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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

UNITED TRANSFER, INC.,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff and Respondent-)	
Appellant,)	
)	
v.)	No. 09-MR-1636
)	
MICHAEL LORENCE,)	
)	
Defendant)	
)	Honorable
(Unique Green Services, LLC, Claimant-)	Bonnie M. Wheaton,
Appellee).)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* We vacated the trial court’s judgment after a trial of right of property, as the statutory prerequisites for such a trial had not been satisfied and a prior order (as we construed it) had established that no such trial was pending.
- ¶ 2 Plaintiff, United Transfer, Inc., appeals a judgment that denied it relief against claimant, Unique Green Services, Inc. (Unique Green), after a trial of right of property (see 735 ILCS 5/12-201 *et seq.* (West 2010)) involving four vehicles that plaintiff alleged were owned by defendant, Michael Lorence, and on which the Sheriff of Du Page County (Sheriff) had allegedly levied in order to satisfy plaintiff’s prior judgment against Lorence. We vacate the judgment.

¶ 3 On October 30, 2009, plaintiff filed a document stating, “This is attached to a money judgment entered August 28, 2006[,] in Cook County, and attached for the purposes of registering/enrolling the same judgment in Du Page County. The enrollment/registration is being done for the purposes of pursuing all supplemental, citation, levy, and collection proceedings against [Lorence] in Du Page County.” Filed with the document was a copy of the Cook County judgment, which awarded plaintiff \$29,916.91 in damages, \$430 in costs, and \$14,479.16 in attorney fees.

¶ 4 On February 26, 2010, the trial court entered an order noting that plaintiff’s counsel and Tammy Aaron, apparently on behalf of Unique Green, had appeared and continuing the “matter” to March 4, 2010, for status. The order required Aaron “to present all documentation related to the ownership of the property that the Sheriff has levied to Counsel for Plaintiff” before March 4, 2010, and “to present all documentation related to the ownership of the property levied upon.” We note that, although the order refers to a prior levy, the record contains no court order allowing a levy. (Also, there is no order registering the 2006 judgment in Du Page County.)

¶ 5 On March 4, 2010, the trial court entered an order (1) continuing the cause to April 26, 2010, for status; (2) allowing Unique Green to file a “motion to dismiss”; (3) allowing the parties “to initiate discovery regarding the issues of the history and ownership of the vehicles subject to the levy of the Sheriff”; (4) stating that the levy would remain in force; and (5) allowing Thomas Bouslog to enter his appearance as counsel for Unique Green.

¶ 6 On April 13, 2010, plaintiff filed a “Motion for Sanctions and for Other Relief,” stating as follows. On February 3, 2010, plaintiff caused certified copies of the Cook County judgment to be placed with the Sheriff to effect a levy in accordance with section 4-141 of the Code of Civil Procedure (735 ILCS 5/4-141 (West 2008)). Sometime after February 3, 2010, the Sheriff “served

the attachment/levy on trucks and vehicles and served a copy of the levy on [Lorence].” (Plaintiff’s motion did not document the allegations summarized in the preceding two sentences.) On February 26, 2010, Aaron appeared at the status hearing and claimed an interest in the vehicles, and the trial court ordered her to produce all documents relating to her claim. On April 1, 2010, plaintiff sent a “Rule 201(k) letter” to Unique Green’s attorney, but plaintiff had received no response. Plaintiff asked the trial court to bar Aaron and Unique Green from asserting any claim to the vehicles and to allow the Sheriff to sell the vehicles.

¶ 7 On April 26, 2010, Unique Green moved to dismiss the Sheriff’s levy. Citing section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2010)), Unique Green alleged that Aaron was the sole member of Unique Green and that the vehicles were possessed and owned by Unique Green, which was not a judgment debtor in this case. Thus, the levy was improper. (Unique Green did not document the alleged levy.)

¶ 8 On April 26, 2010, the trial court continued the cause to June 7, 2010. On May 21, 2010, plaintiff again moved for sanctions, alleging the following. Lorence and Aaron had a long-standing business relationship through Unique Recycling Services, Inc. (Unique Recycling), which Lorence owned. Unique Recycling transferred its titles to certain vehicles, including those levied upon, in order to defraud creditors. Aaron was acting as Lorence’s surrogate in order to avoid his obligations.

¶ 9 Plaintiff’s motion alleged that Lorence and Aaron had agreed to transfer the vehicles’ titles to Unique Green, without substantial consideration, in violation of the Uniform Fraudulent Transfer Act (Transfer Act) (740 ILCS 160/5 (West 2008)). Plaintiff contended that, as a result, Lorence still had title to the vehicles, so that plaintiff could levy against them to satisfy its judgment against

Lorence. Plaintiff asked the trial court to deny Unique Green's motion to dismiss, order the Sheriff to sell the vehicles, and award plaintiff attorney fees and costs.

¶ 10 On June 1, 2010, plaintiff petitioned for rules to show cause against Aaron and Unique Green. Plaintiff alleged as follows. On February 24, 2010, the Sheriff "seized" certain vehicles in Bloomingdale. Despite the "seizure," the vehicles remained parked at the same address. On May 28, 2010, plaintiff's attorney saw what he believed were two of the levied-upon trucks being driven outside where they had been parked, in indirect criminal contempt of court.

¶ 11 The petition attached a Sheriff's inventory, which was titled "INVENTORY OF SEIZED PROPERTY." It recorded the "Date of Seizure" as February 24, 2010, and listed four "yellow trucks w/'Unique Recycling Services' on them": a 1985 Mack registered to Unique Green; a 1989 Ford registered to Unique Green; a 1991 International registered to "URS Inc."; and a 1993 Peterbilt registered to "URS Inc." The inventory noted that Lorence had been present at the "seizure."

¶ 12 On June 21, 2010, Unique Green responded to the motion for sanctions and the contempt petition. Unique Green denied that the vehicles had ever been levied upon or seized. As an "affirmative defense" to the contempt petition, Unique Green asserted that nobody at Unique Green was served with or received a copy of the inventory until June 1, 2010. Responding to the sanctions motion, Unique Green asserted that Aaron was not "a party to these proceedings" but was present only as the representative of Unique Green, which claimed the four vehicles. On July 12, 2010, plaintiff filed an amended petition to hold Aaron in indirect criminal contempt.

¶ 13 On November 22, 2010, Unique Green filed a "Motion to *** Release Lien and Remove Levy," also on the basis that it owned the vehicles and that Lorence had no interest in them. That day, the trial court struck plaintiff's response to Unique Green's motion to dismiss the levy and gave

plaintiff 14 days in which to file a complaint under the Transfer Act. The court's order also stated, "The trial date of the trial right [*sic*] of property is continued."

¶ 14 On December 6, 2010, plaintiff filed a "Complaint for Trial Right [*sic*] of Property Based on a Fraudulent Transfer by [Aaron and Unique Green]." The complaint's introductory paragraph invoked both the Transfer Act and the Trial of Right of Property statute (735 ILCS 5/12-201 *et seq.* (West 2010)). The complaint alleged as follows. As of August 1, 2006, Aaron had long known that Lorence owned Unique Recycling. On or after August 1, 2006, Aaron knew that plaintiff had sued Lorence in Cook County. On August 28, 2006, plaintiff obtained a judgment against Lorence, as Aaron also knew. Sometime afterward, Lorence and Aaron agreed that he would transfer Unique Recycling's assets and accounts to her while the judgment against him remained unpaid. In May 2008, they set up Unique Green, with Aaron as the sole member. Afterward, they agreed that certain vehicles would be registered to Unique Green for Aaron to use in continuing Lorence's former business. The vehicles were transferred from Unique Recycling to Unique Green without fair consideration. Aaron then claimed in court that Unique Green owned the vehicles.

¶ 15 On December 7, 2010, Aaron moved to dismiss the amended petition for indirect criminal contempt. On December 13, 2010, the trial court granted the motion. The court explained that plaintiff had failed to identify any court order that Aaron had disobeyed, even accepting the petition's allegations about the use of the "levied" vehicles. The court reasoned that the record contained no order authorizing a levy and that the Sheriff's inventory was not a levy.

¶ 16 On January 3, 2011, Unique Green moved to dismiss plaintiff's recently filed Transfer Act complaint (see 735 ILCS 5/2-619(a)(9) (West 2010)), contending as follows. None of the vehicles at issue had been the subject of a fraudulent transfer. According to records from the Secretary of

State, Lorence had never owned any of the vehicles. According to Aaron's attached affidavit, Unique Green had purchased the 1985 Mack from Kirk Recycling in Normal, Illinois, and had purchased the 1989 Ford from Jack Krause. Unique Recycling, which had been dissolved as of December 1, 2005, had previously owned the 1991 International and the 1993 Peterbilt and, according to the Secretary of State's records, Unique Recycling had never transferred title to the two vehicles, which it had purchased from Ben Divito.

¶ 17 On February 28, 2011, plaintiff responded to Unique Green's motion to dismiss, arguing that title registration is not synonymous with ownership of levied property such as the four vehicles here. Further, Unique Green had not documented its claim of ownership, such as by bills of sale and proof of actual payment for the 1985 Mack and the 1989 Ford. Also, attached records from the Secretary of State's office showed that the 1991 International had been purchased on June 10, 2007, by "URS, Inc.," whose address was Aaron's home address. Lorence had signed the title assignment as buyer. The title documents for the 1993 Peterbilt showed that, on May 30, 2007, title was transferred to "URS, Inc." with Lorence signing as buyer. The title documentation for the 1989 Ford stated that, on June 25, 2008, Unique Recycling sold the vehicle to Unique Green; Lorence signed as the seller. An application for a vehicle title stated that, on February 13, 2006, Lorence purchased the vehicle from Kraus, a dealer. Finally, the Secretary of State's records disclosed that Unique Green purchased the 1985 Mack on June 19, 2008, from Kirk C & D Recycling (Kirk).

¶ 18 The trial court denied Unique Green's motion to dismiss the complaint. Unique Green answered the complaint. On August 3, 2011, Unique Green filed answers to interrogatories, with Aaron stating as follows. She purchased the 1989 Ford from Unique Recycling. She purchased the International and the Peterbilt by "payments made to Ben Divito over time pursuant to titles he

acquired from Unique Recycling Services, Inc.. [sic] Michael Lorence allegedly deposited title with him for money owed for storage and rent.” Unique Green purchased the Mack from Kirk.

¶ 19 On November 15, 2011, this court affirmed the order of December 13, 2010, denying plaintiff’s petition to hold Aaron in indirect criminal contempt. *United Transfer, Inc. v. Lorence*, 2011 IL App (2d) 110041. We agreed with the trial court that there was no levy order in the record (although the trial court’s order of March 4, 2010, presumed otherwise). *Id.* ¶ 19.¹ Further, even assuming that Aaron had conceded the existence of a levy, nothing in the contempt petition alleged specifically what the levy required of Aaron, so there was no proof that she had been on notice of what the levy forbade her to do. *Id.* ¶¶ 20-21.

¶ 20 On June 15, 2012, after a hearing, the trial court entered an order stating, in pertinent part:

“It is hereby ordered (A) The cause shall proceed to trial on the trial issues regarding the Sheriff’s levy and the claims of interest on [sic] the four vehicles subject to the levy. (B) The

¹On December 12, 2010, Deputy Sheriff John Gillenwater was served with a subpoena, which commanded him to produce, on December 17, 2010, at the office of Unique Green’s attorney, “Copy of levy, inventory, bond, affidavits, correspondence, documentation confirming dates of levy, execution or direction pursuant to levy by virtue of order of 09 MR 1636-001.” What actually happened as a result of the subpoena is not disclosed by the record. On July 30, 2012, Gillenwater was served with a subpoena commanding him to appear at an August 23, 2012, hearing and subsequent trial dates and to produce copies of “[a]ny and all documents related to the levy” and “[a]ny and all documents related to your service of the levy on any defendant.” Again, no such documents made their way into the record on appeal.

plaintiff is granted a voluntary non-suit on its separate complaint against Tammy Aaron and Unique Green Services, LLC. [*sic*] for fraudulent transfers by the defendants[.]”

We have no record of the hearing that preceded this order.

¶ 21 On August 23, 2012, the cause proceeded to a hearing. Unique Green’s attorney, Terry Eland, requested clarification on “what [was] pending.” Eland believed that, because plaintiff had voluntarily dismissed its complaint under the Transfer Act, nothing was pending. The trial judge noted that Unique Green’s November 22, 2010, motion to release liens and remove the levy was still pending. Eland responded that he was “prepared just to withdraw that today.” Plaintiff’s attorney, John Dore, stated, “Early on *** there was an order entered indicating that there was to be a trial right [*sic*] of property. That order was never changed.” Thus, he explained, there was still pending the proceeding under the Trial of Right of Property statute “to determine the ownership of the four trucks that had been the subject of the sheriff’s levy.” It was his understanding that the trial of right of property was to be held that day.

¶ 22 Eland responded that the Trial of Right of Property statute was “really very clear. It [apparently the action under the statute] should have been filed [by Unique Green] *** two-and-a-half years ago.” However, Eland said, Unique Green had never done so. After a recess, Eland stated, “we’ve never been proceeding on a trial to [*sic*] right to [*sic*] property.” He noted that the procedures that the Trial of Right of Property statute required had not been followed; the Sheriff had not given notice to the trial court.

¶ 23 Dore replied that the Sheriff had “effected service after the levy was conducted” and that Unique Green had never objected to the levy. Plaintiff had voluntarily dismissed the “separate complaint” under the Transfer Act on the understanding that the court would still proceed with the

trial of right of property to determine who owned the four vehicles. Eland countered that, without a complaint alleging fraudulent transfers, there was “no issue of ownership at this time.”

¶ 24 The judge stated, “All right. We’re going to proceed on Mr. Eland’s motion to set aside the lien.” Eland then withdrew the motion. The following colloquy occurred:

“MR. DORE: Excuse me. We were directed by this Court to appear today for a two-day trial concerning the trial right [*sic*] of property. We have prepared for an adversary proceeding based upon those orders and based upon prior orders of Court. There was no separate motion.

THE COURT: There is nothing in front of me to try. Mr. Eland is withdrawing his motion. You don’t have anything on file. You have withdrawn your—your complaint and you have not filed a separate action for fraudulent transfer. There is nothing before me to try.

MR. DORE: There was no pleading requirement under the trial right [*sic*] of property statute—

THE COURT: No, but the trial right [*sic*] of property statute directs the claimant who, in this case, would be Unique Green or—

MR. DORE: Tammy Aaron. Both.

THE COURT: —Tammy Aaron.

MR. ELAND: Tammy Aaron is not a party anymore.

THE COURT: Right.

MR. ELAND: She was a party only in the complaint.

THE COURT: Right. Okay. It would require Unique Green to have filed a claim of some sort or lodged a complaint or a claim with the sheriff. Then the statutory proceedings

are followed. There is a reason that there is only one case every 20 years on this. But I don't have a statutory claim that would enable me to hold a hearing for a trial right [*sic*] of property. There is nothing before me. You have withdrawn your, quote, 'claim for trial right of property based on fraudulent transfer,' unquote. So that is no longer before me. There is nothing before me on which I can hold a trial."

¶ 25 Dore referred to the order of February 26, 2010, requiring Aaron to produce documents related to who owned the vehicles. He argued that the levy had taken place; that Aaron had objected to the levy; and that, as a result, the trial court had jurisdiction to decide Unique Green's claim to the property, which it had yet to do. Dore noted that, on June 15, 2012, the court had held a "pretrial" hearing, meaning that the case had been active at that point. The following colloquy ensued:

"MR. DORE: And that *** was the subject matter of the trial right [*sic*] of property because there was nothing else pending before the Court.

THE COURT: There was.

MR. ELAND: That was withdrawn at the very end. As your Honor was walking out of the room, he said: I'm withdrawing my complaint. And you said: Fine.

THE COURT: Yes. Yes.

MR. ELAND: We were there on that one.

MR. DORE: And that was—and that was because previously the Court had admonished us that we were only going to proceed on the trial right [*sic*] of property. That was what the Court had directed.

MR. ELAND: That's not true. *****"

¶ 26 After a discussion of what the Sheriff had actually done vis-a-vis the four vehicles, Dore stated, “[T]hey filed a 2-619 motion claiming that they [owned] all of these vehicles that were subject to the sheriff’s levy and that the Court denied. The issue before the Court was based upon a trial right [*sic*] of property. The sheriff can’t determine that. We have the records to show that *** Unique Green Services does not *** have any ownership interest in these vehicles.” The judge asked whose name was on the titles to the vehicles. Dore responded that two vehicles’ titles were in “URS, Inc.” but that URS Inc. did not exist and that “URS equals Michael Lorence.” The judge and Eland both responded, “We don’t know that.” After some discussion of just who had title to which vehicles, the following exchange ensued:

“MR. DORE: *** These titles were obtained by Michael Lorence. At the time these titles were filed with the Secretary of State, affecting [*sic*] transfer ownership [*sic*], Unique Recycling Services did not exist.

THE COURT: All right. Then that is a subject of a fraudulent transfer petition. You have just told me that two of the vehicles are titled in URS, Inc., and two of the vehicles are titled in Unique Green. The statutory trial right [*sic*] of property is a summary proceeding. And I will find on the basis of your statements as an officer of the court that ownership of *** two of the vehicles, is in URS, Inc., and two of the vehicles are under the ownership of Unique Green. If you want to file a petition for fraudulent transfer, you may do so. But this proceeding is over. This trial right of property is over.”

¶ 27 The trial court allowed plaintiff to make an offer of proof. Dore stated, “The URS, Inc., two titles, there was no corporation existing in which Michael Lorence or Tammy Aaron had any affiliation. The titling of that document was in a nonexistent entity as far as Michael Lorence was

concerned.” Also, the documentary evidence proved that the “vehicles that wound up titled to Unique Green came directly from Michael Lorence.”

¶ 28 The judge noted that the June 15, 2012, order had granted plaintiff a “ ‘voluntary non-suit on its separate complaint’ ” and had “ ‘ordered *** the cause [to] proceed to trial on the trial issues regarding the sheriff’s levy and the claims of interest on the four vehicles subject to the levy.’ ” The judge continued:

“[T]he trial right [*sic*] of property *** is a statutory proceeding. It is summary in nature. You have made a judicial admission that the title to the property is in URS, Inc., and Unique Green. Two vehicles in each. That determines ownership. If you wish to bring a separate claim for fraudulent transfer, you have one year from June 15, 2012, to do so.”

¶ 29 That day, the trial court entered an order stating, as pertinent here:

“This court finds that based upon plaintiffs [*sic*] withdrawal of the complaint for fraudulent transfer on June 15, 2012, nothing remains pending.

* * *

Based upon representation of plaintiff’s counsel that two of the vehicles are titled in the name of URS, Inc[.] and two vehicles are registered in the name of Unique Green Services LLC, the court determines ownership to be in those entities.”

On September 17, 2012, plaintiff filed a notice of appeal.

¶ 30 On appeal, plaintiff contends that the trial court erred in refusing to allow it to present evidence that was relevant to the vehicles’ ownership. Plaintiff contends also that the court’s summary finding that Lorence did not own any of the four vehicles, and thus that plaintiff could not levy against them to satisfy the judgment against Lorence, was not supported by the evidence.

¶ 31 Unique Green has not filed an appellee’s brief, but we may consider the merits of plaintiff’s appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 32 First, however, we must clarify—to the extent possible—the proceedings that led to this appeal. We begin with the Trial of Right of Property statute, under which, at least according to plaintiff, the trial court acted in denying plaintiff relief. As pertinent here, the statute reads:

“§12-201. Procedure.

(a) Whenever a judgment or order of attachment, entered by any court, shall be levied by any sheriff or coroner upon any personal property, and such property is claimed by any person other than the judgment debtor or defendant in such attachment *** by giving to the sheriff or coroner notice, in writing, of his or her claim, and intention to prosecute the same, it shall be the duty of such sheriff or coroner to notify the circuit court of such claim.

(b) The court shall thereupon cause the proceeding to be entered of record, and the claimant shall be made plaintiff in the proceeding, and the judgment creditor or plaintiff in attachment shall be made defendant in such proceeding.

(c) The clerk of the circuit court shall thereupon issue a notice, directed to the judgment creditor or plaintiff in attachment, notifying him or her of such claim, and of the time and place of trial, which time shall be not more than 10 days nor less than 5 days from the date of such notice.

(d) Such notice shall be served in the same manner as provided for the service of summons in other civil cases, at least 5 days before the day of trial; and if such notice is

served less than 5 days before the day of trial, the trial shall, on demand of either party, be continued for a period not exceeding 10 days.

(e) ***

(f) If the judgment creditor or plaintiff in attachment, or his or her attorney, shall, at least 5 days before the day of trial, file with the clerk of the circuit court his or her appearance in such proceeding, then it shall not be necessary to notify such person as above provided.

§12-202. Trial. The trial shall proceed without written pleadings in the same manner as in other civil cases, and may be by a jury if either party demands one.

§12-204. Trial and judgment. The court or the jury shall determine the rights of the parties and the court shall enter judgment accordingly, and the court shall direct the sheriff or coroner as to the disposition of the property in the possession of the sheriff or coroner. In case the property appears to belong to the claimant, when the claimant is any person other than the judgment debtor or the defendant in the attachment *** judgment shall be entered against the judgment creditor or plaintiff in the attachment for the costs, and the property levied on shall be released ***. If it appears that the property does not belong to the claimant, *** judgment shall be entered against the claimant for costs, and an order shall be entered that the sheriff or coroner proceed to sell the property levied on.” *** 735 ILCS 5/12-201, 12-204(a)-(d), (f) (West 2010).

¶33 We note several difficult aspects of this case, evident from applying the foregoing provisions to what happened here. First, a trial of right of property presupposes that a judgment has been “levied by any sheriff or coroner upon any personal property.” 735 ILCS 5/12-201(a)(West 2010).

In our opinion affirming the denial of plaintiff's petition to hold Aaron in indirect criminal contempt, we noted that the record contained no order allowing the Sheriff to levy upon the vehicles. The record in this appeal is equally lacking. We still have only the "INVENTORY OF ~~SEIZED~~ PROPERTY."

¶ 34 We do note that, when plaintiff initiated these proceedings on October 30, 2009, it stated that it sought to register the Cook County judgment in order to pursue "all supplemental, citation, levy, and collection proceedings" against Lorence in Du Page County. At subsequent times, the parties and the trial court apparently all proceeded on the assumption that there had been a levy. On February 26, 2010, the trial court entered a discovery order referring to "the property that the Sheriff has levied." On March 4, 2010, the court entered another discovery order relating to "the vehicles subject to the levy of the Sheriff of Du Page County." On April 13, 2010, plaintiff filed a motion for sanctions alleging, without documentation, that the Sheriff had "served the attachment/levy on the trucks" sometime after February 3, 2010 (February 24, 2010, seemingly the likely date).

¶ 35 Unique Green's approach to the existence of the levy was inconsistent. On April 26, 2010, Unique Green moved to dismiss the levy (without documenting its existence). On June 21, 2010, in responding to plaintiff's contempt petition and motion for sanctions, Unique Green denied that the Sheriff had levied on the vehicles. Yet, on November 22, 2010, Unique Green filed a "Motion to *** Release Lien and Remove Levy."

¶ 36 On December 13, 2010, in ruling on plaintiff's petition for indirect criminal contempt, the trial court rejected its earlier assumptions and dismissed the petition, on the basis that plaintiff had not shown any evidence that there had been a levy. (In affirming, we endorsed this observation, although we did not definitely decide whether there had been a levy.) However, in its June 15, 2012,

order, the trial court stated that the cause would “proceed to trial on the trial issues regarding the Sheriff’s levy and the claims of interest” in the vehicles “subject to the levy.” At the August 23, 2012, hearing that immediately preceded this appeal, plaintiff’s attorney referred to the levy as a fact, and the trial judge eventually proceeded on the assumption that the Sheriff had at some point levied on the four vehicles.

¶ 37 Thus, although the parties and the trial court usually, but not always, assumed that there had been a levy at some time after February 3, 2010—February 24, 2010, being the only date for which there is evidence of the Sheriff having done such a thing—nothing in the record truly establishes the existence of the Sheriff’s levy. And, we note, the one document that might be pertinent is headed “INVENTORY OF ~~SEIZED~~ PROPERTY,” the obvious inference from the strikeout being that the vehicles were not seized, an inference supported by the contempt petition’s allegations that two vehicles had remained in the parking lot and that Unique Green’s agent had been driving them.

¶ 38 If the record is unclear on whether and when the Sheriff actually levied on the vehicles at issue, it is not much clearer on the trial of right of property, which plaintiff contends was conducted without fidelity to the statute. The problem is in part that the proceedings leading up to the alleged trial do not appear to have followed the statute either. As with the existence of the levy, the parties and the trial court were not altogether consistent on whether or when a trial of right of property was pending, or whether the statutory prerequisites had been satisfied. Indeed, at the August 23, 2012, hearing, the judge stated that the “statutory proceedings” for the trial had not been followed here.

¶ 39 As pertinent here, the initiation of a trial of right of property requires (1) a judgment that has been “levied” upon personal property; followed by (2) someone other than the judgment debtor (a) claiming the property and (b) notifying the sheriff in writing of his or her claim; then (3) the sheriff

notifying the circuit court of the claim. 735 ILCS 5/2-201(a) (West 2010). We have already noted the difficulty in finding the existence of prerequisite (1) from the record. We shall assume, however, that the parties and the trial court were correct, as of August 23, 2012, that there had been a levy. Still, there are crucial deficiencies. Unique Green did appear and claim the property (prerequisite 2(a)), but the record does not show that Unique Green (or Aaron) ever gave written notice to the Sheriff (prerequisite 2(b)). Indeed, at the August 23, 2012, hearing, the judge pointed out that Unique Green had never filed a claim with the Sheriff. Not surprisingly, therefore, the record also lacks any notice from the Sheriff to the trial court of Unique Green's claim. (It is true that the court received notice of some sort through Aaron and Unique Green on or about February 26, 2010.)

¶ 40 Under the statute, the next step is for the trial court to cause the proceeding to be entered of record, with the claimant being made the plaintiff and the judgment creditor being made the defendant. The trial court did not enter an order explicitly taking this step. On March 4, 2010, the court did allow the parties to begin discovery on "the issues of the history and ownership of the vehicles." Thereafter, both parties filed various petitions and motions in which the caption listed two coordinate proceedings: plaintiff versus Lorence as defendant, and Unique Green as "claimant" or "petitioner" versus plaintiff as respondent. However, although the controversy between plaintiff and Unique Green was over Unique Green's claim to the personal property on which the Sheriff had (allegedly) levied, the parties and the trial court made no reference to the Trial of Right of Property statute until the order of November 22, 2010, which gave plaintiff 14 days to file the "petition for fraudulent transfer" and also stated, "The trial date of the trial right [*sic*] of property is continued." On December 6, 2010, plaintiff filed its "Complaint for Trial Right [*sic*] of Property Based on a Fraudulent Transfer by Defendants," "hereby plead[ing] its trial right [*sic*] of property Complaint."

¶ 41 Thus, the statute requires a trial court to initiate a trial of right of property proceeding after the sheriff has notified the trial court of the claimant's claim, but, in this case, the statutory proceeding was (purportedly) initiated by the judgment creditor, with no notice from the sheriff to the trial court of the claimant's claim. The statutory proceeding was initiated (assuming that plaintiff's complaint did so) on November 22, 2010, about seven months after Unique Green, the claimant, appeared in court and notified the court of its claim.²

¶ 42 That leaves the order of June 15, 2012. There was a pretrial hearing before the order was entered, but we have no record of that hearing. The order itself is in two parts. The first states, "The cause shall proceed to trial on the trial issues regarding the Sheriff's levy and the claims of interest on [*sic*] the four vehicles subject to the levy." The second grants plaintiff a voluntary dismissal of "its *separate complaint* against Tammy Aaron and Unique Green Services, LLC. [*sic*] for fraudulent transfers by the defendants [*sic*]." (Emphasis added.)

²Section 2-201(c) of the statute requires the circuit court clerk to notify the judgment creditor of the claim and of the time and place of the trial, which is to be held not more than 10 days or less than 5 days from the date of the circuit court clerk's notice. 735 ILCS 5/12-201(c) (West 2010). However, no such notice is required if, at least 5 days before the trial, the judgment creditor has filed its appearance "in such proceeding." 735 ILCS 5/12-201(f) (West 2010). If we assume that plaintiff's complaint of November 22, 2010, initiated the process for holding a trial of right of property, then we need not address whether plaintiff received timely notice of "such proceeding." Moreover, as no notice from the circuit court clerk was required, then we may disregard section 12-201(c)'s requirement that the trial be held no more than 10 days from the date of the notice.

¶ 43 These two parts are not clear individually and do not coexist comfortably. To take the second part first: what did the court mean by plaintiff’s “separate complaint”? Plaintiff filed *one* complaint—for a “Trial Right [*sic*] of Property Based on a Fraudulent Transfer by Defendants [*sic*].” If the June 15, 2012, order dismissed that one complaint, then it obviated plaintiff’s request for a trial of right of property. The complaint was not one “for fraudulent transfers” by Lorence to Unique Green (or Aaron); it requested *a trial of right of property*, with plaintiff relying on the *theory* of fraudulent transfers to establish its right to recover under the Trial Right of Property statute.

¶ 44 The June 15, 2012, order does appear to state that plaintiff’s complaint was “separate” from the matter the order stated was to “proceed to trial”—that being “the trial issues regarding the sheriff’s levy and the claims of interest” in the four vehicles. Needless to say, this description of what remained pending is unclear. Assuming that the second part of the order dismissed the one complaint that plaintiff had filed on November 22, 2010, what remained to “proceed to trial”? One possibility, to which the judge alluded at the August 23, 2012, hearing, was that “the trial issues regarding the sheriff’s levy and the claims of interest” meant Unique Green’s pending “Motion *** to Release Lien and Remove Levy.” This possibility is consistent with what the judge initially told Dore: that, as plaintiff had voluntarily dismissed its complaint, there was nothing left before the court except Unique Green’s pending “motion.” It is also consistent with the judge’s statement, after Eland withdrew the “motion,” that there was now *nothing* pending. Finally, it is consistent with Eland’s statement at the hearing, “[W]e’ve never been proceeding on a trial of right of property.”

¶ 45 Admittedly, construing the first part of the June 15, 2012, order to refer to the “Motion *** to Release Lien and Remove Levy” is inconsistent with what the court then did, which was adjudicate the parties’ rights in the vehicles, hold that Unique Green had proved that Lorence did not

own any of them, and declare, “This trial right [*sic*] of property is over.” Nonetheless, the implication that the trial of right of property had been held and had gone to judgment is inconsistent with the written order issued shortly afterward, which states that, plaintiff already having dismissed its complaint, “Nothing Remains Pending.” In turn, however, this statement in the written order does not jibe with the later statement that, based on Dore’s representations, “The Court so determines ownership to be in [URS, Inc. and Unique Green].”

¶ 46 The confusion in the trial court’s oral and written rulings is especially crucial, as it goes to whether we have jurisdiction to hear this appeal. Although plaintiff states that we have jurisdiction, we have an independent duty to consider our jurisdiction and to dismiss the appeal if jurisdiction is lacking. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985).

¶ 47 With narrow exceptions inapplicable here, our jurisdiction is limited to appeals from final judgments. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). A final judgment is one that determines the litigation on the merits so that, if it is affirmed, the only thing remaining is to proceed with the execution of the judgment. *In re Commitment of Hernandez*, 239 Ill. 2d 195, 202 (2010). The August 23, 2012, order’s statement that nothing was before the trial court, if taken in isolation, would mean that we have no jurisdiction. If there was truly “nothing” pending before the trial court at the hearing on August 23, 2012, then a final judgment was entered at some previous time, or the entire controversy had in some way already been resolved.³ Thus, considered by itself,

³We note that the voluntary dismissal of plaintiff’s complaint cannot give us jurisdiction. The voluntary dismissal was not a final judgment, because plaintiff retained the absolute right to refile its complaint within a year after June 15, 2012. See *Kahle v. John Deere Co.*, 104 Ill. 2d 302, 305 (1984). Moreover, even if plaintiff could have appealed the June 15, 2012, order, August 23,

the “nothing” portion of the August 23, 2012, order means that the notice of appeal from that order did not invoke our jurisdiction.

¶ 48 Of course, we do not take the written order’s “nothing” statement in isolation. The remainder of the order does state that the trial court decided who owned the four vehicles. While it appears counterintuitive that a trial court can resolve “nothing” on the merits, that is what the order says. In any event, though, we shall not consider the written order in isolation. We must look to the trial court’s oral rulings, especially as they control to the extent that the written order is inconsistent with them. See *In re Tr. O.*, 362 Ill. App. 3d 860, 867-68 (2005). Thus, we revisit the hearing.

¶ 49 The trial court’s oral rulings are less inconsistent than its written order, if only because the inconsistencies occur sequentially, with intervening matter, rather than all but simultaneously. We note that, after Eland withdrew Unique Green’s motion to release the liens and remove the levy, Dore requested a trial of right of property. The judge responded, “There is nothing in front of me to try.” Shortly afterward, the judge told Dore that a trial of right of property could not be held, because Unique Green had never filed “a claim with the sheriff” and, insofar as plaintiff’s complaint could have triggered a trial of right of property, the complaint (which had requested a trial of right of property) had been voluntarily dismissed.

¶ 50 After further discussion, Dore stated that Lorence had fraudulently transferred the titles to the vehicles. In response, the court apparently improvised, abandoning the earlier statement that no trial of right of property was pending or even statutorily permissible. After the impromptu trial of right of property, the court ruled that, based on Dore’s admissions, two of the vehicles were owned

2012, was well beyond the 30-day limit imposed by Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008).

by URS, Inc., and the other two were owned by Unique Green. Thus, because plaintiff had voluntarily dismissed its complaint alleging that Lorence had fraudulently transferred the titles, plaintiff lost, and “[t]his trial right [*sic*] of property [was] over.” In the process of initiating, holding, and deciding the trial of right of property, the court ruled that plaintiff’s evidence of fraudulent transfers was inadmissible; by withdrawing its “separate complaint” for relief on this ground, plaintiff had forgone any opportunity to litigate the issue.

¶ 51 What is to be made of the trial court’s orders? We lack a report of the proceedings of June 15, 2012, leading to the confusing order that was entered that day. While the incompleteness of the record is normally construed against the appellant and in favor of the correctness of the trial court’s judgment (*Foutch v. O’Bryant*, 84 Ill. 2d 384, 391-92 (1984)), that is not the problem here; we are concerned not with the correctness of the June 15, 2012, order, or even (as yet) with the correctness of the August 23, 2012, order(s). We are concerned with *construing* the orders.

¶ 52 The only conclusion that we can draw from the trial court’s August 23, 2012, oral orders is that, despite recognizing that (1) the statutory prerequisites for a trial of right of property had not been met; (2) plaintiff had voluntarily dismissed its complaint requesting a trial of right of property; and (3) Unique Green had insisted that the parties had never been proceeding on a trial of right of property, the court went ahead and held a trial of right of property anyway.

¶ 53 Plaintiff contends that the trial court erred in how it conducted the trial of right of property. But there is a more fundamental question: whether the court had the authority to conduct a trial of right of property at all. There is no dispute that the statute was not followed; no claimant ever gave the Sheriff written notice of his/her/its claim and intent to prosecute the claim and, as a result, the Sheriff never notified the trial court of any such claim (see 735 ILCS 5/12-201(a) (West 2010)).

¶ 54 We return to the June 15, 2012, order. Lacking any record of what the trial court and the parties actually said at the hearing that day, we must construe it so as to effectuate the apparent intent of the trial court. See *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 494 (2009). The order itself supports the trial court’s initial interpretation at the August 23, 2012, hearing, especially when it is viewed in the context of the surrounding circumstances. It states in part that plaintiff received a “voluntary non-suit on its separate complaint against Tammy Aaron and Unique Green Services, LLC. [sic] for fraudulent transfers by the defendants [sic].” Since plaintiff had filed only one complaint against Aaron and Unique Green, we conclude that the reference here is to the “Complaint for a Trial Right [sic] of Property Based on a Fraudulent Transfer by Defendants [sic].” Because the complaint sought a trial of right of property, and it was voluntarily dismissed, it follows that, from then on, no trial of right of property was pending. This conclusion is consistent with Eland’s statement on August 23, 2012, that the parties and the court had “never been proceeding on a trial to [sic] right of property.” More important, our conclusion is consistent with the undisputed fact that the statutory prerequisites for a trial of right of property were never satisfied.

¶ 55 We conclude that, upon the entry of the June 15, 2012, order, at the very latest, no trial of right of property was pending. We construe the order’s admittedly cryptic first part, “The cause shall proceed to trial on the trial issues regarding the Sheriff’s levy and the claims of interest on [sic] the four vehicles subject to the levy,” to refer to Unique Green’s pending “motion” to release the liens and remove the levy. While this interpretation is not free of difficulties, neither are any alternatives. We shall not assume that the trial court contemplated holding a trial of right of property after one party withdrew its complaint for that relief and the other party denied that any such proceeding had ever been initiated. Our decision is reinforced—indeed, compelled—by our conclusion that a trial

of right of property would have been unauthorized, as the Sheriff was never notified of any claims and thus never notified the trial court of any claims—prerequisites to a trial of right of property.

¶ 56 Our construction of the June 15, 2012, order leads us to conclude that the August 23, 2012, judgment must be vacated. The trial court held a trial of right of property and decided it against plaintiff. While plaintiff protests the brevity of the trial, we conclude that the trial should never have been held. The trial court's action was unauthorized by statute and inconsistent with the court's prior order (as we have construed it). Therefore, we vacate the judgment of August 23, 2012.

¶ 57 Although we decide the appeal on a ground not urged by the appellant, we do so in the interest of a just result and the maintenance of a sound and uniform body of law. See *Hux v. Raben*, 38 Ill. 2d 223, 225 (1969). The proceedings at the trial level on which the judgment was based were not merely irregular; they were unauthorized by statute and were unfair to both parties.

¶ 58 We express no opinion on whether it is still possible to hold a trial of right of property.

¶ 59 For the foregoing reasons, the judgment of the circuit court of Du Page County is vacated.

¶ 60 Vacated.