2001

State Tax Commission of the State of Utah v. Dana A. Meier : Brief of Appellant

Utah Supreme Court

Dana Meier; Respondent.
Vernon B. Romney; Attorney General; Bruce M. Hale; Assistant Attorney General; Attorneys for Appellant.

IN THE SUPREME COURT

OF THE

STATE OF UTAH

STATE TAX COMMISSION OF THE STATE OF UTAH,

Appellant,

-v-

DANA A. MEIER,

Respondent.

Case No. 14315

BRIEF OF APPELLANT

AN APPEAL FROM A FINAL ORDER OF THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

VERNON B. ROMNEY
Attorney General
State of Utah

BRUCE M. HALE
Assistant Attorney General
236 State Capitol Bldg.
Salt Lake City, Utah 84114

Attorneys for Appellant

DANA MEIER
4925 Pinehill Drive
Murray, Utah
Respondent

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TABLE OF CONTENTS

CASES CITED

STATUTES CITED

OTHER AUTHORITIES

STATEMENT OF THE NATURE OF THE CASE

The respondent did not pay income taxes for 1968, 1969 and 1970 and was assessed and judgment rendered. The respondent's employer was garnished, an Answer filed, and the appellant moved the lower court for a Garnishee Judgment of 50 percent of the net disposable earnings.

DISPOSITION IN THE LOWER COURT

The lower court denied appellant's motion for judgment of 50 percent of the net disposable earnings and indicated that 25 percent was the proper amount in the Court's opinion.

RELIEF SOUGHT ON APPEAL

The lower court's Order should be reversed, and the matter remanded with instructions as to this Court's interpretation of the applicable Federal law, which exempts this appellant from any percentage limitations on its garnishments of wages due.

STATEMENT OF FACTS

There is no question that the defendant, Dana A. Meier, owes state taxes. The question before the Court is simply a matter of law and not of fact. There is no dispute as to the sums or amounts garnished.

The appellant, Utah State Tax Commission, pursuing its normal collection procedures, after the tax judgment had been rendered in the Third Judicial District Court, the

State Tax Commission of Utah garnished the defendant's employer, Butler Buildings, garnishee, who answered that he was indebted to the defendant at the time of service of the garnishment for three days' salary, or in the amount of $181.83. Based on that answer, the appellant applied to the lower court for a Garnishee Judgment and Execution, filed and argued a motion to the Court for judgment against the garnishee in the amount of 50 percent of the answer. That motion was denied by the Minute Entry, Dated August 29, 1975. It is that final Order that is appealed.

POINT I

GARNISHEE JUDGMENTS FOR THE COLLECTION OF UTAH STATE TAX REVENUES ARE STATUTORILY EXEMPT FROM ANY PERCENTAGE LIMITATIONS.

Congress, pursuant to its power to regulate commerce, and to establish uniform laws, enacted the Consumer Credit Protection Act. A portion of the Consumer Credit Protection Act, 15 USC, 1671 through 1677, protects the credit consumer and makes the law uniform by establishing ceilings on garnishment amounts. These limits were established for a purpose. That purpose and intent of Congress are clearly set out in the statute itself:

> "(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States, relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country."
16 USC, 1671 (a)
(Emphasis added.)

The specific restriction establishes a ceiling on the amount of consumer credit earnings subject to garnishment and reads, as follows:

"(a) Except as provided in subsection (b) and in section 305 /Section 1675 of this title/, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 /29 Section 206 (a)(1)/ in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2)."
15 USC, 1673 (a)
(Emphasis added.)

Subsection (b) of Title 15 USC, 1673, sets forth three specific exemptions to the garnishment ceilings

established in subsection (a):

> "(b) The restrictions of subsection (a) do not apply in the case of
>
> (1) any order of any court for the support of any person.
>
> (2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act /11 Sections 1001-1086/.
>
> (3) any debt due for any State or Federal tax."
>
> 15 USC, 1673 (b)
> (Emphasis added.)

The appellant not only submits that the State Tax Commission is specifically exempt from limitations on its collection garnishments by virtue of specific Federal mandate, but also contends that the State and Federal statutes are Consumer Credit Protection Acts passed with the specific intent of protecting the credit consumer in the state and in the nation and to apply those acts to a state revenue situation is not consistent with the intent of the Federal Congress or the State Legislature. It should be obvious to all persons that state taxes must be paid in order to sustain the viability of the government, and, therefore, the specific exemptions granted by the Federal Congress or the implied exemptions granted by the Utah State Legislature must be applied.

It should also be pointed out that tax judgments are not dischargeable in bankruptcy proceedings. Therefore, to grant an exception to the percentage limitations to the Utah State Tax Commission would not be inconsistent with

the intent of the Federal Congress that uniformity in the bankruptcy laws not be frustrated.

In Kokoszka v. Belford, 417 US 651, 94 S.Ct. 2431, L.Ed 2d (1974), the Court denied a debtor's claim that Title 15 USC, Section 1673, precluded a trustee in bankruptcy from attaching his income tax refund. The Court outlined the relationship of the Consumer Credit Protection Act and other Federal legislation. The Supreme Court determined that the Act did not alter or interfere with the provisions of the Federal Bankruptcy Act.

> "The Congress did not enact the Consumer Credit Protection Act in a vacuum. The drafters of the statute were well aware that the provisions and the purposes of the Bankruptcy Act and the new legislation would have to coexist."
> 94 S.Ct. at 2436

The Court then went on to say that when interpreting the statute, it will not look solely to one general clause but to the entire Act and its purpose. Therefore, the Supreme Court's analysis of the Bankruptcy Act must be applicable to the other exempted areas set forth in Section 1673 (b). The rationale of Kokozka, supra, supports the view that the State of Utah's Consumer Credit Protection Act does not supersede the present "state" tax, support, and bankruptcy exemptions, and the procedures implemented to enforce them.

Indeed, the tax obligation is a debt owed the state and does not result at all from a predatory extension of credit which was the evil that Congress sought to eliminate.

POINT II

THE SUPREMACY DOCTRINE REQUIRES THAT STATE GARNISHMENT LAWS COMPLY WITH THE ENTIRE FEDERAL STATUTE ON GARNISHMENTS CONTAINED IN THE CONSUMER CREDIT PROTECTION ACT, 15 USC, 1673.

Subsection (c) of Title 15 USC, 1673, prohibits any court of the United States or any state to issue a garnishment order contrary to the provisions of Title 15 USC, Section 1673:

> "(c) No court of the United States or any State may make, execute or enforce any order or process in violation of this section."
> (Emphasis added.)

It goes without saying that, if a state district court is to forbid making, executing, or enforcing a percentage of garnishments, the Court would be incorrectly interpreting the above-quoted statutes and disallowing their uniform application.

The constitutional mandate of supremacy as applied to the legislative actions of Congress in the commerce and bankruptcy areas precludes conflicting or contrary state legislation or judicial action. Article VI of the United States Constitution. The supremacy doctrine is reinforced in the garnishment context by specific congressional language in the statute itself. It would, therefore, be contrary to the express intent of 15 USC, Section 1673, to fail to issue a Garnishee Judgment in the proper percentage of "net disposable earnings." The supremacy doctrine, therefore, must preclude states from enacting legislation or

judicial action which permits garnishments in excess of the ceiling established in subsection (a) and also prohibits a state from emaculating the effect of the statutory exceptions set forth in subsection (b). To do otherwise would not only make the statute null but also render it useless in its intent for national uniformity in application. Any state action which establishes an across-the-board upper limit on garnishments without regard for the Federal exceptions provided in subsection (b) would be contrary to the doctrine of supremacy and uniformity and, therefore, should have no effect on garnishment procedures in those exempted areas.

> "The secretary of Labor may by regulation exempt from the provisions of section 303 (a) /Section 1673 (a) of this title/ garnishments issued under the laws of the state if he determines that the laws of that state provide restrictions on garnishments which are substantially similar to those provided in section 303 (a) /Section 1673 (a) of this title/."
> 15 USC 1675
> (Emphasis added.)

The above section indicates that Congress considered the question of exemptions to the statute and specifically made three exceptions but granted no such discretion to the states to regulate those exemptions.

Appellant recognizes that Section 1677 may be mistakenly construed to allow states to establish an upper limit on all garnishments disregarding the exemption provisions contained in Section 1673 (b). Section 1677 reads:

"This title does not annul, alter, or affect, or exempt any person from complying with, the laws of any state

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this title /Sections 1671-1677 of this title/, or

(2) Prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness."

15 USC, 1677

There is no power or discretion granted, however, to modify the Federal statute by changing the parties that are exempt from its application. The Congress must have intended to grant discretion only in the areas of garnishments other than those granted specific exemptions; i.e., support, bankruptcy and taxes. This is also consistent with their stated intent to regulate only consumer credit transactions.

Therefore, Section 1675 allows the Secretary of Labor to grant exemptions to the provisions of "Section 1673 (a)" only. The exemptions of Section 1673 (b) must still be in effect and be controlling on the states by the preemption language of Section 1673 (c). (Note: This statute uses the word "section" rather than the wording "subchapter.")

The appellant's view was set forth in the case of Hodgson v. Cleveland Municipal Court, 326 F.Supp. 419

(D.C.N.D. Ohio 1971). In holding, the Federal statute is supreme. The Court said:

> "The restrictions of section 1673 (a) are subject to two exceptions that do not detract from the generally mandatory nature of section 1673 (a). Section 1673 (b) makes the restrictions of subsection (a) inapplicable to court support orders, bankruptcy court orders under Chapter XIII of the Bankruptcy Act, or to any debt due for any state or federal tax, Section 1673, previously recited, authorizes the Secretary to exempt state garnishment laws from the restrictions of section 1673 (a)."
> 326 F.Supp. at 430
> (Emphasis added.)

> "Once having forbidden the validity of any state court 'order or process' that violates section 1673 (a), it is unlikely that Congress in a later provision of the same law would recant that prohibition. In any event, the general language of section 1677, previously quoted, shows no congressional intention to abrogate or weaken the specific Federal preemption ordered by Congress in section 1673 (c)."
> 326 F.Supp. at 432
> (Emphasis added.)

The exceptions to subsection (a) provided in subsection (b) are, therefore, made controlling on the states by the clear supremacy language of subsection (c) and the United States Constitution.

POINT III

THE UTAH STATE LEGISLATURE MUST HAVE INTENDED TO GRANT THE UTAH STATE TAX COMMISSION AN EXEMPTION FROM ANY CEILING LIMITATIONS UPON GARNISHMENTS FOR THE COLLECTION OF STATE REVENUES.

The Utah State Legislature being aware of state tax collection procedures and problems passed the Individual

Income Tax Act of 1973 and provided in Section 95 of that Act that the Utah State Tax Commission shall have the power to administer and enforce all taxes due, pursuant to the Income Tax Act. It also reiterated in Section 79 of that Act that the taxes imposed by the Act shall be collected by the Utah State Tax Commission, giving it authority to establish the mode or time for collection of any amount determined to be due under the Act. The legislative intent to grant to the Tax Commission the necessary power and authority to collect taxes due for the full amount within sixty days was restated in the following quote:

> "(d) Any sheriff who receives a warrant under subsection (c) of this section shall within five days thereafter file the duplicate copy with the clerk of the district court of the appropriate county. The clerk of such court shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and, in appropriate columns, the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer to the same extent as other judgments duly docketed in the office of such clerk.
>
> "(e) When a warrant has been filed with the county clerk, the tax commission shall, in the right of the people of the State of Utah, be deemed to have obtained judgment against the taxpayer for the tax or other amounts."
> Utah Code Annotated, Section 59-14A-79 (d)(e), as amended, (1973).
> (Emphasis added.)

The income tax statutes, prior to the 1973 Act, were upheld as being constitutional by this Court in the case of Utah State Tax Commission v. Hoopes, 30 Utah 2d 107, 109 (1973) (Footnote 7); 514 P.2d 221 (1973). Therefore, it would seem to be illogical for the Utah State Legislature and this Court to grant the Utah State Tax Commission power and authority to collect state revenues by means of a docket judgment having the force and effect of execution upon the personal property of the taxpayer without expecting the Tax Commission to be able to effectively collect that judgment by garnishment upon the entire personal earnings of the party in paying his taxes. It should be noted that the Utah Uniform Consumer Credit Code was passed by the State Legislature in 1969 previous to the enactment of the above-quoted statute but not mentioned anywhere in that statute. There were no percentage limitations imposed by the Legislature in the above-quoted statute, and none were intended since the only other applicable provision would be the garnishment provisions set forth in the Utah Consumer Credit Act, and the Legislature must have clearly understood that a collection of state revenues is not "predatory extension of credit."

Although taxes are possibly high and burdensome to all of us, we are all aware that they are necessary for the proper function of government. It would be inequitable

to allow the party, not promptly paying his taxes, to have a 25 percent exemption from payment of that tax judgment, when the balance of the citizens of the State of Utah is complying with the voluntary payment provisions of the Legislature's mandate. The Utah State Tax Commission reports for the taxable year 1974 an excess of 10,000 "tax warrant judgments" docketed throughout the State of Utah. To impose a limitation upon the ever-increasing collection burden would materially affect the collection of state revenues and the effective and efficient operation of the government of the State of Utah.

CONCLUSION

The garnishment provisions of Rule 64D of the Utah Rules of Civil Procedure and the Uniform Consumer Credit Code can only be effective so far as they comply with the applicable provisions of the CCPA, as the Federal Act is supreme. Congress preempted state garnishment laws regarding the ceilings on consumer credit garnishments and also the exceptions to the ceiling limitations. The Utah rule regarding garnishments, Rule 64D of the Utah Rules of Civil Procedure, is well within the ceiling requirements of 15 USC 1673 (a). In spite of the absence of the exceptions set forth in 15 USC, 1673 (b) in the Utah Rules, 15 USC, 1673 (c), makes such exceptions for taxes a mandatory part of state revenue garnishment collection procedures. Appellant, therefore, submits that the amount of disposable

earnings which becomes subject to garnishment for state revenues and support is excepted from the percentage provisions of Rule 64D, URCP, and the Uniform Consumer Credit Code by virtue of Federal law and the United States Constitution.

Section 70B-5-105, Utah Code Annotated, (1953), being a Uniform Consumer Credit Code, would not be applicable to tax payments due as any taxes would be a nonconsumer, noncredit transaction. It was not the intent of the State Legislature to regulate tax revenues by this statute. It is also obvious that the state Act is superseded by the supremacy language of Section 1673 (c) of the Federal Act.

Therefore, the appellant submits that the Third Judicial District Court was in error in refusing to grant a Garnishee Judgment for at least 50 percent of the amounts garnished and due for the payment of state taxes. The Order should be reversed and remanded with appropriate instructions.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

BRUCE M. HALE
Assistant Attorney General

BRINTON R. BURBIDGE
Assistant Attorney General

Attorneys for Appellant