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**SUPREME COURT GRANTED DISCRETIONARY REVIEW: AUGUST 13, 2008
(FILE NO. 2007-SC-0652-D)**

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002539-MR

MPM FINANCIAL GROUP, INC.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 03-CI-00740

MICHAEL P. MORTON

APPELLEE

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; WINE, JUDGE; PAISLEY,¹ SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: MPM Financial Group, Inc. (MPM) appeals from an opinion and order of the Fayette Circuit Court in which the trial court held that the federal bankruptcy exemptions incorporated into Kentucky Revised Statutes (KRS) 427.170 apply to non-bankruptcy debtors in the Commonwealth, thus depriving MPM of a

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

garnishable source of funds from one of the corporation's judgment debtors. On appeal, MPM argues that the General Assembly has consistently used the words “debtor” and “estate” in KRS Chapter 427 to refer to bankruptcy; therefore, the use of those words in KRS 427.170 means the statute applies only to bankruptcy debtors. MPM also argues that the trial court's interpretation of KRS 427.170 renders KRS 427.150 superfluous. Lastly, MPM argues that, based on the legislative history of KRS 427.170, the statute applies only to bankruptcy debtors. Agreeing with the trial court, we affirm.

On January 5, 2004, MPM obtained a judgment against Michael P. Morton in the amount of \$14,000.00 plus pre-judgment interest, post-judgment interest and attorney's fees. However, the corporation had difficulties collecting from Morton. In June of 2005, MPM learned that Morton had a disability insurance policy with UNUM Provident Insurance Company (UNUM) and that he was receiving \$3,750.00 per month in benefits pursuant to that policy. On June 24th, MPM served an order of garnishment on UNUM seeking Morton's disability payments. UNUM complied with the garnishment order and began forwarding Morton's monthly benefit payments to MPM. On August 11, 2005, Morton filed an affidavit with the Fayette Circuit Court challenging MPM's garnishment. In his affidavit, Morton argued that his disability payments were exempt from garnishment pursuant to KRS 427.150. Later, Morton filed a notice with the trial court claiming that his disability payments were exempt pursuant to KRS 427.170 and 11 USC § 522(d)(10)(C) even though Morton had not filed for bankruptcy.

On November 9, 2005, the trial court entered an opinion and order in which it held that Morton's disability payments were not exempt from garnishment pursuant to KRS 427.150(2)(d). However, the trial court noted that, on June 20, 2005, the General

Assembly had amended KRS 427.170 to incorporate the federal bankruptcy exemptions found in 11 USC § 522(d), which include an exemption for disability payments.

Furthermore, the trial court held that the federal exemptions incorporated into KRS 427.170 were not limited to bankruptcy debtors but applied to all debtors in the Commonwealth. So, the trial court determined that Morton's disability payments were exempt from garnishment pursuant to KRS 427.170.

On appeal, MPM insists that the trial court misapplied KRS 427.170.

MPM points out that the federal exemptions incorporated into KRS 427.170 are virtually identical to the exemptions set forth in KRS 427.150, although the federal exemptions are more generous. MPM argues that if we were to adopt the trial court's interpretation of KRS 427.170, then we would render KRS 427.150 superfluous, in essence repealing that statute. According to MPM, if the General Assembly had intended to repeal KRS 427.150 when it amended KRS 427.170, then it would have done so.

When we interpret a statute, we will attempt to ascertain and effectuate the General Assembly's intent from the language found in the statute if possible. KRS 446.080(1); *Commonwealth v. Reynolds*, 136 S.W.3d 442, 445 (Ky. 2004); *Moore v. Alsmiller*, 289 Ky. 682, 160 S.W.2d 10, 12 (1942). Generally, a statute is open to construction only if its language is ambiguous. If the language is clear and the application of its plain meaning would not lead to an absurd result, then further interpretation is unnecessary. *Overnite Transportation v. Gaddis*, 793 S.W.2d 129, 131 (Ky.App. 1990). However, if a statute is ambiguous and its meaning uncertain, then the legislative intent should be determined by considering the whole statute and the purpose to be accomplished. *Department of Motor Transportation v. City Bus Co.*, 252 S.W.2d

46, 47 (Ky. 1952). Furthermore, our interpretation of the statute should neither add to nor subtract from it; should not produce an absurd result; and should produce a result that is both practical and reasonable. *Commonwealth v. Reynolds, supra* at 445; *Walker v. Kentucky Dept. of Education*, 981 S.W.2d 128, 130 (Ky.App. 1998).

KRS 427.170, as amended in 2005, reads, in its entirety, “An individual debtor domiciled in this state is authorized to exempt from property of said debtor's estate the property specified under 11 U.S.C. sec. 522(d).” We can find no ambiguity in this statute. Applying the plain meaning of the statute's language, we conclude that the federal exemptions apply to all individual debtors in the Commonwealth, including bankruptcy debtors and non-bankruptcy debtors. If the General Assembly had intended to limit the application of the federal exemptions to bankruptcy debtors, then it would have included language to that effect as it did in KRS 427.160. Appellant argues that this interpretation renders KRS 427.150 superfluous. We disagree. We point out that KRS 427.170 does not set forth the text of 11 USC § 522(d) but incorporates that statute's exemptions by reference. The exemptions available pursuant to KRS 427.170 are contingent upon the language currently found in 11 USC § 522(d); however, the exemptions currently found in 11 USC § 522(d) are subject to change by the United States Congress. At any time, Congress can amend or repeal 11 USC § 522(d), thereby effectively amending or repealing KRS 427.170. Given this possibility, KRS 427.150 now provides debtors in the Commonwealth guaranteed exemptions independent of those federal exemptions incorporated into KRS 427.170. In other words, KRS 427.150 establishes a floor for exemptions, while KRS 427.170 provides a ceiling. KRS 427.170

does not repeal KRS 427.150; instead, the two statutes complement one another. We do not agree with MPM that this is an absurd result. It is both practical and reasonable.

In the alternative, MPM argues that, while the General Assembly used the word “individual” in KRS 427.150, in KRS 427.170 it used the words “individual debtor” and “estate”, words that, MPM claims, are used consistently in KRS Chapter 427 to refer to bankruptcy. We find this argument unconvincing. Those are words of plain and ordinary meaning. If the General Assembly had intended KRS 427.170 to apply only to those who had filed for bankruptcy, it could clearly have said so.

MPM also argues that the legislative history regarding KRS 427.170 supports the proposition that it applies strictly to bankruptcy debtors. In 1978, the United States Congress enacted the Bankruptcy Reform Act of 1978 which provided the federal exemptions set forth in 11 USC § 522(d). However, the Congress granted the individual states the right to “opt out” of the federal exemptions and adopt their own. As MPM points out, in 1980, the Commonwealth originally enacted KRS 427.170 to opt out of the federal exemptions. In addition, the General Assembly enacted KRS 427.150 to provide exemptions for bankruptcy debtors, as well as all other debtors, in the Commonwealth. MPM points out that in 2005, Congress amended 11 USC § 522 and “toughened up the federal exemptions.” According to MPM, in response to Congress's action, the General Assembly amended KRS 427.170 to give bankruptcy debtors in the Commonwealth access to the exemptions found in 11 USC § 522(d). MPM insists that the General Assembly meant for these exemption to apply only to bankruptcy debtors because, when the General Assembly first enacted the prior KRS 427.170 in 1980, the statute applied only to bankruptcy debtors.

KRS 427.170's legislative history does not place any constraints on the General Assembly's power to amend the statute in any way that it sees fit. As we previously held, the language of KRS 427.170, as amended, is not ambiguous, and it applies to all debtors in the Commonwealth, the statute's legislative history notwithstanding.

We note that, in Morton's brief, he argues that the trial court erred when it held that KRS 427.150(2)(d) did not apply to his disability benefits. KRS 427.150(2)(d) contains an exemption for debtors who receive compensation for the loss of future earnings. Morton argues that his disability benefits constitute compensation for the loss of future earnings. While Morton's argument is interesting, he failed to file a cross-appeal regarding this issue; therefore, we cannot address its merits since it is not before us.

The opinion and order of the Fayette Circuit Court is affirmed.

COMBS, CHIEF JUDGE, CONCURS.

WINE, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

WINE, JUDGE, DISSENTING: Respectfully, I dissent.

Contrary to the trial judge's contention that the Kentucky legislature never intended for KRS 427.170 to be limited to bankruptcy proceedings, the very title of the statute, "Federal bankruptcy code exemptions applicable in Kentucky," and its reference to 11 U.S.C. § 522(d) can lead to no other conclusion. Further, KRS 427.150(2)(f) provides for an exemption of certain retirement accounts under both Kentucky law as well as the Federal Bankruptcy Code, thus, distinguishing exemptions under KRS 427.150 from KRS 427.170.

Because he has not sought protection under the Bankruptcy Code, the appellee is limited to those exemptions under KRS 427.150, which do not exempt disability payments.

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