

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
NOBLE COUNTY

TRAMAINE E. MARTIN,  
Plaintiff-Appellant,

v.

JASON TAYLOR, CASHIER NOBLE CORRECTIONAL INSTITUTE, et  
al.,

Defendants-Appellees.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 22 NO 0494**

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Civil Appeal from the  
Court of Common Pleas of Noble County, Ohio  
Case No. 222-0014

**BEFORE:**

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

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**JUDGMENT:**

Reversed and Remanded.

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Tramaine E. Martin, *Pro se*, A701-090, Noble Correctional Institution, 15708  
McConnelsville Road, Caldwell, Ohio 43724-8902, Plaintiff-Appellant

*Atty. Dave Yost*, Attorney General of Ohio and *Atty. Salvatore P. Messina*, Assistant  
Attorney General, Criminal Justice Section, Corrections Litigation Unit, Ohio Attorney  
General's Office, 30 East Broad Street, 23rd Floor, Columbus, Ohio 43215-6001, for  
Defendants-Appellees.

Dated: March 24, 2023

**WAITE, J.**

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{¶1} Appellant Tramaine E. Martin appeals a June 1, 2022 judgment entry of the Noble County Common Pleas Court dismissing his complaint for restitution and misappropriation against his correctional institution pursuant to Civ.R. 12(B)(6). Appellant argues that his complaint sufficiently put the warden on notice of his claims when he asserted that his American Rescue Plan Act stimulus check was not subject to garnishment for purpose of paying his court costs. For the reasons provided, Appellant's argument has merit and the judgment of the trial court is reversed and remanded for further proceedings consistent with the law.

Factual and Procedural History

{¶2} Appellant is incarcerated at the Noble Correctional Institution, located in Noble County. Appellee Jason Taylor is a cashier at the institution and Appellee Jay Forshey is the warden. Appellant's prison term arose from Cuyahoga County convictions.

{¶3} During the COVID-19 pandemic, the United States provided three stimulus checks to citizens. At issue, here, is the third stimulus check. It appears that Appellant received the first two checks, which were deposited into his prison trust account without issue and neither check was garnished. However, when Appellant received the third check, he received correspondence dated May 12, 2021 from Appellee Taylor titled "Court Order to Pay a Stated Obligation." The correspondence noted that the institution had received a certified copy of a Cuyahoga County judgment entry ordering Appellant to pay what appears to be court costs in the amount of \$594.50 to the Cuyahoga County Court of Common Pleas, \$217.06 to the Cuyahoga County Court of Common Pleas, and \$344.97 to the United States District Court for the Southern District of Ohio. Appellant

was also informed in this correspondence that he could assert any applicable exemption found within R.C. 2329.66 in order to avoid garnishment. Appellant was advised he had until May 26, 2021 to raise any such exemptions and that Taylor would review and reach a decision relative to garnishment within fourteen days of receipt.

{¶4} Appellant filed an objection to garnishment pursuant to R.C. 2329.66(A)(9)(f), which provides an exemption for monies received pursuant to section 24 or 32 of the Internal Revenue Code of 1986, 26 U.S.C. 1. According to Appellant, the stimulus check derived from the CARES Act, which classified these checks as earned income credit. Appellant also contends the check was exempt from garnishment pursuant to R.C. 2329.66(A)(3) as a tax refund. It appears that Appellant's request for exemption was denied.

{¶5} As a consequence, on March 10, 2022, Appellant filed a civil complaint naming Appellees as defendants. The complaint claimed: (1) Appellant is entitled to restitution as an equitable remedy, (2) Appellee Taylor misappropriated his funds, (3) Appellee Forshey breached a duty of trust for failing to ensure the funds were appropriately handled, and (4) Appellee Forshey failed to intervene in the wrongful garnishment of Appellant's trust account.

{¶6} On April 11, 2022, the Ohio Attorney General's Office filed a motion to dismiss the complaint pursuant to Civ.R. 12(B)(6) on behalf of Appellees. In this motion, Appellees asserted that Appellant failed to provide any statute or other lawful basis that would exempt his stimulus check from garnishment. Appellees claim that Appellant's general assertion the checks are exempt under the CARES Act involves overly broad law

that is not applicable, here. Even so, Appellees contend that Appellant failed to join a necessary party to the action, the respective clerks of courts who requested payment.

{¶17} On June 1, 2022, the trial court granted the motion to dismiss, finding that the stimulus checks were issued as part of the American Rescue Plan and not the CARES Act. The court did not address the remaining claims regarding Forshey's alleged breach of duty and failure to ensure proper handling of prisoner funds. Presumably, these claims were denied on the basis that the funds were not exempt from garnishment, and so were not mishandled.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN GRANTING THE MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM.

{¶18} Appellant contends that a motion to dismiss pursuant to Civ.R. 12(B)(6) must be liberally construed in favor of the plaintiff. He claims that his complaint met the applicable standard of law, as it involved a short and plain statement that placed Appellees on notice of his claim and the grounds on which it was based. From the complaint, Appellant argues it is clear that he asserted he is entitled to restitution for funds that were wrongfully taken from his prison account and were used to pay court costs. Appellant explains that all three stimulus payments that were issued during the COVID-19 relief packages were exempt from collections. By using the funds to pay court costs, Appellant also argues that Taylor breached his fiduciary duty.

{¶19} In response, Appellees first argue that the stimulus check does not qualify for an exemption from collection pursuant to any Ohio or federal law. Appellees note that

Appellant claims former President Donald Trump and current President Joseph Biden provided notices that the stimulus checks are not subject to garnishment. Appellees argue, however, that the language Appellant cites to is not found within the notices and, even if it was, the notices do not rise to the level of law or an executive order. Appellees also argue that Appellant failed to join the clerk of the Cuyahoga County Common Pleas Court, a necessary party, and that any attempt to join the clerk at this point would be futile and lead to an unnecessary delay. Appellees claim that Taylor did not violate his fiduciary duty, as he followed all appropriate procedures before garnishing the funds.

{¶10} “A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint.” *Youngstown Edn. Assn. v. Kimble*, 2016-Ohio-1481, 63 N.E.3d 649, ¶ 11 (7th Dist.), citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). When reviewing a Civ.R. 12(B)(6) motion, “the court must accept the factual allegations contained in the complaint as true and draw all reasonable inferences from these facts in favor of the plaintiff.” *Kimble, supra*, at ¶ 11, citing *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). In order to grant a Civ.R. 12(B)(6) motion, “it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. However, “[i]f there is a set of facts consistent with the complaint that would allow for recovery, the court must not grant the motion to dismiss.” *Kimble, supra*, at ¶ 11, citing *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991).

{¶11} A Civ.R. 12(B)(6) claim is reviewed *de novo*. *Ford v. Baska*, 2017-Ohio-4424, 93 N.E.3d 195, ¶ 6 (7th Dist.), citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

{¶12} R.C. 2329.66 provides a list of eighteen exemptions that allow an inmate to retain monies deposited into their prison account. According to Appellant, his stimulus check falls within R.C. 2329.66(A)(9)(f), which provides an exemption for “[p]ayments under section 24 or 32 of the ‘Internal Revenue Code of 1986,’ 100 Stat. 2085, 26 U.S.C. 1, as amended.”

{¶13} Reviewing this matter under the standard of Civ.R. 12(B)(6), it is apparent that the trial court prematurely dismissed Appellant’s complaint. There has been a great deal of debate within the courts as to whether stimulus checks can be garnished. While it appears that the trend in federal courts has been to allow garnishment of stimulus checks generally, there has only been one court that addressed whether this particular type of stimulus check can be garnished for purposes of court costs, and that case was decided on different arguments and pursuant to a different law. See *United States v. Pittman*, 2022 WL 1173406, \*3 (M.D., North Carolina). Hence, it seems to be an open question whether Appellant’s stimulus check could lawfully be subject to garnishment.

{¶14} Even so, the issue here is more complex. Relevant to this particular matter:

R.C. 5120.133 authorizes the withdrawal of money from a prisoner's account upon receipt of a certified copy of a judgment of a court of record in an action in which the prisoner was ordered to pay a stated obligation. Pursuant thereto, Ohio Adm.Code 5120-5-03 was promulgated to establish guidelines and procedures for withdrawing money that belongs to an inmate

and that is in an account kept for the inmate by the Ohio Department of Rehabilitation and Correction (“ODRC”).

*State v. Brown*, 156 Ohio App.3d 120, 2004-Ohio-558, 804 N.E.2d 1021, ¶ 9 (10th Dist.).

{¶15} However, many federal courts have determined that even if an inmate’s funds can be garnished, the government cannot deplete an inmate’s account. This principle is consistent with Ohio law. Pursuant to Ohio law, “[i]f withdrawals are authorized and if there are sufficient funds in the inmate's account to satisfy the amount shown as due, as long as the account retains twenty-five dollars for inmate expenditures, the designee shall promptly cause a check to be issued payable to the clerk of the court or other appropriate authority issuing the order.” Ohio Adm.Code 5120-5-03(D).

{¶16} Appellant provided the trial court a copy of his prison account records. Those records demonstrate that he had a prior balance of \$892.19 before garnishment. The prison garnished the following funds from the account: \$801.50 to Cuyahoga County Clerk of Courts, and \$90.69 to U.S. District Court. The prison accounting records are somewhat confusing to follow, because it appears that while the relevant account held \$892.19 prior to garnishment, after garnishment the same account showed a balance of zero dollars. Following this, \$4.50 was garnished, apparently for a child support payment. It is unclear from these records if the child support payment was able to be made, considering the records reflect that Appellant lacked funds.

{¶17} The Second District has explained that an inmate must present evidence to establish “the amount of money present in his prison bank account is insufficient to cover his monthly garnishments while still satisfying O.A.C. § 5120-5-03(D), which authorizes the garnishment of an inmate's account to satisfy the inmate's obligations to the court as

long as the account retains \$25.00 for inmate expenditures.” *State v. Jackson*, 2016-Ohio-7800, 73 N.E.3d 1160 (2d Dist.), ¶ 16. It would appear that Appellant has met that burden here by providing his account balance, which shows his account was completely depleted, leaving no balance to cover monthly garnishments.

{¶18} By law, funds must remain in the account for purposes of monthly garnishments, which in this matter appears to include monthly child support payments. At best, this matter was prematurely dismissed. Because the garnishment depleted Appellant’s account, the record on appeal shows that this garnishment violated Ohio Adm.Code 5120-5-03(D), which appears to be part and parcel of R.C. 2329.66. Consequently, it is possible that the relevant law would require a credit of at least \$25 to Appellant’s account unless Appellees can provide other legal precedent authorizing their actions, here.

{¶19} As regards Appellees’ argument that Appellant failed to join all required parties, this oversight is curable pursuant to Civ.R. 19.

{¶20} As such, Appellant’s arguments have merit and Appellant’s sole assignment of error is sustained.

#### Conclusion

{¶21} Appellant argues that he met the applicable standards within his complaint to overcome dismissal under Civ.R. 12(B)(6) by asserting that his American Rescue Plan Act stimulus check was not subject to garnishment for purposes of paying court costs. For the reasons provided, dismissal was premature. Appellant’s arguments have merit and the judgment of the trial court is reversed and remanded for further proceedings consistent with the law.



Robb, J., concurs.

D'Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Noble County, Ohio, is reversed. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**