

LETTER OPINION
99-L-121

November 26, 1999

Honorable Rich Wardner
State Senator
1042 12th Avenue West
Dickinson, ND 58601-3654

Dear Senator Wardner:

Thank you for your letter regarding change of venue and how it affects money judgments in domestic relation and child support actions. Specifically, you ask the following questions regarding the effect of a change in venue:

1. If a money judgment has been docketed in the case and county of venue and the judgment remains unsatisfied, does that judgment remain a lien in the county where it was entered?
2. What is the status of this lien judgment after the venue is changed to another county within the state judicial system?
3. Does this judgment become a lien in the receiving county?
4. Which county is the court of record for satisfaction, execution, and renewal purposes?

Before responding directly to your questions, I want to clarify some of the facts on which your letter and my response are based.

First, it is important to note that a money judgment for child support represents only the payments which are delinquent on the date the judgment is docketed. Subsection 1 of North Dakota Century Code (N.D.C.C.) § 14-08.1-05 states in part:

Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:

- a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, and must be entered in the judgment docket,

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<PAGE NAME="p.L-122">upon filing by the judgment creditor or the judgment creditor's assignee of a written request accompanied by a verified statement of arrearage or certified copy of the payment records of the clerk of district court maintained under section 14-09-08.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment. The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitations provided in chapter 28-01, nor may such judgment be canceled pursuant to section 28-20-35;

(Emphasis added to indicate 1999 amendments). Applying this statute, the North Dakota Supreme Court has observed that each monthly child support payment which is due and unpaid could be docketed as a separate money judgment. See, e.g., Martin v. Rath, 589 N.W.2d 896 (N.D. 1999); Mahoney v. Mahoney, 538 N.W.2d 189 (N.D. 1995). Accordingly, the money judgment you mention in your letter only represents those monthly payments which were due and unpaid when the judgment was docketed. The amount of the money judgment for which a judgment lien exists is not affected by monthly obligations which subsequently become due and unpaid or by a subsequent change in venue.

Second, I will assume for the purpose of this opinion that the case has not simply been transcribed to another county under N.D.C.C. § 14-09-08.1(4). Transcribing a child support order to another county under that section transfers to a different clerk of court the administrative responsibility of providing notice of arrears, but does not give the district court for the county in which the order is transcribed the jurisdiction to modify or alter that order. Nygord v. Dietz, 332 N.W.2d 708 (N.D. 1983) (applying statutory predecessor of N.D.C.C. § 14-09-08.1). A change in venue is required for a court to obtain jurisdiction to modify the order. Id.

Finally, your opinion request refers to "domestic relation and/or child support actions." An order for "child support" which may be docketed under N.D.C.C. § 14-08.1-05 may include an order for combined payments of support for children and former spouses, but would not include orders for spousal support or property settlement which do not contain any provision regarding child support. N.D.C.C. §§ 14-08.1-01.1; 14-09-09.10(2). See generally 1997 N.D. Op. Att'y Gen. L-151 (Sep. 26 letter to Clapp) (enforcement of spousal support

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orders); 1994 N.D. Op. Att'y Gen. L-203 (Aug. 11 letter to Mattson). Therefore, I will also assume for the purpose of this opinion that your questions pertain only to money judgments and liens resulting from "child support" orders.

<PAGE NAME="p.L-123">Your questions all pertain to the effect of a change in venue on enforcement of an order for child support. N.D.C.C. § 28-04-08 requires that, where the place of "trial" is changed, "all other proceedings must be had in the county to which the place of trial is changed." N.D.C.C. § 28-04-08. Even though the change in venue you discuss in your letter commonly occurs after the original "trial" in the case, the North Dakota Supreme Court has held that the term "trial" includes post-judgment proceedings. Whitehead v. Whitehead, 336 N.W.2d 363 (N.D. 1983). Thus, under N.D.C.C. § 28-04-08, a change in venue affects the location of any future proceedings in the case after a child support order is entered or a money judgment is docketed.

N.D.C.C. ch. 28-20 governs the creation and enforcement of judgment liens and contains the answer to the first three questions in your letter. One statute in this chapter provides, in pertinent part, as follows:

On filing a judgment roll upon a judgment that directs the payment of money, the clerk of the district court in which the judgment was rendered shall docket the judgment in a separate record to be known as the "judgment docket". The judgment may be docketed in any other county upon filing with the clerk of the district court of that county a transcript of the original judgment docket. The judgment is a lien on all the real property, except the homestead, of every person against whom the judgment is rendered, which the person may have in any county in which the judgment is docketed at the time of docketing or which the person thereafter acquires in the county, for ten years from the time of docketing the judgment in the county in which it was rendered.

N.D.C.C. § 28-20-13. Thus, in response to your first three questions, it is my opinion that a money judgment docketed in the county of original venue remains a lien in that original county, regardless of any change of venue. The judgment, however, does not become a lien in the receiving county until it is docketed in that county under the procedures outlined in N.D.C.C. § 28-20-13.

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Your fourth question, regarding the appropriate court of record for satisfaction, execution and renewal, is addressed in different sections of N.D.C.C. ch. 28-20.

With respect to satisfaction of a judgment, N.D.C.C. § 28-20-24 allows the clerk where the judgment was rendered or docketed to cancel and <PAGE NAME="p.L-124">discharge the judgment upon the filing of an appropriately executed acknowledgment.

Any judgment rendered or docketed in any district court of this state may be canceled and discharged by the clerk thereof, upon the filing with him of an acknowledgment of the satisfaction thereof signed by the party in whose favor the judgment was obtained, or by his attorney of record, his executor or administrator, or his assignee . . .

N.D.C.C. § 28-20-24.

The clerk must then provide written notice of the cancellation and discharge to the clerk of each court of any county where the judgment was docketed. Specifically, N.D.C.C. § 28-20-27 provides as follows:

Upon the cancellation and discharge of any judgment by the clerk of the district court of the county wherein the judgment was rendered or docketed, such clerk immediately shall forward to the clerk of the district court of any other county wherein a transcript of such judgment docket has been filed and the judgment docketed accordingly, a written notice under his hand and seal, showing the names of the parties, the date and amount of such judgment, and the fact that such judgment has been canceled and discharged. Upon receipt of such notice by any clerk of court wherein such judgment is of record, such officer immediately shall cancel and discharge such judgment of record. No additional charge may be made for issuing said notice nor for canceling and discharging such judgment in the counties to which transcribed.

N.D.C.C. § 28-20-27. Where the judgment creditor cannot be found or satisfaction is refused, the judgment debtor must go to the court where judgment was rendered in order to obtain cancellation and discharge. N.D.C.C. § 28-20-28.

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With respect to execution, N.D.C.C. § 28-21-05 states that "[a]n execution must be issued from the court of the county which entered the judgment." As such, the court of the county of original venue would issue the execution.

Renewal of the judgment also typically originates with the court of original venue. See N.D.C.C. § 28-20-22 ("[T]he affidavit for renewal must be filed with the clerk of court where the judgment was first docketed."). However, under the 1999 amendments to N.D.C.C. § 14-08.1-05, which I underlined earlier in this letter, any money <PAGE NAME="p.L-125">judgment for child support which was still in effect on or after April 2, 1999 (the effective date of the amendments), is no longer subject to cancellation under N.D.C.C. § 28-20-35. Thus, it is no longer necessary to renew a child support judgment and this part of your question is moot.

Sincerely,

Heidi Heitkamp
Attorney General

jcf/pg