

Caulley v. Caulley

Texas Supreme Court
806 S.W.2d 795 · April 24, 1991

OPINION

MAUZY, Justice.

Robert and Ruth Caulley were divorced in Ohio in 1981. In 1987, Ruth filed suit in Harris County seeking to enforce an Ohio divorce judgment that ordered Robert to pay Ruth alimony. She obtained a money judgment for \$34,625 against Robert from the 269th District Court of Harris County. On September 10, 1987, the Harris County District Clerk issued a writ of execution on the judgment and forwarded the writ to the Sheriff of Houston County, where Robert owned property. The writ was returned “Nulla Bona” because a homestead exemption was on file in the Houston County Clerk’s office. Ruth then filed an Application for Turnover Order in the 269th District Court. She disputed the homestead exemption and asked the court to order the district clerk to reissue a writ of execution on the property, and to order that each of Robert’s paychecks be turned over to her until her judgment against him was satisfied. On February 2, 1988, the trial court again ordered the district clerk to issue a writ of execution upon the Houston County property. The trial court also appointed a receiver and ordered Robert to turn over \$2500 of his \$2700 net monthly wages to the receiver in order to satisfy the money judgment against him.

***797** Robert appealed and contended in the court of appeals that the homestead designation is determined by the claimant’s state of mind. He also contended that the turnover statute (Tex.Civ.Prac. & Rem.Code § 31.002) is unconstitutional under Art. XVI, § 28 (prohibition against garnishment) when used to order a judgment debt- or to turn over his wages to a creditor. The court of appeals rejected Robert’s arguments and affirmed the judgment of the trial court. 777 S.W.2d 147. We affirm the lower courts’ judgment regarding the homestead designation, but we reverse the trial court’s order that Robert must turn over 90% of his net wages in order to satisfy the judgment against him.

I. Homestead Exemption

One month after the September, 1981 divorce from Ruth, Robert married Christine in Texas. Before the marriage, Christine had an urban home in Harris County upon which she had established a homestead exemption. After the marriage, the couple made this home their residence. In 1983, Robert and Christine jointly purchased a 150-acre farm in Houston County. This was the property upon which the trial court ordered execution.

Along with the original issuance of a writ of execution, an abstract of judgment was recorded in the Houston County Clerk’s office on September 23, 1987. On October 16, 1987, Robert filed a declaration that the Houston County property was his rural homestead. On October 19, 1987, Christine sought to “undesignate” the couple’s Harris County residence as an urban homestead. Once homestead rights are shown to exist in property, they are presumed to continue, and anyone asserting abandonment has the burden of proving it by competent evidence. *Sullivan v. Barnett*, 471 S.W.2d 39 (Tex.1971). The trial court entered Findings of Fact and Conclusions of Law in which it found that the urban home in Harris County was the homestead of Robert and Christine. Robert contended on appeal that there was no evidence to support this finding by the trial court.

The court of appeals reasoned that testimony at trial revealed that Robert and Christine “spent at least 60% of the nights of the year” at their Harris County home. 777 S.W.2d at 150. Additionally, the court of appeals held that Robert tried to designate the Houston County property as homestead only after Ruth sought to enforce her judgment against that property. *Id.* Thus, the court of appeals correctly held that some evidence supported the trial court’s finding that the urban home in Harris County was the homestead of Robert and Christine. Robert argued in both the court of appeals and in this Court that the Houston County property would become the couple’s permanent home in a few years and that this indicates an intention on their part to make this their homestead property. While occupying a piece of property as homestead, a person cannot establish a homestead right in another place by “attempting to live there in the future”. *O’Brien v. Woeltz*, 94 Tex. 148, 58 S.W. 943, 945, modified on rehearing, 94 Tex. 154, 59 S.W. 535 (1900); *Johnston v. Martin*, 81 Tex. 18, 16 S.W. 550, 550-551 (1891). Therefore, Robert’s argument is without merit. We hold that the trial court and the court of appeals correctly decided that the Houston County property was not Robert’s and Christine’s homestead, and we affirm that portion of the judgment.

II. Turnover Order

We need not reach Robert’s constitutional challenge to the turnover statute because the trial court’s order in this case is expressly prohibited by the 1989 Amendment to the turnover statute. In 1989, the following section was added to Tex.Civ.Prac. & Rem.Code § 31.002:

(f) A court may not enter or enforce an order under this section that requires the turnover of the proceeds of, or the disbursement of, property exempt under

any

statute, including Section 42.0021, Property Code. This subsection does not apply to the enforcement of a child support obligation or a judgment for past due child support, (emphasis added).

***798** The new section was intended to specifically exempt paychecks, retirement checks, individual retirement accounts and other such property exempted under the bankruptcy code.¹ Though the amendment was not effective until June 15, 1989, it is retroactive in its effect.² Therefore, the added section controls even though the district court’s judgment was entered before its effective date. The trial court ordered that Robert must turn over his wages to a receiver on the first and fifteenth days of each month until the judgment is satisfied. We hold that this order violates § 31.002(f) of the Texas Civil Practice and Remedies Code. By prohibiting the turnover of the proceeds of property exempt under any statute, this section necessarily prohibits the turnover of the proceeds of current wages. Tex.Prop.Code § 42.002(8) (listing current wages as one of the personal property items exempt from attachment, execution, and seizure by creditors). We therefore reverse the judgment of the court of appeals affirming the trial court’s order requiring Robert to turn over his wages to a court-appointed receiver.

In sum, we affirm the judgment of the court of appeals regarding Robert’s homestead designation, and we reverse the judgment of the court of appeals affirming the trial court’s order requiring Robert to turn over his wages to a court-appointed receiver.

OPINION ON REHEARING

Footnotes

1 House Committee On The Judiciary, Bill Analysis, Tex.H.B. 1029, 71st Leg., R.S. (1989).

2 “This Act applies to the collection of any judgment, regardless of whether the judgment is rendered before, on, or after the effective date of this Act.” Acts 1989, 71st Leg., R.S., ch. 1015, § 2, 1989 Tex.Gen.Laws 4112.