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simply does not support DHHS' argument. Liddell-Toney's evidence established that her condition was disabling and that her prognoses for rehabilitation and recovery were poor. There is no reasonable interpretation of the record under which Liddell-Toney did not establish that her condition "prevents [her] from entering employment" and "is expected to exist for a continuous period exceeding three months."[12]

CONCLUSION

The district court erred when it affirmed DHHS' determination that Liddell-Toney did not qualify for an exemption from participating in the Employment First program. The evidence clearly indicates that Liddell-Toney's impairment prevents her from entering employment for a period exceeding 3 months, if at all, and she therefore qualifies for an exemption to the Employment First program under § 020.02(2)(b). The judgment of the district court is reversed, and the cause remanded with directions to reverse the determination made by DHHS.

REVERSED AND REMANDED WITH DIRECTIONS.

CONNOLLY, J., participating on briefs.

WRIGHT, J., not participating.

[12] See § 020.02(2)(b).

J.M., AS GUARDIAN AND CONSERVATOR FOR HIS MINOR CHILD, C.M., APPELLANT, V. BILLY L. HOBBS, APPELLEE.

797 N.W.2d 227

Filed May 13, 2011. No. S-10-600.

1. **Statutes: Judgments: Appeal and Error.** The meaning of a statute is a question of law, which an appellate court resolves independently of the trial court.
2. **Statutes.** Absent a statutory indication to the contrary, words in a statute will be given their ordinary meaning.
3. ____. Where general and special provisions of statutes are in conflict, the general law yields to the special, without regard to priority of dates in enacting the same.

Appeal from the District Court for Lancaster County: PAUL D. MERRITT, JR., Judge. Affirmed.

Victor E. Covalt III and John W. Ballew, Jr., of Ballew Covalt, P.C., L.L.O., for appellant.

Dana M. London for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

GERRARD, J.

Nebraska law provides that a court may order any property of a judgment debtor, not exempted by law, in the hands of either the debtor or any other person or corporation, or due to the debtor, to be applied toward the satisfaction of the judgment.[1] But the Nebraska State Patrol Retirement Act (the Act)[2] provides, as relevant, that annuities or benefits "which any person shall be entitled to receive under" the Act are not subject to garnishment, attachment, levy, or any other process of law.[3] The question presented in this case is whether a plaintiff who wins a civil judgment against a former state trooper can obtain an order in aid of execution against the trooper's State Patrol retirement benefits.

BACKGROUND

The plaintiff in this case, J.M., is the guardian and conservator for his minor child, C.M. In 1999, when C.M. was 7 years old, her mother married the defendant, Billy L. Hobbs. C.M. lived with her mother and Hobbs. Hobbs sexually assaulted C.M. while she was between 12 and 14 years old. In 2006, Hobbs was convicted of first degree sexual assault of a child and sentenced to 25 to 30 years' imprisonment. And J.M. sued Hobbs on C.M.'s behalf and won a judgment of $325,000.

J.M. filed a motion for an order in aid of execution, alleging that Hobbs was a judgment creditor and, although incarcerated, was receiving a retirement pension from the State Patrol. J.M. requested that Hobbs be asked to pay all nonexempt property and funds that came into his hands on a recurring basis

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[1] Neb. Rev. Stat. § 25-1572 (Reissue 2008).

[2] Neb. Rev. Stat. §§ 81-2014 to 81-2041 (Reissue 2008).

[3] § 81-2032.

toward satisfaction of the judgment. J.M. also moved for the appointment of a receiver to take control of Hobbs' assets in the event that Hobbs did not comply. Hobbs objected, alleging that his State Patrol retirement benefits were exempt from execution and that the order sought by J.M. would effectively subject his retirement benefits to process of law in violation of § 81-2032. The district court agreed and denied J.M.'s motion. J.M. appealed, and we granted his petition to bypass the Nebraska Court of Appeals.

ASSIGNMENTS OF ERROR

J.M. assigns that the district court erred in (1) finding that Hobbs' pension benefits are exempt from his collection efforts, (2) denying his motion for an order in aid of execution, and (3) failing to appoint a receiver.

STANDARD OF REVIEW

[1] The meaning of a statute is a question of law, which an appellate court resolves independently of the trial court.[4]

ANALYSIS

As noted above, § 25-1572 provides that in aid of execution of a judgment, a court "may order any property of the judgment debtor, not exempt by law, in the hands of either himself or any other person or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment." The question in this case is whether Hobbs' State Patrol retirement funds are "exempt by law." J.M. argues that the applicable statute here is Neb. Rev. Stat. § 25-1563.01 (Reissue 2008), which provides as relevant that "an interest held under a stock bonus, pension, profit-sharing, or similar plan or contract payable on account of illness, disability, death, age, or length of service" is generally exempt from process "[t]o the extent reasonably necessary for the support of the debtor and any dependent of the debtor." J.M. argues that because Hobbs is imprisoned, he does not need his retirement funds for support, so they are available to satisfy C.M.'s judgment.

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[4] *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010).

But Hobbs relies on § 81-2032, which provides:

> All annuities or benefits which any person shall be entitled to receive under [the Act] shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.[5]

Hobbs contends that this provision creates a legal exemption from execution for the funds he receives under the Act. We agree with the district court that § 81-2032 precludes J.M. from obtaining the relief requested in this proceeding.

J.M. attempts to draw a distinction between the funds that Hobbs "shall be entitled to receive," as specified by § 81-2032, and the funds that Hobbs already *has* received and which are in his possession. J.M. contends that the words "annuities" and "benefits" in § 81-2032 refer to a right to payment, not to the payment or proceeds themselves. So, J.M. claims, § 81-2032 is actually intended not to protect the money received by a beneficiary of the Act, but simply to protect the Nebraska State Patrol Retirement System from having to deal with the administrative burdens of execution and garnishment. But J.M.'s argument is inconsistent with the language of the Act and the weight of authority applying similar anti-attachment provisions.

[2] To begin with, we have often said that absent a statutory indication to the contrary, words in a statute will be given their ordinary meaning.[6] The words "annuity" and "benefit" are often used to refer, respectively, to "[a] fixed sum of money payable periodically"[7] and "a cash payment or service provided for under an annuity, pension plan, or insurance policy."[8] And those ordinary meanings for "annuity" and "benefit" are

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[5] Neb. Rev. Stat. §§ 42-1101 to 42-1113 (Reissue 2008).

[6] *In re Estate of Fries*, 279 Neb. 887, 782 N.W.2d 596 (2010).

[7] Black's Law Dictionary 105 (9th ed. 2009).

[8] Webster's Third New International Dictionary of the English Language, Unabridged 204 (1981).

clearly how the terms are used in the Act. For example, the Act describes the authority of the Public Employees Retirement Board to "require repayment of benefits paid" or "offset future benefit payments" in the event of "an overpayment of a benefit," and to compensate a beneficiary in the event of "an underpayment of a benefit."[9] And the Act explains how an officer who has reached retirement age or is disabled is entitled to receive "a monthly annuity" for the remainder of his or her life or disability.[10] There is simply no merit to J.M.'s argument that "annuities" and "benefits" in § 81-2032 refer to something other than payments of money.

Nor are we persuaded that § 81-2032 no longer applies when the money is paid to the beneficiary. The language of § 81-2032 mirrors that of anti-attachment provisions that generally have been held to protect benefits such as those provided under the Act from being used by judgment creditors to satisfy private obligations.[11] J.M. argues that the statutes at issue in those cases are distinguishable, because they contained express language that more clearly applies to, for instance, money "'either before or after receipt by the beneficiary.'"[12] But this distinction has been consistently rejected by courts discussing statutes, such as § 81-2032, that do not contain such language.[13] The language of

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[9] See § 81-2019.01(1).

[10] See § 81-2026(1)(a). Accord § 81-2026(2).

[11] See, generally, *In re Interest of Battiato*, 259 Neb. 829, 613 N.W.2d 12 (2000); *Boersma v. Karnes*, 227 Neb. 329, 417 N.W.2d 341 (1988). See, e.g., *Bennett v. Arkansas*, 485 U.S. 395, 108 S. Ct. 1204, 99 L. Ed. 2d 455 (1988); *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973); *Porter v. Aetna Casualty Co.*, 370 U.S. 159, 82 S. Ct. 1231, 8 L. Ed. 2d 407 (1962).

[12] See, e.g., *Bennett, supra* note 11, 485 U.S. at 397. Accord *Porter, supra* note 11.

[13] See, *Tom v. First American Credit Union*, 151 F.3d 1289 (10th Cir. 1998); *Broward v. Jacksonville Medical Center*, 690 So. 2d 589 (Fla. 1997); *Waggoner v. Game Sales Co.*, 288 Ark. 179, 702 S.W.2d 808 (1986); *Surace v. Danna*, 248 N.Y. 18, 161 N.E. 315 (1928); *State ex rel. Nixon v. McClure*, 969 S.W.2d 801 (Mo. App. 1998); *Sears, Roebuck and Co. v. Harris*, 854 P.2d 921 (Okla. App. 1993). Cf. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 99 S. Ct. 802, 59 L. Ed. 2d 1 (1979).

§ 81-2032 is still clearly intended to protect benefits under the Act from legal process.[14]

As Chief Justice Cardozo explained, when addressing whether payments "'due'" were limited to compensation owing and unpaid, "'due,' like words generally . . . , has a color and a content that can vary with the setting. Compensation due under an act may be a payment presently owing, or one to become due in the future, or one already made, but made because due, *i. e.*, required or commanded."[15] And the 10th Circuit, in addressing a provision of the Civil Service Retirement Act that exempted only "money mentioned by this subchapter,"[16] concluded that although the statutory language was "not as precisely drafted"[17] as the provision of the Social Security Act that the U.S. Supreme Court had previously addressed,[18] "the broad language of [the statute] offers no hint that its protections are any narrower than those afforded to Social Security payments or that Congress intended to treat future payments any differently than payments already received."[19] Accordingly, the 10th Circuit concluded that the same protection extended to payments that had already been received.[20]

The same is true here. Although we recognize that the result may often seem inequitable, courts have held that anti-attachment provisions are to be given effect even where a creditor is attempting to collect restitution for a criminal act, or a tort judgment.[21] As the Kansas Supreme Court said, in a case involving strikingly similar facts:

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[14] See *Harris, supra* note 13.

[15] *Surace, supra* note 13, 248 N.Y. at 21, 161 N.E. at 316.

[16] See 5 U.S.C. § 8346(a) (2006).

[17] *Tom, supra* note 13, 151 F.3d at 1293.

[18] See *Philpott, supra* note 11.

[19] *Tom, supra* note 13, 151 F.3d at 1293-94.

[20] See *id.*

[21] See, *Guidry v. Sheet Metal Workers Pension Fund*, 493 U.S. 365, 110 S. Ct. 680, 107 L. Ed. 2d 782 (1990) (superseded by statute as stated in *U.S. v. Irving*, 452 F.3d 110 (2d Cir. 2006)); *Higgins v. Beyer*, 293 F.3d 683 (3d Cir. 2002); *E.W. v. Hall*, 260 Kan. 99, 917 P.2d 854 (1996); *Younger v. Mitchell*, 245 Kan. 204, 777 P.2d 789 (1989).

> If we were free to decide the case on public policy or equitable consideration, there could be no strong reason asserted for not permitting the attachment. The language of the relevant federal statutes and the United States Supreme Court decision make it clear that we do not have the luxury of deciding the case on the basis of what is the "right" or desirable result. Plaintiff herein is a judgment creditor. . . . We find no legal basis for holding the funds are not exempt due to some implied exception.[22]

And as the U.S. Supreme Court has more generally explained, it is not appropriate for a court to approve any generalized equitable exception to an antigarnishment provision, even for criminal misconduct, despite a "natural distaste for the result."[23] An antigarnishment provision

> reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them. If exceptions to this policy are to be made, it is for Congress to undertake that task.
>
> As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text. The creation of such exceptions, in our view, would be especially problematic in the context of an antigarnishment provision. Such a provision acts, by definition, to hinder the collection of a lawful debt. A restriction on garnishment therefore can be defended *only* on the view that the effectuation of certain broad social policies sometimes takes precedence over the desire to do equity between particular parties. It makes little sense to adopt such a policy and then to refuse enforcement whenever enforcement appears inequitable. A court attempting to carve out an exception that would not swallow the rule would be forced to determine whether application of the rule

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[22] *E.W., supra* note 21, 260 Kan. at 104, 917 P.2d at 858.

[23] See *Guidry, supra* note 21, 493 U.S. at 377.

> in particular circumstances would be "especially" inequitable. The impracticability of defining such a standard reinforces our conclusion that the identification of any exception should be left to Congress.[24]

[3] We agree with the Court's reasoning, and we likewise find that if an exception to § 81-2032 is to be created for circumstances such as these, it is a matter for the Legislature to undertake. But as it stands, § 81-2032 clearly provides greater protection to benefits under the Act than does the general pension exemption set forth in § 25-1563.01. And it is well established that where general and special provisions of statutes are in conflict, the general law yields to the special, without regard to priority of dates in enacting the same.[25] The district court was correct in relying upon this principle to conclude that Hobbs' retirement benefits, even in his possession, are exempted from execution by § 81-2032.

This conclusion disposes of J.M.'s first assignment of error. J.M. seems to suggest, in support of his remaining assignments of error, that the court should nonetheless have ordered Hobbs to pay the judgment and appointed a receiver to take control of Hobbs' assets.[26] Although J.M. implies that the court's contempt power could be used to force Hobbs to pay, the use of a court's contempt power to compel payment from assets that are protected by an anti-assignment provision is limited to narrow exceptions that are not applicable here.[27] Simply put, we do not read these arguments as providing any basis for superseding the exemption provided by § 81-2032; nor has J.M. alleged that any assets other than Hobbs' retirement benefits are at issue. Therefore, we also find no merit to J.M.'s remaining assignments of error.

For the sake of completeness, we note that Hobbs could, obviously, voluntarily pay his retirement funds toward C.M.'s

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[24] *Id.* at 376-77.

[25] *Sack v. Castillo*, 278 Neb. 156, 768 N.W.2d 429 (2009). See, also, *Guidry, supra* note 21.

[26] See § 25-1572 and Neb. Rev. Stat. § 25-1573 (Reissue 2008).

[27] See, *Bennett, supra* note 11; *Rose v. Rose*, 481 U.S. 619, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987); *Younger, supra* note 21.

judgment if he chose to do so[28] and that his willingness (or unwillingness) to do so could be seen as relevant to many of the factors that the Board of Parole is instructed to take into account when making a determination regarding a committed offender's release on parole.[29] We also note that although this opinion addresses the general applicability of § 81-2032, we make no comment on the extent to which the exempt status of Hobbs' retirement funds might be affected by any transformation in their character, such as through spending or investment.[30] And, as suggested above, nothing in this opinion should be construed to comment on whether the Legislature, if it chose to do so, could amend the scope of § 81-2032.

CONCLUSION

The district court correctly concluded that § 81-2032 foreclosed the relief J.M. sought in this proceeding. The court's judgment is affirmed.

AFFIRMED.

WRIGHT, J., not participating.

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[28] See *In re Interest of Battiato, supra* note 11.

[29] See Neb. Rev. Stat. § 83-1,114 (Reissue 2008).

[30] See, e.g., *Porter, supra* note 11; *Trotter v. Tennessee*, 290 U.S. 354, 54 S. Ct. 138, 78 L. Ed. 358 (1933); *In re Smith*, 242 B.R. 427 (E.D. Tenn. 1999); *E.W., supra* note 21; *Younger, supra* note 21.

STATE OF NEBRASKA ON BEHALF OF VANESSA I. MARTINEZ MAYORGA, APPELLANT, V. WILBERTH MARTINEZ-IBARRA, DEFENDANT AND THIRD-PARTY PLAINTIFF, AND PATRICIA R. MAYORGA, THIRD-PARTY DEFENDANT, APPELLEES.

797 N.W.2d 222

Filed May 13, 2011. No. S-10-750.

1. **Child Support: Child Custody: Appeal and Error.** As it does with child support and child custody determinations, the Nebraska Supreme Court reviews the award of cash medical support de novo on the record, with the decision of the trial court affirmed in the absence of an abuse of discretion.