Florida State University Law Review

Volume 7 | Issue 3 Article 10

Summer 1979

Florida Board of Bar Examiners re Groot, 365 So. 2d 164 (Fla. 1978); Florida Board of Bar Examiners v. G.W.L., 364 So. 2d 454 (Fla. 1978)

Carolyn Songer Raepple

Constitutional Law—FLORIDA BAR ADMISSION RULE REQUIRING GOOD MORAL CHARACTER DOES NOT DEFEAT THE PURPOSE OF THE FEDERAL BANKRUPTCY ACT IN VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION—*Florida Board of Bar Examiners re Groot*, 365 So. 2d 164 (Fla. 1978); *Florida Board of Bar Examiners re G.W.L.*, 364 So. 2d 454 (Fla. 1978).

Florida Board of Bar Examiners re Groot[1] and *Florida Board of Bar Examiners re G.W.L.*[2] are excellent examples of the Florida Supreme Court's exercise of its power to assure that prospective attorneys in the State of Florida are of good moral character.[3] In each case, the determination of good moral character was based on the circumstances of the applicant's filing of a voluntary petition for bankruptcy.[4] This comment will consider whether the holdings of these cases tend to defeat the purpose of the federal Bankruptcy Act[5] in violation of the supremacy clause of the United States Constitution.[6]

Groot and G.W.L. were both denied recommendation for admission to the bar by the Florida Board of Bar Examiners after the Board had completed an investigation into their character and fitness. The Board found the circumstances of each applicant's volun-

---

1. 365 So. 2d 164 (Fla. 1978).

2. 364 So. 2d 454 (Fla. 1978).

3. The Florida Supreme Court derives its power to regulate the state's practicing attorneys from art. V, § 15 of the Florida Constitution. Good moral character is a prerequisite for admission to the Florida Bar.

> No person shall be recommended by the Florida Board of Bar Examiners . . . for admission to The Florida Bar unless he first produces satisfactory evidence to the Board that he is of good moral character, . . . and is otherwise a fit person to take the oath and perform the obligations and responsibilities of an attorney.

FLA. SUP. CT. BAR ADMISS. R. IV, § 19. The Florida Supreme Court has defined good moral character as "acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *G.W.L.*, 364 So. 2d at 458. While such a broad definition may be attacked as being too ambiguous, it seems that an attempt to define good moral character with absolute precision could lead to unjust application of inflexible standards.

4. *Groot*, 365 So. 2d at 168; *G.W.L.*, 364 So. 2d at 457-59.

5. These cases were decided under the Bankruptcy Act of 1898, 11 U.S.C. §§ 1-1255 (1970). On Nov. 6, 1978, the President signed the Bankruptcy Reform Act of 1978 which becomes effective Oct. 1, 1979. Pub. L. No. 95-598, 92 Stat. 2549-2657 (1978) (to be codified at 11 U.S.C. §§ 101-151326).

6. U.S.CONST. art. VI, cl. 2. The supremacy issue was raised by Justice Hatchett's dissenting opinion in *G.W.L.*:

> The majority's suggestion that a prospective lawyer seeking release from bankruptcy must consider future employment prospects before filing his petition places a "chilling" effect on his exercise of his right to be "freed from debt" and invades areas exclusively reserved for federal action under Article I, Section 8, of the Constitution of the United States.

364 So. 2d at 461.

tary petition for bankruptcy to be evidence of a lack of good moral character.[7] Both applicants petitioned the Florida Supreme Court to review the Board's findings.

The Board's investigation into G.W.L.'s background revealed that he had filed a voluntary petition for bankruptcy three days before he graduated from law school. Of the approximately $9,900 of debts which were discharged in G.W.L.'s bankruptcy proceeding, only one debt of $8.01 was due at the time G.W.L. filed his petition for bankruptcy. The remaining debts consisted of student loans used to finance a portion of G.W.L.'s undergraduate and legal education and were not due to mature until nine months after G.W.L.'s graduation. After an informal hearing before the Board, in which G.W.L. was given an opportunity to clarify the circumstances of his voluntary petition for bankruptcy, the Board withheld its recommendation for G.W.L.'s admission to the bar. Although G.W.L. voluntarily reassumed the discharged debts shortly after this informal hearing, the Board still found that G.W.L. lacked the requisite good moral character for admission to the bar because he had filed for bankruptcy before thoroughly testing the job market and before the overwhelming majority of his debts were due.[8]

The Board's investigation of Groot's character and fitness revealed that he had filed a voluntary petition for bankruptcy fourteen months after he graduated from law school and seven weeks after he had submitted his application for admission to the bar. The investigation further revealed that twice in the nine months prior to Groot's filing for bankruptcy he had voluntarily terminated his gainful employment and had relocated his domicile to a different state. He had also incurred approximately $900 in debts for medical and gasoline credit charges. Groot petitioned for bankruptcy to discharge these debts, along with approximately $8,530 in government-guaranteed student loans which he had secured to finance a portion of his undergraduate and legal education. Moreover, one week after he filed for bankruptcy and over two months before he received his discharge, Groot had accepted the position of staff director of the Florida House of Representatives Committee on Standards and Conduct at an annual salary of $18,000. Based on these findings, the Board concluded that there was serious doubt as to Groot's good faith in incurring the discharged debts and in his subsequent filing for bankruptcy.[9]

The Florida Supreme Court upheld the Board's recommendation

7. *Groot*, 365 So. 2d at 165; *G.W.L.*, 364 So. 2d at 455.
8. 364 So. 2d at 456-57.
9. 365 So. 2d at 166.

to deny G.W.L. admission to the bar because his petition for bankruptcy had been filed "unjustifiably precipitous[ly]" and "with absolutely no regard for his moral responsibility to his creditors."[10] However, the court admitted Groot to the bar, notwithstanding the Board's recommendation. The court noted that, unlike G.W.L., Groot had several dependents and had been forced to borrow money from members of his family to cover his living expenses while unemployed. The court also noted there was no evidence that Groot's itineracy during the nine months prior to his filing for bankruptcy had been the result of unethical motives. The court held that, although Groot filed for bankruptcy at the very time he attained the capability to begin repayment, Groot's petition for bankruptcy was warranted due to his "unusual misfortune" prior to filing for bankruptcy and his need to apply his total income to current obligations.[11]

To determine whether the holdings in these two cases violate the supremacy clause, it is necessary to establish whether they defeat the purpose of the federal Bankruptcy Act.[12] The United States Supreme Court has developed a two-pronged test for making this determination: first, both the federal statute and the state court rule must be construed; and, second, it must be determined whether the two are in conflict.[13] If a conflict were found to exist between the federal law and the state rule, the state rule would be invalid as violative of the supremacy clause.

It is well settled that the purpose of the Bankruptcy Act is to give unfortunate debtors a "new opportunity in life."[14] The United States Congress has now codified this purpose in the Bankruptcy Reform Act of 1978.[15] The new statute will expressly forbid a governmental unit to discriminate against a bankrupt with respect to employment or the issuance of licenses, permits, charters, franchises, or other such grants *solely* because of the person's status as a bank-

10. 364 So. 2d at 459.

11. 365 So. 2d at 167-68.

12. As noted by the Court in Perez v. Campbell, 402 U.S. 637 (1971): "[O]ur function is to determine whether a challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Id.* at 649 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

13. Perez v. Campbell, 402 U.S. 637, 644 (1971). "Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict."

14. Perez v. Campbell, 402 U.S. 637, 648 (1971) (quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)); *accord,* Stellwagen v. Clum, 245 U.S. 605, 617 (1918); Williams v. United States Fidelity & Guar. Co., 236 U.S. 549, 554-55 (1915).

15. Pub. L. No. 95-598, § 525, 92 Stat. 2593 (1978) (to be codified at 11 U.S.C. § 525).

rupt or failure to pay a discharged debt.[16]

The purpose of the Florida Supreme Court rule relating to admission to the bar is equally clear. By requiring every applicant admitted to the bar to be of good moral character, the court has as its objective the promotion of the public's confidence in the bar and the protection of the public from unscrupulous attorneys.[17] The court has noted that because the practice of law is very technical in nature, it provides an unethical attorney with numerous opportunities to defraud clients or impede the progress of justice. Denying admission to the bar based on a finding that an applicant has exhibited a lack of good moral character in the past is presumed to decrease the number of potentially unethical attorneys.[18]

In construing the state rule, however, it is necessary to look beyond the stated purpose and examine its practical effect.[19] As applied in these two cases, the rule resulted in one bankrupt being delayed in his admission to the practice of law in the state and the other being denied completely the right to practice law in the state unless he could present affirmative evidence of his good moral character.[20] In both cases, the deleterious effect was the result of an evaluation of the applicant's motives in voluntarily filing for bankruptcy and the sufficiency of the applicant's need to have his debts discharged.

At first blush, it would appear that a conflict does, in fact, exist between the federal statute and the state rule. Both G.W.L. and Groot were clearly hindered in making a "fresh start." However, upon closer analysis of the extent of the new opportunity intended for bankrupts, there is significant evidence that indicates the Florida Supreme Court acted within the scope of its authority and that the bar admission rule applied to G.W.L. and Groot is valid.

The United States Supreme Court ruled in *Perez v. Campbell*[21] that a state could not enact laws that discriminate against bank-

16. While the United States Supreme Court ruling in Perez v. Campbell, 402 U.S. 637 (1971) was limited to the "principle that any *state legislation* which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause," *id.* at 652 (emphasis supplied), Congress is extending the bankrupt's protection by expressly barring employment discrimination by *any* governmental unit. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 525, 92 Stat. 2593 (1978) (to be codified at 11 U.S.C. § 525). Both the Florida Bar and the Florida Board of Bar Examiners will fall within the broad category of "governmental units." *Id.* § 101(21), 92 Stat. 2552 (1978) (to be codified at 11 U.S.C. § 101(21)).

17. *In re* Florida Bd. of Bar Examiners, 358 So. 2d 7, 9 (Fla. 1978).

18. *Id.*

19. *See* Perez v. Campbell, 402 U.S. 637, 651-52 (1971).

20. G.W.L. was denied admission to the bar without prejudice "to apply for a formal hearing before the Board to present evidence of his present good moral character." 364 So. 2d at 460.

21. 402 U.S. 637 (1971).

rupts solely because of their status as a bankrupt. The essence of that seminal decision was that a state is precluded from using its power to coerce bankrupts to reassume the debts discharged in bankruptcy.[22] This principle has been applied by state and federal courts to strike down state and local laws as well as agency rules that discriminate against bankrupts by denying them employment or licenses solely because discharged debts remain unpaid.[23] Statutes and rules which exert pressure on bankrupts to reassume their discharged debts violate the supremacy clause because they defeat the purpose of the Bankruptcy Act. In such a situation "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt" is not achieved for the bankrupt.[24]

That the Florida Supreme Court did not use its power to coerce applicants to the bar to reassume their discharged debts becomes apparent upon a close examination of *G.W.L.* and *Groot*. After G.W.L.'s informal hearing before the Board of Bar Examiners to clarify the circumstances of his filing for bankruptcy, G.W.L. voluntarily reassumed his discharged debts.[25] This reassumption of debt was plainly not the objective of the court as G.W.L. was ultimately denied admission to the bar. On the other hand, Groot never reassumed his discharged debts and yet he was admitted to the bar. It is thus apparent that the court was not using its power to defeat the effect of these bar applicants' bankruptcy discharges. Therefore, these Florida Supreme Court rulings, which look to the factual circumstances of an applicant's voluntary petition for bankruptcy to

22. In *Perez*, the Supreme Court struck down a state financial responsibility statute because it gave judgment creditors "a powerful weapon with which to force bankrupts to pay their debts despite their discharge." *Id.* at 654. However, it has been noted "that a state law which falls short of coercing payment will not conflict with the Bankruptcy Act." Note, *Supremacy of the Bankruptcy Act: The New Standard of* Perez v. Campbell, 40 GEO. WASH. L. REV. 764, 771 (1972).

23. *See, e.g.*, Rutledge v. City of Shreveport, 387 F. Supp. 1277 (W.D. La. 1975) (police department rule that provided for potential dismissal of police officer for declaring bankruptcy ruled invalid); *In re* Perkins, 3 F. Supp. 697 (N.D.N.Y. 1933) (state statute that provided for suspension of license of a motorist found guilty of negligently operating his motor vehicle until judgment was paid, notwithstanding judgment debtor's filing for bankruptcy, ruled invalid); *In re* Hicks, 133 F. 739 (N.D.N.Y. 1905) (municipal ordinance that provided for the dismissal of a fireman for failure to pay a debt discharged in bankruptcy ruled invalid); Grimes v. Hoschler, 525 P.2d 65 (Cal. 1974), *cert. denied*, 420 U.S. 973 (1975) (state statute that provided for disciplinary action against a licensed contractor for failure to fully pay a debt discharged in bankruptcy ruled invalid); *In re* Loftin, 327 So. 2d 543 (La. 2d Ct. of App.), *cert. denied*, 331 So. 2d 851 (La. 1976) (fire department rule that provided for potential dismissal of a fireman for declaring bankruptcy ruled invalid).

24. *Perez*, 402 U.S. at 648 (quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)).

25. 364 So. 2d at 456.

determine whether the applicant is of good moral character, do not violate the supremacy clause.[26]

CAROLYN SONGER RAEPPLE

26. In a case that closely parallels *Groot* and *G.W.L.*, the Minnesota Supreme Court recently suggested that the Florida Supreme Court may have violated the supremacy clause by basing its decisions on bar admission on the circumstances of the applicants' voluntarily filing for bankruptcy. Application of Gahn, 279 N.W.2d 826, 831 (Minn. 1979) (en banc). The Minnesota court stated that its denial of Gahn's admission to the bar was "in no way influenced by an assessment of Gahn's motivation in seeking bankruptcy." *Id.* at 832. Rather, the court stated its decision was based "solely on the circumstances surrounding Gahan's default on the student loans and the resulting failure to satisfy this important obligation." *Id.* The distinction drawn by the Minnesota court to separate its decision from the Florida decisions was between a court examining the circumstances of an applicant's filing for bankruptcy to discharge financial obligations and a court examining the circumstances of an applicant's defaulting on financial obligations regardless of their discharge in bankruptcy. Upon close analysis, this distinction proves to be little more than semantics and should not be the determinative factor in an assessment of whether a bar applicant's right to file bankruptcy has been infringed. Instead, the focus of such an assessment should be on whether the state used its power to coerce the applicant to reassume the debts.