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Non-resident Attachment for Overdue Support Payments - Langville v. Langville

NON-RESIDENT ATTACHMENT FOR OVERDUE SUPPORT PAYMENTS

Langville v. Langville[1]

On April 20, 1943, the Circuit Court No. 2 of Baltimore City entered a decree divorcing the parties *a vinculo matrimonii*, awarding custody of their minor child to the wife, and ordering the defendant husband to pay certain sums of money to the plaintiff, including weekly payments of $8.00 for the support of the child until she became self-supporting, "subject to the further order of the court". The decree embodied provisions for these payments in accordance with the terms of an earlier stipulation agreement.

After the defendant's prolonged default, the plaintiff commenced in Anne Arundel County a non-resident attachment proceeding under Code Article 9, Section 2, on January 23, 1947 to recover the unpaid sums under the decree. Under the writ, the sheriff attached a motorboat in the possession of the debtor's father, who was made garnishee. A copy of the short note was mailed to the defendant in Washington, D. C., and, in conformity with the established practice, a separate action was docketed against the garnishee.[2] Neither the defendant nor the garnishee filed any pleas. The court granted the plaintiff's motion for a judgment of condemnation *nisi*, and, after her waiver of a jury trial, found a verdict against the defendant for the amount of the claim, with interest and costs. No judgment was ever entered on the verdict, the clerk issued a writ of *fieri facias*, and the sheriff made a levy thereunder.

Subsequently, the plaintiff wife filed a petition alleging that the garnishee and the defendant's brother had filed boat liens against the attached chattel two weeks after the sheriff's levy under the writ of *fieri facias*. She further averred that these liens were invalid and fraudulent as to her, and she prayed that they be stricken from the docket and that the execution sale be made free and clear of these encumbrances. In their answers, the lienors alleged that their liens were *bona fide* and valid. At the hearing on the petition and answers, the trial judge examined the boat

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[1] 60 A. 2d 206 (Md. 1948).

[2] 2 POE, PLEADING AND PRACTICE (Tiffany's ed. 1925), Sec. 694, and cases there cited. The effect of the attachment was to place the boat *in custodia legis*, a position supported by the earliest Maryland authorities; see Glenn v. Gill, 2 Md. 1, 18 (1852); Hodge v. McLane, *The Law of Attachment in Maryland*, Sec. 148.

liens, without passing upon their validity, and all of the papers filed in the attachment proceeding. The Circuit Court for Anne Arundel County then held, upon its own motion, that it lacked jurisdiction over this non-resident attachment based upon the decree of the Circuit Court No. 2 of Baltimore City. The court quashed the attachment and the writ of *fieri facias*, and, from this order, the plaintiff appealed.

In a unanimous decision, the Court of Appeals, assuming without deciding that the question presented by the appeal was one of jurisdiction over the subject matter rather than of *venue*, held that the trial court erred in its determination that it had no jurisdiction to entertain the attachment proceeding.

The case raises two problems which merit consideration: first, the manner of enforcement of a domestic, equitable decree for the support of a minor child, and, second, the technicalities of the non-resident attachment procedure with particular reference to those which required correction in this proceeding.

The fundamental rule of this case is that an equitable decree of a Maryland court for the periodic payment of fixed sums of money for the support of a minor is enforceable in this State against a non-resident defendant under Code Article 9, Section 2, without the necessity of seeking any further relief from a court of equity. In so deciding, the court, however, refused to commit itself definitely to the proposition that the equity court which rendered this decree could not enforce it against a defendant who had left the State, although the court was doubtful whether the plaintiff could obtain any additional relief in equity until the decree was converted into a money decree. With reference to the existence of other possible remedies, Judge Henderson, speaking for the Court of Appeals, said:

> "Whether the Circuit Court No. 2 of Baltimore City retained jurisdiction of the non-resident defendant so as to permit the entry of a money decree *in personam*, against him, or whether any other remedy, by way of sequestration, execution or otherwise, . . . would be available under section 211 [Code Article 16—author's note], are questions we need not now consider."[3]

Where a divorce decree contains a provision requiring payments for the support of the parties' minor children, it

[3] *Supra*, n. 1, pp. 209-210.

is generally considered that such an order is as enforceable by contempt proceedings as an order for the payment of alimony for the support of the wife.[4] In some jurisdictions, including Maryland, however, support orders for children cannot be enforced by this remedy.[5] The court in the *Langville* case stated that the decree, while not one for a liquidated sum of money, created a debt of record rather than an obligation to pay alimony.[6]

Since the decree was not a money decree, the court was of the opinion that:

> "Before execution could be had upon it, further proceedings would be appropriate, under the established practice, 'for the purpose of converting overdue installments under the original decree into a lump sum so as to become a lien upon the property of the defendant and to facilitate execution or other action under Section 211, Art. 16 of the Code'."[7]

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[4] 154 A. L. R. 443, 469-470.

[5] Bushman v. Bushman, 157 Md. 166, 145 A. 488 (1929). In this case, both the agreement of the parties and the divorce decree contained independent provisions in separate paragraphs for alimony for the wife and a stipulated annual sum, payable in monthly installments, for the maintenance and support of the parties' children. The court held that that part of the decree directing payments for the support of the children was unenforceable by imprisonment for contempt. In Knabe v. Knabe, 176 Md. 606, 6 A. 2d 366, 124 A. L. R. 1317 (1939), the decree, after several modifications by the court, required the husband to pay a weekly sum to the wife "for her support and maintenance and for the support and maintenance of the minor children". The modified order was construed as one for alimony alone, because it was impossible to allocate the single income equitably between the wife and the children. The court held, therefore, that it was enforceable by contempt proceedings.

[6] In Bushman v. Bushman, *supra*, n. 5, 171, the court had earlier said:

> "The failure of the defendant to pay as decreed the plaintiff the specified annual sum for the support of the children, and to discharge his other pecuniary obligations in their regard, is not a declination to pay alimony but a refusal to comply with those terms of the decree which imposed upon the defendant an obligation in the nature of a debt. So that part of the decree relating to the support of the children is within the protection of the constitutional inhibition against imprisonment for debt, and obedience to this part of the decree cannot be enforced by imprisonment for contempt of court."

[7] *Supra*, n. 1, 209, citing Leberstein v. Leberstein, 186 Md. 25, 26, 45 A. 2d 753 (1946). In Marshall v. Marshall, 164 Md. 107, 163 A. 874 (1933), the divorce decree, which incorporated an earlier agreement of the parties, ordered the defendant husband to pay to the plaintiff the sum of $50 per month, until her "death or remarriage", "for the support and maintenance of herself and the care, education, maintenance and support" of their children. The decree was not for alimony. At page 116, the court said:

> "The judgments and decrees contemplated by that statute [then Article 26, Section 20; now Section 21] are those which may survive the death or marriage of the person for whose benefit they were originally entered. Preliminary to an execution on a decree like the one now under consideration, a proceeding to ascertain the amount of the unpaid installments, and the existence of the conditions upon which its enforce-

In a few states, the rule is otherwise, so that installment payments decreed for the support of the minor children of the parties become, when due, final judgments, on which execution may be issued, and this result is reached either with or without the aid of a statute.[8] According to the view prevailing in most jurisdictions, the statute of limitations begins to run against each such installment from the date on which it accrues.[9]

Earlier cases had shown in Maryland that any arrearage due under the decree must be ascertained as a liquidated sum before the issuance of execution. In the *Marshall* case,[10] the defendant husband began to make the required $50 monthly payments to the plaintiff, "for the support and maintenance of herself and the care, education. maintenance and support" of their minor children. Several years later, he removed from Maryland and became unable to comply with the terms of the decree. More than twenty-six years after the entry of the original decree, the court passed an order which liquidated the amount of the arrearage due and directed execution. Thereupon, the plaintiff caused the issuance of an attachment of a valuable personal estate which had become distributable in Baltimore to the absent defendant. The lower court, which had rescinded the order directing execution and had quashed the attachment, was reversed by the Court of Appeals.

In *Leberstein v. Leberstein*,[11] the divorce decree awarded to the wife ordered the defendant to pay the sum of $8 per week for the maintenance and support of their minor child. Almost nineteen years later, the plaintiff filed a petition in the case reciting the decree, alleging that under it an unpaid balance of $5,571. was due, and praying for a judg-

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ment is dependent, would be essential. That course was followed in the present case. Until the passage of an order determining the amount due and authorizing execution, the decree would not become a lien on the defendants' property, but would only have the effect of an adjudication of liabilities thereafter maturing at stated periods. Upon a proper petition and order such a decree may be enforced by execution or attachment as to all unpaid installments which may have become due within the preceding twelve years."

[8] McKee v. McKee, 154 Kans. 340, 118 P. 2d 544, 137 A. L. R. 880 (1941); Trunkey v. Johnson, 154 Kans. 724, 121 P. 2d 247, 250 (1942); Doak v. Doak, 187 Okl. 507, 104 P. 2d 563, 566 (1940). In the following cases, execution was issued pursuant to a statute: Shields v. Shields, 55 Cal. App. 2d 579, 130 P. 2d 982, 983-984 (1942); Cochrane v. Cochrane, 57 Cal. App. 2d 937, 135 P. 2d 714, 715-716 (1943); Wellman v. Wellman, 305 Mich. 365, 9 N. W. 2d 579, 582 (1943); Stephens v. Stephens et al., 170 Or. 363, 132 P. 2d 992, 993-994 (1943).

[9] 137 A. L. R. 890; Marshall v. Marshall, *supra*, n. 7, 115-116.

[10] *Supra*, n. 7.

[11] *Supra*, n. 7.

ment in that amount. The Court of Appeals held that an appeal would not lie from the interlocutory order of the lower court overruling the defendant's demurrer and said that the purpose of the proceeding was to reduce the sum of the accrued installments, due under the original decree, to a fixed amount which would constitute a lien on the defendant's property "and to facilitate execution or other action under Section 211, Article 16 of the Code, 1939."[12] In both the *Marshall* and *Leberstein* cases, the amount due and unpaid under the decree was converted into a lump sum in a proceeding before the original equity court. In the instant case, however, the same result was obtained by a non-resident attachment proceeding at law.

As to the second point mentioned above, the Court of Appeals pointed out that there were several irregularities in the attachment proceeding. The law[13] requires that "at the time of making the affidavit, the creditor shall produce the bond, account, or other evidence of debt, by which the . . . debtor is so indebted; . . .". As used in the statutes governing attachments, the term "indebted" has generally not been construed in a technical or strict legal sense.[14] At the time of making her affidavit, the plaintiff was not bound to produce either testimony *qua* testimony, or all the evidence which she might adduce in court to establish her claim and to entitle her to a judgment of condemnation,[15] but the account and voucher produced must, however, show on their face a *prima facie* indebtedness of the defendant to the plaintiff.[16] The production of a copy of the equitable decree satisfied this requirement in the instant case. Although the *narr.* recited that the plaintiff's claim was "itemized in voucher in short note attached hereto and made a part hereof," and the plaintiff contended that a voucher was in fact filed with the other papers, the clerk denied that the plaintiff had filed a voucher and refused to insert in the record a purported copy. The Court of Appeals said that the absence of a voucher was not a fatal defect, but that it could be cured either by amendment[17] or by verdict.[18]

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[12] *Ibid.*, 26.

[13] Md. Code (1939), Art. 9, Sec. 4.

[14] Franklin v. Claflin, 49 Md. 24, 38 (1878); Wilson v. Wilson, 8 Gill 192, 194 (1849).

[15] White v. Solomonsky, 30 Md. 585, 589 (1869).

[16] Hough v. Kugler, 36 Md. 186, 194 (1872); Mears v. Adreon, 31 Md. 229, 238 (1869).

[17] Morgan v. Toot, 182 Md. 601, 611, 35 A. 2d 641 (1944), cited by the court, involved alleged insufficiency of the vouchers rather than a complete ommission of them. It would seem, therefore, that the holding of the present case

While it has generally been held that, since attachment proceedings are purely legislative creations, they must on their face disclose a substantial, as distinguished from a literal, compliance with statutory requirements,[19] the court here decided that the errors were procedural, and not jurisdictional. Since no judgment was ever entered on the verdict found for the plaintiff by the trial court sitting without a jury, it necessarily follows that the writ of *fieri facias* was prematurely issued.

In reversing and remanding the case to permit the plaintiff to make any requisite amendments and to file whatever motions might be necessary, the Court of Appeals recognized that the General Assembly enacted the broad provisions for amendment "so that all attachment cases may be tried on their real merits and the purposes of justice subserved; . . .".[20]

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in this particular goes further than the earlier decision on which the court relied. While Md. Code (1939), Art. 9, Sec. 28, does not in express terms authorize the procedure here sanctioned by the court, the result may be supported on the ground that it is within the intention of the legislature as declared in the statute itself.

[18] In Sugar Products Co. v. Kitzmiller, 137 Md. 647, 653, 113 A. 345 (1921), cited by the court, it appeared that the contract by which the defendant was allegedly indebted was not annexed to the account or vouchers filed with the affidavit. It was held that such a defect could be cured before verdict by amendment, but that the failure to produce the contract could not be raised on motion to quash after verdict.

[19] Gill v. Physicians & Surgeons' Bldg., etc., 153 Md. 394, 405, 138 A. 674 (1927); Coward v. Dillinger, 56 Md. 59, 60-61 (1881); Evesson v. Selby, 32 Md. 340, 345-346 (1870); Mears v. Adreon, *supra*, n. 16, 237-238; White v. Solomonsky, *supra*, n. 15, 588; Matthews v. Dare, 20 Md. 248, 264 (1863); McPherson v. Snowden, 19 Md. 197, 233 (1862); Risewick v. Davis, 19 Md. 82, 91 (1862); Brown v. Somerville, 8 Md. 444, 460-461 (1855); Boarman v. Patterson, 1 Gill 372, 381 (1843); Shivers v. Wilson, 5 Har. & J. 130, 132 (1820).

[20] Md. Code (1939), Art. 9, Sec. 28.