

245 Ariz. 554

Court of Appeals of Arizona, Division 1.

STATE of Arizona, EX REL., DEPARTMENT OF
ECONOMIC SECURITY, Petitioner/Appellee,

v.

Jose TORRES, Respondent/Appellant.

No. 1 CA-CV 17-0695 FC

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FILED 10/30/2018

Synopsis

Background: Inmate brought action challenging a Department of Economic Security withholding order seizing a gift of money, wired into his inmate trust account from his mother, for the inmate's **child support** obligation. The Superior Court, Maricopa County, No. FC2001-001384 FC, Ronee F. Korbin Steiner, Brian S. Rees, J.J., granted the department's motion to dismiss. Inmate appealed.

Holdings: The Court of Appeals, **Johnsen**, J., held that:

[1] the money was a lump sum payment rather than wages, and thus the department was able to issue limited withholding order seizing it, and

[2] inmate was not entitled to a hearing before money was taken out of his account, and thus inmate's due-process rights were not violated by the withholding order.

Affirmed.

Procedural Posture(s): On Appeal; Review of Administrative Decision; Motion to Dismiss.

West Headnotes (15)

[1] **Appeal and Error** 🔑 Statutory or legislative law

The interpretation of a statute is a matter of law that appellate courts review de novo.

[2] **Statutes** 🔑 Statute as a Whole; Relation of Parts to Whole and to One Another

Statutes 🔑 Similar or Related Statutes

In construing a statute, appellate courts give effect to each word and construe related statutes together.

[3] **Statutes** 🔑 Plain Language; Plain, Ordinary, or Common Meaning

Appellate courts give a statute's words their usual and commonly understood meaning unless the legislature clearly intended a different meaning.

[4] **Statutes** 🔑 Plain language; plain, ordinary, common, or literal meaning

If a statute's language is clear, appellate courts apply it without using other methods of statutory interpretation.

[5] **Child Support** 🔑 Administrative enforcement; orders and proceedings

Prisons 🔑 Money and finances; inmate accounts

Gift of \$120 to an inmate from his mother was a lump sum payment rather than wages, and thus Department of Economic Security was able to issue limited withholding order seizing the gift from a inmate trust account and sending the money to **child-support** clearinghouse; statute authorizing limited withholding orders did not specifically define such gifts as being lump sum payments, but the mother's gift was a single payment made all at once, and thus was a lump sum payment under that term's ordinary meaning. *Ariz. Rev. Stat. Ann. §§ 25-505(E)*, 31-254.

[6] **Statutes** 🔑 Undefined terms

Statutes 🔑 Words of inclusion

In statutory interpretation, the word "includes" is most often a term of enlargement, rather than limitation; in other words, when the legislature

does not define a term, but states that the term includes specified items, appellate courts construe the term to also include other items that fall within the term's ordinary meaning.

[7] **Statutes** 🔑 Subject or purpose

Appellate courts construe statutes that are related to the same subject matter as though they constitute one law.

[8] **Statutes** 🔑 Similarity or difference

Appellate courts engaged in statutory interpretation assume that when the legislature uses different language within a statutory scheme, it does so with the intent of ascribing different meanings and consequences to that language.

[9] **Child Support** 🔑 Garnishment and wage execution

“Lump sum payment” as used in statute governing limited income withholding orders for **child support** obligations can include any payment made in a lump sum, owed to the obligor or not. [Ariz. Rev. Stat. Ann. § 25-505](#).

[10] **Child Support** 🔑 Administrative enforcement; orders and proceedings

Constitutional Law 🔑 Child custody, visitation, and support

Constitutional Law 🔑 Property and employment

Prisons 🔑 Money and finances; inmate accounts

Inmate was not entitled to a hearing before money was taken out of his account, and thus inmate's due-process rights were not violated by Department of Economic Security withholding order on a gift from inmate's mother; inmate had a **child support** obligation of over \$20,000, the order held the money in support clearing house pending final resolution of the matter, merely restricting inmate's freedom to use his money in

a particular way rather than being an absolute deprivation, and the governmental interest in having inmate pay his **child support** obligation was strong. [U.S. Const. Amend. 14](#); [Ariz. Rev. Stat. Ann. § 25-503\(E\)](#).

[11] **Appeal and Error** 🔑 Constitutional questions

Appellate courts have discretion to consider constitutional issues raised for the first time on appeal.

[12] **Constitutional Law** 🔑 Duration and timing of deprivation; pre- or post-deprivation remedies

Although due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner, such hearings need not always be held before the related deprivation. [U.S. Const. Amend. 14](#).

[1 Cases that cite this headnote](#)

[13] **Constitutional Law** 🔑 Factors considered; flexibility and balancing

Due-process protections are flexible and can vary, based on the interests at stake in a particular case. [U.S. Const. Amend. 14](#).

[14] **Constitutional Law** 🔑 Factors considered; flexibility and balancing

In resolving a due-process challenge, courts must consider: (1) the private interests affected; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [U.S. Const. Amend. 14](#).

[1 Cases that cite this headnote](#)

[15] Appeal and Error **Constitutional Rights, Civil Rights, and Discrimination in General**

Whether due process has been satisfied is a question of law that appellate courts decide de novo. *U.S. Const. Amend. 14*.

****1209** Appeal from the Superior Court in Maricopa County, No. FC2001-001384 FC, The Honorable Ronee F. Korbstein, Judge, The Honorable Brian S. Rees, Judge *Pro Tempore*, **AFFIRMED**

Attorneys and Law Firms

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Presiding Judge [Diane M. Johnsen](#) delivered the opinion of the Court, in which Judge [Maria Elena Cruz](#) and Judge [Randall M. Howe](#) joined.

OPINION

[JOHNSEN](#), Judge:

***556** ¶ 1 Jose Torres, an inmate in the state prison system, owed more than \$20,000 in **child support** arrears. After his mother wired a gift of \$120 into his inmate trust account, the Arizona Department of Economic Security (“ADES”) issued a withholding order seizing most of it and sent the money to the **child-support** clearinghouse. Torres argues non-wage monies in an inmate's account may not be seized for **child support** and contends the withholding order violated his due-process rights. For the following reasons, we affirm the superior court's judgment denying Torres's appeal of the administrative action.

FACTS AND PROCEDURAL BACKGROUND

¶ 2 In 2001, the superior court ordered Torres to pay \$173 a month in **child support** for his son and \$2,941 in arrearages that had accumulated since the child was born the year before. In 2011, the court learned Torres was incarcerated and

terminated his monthly **child support** obligation pursuant to  Arizona Revised Statutes (“A.R.S.”) section 25-503(E) (2018).¹ The court's order, however, noted, “Arrears are still owed.”

¶ 3 In November 2016, Torres's mother wired \$120 into his inmate trust account. By that time, and even though Torres's monthly payments had been terminated, he owed **child-support** arrearages of \$20,645. Days later, acting under Title IV-D of the Social Security Act, *42 U.S.C. §§ 651-* *669*, ADES issued a Limited Income Withholding Order that directed the Arizona Department of Corrections (“ADC”) to withhold an unspecified amount from Torres's account for application against his arrearages. ADC withheld \$90.07 from Torres's account, and he requested administrative review. Torres argued the order was improper because he was incarcerated and did not have custody of his son. ADES issued a final determination denying his challenge.

¶ 4 Torres appealed the ADES determination to the superior court. ADES moved to ***557 **1210** dismiss Torres's appeal, arguing its order was proper under *A.R.S. § 25-505(A)* (2018). Torres responded that  *A.R.S. § 31-254* (2018) controls the withholding of an inmate's funds for **child support** and does not allow seizure of funds a prisoner receives as a gift. The superior court granted the motion to dismiss and Torres timely appealed. We have jurisdiction under *Article 6, Section 9, of the Arizona Constitution*, and  *A.R.S. §§ 12-120.21(A)(1)* (2018), -913 (2018) and -2101(A)(1) (2018). See *Svendsen v. Ariz. Dep't of Transp., Motor Vehicle Div.*, 234 Ariz. 528, 533, ¶ 13, 323 P.3d 1179, 1184 (App. 2014).

DISCUSSION

A.  **Section 31-254 Does Not Bar Use of a Withholding Order to Take an Inmate's Non-Wage Monies for **Child Support**.**

[1] [2] [3] [4] ¶ 5 The interpretation of a statute is a matter of law that we review *de novo*. See  *State ex rel. Dep't of Econ. Sec. v. Hayden*, 210 Ariz. 522, 523, ¶ 7, 115 P.3d 116, 117 (2005). In construing a statute, we give effect to each word and construe related statutes together.  *Id.* We give a statute's words their “usual and commonly understood meaning unless the legislature clearly intended a different

meaning.” See [Bilke v. State](#), 206 Ariz. 462, 464-65, ¶ 11, 80 P.3d 269, 271-72 (2003). If a statute's language is clear, we apply it without using other methods of statutory interpretation. See [id.](#) at 464, ¶ 11, 80 P.3d at 271-72.

¶ 6 The statute on which Torres relies, [A.R.S. § 31-254](#), establishes a pay schedule for work performed by inmates and mandates specified deductions from an inmate's pay, including “[t]hirty percent of the prisoner's wages for court ordered dependent care.” [A.R.S. § 31-254\(D\)\(4\)](#). As Torres points out, there is no provision in [§ 31-254](#) for the withholding of non-wage monies from an inmate's account for **child support**. Torres argues that because [§ 31-254](#) mandates that **child support** be taken from an inmate's wages but does not specify any other deductions for **child support**, no other funds in an inmate's account can be taken for **child support**.

¶ 7 Under [A.R.S. § 25-504](#) (2018), a party owed **child support** is entitled to an assignment of the obligor's “income” and may obtain an order withholding a specified amount from the obligor's monthly wages. [A.R.S. § 25-504\(A\), \(B\)](#). The legislature broadly has defined “income” for this purpose as “any form of payment owed.” [A.R.S. § 25-500\(6\)](#) (2018). As stated, when the obligor is an inmate who earns income—wages—while incarcerated, [§ 31-254](#) expressly provides that 30 percent of those wages be deducted for **child support**.

¶ 8 The order at issue here, however, was not directed at Torres's wages pursuant to [§§ 31-254\(D\)\(4\)](#) and [25-504](#). Instead, it was a one-time “limited” withholding order issued pursuant to [§ 25-505](#). That statute does not apply to regularly recurring income, but instead authorizes issuance of a withholding order to “any employer, payor or other holder of a nonperiodic or lump sum payment that is owed or held for the benefit of an obligor.” Under [§ 25-505](#), a “holder” of such a payment may be required to “withhold ... and transmit” the specified funds to the support clearinghouse. [A.R.S. § 25-505\(D\)](#).

¶ 9 Although [§ 31-254\(D\)\(4\)](#) mandates what may be taken from an inmate's wages for **child support** pursuant to [§ 25-504](#), it imposes no limits on what may be taken pursuant to [§ 25-505](#) from a “nonperiodic or lump sum payment” in an inmate's account. Nor do other provisions

in the statutory regime support Torres's contention that the wage deduction specified in [§ 31-254](#) impliedly precludes any other withdrawal for **child support** under [§ 25-505](#). To the contrary, [A.R.S. § 25-521](#) (2018) empowers ADES to levy “on all property and rights to property not exempt under federal or state law” to collect support arrearages, and Torres cites no legal exemption shielding an inmate's trust account from that broad power. Further, the legislature has mandated that **child-support** obligations “may be enforced by all civil and criminal remedies provided by law” and that remedies available under Chapter 5 of Title 25 “are cumulative and do not affect the availability of [other] remedies.” [A.R.S. § 25-501\(D\), \(E\)](#) (2018).

*558 **1211 ¶ 10 Torres contrasts [§ 31-254](#) with [A.R.S. § 31-230\(C\)](#) (2018), which requires ADC to withdraw a specified percentage of funds in an inmate's “spendable account” to satisfy the inmate's restitution obligation. Torres argues the legislature's failure to enact a comparable statute specifically granting ADES the power to take non-wage funds from an inmate's account for **child support** means that ADES must lack that power. Given the broad authority the legislature has granted ADES under [§§ 25-501](#) and [-521](#) to collect past-due **child support**, however, no specific provision addressing inmates' trust accounts is required. For the same reason, we reject Torres's contention that penological interests and ADC policy reasons should constrain ADES's power to take funds from an inmate's account. See, e.g., [Rasmussen v. Munger](#), 227 Ariz. 496, 499, ¶ 12, n.2, 260 P.3d 296, 299, n.2 (App. 2011) (when statute is plain, court will not construe it otherwise because of policy determinations that are for the legislature to decide).

B. ADC Was a Holder of a Lump Sum Payment Under [A.R.S. § 25-505](#).

[5] ¶ 11 Torres also argues the withholding order ADES issued to ADC was improper because his mother's gift was not a “lump sum payment” under [§ 25-505\(E\)](#). As stated, under [§ 25-505](#), ADES may issue a withholding order “to any employer, payor or other holder of a nonperiodic or lump sum payment that is owed or held for the benefit of an obligor.” The statute defines neither “nonperiodic” nor “lump sum,” but subsection (E) states:

¶ 12 For the purposes of this section, “lump sum payment” includes:

1. Severance pay.

2. Sick pay.
3. Vacation pay.
4. Bonuses.
5. Insurance settlements.
6. Commissions.
7. Stock options.
8. Excess proceeds.
9. Retroactive disability proceeds.
10. Personal injury awards.

¶ 13 “Nonperiodic payment” and “lump sum payment” both have ordinary meanings. The former is a payment made once, or intermittently, but not “periodically” or regularly. The latter is a payment made all at once, not in installments. Notwithstanding Torres's argument to the contrary, under the plain meaning of the statute, his mother's gift was a single payment made all at once, and thus was a “lump sum payment” under that term's ordinary meaning.²

[6] ¶ 14 In arguing otherwise, Torres contends the term “lump sum payment” means *only* the types of payments listed in § 25-505(E). But subsection (E) states that “lump sum payment *includes*” the listed forms of payments, and “[t]he word ‘includes’ is most often a term of enlargement, rather than limitation.” *Tracy v. Superior Court of Maricopa Cty.*, 168 Ariz. 23, 35, 810 P.2d 1030, 1042 (1991). In other words, when the legislature does not define a term, but states that the term “includes” specified items, we construe the term to also include other items that fall within the term's ordinary meaning. See *id.* at 35, 810 P.2d at 1042, citing 2A N. Singer, *Sutherland Statutory Construction* § 47.07, at 133 (4th ed. 1984 Rev.).

[7] ¶ 15 Careful review of other relevant statutes further undercuts Torres's contention that § 25-505(E) contains an exhaustive list of what “lump sum payment” means. We construe statutes that are related to the same subject matter as though they constitute one law. See *Hayden*, 210 Ariz. at 523, ¶ 7, 115 P.3d at 117–18. Elsewhere in the support-collection statutes, the legislature has used the verb “means” to state a term's only meaning, while

using “includes” to introduce a non-exclusive list. *Compare* A.R.S. § 25-522(G)(1) (2018) (“‘[b]usiness day’ means a day on which state offices are open for regular business”) with A.R.S. § 25-522(G)(2) (“‘[d]epartment’ includes the department's agent”). See also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 226 (2012) (“When a definitional section says that a word ‘includes’ certain things, that is usually *559 **1212 taken to mean that it may include other things as well.... When, by contrast, a definitional section says that a word ‘means’ something, the clear import is that this is its *only* meaning.”).

¶ 16 Torres further argues that a “lump sum payment” must be a payment *owed* to the recipient—not a gift—because all the items listed in § 25-505(E) are “moneys either earned or owed to a recipient.” As noted above, § 25-504 authorizes withholding of an obligor's “income” for **child support**. See A.R.S. §§ 25-504(H) (“employer or other payor who has received any order of assignment shall withhold the amount specified ... from the income of the person obligated to pay support), -500(6) (“‘Income’ means any form of payment owed to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability payments, [retirement payments] and interest”).

[8] [9] ¶ 17 But § 25-505(A), the source of the withholding order here, expressly applies not only to a “payment that is owed” to the obligor but also to a payment “held for the benefit of” the obligor. By the same token, the statute authorizes issuance of an order not only to an obligor's employer (compelling withholding from a “payment that is owed” to the obligor) but also to a “holder” of a payment that has been made to an obligor, whether “owed” or not. A.R.S. § 25-505(A). “[W]e assume that when the legislature uses different language within a statutory scheme, it does so with the intent of ascribing different meanings and consequences to that language.” *Parker v. City of Tucson*, 233 Ariz. 422, 428, ¶ 12, 314 P.3d 100, 106 (App. 2013). By this reasoning, we conclude that “lump sum payment” as used in § 25-505 can include any payment made in a lump sum, “owed” to the obligor or not.

¶ 18 Torres further argues it was improper to allow seizure of funds his mother sent him as a Christmas gift. Arizona law, however, affords ADES the full panoply of remedies to enforce a **child-support** arrearage. If Torres's mother had wired her gift to his bank account, ADES could have

garnished the bank account. See A.R.S. § 25-521, -524 (2018); see also  *Huggins v. Deinhard*, 134 Ariz. 98, 103, 654 P.2d 32, 37 (App. 1982); A.R.S. § 12-1570.01 (2018). If he were not incarcerated and she had sent him cash that he used to buy property, ADES could perfect a lien on the property.  A.R.S. § 25-516(A) (2018). If he kept the cash in a drawer at home, ADES could seize the money there. A.R.S. § 25-521(A). Thus, the only issue is whether ADES properly used a withholding order in this instance, not whether ADES could reach the gift by any means.

¶ 19 In sum, the gift Torres's mother sent him was a lump sum payment, and once the money reached his inmate trust account, ADC became a “holder ... of a lump sum payment that is ... held for the benefit of an obligor.” See A.R.S. § 25-505(A). ADES thus had authority to issue the withholding order to ADC, which thereafter was obligated to withhold and transmit the money to the clearinghouse. See A.R.S. § 25-505(A), (D).

C. Torres's Due-Process Rights Were Not Violated.

[10] [11] ¶ 20 Torres finally argues the transfer of money out of his inmate trust account before a hearing violated his due-process rights under the United States Constitution. Although Torres did not raise this issue when he sought administrative review by ADES, we have discretion to consider constitutional issues raised for the first time on appeal. See  *Dombey v. Phoenix Newspapers, Inc.*, 150 Ariz. 476, 482, 724 P.2d 562, 568 (1986) (“Instances in which we exercise this discretion [to hear issues not raised before an appeal] include issues ... of constitutional dimension.”)

¶ 21 Torres raises no challenge, nor could he at this point, to the orders establishing his monthly **child support** obligation and the amount of arrearages that accumulated after he failed to pay. He only challenges the process accorded him with respect to the withholding order by which ADES seized the \$90.07 from his inmate trust account. Torres received notice of the withholding order 10 days after ADES issued it and sought and was granted an administrative appeal from the order. Pending final resolution of the matter, the support clearinghouse is holding *560 **1213 the funds at issue. See  Ariz. Admin. Code R6-7-701(H)(3)(b). Torres, however, argues he was entitled to a hearing before the money was taken from his account.

[12] [13] ¶ 22 Although “due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner[,] ... such hearings need not always be held *before* the related deprivation.” *State v. Stocks*, 227 Ariz. 390, 394, ¶ 7, 258 P.3d 208, 212 (App. 2011). Due-process protections are flexible and can vary, based on the interests at stake in a particular case. *Id.* at 394, ¶ 8, 258 P.3d at 212 (quoting  *Gilbert v. Homar*, 520 U.S. 924, 930, 117 S.Ct. 1807, 138 L.Ed.2d 120 (1997) and  *Washington v. Harper*, 494 U.S. 210, 229, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990)).

[14] [15] ¶ 23 The Due Process Clause of the Fourteenth Amendment of the United States Constitution “imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the [clause].”  *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In resolving a due-process challenge, courts must consider: (1) “the private interests ... affected”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”  *Eldridge*, 424 U.S. at 335, 96 S.Ct. 893. Whether due process has been satisfied is a question of law that we decide *de novo*. See *Wassef v. Ariz. State Bd. of Dental Exam'rs*, 242 Ariz. 90, 93, ¶ 11, 393 P.3d 151, 153–54 (App. 2017).

¶ 24 The private interest at stake here is Torres's property interest in the money taken from his account. Given Torres's obligation to pay the accumulated **child-support** arrearages, however, his property interest in the money that was taken is reduced by the fact that the withholding order was “merely a restriction on [Torres's] freedom to use [his] money in a particular way” and “not an absolute deprivation of the benefit of the money.” *Stocks*, 227 Ariz. at 395, ¶ 13, 258 P.3d at 213 (addressing deduction from inmate's account to satisfy restitution order). In contrast, the governmental interest is strong, given that a parent's “obligation to pay **child support** is primary.” A.R.S. § 25-501(C). Additionally, the State has a duty to enforce such obligations in order to “relieve or avoid the burden often borne by the general citizenry through public assistance programs.” See A.R.S. § 46-401 (2018). Finally, Torres does not say how or why a pre-deprivation hearing would have resulted in a different outcome than the administrative review he received. Based on this weighing of

the interests, the procedure afforded to Torres did not violate his rights to due process.

¶ 25 For the reasons stated above, we affirm the superior court's order dismissing Torres's appeal from ADES's final determination upholding the withholding order.

CONCLUSION

All Citations

245 Ariz. 554, 431 P.3d 1207, 803 Ariz. Adv. Rep. 12

Footnotes

- 1 Absent material revision after the relevant date, we cite the current version of a statute or rule.
- 2 Neither ADES nor Torres addresses whether the gift was a “nonperiodic payment.”