

SUPREME COURT OF NEW JERSEY

First Resolution Investment Corp. v. Seker, 171 N.J. 502

795 A.2d 868 (2002) · Decided May 8, 2002

SUMMARY

The Supreme Court of New Jersey held that a creditor's proof of service was adequate when notice of a wage-execution application was sent by certified and regular mail to the debtor's last known address, even though the certified mail was returned marked "unclaimed." The Court overruled *Morristown Memorial Hospital v. Tureo* and adopted the more permissive approach of *Morristown Memorial Hospital v. Caldwell*. It also directed revisions to wage-execution notices to inform debtors of their continuing right to challenge the execution and related hearing rights.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Verniero; Chief Justice Poritz; Justice Stein; Justice Coleman; Justice Long; Justice LaVecchia; Justice Zazzali
JURISDICTION	New Jersey
DECIDED	May 8, 2002
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed the denial of its application for a post-judgment wage execution. The Supreme Court of New Jersey granted direct certification to resolve a conflict between Appellate Division decisions concerning proof of service by certified and ordinary mail.
STANDARD OF REVIEW	De novo interpretation of the New Jersey Rules of Court and review of the trial court's application of those rules.
PRECEDENTIAL VALUE	binding
PARTIES	First Resolution Investment Corporation v. Bilal Seker

TOPICS

- service of process
- civil procedure
- appellate procedure
- appellate jurisdiction
- consumer protection

PRACTICE AREAS

- civil procedure
- appellate procedure
- judgment enforcement
- consumer credit

QUESTIONS PRESENTED

1. Whether a creditor's proof of service for a post-judgment wage-execution application is adequate when certified mail is returned marked "unclaimed" but regular mail sent simultaneously to the debtor's last known address is not returned.
2. Whether due process requires a wage-execution notice to inform the debtor of the right to object after the execution is issued and to receive a hearing within seven days of an objection.
3. Whether revised wage-execution notice language should be required retroactively in the present case.

HOLDINGS

1. A creditor's proof of service is adequate under Rules 4:59-1(d), 1:5-2, and 1:5-3 when it certifies that notice was mailed by certified and ordinary mail to the debtor's last known address; the certification need not state the result of the certified mailing.
2. The existing wage-execution procedure and notice satisfy due process because the debtor receives reasonably calculated notice and an opportunity to object; the Constitution does not require the notice to include every available post-execution objection and hearing procedure.
3. Although not constitutionally required, wage-execution notices should inform debtors of their continuing right to object after issuance of the execution; the revised language applies only to notices arising from judgments entered after May 8, 2002.

KEY QUOTATIONS

"We conclude that the Caldwell court's construction is more in keeping with the policies that underlie the service rules than the construction advanced in Tureo." (171 N.J. at 875)

"The judgment of the trial court is reversed. Tureo is overruled." (171 N.J. at 876)

FACTUAL BACKGROUND

Seker owed First Resolution approximately \$3,000 on an unpaid credit-card balance. After Seker failed to answer or appear, the Special Civil Part entered a default judgment for \$5,206.30, plus costs and attorneys' fees. First Resolution later mailed notice of its wage-execution application by certified and regular mail to Seker's last known address; the certified mailing was returned marked "unclaimed," and the regular mailing was not returned. Seker did not object within the ten-day period or otherwise participate in the proceedings.

PROCEDURAL HISTORY

First Resolution obtained a default judgment against Seker for an unpaid credit-card balance. It later sought a wage execution after sending notice by certified and regular mail to Seker's last known address; the certified mailing was returned marked "unclaimed," while the regular mailing was not returned. The trial court denied the application under *Morristown Memorial Hospital v. Tureo*. The Supreme Court granted direct certification, reversed the trial court, overruled *Tureo*, and directed the Civil Practice Committee to review related notice and service rules.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Civil Practice Committee was directed to review the notice and service issues identified by the court and recommend appropriate rule changes. The trial court's denial of the wage-execution application was reversed; no further factual remand was required for the application.

CASES CITED

- *Morristown Mem'l Hosp. v. Tureo*, 329 N.J. Super. 154, 746 A.2d 1088 (App. Div. 2000), certif. denied, 165 N.J. 487, 758 A.2d 647 (2000)
- *Morristown Mem'l Hosp. v. Caldwell*, 340 N.J. Super. 562, 775 A.2d 34 (App. Div. 2001)
- *State v. Thomas*, 166 N.J. 560, 567, 767 A.2d 459 (2001)
- *State v. Butler*, 89 N.J. 220, 226, 445 A.2d 399 (1982)
- *State v. Vigilante*, 194 N.J. Super. 560, 563, 477 A.2d 429 (App. Div. 1983)
- *Douglas v. Harris*, 35 N.J. 270, 278, 173 A.2d 1 (1961)
- *Clymer v. Summit Bancorp.*, 171 N.J. 57, 66, 792 A.2d 396 (2002)
- *Aponte-Correa v. Allstate Ins. Co.*, 162 N.J. 318, 323, 744 A.2d 175 (2000)
- *Nat'l Waste Recycling, Inc. v. Middlesex County Improvement Auth.*, 150 N.J. 209, 223, 695 A.2d 1381 (1997)
- *State v. Szemple*, 135 N.J. 406, 422, 640 A.2d 817 (1994)
- *Town of Morristown v. Woman's Club of Morristown*, 124 N.J. 605, 610, 592 A.2d 216 (1991)
- *Township of Montville v. Block 69, Lot 10*, 74 N.J. 1, 8, 376 A.2d 909 (1977)
- *Mettinger v. Globe Slicing Mach. Co.*, 153 N.J. 371, 389, 709 A.2d 779 (1998)
- *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313-14, 319 (1950)
- *Feuchtbau v. Constantini*, 59 N.J. 167, 181, 280 A.2d 161 (1971)
- *McCahey v. L.P. Investors*, 774 F.2d 543, 549 (2d Cir. 1985)
- *Brown v. Liberty Loan Corp.*, 539 F.2d 1355, 1368 (5th Cir. 1976)
- *Lacey Mun. Utils. Auth. v. N.J. Dep't of Env'tl. Prot.*, 162 N.J. 30, 40, 738 A.2d 955 (1999)
- *In re Polk License Revocation*, 90 N.J. 550, 579, 449 A.2d 7 (1982)
- *Avant v. Clifford*, 67 N.J. 496, 526-27, 341 A.2d 629 (1975)
- *Community Realty Management v. Harris*, 155 N.J. 212, 240, 714 A.2d 282 (1998)
- *State v. Purnell*, 161 N.J. 44, 53-59, 735 A.2d 513 (1999)
- *Golden v. County of Union*, 163 N.J. 420, 435, 749 A.2d 842 (2000)

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