

COA Opinion: A trial judge enforcing a divorce judgment may withhold half of the delinquent party's salary, but it may not attach a house held jointly by a third person

27. April 2011 By Jeanne Long

On April 26, 2011, the Court of Appeals decided *Licavoli v Licavoli*, [No 295901](#). There, the Court of Appeals held that a trial judge enforcing a divorce judgment may not attach property owned by jointly by the ex-husband and his new wife, but it may, in appropriate circumstances, place an income-withholding order on half of his salary.

Plaintiff and Defendant were a married couple who divorced pursuant to a judgment entered on September 13, 2005. The divorce judgment set child and spousal supports for a specified period of time. It also awarded a home in Bay City and a company to the plaintiff.

The plaintiff later remarried and filed a quit claim deed that deeded the house jointly to his new wife and himself. When his company closed, he filed for bankruptcy, and he stopped making alimony and child support payments. The defendant then moved to enforce the divorce judgment. The court entered two orders in 2007 releasing funds from the plaintiff's IRA accounts to pay child support and alimony that he owed. The plaintiff still remained delinquent in his payments, and she filed another motion to enforce the judgment. In 2009, the court ordered the liquidation of his 401(k) account and that the proceeds be paid to the defendant, and it later ordered the attachment of the house to satisfy the divorce judgment. The court also ordered that 50% of the plaintiff's income be withheld to pay his spousal support obligation.

The plaintiff appealed the trial court's order that attached the house jointly owned by him and his current wife, and he also appealed the spousal-support income withholding order that withheld half of his plaintiff's earnings. The Court of Appeals affirmed the withholding order, but reversed the attachment and remanded for further proceedings.

On appeal, the plaintiff contended that the home could not be attached to provide spousal-support payments to the defendant because he held it as tenants by the entirety with his new wife. The Court of Appeals held that, by statute, the attachment was improper because property that is held as a tenancy by the entirety is not liable for the individual debts of either party. The Court acknowledged the broad discretion that a trial judge in a divorce case has to do equity regarding the disposition of property, but held that Michigan's Legislature in MCL 600.2807 made it clear that a judgment lien does not attach to property owned as tenants by the entirety unless the judgment is against both the husband and wife. Because the divorce judgment was not entered against both the plaintiff and his current wife, even the broad discretion afforded the trial judge in making dispositional rulings was circumscribed by the clear legislative mandate

The plaintiff also objected on appeal to the trial court's income-withholding order in the amount of 50 percent of his salary. The Court of Appeals acknowledged that the withholding order was toward the upper end of acceptable withholding under federal law, but it affirmed that order because the plaintiff had, for a significant length of time, failed to comply with the court's orders to pay child support or spousal support.