

No. 1-13-3977

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**

SOMA INSTITUTE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	
)	
PAMELA MERCER,)	No. 06 M1 142316
)	
Defendant-Appellant,)	
)	
(Cook County,)	Honorable
)	Patrick O'Brien,
Citation Respondent-Appellee).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court is affirmed where the original citation order stated that the appellant would be responsible for the unpaid judgment amount plus costs and interest, and the appellant received sufficient notice that she would have to pay such additional costs.

¶ 2 Appellant, Pamela Mercer, appeals the judgment of the circuit court entering a wage deduction order/turnover order against her in the amount of \$3,768.18. On appeal, Mercer contends the court erred in entering the judgment amount against her because (1) it was substantially greater than the amount identified in the citation to discover assets served upon her; and (2) it violated her right to due process by failing to notify her of the increased amount, or to require an amendment of the citation to discover assets. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court entered its wage deduction order/turnover order on July 25, 2013. Mercer filed a motion to reconsider which the court denied on October 17, 2013. Mercer filed her notice of appeal on November 18, 2013. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 On July 13, 2006, appellee SOMA Institute (SOMA) filed a complaint against Mercer for breach of contract, and sought damages in the amount of \$4,409.37 plus court costs. Mercer made some payments, but on July 29, 2013, a citation to discover assets was issued to Mercer's employer, Cook County. The citation stated that the amount "now due" is "\$2,268.37 plus costs." The citation further stated that "[f]urther sums may become due as costs and interest accrue." As Mercer states in her brief, the citation "was served effectively on Citation Respondent-Appellee Cook County and on Appellant." On July 25, 2013, the trial court entered a wage deduction order against Mercer and her earnings from her employment with

Cook County, in the amount of \$3,768.18. Mercer filed a motion to reconsider which the trial court denied. Mercer filed her timely notice of appeal.¹

¶ 7 ANALYSIS

¶ 8 On appeal, Mercer contends that her motion to reconsider should have been granted because the trial court erred in its application of existing law. Where the motion to reconsider challenges the trial court's application of existing law, we review the grant or denial of the motion *de novo*. *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20.

¶ 9 Mercer contends that the July 25, 2013, wage deduction order for the amount of \$3,768.18, violates Supreme Court Rule 277 (c)(2) (eff. Jan. 4, 2013) and section 2-1402(b) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402(b) (West 2012)). Rule 277(c)(2) states that "[t]he citation by which a supplementary proceeding is commenced *** shall state the date the judgment was entered or revived, and the amount thereof remaining unsatisfied." Ill. S. Ct. R. 277(c)(2) (eff. Jan. 4, 2013). Section 2-1402(b) of the Code provides "[a]ny citation served upon a judgment debtor or any other person shall include a certification *** setting forth the amount of the judgment, the date of the judgment, or its revival date, the balance due thereon, the name of the court, and the number of the case, and a copy of the citation notice required by this subsection." 735 ILCS 5/2-1402(b) (West 2012). Mercer argues that the original citation against her stated a judgment amount of \$2,268.37. In its wage deduction order, however, the trial court entered a sum of \$3,768.18, almost \$1,500 more than the citation amount. She

¹ Appellees SOMA Institute and Cook County did not file a brief in response to Mercer's arguments. A reviewing court, however, may consider the merits of an appeal without an appellee brief if "the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

therefore argues that the trial court's order violated Supreme Court Rule 277(c)(2) and section 2-1402(b) of the Code.

¶ 10 Initially, we note that Mercer's argument on this point contains no citation to authority as required by Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (argument "shall contain the contentions of the appellant and the reasons therefor, with citations of the authorities and the pages of the record relied on"). Nonetheless, we find that the trial court did not misapply the law when it entered the wage deduction order. The citation to discover assets form correctly identified the unpaid judgment amount as \$2,268.37, as required by Rule 277(c)(2), and section 2-1402(b). The form states that "[t]here is now due, less credit and off-set, the sum of \$2268.37 plus costs. Further sums may become due as costs and interest accrue." Mercer argues that the citation should have specifically identified the added \$1,500 in "purported" costs, but neither Rule 277(c)(2) nor section 2-1402(b) contains such a requirement. In fact, the citation form itself acknowledges that costs and interest may be added later to the unpaid judgment amount by stating that "[f]urther sums may become due as costs and interest accrue." The plain language of a statute is the best indicator of legislative intent, and when the language is clear courts must apply it as written without resort to aids of interpretation. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

¶ 11 Mercer next contends that the July 25, 2013, order violated her right to due process by failing to notify her of the increased amount, or to require an amendment of the citation to discover assets. As support, she cites *Kaput v. Hoey*, 124 Ill. 2d 370, 382 (1988), and its finding that "[t]he purpose of the notice requirement is to avoid surprise to a defendant." *Kaput* involved a default judgment on the plaintiff's complaint for personal injuries. *Id.* at 374. The complaint requested damages "in excess of \$15,000" and the default judgment amount entered

was almost \$30,000. *Id.* at 381-82. The supreme court found that a request for damages "in excess of \$15,000" gives notice that the plaintiff is seeking more than \$15,000. It held that the judgment amount of almost \$30,000, although almost twice the requested amount, could not "be deemed a surprise" in that particular case. *Id.* at 382.

¶ 12 Here, the fact that the trial court added costs to the unpaid judgment amount could not have been a surprise to Mercer. As discussed above, the citation form itself stated that "[f]urther sums may become due as costs and interest accrue" and Mercer acknowledges that the citation "was served effectively" on her and appellee Cook County. In addition, section 2-1402(h) of the Code authorizes the trial court to order costs in this situation. Since Mercer received proper notice that she could be responsible for costs in addition to the unpaid judgment amount, the July 25, 2013, order did not violate her due process rights.

¶ 13 Mercer also argues, without elaboration, that the almost \$1,500 in costs entered by the trial court was improper. However, the record does not contain a transcript of the proceedings nor does it contain a substitute report of proceedings pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Without this material, we cannot know the arguments presented at the proceedings or the reasoning of the trial court when it made its determinations. Under these circumstances, we must presume that the trial court acted in conformity with the law and had a sufficient basis in the record for its determination. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 14 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 15 Affirmed.