

SIXTH DIVISION  
April 10, 2015

No. 1-14-1951

**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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EARL S. WORTHINGTON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 M1 011477
	)	
CAPITAL ONE BANK,	)	Honorable
	)	Sheryl A. Pethers,
Capital One-Appellee.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Where plaintiff failed to state a cause of action, we affirmed the circuit court's dismissal, with prejudice, of plaintiff's *pro se* complaint.

¶ 2 Plaintiff, Earl S. Worthington, *pro se*, appeals from the circuit court's dismissal, with prejudice, of his *pro se* complaint against Capital One Bank (Capital One). On appeal, plaintiff argues Capital One was liable for financial injuries he purportedly sustained when BMO Harris Bank, N.A. (BMO), debited a "legal processing fee" from his checking account after BMO received a third-party citation to discover assets initiated by Capital One. For the following reasons, we affirm the decision of the circuit court.

¶ 3 On April 28, 2009, the circuit court entered a judgment by agreement in favor of Capital One and against plaintiff in the amount of \$7,530.61, plus statutory interest and costs in *Capital One Bank v. Worthington*, circuit court case number 07 M1 257339. On December 2, 2013, in an effort to collect that judgment, Capital One issued to BMO a third-party citation for any recoverable assets in plaintiff's checking account. The citation listed a return date of December 23, 2013.

¶ 4 On or about December 11, 2013, BMO sent plaintiff a letter stating it had debited his checking account in the amount of \$82.93, "the available amount of our nonrefundable \$100.00 legal processing fee," under an account agreement with BMO which plaintiff had received when he opened a checking account there. BMO also informed plaintiff it was required to place a hold on any future deposits, and was to debit his checking account pursuant to the citation to discover assets.

¶ 5 On December 23, 2013, on Capital One's motion, the circuit court, in case number 07 M1 257339, ordered that the third-party citation be dismissed, without prejudice, stating that "all funds being held pursuant to the lien of the citation be returned to the account holder."

¶ 6 On February 10, 2014, in circuit court case number 07 M1 257339, plaintiff filed a motion for default judgment against Capital One for its alleged failure to follow the December 23, 2013, order of the circuit court. Plaintiff contended that Capital One had not taken the proper steps with BMO to have his checking account balance reinstated. Plaintiff alleged that the funds in the checking account were "to mainly be used for transportation purposes to secure job interviews." Plaintiff argued that Capital One should be held in default and sought a judgment of \$11,169.52 in damages—the exact amount allegedly then owed by plaintiff under the judgment. He also sought \$4,500 in damages for pain and suffering. The record does not contain the circuit

court's ruling as to plaintiff's motion for default judgment. However, according to plaintiff, when the circuit court struck the motion, it told plaintiff that the courtroom was an "improper venue to file his court motion."

¶ 7 Plaintiff filed the instant "Complaint Against Capital One for Default Judgment for Failure to Fully Follow a Court Order" on March 4, 2014. In his complaint, plaintiff alleged, among other things, that an employee of BMO told him that his checking account balance had been used to pay the legal processing fee imposed as a result of Capital One's third-party citation. Plaintiff asserted that Capital One was "now obligated to completely follow the December 23, 2013" court order in circuit court case number 07 M1 257339 and make him whole. As his prayer for relief, plaintiff sought \$11,169.52, as well as \$4,500, plus court costs, to reimburse him for the pain and suffering caused by a lack of funds for travel to secure employment opportunities, and for having to walk "great distances to constantly check" his BMO checking account balance *via* ATM to see if the funds had been reinstated.

¶ 8 In June 2014, the circuit court dismissed plaintiff's complaint, with prejudice, for failing to state a cause of action, finding plaintiff was unable to demonstrate that Capital One "acted outside the law." This appeal followed.

¶ 9 On appeal, plaintiff contends the circuit court erred: (1) in dismissing his complaint; and (2) in finding that Capital One was not liable for BMO's act of debiting the nonrefundable legal processing fee from his checking account. Plaintiff also contends that if he were able to present his case to a jury, he could demonstrate that Capital One: (1) was liable even though it did not directly cause him injury; (2) acted negligently when it failed to identify any "wage account" that plaintiff may have held at BMO; and (3) failed to ascertain—prior to mailing the citation to discover assets—plaintiff's average or current checking account balance. According to plaintiff,

if Capital One had contacted BMO, it would have learned that plaintiff's checking account balance was less than \$100, an amount allegedly exempt from wage garnishment by state and federal law.

¶ 10 Initially, we note that plaintiff has failed to provide a full statement of facts with proper citations to the record in violation of Supreme Court Rule 341(h)(6) (Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013)). Additionally, throughout most of the argument portion of his brief, plaintiff fails to cite to the record so as to direct us to those places where his claims can be substantiated, also in violation of Rule 341(h)(6). *Id.* Plaintiff also has omitted a statement of the issues presented for review in violation of Rule 341(h)(3). Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). Any facts or arguments unsupported by legal authority, are waived. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Nonetheless, waiver is a limitation on the parties, not on this court, and we may address an issue to carry out our responsibility to reach a just result. *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 52. Furthermore, the record on appeal and the proceedings were not lengthy, nor complex. Accordingly, we will address the merits of plaintiff's appeal.

¶ 11 A cause of action will be dismissed based on a failure to state a cause of action only where "it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Wilson v. County of Cook*, 2012 IL 112026, ¶ 14. We review the dismissal of a complaint for failure to state a cause of action *de novo*. *Id.*

¶ 12 The circuit court did not err in dismissing plaintiff's complaint, and it correctly found plaintiff failed to establish Capital One "acted outside the law." Under section 2-1402(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402(a) (West 2012)), a judgment creditor may prosecute supplementary proceedings against a judgment debtor or third party for the purpose of

discovering the judgment debtor's assets and applying them to satisfy the underlying judgment. *Wells Fargo Bank Minnesota, NA v. Envirobusiness, Inc.*, 2014 IL App (1st) 133575, ¶ 13. A judgment creditor may initiate supplementary proceedings against any third party believed to hold property of the judgment debtor. Ill. S. Ct. R. 277(a) (eff. Jan. 4, 2013). Such proceedings are commenced by service of a citation issued by the clerk. 735 ILCS 5/2-1402(a) (West 2012); Ill S. Ct. R. 277(b) (eff. Jan. 4, 2013).

¶ 13 Here, Capital One obtained a judgment against plaintiff in April 2009. Thereafter, it initiated supplementary proceedings against BMO through a third-party citation to discover assets. Accordingly, Capital One's actions were clearly authorized under Illinois law. While plaintiff contends reversal is warranted due to his ability to convince a jury he had a cause of action, he fails to explain exactly what that cause of action was. In support of his argument—that Capital One was liable even though it did not cause him direct injury—plaintiff cites to a series of cases which involve the liability of drivers involved in automobile accidents. See *Rettig v. Heiser*, 2013 IL App (4th) 120985; *David v. Black*, 98 Ill. App. 3d 1130 (1981); *Dinneen v. Bel-Pak Foods, Inc.*, 87 Ill. App. 3d 878 (1980); *Burgdorff v. International Business Machines Corp.*, 74 Ill. App. 3d 158 (1979). These cases have no bearing on the instant case.

¶ 14 Plaintiff also argues Capital One engaged in gross negligence by issuing the citation notice without verifying that plaintiff's checking account balance or average balance was above the fund level protected from garnishment by state and federal law. Similarly, plaintiff claims Capital One acted negligently by failing to identify any wages plaintiff might be receiving. Yet, plaintiff has provided no authority in support of his claim that Capital One was under an obligation to verify his checking account balance, or that he had a "wage account" before issuing a third-party citation to discover assets. The case law cited by plaintiff is irrelevant. Plaintiff

cites to *East Moline Works Credit Union v. Linn*, 51 Ill. App. 2d 97, 98 (1964) (whether worker's compensation award was subject to garnishment); and *Internal Medicine Associates of Decatur, S.C. v. Patterson*, 244 Ill. App. 3d 704, 705-06 (1993) (whether reimbursement for foster parenting activity and veterans' benefits funds that were comingled with other assets were subject to garnishment), which relate to whether certain funds were subject to garnishment. Plaintiff also cites to *Libby Furniture & Appliance Co. v. Nabors*, 86 Ill. App. 2d 381 (1967), which involves the proper procedure for initiating wage deduction proceedings where a judgment has been issued granting the return of property. *Id.* at 383-84. Thus, plaintiff's citation of the aforementioned cases does not support his assertion that Capital One had a duty to verify his checking account balance, or identify a "wage account," before issuing a third-party citation. To the contrary, the purpose of such a supplementary proceeding is to allow the judgment creditor "to discover the judgment debtor's assets." *Wells Fargo Bank Minnesota, NA*, 2014 IL App (1st) 133575, ¶ 13. Here, Capital One properly initiated a third-party citation proceeding to ascertain whether plaintiff had any assets in his BMO checking account to satisfy its judgment.

¶ 15 For the foregoing reasons, we find that plaintiff's complaint was properly dismissed, with prejudice, by the circuit court for failure to state a cause of action. Accordingly, the judgment of the circuit court is affirmed.

¶ 16 Affirmed.