IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 5, 2020

NO. 20-8500-021

IN THE MATTER OF
THE STAY OF ISSUANCE OF
WRITS OF GARNISHMENT AND
WRITS OF EXECUTION IN
CONSUMER DEBT COLLECTION CASES
DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

ORDER

WHEREAS, this matter having come before the Court upon recommendations to stay the issuance of writs of garnishment and writs of execution in consumer debt collection cases to preserve public health, safety, and welfare during the COVID-19 public health emergency;

WHEREAS, the current directives from public health authorities emphasize the need for New Mexicans to avoid unnecessary contact with one another and remain in their homes to the greatest extent possible during the current public health emergency;

WHEREAS, the current public health emergency has had a significant economic impact on New Mexicans—including loss of income and wages—thereby putting enormous financial strain on New Mexico communities;

WHEREAS, New Mexico is experiencing its highest unemployment rate in recent history, with New Mexicans filing an unprecedented number of unemployment claims;

WHEREAS, the current public health emergency has impacted the ability of many New Mexicans to appear in court, obtain representation, and avail themselves of self-help resources to claim exemptions from garnishment and execution;

WHEREAS, this Court must exercise its equitable powers and power of superintending control over pleading and practice in the New Mexico Judiciary in response to the extraordinary circumstances presented by the current public health emergency by balancing the need for courts to proceed with garnishment and execution procedures for the collection of judgments, with protecting the due process rights of New Mexicans to claim exemptions and protect their assets from garnishment and execution as provided by law;

WHEREAS, this Court amended our rules of practice and procedure in 2016 to define "consumer debt claim," *see* Rule 1-009(J)(1) NMRA, and provide additional protections to consumers in consumer debt collection cases, acknowledging that systemic problems and abuses particular to these cases exist;

WHEREAS, in light of the foregoing, and the Court having considered the recommendations and being sufficiently advised, Justice Barbara J. Vigil, Justice

Michael E. Vigil, Justice C. Shannon Bacon, and Justice David K. Thomson concurring, Chief Justice Judith K. Nakamura dissenting;

NOW, THEREFORE, IT IS ORDERED that, effective June 8, 2020, clerks of court shall not issue any new post-judgment writs of garnishment or writs of execution under Rules 1-065.1, 1-065.2, 2-801, 2-802, 3-801, and 3-802 NMRA, as they pertain to consumer debt collection cases, in accordance with the terms of this order;

IT IS FURTHER ORDERED that clerks of court may continue to issue writs of garnishment and writs of execution in cases other than consumer debt collection cases;

IT IS FURTHER ORDERED that in order to proceed with a new writ of garnishment or a writ of execution while the stay on the issuance of these writs in consumer debt collection cases is in effect, a judgment creditor, upon application for a writ of garnishment or a writ of execution, shall certify to the clerk of court that the application is not based on a judgment issued in a consumer debt collection case;

IT IS FURTHER ORDERED that if a judgment creditor cannot certify to the clerk of court that the application is not based on a judgment issued in a consumer debt collection case, the judge presiding over the case shall issue a stay of the proceedings and the time for collecting on the judgment shall be tolled while the stay is in effect;

IT IS FURTHER ORDERED that writs of garnishment and writs of execution issued prior to June 8, 2020, shall remain unaffected by the terms of this order;

IT IS FURTHER ORDERED that all other rules pertaining to consumer debt collection cases shall remain unaffected by the terms of this order;

IT IS FURTHER ORDERED that no provision of this order shall be construed to apply to domestic support obligations, including child support and spousal maintenance obligations;

IT IS FURTHER ORDERED that no provision of this order shall be construed as relieving a debtor of any liability; and

IT IS FURTHER ORDERED that this order shall remain in effect until amended or withdrawn by future order of the Court.

IT IS SO ORDERED.

WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of June, 2020.

Joey D. Moya, Chief Clerk of the Supreme Court of the State of New Mexico