

SPORTSCO ENTERPRISES v. MORRIS
917 P.2d 934 (Nev. 1996)

ROSE, Justice:

In April 1989, respondent William W. Morris executed a confession of judgment of \$750,000 in favor of Sportsco Enterprises, Inc. (Sportsco). In October 1989, Morris assigned part of his rights in a private sports box at the University of Nevada, Las Vegas (UNLV) to a friend for \$32,000 and the remainder of those rights to his children for lesser or no consideration....

We conclude that the district court erred in concluding that Morris's interest in the box was not property liable to execution

FACTS

In August 1988, respondent Morris entered into a "license agreement" with the Board of Regents of the University of Nevada System (the University), on behalf of UNLV, for the use of a private box at the Thomas and Mack Center. The purpose of the agreement was for Morris to view UNLV basketball games. The agreement was for a five-year period, beginning on July 1, 1988, and ending on June 30, 1993. Morris agreed to pay the University \$24,750 a year as a "license fee" and to purchase a minimum of ten and a maximum of twenty season basketball tickets for seating in the box. Under the agreement, Morris had the right to exclusive use of the private box during basketball games and other public events at the center, he could "sublicense" that use to third parties whom he chose, and he was under no obligation to "sublicense" to the University when he did not purchase tickets to such events. When the center was used for convention purposes, Morris had the right to demand \$4,000 a day in return for use of the box. At all other times, Morris was "entitled to the sole and exclusive right of access" to the box, subject to University approval, which could not be unreasonably withheld. Morris had the right to furnish and improve the box as he saw fit as long as the improvements met University standards and building and fire codes. Any improvements became the property of the University at the expiration of the term of the agreement.

On April 17, 1989, Morris executed a confession of judgment of \$750,000 in favor of Sportsco in an unrelated matter. Almost six months later, on October 11, 1989, Morris assigned part of his rights in the box to a friend, C. Jay Nady. The written assignment provided that Morris assigned Nady four seats and an undivided "twenty-five percent" interest in the box for the remaining term of Morris's "lease" of the box from the University. Although the assignment referred to the "remaining four year term" of the lease, less than three years and nine months remained in that term. The assignment provided that Nady also receive four season tickets to UNLV basketball games and two season parking passes for parking in the private box owners' designated parking area. It also provided that Nady had the right to lease the box if Morris or his wife or his children did not exercise the option to renew the lease. In exchange, Nady paid Morris \$8,000 per year in advance as "rent" for the box, for a total of \$32,000.

Also on October 11, 1989, Morris executed assignments of equal interests in his remaining rights to the box to each of his four children. Each child was assigned four seats and an undivided "18.75 percent" interest in the box for the remaining term of Morris's "lease." Each child also received four season tickets to UNLV basketball games and two season parking passes for parking in the private box owners' designated parking lot. Each assignment provided that the assignee child pay twenty-five percent of the "rent" per year for three years. Each child acknowledged that Nady had the right to lease the assignee's portion of the box if the assignee chose not to exercise the option to renew the lease. Each assignment stated that "for valuable consideration ... the parties agree as follows." No amount of consideration was stated, and Morris admitted in his answer that he assigned his remaining rights in the box to his children for no consideration. (However, according to the terms of the assignments, the children agreed collectively to pay the rent for three years. If this assumption of part of Morris's rent obligation occurred, it constituted some consideration.)

Five months later, on March 20, 1990, Sportsco issued a Notice of Sheriff's Sale of Personal Property Under Execution concerning Morris's interest in the box. Pursuant to a sheriff's certificate of sale dated May 24, 1990, Sportsco became the owner of Morris's agreement with the University to use the box.

.... On September 14, 1990, Sportsco filed an application for a temporary restraining order and a motion for a preliminary injunction. That same day, the district court entered an Order to Show Cause and Temporary Restraining Order. Six months later, on March 20, 1991, the district court denied Sportsco's motion for a preliminary injunction, stating that it was not satisfied that the rights to the box constituted a property interest subject to execution.

A bench trial was conducted on November 22, 1993. On February 7, 1994, the district court filed an Order and Judgment and its Findings of Fact and Conclusions of Law. The court entered judgment in favor of the defendants, dismissed Sportsco's complaint with prejudice, and ordered that execution documents concerning the box be considered void. The district court concluded ... the defendants' rights to the box were not property which could be ... the subject of execution

DISCUSSION

* * *

Property Interest

In the instant case, the district court concluded that the rights in the box were not property for purposes of ... execution We conclude that the district court erred as a matter of law and that Morris's interest in the private sports box in this case was property by statutory definition and under relevant case law.

NRS 21.080(1) provides:

All goods, chattels, moneys and other property, real and personal, of the judgment debtor, or any interest therein of the judgment debtor not exempt by law, and all

property and rights of property seized and held under attachment in the action, shall be liable to execution.... [S]hares and interests in any corporation or company, and debts and credits and other property not capable of manual delivery, may be attached in execution in like manner as upon writs of attachments....

In NRS 21.090, the Legislature provided express exemptions from execution for some property interests. None of these exemptions apply to Morris's interest in the private box. "Of course, all personal property and salable real estate owned by a judgment debtor is subject to execution unless specifically exempted by statute." *Krysmalski v. Tarasovich*, 622 A.2d 298, 310 n.7 (Pa. Super. Ct. 1993).

Statutes permitting execution against specified kinds of property must be liberally construed for the benefit of creditors. 33 C.J.S. *Executions* § 18 (1942). The general rule is that "if the interest is assignable or transferable, it is subject to execution." 30 AM. JUR. 2D *Executions and Enforcement of Judgments* § 165 (1994). "[W]hen property or a right in or to property is salable it is seizable, and ... the sheriff can sell upon execution and convey 'any property, real or personal, tangible or intangible, which may be sold and transferred by the owners thereof at voluntary sale.'" *Gordon v. Rees*, 36 A.2d 841, 843 (Pa. Super. Ct. 1944) (quoting *Brennan v. Pittston Brewing Corp.*, 26 A.2d 334, 335 (Pa. 1942)). In this case, Morris's interest was transferable and, whether deemed an interest in real property or some kind of intangible personal property, was an asset liable to execution pursuant to NRS 21.080(1). *Cf. Greear v. Greear*, 303 F.2d 893, 896 (9th Cir. 1962) (holding that NRS 21.080 authorizes the execution upon all property except spendthrift trusts and therefore seems to contemplate the ability to reach all other equitable interests).

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SPRINGER, Justice, dissenting:

William Morris entered into an agreement with UNLV to "obtain a license to *use* one of the said boxes" at the Thomas and Mack Center. The use of this box was offered by UNLV to Morris "for the purpose of permitting [Morris] to view from the box collegiate basketball games presented by the University...." As I see the arrangement between Morris and UNLV, it was very similar to a season ticket by which the ticket-holder/licensee would be permitted to use a certain seat to watch basketball games--hardly the kind of interest that could be characterized as "property." In fact, Morris and UNLV agreed in writing that the box license "creates no possessory interest which would be subject to property taxes."

Just because Morris and UNLV believed that the license had no taxable value is not, of course, conclusive on the question of whether Morris had a property right or had any interest that was of value; still, I find nothing in the record that indicates that Morris' right to watch basketball games, by virtue of what amounts to a glorified season ticket, can be translated into either a property right or an interest of value that would be subject to execution.

Morris was permitted to watch games from the box only for so long as he paid a very high fee for the privilege. In addition to paying the box fee, Morris was required by his agreement with UNLV to purchase ten season basketball tickets for seating in the box. Morris was prohibited from selling his tickets for a profit and, as I read the agreement, prohibited from “scalping” his box at cost higher than that which he was paying for the use of the box.

* * *

I do not think a season ticket or a season box is property; and, if it were, the property would certainly lose its value at the end of the sports year. Whatever the value of the “usufruct” that a season ticket or box holder might have is certainly cancelled out by the obligation for continued payment that is attached to the privilege. I have been cited to no evidence in this case to show me that a holder of one of these boxes is in a position to peddle the privilege for a profit or that, if this were possible, there is a property interest of value that would be subject to execution proceedings. Under these circumstances, I would give deference to the trial court and affirm its judgment.