

SC98501

IN THE SUPREME COURT OF MISSOURI

RANDALL GRAVES,

Appellant,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,
Division of Probation and Parole

Respondent.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Daniel Green, Circuit Judge

RESPONDENT'S SUBSTITUTE BRIEF

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INTRODUCTION

Missouri's Division of Probation and Parole does not revoke the probation of indigent offenders for failure to pay their intervention fees. Nor does it employ "other legal process" to collect intervention fees from Social Security disability benefits. The Division's publicly promulgated policy states that "[t]he agency practice is *not to recommend revocation for violations that are solely for failure to pay Intervention Fees.*" D3, p. 17 (emphasis added).

Two regulations implement this non-revocation policy in the specific context of indigent offenders. First, 14 CSR 80-5.020(1)(I)(4) provides that "the supervising officer shall submit a notice of citation or violation report" for failure to pay intervention fees only when "*willful* nonpayment occurs over a period of ninety (90) consecutive days." *Id.* (emphasis added.) An offender who is unable to pay due to indigency is not engaged in "willful nonpayment." Second, 14 CSR 80-5.020(1)(H) provides that "[i]f an offender is unable to pay because of having insufficient income, fees may be waived in whole or in part." The same regulation provides for a detailed process by which offenders may apply for a waiver if their "income ... is at or below the most recent Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services." 14 CSR 80-5.020(1)(H)1.

In light of the Division's policy and regulation, based on the record of this case, Appellant Graves faces no reasonable or imminent likelihood of any attempt by the Division to garnish or otherwise collect money from his Social Security disability payments. In fact, Graves has not applied for a waiver based on indigency, and the case presents no issue ripe for review.

Notwithstanding, Graves contends that the Division subjected his disability payments to "other legal process," 42 U.S.C. § 407(a), because, after two months of non-payment, he received a form letter advising him that he had

an overdue balance of \$60 and providing guidance on how to make payments to satisfy that overdue balance. D3, p. 5. The form letter recited that Graves is “required to pay a monthly intervention fee of \$30.00,” and it stated that “[f]ailure to do so *may* place you in violation status.” *Id.* (emphasis added). Graves argues that this letter constitutes or announces an imminent violation of a federal statute that protects Social Security disability payments from “execution, levy, attachment, garnishment, or other legal process,” 42 U.S.C. § 407(a). This Court should reject Graves’ claim for two reasons.

First, Graves’ claim is not ripe because Graves has never sought a waiver of the requirement to pay intervention fees due to indigency, and because the record contains no evidence that Graves has engaged in “willful” failure to pay. The record indicates that there is no reasonable likelihood of any imminent or future action by the Division that would constitute an attempt to collect intervention fees through “other legal process,” so the case is unripe.

Second, the trial court decided the merits of this case on a motion to dismiss filed in a declaratory-judgment action, and this Court recently held that it is reversible error to reach the merits on a motion to dismiss in a declaratory judgment action.

The Court should hold that the case is not ripe and remand with instructions to dismiss the case without prejudice. In the alternative, the Court should reverse the trial court’s judgment that reached the merits in ruling on a motion to dismiss, and remand for further proceedings.

STATEMENT OF FACTS

Randall Graves pled guilty to one count of receiving stolen property. D3, p. 3. On January 10, 2019, he received a suspended execution of sentence, and was placed on probation supervised by the Missouri Division of Probation and Parole for five years. D3, p. 3; D4, p. 1 (¶1).

On May 17, 2019, Graves filed a Petition for Declaratory Judgment (D4) with exhibits (D3). Graves sought a declaration that his “income is exempt from any legal process... by the Department with respect to the payment of intervention fees.” D4, p. 4.

Graves alleged that, as a standard condition of probation, he is required to pay an intervention fee in the monthly amount of \$30.00. D4, p. 2 (¶¶2, 4); D3, p. 5. A form letter dated April 16, 2019, indicates that Graves had an “overdue balance” in the amount of \$60.00. D3, p. 5. The form letter indicates that failure to pay the monthly intervention fee “may place you in violation status.” D3, p. 5. The Intervention Fees Frequently Asked Questions page of the Division of Probation and Parole’s website (Pet. Ex. 6) states: “The agency’s practice is not to recommend revocation for violations that are solely for failure to pay Intervention Fees.” D3, p. 17.

A “Partial Sentencing Assessment” (Pet. Ex. 3) notes that Graves receives Social Security benefits (D3, p. 9) and lists his employment as “Disabled” (D3, p. 10). The Partial Sentencing Assessment states: “This employment has been verified and is acceptable.” D3, p. 10. Graves’ only source of income is his Supplemental Security Income (SSI). D4, p. 2 (¶9). “Effective January 2019, [Graves] receives \$771.00 per month in” SSI benefits. D4, p. 2 (¶8).

The Division of Probation and Parole filed a motion to dismiss for failure to state a claim on which relief can be granted. D11, pp. 1, 2. After a hearing, the circuit court dismissed Graves’ Petition with prejudice. D1, p. 6; D17. Graves filed a notice of appeal. D18.

After briefing and oral argument, the Missouri Court of Appeals, Western District, issued an opinion finding that the controversy before it was not ripe and modifying the dismissal “to a dismissal without prejudice.”

Randall Graves v. Mo. Dept. of Corrections, Div. of Probation & Parole, WD83027, slip op. at 6 (Mar. 31, 2020). This Court sustained Graves' application for transfer.

ARGUMENT

Standard of Review

This Court reviews the circuit court's decision to grant a motion to dismiss *de novo*. *Tuttle v. Dobbs Tire & Auto Centers, Inc.*, 590 S.W.3d 307, 310 (Mo. banc 2019). "A motion to dismiss for failure to state a claim on which relief can be granted is solely a test of the adequacy of the petition." *Id.* (quoting cases). When the judgment does not specify the court's reasons for dismissing the petition, "this Court presumes the circuit court's dismissal was based on one of the reasons stated in the motion to dismiss." *Tuttle* at 310, *citing Avery Contracting v. Niehaus*, 492 S.W.3d 159, 162 (Mo. banc 2016). The dismissal of the petition "will be affirmed if justified on any ground advanced in the motion to dismiss." *Tuttle* at 310, *citing Armstrong-Trotwood, LLC v. State Tax Comm'n*, 516 S.W3d 830, 835 (Mo. banc 2017).

A petition states a claim for declaratory judgment if the court is "presented with (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, ...; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law."

Missouri State Conference of Nat'l Ass'n for Advancement of Colored People v. State, 601 S.W.3d 241, 246 (Mo. banc 2020) ("NAACP"), *quoting Mo. Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 25 (Mo. banc 2003).

I. The Petition Does Not Present a Ripe Controversy. (Responds to Point I).

Without explicitly mentioning any element of a declaratory judgment claim, the motion to dismiss asserted that Graves' petition failed to state a claim on which relief can be granted. D11, pp. 1, 2. The Petition sought a declaration that Graves' "income is exempt from any legal process... by the Department with respect to the payment of intervention fees." D4, p. 4. Graves alleged that his only income consists of SSI benefits in the amount of \$771.00 per month. D4, p. 2, ¶¶8, 9.

In light of the speculative and hypothetical nature of Graves' alleged injuries, the Court of Appeals held that "[a] review for ripeness" was "appropriate". *Randall Graves v. Mo. Dept. of Corrections, Div. of Probation & Parole*, WD83027, slip op. at 4 (Mar. 31, 2020), (quoting cases). "Ripeness is a 'tool' of the court, which is used to determine whether a controversy is... ready for judicial review, or whether... we would simply be rendering an advisory opinion on some future set of circumstances, which we are not permitted to do." *Missouri Retired Teachers Found. v. Estes*, 323 S.W.3d 100, 104 (Mo. App. W.D. 2010), quoting *Local 781 Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Independence*, 947 S.W.2d 456, 461 (Mo. App. W.D.1997). "A case is ripe 'if the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character.'" *Calzone v. Ashcroft*, 559 S.W.3d 32, 35 (Mo. banc 2018), quoting *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013).

The Court of Appeals correctly determined that this case is not ripe. *Graves v. Mo. Dept. of Corrections, Div. of Probation & Parole*, WD83027, slip

op. at 1, 6. The Court considered 14 CSR 80-5.020 in reaching that conclusion. *Graves*, slip op. at 5.

14 CSR 80-5.020 provides that offenders whose income “is at or below the most recent Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services” meet the “insufficient income criteria” to be considered for a waiver of the Intervention Fee. 14 CSR 80-5.020(1)(H).1. The U.S. Department of Health and Human Services’ Poverty Guidelines for 2019 list an annual income of \$12,490 as the poverty threshold for a one-person household. Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167-02 (2019). The federal poverty guidelines for 2020 specify that the poverty threshold for a one-person household is \$12,760. Annual Update of the HHS Poverty Guidelines, 85 Fed. Reg. 3060-01 (2020). Graves’ income of \$771 per month (D4, p. 2, ¶8)—an annual income of \$9,252—is well below the federal poverty guidelines thresholds for 2019 and 2020. *See* 84 Fed. Reg. 1167-02 (2019); 85 Fed. Reg. 3060-01 (2020).

14 CSR 80-5.020 further provides if “*willful* nonpayment occurs over a period of ninety (90) consecutive days, the supervising officer shall submit notice of violation or violation reports.” 14 CSR 80-5.020(1)(I).4. Exhibit 6 to the Petition states that “[t]he agency practice is not to recommend revocation for violations that are solely for failure to pay Intervention Fees.” D3, p. 17. The Court of Appeals correctly concluded that “[t]he regulation only makes ‘willful nonpayment’ a violation.” *Graves v. Mo. Dept. of Corrections, Div. of Probation & Parole*, WD83027, slip op. at 5. The Court found that the controversy presented “is hypothetical,” because it would have to make multiple assumptions “[t]o adequately address the issue,” including assumptions that the Department would find Graves’ nonpayment of the

intervention fee willful and file “a violation report based on nonpayment” with the sentencing court. *Graves*, slip op. at 6.

Based on these facts, the allegation that Division might subject Graves’ intervention fees to “other legal process” under 42 U.S.C. 407(a) is hypothetical and speculative. The statute “uses the term ‘other legal process’ ... far more restrictively” than Graves presupposes. *Wash. State Dept. of Social & Health Servs v. Est. of Keffeler*, 537 U.S. 371, 384 (2003). “Other legal process” is construed to embrace “ ‘only objects similar in nature to those objects enumerated by the preceding specific words.’ ” *Est. of Keffeler* at 384, quoting *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001).

Thus, “other legal process” should be understood to be process much like the processes of execution, levy, attachment, and garnishment, and at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, **by which control over property passes from one person to another** in order to discharge or secure discharge of an allegedly existing or anticipated liability.

Est. of Keffeler, 537 U.S. at 385 (emphasis added); see also *Carter v. Dir. of Revenue*, 805 S.W.2d 154, 157 (Mo. banc 1991).

In *Est. of Keffeler*, the United States Supreme Court held the essential criteria that must be met before the anti-attachment provision will apply is “a process much like... execution, levy, attachment, and garnishment.” *Id.* at 385. The Court further stated that “ ‘other legal process’ ... would seem to require utilization of some judicial or quasi-judicial mechanism... **by which control over property passes from one person to another...**” *Est. of Keffeler*, 537 U.S. at 385 (emphasis added).

Thus, Graves’ argument that Respondent “is attempting to compel compliance” with the intervention fee condition “through threatened violation status of Appellant’s probation in his criminal case... ‘pursuant to an order of

a court'..." (see App.'s Subst. Br. at 16; see also App.'s Subst. Br. at 17) is not supported by the well-pled factual allegations of the Petition. Moreover, following *Keffeler*, two federal Circuit Courts of Appeals have rejected the idea that "[a] threat of future action" constitutes "other legal process" within the meaning of 42 U.S.C. §407(a). *Reed v. Taylor*, 923 F.2d 411, 417 (5th Cir. 2019); *Wojchowski v. Daines*, 498 F.3d 99, 106, 110 (2nd Cir. 2007). The Eighth Circuit's determination that "other legal process... includes the threat of legal process," *King v. Schafer*, 940 F.2d 1182, 1185 (1991), long predates, and is incompatible with, the United States Supreme Court's more recent, restrictive interpretation of "other legal process" as used in 42 U.S.C. §407(a). *Est. of Keffeler*, 537 U.S. at 384, 385; see also *Reed*, 923 F.3d at 418; see *Wojchowski*, 498 F.3d at 106, 110.

For all these reasons, the Court of Appeals appropriately declined to issue a premature, advisory opinion. *Graves v. Mo. Dept. of Corrections, Div. of Probation & Parole*, WD83027, slip op. at 6. The allegation that Graves' benefits may be subjected to "other legal process" is based on speculation.

Furthermore, based on the factual allegations of the Petition, Graves' income has remained below the federal poverty guidelines and is limited to SSI. D4, p. 2, ¶¶7, 8. Graves meets the income criteria for an intervention fee waiver, 14 CSR 80-5.020(1)(H).1. There is no allegation that he has requested the Division of Probation and Parole to waive the intervention fee. Whether the Division would deny a waiver request from Graves or find his non-payment of the intervention fee willful where he has "insufficient income" to pay it is also speculative and presents hypothetical scenarios. See *Foster v. State*, 352 S.W.3d 357, 361 (Mo. banc 2011). "Declaratory judgments are not available to 'adjudicate hypothetical or speculative situations that may never come to pass.'" *Schweich v. Nixon*, 408 S.W.3d 769, 778 (Mo. banc 2013), quoting *Mo. Soybean*

Ass'n, 102 S.W.3d at 25. Moreover, “ [r]ipeness does not exist when the question rests solely on a probability that an event will occur.’ ” *S.C. v. Juvenile Officer*, 474 S.W.3d 160, 163 (Mo. banc 2015), quoting *Buechner v. Bond*, 650 S.W.2d 611, 614 (Mo. banc 1983).

In many similar contexts, courts have held that ripeness is lacking when a policy provides for exemptions, and the person challenging the policy is potentially eligible for an exemption but has not sought one. *See, e.g., McCarthy v. Ozark Sch. Dist.*, 359 F.3d 1029, 1037 (8th Cir. 2004) (holding that a challenge to a statute and implementing regulations was not ripe, because plaintiffs had not applied for exemptions and no request for exemption had been denied); *State of Mo. ex rel. Mo. Highway & Transp. Comm’n v. Cuffley*, 112 F.3d 1332, 1338 (8th Cir. 1997). “[W]here the regulatory regime offers the possibility of a variance from its facial requirements,” a party challenging that regime “must . . . actually seek such a variance to ripen his claim.” *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 736-37 (1997).

The same principles apply here. Graves’ claim is unripe, and the Court should remand the case with instructions to dismiss his petition without prejudice.

II. In the Alternative, the Court Should Remand This Case Because the Trial Court Erred in Reaching the Merits in Ruling on a Motion to Dismiss Filed in a Declaratory Judgment Action. (Responds to Point I)

This Court recently held, in the context of declaratory judgment actions, that “[a] motion to dismiss does not permit... this Court on appeal—to determine the merits of a claim.” *NAACP*, 601 S.W.3d at 246. This Court held that “[t]he circuit court should have overruled the motion to dismiss and *should not have undertaken any analysis of the merits of petitioners’ claims in ruling on that motion.*” *Id.* at 247 (emphasis added). “Because the merits of the

petition were not before the circuit court on the state's motion to dismiss, the circuit court erred in entering a judgment on the merits.” *NAACP*, 601 S.W.3d at 247. “Therefore, the circuit court's judgment with respect to claims not abandoned on appeal must be reversed, and the cause remanded.” *Id.* The Court stated, of these principles, that they “simply cannot be stated any more clearly.” *Id.*

Graves references a different portion of that opinion on page 21 of his Substitute Brief. Immediately after that, Graves asks this Court to enter a judgment holding “that Respondent is not permitted to order¹ Appellant to pay his monthly intervention fees from his social security benefits,” App.’s Subst. Br. at 21. Because this appeal arose from a ruling on a motion to dismiss, under *NAACP*, it was error for the trial court to reach the merits at all, and the Court should remand with instructions to deny the motion to dismiss and allow the case to proceed to the merits. *NAACP*, 601 S.W.3d at 247.

When the circuit court granted the motion to dismiss, this case was not in a procedural posture that would have allowed the circuit court to enter a judgment in Graves’ favor. Therefore, if this Court concludes that Graves’ petition for declaratory judgment stated a claim for relief, the Court should remand this case for further proceedings, without analyzing the merits. *Id.* at 247; *Leuchtman v. Missouri Dept. of Corrections*, 86 S.W.3d 475, 480 (Mo. App. W.D. 2002).

CONCLUSION

For these reasons, Respondent respectfully requests that the Court affirm the dismissal of the Petition.

¹ The sentencing court ordered Graves to pay a monthly intervention fee as a condition of his probation.

Respectfully Submitted,

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I hereby certify that Respondents' Brief was electronically filed and served via Missouri Case.Net this 28th day of August, 2020, upon:

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I hereby certify that this brief contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b), and contains 3,053 words exclusive of cover, signature block, and certificates.

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