts shall treat such hearings as "essential" and "urgent" under this Court's orders of March 16 and 23, 2020 in 20S-CB-123.

In all other respects, the petition is denied.
Done at Indianapolis, Indiana, on 4/20/2020.

Loretta H. Rush
Chief Justice of Indiana

Rush, C.J., and David, Massa, and Goff, JJ., concur.

Slaughter, J., dissents with separate opinion.

Slaughter, Justice, dissenting.

I share the Court's desire to provide some measure of relief to Hoosiers who face severe financial challenges in these difficult and uncertain times. And today's order may succeed in achieving this laudable goal. But with this order, we overstep our limited role under Indiana's constitution—which is to interpret law, not make it, and to leave to the political branches the prerogative of deciding and implementing policy.

The Court today invokes our original jurisdiction, with which we supervise the practice and procedure in Indiana courts, to issue an emergency rule providing what is tantamount to substantive legal relief. We do so based on the view that individual stimulus payments that Congress recently appropriated under the CARES Act are to be used for life's necessities and, thus, should be exempt from garnishment and attachment by debt collectors and judgment creditors. Whether or not this result is what Congress intended, it is not what Congress enacted. Nowhere did Congress declare these payments to be off-limits to collectors and creditors. And, to date, neither has our legislature.

I am aware of no law—federal or state—exempting these stimulus payments from garnishment and attachment. And the Court cites none. That does not mean stimulus-payment recipients are without recourse. One option would be for the Congress to make clear the funds are not subject to garnishment and attachment. Another would be for the secretary of the treasury to issue regulatory guidance declaring these funds exempt. See 31 C.F.R. § 212.2(b). And a third option would be for our governor to call a special session of the general assembly to enact legislation codifying this result under state law.

I do not presume to defend the wisdom or legality of these or other potential policy options. But the course we choose today—providing substantive relief through our original jurisdiction in what amounts to "adjudication by rulemaking"—finds no legal support. And it is incompatible with the exercise of judicial power. We should decide parties' substantive rights and responsibilities in justiciable controversies litigated in the ordinary course—not in emergency rules.

For these reasons, I respectfully dissent.