

Approved 2-21-1984
Date sh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin Littlejohn at
Chairperson

1:30 a.m./p.m. on February 13, 1984 in room 423-S of the Capitol.

All members were present except:

Rep. Kline, Rep. Reinhardt, Rep Niles, all excused.

Committee staff present:

- Emalene Correll, Research
- Bill Wolff, Research
- Norm Furse, Revisor
- Sue Hill, Secy. to Committee

Conferees appearing before the committee:

- Mr. Jim Robertson, Department of SRS, Topeka, Ks.
- Mr. George McCullough, Ks. State AFL-CIO, Topeka, Ks.
- Mrs. Elizabeth Carlson, Ks. Board of Healing Arts.
- Kim C. Dewey, Sedgwick County Commissioner
- Jerry Slaughter, Kansas Medical Society
- Rep. Elaine Hassler.

Visitor's register, (see Attachment No. 1.)

Chairman called meeting to order welcoming back Representative Ken King who has been ill and absent from committee, but back again this date. All committee wish him well.

Hearings on HB2763

Chair noted to committee, fiscal note on HB 2763 was distributed. (See Attachment No. 2.)

Mr. Jim Robertson spoke to HB 2763. He distributed hand-out to committee, see (Attachment No. 3.), for details. Explaining that as currently drafted, this bill prohibits the attachment of worker's compensation for any reason, including the enforcement of past due child or spousal support. It is the hope of Dept. of SRS this will be changed to allow worker's compensation pay to be garnished so that it won't fall on the state to pay support for these individuals unnecessarily. He cited several Supreme Court cases, i.e., Mahone v. Mahone, Bonds v. Bonds, etc. Further stated they feel it is a speedier way to get this support money than through the court systems, and sees no real reason why worker's compensation should be exempt. He answered questions from committee and staff. Proposed language changes in HB 2763, are to: line 28, to delete, "for other than earnings", and in line 30 after period to add, "if a support debt is owed the state of Kansas, the setoff provisions of K.S.A. 1983 Supp. 75-6201 et seq. may be used to collect the debt from worker's compensation. Further questions and answers.

Mr. George McCullough, State AFL and CIO spoke in opposition to HB 2763. Feels it can be a real bucket of worms, in that it can be most difficult to distribute funds, i.e. when the checks come from New York, or Tulsa, or Kansas City, and they are asked to give half the money to the state, (SRS), and the other half to the worker to whom the check was written. He cannot tear the check in half, cannot write 2 new ones, they must go back to the source where the check was written, and it can cause delays, and many many problems. He advocated the best way to handle this is with a citation for contempt and not garnishing of wages. He answered questions from committee.

Hearings concluded on HB 2763.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S Statehouse, at 1:30 ~~a.m.~~ p.m. on February 13, 1984.

Hearings on HB 2784

Elizabeth Carlson, Board of Healing Arts, spoke to HB 2784, in that their board is recommending these statutes be repealed. They are out dated, written in 1925. The Board of Medical Examiners is no longer in existence, --yet these statutes have not been repealed. There was discussion between Ms. Carlson, committee and staff in regard to amounts of money collected in Wyandotte County, (approximately \$3,000), and Sedgwick County, (approximately \$6,000.) Approximate costs to the county to issue licenses is about \$1,500, and the county treasury does not recover this amount. These fees go to medical libraries.

Mr. Jerry Slaughter spoke to HB 2784, saying the law is outdated, and he urged committee for favorable passage of this bill.

Hearings on HB 2784 were concluded.

HB 2101

Chairman invited Mr. Robertson to speak to HB 2101, since he is present this date.

Mr. Jim Robertson spoke to committee in that HB 2101 is requesting for the expansion of a divorce work-sheet. The one presently used covers a lot of data that is needed for informational files, yet does not include a few more lines that would ask for the social security numbers of those involved. This is needed information because of parent locating, kidnapping cases, support payments, etc. They, (SRS), is asking to modify very slightly an already existing form, and hopes that this committee will see fit to approve this request.

Chairman noted that the Department of Health and Environment would be also notified to see if anyone from that department chooses to testify on HB 2101.

Chairman invited Rep. Hassler to appear in regard to a bill request. This request she stated would initiate an \$8.00 increase on the divorce tax, on the docket fee, and the money would go for the Family Trust Fund, and enable further and continued projects that prevent child abuse. A increase in the marriage license had been granted 3 years ago, and this has allowed some significant programs to be developed, however, the need has continued and increased, and this additional fund request will enable expansion of this work. Rep. Wagnon moved we introduce this bill, motion seconded by Rep. Friedeman, motion carried.

Chairman noted to committee, there is Public Health and Welfare committee meeting tomorrow, but not the rest of this week.

Meeting adjourned 2:15 p.m.

Attn # 2
2-13-84

490	2763
Fiscal Note	Bill No.
1984 Session	
February 8, 1984	

The Honorable Marvin Littlejohn, Chairperson
Committee on Public Health and Welfare
House of Representatives
Third Floor, Statehouse

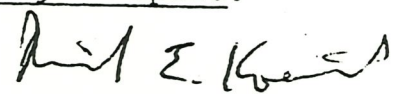
Dear Representative Littlejohn:

SUBJECT: Fiscal Note for House Bill No. 2763 by Committee
on Public Health and Welfare

In accordance with K.S.A. 75-3715a, the following fiscal
note concerning House Bill No. 2763 is respectfully submitted to
your committee.

House Bill No. 2763 amends K.S.A. 44-514 to allow for a
support order to be attached to a workmens' compensation payment.
The bill would allow the collection of child support payments
from workmen compensation payments.

The Department of Social and Rehabilitation Services
estimates that approximately 250 workmen compensation cases would
be collected against for FY 1985. The average collection would
be \$1,250 per case for an estimated total collection of
\$312,500. Of the amount of funds collected, \$156,250 would be
deposited to the Department of Social and Rehabilitation Services
Fee Fund and the remainder would be reimbursed to the federal
government. The amount of funds collected through the passage of
House Bill No. 2763 would be in addition to estimated receipts
contained in the 1985 Governor's Budget Report.



Richard E. Koerth
Principal Budget Analyst
For the Director of the Budget

REK:sr

Attn. # 2
2-13-1984

TESTIMONY - Jim Robertson
CSE Senior Legal Counsel
296-3410

As K.S.A. 44-514 is currently drafted, a total statutory exemption is created to prohibit the attachment of worker's compensation for any reason - including the enforcement of past due child or spousal support. The purpose of H.B. 2763 is to allow for the attachment of worker's compensation benefits for the purpose of enforcing a court order for the support of a person.

The primary purpose of worker's compensation is to replace time consuming law suits in the work place so that a speedier remedy for injury is provided. If traditional court methods were used to compensate the worker, the proceeds of any judgment obtained would not be exempt from attachment. Since the obligation to support one's dependents continues despite any disability, it is not sound reasoning to keep the tools for enforcement from children in need of support.

Exemption statutes such as the one for worker's compensation have often been found invalid by the courts when the enforcement of support orders are in issue.

In the Kansas Supreme Court case of Mahone v. Mahone 213 Kan 346, the court determined that "Accumulated funds presently due and owing from the Kansas Public Employees Retirement System to a member may be reached to satisfy child support payments due under a decree of divorce. In such case the statutory exemption provided by K.S.A. 74-4923 is not applicable."

The court also states that exemption statutes are intended to protect the person and his/her dependents from the claims of creditors which might take away from them all means of support. "Stated in another way, it was not the legislative intention to make the Kansas Public Employees Retirement System a haven for a runaway father to escape his obligation to support his minor children." The court adds, "The denial of relief to the minor children in cases such as this might well cast upon the public the burden of supporting children and relieve him (the obligor) and his property of that obligation."

The Kansas Supreme Court in Blankenship v. Blankenship 19 Kan 159 and Johnson v. Johnson 66 Kan 546 held that the claim of an ex-wife for alimony can be enforced as a lien against a husband's homestead despite the statutory homestead exemption.

The majority of other state's exemption statutes provide an exception for the purpose of enforcing a support order. Several states have waived or overruled the exemption against the attachment of worker's compensation benefits for child support enforcement. (New Jersey - 235 A 2d 476; Oregon - 487 P 2d 1164, and Michigan among others). Even in the state of Mississippi, a statute exempting life insurance policies from garnishment was found not applicable to proceedings to collect past-due alimony and child support. The court states in Bonds v. Bonds (Miss Sup Ct. 1/27/82) "Even though exemption statutes are to be liberally construed to effectuate their purposes, this liberal

interpretation must yield when the subject of the garnishment is for child support and alimony."

In Kansas, Unemployment Compensation benefits enjoyed the same exemption from attachment as worker's compensation. However, in 1982 this legislature enacted statutory waiver of that exemption for the enforcement of support.

In summary, a statutory waiver of the exemption found in K.S.A. 44-514 is needed to insure that legally and morally responsible parents provide for the support of their children.

HOUSE BILL No. 2763

By Committee on Public Health and Welfare

1-24

0017 AN ACT concerning workers' compensation; payments not as-
0018 signable; amending K.S.A. 44-514 and repealing the existing
0019 section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 44-514 is hereby amended to read as fol-
0022 lows: 44-514. *Except for the purpose of enforcing an order for*
0023 *the support of a person, no claim for compensation, or compen-*
0024 *sation agreed upon, awarded, adjudged, or paid, shall be assign-*
0025 *able or subject to levy, execution, attachment, garnishment, or*
0026 *any other remedy or procedure for the recovery or collection of a*
0027 *debt, and this exemption cannot be waived. For the purpose of*
0028 *enforcing a support order, garnishment* for other than earnings,
0029 *as well as any other legal action to enforce a support order, shall*
0030 *be permitted.*

Delete

0031 Sec. 2. K.S.A. 44-514 is hereby repealed.

0032 Sec. 3. This act shall take effect and be in force from and
0033 after its publication in the statute book.

If a support debt is owed the state of Kansas, the setoff provisions of K.S.A. 1983 Supp. 75-6201 et seq. may be used to collect the debt from worker's compensation.

No. 46,986

LESLIE RENEE MAHONE, EFFIE DENISE MAHONE and ASIE MAHONE, III, minor children, by and through their natural guardian, mother and next friend, FLORA MAHONE, *Appellees*, v. ASIE MAHONE, JR., and JOHN CORKHILL, Executive Secretary, Kansas Public Employees Retirement System, *Appellants*.

(517 P. 2d 131)

SYLLABUS BY THE COURT

1. STATUTES—*Not to be Given Arbitrary Construction*. A statute is not to be given an arbitrary construction, according to the strict letter, but one that will advance the sense and meaning fairly deducible from the context.
2. EXEMPTIONS—*Purposed Exemption Statutes*. The whole purpose and policy of our exemption laws has been to secure to an unfortunate debtor the means to support himself and his family, to keep them from being reduced to absolute destitution and thereby public charges.
3. PUBLIC EMPLOYEES RETIREMENT ACT—*Accumulated Funds to Pay Child Support—Exemption Not Applicable*. Accumulated funds presently due and owing from the Kansas Public Employees Retirement System to a member may be reached to satisfy child support payments due under a decree of divorce. In such case the statutory exemption provided by K. S. A. 74-4923 is not applicable.

Appeal from Shawnee district court, division No. 3; E. NEWTON VICKERS, judge. Opinion filed December 8, 1973. Affirmed.

Marshall Crowther, Special Assistant Attorney General, argued the cause, and Vern Miller, Attorney General, and Dennis W. Moore, Assistant Attorney General, were with him on the brief for the appellants.

Frederick K. Cross, of Cross, Serra and Turner, Chartered, of Kansas City, argued the cause, and was on the brief for the appellees.

The opinion of the court was delivered by

PRAGER, J.: This is an action brought by three minor children against their father and the Kansas Public Employees Retirement System to provide for their support out of funds due and owing to the father as a member of the retirement system. The plaintiffs-appellees are Leslie Renee Mahone, Effie Denise Mahone and Asie Mahone, III. The action was brought on their behalf by their mother and next friend, Flora Mahone. In this opinion we will refer to them as the plaintiffs or the children. The children's father, Asie Mahone, Jr., was a named defendant in the district court. Although personally served with summons he has never appeared in the proceeding. The defendant-appellant in this court, Kansas Public Employees Retirement System, has appeared through its

Executive Secretary, John Corkhill. We will refer to the appellant as the retirement system.

The case was submitted to the district court on a stipulation of facts. For purposes of this appeal we will assume that the following facts are true: Plaintiffs are three minor children of their next friend, mother and natural guardian, Flora Mahone, and of the defendant, Asie Mahone, Jr. The next friend, Flora Mahone, obtained judgment against the defendant, Asie Mahone, Jr., in the District Court of Wyandotte County, Kansas, on the 29th day of June 1971. At the time of the decree, there were owing to the said Flora Mahone certain delinquencies in support monies and since the divorce decree the defendant, Asie Mahone, has continued to accumulate delinquencies in child support. He has remarried and has left the jurisdiction, presently living in Jackson County, Missouri.

At the time of the decree of divorce, no mention was made by the defendant of his entitlement under the Kansas Public Employees Retirement System of sums set aside as a pension nor was any mention made of his intention to withdraw such monies in a lump sum. Exactly 121 days after the defendant was terminated from public employment (this is the waiting period statutorily set forth), he made application for withdrawal in a lump sum of all pension monies accruing in his behalf. Such application was made without notice to his former wife and without notifying the court and at a time when he was delinquent in child support. Plaintiffs first sought to bring an action in the District Court of Wyandotte County, Kansas, in an effort to minimize the expense of litigation. Such action is still pending although plaintiffs now concede that statutorily an action to enforce a judicial remedy against pension entitlements must be brought in Shawnee county where the instant case has been brought. Plaintiffs filed their action on November 10, 1971, seeking, among other things, that the pension monies vested in and accruing to the defendant, Asie Mahone, Jr., be restrained and that the sums be paid unto the Clerk of the District Court of Wyandotte County, Kansas, for a suitable accounting and application and credit toward the delinquent child support monies found to be due, together with court costs, attorney's fees and other relief. No answer has been made by the defendant, Asie Mahone, Jr., despite notice having been given to him and to his attorneys in Wyandotte County, Kansas, on several occasions. He is beyond

the jurisdiction of the court so far as contempt citation is concerned, being in another state. Inasmuch as he secrete himself and his employment from his former wife, she is unable to exercise the ordinary post-judgment remedies of attachment, execution and garnishment. The next friend, Flora Mahone, has announced to the court her intention to pursue what remedies might be available to her under the Uniform Reciprocal Support Act, but has expressed the general ineffectiveness of such a remedy as between Wyandotte county and its contiguous sister county, Jackson County, Missouri.

Each of the parties filed a motion for summary judgment and the case was determined by the trial court on a single issue of law which may be stated as follows: Whether or not the accumulated funds of the defendant Mahone with the Kansas Public Employees Retirement System can be applied to past due child support of the defendant Mahone in light of K. S. A. 74-4923, which exempts said funds from execution, garnishment or attachment or any other process or claim whatsoever.

Before examining the contentions of the parties it would be helpful to bring more clearly into focus the provisions of the pertinent statute, K. S. A. 74-4923, which provides in part as follows:

"74-4923. Rights of members and beneficiaries not affected by change or repeal of act, exception; nonalienation of benefits; exemption from taxes and legal process.

Any annuity, benefits, funds, property, or rights created by, or accruing to any person under the provisions of K. S. A. 74-4901 et seq. or K. S. A. 74-4951 et seq., and any acts amendatory thereof or supplemental thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever, and shall be unassignable, except as specifically provided by this act." (Emphasis supplied.)

On this appeal the appellant retirement system contends in substance that the statutory exemption contained in 74-4923 is clear, precise and complete on its face and that the language in the statute provides an exemption from any type of claim whatsoever including claims by dependent minor children for child support. The retirement system further maintains that if an exception had been intended for claims involving child support, the legislature would have so provided and further that a court has no right to make an exception where the legislature failed to make one.

The minor children and the trial court took a different approach

to the question. Here the children contend that statutory exemptions relating to civil pensions are inapplicable when in conflict with the enforcement of a decree for child support. They take the position that 74-4923 should be construed in accordance with the clear purpose and intent of the legislature, which is to protect not only the pensioner but also the members of his family from the claims of creditors which might take away from them all means for their support. The children further maintain that the exemption statute must be interpreted in the light of K. S. A. 1971 Supp. 60-1610 (a) which places upon the district court in a divorce case a clear and unequivocal duty to provide for the support of the minor children of the parties. Stated in another way they contend that it was not the legislative intention to make the Kansas Public Employees Retirement System a haven for a runaway father to escape his obligation to support his minor dependent children.

At the outset we wish to emphasize that the children are not attempting to have sequestered for their support, accumulations in a pension system which are not at this time fully due and payable to their father. Under the stipulated facts the father, Asie Mahone, Jr., has made application for the withdrawal in a lump sum of all pension monies accumulated in his behalf, which amount to approximately \$3,000. It is undisputed that the father is entitled to these funds as a matter of right both under his contractual relationship with the retirement system and the pertinent statutory provisions. We do not have before us a factual situation where minor children are seeking to obtain for their support funds not yet due and payable under the retirement program.

The issue presented here is one of first impression in Kansas. However, the issue has been litigated many times in other jurisdictions where a substantial majority of the decisions have held in favor of the minor dependent children by making the father's pension monies available at least in part for their support. Under most authorities, a judgment for child support is excepted from the statutory exemption, either by express provision in the statute or by construction thereof. The cases supporting the majority rule are set forth in extensive annotations in 11 A. L. R. 110, 106 A. L. R. 669, and 54 A. L. R. 2d 1418. Even where the exemption provision is absolute on its face, it has been held that exemptions contained in pension statutes or ordinances are inapplicable to a claim for alimony or child support. (Lapolla v. Retirement Board, Etc., 140

N. Y. S. 2d 449; *Fischer v. Fischer*, 13 N. J. 162, 98 A. 2d 568; *Courtney v. Courtney*, 251 Wis. 443, 29 N. W. 2d 759; and *McDonald v. McDonald*, 351 Mich. 568, 88 N. W. 2d 398.) The minority position to the contrary is taken in California (*Ogle v. Heim*, 69 Cal. Rptr. 579, 442 P. 2d 659) and Massachusetts (*Utley v. Utley*, 355 Mass. 469, 245 N. E. 2d 435.)

We have concluded that the statutory exemption contained in K. S. A. 74-4923 is not applicable when in conflict with the enforcement of a decree or claim for child support. We further hold that the trial court was entirely correct in its judgment that under the circumstances of this case the accumulated funds of Asie Mahone, Jr., presently due and owing from the Kansas Public Employees Retirement System, should be applied to the support of his minor dependent children in satisfaction of delinquent child support payments under the decree entered in the district court in Wyandotte county.

In arriving at this conclusion we have applied the principle that a statute is not to be given an arbitrary construction, according to the strict letter, but one that will advance the sense and meaning fairly deducible from the context. "It is not the words of the law but the internal sense of it that makes the law; the letter of the law is the body; the sense and reason of the law is the soul." (Quoted from the dissent of Mr. Justice Harlan in the *Civil Rights Cases*, 109 U. S. 3 [1883], 27 L. Ed. 835, 3 S. Ct. 18.) The whole purpose and policy of our exemption laws has been to secure to an unfortunate debtor the means to support himself and his family, to keep them from being reduced to absolute destitution and thereby public charges. (*Southwest State Bank v. Quinn*, 198 Kan. 359, 424 P. 2d 620.) In construing statutory exemptions this court has consistently taken into consideration this purpose and policy. We have by judicial construction excepted from the application of certain statutory exemptions, persons and situations not falling within that purpose.

Guptil v. McFee, 9 Kan. 30, involved a statute which made exempt from execution the necessary tools and implements of any mechanic, miner or other person used and kept for the purpose of carrying on of his trade or business. It was held that this exemption provision did not apply to partnership property and that partnership property in the hands of the firm was not exempt by law from an

execution against the firm. There was no language in the exemption statute which specifically excluded partnership property. The court, however, found the purpose of the statute to be to protect citizens who earn their livelihood by the use of tools or implements, not citizens who incidentally use tools and implements for the purpose of carrying on a trade or business with others. Hence the court by judicial construction held that partnership property was not included within the exemption. In *Burke v. Finley*, 50 Kan. 424, 31 Pac. 1065, this court held that a debtor who had a family to support could not waive the statutory exemption provided for his wages since the particular exemption was created for the benefit of the debtor's family and therefore he had no power to waive it. In *Southwest State Bank v. Quinn*, supra, we held that a corporation as such has no statutory exemption rights and may not hold property exempt from lawful claims of general creditors. The statute involved was K. S. A. 60-2414 (k) which provided that after foreclosure of a mortgage the right of redemption shall not be subject to levy or sale on execution. There was no language in the statute which excepted corporations from the application of the exemption. Nevertheless, this court considered the purpose and policy of our exemption laws to be to protect an unfortunate debtor and his family, and by construction excepted corporations from the protection of the statutory exemption.

We have held that a claim of an ex-wife for alimony can be enforced by a court in a divorce decree as a lien against the husband's homestead in the face of a claim of exemption by the husband. (*Blankenship v. Blankenship*, 19 Kan. 159; *Johnson v. Johnson*, 66 Kan. 546, 72 Pac. 267.) *Blankenship* and *Johnson* clearly stand for the proposition that the exemption afforded a husband's homestead will not be applied to prevent a court from enforcing the alimony rights of a wife. In those cases the court took into consideration the purpose of the homestead exemption provision and by judicial construction held it inapplicable to a claim of alimony.

In construing the exemption provision under 74-4923 we should consider the other sections of the statute which created and maintain the Kansas Public Employees Retirement System. The purpose of the act is set forth in K. S. A. 74-4901. One of its purposes is to enable public employees to accumulate reserves for themselves

and their dependents. Under 74-4902 (7) a member's dependent child is specifically included as a beneficiary of the program. In view of these provisions it seems clear to us that the Kansas Public Employees Retirement System is designed to protect the minor dependents of a member as well as the member himself.

This court as a matter of public policy has always vigorously protected the right of a dependent child to receive support from his father. The denial of relief to the minor children in cases such as this might well cast upon the public the burden of supporting a pensioner's children and relieve him and his property of that obligation. Such a holding in our judgment would be perverse of the true purpose and policy of our exemption laws and the intent of the legislature in providing the exemption contained in K. S. A. 74-4923.

The judgment of the district court is accordingly affirmed.

FROMME, J., dissenting. It has been said that public policy is the time worn friend of appellate judges in a quandary. This court's duty in this case should be limited to construing the statute (K. S. A. 74-4923) and not to declaring public policy. It is the duty of courts to interpret a law as they find it expressed by the legislature without reference to whether its provisions constitute good or sound public policy. Where the legislative purpose has been declared in plain and unmistakable language, it is not within the province of the court to interpose contrary views of what the public need demands. If public welfare demands some exception or change in the law, it is to be effected by the legislature, and not by the courts in the guise of interpretation.

Mr. Chief Justice Johnston expressed this view in *McAllister v. Fair*, 72 Kan. 533, 84 Pac. 112, when he said:

" . . . The right to determine what is the best policy for the people is in the legislature, and courts cannot assume that they have a wisdom superior to that of the legislature and proceed to inject into a statute a clause which, in their opinion, would be more in consonance with good morals or better accomplish justice than the rule declared by the legislature. It has been said that 'the well-considered cases warrant the pertinent conclusion that when the legislature, not transcending the limits of its power, speaks in clear language upon a question of policy, it becomes the judicial tribunals to remain silent.' (*Malinda Deem et al. v. Thomas Millikin et al.*, 6 Ohio C. C. 357, 360.)" (p. 536.)

If an exception is to be engrafted onto the clear statutory exemp-

tion from "process or claim whatsoever" it should be done by the legislature, not this court. This exception will have the effect of subjecting the Kansas Public Employees Retirement System to extensive litigation. The System will be brought into every divorce action which involves a public employee of the state with future retirement benefits, and when such an employee retires from service such benefits will be subjected to continuing claims for alimony and support of minor children. When such claims exceed the monthly benefit to be paid a retirant he may find himself without any funds to live on unless the court applies some limit to the amount which can be reached.

I would construe the statute as written and reverse the trial court's judgment.

SCHROEDER, J., joins in the foregoing dissenting opinion.