HOOKS v. HOOKS

13 Kan. App. 2d 105 (1988) | Cited 0 times | Court of Appeals of Kansas | October 21, 1988

Estella Hooks Watson appeals from an order of the trial courtlimiting execution on a valid judgment for child supportarrearages for as long as the judgment debtor continues to makeweekly payments on the judgment. We hold that the trial court didnot have the power to limit execution on the judgment andreverse.

Estella Hooks Watson (petitioner) and Victor Hooks (respondent)were divorced in 1975. In 1979, respondent stopped paying hismonthly child support installments. Thereafter, each unpaidinstallment became a final judgment against him on the date itwas due. Riney v. Riney, 205 Kan. 671, 674, 473 P.2d 77 (1970).In spring 1987, petitioner filed motions to revive thosejudgments that had become dormant and to determine the totalamount of the arrearage. After reviving the dormant judgments,the trial court determined that the total amount of the arrearagewas $6,000 and granted petitioner judgment for that amount.Neither party appealed this order.

In January 1988, petitioner attempted to collect part of her$6,000 judgment by garnishing respondent's employer, bank, andcredit union. On respondent's motion, the trial court

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quashed the credit union garnishment on the authority of SupremeCourt Rule 185 (1987 Kan. Ct. R. Annot. 100), which provides thatno more than two garnishments may be issued on the same claimwithin a 30-day period. Petitioner appealed on the grounds thatRule 185 applies only in judicial districts that have chosen toadopt it and that the 29th Judicial District has not adopted it.Because the funds subject to the garnishment have been released,this issue is now moot. Burnett v. Doyen, 220 Kan. 400, Syl. ¶1, 552 P.2d 928 (1976).

The trial court did more, however, than just quash thegarnishment. It ordered a stay of execution for as long asrespondent continued to make payments of $40 per week on thejudgment, stating that this had been its intention when it firstentered judgment for petitioner. Respondent contends that thisorder was a valid nunc pro tunc order. However, we need notaddress respondent's contention because the trial court had nopower to limit execution in the first instance.

A district court may modify an order of child support whenevercircumstances make such a change proper, "but the modificationoperates prospectively only." Brady v. Brady, 225 Kan. 485,488, 592 P.2d 865 (1979). Once an installment is due, the rightof modification ceases and no latitude is left for discretion.Davis v. Davis, 148 Kan. 211, 213, 81 P.2d 55 (1938). Theunpaid installment becomes a final

judgment which may becollected and enforced in the same manner as any other finaljudgment. Dallas v. Dallas, 236 Kan. 92, 93, 689 P.2d 1184(1984); Fangrow v. Fangrow, 185 Kan. 227, 229-30, 341 P.2d 998(1959). Like any other final judgment, it may be enforced byexecution. Haynes v. Haynes, 168 Kan. 219, 224, 212 P.2d 312(1949); Sharp v. Sharp, 154 Kan. 175, 177, 117 P.2d 561 (1941);Davis, 148 Kan. at 214.

Kansas statutes provide definite procedures for stayingexecution. See, e.g., K.S.A. 60-262 and K.S.A. 60-2103(d).There is no procedure, however, for staying execution on a validjudgment upon condition that the judgment debtor make regularpayments on the judgment. In the absence of statutory authority,we conclude that a district court has no power to stay executionon a valid judgment.

Reversed.

[13 Kan. App. 2d 107]