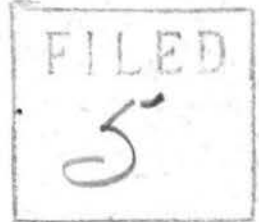


MAGISTRATE COURTS: Magistrate must keep judgment docket; magistrate judgment not lien until transcript of judgment filed with circuit clerk.

January 6, 1948



1/27

Honorable Clyde Baugh  
Judge of the Magistrate Court  
Cape Girardeau County  
Jackson, Missouri

Dear Judge Baugh:

This is in reply to your letter of recent date requesting an opinion from this department, which reads as follows:

"Will you please give me, - at earliest possible date - a definite ruling: As to whether it is necessary that each Magistrate Court use a Judgment Docket?"

"At the time this office was set up, we were under the impression that a Judgment Docket would not be necessary, and so, did not use one. We found that some Magistrate's were using the Judgment Dockets, and some were not - it seemed to be quite a matter of question.

"Under Senate Bill 207, Sections 114 and 115 and 116; Does the judgment become a lien only when transcribed to Circuit Court?"

"If a judgment is not a lien in Magistrate Court - then, is it mandatory to use a Judgment Docket?"

"I would like to get a definite ruling on this, in order to get the book set up, if it is absolutely necessary to use the Judgment Docket."

It is provided by Section 19, page 774 of the Laws of Missouri, 1945, that magistrate courts shall be courts of record. The judgment of a court of record is a part of the record of that court. In *Capitain v. Mississippi Valley Trust Co., Mo. Sup., 177 S.W. 628*, the court said at page 633:

"As we said in the late case of *Smith v. Moseley, 234 Mo. 486, 495, 137 S.W. 971, 974*:

"The record proper consists of the process and return, the pleadings, the verdict and judgment in civil cases."

"This is a concrete way of saying that the record proper of a cause determined in a court of record consists of those things which show the right of the court to adjudicate between the parties, the particular matter before it, and its trial and determination. \* \* \*"

It necessarily follows then that a record of the judgments rendered by the magistrate court must be preserved. Further, Sections 1294 and 1295, R.S. Mo. 1939, require that a docket be kept on all judgments rendered by courts of record and provide the manner in which said dockets shall be set up. This duty is imposed upon the clerks of those courts. Said sections provide:

Sec. 1294. "The clerks of courts of record shall keep in their respective offices a well-bound book for entering therein an alphabetical docket of all judgments and decrees."

Sec. 1295. "They shall, during every term, or within thirty days thereafter, enter in such docket all final judgments and decrees rendered at such term in alphabetical order, by the name of the person against whom the judgment or decree was entered; and if the judgment or decree be against several persons, it shall be docketed in the name of each person against whom it was recovered, in the alphabetical order of their names, respectively."

Therefore, a docket of the judgments rendered by a magistrate court must be kept by the clerk of that court.

With reference to the further question presented concerning judgment liens, we direct your attention to Section 1269, R.S. Mo. 1939, which provides as follows:

"Judgments and decrees rendered by the supreme court, by any United States district or circuit court held within this state, by the Kansas City court of appeals, the St. Louis court of appeals, the Springfield court of appeals; and by any court of record, shall be liens on the real estate of the person against whom they are rendered, situate in the county for which or in which the court is held."

The above section provides that judgments rendered by courts of record are liens on the real estate of the person against whom they are rendered. Since magistrate courts are courts of record, it would seem that judgments rendered by those courts should be considered liens in their own right. However, we cannot fail to take notice of Sections 114 and 115, page 797 of the Laws of Missouri, 1945, which provide that a transcript of a judgment rendered in the magistrate court may be filed with the clerk of the circuit court and entered in the docket of circuit court judgments. Such magistrate court judgment, from the time of filing the transcript, shall have the same lien on the real estate of a defendant as is given to judgments rendered by the circuit court. Section 115 reads:

"Every such judgment, from the time of filing the transcript, shall have the same lien on the real estate of the defendant in the county as is given to judgments of circuit courts, and shall be under the control of the court where the transcript is filed; may be revived and carried into effect in the same manner and with like effect as judgments of circuit courts, and executions issued thereon may be directed to and executed in any county in this state; and the party obtaining said judgment, or his

attorney, shall have the option of suing out an execution out of the court where the transcript is filed, without being required to first sue out an execution from the magistrate court where said judgment was obtained, and without being required to file a supplemental transcript or certificate of the magistrate, showing the suing out and the return of an execution from the magistrate court."

The above section requires a transcript of the judgment rendered by a magistrate court to be filed with the clerk of the circuit court before such judgment is a lien upon the real estate of the defendant against whom it was rendered. Although magistrate courts are courts of record, we believe that said section, being a later and special statute relating only to magistrate courts, will be deemed a qualification of or an exception to Section 1269, a general statute, and must prevail. *Eagleton v. Murphy*, 348 Mo. 949, 156 S.W. (2d) 683; *State v. Richman*, 347 Mo. 595, 148 S.W. (2d) 796. This conclusion is strengthened by the fact that judgment liens are statutory and that the Legislature has not seen fit to expressly provide that judgments rendered by magistrate courts are liens in their own right, but on the contrary has set up a procedure by which such judgments can be made liens in the circuit court.

#### Conclusion.

In view of the foregoing, it is the opinion of this department that a judgment docket should be kept of the judgments rendered by the magistrate court. It is the further opinion of this department that a judgment rendered by the magistrate court is not a lien on the real estate of the defendant against whom it is rendered unless and until a transcript of such judgment is filed with the clerk of the circuit court and entered on the docket of circuit court judgments.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

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J. S. TAYLOR  
Attorney General

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