NORTH GEORGIA FINISHING, INC. *v.* DI-CHEM, INC.

CERTIORARI TO THE SUPREME COURT OF GEORGIA

No. 73–1121. Argued November 18, 1974—
Decided January 22, 1975

Georgia statutes permitting a writ of garnishment to be issued by an officer authorized to issue an attachment or a court clerk in pending suits on an affidavit of the plaintiff or his attorney containing only conclusory allegations, prescribing filing of a bond as the only method of dissolving the garnishment, which deprives the defendant of the use of the property in the garnishee's hands pending the litigation, and making no provision for an early hearing, violate the Due Process Clause of the Fourteenth Amendment, *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337; *Fuentes* v. *Shevin*, 407 U. S. 67. *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600, distinguished. That this case involved garnishment of a corporation's sizable bank account, rather than a consumer's household necessities, is immaterial, since the probability of irreparable injury if the garnishment proves unjustified is sufficiently great to require some procedure to guard against initial error. Pp. 605–608.

231 Ga. 260, 201 S. E. 2d 321, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, and MARSHALL, JJ., joined. STEWART, J., filed a concurring statement, *post*, p. 608. POWELL, J., filed an opinion concurring in the judgment, *post*, p. 609. BLACKMUN, J., filed a dissenting opinion, in which REHNQUIST, J., joined, and in numbered paragraph 5 of which BURGER, C. J., joined, *post*, p. 614.

Warren N. Coppedge, Jr., argued the cause for petitioner. With him on the brief was *Nathaniel Hansford.*

Lemuel Hugh Kemp argued the cause and filed a brief for respondent.

MR. JUSTICE WHITE delivered the opinion of the Court.

Under the statutes of the State of Georgia, plaintiffs in pending suits are "entitled to the process of garnish-

ment." Ga. Code Ann. § 46–101.[1] To employ the process, plaintiff or his attorney must make an affidavit before "some officer authorized to issue an attachment, or the clerk of any court of record in which the said garnishment is being filed or in which the main case is filed, stating the amount claimed to be due in such action . . . and that he has reason to apprehend the loss of the same

[1] The relevant provisions of the Georgia Code Annotated are as follows:

§ 46–101

"Right to writ; wages exempt until after final judgment

"In cases where suit shall be pending, or where judgment shall have been obtained, the plaintiff shall be entitled to the process of garnishment under the following regulations: Provided, however, no garnishment shall issue against the daily, weekly or monthly wages of any person residing in this State until after final judgment shall have been had against said defendant: Provided, further, that the wages of a share cropper shall also be exempt from garnishment until after final judgment shall have been had against said share cropper: Provided, further, that nothing in this section shall be construed as abridging the right of garnishment in attachment before judgment is obtained."

§ 46–102

"Affidavit; necessity and contents. Bond

"The plaintiff, his agent, or attorney at law shall make affidavit before some officer authorized to issue an attachment, or the clerk of any court of record in which the said garnishment is being filed or in which the main case is filed, stating the amount claimed to be due in such action, or on such judgment, and that he has reason to apprehend the loss of the same or some part thereof unless process of garnishment shall issue, and shall give bond, with good security, in a sum at least equal to double the amount sworn to be due, payable to the defendant in the suit or judgment, as the case may be, conditioned to pay said defendant all costs and damages that he may sustain in consequence of suing out said garnishment, in the event that the plaintiff shall fail to recover in the suit, or it shall appear that the amount sworn to be due on such judgment was not due, or that the property or money sought to be garnished was not subject to process of garnishment. No person shall be taken as security on the bond who is an attorney for the plaintiff or a nonresident unless the non-

or some part thereof unless process of garnishment shall issue." § 46–102. To protect defendant against loss or damage in the event plaintiff fails to recover, that section also requires plaintiff to file a bond in a sum double the amount sworn to be due. Section 46–401 permits the defendant to dissolve the garnishment by filing a bond "conditioned for the payment of any judgment that shall be rendered on said garnishment." Whether these provisions satisfy the Due Process Clause of the Fourteenth Amendment is the issue before us in this case.

On August 20, 1971, respondent filed suit against petitioner in the Superior Court of Whitfield County,

---

resident is possessed of real estate in the county where the garnishment issues of the value of the amount of such bond."

§ 46–103

"Affidavit by agent or attorney

"When the affidavit shall be made by the agent or attorney at law of the plaintiff, he may swear according to the best of his knowledge and belief, and may sign the name of the plaintiff to the bond, who shall be bound thereby in the same manner as though he had signed it himself."

§ 46–104

"Affidavit and bond by one of firm, etc.

"When the debt for recovery of which garnishment is sought shall be due to partners or several persons jointly, any one of said partners or joint creditors may make the affidavit and give bond in the name of the plaintiff, as prescribed in cases of attachment."

§ 46–401

"Dissolution of garnishments; bond; judgment on bond

"When garnishment shall have been issued, the defendant may dissolve such garnishment upon filing in the clerk's office of the court, or with the justice of the peace, where suit is pending or judgment was obtained, a bond with good security, payable to the plaintiff, conditioned for the payment of any judgment that shall be rendered on said garnishment. The plaintiff may enter up judgment upon such bond against the principal and securities, as judgment may be entered against securities upon appeal, whenever said plaintiff shall obtain the judgment of the court against the property or funds against which garnishment shall have been issued."

Ga., alleging an indebtedness due and owing from petitioner for goods sold and delivered in the amount of $51,279.17. Simultaneously with the filing of the complaint and prior to its service on petitioner, respondent filed affidavit and bond for process of garnishment, naming the First National Bank of Dalton as garnishee. The affidavit asserted the debt and "reason to apprehend the loss of said sum or some part thereof unless process of Garnishment issues." [2] The clerk of the Superior Court forthwith issued summons of garnishment to the bank, which was served that day. On August 23, petitioner filed a bond in the Superior Court conditioned to pay any final judgment in the main action up to the amount claimed, and the judge of that court thereupon discharged the bank as garnishee. On September 15, petitioner filed a motion to dismiss the writ of garnishment and to discharge its bond, asserting, among other things, that the statutory garnishment procedure was unconstitutional in that it violated "defendant's due process and equal protection rights guaranteed him by the Constitution of the

---

[2] The affidavit in its entirety was as follows:

"SUPERIOR COURT OF *Whitfield* COUNTY GEORGIA, *Whitfield* COUNTY.

"Personally appeared *R. L. Foster, President of Di-Chem, Inc.,* who on oath says that he is *President of Di-Chem, Inc.,* plaintiff herein and that *North Georgia Finishing, Inc.,* defendant, is indebted to said plaintiff in the sum of $51,279.17 DOLLARS, principal, $....., interest, $..... attorney's fees, and $..... cost and that said plaintiff has—a suit pending—*returnable to the* Superior Court of *Whitfield* County, and that affiant has reason to apprehend the loss of said sum or some part thereof unless process of Garnishment issues.

"Sworn to and subscribed before me, this *August* 20, 1971.

"*/s/ R. L. Foster,* Affiant.

"*/s/ Dual Broadrick,* Clerk

"Superior Court of *Whitfield* County." App. 3–4.

United States and the Constitution of the State of Georgia." App. 11. The motion was heard and overruled on November 29. The Georgia Supreme Court,[3] finding that the issue of the constitutionality of the statutory garnishment procedure was properly before it, sustained the statute and rejected petitioner's claims that the statute was invalid for failure to provide notice and hearing in connection with the issuance of the writ of garnishment. 231 Ga. 260, 201 S. E. 2d 321 (1973).[4] We granted certiorari. 417 U. S. 907 (1974). We reverse.

The Georgia court recognized that *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337 (1969), had invalidated a statute permitting the garnishment of wages without notice and opportunity for hearing, but considered that case to have done nothing more than to carve out an exception, in favor of wage earners, "to the general rule of legality of garnishment statutes." 231 Ga., at 264, 201 S. E. 2d, at 323. The garnishment of other assets or properties pending the outcome of the main action, although the effect was to " 'impound [them] in the hands of the garnishee,' " *id.*, at 263, 201 S. E. 2d, at 323, was apparently thought not to implicate the Due Process Clause.

This approach failed to take account of *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), a case decided by this Court

---

[3] Appeal was taken in the first instance to the Georgia Supreme Court. That court, without opinion, transferred the case to the Georgia Court of Appeals. The latter court issued an opinion, 127 Ga. App. 593, 194 S. E. 2d 508 (1972). The Georgia Supreme Court then issued certiorari, 230 Ga. 623, 198 S. E. 2d 284 (1973).

[4] Subsequent to the Georgia Supreme Court's decision in this case, a three-judge federal court, sitting in the Northern District of Georgia declared these same statutory provisions unconstitutional. *Morrow Electric Co.* v. *Cruse*, 370 F. Supp. 639 (1974).

more than a year prior to the Georgia court's decision. There the Court held invalid the Florida and Pennsylvania replevin statutes which permitted a secured installment seller to repossess the goods sold, without notice or hearing and without judicial order or supervision, but with the help of the sheriff operating under a writ issued by the clerk of the court at the behest of the seller. That the debtor was deprived of only the use and possession of the property, and perhaps only temporarily, did not put the seizure beyond scrutiny under the Due Process Clause. "The Fourteenth Amendment draws no bright lines around three-day, 10-day, or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause." *Id.*, at 86. Although the length or severity of a deprivation of use or possession would be another factor to weigh in determining the appropriate form of hearing, it was not deemed to be determinative of the right to a hearing of some sort. Because the official seizures had been carried out without notice and without opportunity for a hearing or other safeguard against mistaken repossession, they were held to be in violation of the Fourteenth Amendment.

The Georgia statute is vulnerable for the same reasons. Here, a bank account, surely a form of property, was impounded and, absent a bond, put totally beyond use during the pendency of the litigation on the alleged debt, all by a writ of garnishment issued by a court clerk without notice or opportunity for an early hearing and without participation by a judicial officer.

Nor is the statute saved by the more recent decision in *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600 (1974). That case upheld the Louisiana sequestration statute which per-

mitted the seller-creditor holding a vendor's lien to secure a writ of sequestration and, having filed a bond, to cause the sheriff to take possession of the property at issue. The writ, however, was issuable only by a judge upon the filing of an affidavit going beyond mere conclusory allegations and clearly setting out the facts entitling the creditor to sequestration. The Louisiana law also expressly entitled the debtor to an immediate hearing after seizure and to dissolution of the writ absent proof by the creditor of the grounds on which the writ was issued.

The Georgia garnishment statute has none of the saving characteristics of the Louisiana statute. The writ of garnishment is issuable on the affidavit of the creditor or his attorney, and the latter need not have personal knowledge of the facts. § 46–103. The affidavit, like the one filed in this case, need contain only conclusory allegations. The writ is issuable, as this one was, by the court clerk, without participation by a judge. Upon service of the writ, the debtor is deprived of the use of the property in the hands of the garnishee. Here a sizable bank account was frozen, and the only method discernible on the face of the statute to dissolve the garnishment was to file a bond to protect the plaintiff creditor. There is no provision for an early hearing at which the creditor would be required to demonstrate at least probable cause for the garnishment. Indeed, it would appear that without the filing of a bond the defendant debtor's challenge to the garnishment will not be entertained, whatever the grounds may be.[5]

---

[5] Petitioner so asserts, relying on *Jackson* v. *Barksdale*, 17 Ga. App. 461, 87 S. E. 691 (1916); *Powell* v. *Powell*, 95 Ga. App. 122, 97 S. E. 2d 193 (1957). Respondent, without citation of authority states that "[c]ounsel could have attacked the garnishment in other ways either in the State or Federal Courts. . . ." Brief for Respondent 5.