

No. 1-12-1470

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> Marriage of ZABRIN INAN,)	Appeal from the
)	Circuit Court of
Petitioner)	Cook County.
)	
and)	No. 08 D 1327
)	11 MC1 600004
ANDREW W. LYNCH, III)	
)	
Respondent)	Honorable
)	Patricia Logue,
and)	Judge Presiding.
)	
BRUCE LEVIN)	
)	
Surety-Appellant)	

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had the discretion to use bond funds posted in a criminal contempt proceeding which arose out of a domestic relations matter to satisfy defendant's financial obligations in the domestic relations matter.

¶ 2 Appellant-surety Bruce Levin appeals from the trial court's order directing that funds posted as a cash bond to secure the release of Zabrin Inan in a criminal contempt proceeding be

used to pay the fees of a court-appointed child representative in Inan's domestic relations matter. On appeal, Levin contends that the trial court acted without statutory authority when it distributed bond funds posted by Levin in the criminal contempt proceeding to pay Inan's financial obligations in a different case. We affirm.

¶ 3 Although the record on appeal does not contain a report of proceedings, the following facts can be gleaned from the common law record and the trial court's order denying Levin's amended motion to release bond funds.

¶ 4 In 2008, a judgment of dissolution of the marriage of Zabrin Inan and Andrew Lynch was entered. Incorporated into that order was a joint parenting agreement providing that neither party would remove the couple's minor children permanently from Illinois without first obtaining the written consent of the other party or a court order. After Inan allegedly removed the couple's minor children from Illinois in violation of the parenting agreement, the trial court entered several orders requiring Inan to return the children to Illinois and turn them over to Lynch. When Inan failed to comply, Lynch filed a petition for adjudication of criminal contempt. Ultimately, the court issued an arrest warrant for Inan in case 11 MC1 600004. Bond was set at \$100,000, and the record indicates that Levin posted \$10,000 cash bond to secure Inan's release. Although the bond slip is not included in the record, the trial court's January 2012 order denying Levin's amended motion to release the bond funds indicates that the slip listed the case numbers of both the contempt proceeding and the domestic relations matter. The record also reveals that Levin received the written notice given to the person providing a defendant money to post bail indicating that the bail funds may be used to pay costs, attorney fees, fines or for "other purposes authorized by the court."

¶ 5 In April 2011, the petition for adjudication of criminal contempt was voluntarily dismissed. The trial court then ordered that the balance of the bond funds was to be deposited

with the clerk of the court and held until further order of court. Levin filed a motion and an amended motion to release the bond funds. Ultimately, the court ordered that the bond funds be used to pay the attorney fees "incurred" by the court-appointed child representative for the minor children in the domestic relations matter. Although this order is not included in the record on appeal, the court's January 2012 order denying Levin's amended motion to release the bond funds references that order and explains the court's reasoning.

¶ 6 The trial court explained that the court-appointed child representative spent "substantial time" investigating the whereabouts of Inan and the children, the well-being of the children, and allegations by Inan regarding the children's health. Furthermore, the court concluded that because Inan did not sign the "ASSIGNMENT OF BAIL BOND BY THE DEFENDANT" to authorize the return of the bond funds to Levin, the funds could not be returned to Levin. See 725 ILCS 5/100-7(f) (West 2010) (when the conditions of the bail bond have been performed and the defendant has been discharged from all obligations in the cause "the clerk of the court shall return to the accused or to the defendant's designee by assignment executed at the time the bail amount is deposited, unless the court orders otherwise, 90% of the sum which has been deposited"). The court also noted that the petition for adjudication of criminal contempt was filed in the domestic relations matter after Inan ignored certain court orders in that case, that the bond slip listed the case numbers for both the domestic relations matter and the criminal contempt proceeding, and that Levin received a written warning that bond funds could be used to pay costs, attorney fees, fines, or for other purposes authorized by the court.

¶ 7 On appeal, Levin contends that the trial court acted without legal authority when it ordered that the bond funds posted in the contempt proceeding be used to pay the fees of the court-appointed child representative in the domestic relations matter. Levin relies on the bond slip, referenced in the court's January 2012 order, to establish "clear proof" of his ownership of

the bond money. He further argues that he was not aware, "despite a perfunctory warning on the bond slip" that the bond funds could be used in the manner ordered by the trial court.

¶ 8 Thus, there are two questions before this court. First, we must determine to whom the bond funds should have been returned, and second, if the bond funds were properly "returned" to Inan, whether the court had the authority to use those funds to satisfy Inan's financial obligations in the domestic relations matter.

¶ 9 Questions of statutory interpretation are reviewed *de novo*. *People v. Williams*, 239 Ill. 2d 503, 506 (2011). In construing a statute, the fundamental rule is to ascertain and give effect to the legislature's intent. *People v. Zimmerman*, 239 Ill. 2d 491, 497 (2010). The most reliable indicator of that intent is the statutory language itself, which must be given its plain and ordinary meaning. *Zimmerman*, 239 Ill. 2d at 497.

¶ 10 Section 110-7(f) provides that once:

"the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused or the defendant's designee by an assignment executed at the time the bail amount is deposited, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. * * * Bail bond deposited by or on behalf of a defendant in one case may be used, in the court's discretion, to satisfy financial obligations of that same defendant incurred in a different case due to a fine, court costs, restitution or fees of the defendant's attorney of record." 725 ILCS 5/110-7(f) (West 2010).

¶ 11 Therefore, pursuant to the plain language of section 110-7(f), the clerk of court was

required to return the bond funds to either "the accused or to the defendant's designee." See *Zimmerman*, 239 Ill. 2d at 497. Although the bond slip is not included in the record, the trial court's order denying Levin's amended motion indicates that Inan did not sign the "ASSIGNMENT OF BAIL BOND BY THE DEFENDANT" to "authorize the return of the money posted above to the person shown on this bond as having provided money for my bail after all conditions of this bail have been met, or as ordered by the court." In other words, it is undisputed that Inan did not identify Levin as her designee at the time that the bail bond was executed. Accordingly, in the absence of an executed assignment naming a designee, pursuant to the plain language of the statute, the clerk could only return the funds to Inan. See 725 ILCS 5/110-7(f) (West 2010).

¶ 12 This leaves the question of whether section 110-7(f) permitted the trial court to use those funds to satisfy fees incurred in the domestic relations matter. Levin argues that section 110-7(f) does not permit the trial court to distribute bail funds "with unrestricted discretion." He further argues that the mere fact that a criminal defendant has a financial obligation in a civil case does not mean that bond funds from the criminal case can be used to satisfy those obligations. We disagree.

¶ 13 Section 110-7(f) requires the circuit clerk to return bond funds to the accused "unless the court orders otherwise." 725 ILCS 5/110-7(f) (West 2010). Although a court may order a defendant's bail bond deposited in one case to satisfy financial obligations of that same defendant incurred in a different case due to a fine, court costs, restitution or attorney fees, it is wholly within the court's discretion to do so. 725 ILCS 5/110-7(f) (West 2010); see also *People v. Devine*, 2012 IL App (4th) 101028, ¶¶ 20-21 (determining that in addition to the obligations listed in section 110-7(f), that section also permits such funds to be used to satisfy unpaid child support obligations). The trial court retains the discretion to order that the bond funds be applied

pursuant to section 110-7(f) even when those funds were provided by a third party. *People v. Rayburn*, 258 Ill. App. 3d 331, 335 (1994) ("although another individual may provide the defendant's bond money, it is within the discretion of the trial judge to determine whether that money should be used for restitution").

¶ 14 Furthermore, this court rejects Levin's argument that the contempt proceeding was completely separate from the domestic relations matter. The record reveals that the petition for adjudication of indirect criminal contempt was filed in the domestic relations matter due to Inan's alleged violation of certain court orders in that case. Additionally, the record indicates that the bond slip listed the case numbers for both the domestic relations matter and the contempt proceeding. This court has previously determined that "it makes no sense to refund a bond in one case when the same defendant owes money to the court because of outstanding fines or costs in other cases." *People v. Hans*, 221 Ill. App. 3d 82, 85 (1991). In other words, section 110-7(f)'s language "unless the court orders otherwise," gives the trial court the discretion to apply the bond in one case to financial obligations owed by defendant to the court in other cases. *Hans*, 221 Ill. App. 3d at 85. Here, as the contempt proceeding arose out of the domestic relations matter, the court had discretion to use the bond funds from the contempt proceeding to satisfy fees incurred in the domestic relations matter. See *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146, 155 (2004) (determining that section 506 of the Marriage Act (750 ILCS 5/506 (West 2002)), which provides for the appointment an attorney representing the interests of a minor child with respect to issues involving his custody and visitation and payment by, *inter alia*, one or both parents, is not limited to proceedings brought under the Marriage Act; rather, such fees are authorized in any litigation reasonably connected with a proceeding under the Act). Therefore, because the trial court may order a defendant's bail bond deposited in one case to satisfy financial obligations of that same defendant incurred in a different case due to a fine, court costs, restitution or

attorney fees (*Devine*, 2012 IL App (4th) 101028, ¶ 20), the trial court had the discretion to use the bond funds posted in the contempt proceeding to satisfy fees incurred by the child representative in the domestic relations matter.

¶ 15 This court is unpersuaded by Levin's reliance on *People v. Mompier*, 276 Ill. App. 3d 393 (1995). In that case, a third-party posted bond money for the defendant. During the pendency of the criminal matter, the Illinois Department of Revenue sent the defendant notices of a tax liability and a lien. When the defendant was ultimately sentenced, the trial court inquired whether he wanted his bond refunded to his attorney and the defendant indicated that he did. Defense counsel later filed a motion for refund of bond notwithstanding notice of the State tax lien because the clerk of court would not refund the bond due to tax lien. After the Attorney General's office filed a response, the trial court heard argument on the issue. Ultimately, the court entered an order directing the clerk to refund the bond to defense counsel notwithstanding the notice of tax lien because the State did not have a right to the bond when it had been posted by a third party who would have been unaware that the funds were subject to seizure to satisfy a tax assessment. *Mompier*, 276 Ill. App. 3d at 397.

¶ 16 Thus, the issue on appeal in that case was whether the State was entitled to a lien against the bond funds in order to satisfy a tax assessment against the defendant. On appeal, the court first stated that in the absence of an express statutory authority, bail money held by the clerk is not subject to attachment or garnishment. *Mompier*, 276 Ill. App. 3d at 397. The court then determined that bond funds are presumptively the defendant's only for the purposes of paying fines, costs and judgments against the defendant, but in cases not involving the payment of fines, costs or judgments against the defendant the presumption that the bond deposit belongs to the defendant does not apply or is rebuttable. *Mompier*, 276 Ill. App. 3d at 398. The court finally determined that the provision upon which the State relied only authorized liens against a

defendant's property, and in this case, because a third party had posted the bond rather than the defendant, the bond funds were not defendant's property. *Mompier*, 276 Ill. App. 3d at 398.

¶ 17 Here, unlike *Mompier*, the trial court ordered that the bond funds be used to satisfy fees incurred in Inan's domestic relations matter, which is a permissible use of bond funds pursuant to section 110-7(f). See 725 ILCS 5/110-7(f) (West 2010) (bond deposited by or on behalf of a defendant in one case may be used, in the court's discretion, to satisfy financial obligations of that same defendant incurred in a different case due to a fine, court costs, restitution or fees of the defendant's attorney of record). Additionally, Levin was aware, through the written warning on the bond slip that the bond funds could be used to pay costs, attorney fees, fines or for "other purposes authorized by the court."

¶ 18 Accordingly, for the reasons stated above, the order of the circuit court of Cook County is affirmed.

¶ 19 Affirmed.