SUPREME COURT OF CONNECTICUT

Ralph Olszewski v. James F. Jordan III et al.

Olszewski · No. SC 19215 · Decided March 3, 2015

SUMMARY

The Connecticut Supreme Court considered whether attorneys may obtain equitable charging liens by operation of law against marital assets in a dissolution action. The court held that Connecticut precedent and public policy do not support such liens against preexisting marital assets, and concluded that the legislature is better suited to determine whether and how such liens should be authorized. The court reversed the Appellate Court's judgment.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Zarella, J.; Rogers, C. J.; Palmer, J.; Eveleigh, J.; McDonald, J.; Robinson, J.; Vertefeuille, J.
JURISDICTION	Connecticut
DECIDED	March 3, 2015
DOCKET	SC 19215
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed from the Appellate Court's reversal of a trial court judgment determining that the defendants had no superior interest in marital-account proceeds by virtue of an attorney charging lien or the dissolution judgment. The Supreme Court granted certification and reversed the Appellate Court.
STANDARD OF REVIEW	Plenary review applies to the legal question whether an attorney is entitled by operation of law to an equitable charging lien against marital assets.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; precedential.
PARTIES	Ralph Olszewski v. Carlo Forzani, Carlo Forzani, LLC

TOPICS

family law procedure · dissolution of marriage · equitable lien · remedies · equitable distribution

PRACTICE AREAS

family law remedies professional responsibility

QUESTIONS PRESENTED

1. Whether attorneys are entitled by operation of law to equitable charging liens against marital assets for fees and expenses incurred in obtaining judgments for clients in marital dissolution proceedings.
2. Whether Connecticut's Rules of Professional Conduct authorize or prohibit equitable charging liens in marital dissolution proceedings.
3. Whether the court should recognize such liens under Connecticut common law or leave the issue to the legislature.

HOLDINGS

1. Attorneys are not entitled by operation of law to equitable charging liens on marital assets for fees and expenses incurred in obtaining judgments for clients in Connecticut marital dissolution proceedings.
2. Rule 1.5 (d) (1) does not itself apply to or prohibit charging liens because a charging lien is security for fees and expenses rather than a fee, contingent or otherwise.
3. The legislature is better positioned than the courts to determine whether, and to what extent, charging liens should be permitted in marital dissolution proceedings.

KEY QUOTATIONS

> *“Accordingly, we conclude that attorneys are not entitled by operation of law to equitable charging liens on marital assets for fees and expenses incurred in obtaining judgments for their clients in marital dissolution proceedings in Connecticut.”*

> *“Rather, we conclude that whether, and to what extent, charging liens should be permitted in marital dissolution actions are questions that the legislature is in a far better position to resolve than the courts.”*

FACTUAL BACKGROUND

In August 2009, a dissolution court dissolved James Jordan's marriage to Diana Jordan and ordered that 50 percent of the defendants' fees be paid from a jointly owned Northwestern Mutual account, with the remaining balance divided equally between the spouses. While an appeal from the dissolution judgment was pending, Ralph Olszewski, Diana Jordan's father, obtained a prejudgment attachment and later a $128,135.04 judgment against James Jordan on a promissory note. The defendants claimed that their charging lien arising from the dissolution judgment had priority over Olszewski's claim to the account.

PROCEDURAL HISTORY

A dissolution court ordered that a portion of a jointly owned account be used to pay the defendants' attorney fees and divided the remaining balance between the spouses. While an appeal from the dissolution judgment was pending, the plaintiff obtained a prejudgment attachment and later a money judgment against James Jordan on a promissory note. In proceedings under General Statutes § 52-356c to determine competing interests in the account, the trial court rejected the defendants' claimed charging lien and priority. The Appellate Court reversed and remanded for consideration of whether the fee agreement contemplated a lien on the account. The Supreme Court reversed the Appellate Court and directed it to affirm the trial court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Appellate Court with direction to affirm the trial court's judgment.

CASES CITED

- D'Urso v. Lyons, 97 Conn. App. 253, 903 A.2d 697
- Marsh, Day & Calhoun v. Solomon, 204 Conn. 639, 529 A.2d 702 (1987)
- Gager v. Watson, 11 Conn. 168 (1836)
- Andrews v. Morse, 12 Conn. 444 (1838)
- Cooke v. Thresher, 51 Conn. 105 (1883)
- DeWandelaer v. Sawdey, 78 Conn. 654, 63 A. 446 (1906)
- Perlmutter v. Johnson, 6 Conn. App. 292, 505 A.2d 13
- Benjamin v. Benjamin, 17 Conn. 110 (1845)
- Rumrill v. Huntington, 5 Day (Conn.) 163 (1811)
- Misthopoulos v. Misthopoulos, 297 Conn. 358, 999 A.2d 721 (2010)
- Tuckman v. Tuckman, 308 Conn. 194, 61 A.3d 449 (2013)
- Gil v. Gil, 110 Conn. App. 798, 956 A.2d 593 (2008)
- Sherman v. Ronco, 294 Conn. 548, 985 A.2d 1042 (2010)
- Olszewski v. Jordan, 144 Conn. App. 144, 71 A.3d 1276 (2013)