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Russell M. Miller Co. v. B. T. Givan : Brief of Plaintiff and Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

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RUSSELL M. MILLER COMPANY,

Clerk, Supreme Court, Utah

Plaintiff and Appellant,

vs.

Case

No. 8773

B. T. GIVAN,

Defendant and Respondent.

Brief of Plaintiff and Appellant

COTRO-MANES & COTRO-MANES

Attorneys for Plaintiff and Appellant

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IN THE SUPREME COURT of the STATE OF UTAH

RUSSELL M. MILLER COMPANY,

Plaintiff and Appellant,

vs.

B. T. GIVAN,

Defendant and Respondent.

Case
No. 8773

Brief of Plaintiff and Appellant

STATEMENT OF FACTS

On the 29th day of May, 1957, judgment was made and entered in the District Court of Salt Lake County, State of Utah, in favor of Russell M. Miller Company and against B. T. Givan, for the sum of \$4,327.82.

On the 22nd day of July, 1957, garnishment was issued and served on the First Security Bank of Utah, Eighth South Branch, and the answer of the garnishee showed that the defendant and respondent, B. T. Givan, had on deposit in a checking account the sum of \$865.41.

On the 5th day of August, 1957, garnishee judgment was made and entered and garnishee execution issued thereon, and pursuant to said execution, the sheriff collected from the garnishee the said sum of \$865.41.

Thereafter, to wit, on the 7th day of August, 1957, the defendant and respondent, B. T. Givan, filed an affidavit of exemption, claiming that \$432.70 of said sum was exempt from execution under the law. On the 9th day of August, 1957, the plaintiff and appellant filed a counter-affidavit alleging that the defendant was not entitled to any exemption under the Utah law.

Hearing was had on the 20th day of September, 1957, and evidence and testimony were introduced by the respective parties. Thereafter, to-wit, on the 8th day of November, 1957, the District Court rendered its decision, holding that the defendant and respondent, B. T. Givan, was entitled to a statutory exemption of one-half of his earnings for the 30 day period prior to levy, or \$432.70 of the amount levied upon.

Subsequently, the plaintiff and appellant filed its notice of appeal and posted a cost and supersedeas bond and designated the entire record on appeal.

The defendant is a self employed buyer of used cars. He travels around the western states and purchases used auto-

mobiles, and either drives them personally or hires persons to drive them to Salt Lake City, where all the cars are sold at the Salt Lake Auto Auction, South Salt Lake, Utah. The defendant purchases the cars on drafts drawn on the Salt Lake Auto Auction, which extends credit to him until such time as the automobiles are sold at the auction. Defendant's income is derived from the difference in what he purchases the cars for and what they bring over the auction less any amount paid out for expenses of transportation, repairs and incidentals.

STATEMENT OF POINT

Where one claims an exemption of one-half of his earnings under the Utah exemption statutes, said earnings, to be exempt, must have been derived from services personally rendered by the judgment debtor.

ARGUMENT

POINT

WHERE ONE CLAIMS AN EXEMPTION OF ONE-HALF OF HIS EARNINGS UNDER THE UTAH EXEMPTION STATUTES, SAID EARNINGS, TO BE EXEMPT, MUST HAVE BEEN DERIVED FROM SERVICES PERSONALLY RENDERED BY THE JUDGMENT DEBTOR.

"The word 'earnings' embraces a larger class of credits than the term 'wages'. It covers all compensation for services and may even include expenditures, as well as labor . . . "

Burns v. Maurer
131 N.Y.S. 344

The word "earnings" as used in the exemption statute of Utah covers not only wages, but salaries and other sums derived from labor or services. However, earnings do not encompass gains created by the use of capital or credit.

"Earnings are the gains of the person derived from his services or labor without the aid of capital."

United Benefit Life Ins. of Omaha
v. Zwan, 143 S.W. 2d 977,980

"An exemption of earnings covers the gains of the debtor derived from his services or labor without the aid of capital."

22 Am. Jur. 57
Exemptions, Sec. 65

The Utah statute provides an exemption for:

"One-half of the earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment or otherwise . . . "

78-23-1 (7), Utah Code Anno. 1953

The Utah Legislature, by the use of the words, "personal services," has limited a debtor's exemption to services actually performed by him without the use of capital or credit.

"While 'wages' and 'salary' exemptions are based on an employer and employee relation, 'earnings' and 'personal earnings' include earnings from a private and independent business, where the services of the debtor are the chief factor in it."

35 C.J.S. 85
Exemptions, Sec. 47

In the case now before the court, Givan buys and sells automobiles, that is to say, Givan locates automobiles, draws

on the credit of the Salt Lake Auto Auction to purchase the automobiles, and either drives them to Salt Lake City or hires others to drive them to Salt Lake City, and then turns them over to an auctioneer who sells the automobiles.

Givan testified:

“Well, I, I, am the buyer, then, in the true sense of the word. I contact the dealer personally and purchase the cars, and pay them by a draft drawn on the Salt Lake Auction and they honor the draft. And they furnish the money to buy the cars, because I just haven’t got the money to buy them.”

R. 6, 7.

The necessity of capital or credit to carry on the business of Givan is admitted by him, and without this capital or credit there could be no business, and so the chief factor in the income of Givan is not personal services but capital.

The case of *Stranger vs. Harris*, 77 Colo. 340, 236 P. 1001, involved the garnishment of the earnings of a defendant who was employed by contract to repair a road and who employed up to twenty men and up to twenty teams. It was held by the Supreme Court of the State of Colorado that his earnings were under the statute and the exemption applied. The case was decided on the theory that the services of the debtor defendant were the chief factor in the earnings derived from the contract.

The Colorado statute provided:

“There shall be exempt from levy under execution or attachment or garnishment sixty per cent of the amount due for wages or earnings of any debtor. . . ”

The Supreme Court held in its decision:

" 'Earnings' is a broader term than 'wages'. And it is a broader term than the term or expression 'personal earnings' or the expression 'earnings for personal services'. 25 C. J. 68. Services of the debtor must, however, be the chief factor.

"In the instant case, services of the debtor and his assistants were the chief factor. *Capital was not.*" (Emphasis ours.)

Stranger v. Harris
77 Colo. 340, 236 P. 1001

The California Court has held:

"The weight of authority in other states appears to be that the terms 'personal earnings' and 'earnings for personal services' which are treated in many authorities as synonymous, do not include a debtor's income arising from a business involving other elements of gain than his personal services such as the employment of capital or assets."

Fay Securities Co. v. Bowering
106 Cal A 771, 288 P. 41,
Citing 25 C. J. 68

This case examines many jurisdictions and upholds the Corpus Juris rule (25 C. J. 69). In holding that the debtor was not entitled to an exemption, the court points out the fallacy of the Oklahoma case of Wineblood v. Payne, 129 Okla. 103, 263 P. 669, in allowing any amount at all to be set up as wages exempt from execution.

In this latter case, the debtor, the owner of a truck, was allowed an exemption under the Oklahoma exemption statute for the value of the services rendered by his driver-operator of the truck, because of the nature of the personal services rendered by the driver.

“Where a debtor’s income is derived from a business involving other elements of gain than his personal services, he is entitled to an exemption inasmuch thereof as is necessary to compensate him for his personal labor, provided it can be ascertained. But if the amount due the debtor on account of personal labor cannot be distinguished from the rest, no part of such income will be exempt as ‘personal earnings’ under the Statutes.”

25 C. J. 69, Cited in Wineblood
v. Payne, 129 Okla 103, 263 P. 669

In the case now before the Court, the defendant, Givan, cannot distinguish between what is earned by personal labor and what is gained by the use of capital and credit, and so the rule as set forth in 25 C. J. 69 is applicable and no amount of the income of the debtor is exempt under the statute.

The cases have gone further in holding that there is a distinction between services and personal services. In the case of *Levitt v. Faber*, 20 Cal. A2d 758, 64 P.2d 498, the California Court said:

“ ‘Services’ and ‘personal services’ are not definitely coextensive. Within the meaning of statutes such as that now under consideration and of exemption statutes, ‘services’ may be rendered though the actual labor be performed by one’s employees and by means of his machinery or other equipment, but ‘personal services’ are those performed by the individual himself.” Citing cases.

The Utah Supreme Court, in the case of *Creameries of America v. Industrial Commission*, 98 U. 571, 102 P.2d 300, in discussing the definition of the words, “personal service,” said:

"The general definition . . . as given in Webster's New International Dictionary . . . The term 'personal service' indicates that the 'act' done for the benefit of another is done personally by a particular individual."

The statute must be read with regard for the words used by the legislature when the law was enacted.

"Courts should be slow to impart any other than their commonly understood meaning to terms employed in the enactment of a statute, and it is the policy of the courts to avoid giving statutory phraseology a new, . . . strained or forced . . . or subtle meaning."

50 Am Jur 227, Statutes, Sec 238

"Unless the contrary appears, the terms of legislative enactments must be taken in their ordinary and usual significance as they are generally understood among mankind."

Emmertson v. State Tax Commission
93 U. 219, 72 P2d 467

In the majority of jurisdictions the rulings have been for a liberal construction of the exemption laws. However, in the case of *Dayton v. Ewart*, 28 Mont. 153, 72 P. 420, the Montana Supreme Court held in a case involving the garnishment of a miner's gold dust under a statute very similar to the Utah statute that:

"But, while a liberal construction of the exemption laws should always be encouraged, it will be readily perceived that too liberal construction thereof might lead to many abuses not contemplated by the lawmaking power, and we deem it proper to say that this case is determined and decided with reference to the facts presented only. 'Each case of this character must rest upon its own facts existing at the time in question.' *Cushing v. Quigley*, 11 Mont 577, 29 P. 377."

The Supreme Court in this case held that the miner's gold dust was under the exemption statute, justifying its decision on the theory that because a miner's tools are exempt, so should the fruit of his labor be exempt.

However, in the dissenting opinion, written by Justice Muilburn, he said:

"I cannot understand that this section expresses or implies an intention on the part of the legislature to protect income from a private and independent business from levy, if such income be not for services rendered others."

In the instant case, Givan testified that his gross for the period of thirty days prior to the garnishment was between \$4,700.00 and \$5,000.00.

"Well, my, I just estimated one statement, because I couldn't find it and I didn't have time to go to the auction and get it, but I'd say between forty-seven hundred and \$5,000 were my gross earnings in that period."

R. 4

In this case, if a liberal interpretation is adopted by the court in holding that the gains of this independent contractor whose income is derived primarily from the use of capital and credit and not from services personally rendered, and whose gross income for a thirty day period exceeded \$4700, is exempt, then such an interpretation of the statute is not what was contemplated by the legislature when this statute was enacted. The statute is primarily designed to protect the wage earner and his family from being placed in a destitute status by the possibility of having all of the earnings of the head of the household subject to attachment or garnishment.

"The purpose of exemption laws generally is to protect an unfortunate debtor and save to him the means of supporting his family."

Michenheim v. Cathcart
54 ALR 2d 1418, 288 La 890,
84 So2d 449

"Exemption laws . . . are designed to give assurance that the wage earner shall always have enough, beyond the reach of attaching creditors, to support his family and prevent them from becoming public charges."

Hollywood Credit Clothing Co.
v. Jones, 51 ALR 2d 944,
Mun Ct App Dist Col,
117 A2d 226.

CONCLUSION

The plaintiff-appellant contends that the exemption statute of the State of Utah should be properly interpreted in the light of the cases discussed heretofore. The cases and authorities have pointed out that an exemption of earnings covers the gains of the debtor derived from his services or labor without the aid of capital, and, further, that "personal services" means that the individual must have personally rendered the service in connection with the earning of the money claimed exempt.

Respectfully submitted,

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