UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Gladwell v. Reinhart

416 F. App'x 761 (10th Cir. 2011) · Decided March 22, 2011

SUMMARY

The Tenth Circuit certified questions to the Utah Supreme Court concerning whether Utah Code Ann. § 70C-7-103 creates a bankruptcy exemption for wages or merely limits garnishment outside bankruptcy. The court also asked whether pre-petition wages qualify as disposable earnings and whether the underlying debts arose from a consumer credit agreement. The appeal was stayed pending the Utah Supreme Court’s consideration of the certified questions.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Deanell Reece Tacha; Paul J. Kelly, Jr.; Carlos F. Lucero
JURISDICTION	Federal
DECIDED	March 22, 2011
DISPOSITION	other
PROCEDURAL POSTURE	The Chapter 7 trustee appealed after the bankruptcy court overruled his objection to the debtor's claimed exemption in pre-petition wages. The district court summarily affirmed. The Tenth Circuit certified questions of Utah law to the Utah Supreme Court and stayed the appeal.
STANDARD OF REVIEW	Not expressly stated; the court resolved the federal statutory issue under de novo interpretation and certified unresolved questions of Utah law.
PRECEDENTIAL VALUE	Published in the Federal Appendix; the supplied text does not state a separate precedential designation.
PARTIES	David L. Gladwell, Chapter 7 Trustee v. Douglas James Reinhart, Douglas J. Reinhart, M.D., P.C.

TOPICS

bankruptcy exemptions · chapter 7 · appellate procedure · statutory interpretation · federalism

PRACTICE AREAS

Bankruptcy · Appellate procedure · Statutory interpretation · Federalism · Consumer protection

QUESTIONS PRESENTED

1. Whether 15 U.S.C. § 1673 creates an exemption in bankruptcy for the debtor's pre-petition wages.
2. Whether Utah Code Ann. § 70C-7-103 creates an exemption in bankruptcy or merely limits a judgment creditor's garnishment remedy outside bankruptcy.
3. If Utah Code Ann. § 70C-7-103 creates a bankruptcy exemption, whether the debtor's pre-petition wages qualify as disposable earnings under the statute.
4. If the wages qualify as disposable earnings, whether the debts at issue arose from a consumer credit agreement under Utah Code Ann. § 70C-7-103.

HOLDINGS

1. 15 U.S.C. § 1673 does not create an exemption in bankruptcy and therefore has no bearing on the debtor's claimed exemption.
2. The questions concerning whether Utah Code Ann. § 70C-7-103 creates a bankruptcy exemption, whether the wages qualify as disposable earnings, and whether the debts arose from a consumer credit agreement should be certified to the Utah Supreme Court because they control the appeal and have not been answered by Utah courts.

KEY QUOTATIONS

> *"In short, the Consumer Credit Protection Act sought to prevent consumers from entering bankruptcy in the first place. However, if, despite its protection, bankruptcy did occur, the debtor's protection and remedy remained under the Bankruptcy Act."* (763)

> *"In the interests of comity and federalism, the Utah Supreme Court should be permitted to answer these questions in the first instance if it should choose to do so."* (764)

FACTUAL BACKGROUND

Douglas James Reinhart filed a Chapter 7 bankruptcy petition on January 28, 2000. The Chapter 7 trustee later sought at least $49,000 in salary, bonuses, and interest that Reinhart had earned before filing but that his professional corporation paid to or still owed him after the petition date. Reinhart claimed that 75% of those pre-petition wages were exempt under federal and Utah wage-garnishment provisions and related Utah bankruptcy authority.

PROCEDURAL HISTORY

Reinhart filed for Chapter 7 bankruptcy protection in 2000. In 2004, the trustee commenced an adversary proceeding seeking recovery of pre-petition wages that had been paid to or remained owed to Reinhart after the petition date. The bankruptcy court held that 75% of the wages were exempt under federal or Utah law, and the district court summarily affirmed. The Tenth Circuit certified three questions concerning Utah's wage-garnishment statute to the Utah Supreme Court and ordered the appeal stayed.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The Clerk was directed to transmit the certification order, briefs, and appendices to the Utah Supreme Court, and the appeal was ordered stayed pending consideration of the certified questions.

CASES CITED

- In re Stewart, 32 B.R. 132, 139 (Bankr. D. Utah 1983)
- Kokoszka v. Belford, 417 U.S. 642, 94 S. Ct. 2431, 41 L. Ed. 2d 374 (1974)
- Smith v. Frazier, 421 B.R. 513, 518 (S.D. Ill. 2009)
- In re Riendeau, 293 B.R. 832, 838-39 (D. Vt. 2002)
- In re W. Side Prop. Assocs., 13 P.3d 168, 170-71 (Utah 2000)

OPINION

TACHA, J.

ORDER CERTIFYING STATE LAW QUESTION DEANELL REECE TACHA, Senior Circuit Judge. On January 28, 2000, Douglas James Reinhart ("the debtor") filed a petition for *762bankruptcy protection under Chapter 7 of the Bankruptcy Code.

On December 30, 2004, Chapter 7 Trustee David L. Gladwell ("the trustee") commenced an adversary proceeding against the debtor and his professional corporation, Douglas J. Reinhart, M.D., P.C. ("the P.C."), seeking to recover at least $49,000 in salary, bonuses, and interest that the debtor earned prior to the bankruptcy petition date but which the P.C. either paid to or still owed the debtor after the petition date.

We refer to this sum of money as the "pre-petition wages." The debtor claimed that 75% of the pre-petition wages were exempt. He relied on the following authorities in support of the claimed exemption: (1) 15 U.S.C. § 1673, which generally prevents a creditor from garnishing more than 25% of a debtor's aggregate disposable earnings for any workweek;1 (2) Utah Code Ann. § 70C-7-103, which contains a similar limitation on garnishment under Utah law;2 and (3) In re Stewart, 32 B.R.

132, 139 (Bankr.D.Utah 1983), which interpreted an earlier version of § 70C-7-103 to hold that "individual debtors in bankruptcy in Utah, may claim an exemption in earnings unpaid but earned as of the dates of the filing of their petitions in bankruptcy." In opposition to the claimed exemption, the trustee argued that § 1673 does not create an exemption in bankruptcy, relying on Kokoszka v. Belford, 417 U.S. 642, 94 S.Ct.

2431, 41 L.Ed.2d 374 (1974). The trustee further argued that § 70C-7-103 similarly does not create an exemption in bankruptcy because: (1) the decision in Kokoszka compels such a conclusion; (2) the statute, by its terms, has no application to bankruptcy proceedings; (3) garnishment limitations serve a different purpose than bankruptcy exemptions; and (4) to the extent In re Stewart held otherwise, the decision is wrong or has been abrogated by subsequent amendments to § 70C-7-103 and should be disregarded.

In the alternative, the trustee argued that even if §§ 1673 and/or 70C-7-103 are bankruptcy exemption statutes, they do not apply in this case because pre-petition wages do not qualify as "disposable earnings" under either statute.

Finally, the trustee argued that § 70C-7-103 is further inapplicable in this case because the pre-petition wages were not sought in order to satisfy a debt incurred under a "consumer credit agreement." Without specifically identifying the basis for its decision, the bankruptcy court overruled the trustee's objection, stating that 75% of the pre-petition wages are exempt under either 11 U.S.C. § 522(b)(2)(A), 15 U.S.C. § 1673, or Utah Code Ann. § 70C-7-103 and In re Stewart.

The district *763court summarily affirmed, and this appeal followed. The issue of whether 15 U.S.C. § 1673 provides for an exemption in this case is governed by the Supreme Court's decision in Kokoszka. There, the Court instructed that § 1673 does not create an exemption in bankruptcy. See Kokoszka, 417 U.S. at 651, 94 S.Ct. 2431 ("In short, the Consumer Credit Protection Act sought to prevent consumers from entering bankruptcy in the first place.

However, if, despite its protection, bankruptcy did occur, the debtor's protection and remedy remained under the Bankruptcy Act."). Because the Supreme Court has instructed that § 1673 does not provide for an exemption in bankruptcy, that statutory provision has no bearing on this case. See Smith v. Frazier, 421 B.R. 513, 518 (S.D.Ill.2009) ("Stated simply, once the [debtors] sought bankruptcy protection, the Bankruptcy Code and applicable state and federal property exemption statutes governed their rights and remedies-not the limitation on garnishment of wages contained in 15 U.S.C. § 1673"); see also In re Riendeau, 293 B.R.

832, 838-39 (D.Vt.2002) (relying on Kokoszka in denying the debtor's claim that § 1673 provides an exemption in bankruptcy). The resolution of this appeal, then, turns on whether Utah Code Ann. § 70C-7-103 provides for an exemption in bankruptcy, and, if so, whether the debtor's pre-petition wages are exempt under that statute.

Because these questions require an intricate and historical analysis of Utah law and public policy, and because the Utah state courts have yet to address them, we respectfully certify on our own motion, pursuant to Tenth Circuit Rule 27.1 and Utah Rule of Appellate Procedure 41, the following questions to the Utah Supreme Court: 1. Does Utah Code Ann. § 70C-7-103 create an exemption in bankruptcy, or does it only limit a judgment creditor's garnishment remedy outside bankruptcy?

2. If § 70C-7-103 does create an exemption in bankruptcy, do pre-petition wages such as those claimed by the debtor in this case qualify as "disposable earnings" under the statute? 3. If § 70C-7-103 does create an exemption in bankruptcy, and the debtor's pre-petition wages qualify as "disposable earnings" under the statute, do the debts in this case "aris[e] from a consumer credit agreement"?

We note that the Utah Supreme Court may reformulate these questions if necessary. See In re W. Side Prop. Assocs., 13 P.3d 168, 170-71 (Utah 2000). CONCLUSION The Utah courts do not appear to have answered the questions before us. Since these questions control the resolution of this appeal, it is appropriate for them to be certified to the Utah Supreme Court.

In the interests of comity and federalism, the Utah Supreme Court should be permitted to answer these questions in the first instance if it should choose to do so. The Clerk of this court shall transmit a copy of this certification order to counsel for all parties.

The Clerk will also forward, under the Tenth Circuit's official seal, a copy of this certification order and the briefs and appendices filed in this court to the Utah Supreme Court. We appreciate the consideration of this request. This appeal is ordered STAYED *764pending consideration of the certified questions.. Section 1673 is titled "Restriction on garnishment." Subsection (a) provides that: Except as [otherwise] provided..., the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) 25 per centum of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage... whichever is less.

15 U.S.C. § 1673(a).. Section 70C-7-103 is titled "Definitions— Limitation on garnishment." Subsection (2) provides that: The maximum part of the aggregate disposable earnings of an individual for any pay period which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of: (a) 25% of his disposable earnings for that pay period; or (b) the amount by which his disposable earnings for that pay. period exceed 30 hours per week multiplied by the federal minimum hourly wage.

Utah Code Ann. § 70C-7-103(2).