

2979

JUDGMENT — PERSONAL EARNINGS OF DEBTOR, OTHERWISE EXEMPT—LIABLE FOR ACTUAL COSTS OF PROCEEDINGS BROUGHT TO RECOVER JUDGMENT FOR WORK, LABOR AND NECESSARIES—PROCEEDINGS TO SATISFY JUDGMENT—SUM NOT TO EXCEED TWO DOLLARS AND FIFTY CENTS FOR EACH SUIT, GARNISHMENT OR PROCEEDING—AID OF EXECUTION BROUGHT TO ENFORCE PAYMENT OF JUDGMENT—OAG 3905, PAGE 557, 1926, 2168, PAGE 1239, 1930; 6470, PAGE 607, 1943 OVERRULED.

SYLLABUS:

Under the provisions of Section 10271, General Code, the personal earnings of a debtor, otherwise exempt, are liable for the actual costs of any proceedings brought to recover a judgment for work and labor or necessities and for any proceedings to satisfy such judgment, in a sum not to exceed two dollars and fifty cents for each suit garnishment or proceeding in aid of execution brought to enforce payment of such judgment. Opinions No. 3905, page 557, for 1926, No. 2168, page 1239, for 1930, and No. 6470, page 607, for 1943 overruled.

Columbus, Ohio, August 27, 1953

Hon. Danny D. Johnson, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir :

This will acknowledge receipt of your letter in which you request an interpretation of Section 10271, General Code, and specifically ask whether this section sets the maximum amount that can be taxed as costs in a proceeding to recover and satisfy a judgment from the personal earnings of a debtor based on a claim for work and labor, or necessities.

Section 11721, General Code, provides in part :

“Every unmarried person resident of the state may hold property exempt from execution, attachment, or sale, to satisfy a judgment or order as follows : * * *

“3. Personal earnings of the debtor for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject such earnings to the payment of a debt, damage, fine or amercement, in an amount up to but not in excess of thirty dollars.”

Regarding heads of families, Section 11725, General Code, provides in part :

“Every person who is the chief support of a family, or who is a person paying alimony, maintenance, or other allowances for the support of a divorced or separated spouse, or for the support of a minor child or children, or is the chief support of any dependent person, and every widow, may hold property exempt from execution, attachment or sale. for debt, damage, fine or amercement, as follows : * * *

“6. Eighty per cent of the first two hundred dollars and sixty per cent of the balance of the personal earnings of the debtor for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order under which the attempt may be made to subject such earnings to the payment of a debt, damage, fine or amercement, but in no event shall the amount of such personal earnings exempt be less than sixty dollars.”

Section 10271, General Code, provides :

“The personal earnings exempted by law shall be liable to

the plaintiff for the actual costs of any proceedings brought to recover a judgment for work and labor, or necessities, *and for any proceedings to satisfy said judgment* in any sum not to exceed two dollars and the necessary garnishee fee *for each suit, attachment, aid of execution or other proceedings*. Such garnishee may pay to such debtor an amount equal to the personal earnings of such debtor exempted by law, less the sum of two dollars and the necessary garnishee fee not to exceed fifty cents, if the same is demanded by the garnishee, for actual costs as herein provided, due at the time of the service of process or which may become due thereafter and before trial and be released from any further liability to such creditor, or to the court or any officers thereof, in such proceeding, or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in said original action. *Both the debtor and the creditor shall likewise be released from any further liability to the court or any officers thereof in such proceedings or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in said original action.* However, the exemption of thirty dollars or less provided for in section 11721 of the General Code of Ohio and the minimum exemption of sixty dollars or less provided for in section 11725 of the General Code of Ohio shall not be subject to the payment of costs of any proceedings brought to recover a judgment for a debt nor for any proceedings to satisfy said judgment.” (Emphasis added.)

In the enactment of the General Code in 1910, former Section 6501 of the Revised Statutes became Section 10271, General Code, reading as follows:

“The personal earnings now exempted by law, in addition to the ten per cent for necessities, shall be further liable to the plaintiff for the actual costs of any proceedings brought to recover them in any sum not over four dollars. Such garnishee may pay to such debtor an amount equal to ninety per cent of such personal earnings, less the sum of four dollars for actual costs as herein provided, due at the time of the service of process or which may become due thereafter and before trial, and be released from any liability to such creditor. R. S. Section 6501.”

In the year 1913, 103 O. L. 567, this section was amended so as to decrease the amount of costs which might be held from otherwise exempted earnings of the debtor to \$2.00 plus a garnishee fee of not to exceed fifty cents. This amendment also added at the end of the section the following language:

“* * * or to the court or any officer thereof, in such proceeding, or in any subsequent proceeding brought for the purpose of en-

forcing the balance of the costs in said original action. Both the debtor and the creditor shall likewise be released from any further liability to the court or any officer thereof in such proceeding or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in the original action."

In 1933, 115 O. L. 431, this language was further supplemented by the addition of the last sentence now contained in Section 10271 General Code, providing that the exemption of thirty dollars to an unmarried debtor and sixty dollars to a married debtor should not be subject to the payment of costs of any proceeding to collect a debt whether brought to recover a judgment or to satisfy said judgment.

Said Section 10271 was the subject of consideration in Opinion 3905, Opinions of the Attorney General for 1926, page 557. It was there held as shown by the syllabus :

"Under the amended garnishee law \$2.50 is the maximum amount that may be charged for costs, including the garnishee fee, in any proceeding to garnishee wages irrespective of the incidental actions instituted to enforce the judgment."

In the course of this opinion the then Attorney General in analyzing the original law in comparison with its form after the 1913 amendment, said :

"In analyzing the two provisions there is no doubt in my mind but that \$2.00 is the maximum amount that may be charged for costs in such a case, whether it be in connection with securing judgment alone, or whether there is in connection with the same, other proceedings to satisfy said judgment.

"In view of the language used, there seems to be some ground for argument that probably a garnishee fee might be charged for each suit, attachment, aid of execution or other proceeding. In other words, in the first sentence of the amended law it is arguable that the garnishee might be entitled to his fee in issuing the original service, and further, collect his fee in the proceeding in aid of execution, etc. However, it is not believed that this is the real intent of the law. While the law has been amended so as to impose greater burdens upon the wage earner, *it is not believed that the language used justifies the conclusion that any additional costs are to be imposed other than the maximum of \$2.50 in any case, irrespective of the incidental proceedings that may be necessary in order to collect or enforce the judgment.*"

(Emphasis added.)

In Opinion #2168, Opinions of the Attorney General for 1930, page 1239, this same section was again considered, and it was held :

“The sum of \$2.50 for costs and garnishee fee is the maximum amount that may be taxed as costs in any proceeding to recover and enforce a judgment from the personal earnings of a debtor, based upon a claim for work and labor or necessities.”

The opinion quoted, with approval, the syllabus and the above extract from the 1926 opinion.

Again, in Opinion 6470, Opinions of the Attorney General for 1943, Section 10271 was under consideration, and it was held :

“By reason of the provisions of Section 10271 of the General Code when the personal earnings of a judgment debtor have been garnisheed or attached and there has been withheld by the judgment debtor’s employer, for the payment of the judgment, the portion of such wages not exempt from execution or attachment under authority of Sections 11721 and 11725 of the General Code, plus the sum of Two Dollars and not to exceed fifty cents for garnishee fee, *neither the creditor nor the debtor is further liable for the court costs in the action*, even though such excess costs include costs paid to a printer under authority of Section 1697 of the General Code which have been taxed as costs in such action.” (Emphasis added.)

The two previous opinions above referred to, were discussed and approved. Tracing the history of the legislation and referring particularly to the amendment of 1913, which I have set out, the then Attorney General said :

“From the history of such Section 10271 it would appear that the original purpose of the section was to permit the garnishee to pay over to the debtor all of his wages other than that portion which was subject to the satisfaction of the judgment and costs, without liability to the creditor for so doing. The amendment in 103 O. L. 567, not only released the garnishee from liability to the judgment creditor, but to the court as well for all costs then due or subsequently accruing in the original action or in any other action brought to enforce payment of costs. Such amendment further provides that when a garnishee has so withheld the sum of Two Dollars and the garnishee fee from the exempted earnings of the debtor employe *neither the debtor employe nor the creditor shall be further liable for the costs due in such original action.*” (Emphasis added.)

The above opinions are quite convincing, and would appear clearly to establish the proposition that the sum of two dollars and fifty cents by way of costs and garnishee fee is the maximum and entire deduction which a debtor employe could suffer by way of court costs in a suit by a creditor, no matter how many supplementary proceedings were required to obtain full satisfaction of the judgment.

However, it appears to me that in each case the writers of those opinions overlooked another radical change that had been made in the language of Section 10271, in 1925. After its amendment in 1913, to which reference has been made, 103 O. L. 567, the section was again amended in 1925, 111 O. L. 385. Prior to this amendment, the first sentence of the section read as follows:

“The personal earnings now exempted by law, in addition to the ten per cent for necessities, shall be further liable to the plaintiff *for the actual cost of any proceeding brought to recover a judgment* of such necessities, in any sum not to exceed two dollars and the necessary garnishee fee. * * *”

As amended, it was made to read as follows:

“The personal earnings now exempted by law, in addition to the *twenty* per cent for work and labor, or necessities, shall be further liable to the plaintiff for the actual costs of any proceedings brought to recover a judgment for such work and labor, or necessities, *and for any proceedings to satisfy said judgment* in any sum not to exceed two dollars and the necessary garnishee fee *for each suit, attachment, aid of execution or other proceeding.* * * *”
(Emphasis added.)

In its present form the sentence just quoted from Section 10271 has undergone slight changes in reading, but its meaning does not appear to have been altered with respect to the matter here under consideration. The first sentence of that section now reads:

“The personal earnings exempted by law shall be liable to the plaintiff for the actual costs of any proceedings brought to recover a judgment for work and labor, or necessities, *and for any proceedings to satisfy said judgment* in any sum not to exceed two dollars and the necessary garnishee fee *for each suit, attachment, aid of execution or other proceeding.* * * *”
(Emphasis added.)

Here, it is to be noted that in the old law provision was made only for the "actual cost of any proceeding brought to recover judgment," in the amendment there was added, "and for any proceedings to satisfy such judgment," and there was further added the words, "for each suit, attachment, aid of execution or other proceeding."

It appears to follow that as the law read in the 1913 form, only one payment of \$2.50 was contemplated or allowed; whereas, according to the 1925 amendment and the present reading, costs amounting to \$2.50 are to be paid by the garnishee, "for each suit, attachment, aid of execution or other proceeding;" and to the extent of such amounts, the personal earnings of a debtor, otherwise exempt, become liable.

Accordingly, I find it impossible to follow the opinions aforesaid, and must overrule them. It is therefore my opinion and you are advised that under the provisions of Section 10271, General Code, the personal earnings of a debtor, otherwise exempt, are liable for the actual costs of any proceedings brought to recover a judgment for work and labor or necessities and for any proceedings to satisfy such judgment, in a sum not to exceed two dollars and fifty cents for each suit, garnishment or proceeding in aid of execution brought to enforce payment of such judgment. Opinions No. 3905, page 557, for 1926, No. 2168, page 1239, for 1930, and No. 6470, page 607, for 1943, overruled.

Respectfully,

C. WILLIAM O'NEILL
Attorney General