



## Northwest Education Loan Association v. Washington State Grange

128 Wash.App. 1053 (2005) | Cited 0 times | Court of Appeals of Washington | July 26, 2005

JUDGES: Concurring: David H. Armstrong J Dean Morgan

### UNPUBLISHED OPINION

The Washington State Grange (Grange) received a wage-withholding order arising from employee Toni McKinley's default on student loans obtained under the Federal Higher Education Act of 1965 (HEA) as amended, 20 U.S.C. sec.sec. 1070-99. The Grange appeals the trial court's judgment enforcing the order and denying the Grange's challenge to the order's underlying validity. The Grange argues that the wage-withholding order had no force due to the following defects: (1) Without proper authority, HEA unconstitutionally delegated its garnishment authority to a private guaranty agency, Northwest Education Loan Association (NELA); (2) NELA further unconstitutionally delegated this power to a private collection agency, Financial Assistance, Inc., (FAI); (3) the order did not comport with due process because FAI, the body authorized to hold a pre-garnishment hearing, had a pecuniary interest in the matter and was, therefore, biased; and (4) NELA and FAI did not follow HEA's pre-garnishment requirement for providing notice to the employee.

NELA cross-appeals the trial court's denial of punitive damages.

Holding that the Grange lacks standing to raise its claims and that NELA has not shown abuse of the trial court's discretion in denying punitive damages, we affirm.

### FACTS

#### I. Student Loan in Default

Toni McKinley, a Grange employee, has two federal student loans from 1986 and 1993, a disputed portion of which is in default. NELA is a loan guaranty agency, empowered by the HEA as amended, 20 U.S.C. sec.sec. 1070-99, to implement and to administer portions of the Federal Student Loan Program (FSLP). A private collection company, Financial Assistance, Inc. (FAI), contracted with NELA to perform administrative wage garnishments, on NELA's behalf, against pre-assigned defaulted student loans.

NELA purchased McKinley's debt and attempted unsuccessfully to collect. FAI mailed multiple letters to McKinley, giving notice that if she did not pay her outstanding balance, FAI would take



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legal action, including issuing an order to garnish her wages. McKinley contends she never received these notices.

In 2002, FAI served the Grange by certified mail with a wage garnishment packet, which included its order<sup>1</sup> to withhold McKinley's earnings. Concerned that the garnishment order was improper, the Grange consulted a lawyer. Based on this legal advice, the Grange chose not to remit any of McKinley's wages to FAI or to establish an escrow account into which it could deposit the disputed funds.

### II. Litigation

NELA sued the Grange for failing to respond to the wage-withholding order. NELA sought the amount of McKinley's wages that the Grange should have withheld under the order, punitive damages, attorney fees, and costs. NELA also moved for partial summary judgment.

The Grange filed cross-motions for (1) summary judgment against a third-party, FAI, for violation of the Fair Debt Collection Practices Act (FDCPA), and the Washington State Collection Agency Act (WSCAA); and (2) dismissal, claiming an unconstitutional delegation of power by Congress, under HEA to guaranty agencies including NELA, and from NELA to FAI. McKinley attempted unsuccessfully to assign her HEA rights to the Grange without relinquishing her ability to pursue her rights independently.

The trial court denied without prejudice NELA's motion for partial summary judgment, finding issues of fact 'as to whether or not the proper procedure was followed in establishing lawful authority to commence garnishment.' Report of Proceedings Vol. 1 at 31. The trial court denied the Grange's cross-motion for summary judgment on the FDCPA and WSCAA violation, reasoning that (1) the Grange had failed to make FAI a proper party to the lawsuit; (2) McKinley's attempted assignment of her rights to the Grange was ineffective; and (3) therefore, the Grange lacked standing to challenge the notice and order procurement procedures.

The trial court also denied the Grange's motion to dismiss on constitutional grounds, ruling that Congress's delegation of power under HEA to NELA and NELA's delegation to FAI were not unconstitutional. The trial court further ruled 'as a matter of law' that the Grange lacked standing to contest the amount of McKinley's debt.

Following the trial court's decision, NELA made a second motion for partial summary judgment on statutory procedural issues; NELA also requested punitive damages and attorney fees under 20 U.S.C. sec. 1095a(a)(8). The trial court held a second hearing, and (1) found that NELA had properly complied with statutory pre-garnishment procedures for notice to McKinley; (2) ordered the Grange to comply with FAI's wage-withholding order and to pay NELA's attorney fees and costs; and (3) denied NELA's request for punitive damages.



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The Grange appeals the trial court's dismissal of its unlawful delegation, due process, and statutory notice claims. NELA cross-appeals the trial court's denial of punitive damages.

## ANALYSIS

### I. Regulatory Background

Title V of HEA authorizes the Secretary of Education to administer student loan and grant programs in order to 'allow students to obtain federally guaranteed educational loans.' *Am. Ass'n of Cosmetology Sch. v. Riley*, 170 F.3d 1250, 1251 (9th Cir. 1999). Under this program, a student: receives a loan from a participating lender (usually a bank), to pay post-secondary education-related expenses such as tuition, fees and living expenses at an eligible institution. Repayment of the student loan is insured by a guaranty agency. See 20 U.S.C. sec. 1078(b)-(c). In the event of default, the guaranty agency pays the lender the unpaid portion of the outstanding loan. The Department of Education reinsures the guaranty agencies for payments made to lenders on defaulted loans. See 20 U.S.C. sec. 1078(c); 34 C.F.R. sec. 682.404.

*Am. Ass'n of Cosmetology Sch.*, 170 F.3d at 1251.

If an individual defaults on a loan, HEA empowers the guaranty agency, on its own authority, to issue an order to garnish up to 10 percent of the individual's wages. 20 U.S.C. sec. 1095a(a)(1).<sup>2</sup> Before garnishment, the guaranty agency must give the individual debtor: (1) a minimum of 30 days written notice, sent to the individual's last known address, informing the individual of the 'nature and amount of the loan obligation to be collected' and the guaranty agency's intent to initiate garnishment proceedings; (2) the opportunity to 'inspect and copy records relating to the debt'; and (3) the opportunity for either a pre- or post-deprivation hearing.<sup>3</sup> 20 U.S.C. sec. 1095(a)(2)-(5).

### II. Standing

NELA argued below that the Grange lacked standing to raise its claims. The Grange responded below and at oral argument before us that it has standing to raise these issues because, as the employer of a person against whom garnishment proceedings have been instituted, it could be held liable to the employee for improper garnishment. The trial court disposed of some, but not all, of the Grange's claims on the basis of standing. Neither party, however, addresses the issue of standing on appeal.

In our view, standing is a pivotal issue. We note that we may affirm the lower court on any basis 'established by the pleadings and supported by the record.' *In re Marriage of Rideout*, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003), quoting *Truck Ins. Exch. v. Vanport Home, Inc.*, 147 Wn.2d 751, 766, 58 P.3d 276 (2002). Accordingly, we consider whether the Grange has standing to bring its claims of unlawful delegation, lack of due process, and defective statutory notice. We conclude that the Grange lacks



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standing on all these claims and affirm the trial court's dismissal of its action on that ground alone.

It is a well-settled principle of jurisprudence that a claimant must prove standing as a precondition to obtaining judicial redress:

A person may not urge the unconstitutionality of an ordinance or statute unless he is harmfully affected by the particular feature of the ordinance or statute alleged to be an unreasonable exercise of the police power. A litigant who challenges the constitutionality of an ordinance must claim infringement of an interest particular and personal to himself, as distinguished from a cause of dissatisfaction with the general framework of the ordinance.

State v. Lundquist, 60 Wn.2d 397, 401, 374 P.2d 246 (1962).

These principles mirror the two-part standing test the Washington Supreme Court has articulated for non-constitutional claims: (1) 'The interest sought to be protected is arguably within the zone of interests to be protected or regulated'; and (2) the 'challenged action has caused an injury in fact.' Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) (citation omitted). See also City of Seattle v. State, 103 Wn.2d 663, 668, 694 P.2d 641 (1985) ('basic test' for standing in a constitutional context is 'whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'). State v. Glenn, 115 Wn. App. 540, 553, 62 P.3d 921, review denied, 149 Wn.2d 1007 (2003) ('A person has standing to raise constitutional questions when he or she has a personal stake in the outcome of the controversy.').

Here, the Grange raises the following claims: (1) HEA unconstitutionally delegates to guaranty agencies the right to collect outstanding student debt on federal loans by initiating garnishment procedures on its own authority and holding hearings to settle any disputes related to the garnishment action; (2) to the extent HEA authorizes NELA, or NELA acts on its own, to sub-delegate these responsibilities to another private entity, FAI, this adds another layer of unconstitutional delegation; (3) HEA, and the application of HEA here, violated the Fourteenth Amendment's due process guaranty because it authorized a party with a pecuniary interest in the outcome of a matter to preside over the hearing; and (4) the trial court erred in finding that NELA complied with HEA's pre-garnishment notice requirements to McKinley.<sup>4</sup>

The Grange has not asserted any injury to its own personal rights.<sup>5</sup> The property at risk was McKinley's, and any injury resulting from its deprivation inured to her alone. Instead, the Grange asserts McKinley's personal rights, purportedly in an attempt to avoid a speculative<sup>6</sup> wrongful-withholding lawsuit by McKinley. But McKinley is neither a party to this action nor has she successfully assigned her personal rights to the Grange to act on her behalf in this matter. Moreover, the Grange has not shown how its interests as an employer, potentially subject to suit, are within the zone of interests to be protected or regulated by the laws it cites.



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We hold, therefore, that the Grange lacks standing to raise its claims of unlawful delegations of authority, due process, and statutory notice. We affirm the trial court's dismissal of the Grange's action and its denial of the Grange's motions.

### III. Costs, Punitive damages, and Attorney fees

NELA requests attorney fees and costs on appeal. It also argues that the trial court should have awarded it punitive damages for the Grange's failure to honor the wage withholding order.<sup>7</sup>

#### A. Attorney Fees and Costs

Employers have a duty under HEA to withhold wages in response to an order issued under the Act: '{T}he employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action.' 20 U.S.C. sec. 1095a(a)(6). Where a guaranty agency must sue to obtain compliance with garnishment orders, HEA mandates that courts award attorney fees and costs: '{T}he employer . . . shall be liable for, and . . . may sue the employer in a State or Federal court of competent jurisdiction to recover. . . attorneys' fees, costs.' 20 U.S.C. sec. 1095a(a)(6) (emphasis added). When the Grange refused to honor NELA's garnishment order, NELA sued to recover the amount of money the Grange failed to withhold from McKinley's wages. Accordingly, we award attorney fees and costs to NELA under 20 U.S.C. sec. 1095a(a)(6).

#### B. Punitive Damages

HEA gives courts discretionary power to award punitive damages if an employer fails to honor a wage withholding order. HEA does not, however, provide any standards for exercising this discretion. 20 U.S.C. sec. 1095a(a)(6).<sup>8</sup> Where a trial court's decision is a matter of discretion, we do not disturb it on review absent 'a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.' State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

We cannot find that the trial court's ruling was manifestly unreasonable or that it acted on untenable grounds in denying punitive damages where the arguable evidence of wrongdoing was the Grange's unilateral decision not to pay the garnishment order and its attorney's reduced fee schedule.<sup>9</sup> Finding no abuse of discretion, we affirm the trial court's denial of NELA's request for punitive damages.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.



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We concur:

Morgan, A.C.J.,

Armstrong, J.

1. Under HEA, a guaranty agency may directly issue a garnishment order, without court assistance: 'Notwithstanding any provision of State law, a guaranty agency . . . may garnish the disposable pay of an individual to collect the amount owed by the individual.' 20 U.S.C. sec. 1095(a). See *Nelson v. Diversified Collection Serv. Inc.*, 961 F. Supp. 863, 872 (D. Md. 1997) (guaranty agency did not have to comply with a Maryland garnishment law that required a court order because HEA preempted it).

2. '{A} guaranty agency. . . may garnish the disposable pay of an individual to collect the amount owed by the individual. . . the amount deducted for any pay period may not exceed 10 percent of disposable pay.' 20 U.S.C. sec. 1095a(a)-(a)(1).

3. The guaranty agency must hold the hearing (1) prior to garnishment, if the borrower petitions for a hearing within 15 days of receiving notice; or (2) after garnishment if the borrower misses the 15 day deadline but petitions any time afterwards. 20 U.S.C. sec. 1095a(b).

4. We note that the record contains the following evidence of FAI's compliance with 20 U.S.C. sec.1095a(a)(2), notice to a debtor: (1) a declaration from Gus Carlson, Vice President of FAI, describing McKinley's last known address and the dates FAI mailed notices to her at that address; (2) copies of three letters FAI sent to McKinley informing her of her default and the need for her to act quickly to avoid legal collection action; and (3) a fourth letter from FAI to McKinley, containing notice of NELA's intent to garnish her wages, the nature and amount of her debt, and an explanation of McKinley's rights and how to enforce them, including her right to inspect NELA's records, how to obtain a hearing, and a copy of the relevant statutes.

5. See *Adult Entm't Ctr., Inc. v. Pierce County*, 57 Wn. App. 435, 442, 788 P.2d 1102, review denied, 115 Wn.2d 1006 (1990) ('One who attacks the constitutionality of an act must show that its enforcement operates as an infringement on his constitutional rights.').

6. There is no evidence on record that McKinley ever contemplated suing Grange.

7. Grange further asserts that its decision not to honor the wage-withholding order was based on the 'personal animus' of Grange's counsel, demonstrated through his interest in the matter evinced through his reduced fee schedule.

8. 20 U.S.C. sec. 1095a(a)(6) provides: '{T}he employer . . . shall be liable for . . . in the court's discretion, punitive damages.'

9. See n.7, *supra*.

