Case Western Reserve Law Review

Volume 12 | Issue 3

1961

Social Security and Public Welfare

Edwin R. Teple

If in fact the defendant was *not* the owner of the automobile, this case appears to be in conflict with *Modern Finance Company v. Reynolds*,[27] a case decided by the same court of appeals, which was reported in last year's survey.[28] The *Reynolds* case held that the statutory ten-day notice need *not* be given the co-maker of a note who is not the mortgagor of the personal property to be subjected to seizure and sale, even though such a co-maker would be subject to civil action for the collection of any deficiency which might result if the proceeds recovered upon the sale of the mortgaged property did not satisfy the amount due upon the note.[29]

In view of these conflicting decisions, ordinary prudence would dictate that the statutory ten-day notice be given to both the co-maker of a note and the mortgagor of the personal property in order that the mortgagee's right to a deficiency judgment against the co-maker may be properly protected.

SHELDON I. BERNS

SOCIAL SECURITY AND PUBLIC WELFARE

A question arose this past year concerning the lien of the Ohio Division of Aid for the Aged for assistance payments made to a decedent. Proceedings were brought by the executrix for the sale of real property, and the Division, by answer and cross petition, set up its lien against the estate. The probate court ruled that the statutory exemption of the surviving spouse and the widow's allowance were superior to this lien. On appeal it was held that the Division's lien provided for under the statute took priority over any other lien subsequently acquired or recorded, except tax liens, and was therefore superior to the claim of the surviving spouse for property exempt from administration and the year's allowance for support.[1]

In two cases involving the right to benefits under the Ohio Unemployment Compensation Law, the position of the claimant was upheld. Both decisions reflect a refreshing point of view, quite in keeping with the purpose of the statute and the liberal construction directed by section 4141.46, of the Revised Code, but too often overlooked.

In *Dahman v. Commercial Shearing and Stamping Company*[2] it was

27. 108 Ohio App. 535, 161 N.E.2d 240 (1958).

28. Berns, *Sales, Survey of Ohio Law — 1959*, 11 WEST. RES. L. REV. 420 (1960).

29. The contradiction in the two decisions might be explained by reason of the fact that the *Stolzenburg* case was heard by a foreign bench sitting in the Tenth Judicial District by designation.

held that an employee who was ineligible for vacation pay under the terms of the collective bargaining agreement between the employer and the union, during the period of a two week vacation shutdown, was unemployed and eligible for a waiting period and one week of benefits. The court did not agree that the claimant had either bargained away or waived his right to benefits under the state act, taking issue with authorities to the contrary and reversing the decision of the Board of Review denying benefits.

In *Chester v. Board of Review*[3] the employee's wages were garnisheed on the basis of a cognovit judgment, the cognovit note having been procured by fraud and then discounted to an innocent holder. The employee advised her employer of the manner in which the note was obtained, but she was discharged nevertheless, and her subsequent claim for unemployment benefits was disallowed on the basis that her discharge had been for "just cause." The Board of Review determined that the illegality of the note upon which the judgment was based and the garnishments issued, was immaterial, the garnishment of the wages of an employee being "just cause" for discharge in any event. The court, however, expressed the view that no person should be penalized by false accusation or by an invalid or wrongful attachment of wages, and that in the absence of any deliberate violation of an employer rule, or a wilful disregard of the employer's interest, the discharge could not be considered for "just cause." The claim for benefits, it was held, should have been allowed.

The old pitfall of failing to request a rehearing by the Board of Review before appealing to the court arose again in *Hall v. Tichenour.*[4] In that case, the court held that an attempted appeal from the original decision of the Board of Review was unauthorized and a nullity.[5]

In *Smith v. Bureau of Unemployment Compensation*[6] the claimant simply failed to file her notice of intent to appeal and her request for rehearing within the ten-day period allowed by the statute. The court held, in accordance with earlier decisions, that this time limit was jurisdictional.

The confusion which often arises concerning the true nature of an employee's separation from his job is well illustrated in the per curiam opinion in *Conner v. Board of Review.*[7] Initially the administrator ruled

1. Division of Aid for the Aged v. Huff, 168 N.E.2d 316 (Ohio Ct. App. 1960).

2. 170 N.E.2d 302 (Ohio C.P. 1960).

3. 164 N.E.2d 460 (Ohio C.P. 1959).

4. 170 N.E.2d 72 (Ohio Ct. App. 1960). See also discussion in *Administrative Law and Procedure* section, p. 448 *supra.*

5. For a discussion of other decisions on this point, in cases arising prior to the amendment removing the rehearing requirement, see Teple, *Labor Law, Survey of Ohio Law — 1959,* 11 WEST. RES. L. REV. 420, 425-26 (1960).

6. 164 N.E.2d 599 (Ohio C.P. 1959).

7. 168 N.E.2d 591 (Ohio Ct. App. 1960). See also discussion in *Administrative Law and Procedure* section, p. 448 *supra.*