Mercer Law Review

Volume 28
Number 4 *Annual Fifth Circuit Survey*

Article 14

7-1977

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Post-Judgment Garnishment Without Notice And a Hearing Is Constitutional

In *Brown v. Liberty Loan Corp.*,[1] the Court of Appeals for the Fifth Circuit held that Florida's post-judgment garnishment statutes[2] satisfy due process requirements even though they fail to provide the judgment debtor with notice and an opportunity for a hearing on his entitlement to a statutory wage exemption[3] before wages are attached.

Liberty Loan Corp. obtained a judgment against Etta Jane Brown in the amount of $646.03. A court clerk issued a writ of garnishment against Brown's employer twelve days later. Brown did not receive notice of the garnishment proceedings until the writ was served on her employer. On the same day that the writ was served, Brown filed an affidavit claiming the statutory wage exemption. The next day Liberty denied Brown's exemption claim, and two weeks later, at the resulting hearing, the county court found that Brown qualified for the exemption and dissolved the writ.

Brown instituted a class action in federal district court, claiming that the Florida statutory procedure for post-judgment garnishment violated her procedural due process rights. The District Court issued a declaratory judgment in favor of the plaintiffs and awarded money damages to Brown.[4] The State of Florida, which had intervened as a defendant, appealed the judgment.

Recent U.S. Supreme Court cases concerning pre-judgment garnishment and property seizure in conjunction with procedural due process questions provide the major source of analysis in this area.[5] *Sniadach v. Family*

1. 539 F.2d 1355 (5th Cir. 1976).

2. FLA. STAT. ANN. §77.01 and §77.03 (Supp. 1975-1976). Under the Florida procedure, a judgment debtor need only file an unverified motion stating the amount of the judgment and that he believes the judgment debtor does not have visible property sufficient to satisfy the judgment. The court clerk will then issue a writ of garnishment.

3. FLA. STAT. ANN. §222.11 and §222.12 (1973). Money due a person for personal labor and services, if he is the head of a family residing in Florida, is exempt from post-judgment garnishment. The judgment debtor must file a sworn statement claiming the exemption with the court clerk who issued the writ of garnishment. If the judgment creditor does not deny, under oath, the debtor's affidavit within two days after he receives notice, the writ of garnishment is automatically dissolved. If the creditor denies the exemption, a hearing must be held. The attached wages will continue to be held until a court order dissolves the writ.

4. Brown v. Liberty Loan Corp., 392 F. Supp. 1023 (M.D. Fla. 1974), *rev'd*, 539 F.2d 1355 (5th Cir. 1976). *See* Note, *Brown v. Liberty Loan Corp.*, 3 FLA. ST. U. L. REV., 626, 637-642 (1975), for an analysis of the trial court's decision.

5. North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975) (garnishment of a bank account); Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974) (sequestration of property in which the creditor had a security interest); Fuentes v. Shevin, 407 U.S. 67 (1972) (replevin of property); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (wage garnishment).

Finance Corp.[6] was the only one of these cases dealing specifically with garnishment of wages. In that case the creditor had filed a complaint alleging default on a promissory note and caused a writ of garnishment to issue, thereby freezing 50% of the debtor's wages. The Supreme Court, balancing the competing interests of the debtor and the creditor, emphasized the special nature of wages and the hardships that wage-earners with families experience when a portion of their wages are frozen until trial.[7] The Court concluded that prior notice and hearing are required by the Due Process Clause in pre-judgment wage garnishment cases even though the deprivation may be temporary.[8]

Since *Sniadach*, the Supreme Court has continued to grapple with the question of what procedures are constitutionally sufficient in pre-judgment garnishment and attachment cases. In *Mitchell v. W. T. Grant Co.*[9] and *North Georgia Finishing, Inc. v. Di-Chem*,[10] the Court moved away from *Sniadach*'s seemingly absolute requirements of notice and a hearing before any deprivation of property. Although notice and a hearing are required before a deprivation of property becomes final, their nature and timing may be varied in light of competing governmental and private interests as long as minimum protections against wrongful deprivations of property are present.[11] If the creditor's interests in obtaining a writ of garnishment or attachment of property are strong enough when weighed against the debtor's interests in continued enjoyment of his property and the statutory procedures adequately protect against wrongful deprivations of property, notice and hearing prior to seizure of property are not required.[12]

Post-judgment-garnishment or property-execution cases cannot, however, be analyzed solely in terms of the pre-judgment cases. The U.S. Supreme Court discussed the procedural due process aspects of *post-judgment* wage garnishment more than fifty years ago in *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*[13] In that case the garnishee contended that New York's statutory procedures violated due process because they authorized issuance of a writ of garnishment to execute a judgment with-

6. 395 U.S. 337 (1975).

7. *Id.* at 340-341. At present a maximum of 25% of an employee's wages can be garnished under the Consumer Protection Act of 1968, Subchapter II, 15 U.S.C.A. §§1671-1677 (1974).

8. 395 U.S. at 342.

9. 416 U.S. 600 (1974).

10. 419 U.S. 601 (1975).

11. 419 U.S. 601, 610 (Powell, J., concurring); 416 U.S. 600, 624 (Powell, J., concurring). Justice Powell's concurrence was the decisive fifth vote in the *Mitchell* majority. *See* Dunham, *Post-Judgment Seizures: Does Due Process Require Notice and Hearing?* 21 S. DAK. L. REV. 78, 92 (1976) [hereinafter cited as Dunham], where the author analyzes the opinions of the members of the Court (before Justice Douglas' retirement) and concludes that Justices Powell and White hold the key votes. He believes that they will uphold only those state procedures which adequately protect against wrongful deprivations.

12. 416 U.S. at 618.

13. 266 U.S. 285 (1924).

out providing prior notice and a hearing for the judgment debtor. The Court, upholding the statute, reasoned that the judgment debtor had already been given his day in court during the trial on the merits and that the judgment notified him in advance that execution procedures might follow. Therefore, no further notice or hearing prior to the issuance of a writ of garnishment was necessary to satisfy due process.[14] Until recently, courts have been applying this rationale to due-process challenges of judgment-execution procedures almost without question.[15]

The due process requirement of notice in judgment-execution cases was discussed again in *Griffin v. Griffin*,[16] a case allowing only limited enforcement of an alimony decree. There had been three trial-court decisions. After a trial in 1926, the court issued a decree ordering alimony payments. In 1936, the same court, after a fully contested hearing, issued an order which set the amount of arrearages then due. In 1938, without notice to the husband, the wife obtained another court order which reduced the amount of arrearages due through the year 1938, including the 1936 order, to a judgment which could then be executed. The Supreme Court said the entry of the 1938 judgment violated the husband's due process rights insofar as it adjudged arrearages between 1936 and 1938.[17] While not mentioning *Endicott*, the Court rejected the argument that the entry of the 1926 decree gave the husband adequate notice that enforcement steps would be taken in the future if necessary. "[D]ue process does . . . require further notice of the time and place of such further proceedings inasmuch as they undertook substantially to affect his rights in ways in which the 1926 decree did not."[18] However, the 1938 judgment, insofar as it relied upon the 1936 order, was adjudged constitutionally correct since that order was the result of a full adversary hearing. Any defenses which the husband had against arrearages found due in the 1936 order were heard and finally decided in that hearing. Since no further defenses to those arrearages existed, the Court stated that a proceeding to reduce to judgment the 1936 arrearages would be constitutional despite lack of prior notice to the husband.[19]

The full impact of the *Griffin* decision cannot be understood without referring to Justice Douglas' dissent from the dismissal of a writ of certiorari in *Hanner v. DeMarcus*.[20] He stated that *Endicott*'s rationale (regarding the judgment itself as adequate notice) no longer fulfilled modern

14. *Id.* at 288.

15. *See, e.g.*, Moya v. DeBaca, 286 F. Supp. 606 (D.N.M. 1968), *appeal dismissed*, 395 U.S. 825 (1969); Langford v. Tennessee, 356 F. Supp. 1163 (W.D. Tenn. 1973); *See also* Dunham, *supra* note 11, at 80 n.13 for a collection of cases applying *Endicott*.

16. 327 U.S. 220 (1946).

17. *Id.* at 232.

18. *Id.* at 229.

19. *Id.* at 233-234.

20. 390 U.S. 736 (1968) (Douglas, J., dissenting).

expectations of due-process notice requirements.[21] Justice Douglas argued that the *Endicott* decision had been rejected by the Court in *Griffin*. He interpreted the *Griffin* decision as requiring notice whenever an execution proceeding substantially affected rights not affected by the previous judgment. Under this rationale, prior notice and a hearing would be required whenever a judgment debtor had statutory defenses, such as the exemption from garishment in *Brown* or the right to choose the property to be levied upon in *Hanner*.[22]

The Fifth Circuit in *Brown* rejected the judgment debtor's argument that the *Griffin* decision entirely undercuts *Endicott*'s precedential value. Conceding that the two decisions were arguably in conflict,[23] the court noted that the Court in *Griffin* carefully distinguished "enforcement of a judgment obtained with notice and an opportunity for a hearing" from "enforcement of a judgment rendered without those elements."[24] The *Griffin* decision held unconstitutional only the part of the 1938 judgment based on arrearages accrued *after* the last fully contested hearing.[25]

After accepting *Endicott*'s status as valid authority, the court refused to rely on it as controlling the result in *Brown*. The pre-judgment garnishment and property seizure cases established the need to balance various interests in order to determine what procedures due process required.[26]

In balancing those interests, the Fifth Circuit characterized the judgment creditor's interest in *Brown* as much weightier than the interest of the pre-judgment creditor in *Sniadach*.[27] However, the judgment debtor's interests were identified as being essentially the same as those of the *Sniadach* debtor. Each debtor was interested primarily in retaining the use of wages during a time in which the creditor's right to retain those funds was not finally established.[28] The court found that the existence of a judgment outweighed the judgment debtor's interests, especially in view of the protections afforded the debtor by federal statutes.[29]

The court's rationale in upholding Florida's procedures rested heavily on two elements. First, Florida's procedures were perceived as "expeditious." The lack of an express statutory requirement that the hearing be held

21. *Id.* at 741.
22. *Id.* at 742.
23. The Court cited Dunham, *supra* note 11.
24. 539 F.2d at 1364.
25. 327 U.S. at 234-235.
26. 539 F.2d at 1364-1365.
27. *Id.* at 1366.
28. *Id.* at 1367.
29. *Id.* at 1368-1369. The federal legislation is the Consumer Credit Protection Act of 1968 (see note 7, *supra*) which limits the percentage of wages susceptible to garnishment to twenty-five percent and also limits an employer's right to fire an employee whose wages are garnished. These protections were not in effect when the writ of garnishment was issued in *Sniadach*.

without delay[30] did not change the court's conclusion. Instead, the court relied on apparent state court practices in which the exemption hearing was not unreasonably delayed.[31] As a further indication of the procedure's expeditious nature, the court focused on the statutory requirement automatically dissolving the writ of garnishment two days after the judgment creditor receives notice of the debtor's exemption claim unless the creditor denies the debtor's claim under oath.[32]

Second, the court apparently relied on the *Endicott* rationale regarding the constitutional requirement of proper notice. Though *Endicott* was not cited, the court said: "Although the kind of notice provided in the proceedings leading to the underlying judgment is not itself notice of the later garnishment activity, it serves at least to alert the debtor that future legal action may be taken to satisfy the judgment."[33] This *Endicott*-type reasoning supports the court's conclusion that lack of prior notice of the garnishment proceeding is relatively unimportant in post-judgment cases. The court found that this *Endicott*-type notice plus the above-mentioned "expeditious" exemption procedure sufficiently minimized any economic injury to the judgment debtor.[34]

The Fifth Circuit's treatment of the *Endicott* decision presents an interesting compromise between lower courts which have rejected its rationale[35] and those that have rigidly applied it.[36] In each of these cases, the court believed the facts presented a sharp choice between *Endicott*'s procedural due process rationale and the more recent pre-judgment cases' rationale. In *Brown*, the court refused to choose the *Mitchell - Di-Chem* balancing analysis to the exclusion of the *Endicott* rationale. The result is a balancing process which incorporated an *Endicott*-type reasoning into the court's justification of Florida's statutory procedures.[37] Such a treatment would seem to be a reasonable approach for a lower court to take in light of the Supreme Court's relatively recent refusal to reconsider *Endicott* in *Moya v. DeBaca*[38] and *Hanner*.[39]

30. See FLA. STAT. ANN. §222.12 (1973). Compare the U.S. Supreme Court's treatment of the statutory requirement for immediate hearing in *Mitchell*, 416 U.S. at 418, 420.

31. In *Brown* the hearing was held within two weeks.

32. 539 F.2d at 1368.

33. *Id.*

34. *Id.*

35. *See, e.g.*, First National Bank v. Hasty, 410 F. Supp. 482, 489 n.8 (E.D. Mich. 1976); Brown v. Liberty Loan Corp., 392 F. Supp. at 1036-1037 (M.D. Fla. 1974).

36. *See, e.g.*, Halpern v. Austin, 385 F. Supp. 1009 (N.D. Ga. 1974); Katz v. Ke Nam Kim, 379 F. Supp. 65 (D. Hawaii 1974); Langford v. Tennessee, 356 F. Supp. 1163 (W.D. Tenn. 1973); *But see* Scott v. Danaher, 343 F. Supp. 1272 (N.D. Ill. 1972). While recognizing the general validity of *Endicott*, the court in *Scott* refused to follow it in a confessed judgment case where the judgment debtor had no notice of the judgment.

37. 539 F.2d at 1368.

38. 286 F. Supp. 606 (D. N.M. 1968), *appeal dismissed*, 395 U.S. 825 (1969).

39. 539 F.2d at 1368.

However, it is arguable that the court failed to require sufficient procedures for preventing wrongful issuance of writs of garnishment. In *Mitchell, Di-Chem* and *Sniadach*, the Supreme Court stressed the need for prevention of wrongful or mistaken deprivation of property. Unlike the *Mitchell, Di-Chem* and *Sniadach* majorities, the court in *Brown* relied solely on procedures which it felt minimized economic or personal injury to the judgment debtor *after the writ was issued* by allowing him to obtain either dissolution of the writ or a hearing within a reasonable time by filing a sworn affidavit claiming the statutory exemption.[40] Only the provision for automatic dissolution of a writ, unless the judgment creditor responds with a sworn denial of the debtor's exemption claim within two days of receiving notice, serves as any sort of substitute for preventive measures prior to issuance of a writ. The fact that wages and similar income, because of their necessity to poor families, have often been treated differently than other types of property serves to emphasize the need for at least some prior deterrence against wrongful or mistaken post-judgment garnishment.[41] This need, when combined with the *Mitchell, Di-Chem* and *Sniadach* prevention rationales, places the *Brown* decision in a slightly less favorable light.

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40. See note 20, *supra*, and accompanying text.

41. *See* 395 U.S. 337 (1968) (wages); Goldberg v. Kelly, 397 U.S. 254 (1970) (welfare benefits); 416 U.S. at 614 (wages). For evidence that the necessity rationale is not dead, consider *Mathews v. Eldridge*, 424 U.S. 319 (1976). An important factor in the Court's decision not to require pretermination hearings in Social Security disability benefits cases was the Court's perception of those benefits as not necessary in the same sense as wages or welfare benefits, which are usually the sole source of family income.