

IN THE COURT OF CIVIL APPEALS OF ALABAMA

DAISY PRUETT,)
)
 APPELLANT,)
) CIVIL APPEALS NO. 2120232
)
) CIRCUIT COURT OF MORGAN
) COUNTY NO. CV2008-494
 V.)
)
 WORLDWIDE ASSET PURCHASING,)

STATEMENT REGARDING ORAL ARGUMENT

Appellant, Daisy Pruett, respectfully requests oral argument. The trial court's position is contrary to previous authority in wage garnishment cases. If the trial court's ruling is allowed to stand, it would render it impossible for an individual to claim wages under a grant of permission in the manner provided by this state's Constitution. Moreover, under this ruling all low-wage persons and their dependants, even those with almost no other personal assets, would be wrongfully deprived of exempting wages necessary for the support of themselves or their families as allowed by the Constitution, with dire social and economic impact on those individuals and to the State as a whole.

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STATEMENT OF JURISDICTION

The Court of Civil Appeals has jurisdiction over this appeal pursuant to Code of Ala. §12-3-10. This is an appeal of Orders entered by the Circuit Court on September 18, 2012 and November 2, 2012 denying Appellant's Claim of Exemption and the Motion to Reconsider Order Denying Claim of Exemption.

The Notice of Appeal to the Court of Civil Appeals was filed on December 14, 2012, within the forty-two (42) days provided by Rule of Appellate Procedure 4 (a)(3).

So.2d 870 (Ala.Civ.App. 1991).	8,14,16,19
<u>In re Robinson</u> , 240 B.R. 70 (N.D.Ala. 1999).	17
<u>Sink v. Advanced Collection Services, Inc.</u> , 607 So.2d 246 (Ala.Civ.App. 1992).	8,13,16,17,18,19
<u>State Board of Health vs. Greater Birmingham Association of Home Builders. Inc.</u> 384 So. 2d 1058 (Ala. 1980).	13
<u>Trimble v. Greater Gadsden Housing Auth.</u> , 603 So. 2d 1102 (Ala.Civ.App. 1992).	8,16,18,19
<u>Weis v. Levy</u> , 9 Ala. 209 (1881).	10,14

Federal Statutes and Rules:

15 U.S.C. § 1673	7,18
15 U.S.C. § 1677	7

Constitution of Alabama:

Alabama Const., Art. X, Sec. 204	10,11,12
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Statutes and Rules:

Ala. Code 1975 § 6-10-6	7,11,18
Ala. Code 1975 § 6-10-7	2,6,7,17,18
Ala. Code 1975 § 6-10-29	12,15,16
Ala. Code 1975 § 6-10-37	7,12,14,15,17,18
Rule of Appellate Procedure, Rule 4(a)(3).	iv

Other:

<u>Acts</u> , 80-569	11
<u>Acts</u> , 88-294	11,12,13

STATEMENT OF THE CASE

This appeal involves a claim of exemption in a wage garnishment filed by the Defendant-Appellant, Daisy Pruett, seeking to claim as exempt the sum of \$600 of wages due paid her on a bi-weekly basis by Wal-Mart Stores, Inc. (hereinafter referred to "Wal-Mart").

On December 24, 2008, the Plaintiff-Appellee, Worldwide Asset Purchasing (hereinafter referred to as 'Worldwide'), a debt-buyer, obtained a default judgment against Ms. Pruett in a collections case in the Circuit Court of Morgan County. On March 23, 2012, Worldwide filed for a writ of garnishment against Ms. Pruett's wages from employment at Wal-Mart. (C.5). In response, on August 7, 2012, Ms. Pruett filed a sworn Declaration and Claim of Exemption selecting her wages from Wal-Mart as exempt under Article X, §204 of the Constitution of Alabama. (SR No.1)¹. Her sworn Declaration and Claim of Exemption included an inventory list of all her other

¹ Citations to the Motion for Joint Stipulation to Supplement the Record are indicated by SR and a number which refers to the Document as it is numbered in the Motion. For example, "SR No. 1" refers to the Motion for Joint Stipulation to Supplement the Record, Document number 1. August 7, 2012 filed Motion to Stay Garnishment and Declaration and Claim of Exemption.

personal property not being claimed as exempt. (SR No.1). The following day, August 8, 2012, the Circuit Court issued an order to stay the garnishment. (SR No.2).

On August 11, 2012, Worldwide filed its "Contest of Claim of Exemption" claiming that under Alabama law no debtor is entitled to select any amount of wages as exempt under the Alabama Constitution where the total amount of all personal property exceeds the sum of \$1,000. (SR No.3). The court set a hearing of the contest for August 29, 2012. (SR No.4). On August 27, 2012, Ms. Pruett filed a Motion setting forth reasons for objecting to the contest and dismissal of the garnishment. (SR No.6). On the morning of the hearing, Worldwide filed written legal arguments in support of its Contest. (SR No.7). At the hearing the trial judge heard no testimony and took the matter under advisement based on the record and arguments made by each of the parties. (SR No.8).

On September 18, 2012, the trial court denied the exemption by issuing an order finding the defendant was entitled only to the exemption amount in §6-10-7 for 75%

of her wages, ordering that Worldwide was entitled to retain 25% of Ms. Pruett's wages during the time necessary to accumulate the sum equal to the amount indicated by the process of garnishment. (C.8).

On September 18, 2012, Worldwide moved to condemn all funds garnished. (SR No.9). On September 20, 2012, the judge ordered all funds held and all future funds collected to be disbursed to the Plaintiff. (SR No.10).

On October 12, 2012, Ms. Pruett filed a Motion to Reconsider. (SR No.12). The trial court summarily denied the Motion to Reconsider without hearing on November 2, 2012. (SR No.12).

On December 17, 2012, Ms. Pruett filed her Notice of Appeal to the Court of Civil Appeals of Alabama. (C.10). Based on Ms. Pruett's financial circumstances, prepayment of docket fees for the appeal was waived by the trial court. (C.14).

STATEMENT OF THE ISSUES

- I. DO DEBTORS WITH EARNINGS OF LESS THAN \$1,000 HAVE A CONSTITUTIONAL RIGHT TO SELECT WAGES AS EXEMPT UNDER THE CONSTITUTION OF ALABAMA, ARTICLE X, § 204?

II. DID THE CIRCUIT COURT ERR AS A MATTER OF LAW IN DENYING A CONSTITUTIONAL EXEMPTION FOR WAGES OF ONLY \$600, WHERE THE DEBTOR OWNED, BUT DID NOT CLAIM MORE THAN \$1000 OF TOTAL PERSONAL PROPERTY?

III. DID THE CIRCUIT COURT ERR BY NOT LIBERALLY CONSTRUING THE CONSTITUTION AND STATE EXEMPTION LAWS IN THE INTERESTS OF AND FOR PROTECTION OF DEBTORS AND THEIR FAMILIES?

STATEMENT OF THE FACTS

No facts in this case are disputed and no oral testimony was taken. Ms. Pruett was previously sued in this case by an assignee of credit accounts claimed to be owed by her. (C.5). It is undisputed that as shown in her affidavit that Ms. Pruett earns on average disposable earnings of \$600 every two weeks from her employment at Wal-Mart, which is 37.72 per cent of the poverty standard for a family of three. (SR No.1). Ms. Pruett is the only wage earner in the household and receives no other income except monthly child support for her two children. (C.14).

Aside from wages, Ms. Pruett listed, but specifically did **not** claim as exempt, an inventory of all her other personal property consisting of the

following: bank accounts of \$125, an old car, an old computer and used furniture, with a total value of \$2,040. (SR No.1). The trial court found that Ms. Pruett did not claim any property other than wages as exempt. (C.8).

STATEMENT OF THE STANDARD OF REVIEW

An error of the trial court as to a matter of law is subject to "de novo" standard of review. The trial court's ruling is also further subject to "de novo" review as being based upon pleadings, briefs and documents in the record. This Court should review the trial court's denial of the claim of exemption under the de novo standard of review. Craig Constr. Co. v. Hendrix, 568 So.2d 752 (Ala. 1990).

SUMMARY OF THE ARGUMENT

The trial court's denial of the claim of exemption for wages must be reversed based on examination of the express language in the Constitution of Alabama, (1901), Article X, § 204, which provides that:

The personal property of any resident of this state to be 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.

The court below does not explain any basis for denying Ms. Pruett's claim of exemption under article X, section 204 and fails to mention the Constitutional provision. The opinion states only that Ms. Pruett was entitled to exempt 75 percent of her wages as allowed under §6-10-7 of the Alabama Code, which is the same limitation on wage garnishments already required by several other state and federal statutes.

The express wording in the Constitution has been recognized by the Supreme Court of Alabama for more than

wages due a debtor if the debtor so chooses, under this \$1,000 exemption. The Constitutional right was not, and could not be, modified by subsequent legislative pronouncements or amendments such as amendments to §6-10-6 and §6-10-7. This, a court or a legislative act can not do. See Gafford v. Pemberton, 409 So.2d 1367, 1374 (Ala. 1982); Opinion of the Justices, 40 So.2d 623, 625 (Ala. 1949). Moreover, while federal law also provides for an exemption that is no less than 75 percent of a debtor's wages, 15 U.S.C. §1673, this law is not intended to preempt state laws that "provid[e] for more limited garnishment than are allowed under this subchapter." 15 U.S.C. §1677.

The right to elect what property a defendant can exempt under the Constitution is not affected by having

claimed only her wages, as she is entitled to do by the express language of the Constitution. Because her wages are less than the \$1,000 exemption guaranteed by the Constitution, Ms. Pruet is entitled to an exemption for the full amount of wages.

This Court expressly recognized that the Constitution allows exemption of 100 percent of wages

Through its Constitution and statutes, Alabama sought to protect a debtor and their families from being deprived of the items necessary for subsistence and from becoming a burden upon the public. Ex parte Avery, 514 So.2d 1380, 1382 (Ala. 1987). To meet this purpose, exemption laws are to be liberally construed in protecting debtors and their families. Id. The trial court's ruling is a drastic departure from existing precedent, and has the effect of depriving the lowest income Alabamians, including Ms. Pruett and most all of the lowest income employed persons, of the money that is set for them to claim if they choose for a minimum level of subsistence established over 100 years ago. This would be extremely oppressive to Alabama's poor, and also goes against the long tradition of this state and clear language of our Constitution.

The court below has erred as a matter of law in not allowing Ms. Pruett's full wages to be claimed as exempt and by not dismissing the writ of garnishment, and its ruling is due to be reversed.

ARGUMENT

I. DEBTORS HAVE THE CONSTITUTIONAL RIGHT TO SELECT WHAT PERSONAL PROPERTY IS EXEMPTED UNDER THE CONSTITUTION OF ALABAMA, ARTICLE X, §204.

The Alabama Constitution provides that every Alabamian may select personal property, valued at up to one thousand dollars, to be exempt from sale or execution. Ala. Const. Art. X, § 204. The Alabama Supreme Court recognizes this as meaning that only the debtor can select the personal property to be exempt and that "[t]he right of selection is thus placed beyond the reach of legislation or judicial restraint." Bray & Bros. v. Laird, 44 Ala. 295 at 297 (1870). It is not

the Alabama Constitution, Art.X, § 204. Enzor & McNeill v. Hurt, 76 Ala. 595 (1884); Avery v. East Alabama Medical Center, 514 So.2d 1377; 1378-79 (Ala.Civ.App. 1985); Ex parte Avery, 514 So.2d 1380 (Ala. 1987) (holding, on appeal, that future wages could, as well, be claimed as exempt).

As a companion to the constitutional exemption provision the Alabama Legislature has in every codification of Alabama law provided statutes governing the rights of its residents to claim personal property exemptions in every codification of Alabama law. In 1980, the Legislature expanded the resident's right to claim exemptions by increasing the \$1,000 limit to \$3,000. Acts, 80-569, amending the Code of Alabama (1975) §6-10-6. However, on April 12, 1988, the exemption statute was again amended so that now the statute allows a resident to claim as exempt personal property "except for wages, salaries or other compensation" up to a \$3,000 limit. Acts, 88-294.

In order to select property as exempt after a writ has been issued, a debtor must file any wage claim of exemption in the court in which the proceedings are

pending. Code of Alabama, §6-10-37. The debtor in all such cases is required to accompany his or her claim of exemption with a statement containing an inventory of all his other personal property, with the location and value of same, pursuant to §6-10-29 and §6-10-37.

In the instant case, only Appellant's wages of less than \$1,000 are being garnished. Ms. Pruett filed her sworn Declaration and Claim of Exemption on August 7, 2012, describing the property selected and claimed as exempt, along with an inventory. (SR No.1).

Exemptions provided in the Alabama Constitution (Article X, §204) are self-executing and cannot be diminished by legislative act, so the \$1,000 personal property exemption contained in the provision of the Alabama Constitution remains intact despite Acts 88-294. See Miller v. Marx, 55 Ala. 321, 332-35 (1876); David's Adm'r v. David, 56 Ala. 49 at 51 (1876); In re Quinlan, 12 B.R. 824 at 829 (Bk. M.D. Ala. 1981).

The law requires that any statute should be read in a way which would be legally valid unless it cannot be reconciled with a superior source of law. The legislature is presumed to intend that legislative acts

shall not violate the Constitution, and be utterly void. Pruett vs. Patton, 265 So.2d 130 (1972). Validly enacted legislation is presumed to be constitutional. State Board of Health vs. Greater Birmingham Association of Home Builders, Inc.. 384 So.2d 1058 (Ala. 1980). Therefore, the wage exclusion contained in the 1988 Amendment must have been intended by the legislature to apply only to amounts in excess of \$1,000 and up to \$3,000 (or the amounts above the constitutional limit). There is no restriction on a debtor's right to deduct \$3,000 in personal property other than wages. Sink v. Advanced Collection Services, Inc., 607 So.2d 246 at 248-249 (Ala.Civ.App. 1992). Read in pari materia with Section 204 of the Constitution, this is the only construction of the statutes amended by Act 88-294 that brings it into harmony with the Constitution.

When money, choses in action or personal property are garnished and the defendant claims the same, or any part thereof, as exempt, he shall file his claim thereto in writing, verified by oath, in the court in which such proceedings are pending, accompanied by a statement setting forth the personal property, choses in action, and money and the location and value thereof, as required in the statement to be filed under the provisions of Section 6-10-29. . . . No claim for exemptions shall exceed the greater of the amounts authorized by the Constitution of 1901, as amended, or required by provisions of federal law.

Ala. Code §6-10-37. By referencing §6-10-29, §6-10-37 requires a debtor to file a full inventory of all of the claimant's personal property along with any claim of exemption.

Nowhere does the legislature mandate that this inventory must be claimed as exempt by a defendant, or that wages may only be claimed if this total inventory of all personal property is less than \$1000, as asserted by Worldwide in its Contest of Claim of Exemptions. (SR No.3). See Bray & Bros. v. Laird, supra. Rather, these sections distinguish the claim and the inventory as separate statements. See Ala. Code § 6-10-37 ("[H]e shall file a *claim* thereto in writing . . . accompanied by a *statement* setting forth the [inventory] . . . as

required in the statement to be filed under the provisions of Section 6-10-29." (Emphasis added)).

Worldwide claims that the decisions of this Court in Roberts v. Carraway Methodist Medical Center, 591 So.2d 870 (Ala.Civ.App. 1991), Sink v. Advanced Collection Services, Inc., 607 So.2d 246 (Ala.Civ.App. 1992) and Trimble v. Greater Gadsden Housing Auth., 603 So. 2d 1102 (Ala.Civ.App. 1992) deal directly with this issue. (SR No.7). It would have the Court interpret these cases as standing for the proposition that a resident may not select any wages as exempt if the wages plus the debtor's inventory of other personal property is valued at over \$1,000. (SR No.3). However, Sink and Trimble only ruled that a person may not claim more than \$1,000 of wages by stacking other exemptions under the Constitution.

In the Roberts case, as here, the total amount claimed as an exemption by the debtor was under \$1000, which in that case included \$430 in wages and \$548 in additional personal property. Roberts, 591 So.2d at 872. The Court found that the debtor could exempt the full value of his wages, and was not limited to 75

percent, as the total value of exemptions claimed was below the Constitutional minimum of \$1,000. Id. Under section 6-10-37, which allows an individual an exemption equal to "the greater of the amounts authorized by the Constitution . . . , or required by provisions of federal law," the debtor was entitled to receive the constitutional exemption, as it exempted more than the amount of wages allowed under federal law or section 6-10-7. Id.

In Sink, however, the debtor attempted to claim more than \$1,000 in exemptions, including the \$1,200 in wages and \$947.50 of additional property. Sink, 607 So.2d at 248. The Court ruled that Sink could not stack combined statutory exemptions on top of the constitutional minimum.² Thus, he was allowed to claim 75 percent of his wages of \$1,200.00 under federal law and §6-10-7, plus the full value of his additional

² In the case of In re Robinson, 240 B.R. 70 (N.D. Ala. 1999), the United States Bankruptcy Court for the Northern District of Alabama determined that stacking of exemptions is allowed, contrary to Sink. While the appellant believes that the issues raised in In Re Robinson may merit further review of the interpretation of these exemptions, it is not necessary to readdress the stacking issues in Sink in the present case. Even under Sink, the ruling below must be reversed.

property where it is not being claimed by the debtor as exempt.³ Sink and Roberts did not, and could not, overrule the Constitution. They presented facts different from the facts of Ms. Pruettt's case.

Thus, by listing additional personal property on her declaration, Ms. Pruettt did not claim any additional personal property, other than her wages, as exempt. Here like Roberts, the total amount **claimed** is under \$1,000, and Ms. Pruettt is entitled to exempt the full value of the wages under Article X, Section 204.

The trial court expressly observed that Ms. Pruettt was not seeking to exempt any additional personal property listed in her inventory. (C.8). In ruling that Ms. Pruettt was not entitled to select the full

III. ALL EXEMPTION LAWS AND STATUTORY AMENDMENTS MUST BE CONSTRUED LIBERALLY IN THE INTERESTS OF AND FOR THE PROTECTION OF DEBTORS AND THEIR FAMILIES AS INTENDED BY AND PROVIDED FOR IN THE CONSTITUTION.

such individuals will become destitute and therefore

Pruett and innocent members of her family; it goes against the long tradition of this state.

pdf. Adjusted for inflation,⁵ this would equal approximately \$2,000 today. Ms. Pruett's monthly disposable income of \$1,200 is already insufficient to cover basic expenses under this standard. The Circuit Court's ruling, which protects only \$900 of her wages per month from garnishment, will only further ensure that Ms. Pruett would be unable to provide for herself and her family.

Under the facts presented in this case, Ms. Pruett is entitled to retain the full amount of her wages due, as her disposable income is below the constitutional minimum exemption she may chose under the Constitution. The effect of upholding Circuit Court's decision would have a drastic and disproportionate effect on low income persons, by depriving them of even the amount set over 100 years ago as the constitutional minimum amount that a judgment debtor may choose to exempt for daily necessities.

Adopting the position of the trial court and Worldwide would require a drastic modification of

⁵ This is also calculated according to the Consumer Price Index. See Bureau of Labor Statistics, CPI Inflation Calculator, *available at* http://www.bls.gov/data/inflation_calculator.htm.

existing Alabama law in a direction that would be extremely oppressive to Alabama's poor, and goes against the long tradition of this state and clear language of our Constitution.

CONCLUSION

The claim of exemption in this case is due to be allowed because Ms. Pruett selected biweekly wages in the amount of \$600 as exempt which did not exceed the minimum exemption allowed under the Constitution. Ms. Pruett is entitled to claiming the full amount of her wages as exempt.

Therefore the order below must be reversed and the writ of garnishment is due to be dismissed.

Respectfully Submitted,

/s/Alesdair Ittelson

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Brief on Counsel of Record for Appellee by U. S. Mail, postage prepaid, to Honorable James Nadler, Nadler & Associates, P.C., 2871 Acton Road, Suite 101-A, Birmingham, AL 35243.

This the 28th day of February, 2013.

/s/Pamela D. Jackson
ATTORNEY FOR APPELLANT