

FIFTH DIVISION
JULY 24, 2015

No. 1-14-2650

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

ACME CONTINENTAL CREDIT UNION,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 M1 123507
)	
STEPHEN LYTE, CHERYL LYTE, and CCL REALTY)	Honorable
LLC,)	Patrick O'Brien,
Defendants-Appellants.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Trial court's order dismissing the case for want of prosecution three years after judgment was entered does not invalidate the underlying judgment or the judgment creditor's ability to continue attempting to collect the judgment.
- ¶ 2 Defendants Stephen and Cheryl Lyte and CCL Realty LLC appeal *pro se* the trial court's entry of a judgment in favor of plaintiff Acme Continental Credit Union (Acme). On appeal, the Lutes and CCL Realty contend the trial court erred in entering a judgment for Acme after the case had been dismissed for want of prosecution earlier by order of the court. Although Acme

has not filed a brief in this proceeding, we may consider the merits of this appeal on the defendants' brief alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (such review is allowable if the record is simple and errors can be considered without additional briefing). We affirm.

¶ 3 On March 19, 2008, Acme filed a complaint alleging the Lytes overdrew funds in the amount of \$877.37. In the complaint, Acme sought that amount and \$350 in attorney fees for a total of \$1,227.37 in damages, plus court costs. On October 6, 2008, the circuit court entered an agreed order to dismiss the action with leave to reinstate. The agreed order was subject to an installment payment plan. The order stated the Lytes agreed to pay \$1,496.37 to Acme in installments of \$100 beginning on October 31, 2008, and on the last day of each succeeding month.

¶ 4 On February 2, 2009, Acme filed a motion to vacate the installment order, reinstate the case and enter a judgment for \$1,396.37, asserting the Lytes had only paid \$100 toward the amount owed. The parties agreed to a hearing on March 23, 2009, on Acme's motion to reinstate the case and enter judgment. The record does not contain a report of proceedings from that hearing or any other court date. On March 23, 2009, the court vacated the dismissal order of October 6, 2008, reinstated the case and entered a judgment for Acme in the amount of \$1,396.37.

¶ 5 From 2009 until 2014, Acme made various attempts to collect that judgment, apparently without success. On February 8, 2012, Acme filed an affidavit for a wage deduction summons on Iowa College Acquisition Corporation, believing it owed wages to Stephen. This purported employer was discharged on March 10, 2012.

¶ 6 In February 2014, Acme filed for wage deduction on CCL Realty LLC as the employer of Cheryl Lyte. In a *pro se* response, Cheryl stated she is not the judgment debtor and that Stephen is the true judgment debtor. Therefore, Cheryl sought to be removed from the case.

¶ 7 On March 12, 2014, the court entered an order indicating dismissal of the case for want of prosecution. That order shows that Acme was not present and both defendants were in court.

¶ 8 On March 24, 2014, a conditional judgment was entered against CCL Realty LLC, which had failed to file an answer after service of the wage deduction summons as to Cheryl Lyte. The judgment for \$2,136.83, entered on March 24, 2014, reflected the earlier judgment of \$1,396.37 entered in 2009, plus additional costs and interest.

¶ 9 The Lytes filed two motions challenging the ongoing wage deduction proceedings, asserting the case had been dismissed for want of prosecution. On August 18, 2014, the court entered a wage deduction/turnover order against CCL Realty in the amount of \$2,270.74. On August 26, 2014, the Lytes and CCL Realty LLC filed a notice of appeal from the August 18, 2014, order.

¶ 10 On appeal, the Lytes and CCL Realty LLC contend the trial court erred in entering a judgment for Acme after the case had been dismissed for want of prosecution in March 2014. They argue Acme was required to have the March 12, 2014, dismissal order vacated and the cause reinstated in order to obtain a judgment against them.

¶ 11 The Lytes and CCL Realty LLC are correct in stating on appeal that after the entry of a dismissal for want of prosecution, further proceedings are unauthorized until the dismissal order is vacated and the cause reinstated to the court's docket. See *Illinois Bone & Joint Institute v. Kime*, 396 Ill. App. 3d 881, 885 (2009) (citing *Davis v. Robinson*, 374 Ill. 553, 556 (1940)).

However, the record is devoid of a transcript of the proceedings or a substitute report of proceedings pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Without those materials, we do not know what transpired between March 12 and March 24, 2014, or why the trial court entered the order dismissing the case for want of prosecution. Clearly, Acme had already obtained a judgment against the Lytes in March 2009. All subsequent proceedings involved Acme's attempts to satisfy that judgment. Under these circumstances, we must presume that the trial court acted in conformity with the facts and the law and had a sufficient basis in the record for its determination. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); see also, e.g., *Illinois Founders Insurance Co. v. Williams*, 2015 IL App (1st) 122481, ¶ 43.

¶ 12 Moreover, the entry of the dismissal order does not negate the March 2009 judgment entered against the Lytes or Acme's subsequent attempts to collect that judgment. Garnishment proceedings are collateral in nature and serve to obtain the satisfaction of an underlying judgment. *Security State Bank of Hamilton v. Kimball*, 319 Ill. App. 3d 635, 638-39 (2001). An examination of the judgment upon which the garnishment is based is limited to whether the judgment has previously been satisfied or was void in the first place because the original trial court lacked jurisdiction over the matter. *Kimball*, 319 Ill. App. 3d at 638-39. Here, the Lytes and CCL Realty LLC have not challenged the validity of the 2009 judgment on which the garnishment proceedings are based.

¶ 13 Accordingly, for all of the foregoing reasons, the judgment of the trial court is affirmed.

¶ 14 Affirmed.