

Dom. Rel. Law § 244: CPLR 2222 Inapplicable to Arrears Judgment in Matrimonial Action

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1966) "Dom. Rel. Law § 244: CPLR 2222 Inapplicable to Arrears Judgment in Matrimonial Action," *St. John's Law Review*: Vol. 41 : No. 2 , Article 42.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol41/iss2/42>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

has a clear right to the permanent relief demanded.²⁶⁰ Finally, there is the general precautionary requirement that where the temporary relief sought gives the litigant that which he seeks ultimately, it is "to be granted, if at all, very sparingly and only when urgent necessity is clearly shown."²⁶¹

In *Graham*, the complainant applied for temporary relief pending the trial of an action seeking to declare unconstitutional the present apportionment of members of the Erie County Board of Supervisors. The court found that equity warranted the granting of the temporary injunction. Unless the Board was compelled by a temporary mandatory injunction to prepare a new apportionment plan in preparation for the November 1966 elections, the ultimate relief sought would be frustrated for one additional year. "Such a constitutional deprivation must not be tolerated for one full year if it can reasonably be avoided."²⁶² Furthermore, in light of recent United States Supreme Court decisions²⁶³ and recent reapportionment cases in New York,²⁶⁴ the court concluded that the complainant had demonstrated a clear legal right to ultimate relief on the basis of the alleged population disparities.²⁶⁵ "The limits of that relief will be determined only after trial."²⁶⁶

Graham thus typifies the detailed examination utilized by the courts before granting the "extraordinary" remedy of a temporary mandatory injunction.

DOMESTIC RELATIONS LAW

Dom. Rel. Law §244: CPLR 2222 *inapplicable to arrears judgment in matrimonial action.*

In *St. Germain v. St. Germain*,²⁶⁷ the court held that the general authority in CPLR 2222 authorizing a party to docket

²⁶⁰ *Begleiter v. Moreland*, 33 Misc. 2d 118, 225 N.Y.S.2d 577 (Sup. Ct. N.Y. County 1961). *Accord*, *Matthes v. Collyer*, 32 Misc. 2d 224, 223 N.Y.S.2d 280 (Sup. Ct. Westchester County 1961); *Stebbins v. McNulty*, 29 Misc. 2d 351, 220 N.Y.S.2d 975 (Sup. Ct. Albany County 1961).

²⁶¹ *James v. Lyon*, 226 N.Y.S.2d 642 (Sup. Ct. Westchester County 1962).

²⁶² *Graham v. Board of Supervisors*, 49 Misc. 2d 459, 468, 267 N.Y.S.2d 383, 393 (Sup. Ct. Erie County 1966).

²⁶³ *WMCA, Inc. v. Lomenzo*, 377 U.S. 633 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

²⁶⁴ *Treiber v. Lanigan*, 48 Misc. 2d 434, 264 N.Y.S.2d 797 (Sup. Ct. Oneida County 1965); *Augostini v. Lasky*, 46 Misc. 2d 1058, 262 N.Y.S.2d 594 (Sup. Ct. Broome County 1965); *Shilbury v. Board of Supervisors*, 46 Misc. 2d 837, 260 N.Y.S.2d 931 (Sup. Ct. Sullivan County 1965); *Goldstein v. Rockefeller*, 45 Misc. 2d 778, 257 N.Y.S.2d 994 (Sup. Ct. Monroe County 1965).

²⁶⁵ *Graham v. Board of Supervisors*, *supra* note 262, at 467, 267 N.Y.S.2d at 392.

²⁶⁶ *Ibid.*

²⁶⁷ 25 App. Div. 2d 568, 267 N.Y.S.2d 789 (2d Dep't 1966).

ex parte an order directing the payment of money as a judgment is circumscribed by the specific provisions of Section 244 of the Domestic Relations Law. This latter provision requires an application to the court, on appropriate notice to the defendant, for an order directing entry of an arrears judgment arising out of a matrimonial action. Section 244 was previously held to be the exclusive remedy in the enforcement of matrimonial payments.²⁶⁸

The primary importance of the instant case is that it is the first to construe CPLR 2222 as inapplicable in matrimonial actions. Thus, the provisions of CPLR 2222, which in general facilitate and liberalize the docketing of orders as judgments are overridden by the specific provisions of section 244, which require a hearing before the court on proper notice to the defendant. The discretion of the court in enforcing the non-payment of orders in a matrimonial action is unaffected by CPLR 2222, and Section 244 of the Domestic Relations Law is still the exclusive remedy.

VEHICLE AND TRAFFIC LAW

Vehicle and Traffic Law § 253: Actual notice not necessary where defendant gave false address.

Constructive service on a nonresident motorist pursuant to Section 253 of the Vehicle and Traffic Law requires service on the Secretary of State *and* service on the defendant at his last-known address by registered mail. In addition, plaintiff must file either the return receipt or notice of defendant's refusal to accept delivery. It is well established that the import of the registered mail and filing requirements is that the defendant must have received actual notice of the service.²⁶⁹ However, in *Greenwood v. White*,²⁷⁰ service was validated even though there was no actual notice.

There, the defendant, a nonresident motorist involved in an accident in New York, gave the sheriff an improper Florida address. The registered letter was returned marked "No such address" "Unknown." In upholding the service, the court recognized that there was a lack of compliance with the provisions of the statute, but nevertheless held that the defendant, by giving an incorrect address and rendering compliance impossible, was *estopped* from asserting that a return receipt had not been filed.

It appears that *Greenwood* is the first case to uphold constructive service pursuant to Section 253 of the Vehicle and Traffic

²⁶⁸ Kahn v. Sampson, 23 App. Div. 2d 539, 255 N.Y.S.2d 963 (1st Dep't 1965); Snow v. Snow, 8 App. Div. 2d 516, 170 N.Y.S.2d 902 (2d Dep't 1959); Leitman v. Leitman, 21 Misc. 2d 653, 190 N.Y.S.2d 188 (Sup. Ct. Kings County 1959).

²⁶⁹ Shusheraba v. Ames, 255 N.Y. 490, 175 N.E. 187 (1931); Bauman v. Fisher, 12 App. Div. 2d 32, 208 N.Y.S.2d 317 (3d Dep't 1960).

²⁷⁰ 25 App. Div. 2d 73, 266 N.Y.S.2d 1012 (3d Dep't 1966).