1965

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

IN THE SUPREME COURT
OF THE STATE OF UTA

LYNN TEEPLES,
Plaintiff-Appellant,

—vs.—

ON CHOQUETTE,
Defendant,

JUDGE MEL HUMPHERYS,
Garnishee, Respondent.

BRIEF OF RESP

Appeal From the Judgm
Third District Court for Sa
HONORABLE STEWART M. H

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DON CHOQUETTE,
Defendant,
JUDGE MEL HUMPHERYS,
Garnishee, Respondent.

Case No. 10324

BRIEF OF RESPONDENT

NATURE OF THE CASE

Appellant Lynn Teeples appeals from a judgment of the Honorable Stewart M. Hanson, Judge, Third Judicial District, denying the appellant a garnishee judgment against the respondent Mel Humpherys, a Justice of the Peace in Salt Lake County, Utah.

DISPOSITION IN LOWER COURT

The District Court of the Third Judicial District ruled that the appellant was not entitled to a garnishee

judgment against the respondent for bail money which the respondent held in his capacity as a justice of the peace and which he returned to the defendant in a criminal case, who had apparently deposited the money with him.

RELIEF SOUGHT ON APPEAL

The respondent contends that the Third District Court's ruling, denying the appellant a garnishee judgment, should be affirmed.

STATEMENT OF FACTS

The respondent submits the following statement of facts:

On February 21, 1964, the appellant Lynn Teeples filed a complaint in the District Court of Salt Lake County against Don Choquette in Case No. 148411. The plaintiff prayed for $4,000 damages, $1,500 punitive damages, and attorney's fees in the sum of $750. On the same day, an affidavit of the appellant was filed in support of attachment proceedings before judgment (R. 1 through 3). On the 21st day of February, 1964, the appellant obtained a garnishment order from the clerk of the court to Justice Mel Humpherys (R. 4), directing the respondent not to pay any debt due or to become due to the defendant Don Choquette (R. 4). On July 16, 1964, Judge Humpherys filed a return on the garnishment, reciting that he was not in any manner indebted to the

defendant, nor did he have any chattels in his possession or know of other rights or credits due or to become due.

On the 21st day of July, 1964, the appellant filed a traverse to the garnishment return, alleging that on information and belief, Judge Humpherys was indebted to the defendant in the sum of $445 (R. 11). Subsequently, a request for admissions was made and on the 30th day of September, 1964, Judge Humpherys, acting through the county attorney, replied to the admissions that prior to the time the garnishment was served, he had received a check from the Brigham City Court in the sum of $500, which represented the bond of the defendant in the case of *State of Utah* v. *Don Choquette,* which was then pending before Judge Humpherys (R. 15).

Subsequently, a pretrial order was entered (R. 17 and 18) which recited that when the garnishment was served, Judge Humpherys was holding the sum of $500 as bail and that subsequent to the service of the garnishment, Don Choquette's case was brought on for disposition and he was sentenced to pay a fine of $50. After applying part of the bail money in satisfaction of the fine, the $450 remaining was returned to the defendant.

On January 29, 1965, Judge Hanson entered judgment, denying the appellant a garnishee judgment against Judge Humpherys. Judge Hanson ruled that inasmuch as the garnishment had been served on the 22nd day of February, 1964, when the case against Don Choquette was still pending, the answers to the interrogatories in the garnishment were properly answered in

the negative; and since the criminal case against Don Choquette was not determined until February 26, 1964, a garnishee judgment would be improper.

Everything in the record supports the conclusion that respondent held the funds in question as a justice of the peace and that he was operating as a duly constituted, judicial officer in a criminal case.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S REQUEST FOR A GARNISHEE JUDGMENT, SINCE:

(a) TO HAVE GRANTED A GARNISHEE JUDGMENT WOULD HAVE BEEN CONTRARY TO JUDICIAL IMMUNITY.

(b) THE RESPONDENT ACTED IN ACCORDANCE WITH THE STATUTORY MANDATE.

(c) A BAIL DEPOSIT IN THE HANDS OF A MAGISTRATE IS NOT SUBJECT TO GARNISHMENT FOR ATTACHMENT PURPOSES WHERE THE LIABILITY OF THE DEPOSITOR REMAINS CONTINGENT.

(d) BAIL ON DEPOSIT WITH A JUDICIAL OFFICER MAY NOT BE THE SUBJECT OF GARNISHMENT.

(a) It is a well-established rule that judges are not civilly liable for acts performed as part of their judicial duties. In 30A, Am. Jur., *Judges,* Section 73, it is stated:

> "It is the general rule that where a judge has jurisdiction he is not civilly liable for acts done in the exercise of his judicial function."

In *Marks* v. *Sullivan,* 9 Utah 12, 33 Pac. 224 (1893), the Territorial Supreme Court ruled that a justice of the peace, acting within his jurisdiction and in good faith, is not civilly liable for acts performed in such capacity. The court noted that a justice of the peace is not liable for mere errors in judgment and could not necessarily know a judicial fact until a full hearing on the issue was heard.

In *Allen* v. *Holbrook,* 103 Utah 319, 135 P. 2d 242 (1943), this court, without reference to the *Marks* decision, ruled that a justice of the peace, acting as a magistrate, when exercising a judicial function, is not liable for damages occasioned by his actions. Further, the law has generally recognized that it is immaterial whether the judge is of an inferior court or a superior court. 48 C.J.S., *Judges,* Sec. 63b.

In the instant case, the respondent is a constitutional officer. Being a justice of the peace, he is cloaked with the judicial power of the State of Utah. Article VIII, Section 1, Constitution of Utah. His involvement in the present case was as a judge, and the garnishment that was served upon him was served upon him, not as an individual, but as a judge or justice of

the peace. At the time of the receipt of the garnishment, the respondent had in his possession only a deposit in lieu of bail. At that time, it was necessary for him to determine whether or not a bail deposit, received under the circumstances evident in this case, could be the subject of a garnishment. At the time the garnishment return was received, the criminal case, pending before the justice, had not been determined. Further, subsequent to the time the case was determined, the justice was required to exercise his judgment as to whether or not the statutory mandate, requiring him to return the bail deposit to the defendant, should be complied with or whether the garnishment request should be honored. In making a determination in accordance with the statutory mandate, as will appear below, a judicial function was involved.

It is well settled that a garnishment proceeding, when it involves a state officer, absolves the sovereign state and its officers from suit. 114 A.L.R. 261. This being so, and it appearing that the respondent in the instant case acted in a judicial capacity, it is apparent that a garnishee judgment may not now be entered against him.

(b) In the instant case, a bond was not deposited with the justice of peace, but rather a deposit instead of bail was made in accordance with Section 77-43-19, U.C.A., 1953. Subsequent to the determination of the criminal case pending against Don Choquette, the respondent had no other alternative but to comply with

the statutory mandate in cases where a deposit in lieu of bail has been made. Section 77-43-21, U.C.A., 1953, provides:

> "When money has been so deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, *must refund the surplus, if any, to the defendant.*" (Emphasis added)

The respondent, therefore, was compelled by statute to subtract court costs and the fine imposed against Don Choquette, and return the rest of the deposit to Mr. Choquette. Had he failed to comply with that statute, he may have been violating a duty imposed by statute and thus be liable to Don Choquette.

The provision of the Utah statute is similar to Section 1297 of the California Penal Code. In *Mundell v. Wells,* 181 Calif. 398, 184 Pac. 666 (1919), a suit was brought by an assignee of money deposited with the clerk of a magistrate in a criminal case. Subsequent to disposition of the case, the court applied the bail money in satisfaction of the fine and paid the remainder over to the defendant rather than the assignee. The court ruled that the clerk acted properly in dispensing the money to the defendant. The court cited Section 1297 of the California Penal Code, requiring the refunding of the surplus of any deposit to the defendant. The court noted that as between the contesting parties, a determination in equity may sometimes be made but cited

Way v. *Day,* 187 Mass. 476, 73 N.E. 543, for the proposition that no claim could be made against the sovereign that bail money should be turned over to any third person.

In *Wright and Taylor* v. *Doughterty,* 138 Iowa 195, 115 N.W. 908, the court held that money deposited as bail could not be reached by judgment creditors by garnishee proceedings following the dismissal of an indictment. The court said that the bail statute in Iowa only required the court to hold the money for bail and for satisfaction of any fine imposed, and did not require it to honor any other claims. The Utah statute is similar to Section 765.4 of the Iowa Code of 1950.

Since the statutory mandate states that the clerk or court "must" refund any surplus to the defendant, it is obvious that the court in this case could not be held liable for complying with the statutory requirement.

(c) Rule 64(a), Utah Rules of Civil Procedure, allows garnishment prior to trial, and it is, of course, recognized that the debt need not be due at the time the garnishment for attachment purposes is served. However, it is well settled that under Utah law, the liability of the garnishee to account to the defendant must be absolute at the time the garnishment is served. Thus, in *Acheson-Harder Co.* v. *Western Wholesale Notions Co.,* 72 Utah 323, 269 Pac. 1032 (1928), it is stated:

> "It is one of the cardinal principles of the law of garnishment that the garnishee is under no greater liability to the plaintiff in whose behalf the writ of garnishment is issued than such gar-

nishee was under to the defendant immediately before the writ was served. The liability of the garnishee to account to the defendant for property or indebtedness must be absolute, in order that such property or indebtedness is garnishable. Shinn on Attachment and Garnishment, vol. 2 § 643, p. 1059. A fortiori it follows that accounts placed in the hands of the garnishee for collection, but not collected, cannot be reached by the service of a writ of garnishment upon the person having such accounts in his hands for collection. To reach such assets of the defendant, the one indebted to the defendant must be served with the writ. Rood on Garnishment, § 167, p. 202; 28 C. J. § 201, p. 160."

In the instant case, it is obvious that at the time the garnishment was served, the liability for the return of any bail was not absolute: (1) It was speculative whether or not the defendant would in fact appear for trial and whether or not the bail would have to be forfeited. (2) The amount of the fine to be imposed, if any, was still not ascertained.

It is apparent that at the time the garnishment was served upon the respondent, his liability to the defendant was not absolute. Therefore, the court acted properly in ruling that no garnishee judgment could be entered.

(d) The appellant cites a case from North Carolina for the proposition that the proceeds, returnable to the defendant, may be attached by garnishment when they are in the hands of a justice of the peace. *White* v. *Ordille,* 229 N.C. 490, 50 S.E. 2d 499. That case is no precedent for the instant appeal. First, the opinion

does not hold that a garnishee judgment may be entered against the officer, but involves only a contest between the depositor and his creditors. Second, it does not appear that North Carolina has a statute similar to Section 77-43-21, U.C.A., 1953, which would compel the return of deposited moneys to a defendant. Third, the North Carolina case involved only the question of attachment and garnishment of the residuary portion of the deposit and did not concern itself with the issue of whether or not a garnishment served before the residuary part is in fact determined, can be the basis for an attachment by garnishment of the said residuary part.

Nothing in Utah law allows an attachment by garnishment of bail on deposit in a criminal case, nor is there any provision which allows a garnishee judgment to be entered against a judicial officer. Although the rules of civil procedure allow a garnishment to be served upon a "corporation, private or public," nothing in the rules mentions a judicial officer nor could the rules authorize a garnishee judgment against a judicial officer, since such an authorization would be substantive rather than procedural, and outside the court's rule-making power.

Further, Rule 64D(p), Utah Rules of Civil Procedure, appears to be contrary to the appellant's position. That rule governs the situation where property is held to secure the performance of some other obligation. The rule provides that if personal property is held for any other purpose than to secure the payment of money, it is subject to garnishment only if the plaintiff seeking the garnishment could perform the condition for which the

deposit is held. In the instant case, the bail was held to guarantee the appearance of the defendant in a criminal case. This is an obligation that could not have been performed by the plaintiff. Consequently, the property under the rules could not be the subject of a garnishment. It may be argued that the term "personal property" in Rule 64D(p) does not contemplate money. However, the spirit of the rule would seem to be applicable in the instant situation.

Sound judicial administration should keep a court, at whatever level, free of becoming a party to creditors' claims or disputes. To allow bail to be the subject of garnishment or attachment is fraught with serious dangers and could greatly undermine the dignity of the courts. It is submitted that as a consequence, bail on deposit with the judicial officer should not be deemed the subject of a garnishment.

CONCLUSION

In the instant case, it is apparent that the trial court acted properly in refusing the appellant a garnishee judgment. The trial court's ruling can be sustained on numerous bases, not the least of which is sound public policy. It is submitted that this court should affirm.

Respectfully submitted,

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