Roger Williams University Law Review

Volume 1 | Issue 1 Article 18

Spring 1996

1996 Preview

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Preview of 1996 Survey

Becker v. Perkins-Becker, 669 A.2d 524 (R.I. 1996).

In this case of first impression, a wife claimed that pursuant to R.I. Gen. Laws section 15-5-16.1[1] she is entitled to recover alimony and a portion of her husband's estate, including the increased earning capacity from an advanced degree the husband obtained during their marriage. The Rhode Island Supreme Court disagreed and followed the majority of states in holding that a professional degree or license is not a marital asset subject to equitable distribution.[2] The court explained that finding otherwise would foreclose consideration of future events, such as death or illness, which could affect an individual's earning capacity. Presently, New York's high court is the only state supreme court to subject a professional degree or license to equitable distribution.[3]

Despite the court's decision in *Becker*, Rhode Island appears to have joined New York in recognizing a professional degree as marital property. Although not applicable to this case, since the Beckers filed for divorce in 1989, the Rhode Island General Assembly enacted an amended section 15-5-16.1 on July 21, 1992, which repealed the assignment of property statute the supreme court relied on in *Becker*. This new statute states that in making an equitable distribution, the court shall consider "the contribution by one (1) party to the education, training, licensure, business or increased earning power of the other[.]"[4]

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1. R.I. Gen. Laws § 15-5-16.1 (1988 Reenactment). Section 15-5-16.1(a) states in part that "[i]n addition to or in lieu of an order to pay alimony made pursuant to a complaint for divorce, the court may assign to either the husband or wife a portion of the estate of the other." R.I. Gen. Laws § 15-5-16.1(a) (1988 Reenactment).

2. The Rhode Island Supreme Court noted Colorado, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania, Utah, West Virginia, and Wyoming as support for their holding. Becker v. Perkins-Becker, 669 A.2d 524, 531 (R.I. 1996).

3. O'Brien v. O'Brien, 489 N.E.2d 712, 713 (N.Y. 1985) (holding a license to practice medicine acquired during the marriage was a marital asset subject to distribution). In arriving at this decision the New York Court of Appeals relied on Domestic Relations Law § 236(B)(5)(d)(6) which states that in considering the distribution of marital property a court shall consider the expenditures and contributions made to the career of the other party. N.Y. Dom. Rel. Law § 236(B)(5)(d)(6) (McKinney 1986).

4. 1992 R.I. Pub. Laws ch. 269, § 2 (a)(9).

State v. One Lot of $8,560 in U.S. Currency, 670 A.2d 772 (R.I. 1996).

According to the Fifth Amendment of the United States Constitution, no person shall "be subject for the same offence to be twice put in jeopardy of life or limb."[1] The Rhode Island Supreme Court addressed the issue of whether the State's attempt to seize the proceeds of illegal drug transactions through civil proceedings, when the assets are claimed by one who has already been criminally convicted of unlawful delivery of a controlled substance. The court adopted the analysis of the United States Supreme Court in *United States v. Halper*[2] and ruled that "a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent" that the civil forfeiture is punitive, rather than remedial in nature.[3] Accordingly, in the civil proceeding the state is entitled to recover up to the approximate amount of damage which resulted from the criminal activity without implicating the Double-Jeopardy clause.[4] To require the defendant to pay more would be a penalty, constituting Double-Jeopardy. Among the factors the superior court may consider are the cost of apprehending and prosecuting the defendants, as well as the cost of probationary supervision.[5]

1. U.S. Const. amend. V.
2. 490 U.S. 435 (1989).
3. State v. One Lot of $8,560 in U.S. Currency, 670 A.2d 772, 773 (R.I. 1996) (quoting *Halper*, 490 U.S. at 448-49).
4. *Id.* at 773.
5. *Id.* at 776.

Pound Hill Corp., Inc. v. Perl, 668 A.2d 1260 (R.I. 1996).

A purchaser of real estate filed suit against defendants, who had earlier unsuccessfully attempted to purchase the same parcel of land. Prior to suit, the defendants had filed numerous actions in an effort to prevent the plaintiff from developing residential housing on the land they had purchased.[1] In vacating the trial court's grant of summary judgement in favor of the defendants on charges of abuse of process and interference with an advantageous relationship, the Rhode Island Supreme Court acknowledged the United States Supreme Court's *Noerr-Pennington* doctrine[2] which protects a person's First Amendment right to petition the government for the redress of grievances.[3] While the Rhode Island Supreme Court recognized this doctrine, the court also recognized its exception.[4] The "sham exception" requires that "[f]irst the lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits."[5] Second, the court "should focus on whether the baseless lawsuit conceals 'an attempt to interfere directly with the business relationships of a competitor,' . . . through the 'use [of] the governmental process — as opposed to the outcome of that process.' "[6] Based on this exception, the Rhode Island Supreme Court ordered that the summary judgement entered in favor of the defendants be vacated and remanded the case to the superior court for further proceedings.[7]

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1. Among the actions filed by the defendants was a complaint alleging that the plaintiff had not received a three-fifths vote to rezone the land. This action was filed six days after the plaintiff had received a four-fifths vote.

2. The *Noerr-Pennington* doctrine arose from two United States Supreme Court cases in the 1960's. United Mine Workers of Am. v. Pennington, 381 U.S. 657 (1965); Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961).

3. Pound Hill Corp., Inc. v. Perl, 668 A.2d 1260, 1263 (R.I. 1996).

4. *Pound Hill*, 668 A.2d at 1264-65.

5. The exception to the *Noerr-Pennington* doctrine, known as the "sham exception," was established by the United States Supreme Court in California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508 (1972).

6. *Id.* (alteration in original)(citation omitted).

7. Pound Hill Corp, Inc., v. Perl, 668 A.2d 1260, 1264 (R.I. 1996) (quoting Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc., 113 S. Ct. 1920, 1928 (1993)).

Giroux v. Purington Bldg. Sys., Inc. v. Gustafson Steel Erectors, Inc., 670 A.2d 1227 (R.I. 1996).

Pursuant to the Supremacy Clause of the United States Constitution, federal bankruptcy laws preempt state bankruptcy statutes.[1] Despite this well-known principle of law, the Rhode Island Supreme Court ruled that R.I. Gen. Laws section 27-7-2.4, which allows a person to file a complaint directly against the insurer of an alleged tortfeasor whenever the alleged tortfeasor files for bankruptcy, is not preempted by federal bankruptcy law.[2]

The supreme court rejected the defendant manufacturer's argument that relief from the automatic stay provision of the Bankruptcy Code is a condition precedent under section 27-7-2.4 to the substitution of the insurance company. Looking to the unambiguous language of section 27-7-2.4, the court ruled that the tort-feasor's filing for bankruptcy is the only condition to the insurance company being substituted as defendant. The court also rejected the defendant's preemption argument that if the debtor's assets are not protected, namely its insurance policy, the aims of the bankruptcy laws will be frustrated. The supreme court explained that the plaintiff is the only claimant to the debtor's liability-insurance policy and reasoned that when there is only one claimant to the insurance policy, substituting the insurance company as the defendant will not result in financial harm to any of the debtor's other creditors.

1. Article I of the United States Constitution gives Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States[.]" U.S. Const. art. I, § 8, cl. 4.

2. Section 27-7-2.4 states "[a]ny person, having a claim because of damages of any kind caused by the tort of any other person, may file a complaint directly against the liability insurer of the alleged tort-feasor seeking compensation by way of a judgment for money damages whenever the alleged tort-feasor files for bankruptcy, involving a reorganization for the benefit of creditors or a wage earner plan, provided that the complaining party shall not recover an amount in excess of the insurance coverage available for the tort complained of." R.I. Gen. Laws § 27-7-2.4 (1994 Reenactment).

Jennings v. Nationwide Ins. Co., 669 A.2d 534 (R.I. 1996).

Plaintiffs, who were injured as a result of a traffic accident, collected medical payments pursuant to an insurance policy they had with the defendant insurance company. According to the terms of their policy, plaintiffs granted the insurance company a subrogation interest in any judgment or settlement received from the other driver. Subsequently, plaintiffs reached a settlement agreement with the other driver's insurance company. As a result of this settlement agreement, the plaintiffs incurred substantial attorney's fees and argued that the insurance company must pay its pro rata share of their fees before collecting their subrogation interest.

The Rhode Island Supreme Court has recognized the subrogation doctrine whereby a party, such as an insurer, who pays the expenses of another may be substituted for that person and acquire their legal rights.[1] The Rhode Island Supreme Court followed Oregon's lead[2] and held that if the insurance company received a benefit from the settlement agreement, it should be required to contribute a proportional amount of the expenses incurred. This case was remanded for the superior court to determine the extent plaintiffs' settlement agreement benefitted the defendant insurance company.

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1. United States Inv. and Dev. Corp. v. Rhode Island Dep't of Human Serv., 606 A.2d 1314 (R.I. 1992); Hospital Serv. Corp. of Rhode Island v. Pennsylvania Ins. Co., 227 A.2d 105 (R.I. 1967).

2. In a similar case to the one at bar, the Oregon Supreme Court held that a subrogated insurer is required to pay reasonable and necessary attorney's fees if the insurer received a benefit. Jennings v. Nationwide Ins. Co., 669 A.2d 534, 536 (R.I. 1996) (citing Ridenour v. Nationwide Mut. Ins. Co., 541 P.2d 1377 (Or. 1975)).