

¶ 2 Plaintiff Aroy Cheers filed a *pro se* complaint against his employer, defendant First Student Bus Company, and individuals in its personnel and legal departments. The gist of Cheers' complaint is that defendants illegally garnished his wages. The circuit court dismissed the action. The order of dismissal is not in the record. Defendants state that the dismissal was based on the *res judicata* effect of a prior appeal in *Chears v. City of Chicago*, No. 1-09-2217 (2010) (unpublished order under Supreme Court Rule 23). See Supreme Court Rule 23(e)(1) (eff. July 1, 2011). Cheers appeals *pro se*, contending that defendants committed fraud by sending money to a collection agency without a legal judgment to garnish his wages. After reviewing the record and finding no valid garnishment order directed to First Student Bus Company, we remand this matter to the presiding judge of the first municipal district for assignment to a judge to hold a hearing to determine the relationship between First Student Bus Company and First Student America (there was a garnishment order as to First Student America in another case), to determine whether a valid garnishment order exists as to First Student Bus Company (see 735 ILCS 5/2-1402(c) (West 2010)), and, if not, for a refund to Cheers of the wage deductions, and court costs, if the circuit court finds that principles of waiver and collateral estoppel are inapplicable.

¶ 3 This case is part of a very complex chronology of multiple, interwoven cases. Cheers is the plaintiff sometimes and the defendant other times, so we refer to him by name. We shall summarize some of the cases that were filed. As far as we can determine, common to the cases is the glaring absence of a valid garnishment order as to First Student Bus Company, although there was a garnishment order as to First Student America in case number 06 MC1 689965.

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¶ 4 In case number 97 MC1 402238, *City of Chicago v. 6718 South Green et al.*, a housing violation case, there was a judgment for plaintiff on May 27, 1998, in the amount of \$1,860.

¶ 5 In case number 01 MC1 603497, *City of Chicago v. Cheers*, a parking violation case, a citation against Cheers was dismissed on August 9, 2001.

¶ 6 In case number 01 CH 5780, *Provident Bank v. Cheers*, a mortgage foreclosure and an order of possession were entered on February 14, 2002.

¶ 7 In case number 02 MC1 403030, *City of Chicago v. 6718 South Green et al.*, a housing court case, there was no record of any garnishment, Cheers was dismissed on September 13, 2002, and an alias summons was to issue against Provident Bank. An order dated November 19, 2002, reflects that on November 14, 2002, the property (6718 South Green in Chicago) was sold to Chicago Rehab Investments, which would bring the property into compliance with the requirements of the City of Chicago. On January 24, 2003, a default judgment in the amount of \$9,500 was vacated. An order dated May 2, 2003, reflects that the property was in full compliance.

¶ 8 In case number 05 MC1 714256, *Higgins v. Cheers*, judgment was entered for Higgins in the amount of \$1,875, and an order for possession was entered on July 29, 2005, but there was no record of any garnishment.

¶ 9 In case number 05 MC1 693884, *City of Chicago v. Cheers*, there was no record of any garnishment, and the case was stricken from the call.

¶ 10 In case number 06 MC1 689965, *City of Chicago v. Cheers*, a garnishment order was entered in 2009 as to First Student America. The City of Chicago obtained an administrative

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money judgment against Cheers in the amount of \$8,550 in 2001. In 2006, the City sought to garnish Cheers' wages in the amount of \$12,834.83 from his employer, Laidlaw Transit, Inc., to satisfy the 2001 judgment plus interest. Cheers sought to quash the wage deduction summons and vacate the judgment because he had not appeared in the 2001 proceedings. The circuit court stayed the proceedings until 2007. In 2007, the circuit court entered an order stating that it had been told that the parties had settled the matter, and dismissing all of the wage garnishment proceedings. But in 2008, the City again sought to garnish Cheers' wages from his employer, Laidlaw. Cheers filed a motion stating that he neither owned nor resided at the property in question at the time of the 2001 judgment, that Provident Bank had filed a mortgage foreclosure proceeding on the property, that a sheriff's sale had been approved in 2002, and that Provident Bank was obligated to pay the judgments and debts. Meanwhile, the wage deduction proceedings continued. In 2009, the circuit court denied Cheers' motions to stay the garnishment proceedings and to stop the wage deductions. On February 5, 2009, Judge Patrick J. Sherlock dismissed the wage deduction with regard to Laidlaw Transit, Inc., and ordered that any monies withheld by Laidlaw or by First Student America were to be returned to Cheers. The court granted the City of Chicago leave to file wage deduction proceedings against First Student America. On March 12, 2009, the circuit court entered a garnishment order as to the defendant, First Student America. The record discloses that FirstGroup America, Inc., is also known as and doing business as First Student America. The record does not reveal the relationship, if any, between First Student America or FirstGroup America, Inc., and the defendant in the present case, First Student Bus Company. On July 22, 2009, Judge Sherlock dismissed Cheers'

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counterclaim without prejudice and allowed him 60 days to amend and refile it. Cheers appealed from an order that entered and continued his motion to stay the garnishment proceedings for the parties to review and/or produce documents. This court dismissed the appeal for lack of jurisdiction because the litigation had not been terminated in that the appealed order was not a final order and the counterclaim could be amended and refiled. (The court also observed that there was no Supreme Court Rule 304(a) (eff. Feb. 26, 2010) finding.) *Chears v. City of Chicago*, No. 1-09-2217 (2010) (unpublished order under Supreme Court Rule 23).

¶ 11 Case number 07 MC1 638715, *City of Chicago v. Cheers*, was disposed upon filing on July 11, 2007.

¶ 12 In case number 10 MC1 104140, *City of Chicago v. Cheers* (one appeal was dismissed on Cheers' motion under *First Student v. Cheers*, No. 1-10-2131, and another appeal remains pending under *City of Chicago Collection v. Cheers*, No. 1-11-0616), Cheers sued First Group America, Inc., also known as First Student America, alleged that "First Student" was his employer, and further alleged that his wages were being improperly garnished on fraudulent documents. In case number 10 MC1 194636 (the present case), Cheers alleged that First Student Bus Company was his employer and that defendants were improperly garnishing his wages based on fraudulent documents. Both cases were dismissed with prejudice, on the pleadings. In 10 MC1 104140, Judge Laurence J. Dunford entered an order on October 5, 2010, stating:

"If Aroy Cheers serves any papers in this cause on any dismissed defendant without first obtaining leave (permission) from the court, Aroy Cheers shall serve two (2) days in the county jail for criminal contempt of this court."

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¶ 13 The record on appeal contains part of the common law record, but it does not contain transcripts, bystander's reports, or agreed statements of fact for the hearing on defendants' motion to dismiss, or any of the other proceedings in this case in the circuit court. The record also fails to contain defendants' motion to dismiss and the order dismissing the instant action. Supreme Court Rules 321 (eff. Feb. 1, 1994) and 323 (eff. Dec. 13, 2005) require a report of proceedings or an acceptable substitute, such as a bystander's report or agreed statement of facts, as well as the judgment appealed from and the entire original common law record. It is the appellant's burden to provide an adequate record to support his contentions on appeal. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Plaintiff has not met his burden here, but he alleges that he cannot afford to obtain the documents. Although ordinarily we would presume that the circuit court's decisions conformed to the law and were supported by a sufficient factual basis (*Webster v. Hartman*, 309 Ill. App. 3d 459, 460-62 (1999), *aff'd*, 195 Ill. 2d 426, 432-34 (2001)); *Foutch*, 99 Ill. 2d at 391-92), we believe that the materials plaintiff has provided, together with other official court documents that we have located and which we may judicially notice, are sufficiently complete to address this appeal. See *Dei v. Tumara Food Mart, Inc.*, 406 Ill. App. 3d 856, 862 (2010).

¶ 14 The record and the materials that we judicially notice demonstrate that, as of November 14, 2002, Cheers no longer owned the property at 6718 South Green, that he was dismissed as a party on September 13, 2002, and that an alias summons was to issue against Provident Bank. Our review of the documents has not disclosed a valid garnishment order as to First Student Bus Company. Although Judge Sherlock entered a garnishment order in case number 06 MC1

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689965 as to the defendant in that case, First Student America, the relationship, if any, between First Student Bus Company and First Student America is not clear. We are mindful of "fanning the undying flame of this litigation" (*In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 654, 660 (2009) (the appellate court remanded to clarify whether \$87,500 that was paid in child support was wrongly included in the dissipation amount, even though the court was mindful of "fanning the undying flame of this litigation" (quoting other cases))), but we believe that the circuit court should hold a hearing to determine the relationship between First Student Bus Company and First Student America, as well as the relationships between First Student Bus Company and FirstGroup America and between First Student America and FirstGroup America. The court on remand should also determine whether a valid garnishment order exists as to First Student Bus Company, and, if not, for a refund of Cheers' wage deductions, and court costs, if the circuit court finds that principles of waiver and collateral estoppel are inapplicable.

¶ 15 Judge Dunford's order threatening to hold plaintiff in criminal contempt of court in a civil case, although permissible for purposes of punishing a litigant (*D'Agostino v. Lynch*, 382 Ill. App. 3d 960, 968 (2008), demonstrated animosity against plaintiff which may have had some impact on that judge's ruling. Since he is no longer assigned to the First Municipal District, we need only remand to the presiding judge for reassignment.

¶ 16 We have considered, and rejected, defendants' arguments on appeal. Defendants have also asserted arguments on appeal involving waiver, *res judicata*, and collateral estoppel, which we cannot address. Pursuant to principles of collateral estoppel, the estopped party must have been a party or in privity with a party to the prior judgment. See *Farwell v. Senior Services*

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Associates, Inc., 2012 IL App (2nd) 110669, ¶ 13. One reason we cannot address the foregoing arguments is that the relationships are not clear between the various bus companies, as noted above. The relationship between City of Chicago and City of Chicago Collection (termed a non-entity in an order dated February 17, 2011, in case number 10 MC1 104140) also is not clear.

¶ 17 The judgment of the circuit court is vacated and the cause is remanded to the presiding judge of the First Municipal District with directions that it shall be assigned to a trial judge to hold a hearing to determine the relationships among the parties in Cheers' cases, to determine whether a valid garnishment order exists as to First Student Bus Company, and, if not, for a refund of Cheers' wage deductions, and court costs, if the circuit court finds that principles of waiver and collateral estoppel are inapplicable.

¶ 18 Vacated and remanded with directions.