

1965

Lynn Teeples v. Don Choquette and Judge Mel Humpherys : Brief of Appellant

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IN THE SUPREME COURT

of the

STATE OF UTAH

LYNN TEEPLES,

Plaintiff,

- vs. -

DON CHOQUETTE,

Defendant,

JUDGE MEL HUMPHERYS,

Garnishee

Case No.

148411

10324

FILED
MAR 16 1935

BRIEF OF APPELLANT

Clerk, Supreme Court

This is an appeal from a judgment denying plaintiff's motion for entry of Garnishee Judgment in the District Court of Salt Lake County, State of Utah.

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BRIEF OF APPELLANT

DISPOSITION OF THE LOWER COURT

The hearing on Plaintiff's motion for an entry of a Garnishee Judgment came on for hearing before the Honorable Stewart M. Hansen, sitting without a jury on the 29th of January, 1965. He denied plaintiff's motion and dismissed the action as against the garnishee with prejudice.

RELIEF SOUGHT ON APPEAL

The plaintiff appellant seeks reversal of said order.

STATEMENT OF FACTS

Appellant filed a suit against defendant and issued an affidavit of garnishment against the garnishee defendant, Justice of the Peace Mel Humpherys. At the time of garnishment the garnishee defendant had in his possession \$500.00 cash which had been placed into his court in lieu of bail to insure the appearance of the defendant on a criminal charge.

In his reply to the garnishment the garnishee defendant denied holding any of defendant's money nor was he holding any of the defendant's money for and on behalf of the defendant but that he was holding the money only for the State of Utah.

However, it appears that four days after the garnishment was issued the defendant was sentenced to pay a fine of \$50.00, and the remaining \$450.00, the amount which the plaintiff had attempted to garnish, was returned to the defendant.

Upon hearing on Plaintiff's motion for Garnishee Judgment the court sitting without a jury decreed that at the date of garnishment the defendant garnishee did not have any property in his possession and based the judgment in favor of defendant upon this ground.

ARGUMENT

THE COURT ERRED IN NOT GRANTING PLAINTIFF'S
MOTION FOR ENTRY OF A GARNISHEE JUDGMENT.

The court held that cash placed with a justice of the peace in lieu of bail was not subject to garnishment before said appearance. The court, by its holding, would seem to indicate that the only time a garnishment is enforceable is during the small period of time between the defendant's appearance and his being returned the cash by the justice of the peace. The fallacy is evident. It has definitely been held in Utah that indebtedness need not be due when the writ is served. *Acheson-Harder Co. v. Western Wholesale Notions Co.*, 72 U. 323, 269 P. 1032, 60 A.L.R. 881. Other cases hold that cash bail may be garnished.

In *Donlop v. Paterson*, 74 N.Y. 145, 30 Am. Rep. 283, cash was deposited with the court clerk in lieu of an undertaking on appeal. The money was held to be subject to garnishment. The New York Supreme Court emphasized that the defendant had voluntarily placed the money in court to guarantee his appearance and he did not give up his right to it. The defendant had a right and an interest in the property which was capable of being transferred by his own act of assignment.

In a more recent case, *White v. Ordille*, 229 N.C. 490, 50 S.E. 499, as cited in 6 Am. Jur. § 202, the defendant

was arrested in North Carolina for a felony. He deposited cash in lieu of bail with the justice of the peace. The Supreme Court held that where cash is deposited by a defendant as security for his appearance, it remains his property subject to the conditions of his recognizance, the justice of the peace becoming the custodian of the cash for the benefit of the State only in so far as the debt of the defendant to the State is concerned. If the defendant fails to perform the conditions, the deposit would be subject to forfeiture. But if he performs the conditions, the deposit would be returnable to him. This is a right which he may enforce against the custodian of the deposit. It is a property right which existed in him. The court compared cash bail with a trust deed where the trustor retains an interest and is entitled to any residue after the purposes of the trust agreement are accomplished. This intangible right was the proper subject for garnishment under the N. C. Statutes.

The Utah Statutes provide that a person may deposit money in lieu of bail to guarantee his appearance, U.C.A. 77-43-19, and that the deposit remains until payment of the fine and thereafter the surplus will be returned to the defendant, U.C.A. 77-43-21.

The Statutes' wording further substantiates the case law and implies that the defendant retains ownership in cash deposited in lieu of bail.

CONCLUSION

The trial court committed error in holding cash deposited in lieu of bail not subject to garnishment. The Utah statutes imply and all cases hold it to be an attachable property right.

Respectively submitted,

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