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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SANDRA L. BAILEY,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellant,)	
)	
v.)	No. 10-L-158
)	
HFN, INC.,)	Honorable
)	Margaret J. Mullen,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Bowman and Zenoff concurred in the judgment.

ORDER

Held: The trial court properly granted summary judgment in favor of defendant and against plaintiff because plaintiff failed to meet the statutory prerequisites to entitle her to penalties for defendant's noncompliance with the provisions of the Income Withholding for Support Act. Moreover, plaintiff failed to meet the notice requirement of section 35(a) because she did not properly serve defendant with the notice of withholding by certified mail or with proof of a process server's service. We affirmed the judgment of the trial court.

¶ 1 Plaintiff, Sandra L. Bailey, filed an action against defendant, HFN, Inc., seeking statutory penalties under section 35(a) of the Income Withholding for Support Act (the Support Act) (750 ILCS 28/35(a) (West 2010)). Plaintiff alleged that defendant, HFN, Inc., her former spouse's employer, failed to properly withhold earnings to which she was entitled. Following a hearing, the

trial court granted defendant's motion for summary judgment, ruling that plaintiff's complaint failed because she did not meet the statutory prerequisites that would entitle her to penalties for defendant's noncompliance with the Support Act. Specifically, the notice of withholding plaintiff prepared directed defendant to deposit a specified amount of money directly into plaintiff's bank account rather than remit it to the State Disbursement Unit. The court further ruled plaintiff failed to meet the notice requirement of section 35(a) because she did not properly serve defendant with the notice of withholding by certified mail. Plaintiff now appeals, contending that the trial court erred when it granted summary judgment in favor of defendant and ruling that she was not entitled to statutory penalties after defendant reduced the amount of the direct deposit upon her former spouse's request. For the reasons that follow, we affirm.

¶ 2 The pleadings, depositions, and affidavits reflect that plaintiff was married to John McDonald on October 18, 1975. During the course of their marriage they had three children, born on March 11, 1983; July 22, 1985; and March 7, 1991.

¶ 3 The couple subsequently separated, and on August 16, 2004, plaintiff's marriage to McDonald was dissolved. The judgment for dissolution of marriage ordered McDonald to pay plaintiff \$2,300 per month in child support and \$1,600 per month for maintenance. To facilitate timely payments, the trial court's judgment specified that a "Uniform Order for Support and Notice to Withhold" were to be entered and served upon defendant, which was McDonald's employer. On August 25, 2004, defendant received a copy of the judgment for dissolution and a letter from plaintiff's counsel, which informed defendant that the parties had reached an agreement that McDonald's monthly obligations would be satisfied by direct deposits into plaintiff's bank account. Defendant responded by requesting a notice of withholding. On August 30, 2004, defendant

received a preprinted form entitled Uniform Order for Support (Order) and a Notice to Withhold Income for Support.

¶ 4 The Order specified the amounts plaintiff was entitled to for child support and maintenance. In addition, the pre-printed Order provided three possible payment arrangements from which to choose: (1) payments could be made to the State Disbursement Unit which would then disburse the funds to plaintiff; (2) the parties could agree in writing to an alternative court-approved payment method; in such case, the parties were to prepare an income withholding notice to be served on her former spouse's employer directing payments be made to State Disbursement Unit in the event of any delinquency; or (3) the State Disbursement Unit was not required and the parties had not come to an agreement under the second option. Plaintiff chose this third option. Ultimately, she specified payments were to be made directly to her by direct deposits being made into her bank account. However, at no time was any Uniform Order of Support entered by the trial court.

¶ 5 Plaintiff also prepared a Notice to Withhold Income for Support. On the part of the form that contained remittance information, plaintiff substituted the designated payee, the State Disbursement Unit, and wrote in her own name, specifying that the payments were to be made by direct deposit to her bank account. Plaintiff's counsel faxed the Notice to Withhold Income and Order to defendant, which began to deduct the amount specified. Defendant continued to deduct a total of \$3,900 monthly until April 26, 2006, when McDonald requested that defendant deduct \$600 less than the \$3,900 amount that was previously being deducted. Defendant complied with McDonald's request.

¶ 6 On February 11, 2010, plaintiff filed a complaint against defendant alleging that section 35(a) of the Support Act (750 ILCS 28/35(a) (West 2008)) entitled her to \$2,219,800 in penalties because defendant knowingly reduced the amount of the direct deposit without proper authorization.

Defendant filed a motion pursuant to section 2-619.1 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619.1 (West 2008)), seeking a dismissal under three grounds. The first basis, count I, sought summary judgment under section 2-1005 of the Code and claimed that plaintiff could not recover penalties because she did not comply with the requirements of the Support Act. The second basis, count II, sought dismissal with prejudice based on an affirmative matter under section 2-619(a)(9) of the Code. The third basis, count III, sought summary judgment alleging laches. The trial court granted defendant's motion for summary judgment on the first basis and denied its motion on the other two bases. Following a hearing, the trial court granted summary judgment in favor of defendant and against plaintiff. Plaintiff filed a timely notice of appeal, contending that the trial court erred when it granted summary judgment in favor of defendant.

¶ 7 A motion for summary judgment should be granted only where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). We review *de novo* the appeal from a grant of summary judgment. *Gassner v. Raynor Manufacturing Co.*, 409 Ill. App. 3d 995, 1005 (2011).

¶ 8 Plaintiff first argues that the statutory penalty of the Support Act is not strictly limited to cases in which an employer is required to submit support payments through the State Disbursement Unit. Based on a plain reading of the statute, plaintiff's argument is misguided.

¶ 9 Under the Support Act, every order for support requires an income withholding notice to be prepared and served immediately upon any payor of the obligor by the obligee or public office, unless a written agreement has been reached between and signed by both parties providing for an alternative arrangement, approved and entered into the record by the court, which ensures payment of support. 750 ILCS 28/20(a)(1) (West 2010). Section 35 of the Support Act penalizes employers

that fail to properly withhold and remit funds in accordance with an income withholding notice. The adoption of this provision was intended as an enforcement tool to ensure employer compliance with the statute by crafting a strictly enforced penalty “to help combat the crisis of child support delinquency.” *In re Marriage of Miller*, 227 Ill. 2d 185, 197 (2007) (quoting *Dunahee v. Chenoa Welding & Fabrication, Inc.*, 273 Ill. App. 3d 201, 206 (1995)). Specifically, section 35(a) provides for a payor’s duties and the penalty for non-compliance:

“The payor shall pay the amount *withheld to the State Disbursement Unit* within 7 business days after the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor. If the payor knowingly fails to withhold the amount designated in the income withholding notice or to pay any amount *withheld to the State Disbursement Unit* within 7 business days after the date the amount would have been paid or credited to the obligor, then the payor shall pay a penalty of \$100 for each day that the amount designated in the income withholding notice (whether or not withheld by the payor) *is not paid to the State Disbursement Unit* after the period of 7 business days has expired.” (Emphasis added.) 750 ILCS 28/35(a) (West 2010).

¶ 10 It is a cardinal rule of statutory construction that statutes are to be construed to ascertain and give effect to the intent of the legislature. *Hernon v. E.W. Corrigan Construction Co.*, 149 Ill. 2d 190, 194 (1992). The best indication of legislative intent is the language of the statute, given its plain and ordinary meaning. *In re Village of Campton Hills*, 399 Ill. App. 3d 160, 163 (2010). Where the statutory language is clear, we must give it effect without appealing to other aids for construction. *Solich v. George and Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill. 2d 76, 81 (1994). This court will not depart from the plain language of the statute by reading into

it exceptions, limitations, or conditions that conflict with the expressed intent. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009).

¶ 11 In this case, section 35(a) clearly and unambiguously indicates that if statutory penalties are sought, then support and maintenance withholdings must go through the State Disbursement Unit and not by some alternative procedure contemplated between the parties, such as direct deposit. In numerous places the subsection of the Support Act employs the phrase “to the State Disbursement Unit” in reference to where the employer has the duty to forward the withholdings. Such language also expressly indicates that the \$100 daily fine is measured by the number of days that have lapsed since the amount was not properly paid to the State Disbursement Unit. For this reason, the legislature could not have contemplated the payor’s fine be measured against something it was not required to do in the first place.

¶ 12 No matter how broadly we read this subsection, plaintiff is essentially asking us to read a new exception into the statute. Given the plain language of section 35, we decline such an invitation. Here, it is undisputed that the payments were not being made to the State Disbursement Unit. The statute requires this as a condition precedent for penalties. Plaintiff’s argument, therefore, fails.

¶ 13 Plaintiff nevertheless urges that defendant waived its objection to her claim for penalties by acquiescing to disobedience of the statute. In other words, because defendant did not object to forwarding the income directly to plaintiff’s bank account instead of the State Disbursement Unit, it is precluded now from objecting to it. Even if defendant could somehow waive its objection to the applicability of the statute, it is unclear how that would in turn vest plaintiff with a cause of action that is not supported by the statute itself. In this regard, the waiver doctrine is an admonition to the litigants and does not a limit the power of a reviewing court to address issues of law as the

case may require. See *Mayfield v. ACME Barrel Co.*, 258 Ill. App. 3d 32, 37 (1994) (concerning the general applicability of the waiver doctrine). Because it is clear that there is no statutory right to grant what plaintiff is asking based on section 35(a) of the Support Act, waiver does not widen the scope of our interpretation.

¶ 14 Finally, plaintiff argues that the documentation requirement of section 35(a) was satisfied because section 20(g) of the Support Act allows for other methods of serving the notice of withholding. We disagree.

¶ 15 The trial court was correct to conclude that plaintiff also failed to meet the plain language requirements of section 35(a) because she did not properly document defendant's nonperformance according to the statute. Section 35(a) provides in pertinent part:

“A finding of a payor's nonperformance within the time required under this Act *must* be documented by a certified mail return receipt or a sheriff's or private process server's proof of service showing the date the income withholding notice was served on the payor.” (Emphasis added). 750 ILCS 28/35(a) (West 2010).

¶ 16 While it may be true that an obligee may serve the income withholding notice on the payor by personal delivery (750 ILCS 28/20(g) (West 2010)), documentation by certified mail under section 35(a) clearly constitutes a distinct statutory requirement. The Support Act permits a withholding order to be served by ordinary mail or fax, but to be eligible for the penalty, documentation of nonperformance must be established by a certified mail return receipt or a process server's proof of service. Furthermore, we agree with defendant that this distinction is supported by our decision in *In re Chen*, 354 Ill. App. 3d 1004 (2004), because in *Chen*, while the employer's duty to withhold could trigger upon actual notice (*Id.* at 1014), statutory fees were only appropriate on checks that were not properly remitted after there was documented notice by certified mail. *Id.*

at 1012-13. Here, there is no dispute plaintiff has not served the withholding order by certified mail or with proof of a process server's service. Plaintiff, therefore, has further failed to comply with the plain language of the statute.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 18 Affirmed.