

Office of the Attorney General
State of North Dakota

Opinion No. 81-103

Date Issued: October 6, 1981

Requested by: Owen K. Mehrer, Stark County State's Attorney

--QUESTION PRESENTED--

Whether child support awarded by a district court in a divorce action should be recorded by the clerk of district court on the money judgment docket.

--ATTORNEY GENERAL'S OPINION--

It is the Attorney General's opinion that child support awarded by a district court order in a divorce decree should not be recorded on the judgment docket.

--ANALYSIS--

Prior to the 1981 Legislative Session, Section 14-09-09.5 of the North Dakota Century Code read in part as follows:

The certified copy of any judgment or order which contains a provision for payment of child support, including any such judgment or order registered in the state under chapters 28-20.1 and 14-12.1, may be docketed in the judgment docket in the office of the clerk of court of any county and shall from such docketing become a lien upon all real property of the obligor in such county owned by the obligor at the time, or which the obligor may afterwards and before the lien expires, acquire, for the respective amounts of child support installments as they mature. The judgment or order shall not become a lien for any sum or sums prior to the date they severally become due and payable. . . .

This statute was repealed by the 1981 Legislative Assembly. (See 1981 N.D. Sess. Laws, Chapter 172, § 1.) The legislative intent has been clearly expressed by the repeal of the provision allowing for support obligations to become liens upon property of the obligor.

The provisions for the enforcement of an order for payments for child support or alimony combined with child support are found in Sections 14-08-07 and 14-08.1-03, N.D.C.C. These sections read in part as follows:

14-08-07. SUPPORT PAYMENTS--PAYMENT TO COURT--
TRANSFER OF PAYMENT TO COURT OF RECIPIENT'S RESIDENCE--
TRANSFER OF PROCEEDINGS FOR ENFORCEMENT OF DECREE--
PROCEDURES UPON FAILURE TO PAY.

1. In any action wherein a court decrees that payments for child support or alimony combined with child support be made, the court shall provide in its decree that such payments be paid to the clerk of court as trustee for remittance to the recipient or person or public agency providing support for such recipient. The clerk of court shall maintain records listing the amount of the payments, the date when the payments shall be made, the names and addresses of the parties subject to the decree, and any other information necessary for the proper administration of the decree. . . . Whenever there is failure to make the payments as required, the clerk of court shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation shall be served on that person as provided by the North Dakota Rules of Civil Procedure.

14-08.1-03. SECURITY REQUIRED--ENFORCEMENT REMEDIES.-

-In order to enforce an obligation for the support of a child under section 14-08.1-01, the court may make suitable provision for the future care or support of the child, require reasonable security for payments required under this chapter, and enforce the obligation by attachment, garnishment, or by other appropriate remedies, including proceedings under chapter 14-08 as nearly as may be.

Therefore, child support awarded by a district court in a divorce action should not be recorded by the clerk of district court on the money judgment docket. The enforcement remedies found in Sections 14-08-07 and 14-08.1-03, N.D.C.C., should be used. If a judgment for a definite total of arrears is rendered, that judgment then becomes part of the judgment money docket.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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