

STATE OF MICHIGAN
COURT OF APPEALS

DAVID GEIB,

Plaintiff-Appellee,

v

RICHARD BLESCH,

Defendant-Appellant.

UNPUBLISHED

September 20, 2005

No. 253387

Kalamazoo Circuit Court

LC No. 90-003021-NO

Before: Smolenski, P.J., and Murphy and Davis, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order requiring him to make weekly payments on a judgment owing to plaintiff. We reverse.

In 1992, plaintiff sued defendant and another party and obtained a default judgment in 1993. Defendant made weekly payments on that judgment from 1994 through September 2001. The amount of each payment was based on defendant's income and set by the court after a biannual review. On September 27, 2001, defendant moved for relief from the payment order by reason of his unemployment. Defendant was obligated to pay \$140 a week at the time. The trial court granted a number of stays and ultimately held a hearing on the issue.

The testimony adduced indicated that defendant was functionally not even seeking employment. Rather, he and his wife were expecting twin babies, and defendant provided child care at home while his wife worked. Defendant argued that it made no financial sense for him to take a job paying less than his wife's job, because it would not cover child care expenses. Defendant testified that day care would cost approximately \$550 a week. The trial court concluded that defendant was "employed" by his wife within the purview of MCL 600.6107(2), which provides as follows:

Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that such salary or compensation is merely colorable and designed to defraud or impede the creditors of such debtor, the court may direct such debtor to make payments on account of the judgment, in installments, based upon a reasonable value of the services

rendered by such judgment debtor under his said employment or upon said debtor's then earning ability.

In light of defendant's testimony that day care would cost \$550 a week, the trial court ultimately concluded that defendant's weekly payments of \$140 were reasonable and reinstated them.

We granted defendant's delayed application for leave to appeal. Defendant argues that MCL 600.6107 was intended to apply to situations in which judgment debtors are working for relatives and receiving in-kind compensation, not situations where unemployed judgment debtors provide ordinary household duties and child care. This is an issue of first impression. The proper interpretation and application of a statute presents a question of law that we consider de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

The goal of statutory interpretation is to determine and give effect to the intent of the Legislature, with the presumption that unambiguous language should be enforced as written. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). If the language is unambiguous, "the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case." *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159-160; 645 NW2d 643 (2002), citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22; 528 NW2d 681 (1995). The courts should not inquire into the wisdom or fairness of a statute or statutory scheme. *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 430; 617 NW2d 536 (2000). However, the language of a statute should be construed reasonably, keeping in mind the purpose of the act and using common sense. *Frierson v West American Ins Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004).

Although the word "services" in the statute could literally apply to anything, it would not be reasonable to give it such a broad construction. The more extensive references to employment, salary, and compensation indicate that, when the statute is read as a whole, the Legislature did not intend to impute income to a judgment creditor every time he or she engaged in some act that benefited a family member in some way. Rather, the Legislature intended to impute income to traditional employment relationships that were being conducted "under the table" by family or friends. In other words, the statute requires the creditor to be engaged in activities for which paid compensation would ordinarily be expected. Thus, feeding a spouse's pets while he or she is on a vacation would likely not be sufficient, but answering telephones for a spouse's at-home business for eight hours a day likely would be.

Here, we are presented with a situation in which defendant is staying home and caring for *his own children*. As discussed, this is technically a "service," but characterizing it as a traditionally compensable service ignores defendant's legal and moral responsibility to provide care for his children. An individual might ordinarily expect compensation for caring for another person's children. However, parents are not ordinarily compensated for caring for their *own* young children, and we generally do not speak of stay-at-home parents as either rendering compensable services or being "employed" in that capacity. We believe it would be against both public policy and common sense to suggest that caring for one's children is "employment" in the traditional sense of the term.

We note that the Committee comment to MCL 600.6107(2) explains that it is intended “to catch the family-corporation man.” While this may be “a feeble indicator of legislative intent,” *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 587; 624 NW2d 180 (2001), it supports our conclusion that the Legislature did not intend to address all possible “services” an individual could perform for his or her family. Other jurisdictions have examined similarly worded statutes and also explicitly or implicitly concluded that some sort of traditional employment relationship must exist. *In re Schneiderman*, 251 BR 757, 764-765 (2000); *Phillips v Sugrue*, 886 F Supp 63, 65 (USDC, DC, 1995); *Bell v Smith*, 828 P2d 445, 446-447 (Ok App, 1992); *IBF Corp v Alpern*, 487 A2d 593, 595-597 (DC App, 1985). The Committee comment also notes that the statute was modeled after New York’s now-repealed Civil Practice Act, § 793 (now Civil Practice Law and Rules, § 5226), which New York courts applied where debtors were genuinely employed by corporations owned by their spouses but receiving no or little compensation. *Lackner v Abrams*, 289 NYS 1031 (1936); *Frooks v Clurman*, 76 NYS2d 187 (1942), *aff’d* 266 AD 859; 43 NYS2d 861 (1943). These cases all support the conclusion that the Legislature only intended to address the kind of “services” for which one would ordinarily expect payment.

In this context we agree with the Minnesota Supreme Court’s observation that “[w]here relatives live together as members of the same household, it is presumed that no pecuniary compensation is expected or will be paid for services rendered or support furnished by one member to another. . . . To overcome this presumption it must appear that when the services were performed, or the support was furnished, both parties understood that compensation was to be made therefor.” *In re Hirt’s Estate*, 213 Minn 209, 213; 6 NW2d 98, 100 (1942), quoting 6 Dunnell, Dig. & Supplement, § 10375 (emphasis omitted). We do not perceive the latter situation to be true of this arrangement. Parents might stay at home with their children for any number of reasons, including, as defendant is doing here, avoiding the need to pay someone else to do so. However, it is not the kind of activity that would normally generate a salary or any other manner of payment.

As a parent, defendant is legally and morally obligated to provide care for his children. We are loath to conclude that the Legislature intended to impute an income to a parent for electing to execute that duty him- or herself rather than delegating it. Caring for one’s own children is not a job for which compensation would ordinarily be expected. We therefore cannot find caring for one’s own children to be the kind of “employment” or “rendered service” governed by MCL 600.6107(2).

Reversed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Alton T. Davis