

1979

Nancy Schneider Logan v. Edward James Schneider : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

NANCY SCHNEIDER LOGAN,
Plaintiff-Respondent,

vs.

Case No. 16557

EDWARD JAMES SCHNEIDER,
Defendant-Appellant.

BRIEF OF RESPONDENT

APPEAL FROM AN ORDER OF THE DISTRICT COURT
IN AND FOR MILLARD COUNTY, UTAH
THE HONORABLE J. HARLAN BURNS, PRESIDING

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NANCY SCHNEIDER LOGAN,
Plaintiff-Respondent,
vs.
EDWARD JAMES SCHNEIDER,
Defendant-Appellant.

Case No. 16557

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This case is on appeal by the Defendant-Appellant from an Order of the Fifth Judicial District Court, in and for Millard County, State of Utah, the Honorable J. Harlan Burns presiding, denying Defendant-Appellant's Motion To Stay Entry Of Judgment granting full faith and credit to a Judgment of the State of Ohio.

DISPOSITION IN LOWER COURT

Plaintiff-Respondent commenced this action in the lower Court to enforce in the State of Utah a Judgment originally granted in the State of Ohio. Plaintiff-Respondent filed a Motion For Summary Judgment which was granted. Defendant-Appellant thereafter filed a Motion To Stay the Entry of Judgment pursuant to Rule 59, Utah Rules of Civil Procedure, and also requested that the lower Court hear oral argument with respect to Plaintiff-Respondent's Motion For Summary

Judgment. Said Motion To Stay the Entry of Judgment was orally argued to the lower Court. The lower Court denied Defendant-Appellant's Motion, prompting this appeal.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks to have this Honorable Supreme Court affirm the order of the lower Court denying Defendant-Appellant's Motion To Stay The Entry Of Judgment and, further to affirm the Judgment of the lower Court giving full faith and credit to the Judgment of the State of Ohio.

STATEMENT OF FACTS

Plaintiff-Respondent agrees with Defendant-Appellant's Statement of Facts.

ARGUMENT

POINT I: THE COURTS OF THE STATE OF OHIO HAD JURISDICTION OVER DEFENDANT-APPELLANT AT ALL STATES OF THE PROCEEDINGS.

Throughout this Brief references will be made to various Exhibits. All said Exhibits are attached to the Memorandum In Support Of Motion For Summary Judgment on file herein.

The Ohio Courts obtained jurisdiction over the person of Defendant-Appellant for the original 1961 court action to obtain child support by personal service upon the Defendant-Appellant. Exhibit 4 shows the Motion for child support, duly signed by Plaintiff-Respondent and Exhibit 5 shows personal service of said Motion upon Defendant-Appellant. Exhibit 6 is the order of the Ohio Courts granting the original child support order for 1961.

and Exhibit 11 for a notice of hearing of said Motion. Defendant-Appellant, in response thereto, made a general appearance by filing his Declaration of Edward James Schneider, Exhibit 12.

The Declaration Of Edward James Schneider (Exhibit 12) cures any and all defects in jurisdiction that may have occurred up to the 1975 Ohio Court action. In Barber v. Calder, 522 P.2d 700 (Utah, 1974) this Court held that an appearance by a Defendant for any purpose other than to object to jurisdiction, constitutes a general appearance. Since Defendant-Appellant, by his Declaration, did not object to jurisdiction, his action constituted a general appearance.

In Coleman v. Meyer, 493 P.2d 48 (Oregon, 1972), the Oregon Supreme Court ruled that a party waives all irregularities in service of process, whether it be before or after Judgment, when he makes a general appearance. Since Defendant-Appellant made a general appearance through his Declaration he waived any irregularities in jurisdiction that may have existed up to that time.

From the above outline of the events in this matter, it can be seen that the Ohio Court had jurisdiction over Defendant at each and every stage of the proceedings and that any alleged defect in jurisdiction was cured by the general appearance of Defendant-Appellant by his Declaration (Exhibit 12). Therefore, this Court is urged to rule that the Ohio Court had jurisdiction over the person of Defendant-Appellant.

POINT II: DEFENDANT-APPELLANT HAD SUFFICIENT NOTICE OF ALL PROCEEDINGS BROUGHT IN OHIO.

Defendant-Appellant contends that he did not receive sufficient notice of the 1967 Court action whereby a Judgment was granted against him for child support arrearages.

As outlined in Point I, Plaintiff-Respondent filed a motion in 1967 to reduce delinquent child support to Judgment. (Exhibit 7) Said Motion was personally served upon the Defendant-Appellant on October 3, 1967. (Exhibit 8). The Motion provided the following material facts to Defendant-Appellant, namely, the amount of the weekly child support obligation, the claimed current amount of the delinquency and a request that said amount be reduced to Judgment. About two months after service of the Motion upon Defendant, on December 1, 1967, the Ohio Court entered its Judgment. (Exhibit 9).

Both the United States Constitution, 14th Amendment, and the Utah Constitution, Article I, Section 7, provide that "no person shall be deprived of life, liberty or property, without due process of law". As applied to this case, the due process clause requires that Defendant-Appellant be provided with sufficient notice of the Court proceedings.

The required nature of the notice, to satisfy due process requirements, is set forth in 16 Am Jur 2d Constitutional Law, § 562:

To meet the requirements of due process,
the notice must be reasonable and adequate.

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for the purpose, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it. It must give sufficient notice of the pendency of the action or proceeding and a reasonable opportunity to a defendant to appear and assert his rights before a tribunal legally constituted to adjudicate such rights . . . The fundamental test is whether the notice is fair and just to the parties involved. The adequacy of notice respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which the circumstances show such party may be assumed to have with respect to the consequences of his own conduct. (emphasis added)

In Gribble v. Gribble, 583 P.2d 64,67 (Utah, 1978), this Court ruled that "implied in the due process clause of our State Constitution is that persons be afforded a hearing to determine their rights under the law". In Watson vs. Washington Preferred Life Insurance Co., 502 P.2d 1016 (Wash., 1972), the Washington Supreme Court ruled that the essence of procedural due process is notice and the right to be heard, and that the notice must be reasonably calculated to apprise a party of the pendency of the proceedings.

From the above, the two required elements of notice for due process requirements appear. First, notice of the pendency of the action and second, reasonable opportunity to appear and assert his rights.

Defendant-Appellant was given notice of the action by the Motion (Exhibit 7) which was served upon him. Defendant-Appellant was notified that Plaintiff-Respondent was seeking a Judgment against him for an amount listed on the Motion represented to be delinquent child support payments. We can also assume that Defendant knew he was in default on his child support payments and therefore had this additional

notice of the proceedings. Defendant was also given a reasonable opportunity to appear and assert his rights because no action was taken upon the Motion until December 1, 1967, almost two months after the Motion was served upon the Defendant-Appellant. Because of this delay in obtaining the 1967 Judgment, Defendant-Appellant can hardly claim he was not afforded an opportunity to appear in the case.

Defendant-Appellant, at page 9 of his brief, quotes Revised Code Ohio Section 2309.67 for the proposition that notice should have been given to Defendant-Appellant of time, place, etc. of any court hearing. However, this section begins "When notice of a motion is required", thereby implying that in Ohio there may be some motions without notice. However, any alleged violation of the Ohio law of notice would seem to be immaterial since the issue on appeal is not whether the Ohio law of notice was satisfied, but rather was due process requirements of notice satisfied. In Transamerican Title Insurance Co. v. United Resources Inc., 24 Utah 2d 346, 471 P.2d 165 (1970) this Court held that an irregularity of procedure not constituting due process may be asserted as a defense for an action on a foreign judgment if properly raised. That case does not allow an alleged violation of State Law not constituting a violation of due process to be raised as a defense. Furthermore, Defendant-Appellant has waived any defect of notice based on Ohio Statutory Law for the 1967 hearing because he made a general appearance by his Declaration Of Edward James

Schneider, (Exhibit 12) in 1975 and failed to object to the notice given him in 1967. Therefore, it is argued that Defendant-Appellant had notice of the 1967 Court action sufficient to satisfy due process requirements.

POINT III: THE UTAH STATUTE OF LIMITATIONS DOES NOT PROHIBIT ENFORCEMENT OF THE OHIO JUDGMENT.

Utah Code Annotated § 78-12-22 provides:

Within eight years: An action upon a judgment or decree of any Court of the United States, or of any state or territory within the United States.

Defendant-Appellant has argued that the above statute prohibits collection of that portion of the Judgment represented by the 1967 award. However, Defendant-Appellant is overlooking the fact that a judgment can be renewed, thereby extending its life. This procedure is accepted in the State of Utah. See, for example, Yergensen v. Ford, 16 Utah 2d 397, 402 P.2d 696 (1965) where renewal was denied because action for renewal was commenced 8 1/2 years after judgment was granted.

By taking the 1975 Court action, Plaintiff-Respondent renewed the 1967 Judgment and said Judgment was merged into the 1975 Judgment. That this is the effect in the State of Ohio is apparent by reference to the Certificate of Judgment (Exhibit 14) which certifies that Judgment was rendered on June 13, 1975 for support arrearage for \$7,902.84 (\$7,522.84, the amount of the renewed 1967 Judgment as of May 3, 1975 and \$380.00 for arrearages since 1967). From the above it

seems apparent that the effect of the 1975 Judgment was, in part, to renew the 1967 Judgment, thereby extending its life.

Furthermore, Utah Code Annotated, § 78-12-35 provides:

If when a cause of action accrues against a person when he is out of state, the action may be commenced within the term herein limited after his return to the state; . . .

In Defendant-Appellant's Written Answers To Interrogatories, the Defendant-Appellant states that he became a resident of this State on May 6, 1977 and has since been out-of-state for approximately 4 1/2 months.

Plaintiff-Respondent's, "cause of action", namely the right to collect upon the Judgment, accrued while Defendant-Appellant resided outside the State of Utah. Therefore, the above provision tolls the running of the Statute of Limitations and allows Plaintiff-Respondent to commence her action against Defendant-Appellant "within the term herein limited after his return to the state". Specifically, the eight year limitation period did not commence until such time as Defendant became a resident of the State of Utah, in this case on May 6, 1977.

The Defendant cites Revised Code Ohio Section 2305.07 for the proposition that it establishes a six year statute of limitations for child support arrearages. This is not the case. The Ohio Courts have held that Statutes of Limitation of the State do not apply to alimony and support payments. DeCamp v. Beard, 94 Ohio App. 367 (1953) and Lemert

v. Lemert, 72 Ohio St. 364, 74 N.E. 194 (1905).

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For the above reasons, the Court is urged to rule that the eight year Statute of Limitations period imposed by Utah Code Annotated Section 78-12-22, does not prohibit enforcement of the Ohio Judgment.

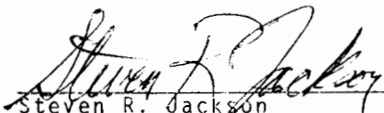
CONCLUSION

The Ohio Court obtained jurisdiction over Defendant-Appellant for any and all action taken by that Court. Said jurisdiction was obtained by personal service upon the Defendant-Appellant at every stage of the proceedings. Defendant-Appellant also received notice of the 1967 Court action sufficient to satisfy due process requirements. The Defendant-Appellant was notified of the nature of the proceedings and was given sufficient time (2 months) to appear and assert his rights.

The eight year Statute of Limitations of this State is not applicable to this case because Plaintiff-Respondent renewed the 1967 Judgment in 1975 and, furthermore, because Defendant-Appellant resided outside of this State until May 6, 1977, thereby tolling the running of the Statute of Limitation until that date.

For the reasons stated above, this Court should affirm the ruling of the lower Court.

Respectfully submitted this 17th day of September, 1979.



Steven R. Jackson
Attorney for Plaintiff-Respondent