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Russell M. Miller Co. v. B. T. Givan : Brief of Defendant and Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

RUSSELL M. MILLER
COMPANY

Plaintiff and Appellant,

— vs. —

B. T. GIVEN,

Defendant and Respondent.

Case
No. 8773

FILED

APR 17 1958

Clerk, Supreme Court, Utah

Brief of Defendant and Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiff and Appellant,

— vs. —

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No. 8773

Brief of Defendant and Respondent

STATEMENT OF FACTS

Respondent submits that appellant's statement of facts is essentially correct except as to the last paragraph thereof which respondent feels should be corrected as follows:

The defendant is self-employed as a licensed automobile dealer doing business in the state of Utah. In the

course of his business he buys used cars in the Western and Central states and either drives the cars to Salt Lake City personally, or personally hauls them on an Auto transport truck, or occasionally hires another person to return the cars to Salt Lake City, Utah. (R.)

The defendant sells some cars to private individuals but considers himself to be primarily a wholesale used car dealer and sells most of the automobiles at the Salt Lake Auto Auction in South Salt Lake City, Utah.

The defendant purchases used cars by a variety of means but the most common method employed is to draw a draft upon his account with the Salt Lake Auto Auction. As the cars are sold by the auction the proceeds are deposited to the account of the defendant and when the drafts are presented to the Salt Lake Auto Auction for payment the amount of the drafts are charged to the defendant's account.

Defendant's income is thus derived from the net amount realized from the sale of his cars to individuals and the net amount of his account with the Auto Auction after payment from his account of the outstanding drafts, less his expense in purchasing and transporting the used cars and other operating business expenses.

STATEMENT OF POINT

That one-half of the earnings of a used car dealer are exempt from execution where he personally buys, transports, and sells at auction or to private individuals used cars, under Title 78-23-1 (7) Utah Code Annotated, 1953,

not withstanding that other persons are occasionally employed to transport said cars and that said dealer pays for said car by drafts upon his account with the Auto Auction where said cars are sold at auction.

ARGUMENT

Historically, exemption of wages from execution was available only to the common laborer. Gradually these statutes have been enlarged to encompass employees in general and under modern statutes exemption from execution has been extended to include salesmen, independent contractors, professional men, artists, photographers, and room keepers. 35 CJS 85 Exemptions, Sec. 47 (3).

The Utah Statutes provided in part as follows :

“(7) 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 by garnishment or otherwise, when it appears by the debtor’s affidavit that he is a married man, or head of family, and that such earnings are necessary for the use of his family residing in the state and supported wholly or in part by his labor ; provided, that a married man or head of family shall be entitled to an exemption of not less than \$50.00 per month . . .”
78-23-1 (7) Utah Code Annotated 1953.

The Utah legislature in passing this statute clearly intended to liberalize and enlarge the exemption rights in the State of Utah to include all occupations. Of the seven limitations imposed by this statute the only statement of point raised by appellant relates to the statutory require-

ment that the earnings must have been derived from the personal services of the judgment debtor.

Appellant urges in his brief that the earnings involved in this instant case were not derived from respondent's personal services because of the use of capital or credit in the operation of his business and that respondent is an independent contractor and that the statute is intended to protect the wage earner and his family only.

There can be no question in this case as to the earnings of the defendant and respondent being the result of personal services.

The defendant testified:

Q. Were any of these earnings that you have reported earned as the result of the personal services of any other person?

A. No. (R. 15)

Again he testified:

Q. I see. So that actually then earnings are primarily the result of your personal services in buying cars and arranging for their delivery to the Auction.

A. That's right. (R. 15, 16)

While the defendant stated upon examination that he drew drafts upon the Salt Lake Auto Auction to purchase cars this should not be construed as the use of capital or credit in the operation of his business and the production of his earnings. On the contrary it should be pointed out that the defendant operates on a weekly basis.

He leaves on Monday to purchase cars, buys cars Monday evening and Tuesday, returns the cars on Wednesday, and the cars are sold each Thursday at the Salt Lake Auto Auction. When the defendant issues drafts on late Monday or Tuesday, the drafts do not arrive in Salt Lake City and thus are not presented for payment until usually Thursday or Friday of each week and after the car has been sold at auction.

The Salt Lake Auto Auction credits the gross amount received from the sale of the defendant's cars to the defendant's account and when the drafts are presented for payment the Salt Lake Auto Auction pays the drafts from the defendant's account. There is no evidence in the record to indicate that the Salt Lake Auto Auction does or would honor drafts presented to them if the cars for which the drafts had been given had not been sold and if the defendant did not have a sufficient balance in his account from which the draft could be paid. On the contrary, the defendant has been in extremely poor financial condition, as he testified (R. 14, 15), and the inference to be gathered from the entire record is that the defendant had no credit with the Salt Lake Auto Auction.

Q. And would you tell us what type of business you are in?

A. I'm in the wholesale buying business. I don't engage in retail selling at all. I travel through Wyoming, Nebraska, Colorado, New Mexico, buying from licensed dealers and bringing the cars in and selling them to, through the Salt Lake Auction here.

- Q. Now, do you buy these cars, Bert — that is, do you pay cash for them? How do you handle your purchases?
- A. No. I don't have my own money, and I draft on the Salt Lake Auto Auction.
- Q. And then when the cars are sold the drafts are paid?
- A. Well, they — I don't know when they pay the drafts. They pick up the drafts when they're presented at the Bank, I assume. (R. 11)

The Defendant testified:

... And they furnish the money to buy the cars, because I just haven't got the money to buy them. (R. 14, 15)

We submit that while the record is confusing as to this point, the defendant did not mean to say that the Salt Lake Auto Auction extended credit to the defendant to purchase the cars, rather that the auction honors drafts after the sale of defendant's cars from funds belonging to the defendant on deposit with the Auction. The record properly should have been amplified on this point.

The general rule of law in point is as follows:

“An exemption of earnings covers the gains of the debtor derived from his services on labor without the aid of capital. If the debtor has no capital and no credit contributing to increase his profits, except the credit arising from the labor or service in which he is presently engaged, and out of the proceeds of which his obligations on account of such labor or service are to be discharged, then his net receipts or gains from such labor or service may fairly be accounted earnings.” (22 Am. Jur. 57, Exemptions, Sec. 65)

In the instant case the defendant testified that he had no capital which was undisputed. There is no evidence that there was any credit which contributed to his earnings except the money which the defendant would receive from the labor or services in which he was engaged during the period in question and the record is clear that the obligations on account of the purchasing of the cars (drafts for purchase and expenses) was paid out of the proceeds from the sales of the cars and we submit that the defendant is entitled to an exemption of these earnings as claimed. (R. 13, 16)

Appellant contends that defendant's earnings are not earnings from personal services because "without this capital or credit there could be no business, and so the chief factor in the income of Given is not personal services but capital." (Appellant's Brief 7)

The defendant testified:

- Q. And would you tell us what type of business you are in?
- A. I'm in the wholesale buying business. I don't engage in retail selling at all. I travel through Wyoming, Nebraska, Colorado, New Mexico, buying from licensed dealers and bringing the cars in and selling them to, through the Salt Lake Auction here. (R. 11)
- Q. (By Mr. Henriksen) Do you actually buy the cars?
- A. Well, I, I am the buyer then, in the true sense of the word. I contact the dealer personally and purchase the cars. . . . (R. 14)

Q. Yes. Now, who brings the cars back here?

A. Sometimes I drive them back, sometimes I have one of the colored boys that work down to the Auction on Thursdays drive them back; whoever I can get to drive them in.

Q. Do you own an auto transport truck?

A. I have one, yes.

Q. And you use that to haul them back in?

A. Uh huh. I did do until it blew up on me here two months ago, and I haven't used it since then. I've had to transport them by towbar.

Q. Were any of these earnings that you have reported earned as a result of the personal services of any other person?

A. No. (R. 15)

Q. I see. So that actually these earnings are primarily the result of your personal services in buying cars and arranging for their delivery to the Auction.

A. That's right. (R. 15, 16)

In view of this uncontroverted testimony it is clear that the defendant's income is almost entirely the result of his individual personal services and while drafts were customarily used in the purchase of cars, this fact does not alter the fact that the earnings were the result of personal services since a draft before acceptance, is merely an order, and not a promise by the drawee to pay, and creates no obligation of the drawee to pay the payee. (13 Words and Phrases, 369)

The payees of the drafts in the instant case conveyed title to the cars to the defendant subject to payment upon presentment of the drafts. No credit was extended by the Salt Lake Auto Auction since they had no obligation to honor the draft unless the defendant had funds in their possession from which the draft could be paid. We submit that the earnings here involved are exempt from execution in accordance with the Utah Statute above cited.

The rule is well settled that exemption from execution statutes should receive a liberal construction in favor of those intended to be benefited and favorable to the objects and purposes of the enactment. (*Spangler v. Corless*, 61 Utah 88, 211 p. 692; 28 ALR, 72; 22 Am. Jur. 9, Exemptions, Sec. 6; Cases cited)

The purpose of exemption laws generally is to protect an unfortunate debtor and to save him the means of supporting his family and to keep him and his dependents from becoming public charges. (22 Am. Jur. 7, Exemptions Sec. 4)

Contrary to the impression appellant attempts to make in his brief the defendant testified that he averages \$400.00 - \$500.00 per month from his personal services and defendant only claims as exempt \$432.70 of his estimated earnings of \$1200.00 for the thirty days prior to garnishment. (R. 20, 13)

We submit that to exempt the earnings in the instant case could not be interpreted as an abuse of the purpose of the statutes in this case.

It is also a well-settled rule that 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 in as much thereof as is necessary to compensate him for his own personal labor, provided it can be ascertained. (35 CJS 86, Exemption, Sec. 47 [3])

In the instant case the record contains no evidence upon which a determination of income necessary to compensate the defendant for his own personal labor could be based, but we submit that if the court determines that the defendant employed other elements of gain other than his personal services resulting in his earnings, then this case should be returned to the trial court to determine this issue.

CONCLUSION

The Defendant - Respondent contends that the judgment in favor of the Defendant and against the Plaintiff should be affirmed in all respects and that the earnings claimed to be exempt were derived from personal services within the clear meaning of Title 78-23-1 (7) Utah Code Annotated, 1953.

Respectfully submitted,

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