

2015 IL App (2d) 140833-U
No. 2-14-0833
Order filed August 21, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re MARRIAGE OF TOMASZ CIOLKO,)	Appeal from the Circuit Court of Du Page County.
)	
Petitioner-Appellee,)	
)	
and)	No. 12-D-2663
)	
IWONA P. BEDNARENKO-CIOLKO,)	
)	
Respondent-Appellant)	Honorable
)	Rodney W. Equi,
(P.R.H. Trucking, Inc., Appellee).)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed respondent's petition for penalties under the Income Withholding for Support Act, as respondent's notice of withholding did not include, among other things, petitioner's full social security number and thus was invalid.

¶ 2 Respondent, Iwona P. Bernarenko-Ciolko, appeals the trial court's order denying her petition seeking penalties, against petitioner, Tomasz Ciolko, and his employer, P.R.H. Trucking, Inc. (the employer), for failure to make timely child-support payments under the Income Withholding for Support Act (Act) (750 ILCS 28/35 (West 2012)). Respondent had sought

income withholding under the Act, but failed to include petitioner's full social security number on the notice of withholding (the notice). Applying *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, the trial court determined that the notice was not in strict compliance with the Act and was thus invalid. We agree that *Schultz* applies. Accordingly, we affirm.

¶ 3

I. BACKGROUND

¶ 4 In 2012, petitioner filed for dissolution of his marriage to respondent. In June 2013, the trial court entered an order of support that required petitioner to make weekly child-support payments. Respondent then sought withholding of wages from the employer.

¶ 5 On June 6, 2013, respondent prepared the notice, which was mailed by the clerk of the court to the employer via certified mail. The return receipt shows that it was delivered on June 7, 2013. Respondent also mailed a copy to the employer via certified mail that was delivered on June 14, 2013. The employer admitted that it received the notice and, at the end of June 2013, petitioner also asked the employer to withhold payments.

¶ 6 The notice included only the last four digits of petitioner's social security number. It did not include the date that the support order terminated, although it did include the child's birth date, which would allow that to be calculated. It also did not properly format text regarding penalties in bold type. The employer made the first payment under the notice on June 22, 2013, and made 18 more payments after that date. It then failed to make additional payments.

¶ 7 On March 7, 2014, respondent filed a petition to collect penalties provided for by the Act, based on the employer's failure to continue to withhold income under the notice. Petitioner and the employer filed a combined motion to dismiss on the basis that the notice failed to include petitioner's full social security number. They argued that the employer was not required to comply with a notice that failed to strictly comply with the requirements of the Act. The motion

also stated that the employer received two additional notices sent by the Department of Healthcare and Family Services (DHFS), both of which listed petitioner's full social security number but failed to include the social security numbers of respondent and the child.¹ The motion stated that one notice, dated August 9, 2013, was sent by regular mail, and that the other, dated September 19, 2013, was sent by fax.

¶ 8 Respondent filed a response and argued that the notice was in compliance with the Act because court privacy rules required the redaction of social security numbers. Respondent also noted the additional notices and stated that, while the DHFS case was a separate action, it was further evidence that the employer received sufficient notice.

¶ 9 On July 15, 2014, a hearing was held. The trial court determined that for respondent to collect penalties, *Schultz* required strict compliance with the Act. Because the notice did not strictly comply, the court granted the motion to dismiss. Respondent appeals.

¶ 10

II. ANALYSIS

¶ 11 Respondent argues that the notice complied with the Act because it contained enough information for the employer to comply. Respondent further argues that court rules prohibit the provision of a full social security number on court filings. Petitioner and the employer argue that strict compliance, including a full social security number, is required and that the court rules do not change that result.

¹ Petitioner and the employer argued that the failure to include the social security numbers of respondent and the child were additional failings of the notice under the Act. However, that requirement had been removed by the time that the notice was served. Compare 750 ILCS 28/20(c)(9) (West 2006) (including no such requirement) with 750 ILCS 28/20(c)(9) (West 2004) (including the requirement).

¶ 12 Section 35 of the Act places a duty on a payor, who in this case is the employer, who has been served with notice, to pay over to the State Disbursement Unit the ordered portion of the obligor's income. 750 ILCS 28/35(a) (West 2012). In this case, petitioner is the obligor. Section 35 imposes a \$100-a-day penalty on a payor who knowingly fails to withhold income of the obligor, in the amount set out in the notice served under the Act. *Id.* The Act requires the "obligee," respondent in this case, to serve the income-withholding notice on the payor and the obligor. 750 ILCS 28/20(g) (West 2010). Section 20(c) of the Act sets forth the information that must be included in the notice of withholding. It provides in part:

"The income withholding notice shall:

* * *

(7) in bold face type, the size of which equals the largest type on the notice, state the duties of the payor and the fines and penalties for failure to withhold and pay over income and for discharging, disciplining, refusing to hire, or otherwise penalizing the obligor because of the duty to withhold and pay over income under this Section; and

(8) state the rights, remedies, and duties of the obligor under this Section; and

(9) include the Social Security number of the obligor; and

(11) contain the signature of the obligee or the printed name and telephone number of the authorized representative of the public office, except that the failure to contain the signature of the obligee or the printed name and telephone number of the authorized representative of the public office shall not affect the validity of the income withholding notice. 750 ILCS 28/20(c)(7)-(9),(11) (West 2012).

The version of the Act in effect at the time of respondent's notice also required the notice to include the date that withholding for the support will terminate. 750 ILCS 28/20(c)(10) (West 2012).

¶ 13 Section 35(c) provides that “[a] payor who complies with an income withholding notice that is regular on its face shall not be subject to civil liability with respect to any individual, any agency, or any creditor of the obligor for conduct in compliance with the notice.” 750 ILCS 28/35(c) (West 2012).

¶ 14 In *Schultz*, a notice was provided that omitted the social security number. Our supreme court held that, aside from the signature requirement, there must be strict compliance with all requirements of the Act. *Schultz*, 2013 IL 115738, ¶ 18. The court noted that the Act “unequivocally requires that the obligor’s social security number be included in the notice of withholding.” *Id.* ¶ 15. When the social security number is not provided, it renders the notice invalid. *Id.* The court specifically held that “section 35(c) creates a safe harbor for an employer complying with a withholding notice only to the extent that the notice is regular on its face, meaning that the notice contains the information required by section 20(c), which includes the obligor’s social security number.” *Id.* ¶ 20. The court further stated: “[a] social security number is an essential piece of identifying information, especially considering that there may be more than one employee with the same name working for the employer. It would be hard to fathom, then, how a notice lacking this essential information could be considered regular on its face.” *Id.* ¶ 21.

¶ 15 Here, respondent failed to provide petitioner’s full social security number and also failed to strictly comply with the Act in regard to typeface requirements and the provision of a termination date. Respondent argues that the Act does not state that the “full” social security

number is required, that the necessary information could be inferred from the notice, that the employer actually withheld support as required for some time, and that the employer had received other notices with the social security number, showing that it had the correct information. Respondent also argues that the legislative history supports her position. But *Schultz* rejected a substantial-compliance argument, finding that the Act is unambiguous, that its requirements for the content of the notice are mandatory, and that the failure to strictly comply renders the notice invalid. Here, the partial social security number did not unequivocally show petitioner's identity, and there was not strict compliance with the Act in other respects. Thus, respondent's notice was not regular on its face as required by the Act, rendering it invalid such that penalties could not be awarded under section 35(c).

¶ 16 Respondent next attempts to distinguish *Schultz* based on court rules that require the redaction of social security numbers to four digits. Illinois Supreme Court Rule 15 (eff. Apr. 26, 2012) provides that, unless otherwise required by law, if the disclosure of a social security number is required for a document to be filed with the court, only the last four digits of the number shall be used in the document and the disclosure must be accompanied by a confidential-information notice, which includes the full social security number, to which the parties are privy. The court in *Schultz* noted this rule in a footnote, observing that this requirement was not in effect when the notice was provided in that case. *Schultz*, 2013 IL 115738, ¶ 3, n1. In addition, Illinois Supreme Court Rule 138 (eff. July 1, 2013) provides that personal information shall not be included in documents filed with the court and states that a redacted filing with the last four digits of a social security number is permissible. Rule 138 also provides that, unless ordered otherwise, when the full information is required by law, the party making the filing shall provide the information with a confidential-information notice that will be impounded by the court.

Finally, a local court rule requires redaction of social security numbers in court filings. Eighteenth Judicial Cir. Ct. R. 6.10 (Mar. 23, 2006).

¶ 17 These court rules do not excuse the lack of strict compliance with the Act. In the case of the supreme court rules, each provides for redaction unless otherwise required by law and each provides a method for filing the full information in a confidential manner. Here, the Act unambiguously required the full social security number, and in any event respondent did not seek to provide it through a confidential-information notice. To the extent the local court rule does not contain the same provisions, Illinois Supreme Court Rule 21(a) (eff. Dec. 1, 2008)) authorizes circuit courts to adopt local rules governing civil cases provided that they do not conflict with or modify supreme court rules or statutes. *People v. Atou*, 372 Ill. App. 3d 78, 82 (2007). Here the Act and the supreme court rules take precedence. Further, as previously noted, the notice also failed to strictly comply with the Act in other respects.

¶ 18 Finally, respondent argues that the employer is subject to penalties based on the two later notices that contained petitioner's social security number. However, respondent did not seek to recover penalties under those notices. Respondent's petition mentioned only the June 6, 2013, notice. Further, when petitioner and the employer mentioned the other notices in their motion, respondent stated that they were the subject of another action and she used their existence merely to argue that they were evidence that the employer had the information necessary to comply with the June 6, 2013, notice. Because respondent did not assert that they independently supported penalties, she cannot do so for the first time on appeal. See *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 85 (issues not raised in the trial court are deemed forfeited and may not be raised for the first time on appeal). Respondent argues that we may consider the matter as part of our *de novo* review, but our review is framed by what was presented to the trial court and the

relief sought. Respondent never made a claim based on the later notices, nor did she provide evidence that those notices were sufficient. Thus, she cannot raise a claim based on them for the first time on appeal.

¶ 19

III. CONCLUSION

¶ 20 Respondent's notice did not strictly comply with the Act and was invalid. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 21 Affirmed.