THE STATUS OF REPAYMENT PROVISIONS IN CURRENT WELFARE LAW

Welfare regulations for the Commonwealth of Pennsylvania require applicants who own certain types of real or personal property to agree, as a condition for receiving assistance under the Aid to Families with Depedendent Children (AFDC) program, to reimburse the Commonwealth for benefits received.[1] A lien is taken on the property as security for the repayment promise.[2] Two class actions, *Charleston v. Wohlgemuth*[3] and *Coleman v. Wohlgemuth*,[4] were brought seeking invalidation of those regulations on the grounds that they conflicted with the Federal Social Security Act[5] and violated the fourteenth amendment's equal protection and due process clauses.[6] The suits were consolidated and tried before a three-judge court[7] which found both the statutory and constitutional arguments to be without merit.[8] This comment will demonstrate that this holding is inconsistent with the recent trend of judicial decisions in the welfare area.[9]

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1. The welfare statutes of 34 states provide for repayments to the welfare fund by recipients. Snell v. Wyman, 281 F. Supp. 853, 861 n.13 (S.D.N.Y. 1968), *citing* U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, PUBLIC ASSISTANCE REP. No. 50, CHARACTERISTICS OF STATE PUBLIC ASSISTANCE PLANS UNDER THE SOCIAL SECURITY ACT (1964). Since 1964, two of the 34 states have repealed their repayment laws. 281 F. Supp. at 861 n.13.

2. DEPARTMENT OF WELFARE PUB. ASSISTANCE MANUAL §§ 3822, 3822.1, 3822.2, 3822.21 (1971). Note, however, that the statutory origin is PA. STAT. ANN. tit. 62, §§ 401 *et seq.* (Purdon 1968). This statute is general and delegates to the Pennsylvania Department of Public Welfare the formulation of standards as to eligibility for assistance, and the nature and extent thereof. *Id.* § 403. Thus, the Pennsylvania state plan consists principally of the regulations contained in the Pennsylvania Manual.

3. 332 F. Supp. 1175 (E.D. Pa. 1971), *aff'd per curiam*, 405 U.S. 970 (1972).

4. 332 F. Supp. 1175 (E.D. Pa. 1971).

5. 42 U.S.C. §§ 601 *et seq.* (1969).

6. U.S. CONST. amend. XIV, § 1.

7. Actually, two three-judge courts were convened, consisting of the same three judges.

8. 332 F. Supp. at 1177.

9. *See* Goldberg v. Kelly, 397 U.S. 254 (1970); Shapiro v. Thompson, 394 U.S. 618 (1969); King v. Smith, 392 U.S. 309 (1968), *aff'g* 277 F. Supp. 31 (M.D. Ala. 1967); Stoddard v. Fisher, 330 F. Supp. 566 (D. Me. 1971); Cooper

I. Background

Plaintiff Charleston is the mother of six minor children. Her $118 semi-monthly earnings are supplemented by $151 semi-monthly AFDC assistance. Upon purchase of a home pursuant to the Federal Housing Authority's section 235[10] plan, she was asked to sign Pennsylvania Department of Public Welfare (DPW) form DPA 9 which would give DPW a lien on her property. She refused.

The income received by plaintiff Coleman and her seven minor children consisted of a $10 bi-weekly support order payment and a $218.30 semi-monthly AFDC benefit. After being injured in an automobile accident, she refused to sign form DPA 176-K which would assign her personal injury claim to DPW.

These two plaintiffs are typical of the persons bringing this class action. All plaintiffs had either executed DPA 9 or DPA 176-K forms or had refused to and, in the latter case, risked forfeiture of AFDC aid.[11]

The DPA 9 and DPA 176-K forms are basically similar. Each sets forth a portion of the DPW regulations. In executing a DPA 9 form, the applicant acknowledges liability for the repayment of any benefits received by himself, his spouse or unemancipated children. In accordance with the provisions recited on the form, this promise is to be secured by giving DPW a lien on real or personal property owned while assistance was received. This lien may be executed at any time after commencement of benefits, but shall not, under DPW regulations, be so executed during the lifetime of the signer, his spouse or dependent children. The DPA 176-K form is directed to certain types of personal property: alimony payments, delayed wages, estates of deceased recipients, income tax refunds, life insurance sick benefits and support order payments, among others. It contains an assignment which is served upon the recipient's attorney or the agency paying the benefits, directing payment of the proceeds of the claim or benefits to DPW.

Both forms include an authorization for the prothonotary, court clerk or any attorney to appear in any court, at any time, to confess

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v. Laupheimer, 316 F. Supp. 264 (E.D. Pa. 1970). *See also* the more recent case, Carleson v. Remillard, 406 U.S. 598 (1972), *aff'g* 325 F. Supp. 1272 (N.D. Cal. 1971).

10. 12 U.S.C. § 1715z-2 (1970).

11. The plaintiffs' right to receive assistance pending the outcome was secured by a temporary restraining order. 332 F. Supp. at 1178.

judgment against the signer for $2,000.[12] Judgment is entered without notice to the welfare recipient and without a hearing. The judgment entered as a result of a confession clause has the same force and effect as any other judgment, *i.e.*, it acts as a lien upon the debtor's presently owned property and on after-acquired property if the judgment is revived on real property or executed upon personal property.[13] DPW regulations provide for departmental hearings, at the applicant's request, to settle any dispute which may arise regarding the amount of the assistance claim or virtually any other matter affecting his relations with DPW.[14]

II. The Supremacy Clause Argument

Plaintiffs' allegations that the Pennsylvania repayment provisions conflicted with the Federal Social Security Act by imposing a condition of eligibility beyond that of need and dependency were effectively met with the reasoning that: "*Snell v. Wyman*[15] . . . is the controlling precedent in this case."[16] "If *Snell* is incorrect . . . there is plainly nothing that this Court can do about it, since, by virtue of affirmance, *Snell* now represents the teaching of the Supreme Court."[17] *Snell* upheld the constitutional and statutory validity of reimbursement and lien provisions under a New York State plan[18] basically similar to Pennsylvania's AFDC program. Probably the only significant difference between the two state plans is that under the New York laws and regulations challenged in *Snell*, the lien which originates is a statutory one—it arises automatically from the granting of assistance—while the lien is obtained by a confession of judgment under the Pennsylvania provisions.

The stark similarity in the fact patterns of *Snell* and *Charleston* would make the instant court's reasoning persuasive were it not for

12. P. Shughman, Handbook on the Use of Judgment Notes in Pennsylvania § 1.1 (1961).

13. 332 F. Supp. at 1180.

14. Accumulation of liens is permitted where the aid received exceeds that amount. Where the assistance received is less than $2,000, DPW may recover only the lesser amount regardless of the amount of the lien. 332 F. Supp. at 1179.

15. 281 F. Supp. 853 (S.D.N.Y. 1968), *aff'd per curiam*, 393 U.S. 323 (1969).

16. 332 F. Supp. at 1181.

17. *Id.* at 1182. *See* Center on Social Welfare Policy and Law, Materials on Welfare Law, at VII-1 to -28 (1972).

18. N.Y. Soc. Welfare Law § 104 (McKinney 1966).

the interposition of the Supreme Court's ruling in *King v. Smith*,[19] and district court rulings in *Cooper v. Laupheimer*[20] and *Stoddard v. Fisher*.[21] These cases, like *Snell* and *Charleston*, involved the Aid to Families with Dependent Children program as set up by the Social Security Act of 1935.

The Social Security Act established a trilogy of categorical public assistance programs.[22] One member of this tripartite structure is the AFDC program, which singles out the "dependent child" as a recipient of welfare benefits. A dependent child is defined by the federal statute as an age-qualified, "needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with . . ."[23] any of several listed relatives. A further statutory requirement provides "that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals."[24]

The federal statute's silence on the question of the states' ability to impose eligibility requirements *in addition* to need and dependency renders the statute ambiguous.[25] This ambiguity was resolved by the teaching of the court in *King*, as expressed in *Stoddard*:

> absent specific indications of Congressional authorizations for the states to exclude a class of dependent children by narrowing a specific federally-imposed eligibility factor, any state eligibility standards which exclude persons eligible for assistance under the federal standards are in conflict with Congressional intent and void under the federal statute.[26]

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19. 392 U.S. 309 (1968). It is of interest to note that *Snell v. Wyman* was decided in the district court prior to the Supreme Court's decision in *King v. Smith*. *Snell* was later affirmed without opinion by the Supreme Court.

20. 316 F. Supp. 264 (E.D. Pa. 1970).

21. 330 F. Supp. 566 (D. Me. 1971). *See also* Carleson v. Remillard, 406 U.S. 598 (1972), decided after the *Charleston* decision was handed down.

22. *See generally* Goldberg v. Kelly, 397 U.S. 254, 256 (1970).

23. 42 U.S.C. § 606(a) (1969).

24. *Id.* § 602(a)(10) (1969).

25. *See generally* Comment, *AFDC Eligibility Requirements Unrelated to Need: The Impact of King v. Smith*, 118 U. PA. L. REV. 1219 (1970).

26. 330 F. Supp. at 571. *See also* Carleson v. Remillard, 406 U.S. 598 (1972); Doe v. Hirsh, 328 F. Supp. 1360 (D. Minn. 1970); Woods v. Miller, 318 F. Supp. 510 (W.D. Pa. 1970); Cooper v. Laupheimer, 316 F. Supp. 264 (E.D. Pa. 1970); Doe v. Shapiro, 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488 (1970); *AFDC Eligibility Requirements Unrelated to Need: The Impact of King v. Smith*, *supra* note 25, at 1239.

Legislative history,[27] however, clearly indicates the states' freedom in setting their own standards of need for AFDC purposes.[28] Pennsylvania's definition of need[29] does not bar the owner of real or personal property from being a recipient of welfare assistance, provided the property owned is not disparate to circumstances of a person receiving AFDC aid and the property is not immediately convertible to cash[30] to meet current living expenses.

Yet, DPW regulations make the grant of assistance to such owner conditional upon the execution of either form DPA 9 or DPA 176-K,[31] the effect of which is to create a lien on the property. In so doing, DPW is ignoring its own prior determination of need:

(1) that despite the ownership of realty or personalty, the family is eligible for assistance because the property affords them no access to cash for their daily living expenses;

(2) that despite the property the family is in a situation not dissimilar to other families receiving AFDC assistance; and, therefore,

(3) that despite the property the family is eligible for aid.

Thus, meeting DPW's standard of need is not, in itself, sufficient to obtain AFDC benefits. Such benefits will be granted only if the applicant signs the lien or assignment form. Taken in this perspective, the state provision is seen as a state-imposed eligibility requirement and inconsistent with the Social Security Act as interpreted in *King*.

Unfortunately, because of the *Charleston* court's failure to give cognizance to prevailing congressional and judicial views regarding welfare as a right to which all persons meeting the requirements of need and dependency are *entitled*,[32] that result was not reached. Through blind application of the *Snell* doctrine, the court, despite

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27. 392 U.S. at 318 n.14.

28. Rosado v. Wyman, 397 U.S. 397, 408 (1970); King v. Smith, 392 U.S. 309, 318 (1968). *See also* note 25 *supra*, at 1241.

29. DEPARTMENT OF WELFARE PUB. ASSISTANCE MANUAL § 3826 (1971).

30. *Id.* These regulations are in conformity with HEW regulations which require that only income and resources actually available for current use on a regular basis be considered in determining need. HANDBOOK OF PUB. ASSISTANCE ADMIN. PART IV, ELIGIBILITY ASSISTANCE SERVICES § 3120—AVAILABILITY OF INCOME AND RESOURCES (1971).

31. DEPARTMENT OF WELFARE PUB. ASSISTANCE MANUAL § 3826 (1971).

32. Stoddard v. Fisher, 330 F. Supp. 566, 569 (D.N.C. 1971); Cooper v. Laupheimer, 316 F. Supp. 264, 269 (E.D. Pa. 1970).

judicial sympathy,[33] missed the opportunity to eliminate "the adverse effect of the lien on the mobility, self-sufficiency, and even the living standards of welfare recipients."[34]

III. The Equal Protection Argument

The impact of *Snell*—with *Dandridge v. Williams*[35] as a conduit—extended likewise to strike down plaintiffs' equal protection claim. They claimed essentially that the DPW regulations created two classes of needy and dependent children, otherwise eligible for assistance: those who receive AFDC assistance because their parents have executed a DPA 9 or DPA 176-K form and those who are denied assistance because of their parents' refusal to sign, and that this constitutes a violation of the equal protection clause.[36] This argument was rejected by the court based on the following reasoning:

(1) The equal protection questions discussed in *Snell* differ from those in the instant case.[37]

(2) The leading equal protection case in the welfare field is *Dandridge v. Williams.*[38]

(3) *Dandridge v. Williams* cited *Snell.*

(4) *Snell* is the authority for applying the equal protection standards.

Dandridge did indeed adopt *Snell* as the authority for applying equal protection standards in the welfare context:

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33. 332 F. Supp. at 1180.

34. *Id.*

35. 397 U.S. 471 (1970), *rev'g* 297 F. Supp. 450 (D. Md. 1968).

36. *Cf.* Wyman v. James, 400 U.S. 309 (1971), a case involving the action of a parent in refusing to accede to a home visit as a condition of eligibility for AFDC benefits. Analogous to the principal case, the parental refusal worked a deprivation on the children involved. Under those facts, it could have been argued that a separate class of needy and dependent children had been created and was being discriminated against in violation of the equal protection clause. The Court, while basing its decision on fourth amendment guarantees, implicitly refuted such an argument by its broad statement: "The choice is entirely hers, and nothing of Constitutional magnitude is involved." *Id.* at 324.

37. The lien obtained in *Snell* was a statutory one arising automatically from the granting of assistance. Here, the lien is given by vehicle of a confession of judgment.

38. *Dandridge* involved an action to enjoin the use of maximum grant regulations as an invidious discrimination against large families and, therefore, violative of equal protection. The Court found that the regulations were rationally supported and justified by legitimate state interests.

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality."[39]

Thus, under the precedent of *Snell,* a state classification is to be reviewed under the "traditional test"[40] rather than under the "compelling state interest test"[41] laid down in *Shapiro v. Thompson.*[42] Where the latter test requires the court to analyze, *inter alia,* the character of the classification, the state purpose being promoted and the validity of the state interest being asserted, the former test requires only that the state classification have a reasonable basis[43] and that it not be invidiously discriminatory.[44] That is, regardless of the arbitrariness of a classification, it must be sustained if any state goal can be imagined that is furthered by its efforts.[45]

The state interests to be promoted by the classification in the instant case are: financing the assistance program, saving of tax money and encouraging self-sufficiency, protection and collection of DPW claims for reimbursement mandated by Pennsylvania's Support Law,[46] and equal treatment of all property owners. Any one, or combination of, those state interests would be sufficient to supply the reasonable basis needed to support the eligibility requirements.[47]

Having so determined, the court in *Charleston* was not free to do other than uphold the validity of the repayment provisions on equal protection grounds. It could decide contrarily only if it chose to challenge *Dandridge* as an unique and isolated case rather than regard it as a halt in the trend toward full protection of the poor through equal protection of the laws.[48]

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39. 397 U.S. at 485.
40. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911).
41. 394 U.S. 618 (1969). *See generally* Comment, *Constitutional Law—The North Carolina Public Assistance Lien Law and Current Constitutional Doctrine,* 49 N.C.L. REV. 519, 522 (1971).
42. 394 U.S. 618 (1969).
43. 397 U.S. at 487.
44. *Id.*
45. *Id.* at 508 (dissenting opinion).
46. PA. STAT. ANN. tit. 62, §§ 401 *et seq.* (Purdon 1968).
47. *See* Comment, *Snell v. Wyman and the Constitutional Issues Posed by Welfare Repayment Provisions,* 55 VA. L. REV. 177, 188 (1969).
48. Note, *Shapiro, Dandridge, and Residence Requirements in Public Housing,* 1971 URBAN L. ANN. 131, 133.

IV. The Due Process Argument

Plaintiffs' third argument invoked application of the fourteenth amendment due process clause. That argument was twofold: (1) that by being required to execute the DPA 9 or DPA 176-K form, the welfare recipient is forced to relinquish his constitutional rights of notice and hearing, and (2) that, in order to avoid being deprived of property pursuant to the judgment lien, he is required to institute onerous litigations in the nature of proceedings to open judgment.[49]

The court, having found *Snell* to be dispositive of the statutory and equal protection arguments, seemed determined to resolve the due process question in a like manner. It subsequently did so by focusing on the second aspect of plaintiffs' argument—that involving the burden of opening the judgment—and virtually ignoring the contention that their constitutional rights of hearing and notice were violated. This approach is evidenced by the court's application of *Swarb v. Lennox*:[50] "The most striking feature . . . is that the burden of proof is placed upon the debtor."[51]

While the *Swarb* court gave cognizance to the burden which cognovit judgments place on the debtor, the emphasis there was on the consciousness and voluntariness of the waiver of constitutional rights:

> A warrant of attorney authorizing judgment is perhaps the most powerful and drastic document known to civil law. The signer deprives himself of every defense and every delay of execution, he waives exemption of personal property from levy and sale under the exemption laws, he places his cause in the hands of a hostile defender. For that reason the law jealously insists on proof that this helplessness and impoverishment was *voluntarily accepted and consciously assumed.*[52]
>
> Judgments and executions entered in accordance with the above procedure comply with the due process of law clause of the Fourteenth Amendment provided that there has been an *understanding and voluntary consent* of the debtor in signing the document containing the confession of judgment clause (citations omitted).[53] However, if there has not been such an

49. 332 F. Supp. at 1180.

50. 314 F. Supp. 1091 (E.D. Pa. 1970), *aff'd* 405 U.S. 191 (1972).

51. 314 F. Supp. at 1094.

52. *Id.* at 1095, *citing* Cutler Corp. v. Latshaw, 374 Pa. 1, 5, 97 A.2d 234, 236 (1953).

53. 314 F. Supp. at 1095. *See also* National Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311, 316 (1964); American Surety Co. v. Baldwin, 287 U.S. 156, 168-69 (1932).

> *understanding consent,* the above-described Pennslyvania procedure violates the due process requirements of notice and opportunity to be heard prior to the entry of judgment (citations omitted).[54] The evidence must be examined to determine whether *understanding consent to this Pennsylvania procedure is present in the execution of the documents* containing such clauses by members of the class on whose behalf this suit is brought.[55] (Emphasis added.)

The members of the class on whose behalf the instant suit was brought are welfare applicants, otherwise eligible for welfare assistance, who, because they are property owners, are required to give a lien on their property as a condition for receiving the benefits. It must then be determined if this class of persons voluntarily and knowingly[56] consented to the confession of judgment and thereby waived their constitutional rights of hearing and notice.

Due process rights to notice[57] and hearing[58] prior to a civil judgment are subject to waiver. However, any presumption that a person acquiesces in the waiver of his constiutional rights has been adamantly denied by the United States Supreme Court.[59] On the contrary, the presumption against the waiver of those rights has been well-settled.[60] In deciding the federal question of waiver, the court must look to the facts which allegedly support the waiver.[61]

The facts here are that plaintiffs are welfare recipients, financially deprived and generally uneducated. The question then becomes whether a person in that position, when signing a confession of judgment which gives a lien on his property, does so voluntarily, knowingly and intending to waive his constitutional rights to hearing and notice. The voluntariness of the action is questionable:

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54. 314 F. Supp. at 1095. *See also* Sniadach v. Family Finance Corp., 395 U.S. 337, 339-40 (1969); Armstrong v. Manzo, 380 U.S. 545, 550 (1965); Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313-15 (1950); Coe v. Armour Fertilizer Works, 237 U.S. 413, 422-26 (1915).

55. 314 F. Supp. at 1096.

56. D. H. Overmyer Co. v. Frick Co., 405 U.S. 174, 185 (1972).

57. *Id.*; National Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311, 315-16 (1964).

58. Boddie v. Connecticut, 401 U.S. 371, 378-79 (1971).

59. Brookhart v. Janis, 384 U.S. 1, 4 (1966); Ohio Bell Tel. Co. v. Public Util. Comm'n, 301 U.S. 292, 307 (1937).

60. Glasser v. United States, 315 U.S. 60, 70-71 (1941).

61. Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

> It is absurd to speak of the welfare agreement as formalizing a bargain freely made. Execution of the form will generally be a routine procedure with no give-and-take between the parties and with an assumption on the part of the agency's administrator that the applicant for relief will sign, whether or not he understands its import, because he has no choice.[62]

It is likewise open to question whether the applicant places his signature on the form knowing—and intending—the consequences. The court in *Swarb,* based on a published report,[63] found that of all judgments confessed in Pennsylvania over a period of years, 96 per cent were against individuals with incomes of less than $10,000 per year. Of that group, 95 per cent of those who had signed such instruments lacked understanding of what they were signing. Plaintiffs are obviously within the income bracket of those surveyed.[64]

In light of the above evidence, can it be said that a person in the class of plaintiffs waives his constitutional rights when he signs form DPA 9 or form DPA 176-K? It would seem not. The *Charleston* court's refusal to face this issue will undoubtedly have adverse effects on the current trend toward full protection of the poor.

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62. Note, *Public Assistance: The Right to Receive; The Obligation to Repay,* 43 N.Y.U.L. Rev. 451, 487 (1968).

63. D. Caplovitz, Consumers In Trouble (Feb. 1968).

64. 332 F. Supp. at 1178.