

No. 1-12-2227

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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TINISHA JONES, Wm. VANDERVER	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Cook County, Illinois.
	)	
vs.	)	No. 08 M6 3407
	)	
DEVIN KNOCKUM,	)	Consolidated with 08 M1
	)	19191
Defendant	)	
	)	
and	)	
	)	
UNITED EQUITABLE GROUP, LTD.,	)	Honorable
an Illinois Corp., d/b/a UNITED EQUITABLE	)	Martin D. Coghlan,
INSURANCE COMPANY,	)	Judge Presiding.
	)	
Garnishee-Appellant.	)	

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JUSTICE TAYLOR delivered the judgment of the court.  
Justices McBride and Palmer concurred in the judgment.

ORDER

¶ 1 *HELD:* Trial court did not abuse its discretion in denying garnishee’s section 2-1301 motion to vacate a default judgment where (1) the procedural posture and timing of the filings indicated that the motion was properly understood as a section 2-1203 motion to reconsider, (2) the trial court had authority to confirm the conditional judgment on the issues immediately after the garnishee appeared and answered, and (3) garnishee improperly submitted evidence with its motion that was readily available to the garnishee prior to submitting its answer and the hearing thereon.

## ¶ 2 I. INTRODUCTION

¶ 3 Garnishee United Equitable Insurance Company (“UEIC”) appeals from the trial court’s order denying its motion under section 2-1301 of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2012)) to vacate a default judgment.

¶ 4 On December 14, 2011, the trial court entered judgment confirming an arbitration award in favor of plaintiffs William Vanderver and Tinisha Jones (collectively, “plaintiffs”) in the amount of \$25,097.09. The arbitration arose from an automobile collision that occurred between plaintiffs and defendant Devin Knockum (“Knockum”) on April 17, 2008.

¶ 5 On February 12, 2012, plaintiffs commenced a non-wage garnishment proceeding against UEIC, Knockum’s insurer. UEIC failed to respond by the return date, and the trial court entered a conditional judgment against UEIC pursuant to section 12-706(a) (735 ILCS 5/12-706(a) (West 2012)). After a continuance, UEIC filed an appearance and its answer to the non-wage garnishment. At a hearing on May 2, 2012, the trial court confirmed the conditional judgment. Subsequently, UEIC filed its motion to vacate on May 22, 2012.

¶ 6 On July 18, 2012, the trial court denied UEIC’s motion to vacate, and UEIC now appeals. For the reasons that follow, we find that the trial court did not abuse its discretion in denying the motion.

## ¶ 7 II. BACKGROUND

¶ 8 This appeal arises from an insurance coverage dispute surrounding an automobile collision that occurred between plaintiffs and Knockum on April 17, 2008. Plaintiffs subsequently filed a negligence suit against Knockum on July 31, 2008 to recover for their personal injuries. When Knockum failed to submit a timely answer, the trial court held her in default, which was later vacated when UEIC provided counsel to defend. The case was assigned

to mandatory arbitration on December 10, 2009 with one of the contested issues being liability for the collision. Approximately one month later, Knockum filed for bankruptcy and obtained a discharge from her debts. After stipulating that they would seek damages against Knockum only to the extent of her UEIC policy, plaintiffs proceeded with the case.

¶ 9 On September 23, 2011, the trial court reset the case for arbitration. However, Knockum again failed to appear, and the arbitrator ultimately entered a judgment against Knockum in the amount of \$25,097.09. Knockum filed a motion to reject the arbitration award, which the trial court struck before entering judgment on the arbitration award in favor of plaintiffs on December 14, 2011.

¶ 10 On February 12, 2012, plaintiffs initiated a non-wage garnishment proceeding against UEIC. On March 17, 2012, after UEIC failed to file a timely appearance or answer by the return date, the trial court entered a conditional judgment against UEIC. On April 4, 2012, UEIC appeared before the trial court to request a continuance for time to respond to the conditional judgment. The trial court granted UEIC's request and entered an order allowing the continuance. In the order, the "other" box was checked and the description read, "Summons after Conditional Judgment."

¶ 11 Subsequently, UEIC filed a timely appearance and an answer on April 10 and 25, 2012 respectively. UEIC also filed a motion arguing that the underlying judgment against Knockum was void as a result of the outcome of the bankruptcy proceeding and, in the event that the bankruptcy judgment did not bar plaintiffs' recovery, announcing its intention to file an objection insofar as Knockum failed to cooperate. In its answer, UEIC also included a complaint filed in the chancery court in which it sought a declaratory judgment attacking any extension of

coverage on the basis of the voiding effects of the bankruptcy judgment and Knockum's alleged refusal to cooperate.

¶ 12 On May 2, 2012, the matter came on the trial court's call. The trial court reviewed the answer and UEIC's complaint seeking declaratory relief filed in the chancery court, heard argument on the answer, and confirmed the conditional judgment. The proceeding was ultimately summarized in a bystander's report, and the judgment order did not identify itself as a default judgment.

¶ 13 On May 22, 2012, UEIC filed a motion pursuant to section 5/2-1301(e) to vacate the judgment and for a stay of execution. Attached to the motion were twenty exhibits supporting the issues raised in the answer and attacking the extension of coverage. At the motion hearing on July 18, 2012, the trial court articulated that while the issuance of a conditional judgment is default in nature, the basis for the confirmation was not predicated on a default, noting that there was a timely filed appearance and an answer. At the conclusion of the hearing, the trial court denied UEIC's motion to vacate and UEIC appealed.

#### ¶ 14 III. ANALYSIS

¶ 15 On appeal, UEIC contends that the trial court abused its discretion by denying its section 2-1301(e) motion to vacate the confirmation of the conditional judgment. It argues that confirmation of the conditional judgment was equivalent to an entry of a default judgment, and that by submitting its motion to vacate within thirty days UEIC was well within the time limit allowed for invoking the customary liberal standard under which Illinois courts decide such motions. UEIC further claims that it was unaware that a hearing was going to occur on May 2, 2012, and therefore it was denied substantial justice when it appeared unprepared to submit appropriate supporting evidence.

¶ 16 Plaintiffs respond that the trial court’s confirmation of the conditional judgment was not a default judgment and that UEIC’s purported motion to vacate was in effect a section 2-1203 motion to reconsider. They maintain that the more rigorous standard of section 2-1203 applies and that exhibits to UEIC’s motion to vacate should not be considered because they contain evidence that could have been proffered at or before the hearing at which the trial court entered judgment for plaintiffs.

¶ 17 A. UEIC’s Motion Should be Decided under Section 2-1203

¶ 18 Before addressing the merits, we must first determine whether UEIC’s motion was a section 2-1301(e) motion to vacate a default judgment or a section 2-1203 motion to reconsider a final judgment. A section 2-1301(e) motion imposes a relatively less rigorous burden on the movant. A trial court may set aside a final default judgment within thirty days “upon any terms or conditions that shall be reasonable.” 735 ILCS 5/2-1301(e) (West 2012). Reviewing courts apply an abuse of discretion standard, with an abuse occurring “when the trial court ‘acts arbitrarily without the employment of conscientious judgment or if its decision exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted.’” *Aurora Loan Servs., LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 26 (quoting *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941 (1999)). In essence, the reviewing court must determine whether the decision at issue “‘was a fair and just result, which did not deny [the moving party] substantial justice.’” *Kmiecik*, 2013 IL App (1st) 121700, ¶ 26 (quoting *Deutsche Bank Nat. v. Burtley*, 371 Ill. App. 3d 1, 5 (2006)). The movant must meet the burden of showing sufficient grounds for vacating, and sufficient grounds exist when the trial court’s judgment unreasonably denies the movant the opportunity to go to trial on the merits. *Standard Bank & Trust Co. v. Madonia*, 2011 IL App (1st) 103516, ¶ 8. Finally, Illinois law requires that

the sections of the Illinois Code of Civil Procedure regulating relief from defaults be “liberally construed toward that end.” *In re Haley D.*, 2011 IL 110886, ¶ 69.

¶ 19 In contrast, the standard invoked by a 2-1203 motion places a more arduous burden on the movant. It provides that, “[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment \* \* \* file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment.” 735 ILCS 5/2-1203(a) (West 2012). Although likewise reviewed under an abuse of discretion standard, the purpose of a motion to reconsider is to alert the court “to newly discovered evidence, changes in law, or error in the court’s application of previously existing law.” *Nissan Motor Acceptance Corp. v. Abbas Holding I, Inc.*, 2012 IL App (1st) 111296, ¶ 16. “‘Newly discovered’ evidence is evidence that was not available prior to the hearing[,] and trial courts should not allow litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling.” *Gen. Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007). Trial courts may exercise “broad discretion” when determining whether a motion to reconsider should be granted. *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶ 23. Reviewing courts will reverse a trial court for abuse of that discretion, “subject only to an inquiry as to whether substantial justice is being done between the litigants and whether, under the circumstances of the case, it is reasonable to compel the other party to go to trial on the merits.” *Id.*

¶ 20 In determining whether a motion is to be treated as a motion to reconsider under section 2-1203 or a motion to vacate under section 2-1301(e), courts evaluate a movant’s request according to its substantive content and not merely the label affixed to it. See *In re Haley D.*, 2011 IL 110886, ¶ 67 (“the character of the pleading should be determined from its content, not its label”). Furthermore, Illinois precedent clearly permits a court to consider procedural posture

when determining the proper character of a movant's request. See *id.* at ¶¶ 66-68 (deciding that a movant's 2-1401(a) motion for relief should be evaluated under 2-1301(e) when the substance of the request for relief and the procedural posture indicated that the latter was the appropriate standard); *Babcock*, 2012 IL App (1st) 111090, ¶ 25 (deciding that a movant's 2-1401 motion should be evaluated under 2-1203 when "the timing of the motion and its content [compelled the court to] treat the motion as a motion to vacate the judgment under 2-1203 rather than a petition for relief under 2-1401"); *Williams v. Dorsey*, 273 Ill. App. 3d 893, 903-04 (1995) (deciding that appellant's motion was properly understood as a 2-1203 motion to reconsider rather than a 2-1301(e) motion to vacate a default judgment when appellant had filed an appearance and answer prior to the final judgment and thus was not in default).

¶ 21 Here, although UEIC titled its motion "2-1301 Motion," that fact alone is insufficient to trigger the less deferential standard of a motion to vacate a default judgment under section 2-1301(e). The procedural posture clearly indicates that UEIC was no longer in default when the trial court confirmed the conditional judgment on May 2, 2012. UEIC filed its appearance and its answer on April 10 and April 25, 2012 respectively. Further, as both parties agree, at the time of the confirmation, no motions or orders striking the answer existed. Moreover, the record demonstrates that the trial court, plaintiffs, and even UEIC understood that the judgment entered on May 2, 2012 was not a default judgment. For instance, at the July 18, 2012 hearing on UEIC's motion to vacate the trial court stated several times that the judgment was not a default judgment because there was an appearance, answer, and counsel was present. Therefore, considering the procedural posture and timing of UEIC's motion, a section 2-1301 motion to vacate a default judgment is not the appropriate procedural device through which to analyze UEIC's request because UEIC simply was not in default when the trial court entered the

judgment. See *Williams*, 273 Ill. App. 3d at 903-04. Thus, we conclude that UEIC's May 22, 2012 motion is best understood as a section 2-1203 motion to reconsider and not a section 2-1301(e) motion to vacate a default judgment. Accordingly, the standard invoked by section 2-1203 should apply to UEIC's motion.

¶ 22 This conclusion is consistent with the statutory regime governing garnishment actions in Illinois. Section 12-706(a) permits a trial court to enter a non-final conditional judgment against a garnishee in the event of a default, which may be later confirmed if the garnishee fails to answer and appear after it is served with a summons containing notification of the default. 735 ILCS 5/12-706(a) (West 2012). However, "[i]f the garnishee appears and answers, the same proceedings may be had as in other cases." *Id.* These proceedings include the statutory section governing answer contests in garnishment actions:

[t]he judgment creditor or the judgment debtor may contest the truth or sufficiency of the garnishee's answer and the court shall immediately, unless for good cause the hearing is postponed, proceed to try the issues. The answer of the garnishee shall be considered denied without further pleading. 735 ILCS 5/12-711(a) (West 2012).

Illinois courts have long held that if the garnishee's answer discloses upon its face that the garnishee is liable for the debt, "nothing remains but to enter judgment confirming [the] prior conditional judgment." *Howard Co. v. Miller*, 123 Ill. App. 483, 486 (1905). Further, absent good cause, hearings on the contest of the answer must commence immediately. *In re Marriage of Schomburg*, 269 Ill. App. 3d 13, 19 (1995) (citing 735 ILCS 5/12-711(a) (West 2012)).

¶ 23 This procedural sequence is precisely what occurred in this case. On March 7, 2012, the trial court entered a conditional judgment, after which UEIC filed a timely appearance and



answer. When UEIC appeared and answered, it was no longer in default, and plaintiffs contested the answer pursuant to section 12-711(a) at the May 2, 2012 hearing. At that hearing, the trial court immediately proceeded to try the issues as authorized by statute. Having declared that the underlying judgment was not void and finding no other reason to delay judgment, the trial court confirmed the conditional judgment in favor of plaintiffs pursuant to section 12-711(a). As a result, the trial court's actions were consistent with an entry of a judgment on the merits and not a default judgment.

¶ 24 B. The Trial Court Properly Denied UEIC's Motion

¶ 25 Having decided that UEIC's motion is properly understood through the lens of section 2-1203, we now turn to the issue of whether the trial court abused its discretion by denying the motion.

¶ 26 UEIC has not demonstrated that the trial court's judgment denied it substantial justice. UEIC argues that the May 2, 2012 hearing could not have been a proper hearing on the issues because the order setting the matter for May 2 did not explicitly indicate that a hearing was to take place. However, UEIC provides no authority to suggest that explicit notice of the hearing was required in light of the statutory regime governing garnishment actions nor does it present any authority that undermines the clear language of 2-711(a). See 735 ILCS 5/12-711(a) (West 2012) (“[t]he judgment creditor or the judgment debtor may contest the truth or sufficiency of the garnishee's answer and the court shall *immediately*, unless for good cause the hearing is postponed, proceed to try the issues”) (emphasis added); see also *Schomburg*, 269 Ill. App. 3d at 19 (noting that although section 12-711(a) “does not provide a time frame in which [a hearing on the contest of an answer] must be done,” the section “does provide, however, that [it] commence immediately”).

¶ 27 Further, the record strongly suggests that UEIC had at least constructive notice of the hearing. When presented with UEIC's assertion that it had no knowledge that the May 2, 2012 proceeding constituted a hearing to answer and contest the garnishment because the "other" box was checked on the continuance order, the trial court dismissed this characterization as "absurd." Indeed, the bystander's report of the proceeding indicates that the trial court reviewed and heard argument on the answer from both counsels prior to confirming the conditional judgment. Illinois law governing garnishment actions explicitly provides trial courts with the authority to proceed in such a manner. See 735 ILCS 5/12-706(a), 5/12-711(a) (West 2012). Accordingly, the trial court's decision to confirm the conditional judgment was proper and within the bounds of substantial justice.

¶ 28 Finally, even if UEIC felt that it lacked an adequate opportunity to prepare for the May 2, 2012 hearing, it could have engaged in a number of appropriate remedial responses. For instance, UEIC could have requested leave to amend its answer to attach supporting evidence or it could have requested a postponement to garner and present witnesses and other evidence. However, it failed to undertake any of these curative actions and instead argued its case on the answer before the trial court and lost. UEIC cannot decline to take reasonable efforts to defend itself against plaintiffs' claim, lose, and then seek relief after the trial court enters a judgment. See *Stoval*, 374 Ill. App. 3d at 1078-79 (denying plaintiff's 2-1203 motion to reconsider when it failed to offer evidence in its possession during the litigation of the underlying motion). Reasonable efforts could have included the previously mentioned procedural requests or presenting the evidence contained in the exhibits attached to UEIC's motion. The contents of UEIC's exhibits do not constitute the newly discovered evidence envisioned by section 2-1203. Rather, this evidence should have been properly brought with the answer and not with a post-

judgment motion to reconsider. See, e.g., *Landeros v. Equity Prop. & Dev.*, 321 Ill. App. 3d 57, 65-66 (2001) (denying motion to reconsider summary judgment and refusing to consider previously unoffered evidence when movant could have offered the evidence during the resolution of the summary judgment). Accordingly, the trial court's denial of UEIC's motion did not deny it substantial justice.

¶ 29 IV. CONCLUSION

¶ 30 In light of the reasoning above, and because we are not considering the exhibits attached to UEIC's motion to reconsider, defendant's motion is denied. The judgment of the Circuit Court of Cook County is affirmed.

¶ 31 Affirmed.