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NORTH CAROLINA LAW REVIEW

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Volume 56 | Number 1

Article 12

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1-1-1978

# Remedies -- Domestic Relations: Garnishment for Child Support

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## Recommended Citation

Michael A. Heedy, *Remedies -- Domestic Relations: Garnishment for Child Support*, 56 N.C. L. REV. 169 (1978).

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## Remedies—Domestic Relations: Garnishment for Child Support

The incidence of marital disruption in our society is of serious and escalating proportions. Whether by annulment, separation or divorce, an increasing number of families have been left destitute by the parents who commonly provided for them. The burden on the state and federal governments, and vicariously on the taxpayer, to provide support for deserted families, is of such magnitude as to have necessitated the payment of seven billion dollars to families under the Aid to Families with Dependent Children Act<sup>1</sup> (AFDC) in 1974.<sup>2</sup> As of June 1974, over eighty percent of families receiving AFDC benefits required the aid due to parental nonsupport.<sup>3</sup> Enforcement of spousal and child support orders has been chronically inadequate and unsatisfactory. In 1975 Congress reacted with the enactment of the Title IV D program, which was designed to improve enforcement of child support payments by instituting a network of state operated, federally monitored support programs.<sup>4</sup>

In response to this legislation, North Carolina amended Chapter 110 of the General Statutes by the addition of Article 9, providing a system for child support enforcement conforming with federal requirements.<sup>5</sup> Most significant in this enactment was the addition of an "independent" garnishment proceeding for the enforcement of child support<sup>6</sup>—"independent" because it is technically free of the limitations commonly associated with wage garnishment in North Carolina. Briefly, the statute<sup>7</sup> allows for gar-

1. 42 U.S.C.A. §§ 601-610 (West 1974 & Cum. Supp. 1977). An estimated 11 million families are recipients of AFDC. AFDC was established "[f]or the purpose of encouraging the care of dependent children in their own homes . . . by enabling each State to furnish financial assistance and rehabilitation . . . to needy dependent children . . . to help maintain and strengthen family life." *Id.*

2. Ehrlich, *A New National Family Law*, 65 ILL. B.J. 70, 77 (1976).

3. SENATE FINANCE COMM., SOCIAL SERVICES AMENDMENTS OF 1974, S. REP. NO. 1356, 93d Cong., 2d Sess. 42 (1974), reprinted in [1974] U.S. CODE CONG. & AD. NEWS 8133, 8145-46.

4. 42 U.S.C. §§ 651-660 (Supp. V 1975).

5. Law of June 25, 1975, ch. 827, § 1, 1975 N.C. Sess. Laws 1166.

6. N.C. GEN. STAT. § 50-13.4(f)(4) (1976) provides the remedy of garnishment for enforcement of child support. In 1975 the section was amended to read: "In addition, an independent garnishment proceeding, as provided in G.S. 110A-9 [sic], shall be available for enforcement of child-support obligations." Law of June 24, 1975, ch. 814, § 1, 1975 N.C. Sess. Laws 1155.

7. N.C. GEN. STAT. § 110-136 (Supp. 1975) provides:

**Garnishment for enforcement of child-support obligation.**—(a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, a judge . . . may enter an order of garnishment whereby no more than 20 percent (20%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. . . . The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

nishment of up to twenty percent of a responsible parent's monthly income.<sup>8</sup> Under order of court, the employer of the delinquent parent is required on a continuing basis to submit the ordered amount of the employee's wages to the clerk of court under threat of contempt for noncompliance.<sup>9</sup> In theory, this statute provides the most effective means for enforcement of support payments; yet, as a consequence of legislative and judicial reluctance to garnish wages in North Carolina and of deficiencies in the statute itself, the remedy has unfortunately been of only limited use as yet.

The importance of this new remedy is emphasized by an examination of the relatively ineffective measures heretofore available to dependent families in North Carolina. Sections 50-13.4 and 50-16.7<sup>10</sup> of the North Carolina General Statutes provide in similar language the procedures for bringing actions for child support and alimony respectively. Payments to dependents may be ordered paid by lump sum payment, periodic payments or by transfer of personal and real property.<sup>11</sup> Of these modes of payment, the provision for periodic payments presents the only viable means by which a less affluent individual can comply with his duty of support. The real problems arise, however, when the responsible parent becomes recalcitrant and the support order must be enforced. Enforcement of support payments by means of execution,<sup>12</sup> appointment of receiver,<sup>13</sup> injunction,<sup>14</sup> or attach-

(b) The mother, father, custodian, or guardian of the child or any county interested in the support of a dependent child may petition the court for an order of garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings. . . .

(c) A hearing on the petition shall be held within 10 days after the time for response has elapsed or within 10 days after the responses of both the responsible parent and the garnishee have actually been filed. . . . If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the clerk of the superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Human Resources.

(e) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt.

8. *Id.* § 110-136(a).

9. *Id.* § 110-136(d), (e).

10. *Id.* § 50-13.4 (1976), *as amended* by Law of June 23, 1977, ch. 711, § 26, 1977 N.C. Adv. Legis. Serv. 464 (Pamphlet No. 10, Pt. 2) (provisions for child support); *id.* § 50-16.7 (provisions for alimony).

11. *Id.* §§ 50-13.4(e), -16.7(a).

12. *Id.* §§ 50-13.4(f)(10), -16.7(k). *See generally* 2 R. LEE, NORTH CAROLINA FAMILY LAW § 158, at 248-50 (1963) (wife stands in the position of a judgment creditor of the husband; she is

ment and garnishment<sup>15</sup> of property owned by the responsible parent is ineffective to aid the family of a parent who owns no tangible property and whose only asset is his ability to work. Furthermore, the primary enforcement technique of contempt<sup>16</sup> accomplishes merely an endless succession of threats from the court ending often with the imprisonment of the responsible parent, making the possibility of payment of support even more remote.

Prior to the enactment of section 110-136 only two remedies, buried within the expansive provisions of sections 50-13.4 and 50-16.7, had provided practical alternatives to these basically futile measures of support enforcement. Both are directed at the primary asset of the less affluent family, the wages of the responsible parent. The first statutory remedy is assignment of wages.<sup>17</sup> The court may require the responsible parent to execute an assignment of wages or other income due or to become due. The statutory language indicates that wages not yet earned are subject to assignment; this feature makes the remedy particularly well adapted to the continuing nature of a support order. Such an assignment, however, is a two-party agreement that does not involve the employer, is detached from the court, and is thus difficult to enforce.<sup>18</sup> As a result, under this arrangement it is common for a responsible parent to spend his income before his dependents have any opportunity to benefit from the assignment.

The second of these two remedies is a limited form of wage garnishment. It has an advantage over assignment for it is directed at the employer and intercepts wages before they reach the hands of the responsible parent.<sup>19</sup> The statute provides that dependents may avail themselves of the garnishment proceedings available to general creditors, and for this purpose they

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entitled to the issuance of execution upon real and personal property of the husband to enforce payment of an alimony award).

13. N.C. GEN. STAT. §§ 50-13.4(f)(6), -16.7(g) (1976). *See generally* R. LEE, *supra* note 12, § 160, at 254 (a receiver holds property of the responsible parent for the benefit of all interested parties).

14. N.C. GEN. STAT. §§ 50-13.4(f)(5), -16.7(f) (1976). *See generally* R. LEE, *supra* note 12, § 160, at 256-57 (restrains responsible parent from disposing of property pending litigation).

15. N.C. GEN. STAT. §§ 50-13.4(f)(4), -16.7(e) (1976). *See generally* R. LEE, *supra* note 12, § 159, at 250-51 (preliminary actions subjecting property of responsible parent, in his possession or the possession of another, to execution).

16. Law of June 23, 1977, ch. 711, § 26, 1977 N.C. Adv. Legis. Serv. 464 (Pamphlet No. 10, Pt. 2) (to be codified at N.C. GEN. STAT. §§ 50-13.4(f)(9), -16.7(j)). *See generally* R. LEE, *supra* note 12, § 166, at 276-78 (imprisonment for wilful disobedience of a court order for support; an order to pay support is not a debt so as to raise prohibitions against debtor's imprisonment).

17. N.C. GEN. STAT. §§ 50-13.4(f)(1), 16.7(b) (1976).

18. *See, e.g.*, Parker v. Parker, 13 N.C. App. 616, 186 S.E.2d 607 (1972).

19. N.C. GEN. STAT. §§ 50-16.7(e), -13.4(f)(4) (1976). Prior to the enactment of these statutes, several North Carolina decisions had stated in dicta that wages could be garnished for the benefit of a deserted spouse. *See, e.g.*, Porter v. Citizens Bank, 251 N.C. 573, 579, 111 S.E.2d 904, 909 (1960); Walton v. Walton, 178 N.C. 73, 75, 100 S.E. 176, 177 (1919).

are treated as creditors of the responsible parent. Under these provisions, however, prospective earnings are not garnishable as they are under the newer section 110-136.<sup>20</sup>

Garnishment is a proceeding ancillary to attachment<sup>21</sup> and is the remedy for discovering and subjecting to attachment tangible property of the defendant not in his possession and any indebtedness owed to the defendant.<sup>22</sup> Although no cases have been decided on this point under the garnishment statute, it would appear that the use of the term "indebtedness" excludes unearned wages as property subject to garnishment; until wages are earned, no debt is owing to an employee from his employer. *Motor Finance Co. v. Putnam*,<sup>23</sup> a 1948 case interpreting the North Carolina execution statutes, lends support to this assumption.<sup>24</sup> There, the North Carolina Supreme Court stated:

[I]t is plain that a supplemental proceeding against a third person is designed to reach and apply to the satisfaction of the judgment . . . debts due to the judgment debtor by the third person at the time of the issuance and service of the order for the examination of the third person. Prospective earnings of a judgment debtor are entirely hypothetical. They are neither property nor a debt.<sup>25</sup>

No other explanation for the prohibition against garnishing prospective wages has been articulated other than that they are "hypothetical."<sup>26</sup> More than likely, the limitation of garnishment to wages due and owing is a manifestation of a general distaste for wage garnishment and a concern for the disastrous effects even a single garnishment may have on a family's economic stability.<sup>27</sup>

20. For the first and only reported application of § 110-136, see *Watson v. Watson*, 424 F. Supp. 866 (E.D.N.C. 1976), in which a retired army colonel's future retirement pay was subjected to garnishment for child support.

21. N.C. GEN. STAT. § 1-440.1(a) (1969) provides:

Attachment is a proceeding ancillary to a pending principle action, is in the nature of a preliminary execution against property, and is intended to bring property of a defendant within the legal custody of the court in order that it may subsequently be applied to the satisfaction of any judgment for money which may be rendered against the defendant in the principle action.

22. *Id.* § 1-440.21.

23. 229 N.C. 555, 50 S.E.2d 670 (1948).

24. The court in its interpretation of the statutes relied heavily upon a New York case, *In re Trustees of Bd. of Publication*, 22 Misc. 645, 50 N.Y.S. 171 (Sup. Ct. 1898), that had ruled prospective wages non-garnishable under a statute that served as a model for North Carolina's statutes.

It is interesting to note that New York now allows execution upon income. An employer is required to pay monthly installments from an employee's wages into court for the benefit of judgment creditors. Although not labeled garnishment, the effect is the same, and the procedure permits execution on prospective wages. N.Y. CIV. PRAC. LAW § 5231 (McKinney 1967).

25. 229 N.C. at 557, 50 S.E.2d at 671.

26. *Id.* The ease with which the legislature has overcome this barrier to garnishment with the enactment of § 110-136 renders this judicial reasoning specious at best. This indicates that there are unmentioned policy considerations behind the judicial constraint on garnishment.

27. See text accompanying notes 49-51 *infra*.

This limitation has reduced wage garnishment under sections 50-13.4 and 50-16.7 to a hollow remedy. Given the nature of a continuing support order, enforcement by means of the garnishment they provide is a troublesome procedure at best. If prospective earnings are not subject to garnishment, dependents have to wait during each payment interval until the responsible parent is in arrears before bringing the garnishment action, and then an action can be brought only against wages earned and owing to the employee. This necessitates a series of separate garnishment orders, each of which is time-consuming, expensive and marginally productive of support to dependents.<sup>28</sup>

The experience of other states and the history of the AFDC program similarly demonstrate the inadequacy of the earlier remedies.<sup>29</sup> One study conducted in 1955 revealed that absent fathers "complied with [their] support obligations to some extent in only 18.3% of cases involving AFDC families despite widespread civil and criminal legislation designed to enforce [their] duty."<sup>30</sup> Although the inadequacy of these remedies is a major cause of the large increase in the number of families receiving AFDC benefits, the apathy of the courts, prosecutors and welfare officers in administering and enforcing the laws already enacted has also contributed significantly to their ineffectiveness.<sup>31</sup>

In response to this situation Congress enacted the Title IV D Program in 1975<sup>32</sup> in an effort to force states to redesign and make better use of support enforcement remedies. Under this program the states must implement a child support program conforming to federal requirements<sup>33</sup> before

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28. Although § 110-136 has alleviated this procedural problem for the dependent child, a wife seeking alimony alone must still follow these tedious steps in order to garnish wages. *See, e.g.,* *Watson v. Watson*, 424 F. Supp. 866 (E.D.N.C. 1976). This is so, even though Congress has permitted prospective wage garnishment of federal employees for alimony, as well as for child support. *See* 42 U.S.C. § 659 (Supp. V 1975).

29. Most of the remedies discussed are employed in some manner by a majority of the states. *See generally* 2 W. NELSON, *DIVORCE AND ANNULMENT* § 16.03, at 387 (contempt), § 16.47, at 495 (execution), § 16.48, at 503 (attachment and garnishment), § 16.50, at 509 (receivership and injunction) (2d ed. 1961).

30. Willging & Ellsmore, *The "Dual System" in Action: Jail For Nonsupport*, 1969 U. TOL. L. REV. 348, 373.

31. A Senate Report on the Social Services Amendments of 1974 cited a study by the Rand Corporation that revealed that "[m]any lawyers and officials find child support cases boring, and are actually hostile to the concept of fathers' responsibility for children." SENATE FINANCE COMM., *supra* note 3, at 43, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS at 8147. The study also dispelled the common belief that nonenforcement of child support was often due to inability to find absent fathers. "[The fathers] have not disappeared. Usually they were living in the same county as their children." *Id.*

32. 42 U.S.C. §§ 651-660 (Supp. V 1975).

33. *Id.* § 654.

they will become eligible to receive matching federal funds.<sup>34</sup> Although the states administer their own programs, they are subject to audit by an agency created for this purpose by the Secretary of Health, Education and Welfare.<sup>35</sup> Congress also created an innovative remedy that eliminates the federal immunity against suit and allows garnishment of federal employees' wages by state courts.<sup>36</sup> This remedy is, however, available only in those states that have a statute providing for wage garnishment.<sup>37</sup> To take advantage of this elimination of governmental immunity and to remedy the inadequacies of the garnishment procedures of sections 50-13.4 and 50-16.7, North Carolina enacted section 110-136 providing for garnishment of prospective wages for enforcement of child support.<sup>38</sup>

The new North Carolina statute provides that any responsible parent under court order or written agreement to provide child support is subject to garnishment of up to twenty percent of his monthly disposable earnings.<sup>39</sup> Before a court may issue a garnishment order it must be shown that the responsible parent has been delinquent or erratic in making child support payments.<sup>40</sup> After an order is issued, the amount garnished is transmitted by the employer to the clerk of superior court, and payments are subsequently forwarded either directly to the party designated by the order, or, in the case of dependent children receiving public assistance, to the North Carolina Department of Human Resources.<sup>41</sup> The employer is the defendant in the garnishment action and his noncompliance with the order is "subject to punishment as for contempt."<sup>42</sup> Although this statute was enacted to facilitate the collection operation of the state welfare system, it is important to note that the remedy is available to other parties<sup>43</sup> including the county subrogated to the rights of the dependent pursuant to section 110-137.<sup>44</sup> In

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34. Under the program, the federal contribution to state plans is increased from 50% to 75%. *Id.* § 655. States not complying with the requirements would face a penalty in the form of reduced matching funds for AFDC payments (the Secretary could impose a penalty equal to 5% of the federal funds for AFDC payments made by the state in the year the audit was conducted). *Id.* §§ 603(h), 652(a)(4).

35. *Id.* § 652(a)(4).

36. *Id.* § 659.

37. The statute provides only for consent to state garnishment proceedings. It does not set up a federal procedure by which a garnishment proceeding may be instituted. *Id.*

38. Law of June 25, 1975, ch. 827, § 1, 1975 N.C. Sess. Laws 1166.

39. N.C. GEN. STAT. § 110-136(a) (Supp. 1975) (substantial portions of the statute are set out in note 7 *supra*).

40. *Id.* § 110-136(b).

41. *Id.* § 110-136(d).

42. *Id.* § 110-136(e).

43. "The mother, father, custodian or guardian of the child or any county interested in the support of a dependent child . . ." *Id.* § 110-136(b).

44. *Id.* § 110-137 provides in part: "The county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Article and to recover any payments ordered by the court of this or any other state."

addition, the remedy is not limited to garnishment against federal employers. State and private employers as well are technically subject to garnishment proceedings for wages of employees who are delinquent in their child support payments.<sup>45</sup>

The most significant language in the statute is found in subsection 110-136(c), pertaining to the form of the order: "The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished *for each pay period*."<sup>46</sup> This language indicates that the statute provides for a continuing arrangement whereby the employer will deduct the ordered amount and submit it to the court each month. In the past, in order to enforce the continuity of support payments now attainable under this statute, it was necessary to bring a separate garnishment action each pay period. In this respect, the statute diverges drastically from the historical conception of and limitations on wage garnishment.<sup>47</sup>

These traditional limitations on wage garnishment are, in part, the reason for the limited use that has been made of section 110-136. Although the statute technically transcends the old limitations, it is probable that their continuing influence overshadows the new provision and may have engendered some reluctance on the part of the legal profession to reap for their clients the substantial benefits available by way of prospective wage garnishment for child support.

In addition, policy arguments against wage garnishment have been made with some effect by various legal commentators.<sup>48</sup> Wage garnishment has an adverse effect on employer-employee relations. "The employer is the garnishee defendant in the action and he must respond to the summons."<sup>49</sup> It is his responsibility to deduct appropriate amounts from the judgment debtor employee's salary and to forward that portion to the court. If the debt is not satisfied by the first garnishment, a judgment creditor may institute a succession of garnishment orders until the whole debt is paid. The result is an increased bookkeeping expense to the employer and, unless provided for by statute, an uncompensated one. The administrative difficulties arising from garnishment often provoke the employer into dismissing the debtor

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45. "The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed." *Id.* § 110-136(a).

46. *Id.* § 110-136(c) (emphasis added).

47. Traditionally, garnishment orders were issued only after a reduction of past due claims to a money judgment. See W. NELSON, *supra* note 29, § 16.40, at 475, § 16.48, at 503. See also text accompanying notes 21-25 *supra*.

48. See, e.g., Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214 (1965); Note, *Wage Garnishment: Remedy or Revenge?*, 5 LOY. CHI. L.J. 140 (1974); Note, *Wage Garnishment as a Collection Device*, 1967 WIS. L. REV. 759.

49. Note, *Wage Garnishment as a Collection Device*, *supra* note 48, at 760.

employee,<sup>50</sup> which, in turn, destroys the employee's ability to meet his financial obligations, including support of his family. The ultimate result is often that the employee is forced into bankruptcy.<sup>51</sup>

Federal and state exemption statutes have traditionally been another limitation on the use of wage garnishment.<sup>52</sup> Protection of the family is the main objective of the exemption statutes. North Carolina manifestly asserts this concept in its exemption statute. Section 1-362 of the North Carolina General Statutes provides for one hundred percent exemption of an employee's wages for the sixty days next preceding the issuance of a garnishment order if the garnished wages would be used to support the family.<sup>53</sup> As would be expected, the exemption may not be asserted against a dependent seeking support.<sup>54</sup> This dichotomy further emphasizes the consideration that the state has given not only to the maintenance of the stable family unit, but also to the predicament of families abandoned by the supporting parent.

The policy of protection for the family argues strongly for the wider use of garnishment in support enforcement. Ironically, it appears that the traditionally negative sentiment toward garnishment, based on its potentially destructive impact on the family unit, has had an unjustifiably detrimental effect on the advancement of the use of garnishment to enforce continuing support for dependent families. This result follows despite the fact that many arguments against wage garnishment are not applicable in the context of using it for enforcement of support obligations.

50. Many companies have a rigid policy of dismissing the employee or threatening to do so in the event of another garnishment. Brunn, *supra* note 48, at 1230.

51. Empirical studies have demonstrated that the number of bankruptcies in a state increases proportionately with the degree to which earnings may be garnished. *See id.* at 1236; Note, *Wage Garnishment: Remedy or Revenge?*, *supra* note 48, at 147-49.

52. Since 1968 federal law has required that at least 75% of weekly wages in every state must be exempt from general wage garnishment. The Consumer Credit Protection Act of 1968 provides that the maximum portion of the aggregate disposable earnings of an individual that is subject to garnishment may not exceed the lesser of: (1) 25% of his disposable earnings for that week, or (2) the amount by which his disposable weekly income exceeds 30 times the federal minimum hourly wage. Consumer Credit Protection Act of 1968, 15 U.S.C. § 1673 (1970). Further restrictions on wage garnishments are left to the states. Every state has some sort of exemption statute. For example, in Pennsylvania, a state in which all wages are unconditionally exempt from general garnishment, 42 PA. CONS. STAT. ANN. § 886 (Purdon 1966), dual policy considerations were attributed to such exemption provisions:

Doubtless the legislature meant it should operate as an exemption law for the benefit of families of laborers and salaried officers, and quite likely they had in view . . . the . . . inconvenience . . . of manufacturers and other large employers being harrassed with attachment execution . . . complicating accounts, accumulating costs, and depriving them of the laborers on whom they depended, by diverting wages from the current support of the laborer's family to the paying of former debts.

*Firmstone v. Mack*, 49 Pa. 387, 392-93 (1865).

53. N.C. GEN. STAT. § 1-362 (1969).

54. *Id.* §§ 50-13.4(f)(10), -16.7(k) (1976). The federal exemption, discussed at note 52 *supra*, is similarly limited. *See* 15 U.S.C. § 1673(b)(1) (1970).

The ill effects of wage garnishment are a result of the detrimental impact of a garnishment order on the family as a whole. When the family is divided, however, it is only logical that a substantial portion of the responsible parent's income should go to support his dependents.<sup>55</sup> Garnishment, in the form of a continuing levy each pay period, is the most efficient manner by which this can be accomplished. Thus, the same argument that supports prohibition of wage garnishment in other contexts supports the use of wage garnishment as a constructive remedy for maintaining a divided family's economic stability.

Nevertheless, the stigma on wage garnishment has apparently carried over into the support area. However inapplicable the prohibitions against wage garnishment may be to support enforcement, the pervasive distaste for wage garnishment has all but suppressed the new garnishment provision for child support in North Carolina. Although the remedy has been available in the state for two years, it is doubtful that more than a few garnishment orders have been issued against private employers. On the other hand, the remedy has proven effective against federal employees as a consequence of the elimination of federal immunity and an unspoken assurance that no employee will be dismissed for having a garnishment order issued against his federal employer.<sup>56</sup> It is apparent that the basic barrier to the use of the remedy against private employers is the fear of employer reprisal. The inconvenience that employers would encounter from processing a limited number of garnishment orders for child support would, however, be greatly outweighed by the benefits to dependents and taxpayers, measured in increased assurance of support and dollars saved on decreased welfare expenditures.

Prior to the enactment of the IV D Program, several states enforced support payments through continuing levying arrangements binding on employers.<sup>57</sup> Since that enactment five additional states have enacted similar

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55. It is questionable whether the 20% of a spouse's wages garnishable under § 110-136 is substantial enough. This may be an additional factor contributing to the disuse of the statute, despite the fact that a steady flow of income to a dependent, regardless of how small, would be better than no income at all.

56. As of January 1, 1977, not a single garnishment order had been filed against a private employer at the Wake County Courthouse. In contrast, approximately ten orders had been filed against federal employers. Although not a great number, the discrepancy is revealing, and, if the experience of one county is indicative of the state as a whole, this information reveals a decided disuse of § 110-136. *See also* *Watson v. Watson*, 424 F. Supp. 866 (E.D.N.C. 1976).

57. CONN. GEN. STAT. ANN. § 52-362a (West Cum. Supp. 1976) (execution on wages for support); ILL. ANN. STAT. ch. 40, § 21.1 (Smith-Hurd Cum Supp. 1977) (assignment of wages to secure payment of child support); KY. REV. STAT. ANN. § 405.035 (Baldwin Cum. Supp. 1976) (assignment of wages for child support payment); MICH. COMP. LAWS § 552.203 (MICH. STAT. ANN. § 25.163 (Callaghan 1974)) (assignment of income, withholding from earnings to pay support); ILL. ANN. STAT. ch. 40, § 21.1 (Smith-Hurd Cum. Supp. 1977) (assignment of wages to

legislation.<sup>58</sup> All of these states provide for subjection of prospective wages to payment for child support. Though seldom labeled as garnishment actions, their effect is essentially the same as that provided under section 110-136. The remedies commonly take one of three forms: an assignment of wages binding on the employer;<sup>59</sup> an attachment of wages (garnishment);<sup>60</sup> or a court order requiring the employer to withhold wages for support on a continuing basis.<sup>61</sup>

Many of these states have given commendable consideration to the effect upon an employer of having his employee's wages garnished. Compensation to the employer for his administrative expenses in complying with support orders ranges from a low of fifty cents per order provided by Kentucky<sup>62</sup> to five dollars per month allowed in Nebraska.<sup>63</sup> These amounts are generally deducted from the amount ordered for support each pay period. Although the amounts may appear inadequate, the expense to the employer of making future payments under an order should be negligible after the initial establishment of a bookkeeping procedure. These provisions should indirectly alleviate the fear of employee discharge due to garnishment orders, but further deterrents to employer reprisal are probably also necessary. Delaware, for example, provides a stiff penalty against an employer for discharge of an employee. Dismissal of an employee due to an attachment order is punishable by a fine of up to one thousand dollars or ninety days in prison or both. Subsequent offenses are subject to fines of five thousand dollars or imprisonment for one year or both.<sup>64</sup>

If the intended benefits are to follow from section 110-136, suit against a private employer must be made more of a practical possibility. To this

support); NEB. REV. STAT. § 42-364.01 (Cum. Supp. 1976) (withholding from earnings to pay support); N.Y. PERS. PROP. LAW § 49-b (McKinney 1976) (wage assignment and deduction by court order in support cases); OHIO REV. CODE ANN. § 3113.21 (Page 1972) (withholding personal earnings to pay support); 62 PA. CONS. STAT. ANN. § 2043.39(c) (Purdon 1968) (attachment of wages for support); WIS. STAT. ANN. § 52.055(2m) (West Supp. 1977) (assignment of wages binding an employer).

58. ALASKA STAT. § 47.23.070 (Cum. Supp. 1976); DEL. CODE tit. 13, § 516 (Cum. Supp. 1976); FLA. STAT. ANN. § 409.2574 (West Cum. Supp. 1976); GA. CODE ANN. § 99-915b.1 (Cum. Supp. 1977); UTAH CODE ANN. § 78-45b-13 (1977).

59. *See, e.g.*, ALASKA STAT. § 47.23.070 (Cum. Supp. 1976); KY. REV. STAT. ANN. § 405.035 (Baldwin Cum. Supp. 1976).

60. *See, e.g.*, DEL. CODE tit. 13, § 516 (Cum. Supp. 1976); GA. CODE ANN. § 99-915b.1 (Cum. Supp. 1977).

61. *See, e.g.*, NEB. REV. STAT. § 42-364.01 (Cum. Supp. 1976). Georgia and Florida, two of the states that provide for assignment of future wages, retain the traditional restriction that only arrearages reduced to a judgment amount may be enforced under the provision. FLA. STAT. ANN. § 409.2574(1) (West Cum. Supp. 1976); GA. CODE ANN. § 99-915b.1(b) (Cum. Supp. 1977). Once the arrearage is paid, the assignment order will cease. In this respect the arrangement is not a continuing one.

62. KY. REV. STAT. ANN. § 405.035 (Baldwin Cum. Supp. 1976).

63. NEB. REV. STAT. § 42-364.01(3) (Cum. Supp. 1976).

64. DEL. CODE tit. 13, § 516(d) (Cum. Supp. 1976).

end, two changes should be made in the statute, for in its present state it is doubtful that any attorney would jeopardize a responsible parent's job by seeking to garnish his wages because of the potentially counterproductive nature of such an action. First, provision must be made for compensation to the employer for the increased bookkeeping expense that accompanies a continuing garnishment order. Secondly, a severe penalty should be assessed against discharging an employee because of a garnishment.<sup>65</sup> Until such action is taken, decreases in welfare expenditures and increased assurance of support to dependents will never be realized, and an essential support enforcement remedy will continue to lay dormant.

MICHAEL ANDREW HEEDY

### Taxation—Part A Medicare Benefits Under the Dependency Support Test

Section 152(a) of the 1954 Internal Revenue Code<sup>1</sup> permits a taxpayer to claim a qualified individual as a dependent if the taxpayer has provided more than half of that individual's total support during the taxable year.<sup>2</sup>

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65. In addition, although not discussed at length herein, the 20% maximum provided by § 110-136(a) should be raised to a level that will adequately reflect the economic needs of abandoned dependents. See note 55 *supra*. The ceiling placed on wage garnishment by the Consumer Credit Protection Act of 1968, see note 52 *supra*, is inapplicable to garnishment actions for support. 15 U.S.C. § 1673(b)(1) (1970).

1. I.R.C. § 152(a).

2. Section 152 provides in pertinent part:

(a) GENERAL DEFINITION—For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer

. . . :

(4) The father or mother of the taxpayer, or an ancestor of either,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer . . . .

*Id.* Treas. Reg. § 1.152-1(a)(2)(i), T.D. 6231, 1957-1 C.B. 77, 83, adds:

For purposes of determining whether or not an individual received, for a given calendar year, over half of his support from the taxpayer, there shall be taken into account the amount of support received from the taxpayer as compared to the entire amount of support which the individual received from all sources, including support which the individual himself supplied. The term "support" includes food, shelter, clothing, medical and dental care, education, and the like.

*Id.* The burden of proof is on the taxpayer to establish not only the amount of his or her contribution but also that it constitutes more than half of the individual's total support. *E.g.*, Rose D. Serayder, 50 T.C. 756, 760 (1968), *acq.* 1969-2 C.B. xxv; Aaron F. Vance, 36 T.C. 547, 549 (1961). For discussion of dependency support, see Krawchick, *Who Is Dependent? Whose Dependent? What Is Support?*, 29 N.Y.U. ANN. INST. FED. TAX. 1343 (1971); [1975] 1 TAX COORDINATOR (RIA) ¶¶ A-3100 to -3120.