

Palm Coast Recovery Corp. v. Carter

Fla. 4th DCA
638 So. 2d 1003 (Fla. 4th DCA 1994) · 1994-06-15

STONE, Judge.

We reverse an order denying a writ of post judgment garnishment of wages. The writ was denied because several months earlier, without a record of the debtor's head of household status, the court had rejected a motion for a garnishment judgment for a \$60 wage claim, citing section 222.11, Florida Statutes, the head-of-family exemption.

Appellant Palm Coast subsequently sought a continuing wage garnishment, under section 77.0305, Florida Statutes. At a hearing on its motion, counsel for Palm Coast explained that in- the prior garnishment proceeding, the garnishee employer had indicated that Katie Carter was its employee, but garnishment was denied pursuant to section 222.11, because she was the head of a family. Thereafter, the debtor indicated in a deposition that she did not provide support for anyone other than herself. The debtor, ap*1004 pearing pro se, later told the court that she did not have any money and that she earned \$250.00 per week; she did not claim to be the head of a family.

The court denied Palm Coast's motion for a continuing writ, concluding that any right to garnishment of the judgment debtor's wages was resolved by the earlier decision that she was a head of family.

Palm Coast claims it is entitled to a continuing writ of garnishment because it complied with all statutory and procedural requirements and the debtor failed to file an affidavit setting forth her right to an exemption. It further asserts that it did not appeal the earlier order because it was not a final order, since the writ had not been dissolved.

The earlier order should not have precluded Palm Coast's seeking a continuing writ. *Barnett Bank of Broward County v. Tabatchnick*, 401 So.2d 1166 (Fla. 4th DCA 1981). See also section 77.08, Florida Statutes (1991). The failure to appeal the earlier order affected relief only at that stage of the proceedings. An issue remained as to the applicability of the exemption.

Therefore, the order is reversed, and we remand for further proceedings.

GUNTHER and POLEN, JJ., concur.