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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

FOSTER BANK,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	No. 12-CH 257
)	
XIAOWEN ZHU,)	Honorable
)	Robert G. Gibson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court had jurisdiction over the subject matter and the third-party respondent when he appeared generally; the trial court did not err in denying defendant an exemption; and, defendant could not claim intentional infliction of emotional distress against plaintiff. Affirmed.
- ¶ 2 In a foreclosure action, plaintiff, Foster Bank,¹ obtained a deficiency judgment against defendant, Xiaowen Zhu. Plaintiff began supplementary proceedings to collect, including

¹ Plaintiff merged with BBCN Bank, effective August 13, 2013. Plaintiff was substituted in the underlying case, and the pleadings were amended to reflect the change. The appellate brief is filed on behalf of BBCN Bank as successor in interest to Foster Bank.

issuing citations to discover assets to defendant's tenants. One of these third-party respondents, David Rodriguez, appeared in court and the trial judge ordered that he pay rent to plaintiff beginning June 2014, instead of paying rent to defendant. *Pro se* defendant orally requested an exemption. The court subsequently learned that defendant had been collecting rent from her rental properties and denied defendant's exemption request.

¶ 3 Defendant appeals, *pro se*, contending that the trial court had no jurisdiction over Rodriguez because he lived in Kane County; that trial court erred in denying her exemption; and that the court erred in finding that she could not seek damages for intentional infliction of emotional distress against plaintiff. After the notice of appeal was filed on July 17, 2014, defendant continued to make the same requests and filed two more notices of appeal. All three appeals were consolidated on defendant's motion. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 On January 18, 2012, plaintiff filed its complaint to foreclose the mortgage secured by property at 420 East Echo Lane, Condominium 3, Aurora, Illinois. Plaintiff named defendant because she signed the mortgage and note. On February 15, 2013, a default judgment was granted in plaintiff's favor and against defendant. A judgment of foreclosure and sale was entered in the amount of \$66,239. On May 16, 2013, the property was sold at public auction and the sale resulted in a deficiency amounting to \$16,938. On July 22, the court approved the sale of the property and entered an *in personam* judgment against defendant for the amount of the deficiency, plus interest due at the statutory rate.

¶ 6 Plaintiff initiated supplemental proceedings against defendant by executing a citation to discover assets to defendant, returnable on November 6, 2013. On that date, defendant asked for additional time to respond to the citation. Proceedings were continued several more times.

¶ 7 On February 20, 2014, in addition to the citation issued to defendant, plaintiff executed a third-party citation to discover assets to Du Page Housing Authority (DHA). Plaintiff also issued third-party citations to discover assets to plaintiff's tenants, returnable May 15, 2014. The rider enclosed with each third-party citation stated that, from the date the citation is received, any and all future rental payments for tenancy were to be paid to plaintiff. Plaintiff mailed copies of the third-party citations to defendant.

¶ 8 On May 15, tenants Denise Bibiano, Bibiano's husband, and Rodriguez (collectively, third-party respondents) appeared as scheduled, but plaintiff did not. The court explained the nature of the proceedings to the third-party respondents, and entered an order that, beginning in June 2014, they were to pay rent to plaintiff, not defendant.

¶ 9 Around 9:10 a.m., defendant arrived in court. She asked that the case be recalled. When it was, defendant told the court that she had no income. The court advised her that this was inconsistent with the testimony of Bibiano and Rodriguez, who stated that they had paid rent to defendant. Plaintiff stated that she "wanted to have exemption" and that "the only income is house, but I need to pay property tax, I need to pay bank, and the rent [is] not stable." The court asked her if she previously requested an exemption when the case was heard on April 10, 2014. Plaintiff acknowledged that she had not and asked if she could "create [an] exemption." The court then directed defendant to file a statement of her income, assets, and liabilities as well as the exemptions she intended to claim. Plaintiff stated that she could submit this within a month.

¶ 10 On May 23, plaintiff received notice of an emergency motion filed by defendant, scheduled for May 27. Defendant argued that the court did not have jurisdiction to enter an order concerning Rodriguez because the property was located in Kane County. Defendant also argued

that she wanted to claim her “wild card” exemption and that it was not necessary to file a motion to do so.

¶ 11 On May 27, the court noted that defendant had not filed the documents related to her income and liabilities as previously ordered. The court advised defendant that, although she may not agree that she was required to make these filings, she in fact needed to complete the record for the case. The court denied the motion and also held that it had jurisdiction to enter the May 15, 2014, order as it related to Rodriguez.

¶ 12 On June 12, defendant filed a “motion of statement” and another “emergency motion to reconsider.” This second motion included several attachments, including “defendant’s motion to claim exemption under wage deduction proceedings,” “notice of motion for wage deduction exemption hearing,” and a document titled “amendments.”

¶ 13 Plaintiff presented the second motion on June 19. The court reviewed the motion of statement and told defendant that she had not filed the correct papers because plaintiff did not seek a wage deduction, and the court denied the second motion with prejudice.

¶ 14 On the same date, the court heard the third-party citation to DHA. DHA’s counsel stated that she did not object to the entry of a turnover order in the amount of \$2,520, which represented the rental income generated from the Catalpa property, another property owned by defendant, for the months of April and May. Defendant objected and stated that she would “declare four thousand wild card.” Defendant then attempted to continue her argument related to Supreme Court Rule 277(d) (eff. Jan. 4, 2013) and the county in which the proceedings should take place. The court asked about defendant’s assets, including the number of rental properties she owned. Defendant stated that she owned four properties. The court advised her that

exemptions are not intended to shield four rental properties from postjudgment collection and it granted plaintiff's request for turnover of rents from the Catalpa property.

¶ 15 On July 18, defendant filed an amended notice of appeal of the June 19 order. Thereafter, on August 15, defendant filed a document entitled "Answer" in response to plaintiff's motion to amend the order entered May 15. The document contained, *inter alia*, defendant's request for compensation from plaintiff in the amount of \$30,000 for emotional distress.

¶ 16 On September 9, defendant filed a motion to reconsider, arguing again that the trial court did not have jurisdiction to enter an order regarding Rodriguez, that the only exemption she needed was a wild card exemption, and that she should have a judgment for \$1,400. Defendant asked that plaintiff pay her \$30,000 for causing her emotional distress.

¶ 17 On September 24, the trial court denied her motion because the proceedings arose from a judgment against defendant in favor of plaintiff entered in July 2013, and that defendant had no counterclaim on file and thus, no ability to ask for damages from plaintiff.

¶ 18 Defendant filed a second notice of appeal on September 25, seeking review of the order entered September 24 for a turnover of assets to plaintiff and the order denying defendant's motion to reconsider.

¶ 19 On October 2, defendant filed a motion of rental income and included the income and asset form. Defendant stated that she received cash from rental income, that she wanted to exercise her \$4,000 wild card exemption, and that the law allows her certain exemptions for a vehicle, \$4,000 in any other property, \$1,500 for tools of the trade, and \$15,000 for her property on Sunset Avenue in West Chicago.

¶ 20 On October 20, the court reviewed defendant's income and asset form and asked whether she was asserting her wild card exemption. Plaintiff objected to defendant claiming her wild

card exemption for the rental income because defendant had collected rents in excess of the statutory exemption amount after she was served with the citation in October 2013, until the first turnover order was entered in May 2014. Defendant acknowledged that she received rental income from the Catalpa property after being served with the citation up until the entry of the turnover order. The court found that the rents defendant collected after the citation that had not been turned over would have been applied to the wild card exemption had she claimed it earlier. The court then determined that it was unnecessary to determine how much rent was collected from defendant's other three properties, as the rents from Catalpa would have exceeded the statutory amount she could have claimed.

¶ 21 On November 10, defendant filed a third notice of appeal, seeking review of the same orders referenced in her September 25, notice of appeal, as well as review of the order directing DHA to turn over rents collected from the Catalpa property to plaintiff, and of the order denying defendant's motion of rental income (the wild card exemption). We consolidated the appeals.

¶ 22

II. ANALYSIS

¶ 23

A. Third-Party Citation

¶ 24 Defendant raises two issues related to the third-party citation to discover assets issued to Rodriguez. First, defendant contends that the purpose of a citation to discover assets is to obtain information, not to order their turnover to a creditor. Defendant is misinformed as section 2-1402 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402 (West 2012)) authorizes a court to summarily compel discovered assets or income to satisfy the judgment.

¶ 25 Section 2-1402 provides a mechanism by which a judgment creditor may initiate supplementary proceedings against a judgment debtor or a third party to discover the assets of a judgment debtor and apply those assets to satisfy an underlying judgment. *Bloink v. Olson*, 265

Ill. App. 3d 711, 714 (1994). The proceedings may be initiated only after the trial court enters an underlying judgment. Section 2-1402(a) allows “[a] judgment creditor *** to prosecute supplementary proceedings for the purposes of examining the judgment debtor or any other person to discover assets or income of the debtor not exempt from the enforcement of the judgment.” 735 ILCS 5/2-1402(a) (West 2012). It “authorizes a creditor to conduct an examination of a third party *** and upon a showing that the third party is holding assets belonging to the judgment debtor, empowers the court to summarily compel the application of discovered assets or income to the satisfaction of the judgment, as long as the judgment debtor would have the right to recover such assets from the third party.’ ” *Stonecrafters, Inc. v. Wholesale Life Insurance Brokerage, Inc.*, 393 Ill. App. 3d 951, 958 (2009) (citing *Mid-American Elevator Company v. Norcon, Inc.*, 287 Ill. App. 3d 582, 587 (1996)). The statute “gives the trial court broad powers to compel the application of discovered assets or income to satisfy a judgment” *Id.*

¶ 26 Defendant next contends that the Du Page County circuit court lacked jurisdiction over Rodriguez, who was a Kane County resident. Defendant does not challenge the court’s jurisdiction over her, only jurisdiction over Rodriguez. We question, therefore, whether defendant has standing to object on behalf of Rodriguez. See *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988); see also *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010) (defendant has burden to plead and prove affirmative defense of lack of standing, which will be forfeited if not timely raised in trial court, and, under Illinois law, issues of standing do not implicate the court’s subject matter jurisdiction).

¶ 27 Moreover, defendant raises a jurisdictional argument, but this is a venue issue. Jurisdiction and venue are distinct legal concepts; jurisdiction relates to the power of a court to

decide the merits of a case, while venue determines where the case is to be heard. *Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill. 2d 321, 328 (1977).

¶ 28 In any event, Supreme Court Rule 277(d) requires that a citation against a third party must be brought in that party's county of residence. A respondent served with a citation in the wrong county can move to dismiss the citation. See *Lammert v. Lammert Industries, Inc.*, 65 Ill. App. 3d 165, 167 (1978). Section 2-104(b) of the Code sets forth the method and timing to properly challenge improper venue. It provides that all objections of improper venue are waived by a defendant unless a motion to transfer to a proper venue is made by him on or before the date upon which is required to appear or within any further time that may be granted to answer. 735 ILCS 5/2-104(b) (West 2012); *Bank of Hickory Hills v. Hammann*, 108 Ill. App. 3d 834, 838 (1982). The defense of improper venue can be waived if not timely asserted. See *Id.* Here, it is clear that both defendant and Rodriguez appeared on May 15, 2014, and neither objected to venue in Du Page County. Accordingly, whether or not defendant had standing to object, because neither defendant's nor Rodriguez's objection was properly raised, it therefore was waived.

¶ 29 B. Exemption

¶ 30 Defendant asserts that she was entitled to her claim for a "wild card" exemption. A judgment debtor has the right to assert an exemption for personal property. The so-called "wild card" exemption exempts the debtor's equity interest, not to exceed \$4,000 in value, in any other personal property. See 735 ILCS 5/12-1001(b) (West 2012). Plaintiff contests whether defendant was entitled to the exemption. At the hearing, the evidence revealed that defendant continued to receive rental income in excess of the \$4,000 exemption on the Catalpa property after the citation had been served on defendant in October 2013. Therefore, even if defendant is

entitled to the exemption, she could not assert an additional \$4,000 exemption because she already had received enough rental income to reach the \$4,000 figure. Accordingly, we reject defendant's argument.

¶ 31 C. Emotional Distress

¶ 32 Defendant next claims that plaintiff's extreme and outrageous conduct caused her emotional distress. Plaintiff brought a motion to amend a previously entered order and defendant filed a response during the postjudgment collection proceedings. In that response, defendant asserted that plaintiff's conduct was extreme and outrageous causing her to suffer emotional distress and damages in the amount of \$30,000.

¶ 33 We question whether the trial court had jurisdiction to entertain such an allegation in the first place. The order that approved the sale of the judgment property is the final order in the case (see *In re Marriage of Verdung*, 126 Ill. 2d 542, 555 (1989)), and defendant raised this allegation in a response during the postjudgment collection proceedings. Absent a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)), the trial court loses jurisdiction to alter its adjudication of the parties' rights in the lawsuit. See *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 4 (2010).

¶ 34 Even if the trial court had jurisdiction, defendant did not file a separate pleading against plaintiff alleging a cause of action for intentional infliction of emotional distress. The trial court advised defendant that, because she did not file any pleading for intentional infliction of emotional distress against plaintiff, she had no ability to seek damages. We agree with the trial court. It is only when a legally sufficient cause of action has been raised should the trial court entertain such a claim.

¶ 35 III. CONCLUSION

¶ 36 Based on the preceding, we affirm the judgment of the circuit court of Du Page County.

¶ 37 Affirmed.