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**COPY**

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ARIZONA SUPERIOR COURT  
MARICOPA COUNTY

In re the Marriage of

WALTER J. BURIEN JR,

Petitioner,

and

DEBBIE C BURIEN (WATTON),

Respondent.

Case No. DR2000-090543

STATE'S RESPONSE TO  
MOTION FOR SUMMARY  
JUDGMENT ON THE PLEADINGS

A Motion for Summary Judgment on the Pleadings has been filed by the  
Petitioner in the above-captioned IV-D case.

The State of Arizona, ex rel., the Department of Economic Security,  
(State), herein responds to Petitioner's Motion filed November 11, 2011

**MEMORANDUM OF LAW**

Petitioner appears to be requesting that the State return to him money that  
was seized from his bank account in February 2011. First, the State does not  
have the money seized from Petitioner's bank account because that money was  
forwarded to Respondent's Mother. Second, the Court has no jurisdiction to

hear this matter as Petitioner has failed to exhaust his administrative remedies. His request is untimely. Third, even though the Court does not have jurisdiction to hear this issue, the Court already ruled on this issue by Minute Entry dated 02/17/2011. (Courtesy copy attached). As a result, the doctrine of Issue Preclusion applies and Petitioner's request should be denied.

Generally, Administrative remedies must be exhausted prior to seeking judicial review. Foremost Live Ins. Co. v. Trimble, 199 Ariz. 222, 580 P.2d 360 (App. 1978); Stephens v. Industrial Commission, 114 Ariz. 92, 559 P.2d 212 (1977). The principal of the necessity of exhausting administrative remedies before seeking relief in court is well established in Arizona. State board of Dental Examiners v. Hoffman, 23 Ariz. App. 116, 531 P.2d 161 (1975).

A party must exhaust available administrative remedies "before appealing to the courts." Minor v. Cochise County, 125 Ariz. 170, 172, 608 P.2d 309, 311 (1980). The doctrine of exhaustion of administrative remedies usually applies when a statute establishes an administrative review procedure and "determines when judicial review is available." Id. (emphasis in original); see also, Minor, 125 Ariz. at 172, 608 P.2d at 311. "where a board is specifically empowered to act by the Legislature, the board should act before recourse is had to the courts" as judicial review "is withheld until the administrative process has run its course." Minor, 125 Ariz. At 172, 608 P.2d at 311.

In this case, the State issued a notice of levy against Petitioner's bank account in early 2011 for the purpose of seizing funds held in that bank account

to pay Petitioner's child support arrears. The notice of levy was issued pursuant to A.R.S. § 25-521. This Statute Provides:

G. If there is a court ordered judgment or if the obligor is in arrears in an amount equal to twelve months of support, the department may issue a levy and collect the amount owed by the obligor by levy on all property and rights to property not exempt under federal or state law. ... The person served with the levy, the obligor or other person known or believed to have an interest in the property may make a written request for an administrative review to contest the levy within fifteen days after the date of mailing of the notice. The administrative review shall be conducted pursuant to § 25-522, subsection D.

As indicated above, the procedure for requesting administrative review is set forth in A.R.S. § 25-522. Petitioner either failed to timely request administrative review or he failed to timely request judicial review of administrative decision. Further, Petitioner's oral request for relief on these same grounds was denied at the hearing held before Commissioner R. Jeffrey Woodburn on February 17, 2011.

When a party fails to utilize the available administrative remedies, the Court should decline to exercise jurisdiction. Southwest Soil Remediation, Inc. v. City of Tucson, 201 Ariz. 438, 442, 36 P.3d 1208, 1212 (App. 2001). According to the doctrine of exhaustion of remedies, the Petitioner was not permitted to seek judicial relief from the Court for the levy until all the prescribed administrative remedies had been exhausted. The purpose of the doctrine is "to allow an administrative agency to perform functions within its special competence to make a factual record, to apply its expertise, and to correct its own error so as to moot judicial controversies. The doctrine promotes both judicial economy and administrative agency autonomy by preventing premature judicial intervention in

inchoate administrative proceedings. " Moulton v. Napolitano, 205 Ariz. 506, 511 73 P.3d 637, 542 (App. 2003); citing Medina v. Arizona Department of Transportation, 185 Ariz. 414, 417, 916 P.2d 1130, 1133 (App. 1995). "The doctrine is jurisdictional." Id.

[I]f parties have statutory recourse to an administrative agency that has authority to grant appropriate remedies, they must scrupulously follow the statutory procedures. If they fail to utilize all their administrative remedies, the superior court lacks jurisdiction to consider their claim. Id.

### Conclusion

WHEREFORE, for the reasons stated above, the State requests that the Court deny the Petitioner's Motion For Summary Judgment on the Pleadings filed by on or about November 11, 2011.

Dated: 11/28/11

THOMAS C HORNE  
ATTORNEY GENERAL

  
Paula J. Cotitta  
Assistant Attorney General

Original of the foregoing filed  
this 28 day of Nov., 2011.

Copy of the foregoing delivered  
this 28 day of Nov., 2011, to:

JUDGE/COMMISSIONER  
Honorable Jaime Holguin  
Maricopa County Superior Court (SE)  
222 E Javelina Ave  
Mesa AZ 85210

Copies of the foregoing mailed  
this 28 day of Nov., 2011, to:

COUNSEL/OBLIGOR  
WALTER BURIEN JR  
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COUNSEL/OBLIGEE  
TROY L BROWN  
1757 E BASELINE RD SUITE 130  
GILBERT AZ 85233

By: A. Romero

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

DR 2000-090543

02/17/2011

COMMISSIONER R. JEFFREY WOODBURN

CLERK OF THE COURT  
P. Odell  
Deputy

IV-D ATLAS NO. 000391786700  
STATE OF ARIZONA, EX REL., DES  
WALTER J BURIEN JR.

DEEAN GILLESPIE

AND

DEBBIE C WATTON

TROY L BROWN

AG-CHILD SUPPORT-EAST VALLEY  
OFFICE  
FAMILY COURT SERVICES-CCC

IV-D REVIEW HEARING

Courtroom 305-SEA

10:05 a.m. This is the time set for review hearing. Petitioner/Father, Walter Burien, Jr. (hereinafter referred to as "Father"), is present and represented by Neil Poston on behalf of above-named counsel. Respondent/Mother, Debbie Watton (hereinafter referred to as "Mother"), is not present but is represented by above-named counsel. The State is represented by Assistant Attorney General, Paula Cotitta.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Counsel for Mother advises the Court that Mother waives her appearance for purposes of today's hearing.

Father is sworn.

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Counsel for the State advises the Court that a payment of \$2,394.00, which includes the previously ordered purge, was posted to the Clearinghouse on December 21, 2010. Since then, two additional payments have been received: one on January 6, 2011 in the amount of \$431.00, and another on February 7, 2011 in the amount of \$431.00. Father still owes arrears of over \$36,000, but at this time the State does not believe future review hearings are necessary.

Counsel for Mother concurs that no further review hearings are needed but requests the right to file a notice of non-compliance should Father change his monthly bank withholding amount.

Counsel for Father advises the Court that the State of Arizona seized over \$1,800 of Father's disability funds from his bank account, in violation of the Court's order that the payment on arrears may not be increased without further Court order. Counsel requests that the funds be returned to Father.

Counsel for State is heard in response and believes this is not an issue before the Court today but a matter for administrative review by the State.

Discussion is held.

Counsel for Mother concurs with the State's position and waives his appearance and exits the courtroom.

Discussion is held with counsel for Father regarding the seizure of Father's disability funds.

The Court is in receipt of Father's "Statement of: Walter J. Burién, Jr. Notice of Father's Compliance with Standing Orders of 12/02/10" and "Notice to the Court of: Non-Compliance by DES and Request for ORDER of the Court", both filed February 16, 2011.

Counsel for Father advises that Father has complied with the Court's orders, and requests that the seized funds be released to Father.

Father makes statements to the Court and requests that the State be held in contempt of Court for violating the Court's orders.

Counsel for the State is heard in response.

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The parties are advised that the Court's order does not preclude the State from their statutory right to seek other forms of relief to collect arrearages. However, the State cannot increase the monthly arrearage payment without Court order.

**IT IS ORDERED** denying Father's "Notice to the Court of: Non-Compliance by DES and Request for ORDER of the Court", filed February 16, 2011, without prejudice. The Court believes this is an administrative matter to be addressed with the State rather than a matter of contempt for violating the Court's orders.

At the request of the parties, no further review hearings will be set at this time. Should Father fail to comply with the Court's orders, Mother may file an affidavit of non-compliance to seek additional remedies.

10:21 a.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.