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regulations.³⁸ Following *Frontiero v. Richardson*³⁹ it appeared that the Court was on the verge of recognizing sex based classifications as being inherently suspect and subject to strict judicial scrutiny. In *La Fleur*, the Court failed to meet the real issue of sex discrimination head on. Whether or not *La Fleur* indicates a withdrawal from Equal Protection as applied to sex discrimination is a question yet to be answered.⁴⁰

RICHARD A. CLAPP

STATES—FEDERAL LAW AS SUPERSEDING STATE LEGISLATION—NORTH DAKOTA GARNISHMENT AND EXECUTION OF JUDGMENT STATUTES ARE PRE-EMPTED INsofar AS THEY FRUSTRATE THE CONSUMER CREDIT PROTECTION ACT.

The United States Secretary of Labor alleged that two practices employed in Grand Forks County in aid of execution and garnishment, pursuant to the North Dakota Century Code, violated provisions of the Consumer Credit Protection Act (CCPA).¹ The first allowed a garnishee-employer to pay the entire wages of a debtor-employee to the clerk of court or sheriff pending a judicial determination; the second permitted the sheriff to levy judgment on the debtor's earnings which were in payroll check form but undistributed by the debtors' employer. The United States District Court, District of North Dakota, held these practices circumvented the purposes of the CCPA. The Act therefore pre-empted the offending Code provisions² to the extent necessary to assure compliance. The Clerk of Court for the First Judicial District of North

38. Justice Powell in his concurring opinion would have applied an Equal Protection analysis to the challenged rules. He did not reach the question whether strict judicial scrutiny should be applied. 94 S. Ct. at 802-04 (Powell, J., concurring).

The federal appellate decisions dealing with mandatory maternity leave rules were all based upon an Equal Protection analysis. See *Green v. Waterford Board of Education*, 473 F.2d 629 (2nd Cir. 1973); *Buckly v. Coyle Public School System*, 476 F.2d 92 (10th Cir. 1973); *Schattman v. Texas Employment Commission*, 459 F.2d 32 (5th Cir. 1972), cert. denied, 409 U.S. 1107 (1973).

39. 411 U.S. 677 (1973). In *Frontiero* a plurality of the Court found sex based classifications to be inherently suspect and subject to strict judicial scrutiny. *Id.*

40. For additional discussion of maternity leave see Comment, *Mandatory Maternity Leave of Absence Policies—An Equal Protection Analysis*, 45 TEMPLE L.Q. 240 (1972); See also, Comment, *Love's Labor Lost: New Conceptions of Maternity Leaves*, 7 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 260 (1972).

1. Consumer Credit Protection Act, 82 Stat. 146 (1968), 15 U.S.C. § 1671 (1970). This discussion deals exclusively with Title III—Restriction on Garnishment, 82 Stat. 146, 162 (1968), 15 U.S.C. § 1671-77 (1970) hereinafter referred to as CCPA, or the Act.

2. N.D. CENT. CODE §§ 28-21-08, 32-09-17 (1960).

Dakota and the Sheriff of Grand Forks County were permanently enjoined from participating in any process which would deprive an individual of the benefits and protection of the CCPA. *Hodgson v. Christopher*, 365 F. Supp. 583 (D.N.D. 1973).

The CCPA was enacted by Congress in 1968, after seven years of hearings,³ to safeguard the consumer in the utilization of credit.⁴ Subchapter II of the Act, which went into effect on July 1, 1970, places specific restrictions upon garnishment. It states:

[T]he 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 prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time earnings are payable,

which ever is less.⁵

It further provides that, "[N]o court of the United States or any State may make, execute, or enforce any order or process in violation of this section."⁶ Three exceptions,⁷ not pertinent to the issues of this case, were provided and employers were forbidden from discharging an employee because his wages had been subjected to garnishment for one debt.⁸ The responsibility for enforcement was placed on the Secretary of Labor.⁹

This was remedial legislation intended to protect the wage earner and assure his receiving a minimum amount of wages each payday on which to live.¹⁰ Congressional investigation had disclosed that unrestricted garnishment encouraged the predatory extension of credit and frequently culminated in the loss of employment or bank-

3. 2 U.S. CODE CONG. & AD. NEWS 1962, 1964 (1968).

4. *Id.* at 1962.

5. 15 U.S.C. § 1673(a) (1970).

6. *Id.* § 1673(c).

7. The restrictions are not applicable to:

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

(3) any debt due for any State or Federal Tax.

Id. § 1673(b).

8. *Id.* § 1674.

9. *Id.* § 1676. It was held in *Oldham v. Oldham*, 337 F. Supp. 1039 (N.D. Iowa 1972), that no private civil remedy existed in view of the chapter's silence in this respect, while the other two subchapters of the Act specifically provided for limited civil actions. *Accord*, *Simpson v. Sperry Rand Corp.*, 350 F. Supp. 1057 (W.D. La. 1972).

10. Reply brief for Plaintiff at 2, *Hodgson v. Christopher*, 365 F. Supp. 583 (D.N.D. 1973).

ruptcy on the part of the debtor.¹¹ The garnishment restrictions in the Act are predicated on the power of Congress to regulate commerce and establish uniform bankruptcy laws.¹² Their constitutionality has been tested and upheld in *Hodgson v. Hamilton Municipal Court*.¹³

The CCPA was not intended to establish sole federal control over the field of garnishment law. The Act allows, and seems to encourage, the states to retain control over this area by enacting more limited garnishment laws or prohibiting it altogether.¹⁴

In an effort to comply with the federal mandate, North Dakota's garnishment laws were updated at the Forty-second Legislative Session.¹⁵ Previously, section 32-09-02 of the North Dakota Century Code provided for a thirty-five dollar per week exemption from garnishment of wages for a state resident who was the head of a family. Its replacement mirrored the federal restrictions except that "garnishment" was not defined and the minimum exemption was increased from thirty to forty times the current minimum wage.¹⁶

In *Hodgson v. Christopher*¹⁷ the defendants admitted the alleged practices were employed in Grand Forks County but maintained they were contrary to neither the Century Code nor the CCPA. Defendants contended that garnishment and execution of judgment are two separate and distinct procedures, with the aforementioned CCPA and Code restrictions applicable only against garnishment.¹⁸ They pointed out that executions are not specifically mentioned in the statutory restrictions,¹⁹ that garnishment and execution have

11. 15 U.S.C. § 1671(a) (1970). Congressional hearings leading to the CCPA disclosed that in Texas and Pennsylvania, which prohibit garnishment, the nonbusiness bankruptcies numbered 5 and 9 per year respectively for every 100,000 in population, while in states having harsh garnishment laws the frequency jumped to 200 or 300 per 100,000. 2 U.S. CODE CONG. & AD. NEWS 1962, 1978 (1968).

12. 15 U.S.C. § 1671(b) (1970).

13. *Hodgson v. Hamilton Municipal Court*, 349 F. Supp. 1125 (S.D. Ohio 1972). The court found Congress had a rational basis for finding the legislation "necessary and proper" and therefore the Act was constitutional in accordance with the test espoused in *Katzenbach v. McClung*, 379 U.S. 294, 303-04 (1964). *Accord*, *Hodgson v. Cleveland Municipal Court*, 326 F. Supp. 419 (N.D. Ohio 1971).

14. See 15 U.S.C. § 1677 (1970). In addition, the Secretary of Labor may exempt any state whose garnishment restrictions are substantially similar to those of the CCPA. *Id.* § 1675. "Substantially similar" has been interpreted to mean those statutes which provide equal or greater protection for the debtor in every instance. 2 CCH LAB. L. REP. para. 30, at 894 (1973).

15. The initial bill, closely resembling the federal statute, was introduced on January 22, 1971, by Representatives Myron Atkinson, Jr. and Edward Metzger. However, it was amended in the Senate to increase the exemption from 30 to 40 times the current minimum wage and provide a two day notice requirement prior to the issuance of any garnishment summons. Final passage came on March 29, 1971, and the provisions were codified in *North Dakota Century Code* §§ 32-09-02 and 32-09-03.

16. See N.D. CENT. CODE § 32-09-02 (Supp. 1973).

17. *Hodgson v. Christopher*, 365 F. Supp. 583 (D.N.D. 1973).

18. *Id.* at 585.

19. See 15 U.S.C. §§ 1671-77 (1970); N.D. CENT. CODE § 32-09-02 (Supp. 1973).

traditionally different connotations,²⁰ and that each are dealt with in completely different titles of the North Dakota Century Code.²¹ Defendants maintained that the 1971 amendment to Section 32-09-02 of the Code brought the state statutes into compliance with the CCPA. They argued that Congress did not intend the restrictions to apply in execution of judgment and therefore those provisions in Chapter 28-21 of the Code were unaffected.²²

The court, by following such an interpretation, could have rendered the garnishment restrictions nearly a dead letter since "[p]re-judgment wage attachments are . . . for all practical purposes 'constitutionally defunct' under *Sniadach v. Family Finance Corporation of Bayview*, 395 U.S. 337 (1969)."²³ Instead it found defendants' argument unpersuasive. The court noted that a review of the Congressional findings and legislative history leading to passage of the CCPA,²⁴ "[c]learly demonstrates that Congress intended to maximize the protection available to the debtor."²⁵ Also lending support to a broader application are the Act's definition provisions, which state: "the term 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."²⁶ The court concluded that section 28-21-08 of the Code, although separate from the garnishment statutes, was the type of procedure Congress was seeking to remedy and was therefore preempted to the extent that it frustrated the CCPA.²⁷ This issue had previously been argued in *Hodgson v. Hamilton Municipal Court*²⁸ with the court in that instance reaching a similar conclusion. It held that whatever definition was given to "garnishment" for other purposes, the CCPA clearly applies to proceedings in aid of execution as well as attachment.²⁹

20. Brief for defendants at 3, *Hodgson v. Christopher*, 365 F. Supp. 583 (D.N.D. 1973) noted:

"Execution is defined as putting the sentence of the law in force; the act of carrying into effect the final judgment or decree of a court. And the issuance of a writ of garnishment by a judgment creditor is not equivalent to an execution, so as to prevent the judgment being barred by limitations. Garnishment is in the nature of pleading and not a final process to enforce collection of a judgment. Indeed, without a further judgment an [sic] execution in the garnishment suit, it avails nothing in the collection of the original judgment. *Shields v. Stark*, Texas 51, [sic] *Southeastern* 540." Words and Phrases, Vol. 15A, page 270.

21. Garnishment is covered under Chapter 9 of Title 32—Judicial Remedies, while execution of judgment is covered under Chapter 21 of Title 28—Judicial Procedure, Civl.

22. Brief for defendants at 2, *Hodgson v. Christopher*, 365 F. Supp. 583 (D.N.D. 1973).

23. *Hodgson v. Hamilton Municipal Court*, 349 F. Supp. 1125, 1140 (S.D. Ohio 1972).

24. See 2 U.S. CODE CONG. & AD. NEWS 1962 (1968).

25. *Hodgson v. Christopher*, 365 F. Supp. 583, 586 (D.N.D. 1973).

26. 15 U.S.C. § 1672(c) (1970).

27. *Hodgson v. Christopher*, 365 F. Supp. 583, 586 (D.N.D. 1973). It is a well established and fundamental doctrine that laws enacted by Congress, pursuant to power delegated under the Constitution, are the Supreme Law of the Land and any state laws inconsistent therewith are to that extent invalid. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 315 (1819).

28. *Hodgson v. Hamilton Municipal Court*, 349 F. Supp. 1125 (S.D. Ohio 1972).

29. *Id.* at 1139.

Defendants further contended, in *Hodgson v. Christopher*, that a debtor's wages once converted into paycheck form lost their identity as "earnings" and became personal property subject to levy. The court rejected this technical distinction and found that any difference, for purposes of the CCPA, was in form only. To have held otherwise would have allowed sheriffs to completely avoid all garnishment restrictions by merely waiting until the employer typed up the payroll checks or put the cash into pay envelopes before making the levy.³⁰ Such a holding would have been illogical and clearly contrary to the broad definition given "earnings" in both the Code and CCPA.³¹

The final ambiguity in the North Dakota statutes which the Secretary of Labor sought to clarify and correct concerned section 32-09-17.³² Under this section, an employer-garnishee could turn an employee's entire wages over to the sheriff or clerk of court without regard to any exemptions. Apparently not until after a court determination would the employee receive that portion of the wages which were exempt under section 32-09-02 of the Code.³³ This would deprive the wage earner of his entire income for an indefinite period just when he and his family probably needed it the most. The court held this in effect frustrated the Congressional purpose and therefore section 32-09-17 was pre-empted to the extent it allowed excessive surrender of a debtor's wages.³⁴

The decision in the principle case is of fundamental importance to every person who may come in contact with the garnishment process. It means that each wage earner in North Dakota is automatically entitled to take home at least sixty-four dollars³⁵ every week³⁶ regardless of any garnishment or execution of judgment

30. *Hodgson v. Christopher*, 365 F. Supp. 583, 587 (D.N.D. 1973).

31. 15 U.S.C. § 1672(a) (1970); N.D. CENT. CODE § 32-09-02 (Supp. 1973).

32. N.D. CENT. CODE § 32-09-17 (1960). It provides:

In case the answer of the garnishee shall show indebtedness to the defendant, he may pay the amount thereof to the officer having a warrant of attachment in the action, if any, or otherwise to the clerk of the court, or, if the garnishment is in aid of an execution, to the sheriff having the execution, and the officer to whom such payment is made shall give him a receipt specifying the facts, and such receipt shall be a complete discharge of all liability to any party for the amount so paid. If the answer discloses any money, credits, or other property, real or personal, in the possession or under the control of the garnishee, the officer having a writ of attachment or an execution, if any, may levy upon the interest of the defendant in the same; otherwise the garnishee shall hold the same until the order of the court thereon.

33. *Hodgson v. Christopher*, 365 F. Supp. 583, 584-85 (D.N.D. 1973).

34. *Id.* at 586.

35. 40 hours times \$1.60 per hour, the current minimum wage, is \$64. Under N.D. CENT. CODE § 32-09-02, this amount of a wage earner's weekly salary is not garnishable in any amount. If, after legally required deductions, the wage earner has more than this amount coming, it is garnishable at the rate of 25% or the amount it exceeds \$64, whichever is less.

36. For pay periods other than a week the Secretary of Labor has prescribed a "multiple" which has an equivalent effect. 29 C.F.R. § 870.10 (1973). Since North Dakota has adopted stricter restrictions, the figure 40 must be substituted for the 30 used in all federal formulas.

procedures pending against him. Coming in the wake of the Supreme Court's newly established constitutional guarantees in garnishment proceedings,³⁷ the decision emphasizes the growing judicial concern for the consumer and expands the protective blanket which has been placed around him. Such a policy seems justified since garnishment in recent years has become a sword of the creditor, used against the poor and ignorant, rather than the shield it was intended to be.³⁸ In addition to saving many debtors from bankruptcy,³⁹ the recent statutory reforms and court decisions should force those who rely on the remedy to be more prudent in their extensions of credit.⁴⁰

STEVE SHERMOEN

37. See *Sniadach v. Family Finance Corporation of Bayview*, 395 U.S. 337 (1969); cf. *Fuentes v. Shevin*, 407 U.S. 67 (1972).

38. Comment, *Wage Garnishment in New Mexico—Existing Debtor Protections Under Federal and State Law and Further Proposals*, 1 N.M.L. Rev. 388, 399 (1971).

39. See Shuchman & Jantscher, *Effects of the Federal Minimum Exemption from Wage Garnishment on Nonbusiness Bankruptcy Rates*, 77 Com. L.J. 360 (1972).

40. Comment, *Wage Garnishment in New Mexico—Existing Debtor Protections Under Federal and State Law and Further Proposals*, 1 N.M.L. Rev. 388, 398-400 (1971).

