

2011 IL App (1st) 101429-U

No. 1-10-1429

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SIXTH DIVISION  
November 10, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MARTIN PRODUCE, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 09 M1 133576
	)	
EL CENTRO, LLC,	)	Honorable
	)	Patrick J. Sherlock,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Robert E. Gordon and Justice Cahill concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant waived any objection regarding service of process and personal jurisdiction; however, we reverse the trial court's turnover order and remand the cause for further proceedings because it appears that the property subject to the turnover order is claimed by people who were not afforded the opportunity to appear and maintain their rights.

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¶ 2 Defendant El Centro, LLC, appeals the trial court's April 2010 order, which requires defendant to turnover to plaintiff Martin Produce, Inc. certain payments from a third party in order to satisfy the judgment rendered against defendant in favor of plaintiff. Defendant argues the trial court's order should be vacated because plaintiff allegedly failed to notify defendant's registered agent of the claim and comply with the statutory notice requirements concerning garnishment proceedings.

¶ 3 We find that defendant submitted to the jurisdiction of the trial court. However, we reverse the trial court's turnover order and remand this matter for further proceedings to permit or require certain adverse claimants to appear before the court to maintain any alleged right they may have to the payments at issue in this dispute.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff was a wholesaler, and defendant was an Illinois limited liability company that operated a restaurant. Plaintiff sold defendant various food and other products. When defendant failed to fully pay plaintiff for the food and products defendant had received, plaintiff, in April 2009, sued, alleging, *inter alia*, breach of contract and unjust enrichment. Plaintiff alleged defendant owed \$8,785.68 plus interest on invoices not timely paid. The summons and complaint were served on defendant by personal service on James Kapla, Jr., as defendant's agent, at West Willow Drive in Plainfield, Illinois on May 6, 2009. On May 20, 2009, Kapla, acting *pro se*, filed an appearance on behalf of defendant. On May 29, 2009, Kapla filed an answer on behalf of defendant. On July 24, 2009, after a hearing, the trial court entered judgment for plaintiff for \$12,372.81 with costs assessed against defendant.

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¶ 6 On August 17, 2009, plaintiff issued a citation to discover assets to defendant, which was served by personal service on Kapla, "its member," at the Willow Drive address. Later, however, that service of citation was quashed, upon plaintiff's motion, with leave to re-serve it upon defendant. On October 21, 2009, the citation was served on defendant by leaving a copy with its registered agent, Richard Morley, on Oak Park Avenue in Oak Park, Illinois. Counsel for Morley objected to service of the citation, and the court, after hearing argument of counsel, continued the matter for status, excused Morley from appearing at the next hearing date, and ordered that an alias citation to discover assets be issued for service upon a representative of defendant. A sheriff's office certification of service dated December 7, 2009, indicated that defendant by Kapla was not served because Kapla no longer resided at the Willow Drive address.

¶ 7 On March 31, 2010, the court entered an order that noted defendant's member Kapla "voluntarily submitted to the court's jurisdiction and elect[ed] to proceed for he has no attorney representing him in this proceeding." In April 2010, Kapla appeared in court on the citation to discover assets examination as defendant's member.

¶ 8 According to the bystander's report, the trial court, after the April 22, 2010 hearing, noted that defendant, on November 16, 2007, sold certain property pursuant to a bill of sale to Martin Jaimes for \$78,000 under an installment payment at the rate of \$500 per week. Those payments were supposed to commence on March 31, 2008, and continue to March 31, 2011. Kapla testified that he personally owned and sold the property, but the court rejected his arguments, finding his claims not credible and contrary to the terms of the bill of sale. The court found that

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plaintiff met its burden of proof to establish that: the personal property referenced in the bill of sale was owned by and was the sole personal property of defendant and not Kapla individually; defendant entered into the bill of sale and not Kapla individually; and the funds received from that sale were the property and funds of defendant and not Kapla individually.

¶ 9 Furthermore, the court referred to Kapla's submission of two 2009 orders entered by the Kane County Circuit Court in No. 06 DK 1666, a divorce action between Kapla and his wife, Norma Kapla. Those orders provided as follows:

The July 31, 2009 Kane County agreed order was entered pursuant to Kapla's motion for voluntary non-wage garnishment for child support. The order provided that Jaimes shall pay his daughter Norma Kapla \$238 per week for child support until Jaimes "has paid off the amount of funds he owes" Kapla.

Furthermore, Jaimes shall pay Norma Kapla \$262 per week until an arrearage of \$8,854 is paid or Jaimes has paid off the amount he owes Kapla.

The October 21, 2009 Kane County order was entered on a matter before the court on citation of Jaimes. The court noted the prior July 2009 order and ordered that when the arrearage is satisfied, Jaimes shall pay the \$262 per week to Steven Titiner for the judgments of Dan Klenke. Moreover, if Kapla begins to pay child support directly, then Jaimes shall pay the \$238 to Titiner for the judgments of Klenke.

¶ 10 The trial court found the Kane County orders were irrelevant because they "had no bearing on the ownership of the Personal Property which the court found was owned by

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[defendant]." Accordingly, the court ordered that any payment defendant or Kapla received pursuant to the November 2007 bill of sale must be promptly turned over to plaintiff until the \$12,372.81 judgment plus costs and interest was paid in full. Defendant timely appealed this April 2010 turnover order.

¶ 11

## II. ANALYSIS

¶ 12 Initially we note that the briefs filed in this case offer minimal assistance to this court. Reviewing courts are entitled to have briefs submitted that are articulate and present an organized and cohesive legal argument in accordance with the applicable supreme court rules. *In re Marriage of Souleles*, 111 Ill. App. 3d 865, 869 (1982). The failure to comply with the rules to have the issues clearly defined and to cite pertinent authorities can result in the dismissal of an appeal, but it is not a jurisdictional limitation on this court. *Id.* In the interests of justice and fairness, we address the issues this case presents.

¶ 13 Without citation to any relevant authority, defendant contends it could not have been represented in the proceedings below by Kapla because plaintiff failed to comply with section 5.25 of the Business Corporation Act of 1983 (805 ILCS 5/5.25 (West 2010)).

¶ 14 Defendant seems to argue that the circuit court never obtained jurisdiction over defendant because plaintiff's complaint was served on defendant's member, Kapla, rather than defendant's registered agent. This argument lacks merit. Any objection defendant may have had regarding service was waived where Kapla filed an appearance and answer on behalf of defendant, participated in court proceedings on defendant's behalf, and—as documented by the trial court's March 31, 2010 order—voluntarily submitted to the court's jurisdiction and elected to proceed

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with the asset discovery examination. *In re Commissioner of Banks and Real Estate*, 327 Ill. App. 3d 441, 464 (2001) (an appellant waives the right to contest personal jurisdiction and service of process if the appellant fails to file a special and limited appearance or participates in the proceeding on the merits); *O'Connell v. Pharmaco, Inc.*, 143 Ill. App. 3d 1061, 1068 (1886) (accord).

¶ 15 Defendant also contends the April 2010 order should be vacated because plaintiff failed to comply with the statutory notice provisions for garnishment actions. Defendant seems to argue that the April 2010 order, which requires defendant or Kapla to turnover to plaintiff any payments received from Jaime pursuant to the November 2007 bill of sale, is void because Norma Kapla and Dan Klenke already had garnishment orders on those funds but plaintiff failed to give them notice of the citation to discover assets issued to defendant or the supplementary proceedings. Defendant argues that a garnishment judgment issued in the absence of such notice is invalid.

¶ 16 Plaintiff responds that Norma and Klenke were not entitled to any notice of the supplementary proceedings because defendant failed to provide any factual support that they had any interest in the \$500 weekly payments from Jaime to defendant pursuant to the terms of the bill of sale. Plaintiff asserts that those funds were the sole and exclusive property of defendant and neither Norma nor Klenke was a judgment creditor of defendant but, rather, may have been creditors to Kapla, individually. Finally, plaintiff alleges that any assignment by Kapla of the \$500 weekly payments from the bill of sale indicates that fraud has been perpetrated to divert funds due to defendant to satisfy Kapla's personal obligations.

¶ 17 The record indicates that plaintiff initiated a supplementary proceeding against defendant to enforce the judgment, pursuant to section 2-1402 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402 (West 2010)). Section 2-1402 of the Code authorizes a citation action and provides a mechanism by which a judgment creditor may initiate supplementary proceedings to discover the assets of a judgment debtor or third party and apply those assets to satisfy the judgment. 735 ILCS 5/2-1402(a) (West 2010). The provisions of section 2-1402 are to be liberally construed, and the burden lies with the petitioner to show that the citation respondent possesses assets belonging to the judgment creditor. *Schak v. Blom*, 334 Ill. App. 3d 129, 133 (2002). The due process requirements of notice and hearing for supplementary proceedings do not require a rigid or generic formula. *Bank of Aspen v. Fox Cartage, Inc.*, 126 Ill. 2d 307, 317 (1989); *Valley Pontiac-Cadillac-Jeep-Eagle, Inc. v. Jim Thornton Pontiac Cadillac, Inc.*, 187 Ill. App. 3d 699, 703 (1989). Before a judgment creditor may proceed against a third party who is not the judgment debtor, the record must contain some evidence that the third party possesses assets of the judgment debtor; only then does the citation court have the jurisdiction to order that party to produce those assets to satisfy the judgment. *Schak*, 334 Ill. App. 3d at 133.

¶ 18 "[T]he only relevant inquiries in supplementary proceedings are (1) whether the judgment debtor is in possession of assets that should be applied to satisfy the judgment or (2) whether a third party is holding assets of the judgment debtor that should be applied to satisfy the judgment." *Id.* Section 2-1402 affords protection to third persons by providing as follows:

"If it appears that any property \*\*\* discovered, or any interest therein, is claimed

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by any person, the court shall, as in garnishment proceedings, permit or require the claimant to appear and maintain his or her right. The rights of the person cited and the rights of any adverse claimant shall be asserted and determined pursuant to the law relating to garnishment proceedings." 735 ILCS 5/2-1402(g) (West 2010).

¶ 19 When a trial of the issues is conducted in a supplementary proceeding, the trial court's decision of the issues and contested facts is reviewed under the manifest weight of the evidence standard. See *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1999) (when a garnishee's answer is contested, a trial of the issues presented is to be conducted as in all other civil cases, and the judgment is reviewed under the manifest weight of the evidence standard). A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence. *Id.* at 143. However, the trial court's decision to compel a judgment debtor to deliver up money or property in satisfaction of a judgment is reviewed under an abuse of discretion standard, provided that the trial court conducted an evidentiary proceeding, heard testimony, and made findings of fact. *Gonzalez v. Profile Sanding Equipment, Inc.*, 333 Ill. App. 3d 680, 692-93 (2002); *cf. Dowling v. Chicago Option Associates, Inc.*, 226 Ill. 2d 277, 285 (2007) (*de novo* review applies when the trial court heard no testimony and based its turnover decision on documentary evidence).

¶ 20 We note that defendant does not challenge the trial court's factual finding that the personal property referenced in the November 2007 bill of sale was owned and sold by defendant and not by Kapla individually. Moreover, nothing in the record indicates that factual finding

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was against the manifest weight of the evidence. Instead, defendant challenges the validity of the turnover order based on the lack of notice to third parties who have claims on the payments Jaime owes to defendant. We find that the trial court's April 22, 2010 turnover order was an abuse of discretion because the court erred when it did not hold further proceedings to determine the rights of adverse claimants despite the indication from the Kane County court orders that third parties might have claims on the payments at issue here.

¶ 21 We agree with the trial court that the Kane County court orders were not relevant on the issue of ownership of the property referenced in the bill of sale. Furthermore, the trial court did not exceed its authority because the turnover order was directed only at the cited parties—defendant and Kapla; the trial court did not order any third party to produce any assets to satisfy the judgment. Nevertheless, the Kane County court orders sufficiently raised the issue that Norma and Klenke appeared to have claims on Jaime's \$500 weekly payments. The statutory provisions require that any person who appears to have a claim on property discovered pursuant to a citation to discover assets must be given an opportunity to appear and maintain his claim. 735 ILCS 5/2-1402(g) (West 2010); *B.J. Lind & Co. v. Diacou*, 3 Ill. App. 3d 299, 301-02 (1972) (where judgment debtor's sister testified that she had sold the property to her daughter-in-law, the trial court erred in refusing to continue the citation proceeding so that the daughter-in-law could be given notice of the proceeding).

¶ 22 Accordingly, we reverse the April 22, 2010 order of the trial court and remand the cause for further proceedings consistent with this order.

¶ 23 Reversed and remanded.

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