

BILL ANALYSIS

Senate Research Center
2001S0811/1

S.C.R. 39
By: Van de Putte
Finance
4/4/2001
As Filed

DIGEST

Under current law, neither the state nor any state agency may be sued except where permission is granted by statute, unless permission is granted by concurrent resolution of the Texas Legislature. This concurrent resolution allows the legislature to grant Carmen R. Melenyzer permission to sue the State of Texas, and the Office of the Attorney General of Texas individually and as next friend of Russell Glen Melenyzer, her son.

Carmen R. Melenyzer, individually and as next friend of Russell Glen Melenyzer, a child, alleges that:

- Carmen R. Melenyzer, (hereinafter "Melenyzer"), is a person for whom the Office of the Attorney General of the State of Texas, (hereinafter "OAGTX") by and through its agents, employees and functionaries, including the child support division of the Office of the Attorney General collect child support payable to her at some central collection site, believed to be in Austin, Texas, and then pays the collected child support to her in San Antonio, Bexar County, Texas.
- On and after the entry of a corrected decree of divorce on June 7, 1989, at the direction of the OAGTX, all of Melenyzer's child support payments have been paid through the OAGTX.
- Charles L. Melenyzer, (hereinafter "obligor"), being an out-of-state resident, was, for this additional reason, necessarily required to make all of his child support payments through the OAGTX.
- The OAGTX and the Attorney General of the State of Texas, pursuant to their statutory duty, both state and federal, to preserve and protect the rights of the children of Texas, and, in particular the child, Russell Glen Melenyzer, (hereinafter "the child"), have expressly assumed the exclusive right to receive and collect monthly court-ordered child support payments for many of the children in Texas for whom child support is payable, but, in any event, have expressly assumed the exclusive right to receive and collect child support payable by the obligor to Melenyzer for and on behalf of the child. That is, Melenyzer has no choice but to allow the OAGTX and the Texas Attorney General to collect child support payable to her.
- Melenyzer, relying upon the authority and duty of the OAGTX and the Texas Attorney General to collect the monthly court-ordered child support payments to which she and the child had a legal right, necessarily deferred to their assumption of exclusivity in this arena, all to her detriment and, more especially, that of the child.
- Melenyzer, again under the pre-eminence of the position of the OAGTX in the area of collection of child support, has also necessarily been required to rely upon the OAGTX to forward to her, for the use and benefit of the child, any and all child support payments received by the OAGTX from obligor with respect to the child, whether ordered or not, whether in excess of the "court-ordered" amount or not.
- The OAGTX has been receiving from obligor, father of the child, the sum of \$83.00 per month for an extended period of time.

- Although the OAGTX has a fiduciary duty to Melenyzer, but more especially to the child, to promptly record the receipt of the child support payments and forward such payments to the designated recipient, that is, Melenyzer, it has not.
- The OAGTX, based upon the information and belief of Melenyzer, as well as upon the representations or admissions of the employees and agents of the OAGTX, all of whom were then acting in the ordinary course and scope of their employment, has been, since on or about October, 1999, and is currently routinely breaching its fiduciary duty to Melenyzer and the child by arbitrarily withholding or returning to the obligor, (or otherwise disposing of the funds referenced herein), one-half or more of each monthly payment made by obligor to Melenyzer for the support of the child through the OAGTX, which payment is made in accordance with the applicable order in the underlying case, being Cause No. 85-CI-04159, styled In the Interest of Russell Glen Melenyzer, A Child.
- On or about October, 1999, Melenyzer began to receive less than the \$83.00 she had previously been being paid by obligor through the OAGTX. Although no other order had been entered and although obligor was still making monthly payments of \$83.00 each month, the OAGTX, for some unknown and inexplicable reason, began withholding monies from Melenyzer that were rightly paid by obligor to her for the use and benefit of the child;
- The OAGTX has, since that time, withheld from Melenyzer the sum of at least \$41.50 each month through on or about May, 2000, when the OAGTX began to again pay Melenyzer the entire amount received by the OAGTX and payable to Melenyzer; however, prior to that time, especially in some recent months, the OAGTX or the Texas Attorney General has arbitrarily withheld more than one-half of the child payment received by the OAGTX from the obligor for the use and benefit of the child.
- In this regard, and by way of explanation, the OAGTX receives a check or other payment from the obligor, deposits that check into the treasury of the State of Texas, (child support trust fund), into which all child support checks from all obligors are presumably deposited, and then sends Melenyzer, (and presumably all other obligees who receive their child support payments through and from the OAGTX), a new check drawn on The State of Texas.
- When Melenyzer sought to learn the reason for the wrongful confiscation or conversion of Melenyzer's child support money by the OAGTX, she was advised that the monies were being withheld to repay a some unknown and undefined debt to the State of Texas in the sum of \$10,000.00.
- Although she has requested an explanation on several occasions, each inquiry is met with a different reason or explanation; at no time, however, has she been provided with an accounting of the supposed account that she owes to the State of Texas.
- Although an accounting has been verbally requested on several occasions from several different employees and agents of the OAGTX, neither the State of Texas, the Texas Attorney General, the OAGTX, or any other agency of the State of Texas has sent Melenyzer a statement or bill for any sum at any time indicating that she owes the State of Texas, the Texas Attorney General, the OAGTX, or any other person the sum of \$10,000.00, much less any other sum.
- Without actual or constructive notice to Melenyzer of a hearing on this issue of her indebtedness--although such an indebtedness is expressly denied--much less without affording Melenyzer a hearing at which to present evidence in her defense, the OAGTX, in violation of Melenyzer's civil rights, began paying Melenyzer--and the child--one-half of the sum paid by obligor.

- Although the OAGTX continues to receive the sum of \$83.00 each month from obligor for the use and benefit of Melenyzer and the Child, the OAGTX has made reduced payments from the child support trust fund to Melenyzer of \$41.50 per month rather than the full \$83.00 per month paid by obligor through the OAGTX.
- As such, the OAGTX and Attorney General John Cornyn have breached the fiduciary duty the State of Texas, by and through the Texas Attorney General and the OAGTX owe Melenyzer and the child in wrongfully converting or confiscating without lawful order monies owed to one of the children for whom the OAGTX and Attorney General John Cornyn purportedly are collecting child support money in accordance with their statutory charge.
- The OAGTX and Attorney General John Cornyn are liable to Melenyzer and the child for actual damages for their gross breach of their fiduciary duty to Melenyzer and the child in an amount yet to be determined since the OAGTX refuses to provide Melenyzer with an accounting of the monies received, withheld and paid, and, in particular, the reasons for withholding the confiscated child support.
- The OAGTX and Attorney General John Cornyn are liable to Melenyzer and the child for actual damages for unlawfully and without any legal authorization to do so, confiscating and misdirecting monies due and payable to Melenyzer for the use and benefit of the child in an amount yet to be determined due to the refusal of the OAGTX to provide Melenyzer with an accounting.
- Melenyzer requests declaratory relief to authorize a court to find that the acts and omissions of the OAGTX as alleged hereinabove be declared invalid and in contravention of its fiduciary, statutory, or constitutional duty to Melenyzer and the child, as well as the people of Texas.
- The OAGTX has supplied false and incorrect information about Melenyzer's entitlement to receive child support and the amount of child support she is receiving that caused Melenyzer to be denied Medicaid for and on behalf of her father when she made a claim for the payment by the agency involved of some of the medical bills incurred by her father in 1999.
- This request for permission to sue the OAGTX is necessary in that Melenyzer filed suit against the OAGTX in Cause No. 2000-CI-07323, styled Carmen R. Melenyzer, Individually and As Next Friend of Russell Glen Melenyzer, A Child v. John Cornyn, Attorney General of the State of Texas, in his representative capacity, and the Office of the Attorney General of The State of Texas, Child Support Division, in the District Court for the 285th Judicial District of Bexar County, Texas and, to prevent the OAGTX from obtaining a dismissal with prejudice based upon its claim of sovereign immunity, was required to take a non-suit of that lawsuit.
- This suit should be authorized to be brought in the county of the residence of Melenyzer, that is, Bexar County, Texas.
- This suit should authorize Melenyzer, who necessarily was required to retain legal counsel to attempt to protect her civil rights as referenced hereinabove, to further recover the reasonable and necessary attorney's fees rendered and to be rendered and costs of court incurred or to be incurred on her behalf and that of the child in filing and prosecuting the suit in Cause No. 2000-CI-07323, referenced above, but in any future legal proceeding authorized by this resolution, and as otherwise authorized or provided by the Texas Family Code.

PURPOSE

As proposed, S.C.R. 39:

Provides that Carmen R. Melenzyer, individually and as next friend of Russell Glen Melenzyer, a child, or any other person who may hereafter be appointed by the Court to act for or on behalf of the child, Russell Glen Melenzyer, are granted permission to sue the State of Texas and John Cornyn, Attorney General of the State of Texas, in his representative capacity, and the Office of the Attorney General of The State of Texas, Child Support Division subject to Chapter 107 (Permission to Sue the State), Civil Practice and Remedies Code. Requires that the suit authorized by this resolution be brought in Bexar County. Provides that John Cornyn, Attorney General of the State of Texas, in his representative capacity and the director of the child support division of the attorney general's office be served process as provided by Subdivision (3), Subsection (a), Section 107.002 (Effect of Grant of Permission), Civil Practice and Remedies Code.