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Opinion No. 02-079

Service of Process under 2002 Tenn. Pub. Acts Ch. 794

QUESTIONS

1. Are private process servers allowed to serve garnishments and levies of execution under 2002 Tenn. Pub. Acts Ch. 794?

2. Are private process servers appointed under Tenn. Code Ann. § 8-8-108, which remains in effect, still authorized to serve process under that statute?

OPINIONS

1. and 2. Under Tenn. Code Ann. § 16-15-901, a private process server simply designated by a party or the party's attorney may not serve a levy of execution, a summons of garnishment or any process in connection with a garnishment in aid of execution. Private process servers appointed under Tenn. Code Ann. § 8-8-108 may continue to serve any process or other papers issued by the General Sessions Court, including a garnishment or levy of execution, or do any act that the sheriff might do in serving process, except that a private process server may not serve process requiring the arrest of any person.

ANALYSIS

This opinion concerns the effect of amendments to the laws on service of process enacted in 2002 Tenn. Pub. Acts Ch. 794 ("Chapter 794"). The first question is whether, under the new law, private process servers may serve garnishments and bank levies. We assume your question refers to garnishments in aid of execution under Tenn. Code Ann. §§ 26-2-101, *et seq.* We have found no statute specifically referring to "bank levies." For the purposes of this opinion, we assume this term refers to a levy of execution described under Tenn. Code Ann. §§ 26-3-101, *et seq.*

Section 1 of Chapter 794 amended Tenn. Code Ann. § 8-21-901 on fees for sheriffs and constables by deleting the statute in its entirety and replacing it with a new statute. Under Section 2 of Chapter 794, Tenn. Code Ann. § 16-15-901 was completely rewritten. That statute formerly provided:

> The sheriff of the county, or any deputy sheriff or constable thereof, shall serve regular process, writs and papers issued by the court of general sessions with the same authority as provided by law in the other inferior courts. The sheriff shall designate a court officer to wait on the court at all times such court is in session.

The new statute provides:

> (a) Upon filing of civil warrants, writs and other papers the clerk of the general sessions court wherein such civil warrants, writs or other papers are filed, shall issue the required process, writs or other papers, and cause it, with necessary copies of the civil warrant, writ or papers, to be delivered for service *to such person authorized to serve process as may be designated* by the party filing such civil warrant, writ or other papers or such party's attorney if represented by counsel. Such authorized person shall serve the civil warrant, writ or other papers, and the return endorsed thereon shall be proof of the time and manner of service. A civil warrant, writ or other papers may be issued for service in any county against any defendant, or additional defendants.
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> (b) *A civil warrant, attachment or any other leading process used to initiate an action in general sessions court and subpoenas or summons may be served by any person designated by the party, or the party's attorney, if represented by counsel, who is not a party to the action and is not less than eighteen (18) years of age.* Service of other process and orders of the courts of this state shall be by sheriffs, constables *or as provided by law.* The process server must be identified by name and address on the return.
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> (c) Nothing in this section shall affect existing laws with respect to venue.

(Emphasis added). Subsection (a) does not purport to confer authority to serve process, but is directed to the clerk. Under that provision, the clerk is instructed to return papers to any person designated by the a party requesting their issuance, so long as that person is "authorized to serve process." Subsection (b), by its terms, expressly confers authority to serve particular types of process on any individual eighteen and over who is not a party to the action and who has been designated by a party or the party's attorney. Under Tenn. Code Ann. § 16-15-901(b), therefore, a party or the party's attorney may designate any individual eighteen or over who is not a party to the action to serve a "civil warrant, attachment or any other leading process used to initiate an action in general sessions court and subpoenas or summons."

Clearly, a levy of execution under Tenn. Code Ann. §§ 26-3-101, *et seq.*, does not fall within these

terms. Therefore, a private process server who is merely designated to serve process under this statute may not serve a levy of execution.

A garnishment under Tenn. Code Ann. §§ 26-2-201, *et seq.*, is a method of enforcing an execution on a final judgment. Under Tenn. Code Ann. § 26-2-203, however, a garnishee receives a "summons" from the court from which the execution is issued. Tenn. Code Ann. § 26-2-216 expressly refers to a "garnishment summons." The question is whether any person designated by a party or an attorney who otherwise meets the requirements of Tenn. Code Ann. § 16-15-901(b) is now authorized to serve any garnishment summons issued out of a General Sessions Court.

The answer to this question is not clear. The new statute, clearly, does not authorize a private process server simply designated by a party to an action or his or her attorney to serve or levy executions in general. In addition, Section 1 of Chapter 794, which rewrote Tenn. Code Ann. § 8-21-901, the statute on fees for service of process, includes the following:

> Notwithstanding any other provision of law to the contrary, the sheriff or constable is entitled to demand and receive the respective fees for the following services where services are actually rendered:
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> * * * *
>
> (2) Collection of money;
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> * * * *
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> (B)(1) For collecting money to satisfy a judgment, whether by execution, fieri facias, *garnishment,* or other process, in civil cases each time collection is attempted$20.00.
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> (2) For purposes of the payment of fees for garnishments as provided in this subdivision, all garnishments shall be deemed to be original garnishments and the *sheriff or other person authorized by law to serve garnishments* shall be entitled to the fee provided for in this subdivision for each such garnishment served.

(Emphasis added). This provision suggests that the General Assembly contemplated that garnishments would continue to be served by a sheriff or other person expressly authorized by law. It should be noted, however, that subsection (c) of the same statute as amended provides:

> The court in its discretion may award as any part of any judgment rendered in a case recovery of fees for process service *by any private process server,* but such fees awarded against a party shall not exceed the like fees as authorized by this section for services provided by sheriffs or constables.

(Emphasis added).

While parts of Tenn. Code Ann. §§ 26-2-201, *et seq.*, governing garnishments in aid of execution refer to a "garnishment summons," other parts of the statutory scheme indicate that the same person who serves a "summons of garnishment" serves the underlying execution on the garnishee at the same time. Thus, for example, under Tenn. Code Ann. § 26-1-110, a garnishee who receives an "execution" that does not sufficiently identify the defendant may return it with a statement that the defendant cannot be identified. Tenn. Code Ann. §§ 26-2-401, *et seq.*, apply additional statutory requirements to "executions and garnishments in aid of execution." Tenn. Code Ann. § 26-2-401. Moreover, under the garnishment statutes, where property in the hands of the garnishee has been declared the property of defendant, the garnishee must deliver the property to the officer serving the garnishment, on demand. Tenn. Code Ann. § 26-2-208. None of the other types of process listed in Tenn. Code Ann. § 16-15-901 as amended by Chapter 794 confers this kind of responsibility on the person serving it. For these reasons, we think the statute does not clearly authorize a private process server who has been designated by a party or the party's attorney to serve a garnishment summons, or any other process in connection with a garnishment in aid of execution under Tenn. Code Ann. §§ 26-2-201, *et seq.*

Courts are limited to the "natural and ordinary" meaning of a statute unless an ambiguity necessitates resorting elsewhere to ascertain legislative intent. *Austin v. Memphis Publishing Co.*, 655 S.W.2d 146, 149 (Tenn. 1983). The first sentence in the new Tenn. Code Ann. § 16-15-901(b) was inserted when the bill was amended. Representative Buck, who sponsored the bill in the House, asked Steve Cobb to explain the amendment when it was introduced before the House Judiciary Committee. Mr. Cobb represented the Tennessee Bar Association, which was active in formulating and promoting the bill. Mr. Cobb explained this portion of the amendment as follows:

> In addition, it [the bill as amended] will provide private service of process in general sessions court for leading process, be that, you know, a civil writ or a civil warrant, excuse me, or an attachment, whatever, to begin a lawsuit, you can do it just like you do in circuit court, also summonses and subpoenas *which already under state law are serveable in general sessions by individuals. As to the rest, such things as, you know, levy and execution, you know, where you go take property, will remain as it is now under current law, which is sheriffs, constables and in certain areas also private process servers under court supervision.*
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> Representative Buck: So we're only amending in regard to leading process and service of subpoenas in general sessions court.
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> Mr. Cobb: That's correct.

House Judiciary Committee, April 17, 2002 (emphasis added). In fact, Tenn. Code Ann. § 16-15-708(a)

gives a General Sessions Court the authority to procure witnesses by subpoena or summons, and that process may be served "by any person authorized to serve process." It appears, therefore, that the General Assembly did not intend to allow service of process by private process servers not appointed by a court where, as in the case of a garnishment, that process is directly related to levy of execution. For this reason, we conclude that private process servers who are not appointed by a court may not serve a summons of garnishment or any other process related to a garnishment in aid of execution.

Under Tenn. Code Ann. § 8-8-108, private individuals may be appointed by a General Sessions Court to serve process for that court. Counties may adopt either subsection (b) or (c) to apply to service of general sessions court process. Tenn. Code Ann. § 8-8-108(d). Subsections (b) and (c) of the statute describe the process under which a private individual may be appointed to serve process in General Sessions Court. A person who qualifies under either subsection (b) or (c), depending on which is applicable in the particular county, is qualified to serve any process or other papers issued by the court or to do any act that the sheriff might do in serving process, except that a private process server is not authorized to serve process requiring the arrest of any person. Tenn. Code Ann. § 8-8-108(b)(1); Tenn. Code Ann. § 8-8-108(c)(1); Op. Tenn. Atty. Gen. 99-115 (May 14, 1999). As amended, Tenn. Code Ann. § 16-15-901 (b) states that "Service of other process and orders of the courts of this state shall be by sheriffs, constables *or as provided by law*." (Emphasis added). Clearly, a process server appointed by a court under Tenn. Code Ann. § 8-8-108 is authorized to serve process "as provided by law." Therefore, private process servers appointed by a court under Tenn. Code Ann. § 8-8-108 may continue to serve levies of execution and garnishments.

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