

Rel: January 10, 2020

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Renter's Realty

v.

Ieisha Smith

**Appeal from Madison Circuit Court
(CV-18-69)**

PER CURIAM.

Renter's Realty ("Renter's") appeals from a judgment of the Madison Circuit Court ("the circuit court") discharging a writ of garnishment that had been issued by the Madison District Court ("the district court"). In doing so, the

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circuit court granted Ieisha Smith's "Declaration and Claim of Exemption" and denied Renter's objection to that claim.

This is the second appeal to this court that has arisen from the writ of garnishment issued in this action. The record from the previous appeal, Smith v. Renter's Realty, [Ms. 2180304, July 12, 2019] ___ So. 3d ___ (Ala. Civ. App. 2019) ("Smith I"), which the parties have asked to be incorporated as the record in the current appeal, indicates the following. In the district court, Renter's prevailed against Smith in its unlawful-detainer action against her, and the district court entered an order of possession in favor of Renter's. Subsequently, on December 22, 2016, the district court entered a judgment ordering Smith to pay damages and costs in the amount of \$5,145. Smith did not appeal from the December 22, 2016, judgment.

Nothing in the record indicates that Smith paid the judgment or attempted to arrange a payment schedule with Renter's. Thus, on May 17, 2017, Renter's filed a process of garnishment in the district court, and on May 18, 2017, a writ of garnishment was issued to Smith's employer. On June 12, 2017, Smith filed in the district court a motion to stay the

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garnishment, a verified declaration, and a claim of exemption. In her claim of exemption, Smith asserted that her biweekly wages were approximately \$900 or less and that she used all of her income to pay current expenses for her family and herself. She said that she did not accumulate wages from paycheck to paycheck. Citing Art. 10, § 204, Ala. Const. 1901 ("§ 204"), Smith claimed that her wages were exempt from garnishment.

The district court granted a stay on June 13, 2017. On June 15, 2017, Renter's filed an objection to Smith's claim of exemption, arguing, among other things, that Smith was barred from claiming wages as personal property subject to exemption by application of § 6-10-6.1, Ala. Code 1975, which had become law on June 11, 2015. Approximately one year after the objection was filed, after a number of hearings, the district court entered a judgment on June 27, 2018, denying Smith's claim of exemption and reinstating the writ of garnishment. On July 2, 2018, Smith appealed to the circuit court. The record created in the district court was made a part of the circuit court's record.

On July 17, 2018, Smith filed in the circuit court a "response" to Renter's objection to her claim of exemption.

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In that response, Smith argued that her wages could be claimed as a personal exemption under § 204 and Alabama caselaw dating to 1884. Smith and Renter's each filed trial briefs in the circuit court regarding the constitutionality of § 6-10-6.1, which provides:

"(a) Wages, salaries, or other compensation of a resident are not personal property for the purposes of exemption from garnishment, levy, sale under execution, or other process for the collection of debt.

"(b) It is the intent of this section to exclude from the meaning of personal property the wages, salaries, or other compensation of a resident for the purposes of the personal property exemption under Section 6-10-6[, Ala. Code 1975,] and Section 204 of the Constitution of Alabama of 1901."

On August 10, 2018, the circuit court held a hearing on Smith's claim of exemption and Renter's objection to the claim of exemption. On August 13, 2018, the circuit court entered a judgment stating that the attorneys for the parties had appeared before it on August 10, 2018, and had "consented to the Court rendering a decision on claim of exemption without further hearing." The circuit court then denied Smith's claim of exemption, citing § 6-10-6.1 and noting that that statute had become law before the writ of garnishment had been issued.

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Smith timely appealed the circuit court's August 10, 2018, judgment to this court. This court determined that Smith had served the attorney general with notice of her constitutional challenge to § 6-10-6.1, as required by § 6-6-227, Ala. Code 1975. However, the matter had proceeded to trial before the attorney general's office had had the opportunity to respond. Accordingly, on the authority of Armstrong v. Roger's Outdoor Sports, Inc., 581 So. 2d 414 (Ala. 1990), this court remanded the case to the circuit court to allow the attorney general the opportunity to intervene in the action or to waive any right to intervene. The circuit court was instructed to render a valid judgment on the issue of the constitutionality of § 6-10-6.1. Smith I, ___ So. 3d at ___.

On remand, the attorney general's office waived any right to be heard in this matter. The circuit court held a hearing, and on August 12, 2019, it entered a judgment dismissing the garnishment and declaring § 6-10-6.1 unconstitutional. The circuit court stated that the statute "'represents an unconstitutional overreach by the legislature and a violation of the separation of powers principles.'" Smith v. Renter's

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Realty, [Ms. 2180304, Oct. 4, 2019] ___ So. 3d ___, ___ (Ala. Civ. App. 2019) (opinion on return to remand) ("Smith II").

Because Smith had ultimately prevailed in the matter in the circuit court, she did not have an adverse ruling from which to appeal. Smith II, ___ So. 3d at ___. Accordingly, in Smith II, this court dismissed Smith's appeal of the circuit court's judgment.

Upon the entry of the August 12, 2019, judgment, Renter's, which had previously been the prevailing party, had an adverse judgment from which it could appeal. On September 23, 2019, Renter's filed a timely appeal from that judgment. This court granted the parties' request to rely on the arguments set forth in their respective briefs and the submitted record from the previous appeal, i.e., Smith I, regarding the constitutionality of § 6-10-6.1.

Section 204 provides:

"The personal property of any resident of this state to the value of one thousand dollars, to be selected by such resident, shall be exempt from sale or execution, or other process of any court, issued for the collection of any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight or after the ratification of this Constitution."

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Section 204 is the successor to an identical provision in Article X, § 1, Ala. Const. 1875.

"The purpose of the exemption laws is to protect the debtor and his family from being deprived of the items necessary for subsistence, and possibly to prevent them from becoming a burden upon the public." Ex parte Avery, 514 So. 2d 1380, 1382 (Ala. 1987). See also Coffman v. Folds, 216 Ala. 133, 136, 112 So. 911, 913 (1927) (quoting Levens v. State, 3 Ala. App. 45, 50, 57 So. 497, 498-99 (1912), quoting in turn State v. Johnson, 12 Ala. 840, 841 (1848)) (holding, in the context of an attempted levy of attachment or execution of exempt items, that "'articles of prime necessity for the comfort of the family should be kept inviolate for its use'").

In Enzor v. Hurt, 76 Ala. 595 (1884), our supreme court discussed the meaning of "personal property" as that term was used in the Alabama Constitution of 1875. The Enzor court declared:

"We have often decided, that our exemption laws, being founded in a spirit of humanity and benevolence, were to be liberally construed; and such a rule of construction necessarily induces us to attach to the phrase 'personal property,' as used in those laws, a comprehensive signification. It

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was, in our judgment, intended to embrace everything which is the subject of ownership, not being realty, or an interest in realty."

76 Ala. at 597.

Nearly 100 years after Enzor was decided, this court noted that there had been no Alabama decision contrary to Enzor and further observed that our supreme court had held "Kennedy v. Smith, 99 Ala. 83, [88,] 11 So. 665[, 666 (1892)], that the words 'personal property,' in the exemption laws embraced a debt due a defendant in execution, so there is no question that wages due a defendant in a garnishment suit is personal property." Walker v. Williams & Bouler Constr. Co., 46 Ala. App. 337, 340, 241 So. 2d 896, 899 (Civ. 1970).

By any objective standard, "wages, salaries, or other compensation of a resident," § 6-10-6.1(a), constitute personal property. The Alabama Constitution of 1901, building on precedent, explicitly mandates that "[t]he personal property of any resident of this state to the value of one thousand dollars, to be selected by such resident, shall be exempt from sale or execution, or other process of any court, issued for the collection of any debt contracted" § 204.

"The Constitution of Alabama, like that of the nation and of the other states, is the supreme law

within the realm and sphere of its authority. Subject only to the restraints resulting from the Constitution of the United States, the Constitution of Alabama is the highest form and expression of law that exists in this state. The source of its creation and the character of its sanction, viz. the people's deliberate will, invest the Constitution with its paramount quality. The Constitution's control is absolute wherever and to whatever its provisions apply; and every officer, executive, legislative, and judicial, is bound by oath ([Art. XVI,] section 279) to support the Constitution, to vindicate and uphold its mandates, and to observe and enforce its inhibitions without regard to extrinsic circumstances. It commits to no body, officer, or agent any authority or power whatever to change or modify or suspend the effect or operation of its mandates or its prohibitions; the instrument itself prescribes the exclusive modes by which it may be altered or amended, or its effect and operation changed. Otherwise than as these exclusive modes contemplate and authorize the Constitution's alteration, its character is permanent, its force and influence enduring. Both of these exclusive modes are plainly stated in [Art. XVIII,] sections 284-287 of the [Alabama] Constitution. Only through a constitutional convention, called and convened as provided in the existing organic law, or through amendment proposed and adopted as provided in the existing organic law, can the Constitution be altered or changed."

Johnson v. Craft, 205 Ala. 386, 393, 87 So. 375, 380 (1921).

Stated more succinctly, "[t]he constitution of this state is the supreme law and limits the power of the legislature.

Alexander v. State, 274 Ala. 441, 150 So. 2d 204 (1963)."

Grantham v. Denke, 359 So. 2d 785, 787 (Ala. 1978).

In Johnson, our supreme court eloquently explained that the state legislature did not have the authority to alter or amend the Alabama Constitution merely by enacting a law contrary to the dictates of the constitution, stating:

"Upwards of 60 years ago [now more than 160 years ago] this court had occasion to consider and to pronounce constitutional principles referable to the change by amendment of the organic law. The opinion then delivered by Justice Goldthwaite established Collier v. Frierson, 24 Ala. 100 [(1854)], as a leading authority in our country on the subject under consideration. Many courts of the highest repute, as well as text-writers, have accorded the doctrine there announced the unreserved acceptance its obvious soundness deserves, and have given that pronouncement its own great place in the constitutional jurisprudence of the republic. With a brevity, and also a comprehension, that is notable and gratifying, it was there said:

"We entertain no doubt, that, to change the Constitution in any other mode than by a convention, every requisition which is demanded by the instrument itself must be observed, and the omission of any one is fatal to the amendment. We scarcely deem any argument necessary to enforce this proposition. The Constitution is the supreme and paramount law. The mode by which amendments are to be made under it is clearly defined. It has been said that certain acts are to be done, certain requisitions are to be observed, before a change can be effected. But to what purpose are these acts required, or these requisitions enjoined, if the Legislature, or any other department of the government, can dispense with them. To do so would be

to violate the instrument which they are sworn to support, and every principle of public law and sound constitutional policy requires the courts to pronounce against every amendment, which is shown not to have been made in accordance with the rules prescribed by the fundamental law.'

"[24 Ala. at 109.]"

205 Ala. at 393, 87 So. at 380. The Johnson court went on to explain how changes to the Alabama Constitution are to be accomplished, stating:

"The provisions of the Constitution providing for its amendment are mandatory, not directory--binding on the people themselves and concluding every department, body, officer, and agency under its authority. ... 12 C.J. pp. 688, 689. The power granted the Legislature to propose amendments to the Constitution is a particular, special power, not possessed by the Legislature otherwise than through grant by the instrument itself. It can only be exercised in the mode prescribed, and the mode defined is the measure of the power. Collier v. Frierson, [24 Ala. 100 (1854)]; Oakland [Paving] Co. v. Hilton, 69 Cal. 479, 514, 11 Pac. 3 [(1886)]; Jones v. McDade, [200 Ala. 230, 75 So. 988 (1917)]. It results from the system and the provision of the Constitution that in proposing amendments to that instrument, to be voted upon by the electorate, the Legislature is not exercising its other power to make laws. Jones v. McDade, supra; Livermore v. Waite, 102 Cal. 113, 36 Pac. 424, 25 L.R.A. 313, 315, 316 [(1894)]; 12 C.J. p. 693; 6 R.C.L. § 19, pp. 28, 29. Recognition of this last-stated principle--resultant, as it is, from those previously reiterated--is an essential prerequisite to any sound, logical conclusion upon the objection now being considered. To ignore it or to deny it

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appropriate effect is to invite error in judgment and to court the affirmation of inexcusable fallacy."

205 Ala. at 393-94, 87 So. at 381.

The legislature openly declared that its purpose in enacting § 6-10-6.1 was to redefine the meaning of "personal property" in § 204, stating in the statute:

"(b) It is the intent of this section to exclude from the meaning of personal property the wages, salaries, or other compensation of a resident for the purposes of the personal property exemption under Section 6-10-6 [, Ala. Code 1975,] and Section 204 of the Constitution of Alabama of 1901."

None of the methods that are required by the Constitution itself for making such an alteration were followed. See Art. XVIII, §§ 284-287, Ala. Const. 1901; Johnson, supra. Instead, the legislature attempted to effect the change through its own legislation.

We agree with the circuit court's determination that the legislature's effort to redefine "personal property" in § 204 was an impermissible "overreach" and that § 6-10-6.1 is, therefore, unconstitutional. Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

All the judges concur.