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J.M. v. Hobbs

Supreme Court of Nebraska - July 18, 2014 - N.W.2d - 288 Neb. 546

Before 2012, under Neb.Rev.Stat. § 81-2032, a Nebraska State Patrol officer's retirement assets had absolute protection from "garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law." Such provisions are called anti-attachment statutes.

In 2012, the Legislature amended § 81-2032(2) and other anti-attachment statutes to allow a civil judgment to attach to the distributed retirement assets of State Patrol officers and other public employees who have committed six specified crimes—if the public employee was convicted of the crime in a criminal prosecution. The amendment applied retroactively to past civil judgments predicated on such crimes.

Billy L. Hobbs, is a retired State Patrol officer who was convicted of one of the specified crimes—first degree sexual assault of a child. J.M., the victim's guardian and conservator, obtained a civil judgment against Hobbs and has twice sought an order in aid of execution. In response to J.M.'s second attempt, after the statute was amended to apply retroactively, Hobbs challenged the constitutionality of the amendment on multiple grounds. The District Court determined that the amendment was unconstitutional as special legislation and dismissed J.M.'s motion.

The Supreme Court of Nebraska agreed with the District Court that L.B. 916 arbitrarily benefits the select crime victims of its specified crimes. Simultaneously, L.B. 916 arbitrarily benefits those public employees and officers whose retirement assets are not subject to attachment because (1) the act does not apply to their retirement plans or (2) they pleaded no contest or were convicted of a serious crime that is not included in the act.

The Court concluded that, under the act's stated purpose of providing compensation to the victims of serious crimes, no substantial difference exists between the favored groups of victims and employees and those victims and employees who do not receive the act's benefits. Because the class members are not substantially different, the act is special legislation.