

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TONY W. STRICKLAND,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:12-CV-02735-MHS
RICHARD T. ALEXANDER,	:	
Clerk of Court of the State Court	:	
of Gwinnett County, Georgia,	:	
	:	
Defendant.	:	

ORDER

To expedite consideration of defendant's motion to alter or amend judgment [Doc. 108], any response in opposition to the motion shall be filed no later than Monday, September 28, 2015, and any reply shall be filed no later than Thursday, October 1, 2015.

IT IS SO ORDERED, this 23rd day of September, 2015.

/s/ Marvin H. Shoob
Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TONY W. STRICKLAND,)	
)	
Plaintiff,)	Civil Action No.
v .)	1:12-cv-02735-MHS
)	
RICHARD T. ALEXANDER,)	
Clerk of Court of the State Court,)	Judge Marvin H. Shoob
Of Gwinnett County, Georgia,)	
)	
Defendant.)	

**DEFENDANT ALEXANDER’S BRIEF IN SUPPORT OF HIS
MOTION TO ALTER OR AMEND JUDGMENT**

COMES NOW RICHARD ALEXANDER, Defendant in the above-styled civil action, and pursuant to Federal Rule of Civil Procedure 59(e), files this his Brief in Support of his Motion to Alter or Amend the Court’s Judgment dated September 8, 2015.

In its Judgment, this Court declared Georgia’s post-judgment garnishment statute, O.C.G.A. §§18-4-60 et seq., unconstitutional. Order of September 8, 2015 [Doc. 105] at 47. The Court enjoined Defendant Alexander “from issuing *any* summons in garnishment pursuant to the existing forms and procedures insofar as they are inconsistent with this decision.” Id. at 48 (emphasis added). Because of the breadth of this language, Defendant Alexander has stopped issuing any and all

summons and notice in garnishment actions, regardless of the type of garnishment at issue.

The case brought by Plaintiff Strickland involved a “bank garnishment” filed pursuant to O.C.G.A. §§18-4-60 *et seq.* The judgment creditor sought to obtain Mr. Strickland’s funds on deposit with J.P. Morgan Chase Bank.

In addition to a garnishment action against a bank at which a judgment debtor has a deposit account, Georgia law also allows for a continuing garnishment action against a judgment debtor’s employer, whereby a portion of the judgment debtor’s wages are paid into court in order to satisfy the judgment. *See* O.C.G.A. §§18-4-110 *et seq.* Defendant Alexander will refer to this procedure as a “continuing wage garnishment.” There is a separate but related procedure where the debt is for a child support obligation; in those cases it is once again the debtor’s wages that are the object of the garnishment proceeding. *See* O.C.G.A. §§18-4-130 *et seq.* Defendant Alexander will refer to that procedure as a “child support garnishment.”

This Court has declared “O.C.G.A. §§18-4-60 *et seq.* unconstitutional,” and this has led Defendant Alexander to err on the side of caution and assume the Court’s order and judgment applies to the entire post-judgment garnishment statute (of which O.C.G.A. §§18-4-110 and 18-4-130 arguably are a part). While this

Court did not specifically declare the continuing wage garnishment and child support garnishment statutes unconstitutional, it did enjoin Mr. Alexander from issuing any summons in garnishment, and Defendant Alexander believes he is obligated to adhere to that injunction unless and until it is altered or amended.

Defendant respectfully moves the Court to alter or amend its Order and Judgment of September 8, 2015 in such a manner as to limit its scope and application to garnishment proceedings filed against a financial institution holding a judgment debtor's property under a deposit agreement or account, and to specifically exempt from its scope and coverage those continuing wage and child support garnishments authorized by O.C.G.A. §§18-4-110 and 18-4-130 et seq. First, Mr. Strickland lacks standing to challenge those statutes, because he does not allege that a continuing wage or child support garnishment action was filed against his employer. Second, the parties did not address, and this Court did not consider, the type of exemptions and the notice and hearing procedures that apply to continuing wage and child support garnishment proceedings. Having never considered the terms of those statutory provisions, the Court should make it clear that no injunction has been issued against those two types of post-judgment garnishment proceedings, and that O.C.G.A. §§18-4-110 and 18-4-130 et seq. have not been declared unconstitutional.

CONCLUSION

Therefore, for the foregoing reasons, the Defendant respectfully requests that this Court GRANT his Motion to Alter or Amend this Court's Order of September 8, 2015, clarifying that no injunction has been issued against the issue of notice or summons of garnishment in wage and child support garnishment proceedings, and that those provisions of Georgia's post-judgment garnishment laws have not been declared unconstitutional.

Respectfully submitted, this 23rd day of September, 2015.

O'QUINN & CRONIN, LLC

/s/ Michael A. O'Quinn

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as approved by the Court in L.R. 5.1.C, and comports with the page limitations of L.R. 7.1(D).

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/s/ Michael A. O'Quinn

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that he has this day filed a copy of the forgoing Brief in Support of Defendant Alexander's Motion to Alter or Amend Judgment via the Court's electronic filing system ("ECF"). Notice of this filing was provided to counsel of record for all other parties to this case via ECF.

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This 23rd day of September, 2015.

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