

No. 1-13-1136

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

MARK J. SCHACHT,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 10 L 8024
)	
DOROTHY BROWN, in her official capacity as Clerk)	
of the Circuit Court of Cook County; and)	
THE COUNTY OF COOK,)	
)	Honorable Ronald Bartkowicz,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 **Held:** A case seeking a refund of a motion filing fee improperly charged by the clerk of the circuit court in an earlier case was moot, because the clerk refunded both the motion filing fee and the filing fee for the second case.

¶ 2 Early in their careers, new lawyers are confronted with many problems not taught in their law school training. One such problem is dealing with a court clerk who incorrectly insists that a particular fee is required for a filing when it is not. Two of the most effective remedies in that situation are asking for help from a supervisor, or paying the fee “under protest” and asking the

judge for a reimbursement order. The plaintiff in this case decided to do neither. Instead, he filed a completely new lawsuit against the court clerk. We agree with the court below that the case became moot when the clerk refunded both the objectionable fee and the filing fee for the second case, and therefore affirm.

¶ 3 The plaintiff in this case, Mark Schacht (Schacht), was also the plaintiff in a different civil action which had been filed a few months before this one. His lawyer attempted to file a motion in that original case. The motion sought to vacate an order which had transferred the case to the Commercial Calendar in the Law Division of the circuit court of Cook County – essentially a routine judicial assignment order. That order was not final, not appealable, and did not affect the substantive rights of any party. (The second amended complaint does not describe the nature of the motion in any way, but the pleadings on the dispositive motion to dismiss do.) The counter clerk told him that a \$60 fee was required. See 705 ILCS 105/27.2(g) (West 2010) (section 27.2) (requiring, with some exceptions, a fee for filing “petitions to vacate or modify any final judgment or order of court”). The lawyer objected to the fee, asserting that no fee was required for a motion to vacate a transfer order, because section 27.2 only requires fees for motions to vacate “final judgments” or “final orders of court”, terms which normally connote that the order is appealable under Supreme Court Rule 304 (Ill. Sup. Ct. R. 304 (eff. Feb. 26, 2010) or a similar rule.

¶ 4 Nonetheless, Schacht’s attorney paid the fee under protest and the original case proceeded apace. Rather than seeking relief regarding the filing fee from the judge hearing the first case, however, Schacht filed a second case against Cook County Clerk of the Circuit Court Dorothy Brown (Brown) and Cook County. That case is the subject of this appeal.

¶ 5 The second amended complaint in this case contains only a single count. That count sounds in conversion, and it alleges that Brown improperly converted \$60 from Schacht by insisting that he pay the filing fee. Schacht seeks “compensatory and punitive damages,” but in no particular specified amount. At an early stage in the proceedings below, Schacht argued that he was also seeking relief as to other similarly-situated litigants and an accounting of improperly-assessed fees. These would normally be framed as stand-alone counts for a class action and for the equitable remedy of accounting. However, no such claims appear in the second amended complaint in any manner.

¶ 6 At some point after Schacht filed this case, the court clerk refunded both the \$60 fee imposed in the first case and the \$564 filing fee for the second case to Schacht. Nothing in the record shows that Schacht ever refused these refunds or returned them. Brown and Cook County then filed two motions to dismiss. The first motion alleged numerous bases for dismissal, but did not raise the issue that the case was moot. That motion was brought under both sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2010)). The trial court granted that motion in part by striking various paragraphs in the first count. Schacht voluntarily withdrew his second count without prejudice; that count had sought relief under federal civil rights law for Brown’s alleged violation of his constitutional rights.

¶ 7 The defendants then filed a second motion to dismiss pursuant to section 2-619, alleging that the \$624 in refunds rendered the case moot. The motion also presented several defenses to the punitive damages claim. Schacht objected, arguing that the case fell within the public interest exception to the mootness doctrine because Brown continued her practice of charging excess fees for motions to vacate. He presented an affidavit generally and quite vaguely asserting that the clerk continued to charge the fee for motions which did not fall within its scope. In reply, the

defendants challenged that affidavit, noting that it was unspecific and insufficient to raise an issue of fact regarding mootness which would preclude dismissal. The court dismissed the case as moot, and this appeal followed.

¶ 8 When we consider the propriety of the dismissal of a complaint under section 2-619, our review is *de novo*. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 12 (2005). Additionally, we must take the facts alleged in the surviving portion of the second amended complaint as true. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008).

¶ 9 In this court, the sole basis Schacht asserts for reversal is that the case was not moot. He presents two grounds in support of his non-mootness argument: (1) he was not “made whole” because the defendants were not required to pay his attorney fees; (2) the case falls within the public interest exception to the mootness doctrine because the clerk’s practice is still ongoing and is therefore likely to recur, creating a need for an “authoritative determination *** for future guidance.”

¶ 10 The second amended complaint contains a prayer for attorney fees, but it cites no statutory, constitutional, or other basis upon which a court can award attorney fees in a conversion case. Moreover, his appellate brief cites no such authority. We find that Schacht waived the issue by citing no authority in his appellate brief supporting this argument. Points not supported by citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(e)(7) (Ill. S. Ct. R. 341(e)(7) (eff. July 2, 2008)) and are waived on appeal. *Brown v. Tenney*, 125 Ill. 2d 348, 362 (1988). Even if it had not been waived, we would find that attorney fees were not available to Schacht. Illinois has long followed the “American rule” which provides that the prevailing party in a lawsuit may not recover attorney fees or costs unless some

statutory or contractual provision governing the transaction provides for fee awards. *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 238 (1995).

¶ 11 With respect to the second point, Schacht strongly relies on two bullet-point style notices circulated in the court clerk's office and used (at some times) by counter clerks to assist them in determining whether a particular motion requires a filing fee. The record contains additional "instruction sheets" issued by the clerk's supervisory staff which attempt to parse which types of motions require the section 27.2 fee and which do not. However, these notices do not provide us with a reason to disturb the trial court's mootness finding. In determining whether the court properly dismissed the action under the second section 2-619 motion, our review is limited to the allegations in the second amended complaint less: (1) the paragraphs stricken by the first combined section 2-615 and 2-619 motion; and (2) the civil rights count which Schacht voluntarily dismissed. All that remains is a simple count for conversion relating to the \$60 fee and a prayer for "compensatory and punitive damages."

¶ 12 The usual measure of damages for conversion of personal property is "the market value of the property at the time and place of conversion plus legal interest." *Jensen v. Chicago & Western Indiana R.R. Co.*, 94 Ill. App. 3d 915, 933 (1981). Since Schacht made no claim for interest, and any interest would undoubtedly be *de minimis*, the refund of the \$60 filing fee provided him with the only remedy available under the surviving allegations in the second amended complaint. See also *Barber v. American Airlines, Inc.*, 241 Ill. 2d 450, 459 (2011) (holding that refund of fee by airline to customer rendered challenge to the fee moot).

¶ 13 We also must reject Schacht's claim that this case falls within the public interest exception to the mootness doctrine. "The public interest exception to the mootness doctrine allows a court to consider an otherwise moot issue when (1) the question presented is of a

substantial public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question.” *In re Marriage of Donald B. & Roberta B.*, 2014 IL 115463, ¶ 33. Schacht’s complaint did not purport to be a class action, nor did it contain any prayer for declaratory or injunctive relief. It applied to only one particular type of motion – a motion to transfer a case to a different court calendar. Accordingly, it was not a legal vehicle through which such an “authoritative determination” of great public interest could be made.

¶ 14 Finally, we also agree with the defendants that punitive damages were no longer available. “Punitive damages may be awarded in cases where the wrongful act complained of is characterized by wantonness, malice, oppression or other circumstances of aggravation.” *In re Estate of Wernick*, 127 Ill. 2d 61, 83-84 (1989). On this issue, we note that the fee statute is hardly a model of clarity. It imposes a fee on “petitions to vacate or modify any final judgment or order of court,” and is easily capable of two different meanings. It can be read both to require a fee for pleadings to vacate/modify only orders that are “final” (in that they are appealable), or to require the fee regarding all “orders of court,” even those relating to ministerial or unappealable substantive matters. We do not resolve that issue herein, but merely note that there is a sufficient ambiguity to create legitimate disputes regarding whether a particular motions require fees. The record indicates that the latest set of instructions tells counter clerks to distinguish between motions which seek to vacate “substantive” orders as opposed to “procedural” ones, listing various examples and exceptions. We doubt whether any instructions could be so perfectly drafted that they would both be practical and exhaustively classify every conceivable type of motion. Discerning what is, and is not, a “substantive” or “final” order perplexes seasoned attorneys and often generates disagreement among judges.

¶ 15 The surviving allegations of the second amended complaint, even taken as true and generously construed, merely posit that Brown (through her staff) acts in a sloppy and misguided manner when determining whether particular motions require the section 27.2 fee. Schacht submitted nothing in response to the section 2-619 motion that demonstrated any particular malice by Brown. While inaccuracy in fee computation may be a matter of some concern, this record does not demonstrate how punitive damages were somehow in play when the case was dismissed.

¶ 16 Finally, we find that this case was also properly dismissed on the simple ground that it dealt with a fee filed in a different case. We “can sustain the decision of the circuit court on any grounds which are called for by the record regardless of whether the circuit court relied on the grounds and regardless of whether the circuit court’s reasoning was correct.” *Rodriguez v. Sheriff’s Merit Comm’n*, 218 Ill. 2d 342, 357 (2006). The propriety of the fee should have been only been adjudicated in that case. Our supreme court has strongly admonished that attorneys should not file new lawsuits simply to refund fees charged in earlier lawsuits, stating “it is obviously much more efficient for the appellate court to simply take care of the matter while the case is on review than to have the defendant initiate a separate proceeding to have the fine vacated. Also, we do not believe that the clerk’s action in imposing an illegal fee should further burden the defendant.” *People v. Gutierrez*, 2012 IL 111590, ¶ 14 n.1.

¶ 17 For these reasons, we find that the circuit court correctly dismissed the remaining portion of the second amended complaint.

¶ 18 Affirmed.