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No. 1-10-1867

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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VICTORIA POILEVEY,	)	Appeal from the Circuit Court of
	)	Cook County, County Department,
Plaintiff-Appellee,	)	Tax and Miscellaneous Remedies
	)	Division
v.	)	No. 03 L 51523
	)	
AARON SPIVACK,	)	Honorable Alexander P. White,
	)	Judge Presiding
Defendant-Appellant.	)	

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Justice Murphy delivered the judgment of the court.

Quinn, P.J., and Steele, J., concurred in the judgment.

**ORDER**

*HELD:* Where defendant failed to fully satisfy the judgment amount, the trial court did not err in denying his motion for satisfaction of judgment pursuant to section 12-183 of the Code of Civil Procedure (735 ILCS 5/12-183 (West 2006)).

In 2003, plaintiff, Victoria Poilevey, registered in Illinois a default judgment entered in

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the state of Wyoming against defendant, Aaron Spivack. After this court affirmed the trial court's order requiring defendant to pay postjudgment attorney fees, defendant paid plaintiff the sum of \$96,497.83 and filed a petition for issuance of a satisfaction of judgment pursuant to section 12-183 of the Code of Civil Procedure (735 ILCS 5/12-183 (West 2006)). The trial court denied defendant's petition, holding that defendant still owed plaintiff attorney fees and interest on those fees. On appeal, defendant argues that he is entitled to a satisfaction of judgment. For the following reasons, we affirm.

## I. BACKGROUND

Plaintiff obtained a default judgment against defendant in Wyoming for \$56,324.95 based on defendant's breach of obligations under a promissory note. On December 3, 2003, plaintiff registered the Wyoming default judgment with the clerk of the circuit court in Cook County.

On November 24, 2004, the trial court entered a memorandum of judgment providing that on July 16, 2003, judgment was entered in plaintiff's favor in the amount of \$56,324.95, "plus costs, attorneys' fees, interest, etc."

On February 16, 2005, defendant's attorney informed the trial court that defendant had entered into a contract to sell his real property on Armitage Street in Chicago and that there was enough equity to satisfy the judgment. Defendant's counsel requested a payoff letter from plaintiff's counsel good through March 31, 2005. The court continued the matter for status to March 31, 2005.

Defendant failed to appear at the March 31, 2005, status hearing. The court imposed a judicial lien against the buyers of defendant's real property on Armitage in the amount of

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\$84,236.16, which included postjudgment attorney fees of \$17,972.94. It also ordered that defendant pay a per diem of \$15.43 from March 29, 2005. The court ordered defendant to appear before it on April 12, 2005, to show cause for failing to appear and to produce documents required by previous court orders.

On April 4, 2005, defendant filed an emergency motion to modify the court's March 31, 2005, order. Defendant argued that the original note merged with the judgment and that interest was calculated incorrectly. The trial court denied defendant's motion to modify the order on June 14, 2005, holding that interest was properly calculated and that neither the merger doctrine nor the *ejusdem generis* doctrine of construction precluded the award of postjudgment attorney fees.

Defendant appealed to this court on July 6, 2005. We affirmed. *Poilevey v. Spivack*, 368 Ill. App. 3d 412 (2006). We found that the language of the default judgment entered in Wyoming supported an award of postjudgment attorney fees that were ancillary to that judgment. *Poilevey*, 368 Ill. App. 3d at 416. "To argue that postjudgment fees have not been specifically provided for is to ignore the plain language of the Wyoming judgment." *Poilevey*, 368 Ill. App. 3d at 416. Further, the fees were not barred by the doctrines of merger or *res judicata*. *Poilevey*, 368 Ill. App. 3d at 416.

After the mandate issued in this court and the supreme court denied defendant's petition for leave to appeal, plaintiff filed a petition for turnover. On June 4, 2007, the trial court ordered defendant to pay plaintiff \$96,497.83, which included the judicial lien of \$84,236.16 plus 10% interest from April 1, 2005, through June 5, 2007, of \$12,281.67. On June 5, 2007, the sum of

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\$96,497.83 was paid to plaintiff out of money held in escrow pursuant to petitions to discover assets.

On May 29, 2007, plaintiff filed a motion for award of attorney fees and costs incurred after March 31, 2005. On September 24, 2007, the trial court granted plaintiff's petition for award of attorney fees and costs incurred after March 31, 2005, awarding additional fees and costs in the amount of \$29,625.96. That judgment was modified on January 14, 2008, (1) to award post-judgment interest on the March 31, 2005, attorney fee at the rate of 9% per annum until paid and (2) to correct the fees incurred by plaintiff in responding to defendant's petition for leave to appeal from \$1,500 to \$3,350. Therefore, the court awarded plaintiff the additional sum of \$1,850.

Defendant filed a motion to reconsider the order on fees and costs. Defendant did not appear in court on April 21, 2008, and an order was entered denying defendant's motion for reconsideration and granting plaintiff's oral motion for turnover. Defendant filed an emergency motion to vacate the April 21, 2008, order, which the court granted on May 2, 2008. The court ordered plaintiff's counsel to draft and deliver to the court an order ruling on the matters addressed in the April 21, 2008, order, which was to be identical to the April 21, 2008, order and effective the date of entry.

On August 27, 2008, plaintiff filed a motion to enforce the March 31, 2005, judicial lien of attorney fees and to convert it to judgment. The trial court granted that motion on March 30, 2009. Defendant filed a motion to reconsider on April 30, 2009. Because defendant filed his motion to reconsider more than 30 days after the March 30, 2009, order, the court considered the

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motion under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)) and allowed him to file an amended 2-1401 petition. He filed his verified petition pursuant to section 2-1401 on July 9, 2009.

Subsequently, on December 1, 2009, defendant filed a petition for issuance of satisfaction of release of judgment. He contended that the default judgment entered in Wyoming was \$58,469.93 and the statutory interest of 10% calculated from December 3, 2003, through June 6, 2007, was \$20,514.71. He argued, therefore, that as of June 6, 2007, the amount of principal, interest, and costs of \$80,731.97 was due plaintiff pursuant to the default judgment and that he overpaid by \$15,765.86 when he paid plaintiff \$96,497.83 on June 6, 2007.

On June 4, 2010, the trial court denied defendant's 2-1401 petition and motion for issuance of a satisfaction of judgment, noting that defendant still owed plaintiff \$41,366.97 in unpaid attorney fees and interest on the fees.<sup>1</sup> It granted plaintiff's motion for turnover in the amount of \$42,158.09. This appeal followed.

## II. ANALYSIS

On appeal, defendant argues that the trial court erred when it denied his motion for issuance of satisfaction of judgment. Section 12-183 of the Code of Civil Procedure (735 ILCS

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<sup>1</sup> Defendant states in his opening brief that a transcript of the April 14, 2010, hearing on his motion for issuance of satisfaction of judgment would be included in a supplemental record. However, a supplemental record was not filed, so said transcript is not included in the record on appeal.

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5/12-183 (West 2006)) provides as follows:

“(a) Every judgment creditor, his or her assignee of record or other legal representative having received full satisfaction or payment of all claims of money as are really due to him or her from the judgment debtor on any judgment rendered in a court shall, at the request of the judgment debtor or his or her legal representative, execute and deliver to the judgment debtor or his or her legal representative an instrument in writing releasing such judgment.

(b) If the judgment creditor, his or her assigns of record or other legal representative to whom tender has been made of all sums of money due him or her from the judgment debtor including interest, on any judgment entered by a court, wilfully fails or refuses, at the request of the judgment debtor \*\*\* to execute and deliver to the judgment debtor \*\*\* an instrument in writing releasing such judgment, the judgment debtor may petition the court in which such judgment is of record, making tender therewith to the court of all sums due in principal and interest on such judgment, for the use of the judgment creditor, \*\*\* whereupon the court shall enter an order satisfying the judgment and releasing all liens based on such judgment.” 735 ILCS 5/12-183(a), (b) (West 2006).

The purpose of section 2-183 is to serve as proof of the payment of the judgment, barring any further attempts by the judgment creditor to enforce the judgment, and to stop the accrual of postjudgment interest. *Bricks, Inc. v. C & F Developers, Inc.*, 361 Ill. App. 3d 157, 161 (2005).

We will reverse an order on whether a release or satisfaction of judgment has been properly

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proved only if the trial court abused its discretion. *Meyer v. First American Title Insurance Agency of Mohave, Inc.*, 285 Ill. App. 3d 330, 336 (1996).

We conclude that the trial court did not abuse its discretion in denying defendant's motion for satisfaction of judgment because he did not fully satisfy the judgment, as required by section 12-183. Defendant's payment of \$96,497.83 on June 4, 2007, included the judicial lien of \$84,236.16 plus interest of \$12,281.67 through June 5, 2007, on the underlying judgment. However, the trial court ordered the following additional fees and interest, which defendant never paid: (1) the attorney fees totaling \$29,625.96 that the trial court granted on September 24, 2007, and that the court converted to judgment on March 30, 2009; (2) the additional \$1,800 in attorney fees that the trial court granted on January 14, 2008; and (3) the interest that the trial court also granted on the March 30, 2005, fee award on January 14, 2008, at the rate of 9% per annum.

During the first appeal of this case, this court specifically found that the language of the default judgment entered in Wyoming supported an award of postjudgment attorney fees that were ancillary to that judgment. *Poilevey*, 368 Ill. App. 3d at 416. Under the law-of-the-case doctrine, where an issue has been litigated and decided, a court's unreversed decision on that question of law or fact settles that question for all subsequent stages of the suit. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 374 (2007). Therefore, the trial court properly awarded attorney fees that plaintiff incurred after March 31, 2005, due to the continued litigation.

Defendant argues, however, that on June 4, 2007, when the trial court ordered him to pay plaintiff \$96,497.83, there was only one judgment against him. He contends that the judicial lien from March 31, 2005, was not a judgment but, rather, an "amount lien." He argues that the

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December 3, 2003, judgment<sup>2</sup> should have been used to determine the amount of the June 4, 2007, order. According to defendant, as of June 5, 2007, no postjudgment attorney fees were reduced to judgment; the attorney fees were not reduced to judgment until March 30, 2009. Therefore, he argues, he not only satisfied the judgment amount on June 5, 2007, but he overpaid because the correct amount was \$74,979.79.

We disagree with defendant's contention that when the trial court ordered the turnover of escrowed funds on June 4, 2007, there was only one judgment against him. A November 24, 2004, "memorandum of judgment" provided for an award of \$56,324.95, "plus costs, attorneys' fees, interest, etc. as allowed by law." After that judgment was entered, on March 31, 2005, the trial court entered a judicial lien against the buyers of defendant's real property on Armitage. On June 14, 2005, the trial court affirmed the lien and confirmed that it had previously "signed a memorandum of judgment." On June 4, 2007, the trial court ordered defendant to pay plaintiff \$96,497.83, which included the judicial lien of \$84,236.16 plus 10% interest from April 1, 2005, through June 5, 2007, of \$12,281.67. The amount of \$84,236.16 included postjudgment attorney fees of \$17,972.94.

Defendant contends that the facts in *Tobias v. Lake Forest Partners, LLC*, 402 Ill. App. 3d 484 (2010), are "virtually on all fours" with those of the instant case. In *Tobias*, the plaintiff obtained a judgment against the defendants. The court ordered a citation-respondent to turnover

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<sup>2</sup> Plaintiff registered the Wyoming judgment in Illinois on December 3, 2003. "December 3, 2003 judgment" apparently refers to the default judgment entered in Wyoming.

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to the plaintiff the sum of \$86,845 held by it and belonging to one of the defendants in satisfaction of the balance owed on the judgment. The plaintiff filed a petition for an award of postjudgment attorney fees and costs, which remained pending. The plaintiff appealed, arguing that the trial court erred in concluding that the citation-respondent's payment of \$86,845 would act as "full satisfaction" of the balance owed on his judgment, since he was still owed money for postjudgment attorney fees. He contended that although his claim for postjudgment attorney fees was unresolved, it was entitled to the same lien priority pursuant to section 2-1402 of the Code of Civil Procedure (735 ILCS 5/2-1402 (West 2008)) as the lien for the balance due on his underlying money judgment.

This court found that "no claim can achieve lien status by reason of the service of a citation to discover assets until that claim has first been reduced to an enforceable judgment." *Tobias*, 402 Ill. App. 3d at 489. The plaintiff never had an enforceable judgment for attorney fees incurred in the collection of his underlying judgment. *Tobias*, 402 Ill. App. 3d at 489. "As a consequence, the only lien upon [the defendant's] nonexempt funds in the possession of [the citation-respondent] which was created by the service of the citation to discover assets was a lien for the 'balance due' on that underlying judgment." *Tobias*, 402 Ill. App. 3d at 489. No lien rights were created for the enforcement of any unresolved claim for postjudgment attorney fees. *Tobias*, 402 Ill. App. 3d at 489. "Any claim which [the plaintiff] may have for postjudgment attorney fees incurred in the collection of his underlying judgment can only become a lien upon the personal property of any of the judgment debtors in the possession of a third party after that claim has been reduced to an enforceable judgment and a citation to discover assets has been

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served in accordance with section 2-1402 of the Code.” *Tobias*, 402 Ill. App. 3d at 489.

We agree with plaintiff that the facts of the instant case do not suggest that the postjudgment attorney fees through March 31, 2005, were unresolved. Further, plaintiff obtained a judgment for postjudgment attorney fees on November 24, 2004. The trial court granted a lien on March 31, 2005, in an amount that included attorney fees. In addition, we previously held that the underlying judgment provided for postjudgment attorney fees. *Poilevey*, 368 Ill. App. 3d at 416. We also note that on August 27, 2008, plaintiff filed a motion to enforce the March 31, 2005, judicial lien of attorney fees and to convert it to judgment, which was granted on March 30, 2009.

Defendant also contends that “[n]o one, not the trial court, the plaintiff or the defendant recognized that the March 31, 2005 order was not a final order and no SCR 304(a) finding was made by the court.” In April 2005, defendant filed an emergency motion to modify the court’s March 31, 2005, order, arguing that the original note merged with the judgment and that interest was calculated incorrectly. He had the opportunity at that time, and during the subsequent appeal to this court, to raise that issue. He did not. That argument is waived. See *Riopelle v. Northwest Community Hospital*, 195 Ill. App. 3d 750, 753 (1990).

Finally, while defendant argues on appeal that the correct judgment amount on June 6, 2007, was \$74,979.78, he argued in his petition for issuance of satisfaction of judgment filed in the trial court that the correct amount was \$80,731.97. He does not recognize or explain that discrepancy on appeal.

The majority of the difference might be explained by defendant’s claim on page 3 of his

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brief that the June 5, 2007, order failed to include a credit for \$4,127.02, the amount purportedly received from Prairie Bank and Trust Co. in a garnishment proceeding. Indeed, a December 10, 2004, order required the bank to turnover the \$4,127.02 that defendant had on deposit there.

There is, however, no evidence that plaintiff actually received \$4,127.02 from Prairie Bank. To the contrary, our own review of the record shows that on December 29, 2004, Prairie Bank filed a motion to vacate the December 10, 2004, order because defendant owed the bank \$137,600. On June 14, 2005, the trial court vacated the December 10, 2004, turnover order. Defendant neglects to include these facts in his brief. He is not entitled to a credit of \$4,127.02.

### III. CONCLUSION

For the foregoing reasons, we affirm the trial court's order denying defendant's petition for issuance of a satisfaction of judgment.

Affirmed.