Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 24, 2004

GSBCA 16526-DBT

In the Matter of LYDIA [redacted] C [redacted]

Adele Ross Vine, Office of Regional Counsel, General Services Administration, Kansas City, MO, counsel for General Services Administration.

Cecil R. Sanner and L. Donald Foreman, Lake Charles, LA , counsel for Respondent.

DeGRAFF, Board Judge.

On April 3, 2001, a vehicle owned by Lydia [redacted] C [redacted] and driven by Joel B. C [redacted] was involved in an accident that resulted in significant damage to a vehicle owned by the General Services Administration (GSA). GSA determined the accident was the fault of Mr. C [redacted] and sent several letters to Ms. C [redacted] asking her to forward the information regarding the accident to her insurance company or to remit payment for the damage to GSA. After receiving no satisfactory response to its letters, GSA transferred the debt to the Department of the Treasury for collection and Treasury referred the debt to a private collection contractor. The private collection contractor notified Ms. C [redacted] if she did not make arrangements to pay the amount requested by GSA, the Government intended to garnish up to fifteen percent of her disposable pay until the debt was paid. One of Ms. C [redacted]'s attorneys wrote a letter in response to the notice and Treasury and GSA construed the letter as a request for a hearing. Because the debt originated with GSA, the request for a hearing was referred to this Board pursuant to 68 Fed. Reg. 68,760, 68,762-63 (Dec. 10, 2003) (to be codified at 41 CFR 105-57.002(p), -57.005).

We gave the parties the opportunity to submit documentation in support of their positions and to submit statements regarding the existence of the debt, the amount of the debt, and the proposed repayment terms. After reviewing the submissions and the

supporting documentation, we conclude GSA has not met its burden of establishing the existence of the debt.

Statutory and Regulatory Background

The GSA program that gives rise to the debt allegedly owed by Ms. C [redacted] is its fleet management program, which authorizes GSA to establish, maintain, and operate motor vehicle pools. 40 U.S.C.A. §§ 601- 611 (West Supp. 2004). According to the regulations GSA issued regarding the operation of its fleet management program, when an operator of a Government-owned vehicle is involved in an accident and it appears someone else was at fault, GSA will initiate action to recover whatever claim the Government has against the person at fault. 41 CFR 101-39.404 (2003). GSA also has internal procedures in place regarding accidents involving fleet management vehicles. These procedures instruct GSA employees to issue demand letters to recoup damages when someone is at fault in an accident that causes damage to a fleet management vehicle. The initial demand letter will be sent by a fleet management program official and subsequent letters will be sent by the GSA Finance Office. The damages amount is supposed to include all costs directly attributable to the accident, including items such as storage, towing, travel, and the cost of any necessary rental vehicle. If the vehicle is a total loss, the damages amount will include the lesser of (a) the fair market value prior to the accident as established by the National Automobile Dealers Used Car Guide or (b) the original capitalized value, minus any proceeds recovered from the sale of the vehicle. GSA Order FSS P 5600.8, ch. 9, pt. 2 (Aug. 1, 1994).

Administrative wage garnishment is authorized by the Debt Collection Improvement Act of 1996, which provides:

> Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required payments in accordance with any agreement between the agency head and the individual.

31 U.S.C. § 3720D(a) (2000). The statute permits agencies to garnish up to fifteen percent of an individual's disposable pay, unless the individual agrees to a greater percentage. 31 U.S.C. § 3720D(b)(1).

The term "debt" is defined by statute as including, "without limitation":

> (A) funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property,
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> (B) expenditures of nonappropriated funds, including actual and administrative costs related to shoplifting, theft detection, and theft prevention,
>
> (C) over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,
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> (D) any amount the United States is authorized by statute to collect for the benefit of any person,
>
> (E) the unpaid share of any non-Federal partner in a program involving a Federal payment and a matching, or cost-sharing, payment by the non-Federal partner,
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> (F) any fines or penalties assessed by an agency; and
>
> (G) other amounts of money or property owed to the Government.

31 U.S.C.A. § 3701(b)(1) (West 2003).

The Secretary of the Treasury issued regulations to implement 31 U.S.C. § 3720D, and these regulations define debt as "any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual . . . ." 31 CFR 285.11(c) (2003). A delinquent debt is one that has not been paid by the date specified in the agency's initial written demand for payment or in accordance with an agreement between the agency and the debtor. Id.

GSA also issued regulations to implement an administrative wage garnishment procedure. These regulations define debt as including:

> an amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property,

> overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources . . . .

68 Fed. Reg. 68,760, 68,762 (to be codified at 41 CFR 105-57.002(k)).

In order to effect an administrative wage garnishment, GSA must provide the person who allegedly owes a debt with written notice of the debt. The notice must explain the person's right to inspect and copy records relating to the debt, to enter into a repayment agreement, and to request a hearing to determine the existence or the amount of the debt and the terms of the repayment schedule. 31 U.S.C. § 3720D(b); 68 Fed. Reg. 68,760, 68,763 (to be codified at 41 CFR 105-57.004). If the person requests a hearing, GSA has the burden of proving the existence and amount of the debt. If the person disputes the existence or amount of the debt, the person must establish his or her position is correct by a preponderance of the evidence. Also, the person may present evidence to show the terms of the repayment schedule are either unlawful or would cause a financial hardship, or to show collection of the debt may not be pursued due to operation of law. 31 CFR 285.11(f)(8); 68 Fed. Reg. 68,760, 68,763 (to be codified at 41 CFR 105-57.005(f)).

If a nontax debt owed to the United States has been delinquent for a period of 180 days, the head of the agency that administers the program which gave rise to the debt is required to transfer the debt to the Secretary of the Treasury for collection action. Treasury can refer the debt to a private collection contractor for collection. 31 U.S.C. § 3711(g) (2000).

The Government is required to charge interest on an outstanding debt, to charge for the cost of processing and handling a delinquent claim, and to impose a penalty for failure to pay a part of a debt more than ninety days past due. In some circumstances, these charges can be waived. 31 U.S.C. § 3717 (2000).

Findings of Fact

On April 3, 2001, a van driven by sixteen year old Joel C [redacted] and owned by Lydia C [redacted] was traveling south on a highway in Louisiana. A truck owned by GSA was traveling north on the same highway. According to a police report, Mr. C [redacted] made a left turn and stopped in the highway in front of the GSA truck. In order to avoid hitting Ms. C [redacted]'s van, the driver of the GSA truck drove off the road and into a ditch. The police officer on the scene determined Mr. C [redacted] had been inattentive or distracted and issued him a citation for failing to yield the right of way to the GSA truck. Another police officer obtained statements from two witnesses who confirmed Mr. C [redacted] made the left turn and then stopped the van in the oncoming traffic lane, and who also said the driver of

the GSA truck took evasive action to avoid hitting the van and ended up hitting the ditch and rolling end over end. This account was confirmed by the driver of the GSA truck and the passenger in the truck. Our record contains nothing to contradict the statements of the police, the witnesses, or the driver of the GSA truck and his passenger. The GSA truck was a total loss.

On May 1, 2002, GSA's fleet management office sent a letter to Ms. C[redacted] regarding the accident. The letter briefly recounted the facts and said GSA had determined Ms. C[redacted] was liable for the damage to the GSA truck. GSA asked Ms. C[redacted] to forward the information regarding the accident and GSA's claim to her insurance company and said either she or the insurance company should remit $20,352 to GSA. Also, GSA told Ms. C[redacted] this amount would begin to accrue interest and penalties and might begin to accrue administrative charges if she did not contact GSA within thirty days. GSA's Finance Office sent a similar notice to Ms. C[redacted] on May 31, 2002, and revised the amount due to $19,616.56 to correct an earlier computer input error. GSA's Finance Office sent a similar notice to Ms. C[redacted] on July 1, 2002.

On July 22, 2002, one of Ms. C[redacted]'s attorneys responded to GSA's letters. He said GSA could not collect the amount it sought because the state statute of limitations for filing suit in connection with the accident had expired. One week later, GSA told Ms. C[redacted]'s attorney the state statute of limitations did not apply to the Federal Government and once again asked Ms. C[redacted] to pay for the damage to the GSA truck.

According to GSA, it referred Ms. C[redacted]'s debt to Treasury in early 2003, and on September 14, 2004, Treasury's collection contractor sent a notice to Ms. C[redacted] requesting payment of $29,804.44. This amount included the $19,616.56 previously requested plus accrued interest, penalties, and administrative charges. The same day, the contractor sent a notice to Ms. C[redacted] informing her of the Government's intent to effect an administrative wage garnishment of up to fifteen percent of her disposable pay until the debt was repaid. The notice informed Ms. C[redacted] of her right to enter into a repayment plan, to inspect the agency's records, and to request a hearing.

In a letter to the collection contractor dated October 4, 2004, one of Ms. C[redacted]'s attorneys said she did not owe the debt because the statute of limitations had expired and GSA had not reduced the debt to judgment. Although the letter did not request a hearing, Treasury and GSA treated it as containing such a request and referred it to the Board.

Analysis

The facts contained in the record show Mr. C [redacted] failed to yield the right of way to the GSA truck and the truck was substantially damaged. GSA calculated the amount of the damage in accordance with its internal regulations and assessed interest, penalties, and administrative charges as allowed by statute. The statute of limitations defense raised by Ms. C [redacted] is unavailing because GSA is not attempting to sue her and if it did, it would not be subject to a limitation imposed by a state statute. Also, it does not matter whether GSA reduced Ms. C [redacted]'s debt to a judgment because the Debt Collection Improvement Act does not require an agency to reduce a debt to judgment before utilizing the administrative wage garnishment procedure. Ms. C [redacted]'s submission to the Board says GSA cannot garnish her pay because the language of 31 U.S.C. § 3720D(a) allows agencies to effect administrative wage garnishments only if someone has entered into a repayment agreement with an agency and has not made the required payments in accordance with the agreement. We reject this argument because section 3720D provides for the collection of debts and the statutory definition of a debt found in section 3701(b)(1) is not limited to debts which arise only after someone has signed a repayment agreement.

Despite our findings of fact and our rejection of the defenses raised by Ms. C [redacted], we are not convinced GSA has met its burden of establishing the existence of a debt owed by her. If an agency says a debt is evidenced by a note, the legal standard used to determine whether a debt exists will most likely be found in the loan agreement and any statutes and regulations that authorized the agency to enter into the agreement. Similarly, if an agency says a debt is evidenced by a record of overpayments or a notice of a fine, the legal standard used to determine whether a debt exists will probably be found in the statutes and regulations that authorized the payments or that allowed the agency to impose the fine. The evidence of Ms. C [redacted]'s debt is the letters from GSA stating she was liable for the damage to the GSA truck. In the position statement it submitted to us, GSA says Ms. C [redacted] owes a debt because the accident that damaged the GSA truck was Mr. C [redacted]'s fault, Mr. C [redacted] was a minor child when the accident occurred, and Ms. C [redacted] owned the van driven by Mr. C [redacted]. In other words, GSA says the debt arises from imputing Mr. C [redacted]'s conduct, which GSA says was tortious, to Ms. C [redacted]. But, GSA does not say what legal standard we should apply in order to determine whether Mr. C [redacted]'s conduct amounted to a tort or to determine whether Ms. C [redacted] is liable for Mr. C [redacted]'s actions.

GSA has not shown there is any federal law that establishes whether Mr. C [redacted]'s actions were tortious or whether Ms. C [redacted] is liable for his conduct. Although 31 U.S.C. § 3720D(a) preempts state laws that prohibit wage garnishment and govern wage garnishment procedures, the statute does not prescribe a federal standard for determining

whether conduct amounts to a tort or whether someone is liable for the tortious conduct of another. Because GSA has not shown there is any direct conflict between federal law and state law regarding the evaluation of Mr. C [redacted]'s conduct or Ms. C [redacted]'s liability, we cannot conclude state law is preempted and replaced with federal law. Further, GSA has not explained how assessing the conduct at issue here and determining responsibility for this conduct involves a "uniquely federal interest" which is "so committed by the Constitution and laws of the United States to federal control that state law is preempted and replaced, when necessary, by . . . so-called 'federal common law.'" Boyle v. United Technologies Corp., 487 U.S. 500, 504 (1988). GSA has no unique federal interest in operating its vehicles upon public roads or in attempting to recover damages when one of its vehicles is involved in an accident. Even if it did have such an interest, state law would give way to federal law only if we could find a significant conflict between a federal policy and the operation of state law, or if the application of state law would frustrate the objectives of federal law. Id. at 507. However, there is no such conflict and applying state law principles to determine GSA's rights in the case of an automobile accident would not hinder the operation of the fleet management program.

State law governs Ms. C [redacted]'s liability to GSA for a debt. GSA, however, has not presented us with an analysis of either Mr. C [redacted]'s conduct or Ms. C [redacted]'s liability in light of state law.[1] In the absence of such an analysis, GSA has not established the existence of a debt owed by Ms. C [redacted].[2]

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[1] Our preliminary review of Louisiana law shows "[t]he owner of a vehicle is not usually liable for damages occurring when another is operating the vehicle." Wimberly v. Clark, 877 So. 2d 195, 197 (La. App. 2 Cir. 2004). There are exceptions to this rule when the driver is on a mission for the owner, when the driver is the agent or employee of the owner, and when the owner is negligent for allowing an incompetent driver to operate the vehicle. Id. Parents are, however, responsible for damage caused by the negligence of minor children who reside with them. Joseph v. Dickerson, 754 So. 2d 912 (La. 2000) (dicta, citing provision of the Louisiana Civil Code).

[2] This is the first time the agency has asked us to make a determination of tort liability in order to establish the existence of a debt in an administrative wage garnishment hearing involving a non-federal employee. Resolving this matter has caused us to wonder whether the administrative wage garnishment procedure will always provide an appropriate means for resolving such issues. GSA's internal regulations caution fleet management employees not to refer claims to the Finance Office unless they review accident reports closely and make sure fault clearly lies with someone other than the driver of the fleet vehicle, and questionable claims are supposed to be reviewed by GSA's attorneys before they are referred to the Finance Office. GSA Order FSS P 5600.8, ch. 9, pt. 2 (Aug. 1, 1994).

Conclusion

GSA has not established the existence of a debt owed by Ms. C[redacted] as required in order to effect an administrative wage garnishment.

MARTHA H. DeGRAFF
Board Judge

During these proceedings, Ms. C[redacted] did not offer anything to contradict the facts put forward by the agency. But suppose she had. Or suppose she had pointed to a principle of state law either to show Mr. C[redacted]'s actions did not amount to a tort or to show she could not be held liable for his actions. The Debt Collection Improvement Act requires us to issue our decisions not later than sixty days after the petition requesting a hearing is filed. If the facts are contested or if issues of state law arise, would there be sufficient time for discovery, a hearing, filing briefs to address state law issues, and the preparation of a decision? This is a question we do not have to answer here, so we leave it for another day. We pose it, however, in order to illustrate the importance of the caution contained in GSA's internal regulation regarding the referral of questionable claims and to give an idea of what might be expected of the parties in future hearings.