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June 3, 1957
Opinion No. 57-83

REQUESTED BY: The Honorable John Carrighan
Justice of the Peace.

OPINION BY: ROBERT MORRISON, The Attorney General
Oscar C. Rauch, Special Assistant
Attorney General

QUESTION: After a plaintiff obtains a judgment against a garnishee-defendant, may he immediately execute on such judgment?

CONCLUSION: Yes.

A.R.S. § 22-211 provides:

"§ 22-211. Procedure and practice

The law governing procedure and practice in the superior court so far as applicable and when not otherwise specially prescribed, shall govern procedure and practice in justice of the peace courts, except that the justice of the peace shall not charge the jury."

A.R.S. § 22-241 states:

"§ 22-241. Announcement and docketing of verdict or decision

When a verdict is returned by a jury the justice of the peace shall announce the verdict in open court, note it in his docket and give judgment on the verdict. When the action has been tried without a jury, the justice shall announce his decision in open Court, note it in his docket and give judgment on the decision."

The authority to render judgment against a garnishee, to require the garnishee to deliver the property caught by the garnishment, and the power to enforce said delivery is specifically granted by statute. Thus:

"A.R.S. § 12-1585. Judgment against garnishee

If it appears from the answer of the garnishee, or otherwise, that the garnishee is indebted to the defendant in any amount or was so indebted when the writ was served, the court shall give judgment for

plaintiff against the garnishee for the amount so admitted or found to be due defendant from the garnishee unless the amount exceeds plaintiff's judgment against defendant in which case it shall be for the amount of such judgment."

"A.R.S. § 12-1586. Delivery of property by garnishee; enforcement; contempt

A. If it appears from the answer of the garnishee, or otherwise, that the garnishee has in his possession or had in his possession when the writ was served, any property of defendant liable to execution, the court shall render judgment requiring the garnishee to deliver to the sheriff or any constable presenting an execution in favor of plaintiff against defendant, such property or so much thereof as is necessary to satisfy the execution.

B. Failure to comply with the judgment may be punished as a contempt."

There is nothing in the law which abates the effect of a judgment either in superior court or justice court after judgment is entered. The judgment is immediately operative, and, if the garnishee-defendant refuses to satisfy the judgment, the normal post-judgment remedies, e.g., execution, are available to the successful plaintiff. See Davis v. Chilson, 48 Ariz. 366, 62 P.2d 127. Subsection A, A.R.S. § 12-1551, provides as follows:

" A. The party in whose favor a judgment is given may, at any time within five years after entry of the judgment, have a writ of execution issued for its enforcement. * * * " (Emphasis supplied)

It seems clear, therefore, that the successful plaintiff may immediately after entry of judgment sue out a writ of execution. The burden of delaying the enforcement of said judgment is placed on the unsuccessful defendant.

A.R.S. § 22-261 provides that any party to a final judgment of a justice of the peace may appeal to the superior court where the judgment or the amount in controversy exceeds $20.00. A.R.S. § 22-262 states that the party appealing shall give notice of appeal either at the time judgment is given or by written notice upon the adverse party within five days after judgment is given and shall within ten days from date of the judgment file his appeal bond with

the justice of the peace.

Rule 58(d) of the Rules of Civil Procedure provides:

> " 1. In case of a judgment other than for money or costs, or that all relief be denied, the judgment shall not be settled, approved and signed until the expiration of five days after the proposed form thereof has been served upon opposing counsel unless the opposite party or his counsel endorses on the judgment an approval as to form. This subdivision shall not apply to parties in default.
>
> * * * * * "

It must be noted that there is an exception to the rule in the case of money judgments.

Rule 59(d) states that a motion for new trial shall be served not later than ten days after entry of judgment, with certain exceptions, and Rule 59(1) provides that a motion to alter or amend the judgment may be served not later than ten days after entry of judgment.

Rule 62(b) of the Rules of Civil Procedure provides:

> "<u>Stay on Motion for New Trial or for Judgment</u>.
>
> In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to subdivisions (a) and (c) of Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b), or when justice so requires in other cases until such time as the court may fix."

Note, however, that the stay of execution is not automatic. It is granted only in the discretion of the court, and on such conditions for the security of the adverse party as are proper.

It has been held that, where a motion for a new trial was made and duly filed after judgment was entered, the judgment does not become final so as to authorize the issuance of execution until the motion is disposed of. See Danielson v. Northwestern Fuel Co., 55 Fed. 49.

Execution on a judgment may also be stayed by virtue of the provisions of Rule 62(d). Rule 62(d) provides that when an appeal is taken the appellant, by giving a supersedeas bond, may obtain a stay when the bond is approved by the court and filed. Here again the stay of execution is not automatic, and the burden of delaying the enforcement of said judgment is placed upon the unsuccessful party. Unless the required affirmative action is taken by the unsuccessful party, he has no right to withhold payment.

It is, therefore, the opinion of this office that the unsuccessful garnishee-defendant has no right to withhold payment of the judgment for ten days, or any other period, unless he affirmatively takes one of the courses of action described above which acts to prevent the enforcement of the judgment.

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