

FIRST DIVISION
September 29, 2014

No. 1-13-2240

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

MICHAEL MUIR,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee and Counterdefendant,)	Cook County.
)	
v.)	No.10 M1 705598
)	
JAMIE BARBER,)	Honorable
)	Leonard Murray,
Defendant-Appellant and Counterplaintiff.)	Judge Presiding.

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

ORDER

Held: The circuit court erred in ordering a judgment of attorneys fees to be set off against another judgment between the same parties because section 12-178 of the Illinois Code of Civil Procedure (735 ILCS 5/12-178 (West 2012)) prohibits attorneys fees from being set off against another judgment between the same parties.

¶ 1 Plaintiff and counterdefendant Michael Muir filed a complaint for unpaid rent against his tenant, defendant and counterplaintiff Jamie Barber. Relevant here, Barber alleged by way of counterclaim that Muir violated section 5-12-080(c) of the Chicago Municipal Code, more commonly known as the Residential Landlord and Tenant Ordinance (Ordinance) (Chicago Municipal Code § 5-12-080(c)(amended July 28, 2010)), for failing to pay interest on her security deposit. A jury returned a verdict in Muir's favor on his complaint, awarding him \$2,900 for unpaid rent. The jury also returned a verdict in Barber's favor on her counterclaim, awarding her \$1,100.

¶ 2 After the success of Barber's counterclaim, her attorney filed a petition for attorneys fees pursuant to section 5-12-180 of the Ordinance. Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991). The circuit court granted the petition in the amount of \$2,000. In its order, however, the circuit court found that the \$2,000 in attorneys fees awarded to Barber were to be set off against the judgment entered in Muir's favor in the amount of \$2,900.¹ At issue in this case is whether Barber's attorneys fees can be set off against the judgment entered against her. We hold that Barber's award of attorneys fees cannot be set off against the judgment entered against her because section 12-178 of the Illinois Code of Civil Procedure (Code)(735 ILCS 5/12-178 (West 2012)) prohibits attorneys fees from being set off against another judgment between the same parties.

¹ As discussed *infra*, the circuit court initially granted Barber's counsel's petition for attorneys fees in March of 2011, entering a judgment in the name of Barber's counsel and against Muir. Over two years later, Barber's counsel petitioned the circuit court for a memorandum of the judgment. The circuit court voided the 2011 judgment, and entered a new judgment of attorneys fees to be awarded in Barber's, not her attorney's, name. Barber does not contest these findings by the circuit court before this court.

¶ 3

JURISDICTION

¶ 4 On June 17, 2013, the circuit court entered its judgment of attorneys fees and denied counsel's motion for a memorandum of judgment. On July 11, 2013, Barber timely filed her notice of appeal. 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 In March of 2010, Muir filed a complaint against his tenant, Barber, alleging she owed Muir \$3,375 in unpaid rent. Barber filed an affirmative defense and several counterclaims. Relevant here, Barber alleged by way of counterclaim that Muir violated section 5-12-080(c) of the Ordinance (Chicago Municipal Code § 5-12-080(c)(amended July 28, 2010)), for failing to pay interest on her security deposit.

¶ 7 After a September 2010 trial, a jury returned a verdict in Muir's favor finding Barber owed him \$2,900 in "back rent and/or other damages." The jury also returned a verdict on Barber's counterclaim finding Muir violated section 5-12-080(c) of the Ordinance (Chicago Municipal Code § 5-12-080(c)(amended July 28, 2010)) for failing to pay interest on Barber's security deposit. Damages were awarded on the counterclaim in the amount of \$1,100. On September 22, 2010, the circuit court entered judgment on the jury's verdict, and allowed Barber's counsel, Larry Carlson of the Law Offices of Michael Pensack, to file an attorneys fee petition. After trial, the parties each filed motions for judgment notwithstanding the verdict, which the circuit court denied.

¶ 8 On January 14, 2011, Barber's counsel filed a petition for attorneys fees pursuant to section 5-12-180 of the Ordinance (Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991)),

asking for \$2,300 in attorneys fees. Counsel included a certification under section 1-109 of the Code (735 ILCS 5/1-109 (West 2010)) certifying the work he performed on Barber's behalf. On March 2, 2011, the circuit court entered judgment in favor of the Law Office of Michael Pensack and against Muir for attorneys fees in the amount of \$2,000.

¶ 9 Over two years later, on April 24, 2013, Barber's counsel motioned the court for a memorandum of judgment. Counsel argued that Muir had "failed and refused to pay" the March 2, 2011, judgment of \$2,000 in attorneys fees. Counsel asked for the memorandum of judgment in order to record it with the Cook County recorder of deeds.

¶ 10 On May 13, 2013, Muir, *pro se*, filed a motion titled "Motion to Dismiss Motion to Vacate Judgment." Muir argued, pursuant to section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2012)), that counsel failed to file the petition within 21 days after judgment was entered on the jury's verdicts, and failed to provide him notice of the hearing.

¶ 11 On June 17, 2013, the circuit court conducted a hearing on counsel's motion for a memorandum of judgment.² The court noted that the Ordinance directed attorneys fees to be awarded to the party, *i.e.* counsel's client, Jamie Barber, and not her attorney. The court explained "where the language of the statute awards fees for [the] prevailing party, it's an award to the party and not the lawyer." The court noted that section 5-12-180 of the Ordinance (Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991)), "says prevailing plaintiff. It does not say prevailing plaintiff's lawyer." In accordance with its oral findings, the circuit court

² It appears from the record that at some point prior to June 17, 2013, the circuit court indicated to the parties that it intended to set off the award of attorneys fees to Barber against the judgment entered in favor of Muir. Counsel filed a memorandum of law arguing against this course of action. Absent from the record is any order prior to June 17, 2013, addressing the substance of counsel's motion for memorandum of judgment.

entered its written order on that same day. In its written order, the circuit court entered the following four findings:

"(1) the judgment in favor of the Law Office of Michael Pensack and against Muir for attorneys fees is void;

(2) An award of attorney fees is entered in favor of counter-plaintiff, Jamie Barber, and against counter-defendant, Michael Muir, in the amount of \$2,000 *** [;]

(3) This award of fees in favor of Barber may be off-set against the judgment previously entered in this case in favor of Michael Muir and against Jaime Barber[;]

[(4)] The motion of the Law Office of Michael Pensack is denied[.]".

Barber timely appealed.

¶ 12 On February 22, 2014, this court, upon our own motion, found that Muir failed to timely file a brief. We ordered that this matter be considered on the record and Barber's brief only.

¶ 13 ANALYSIS

¶ 14 Barber asks this court to vacate the portion of the circuit court's June 17, 2013, judgment in which it found that the award of attorneys fees in her favor could be set off against the September 22, 2010, judgment entered in Muir's favor for unpaid rent. Barber does not challenge, and provides no argument or citation to legal authority, addressing the circuit court's finding that it's March 2, 2011, judgment was void or that the award of attorneys fees be in her

name as opposed to counsel's name.³ Accordingly, we offer no opinion as to the appropriateness of those findings of the circuit court in this order and focus our review on whether the circuit court's June 17, 2013, award of attorneys fees to Barber may be set off against the verdict entered in Muir's favor on September 22, 2010. Barber argues that the circuit court violated section 12-178 of the Code (735 ILCS 5/12-178 (West 2012)) when it found that her award of attorneys fees could be set off against the judgment entered in Muir's favor for unpaid rent.

¶ 15 Our review of Barber's claim of error is *de novo* because it is a question of law. *Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill. 2d 295, 299 (2003). Sections 12-176 and 12-177 of the Code allow judgments between the same parties to be set off against one another. 735 ILCS 5/12-176, 12-177 (West 2012). Section 12-178 of the Code, however, provides a list of scenarios where a "set-off shall not be allowed." 735 ILCS 5/12-178 (West 2012). One of those scenarios addresses attorneys fees. 735 ILCS 5/12-178 (West 2012). Specifically, section 12-178 of the Code provides a set off "shall not be allowed as to so much of the first judgment as is due to the attorney in that action for his or her fees and disbursements therein." 735 ILCS 5/12-178 (West 2012). "The purpose of exempting attorney's fees from the set-off provision is to render the attorney's claim for fees preferred as against his client's judgment creditors." *Adam Martin Construction Co. v. The Brandon Partnership*, 135 Ill. App. 3d 324, 327 (1985); see also *Silverman v. City Engineering Const. Co.*, 338 Ill. 154, 157 (1930); *Siegel v. Meyer*, 319 Ill. App. 102, 105 (1943) (Both *Silverman* and *Siegel* addressed prior versions of section 12-178.)

¶ 16 Barber's attorneys fees were awarded here under section 5-12-180 of the Ordinance (Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991)) based on the jury's verdict that Muir

³ Specifically, she states in her brief that she has "no quarrel" with those findings.

failed to pay interest on Barber's security deposit in violation of section 5-12-080(c) of the Ordinance (Chicago Municipal Code § 5-12-080(c)(amended July 28, 2010)). Section 5-12-180 is titled "Attorney's fees," and provides, in relevant part, that "the prevailing party plaintiff *** shall be entitled to all court costs and reasonable attorney's fees." Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991). Barber's attorneys fee petition included a certification outlining the services he performed on Barber's behalf. The circuit court's June 17, 2013, order provided, in relevant part, that "an award of *attorney fees* is entered in favor of counter-plaintiff, Jamie Barber, and against counter-defendant, Michael Muir, in the amount of \$2,000." (Emphasis added). Therefore, a review of the statutory authority the attorneys fees were awarded under, and the circuit court's June 17, 2013, order, shows that the circuit court's award of \$2,000 to Barber was for attorneys fees.

¶ 17 The jury in this case awarded Muir, based on his complaint for unpaid rent, \$2,900. The jury awarded Barber, based on her counterclaim under the Ordinance for Muir's failure to pay interest on her security deposit, \$1,100. The circuit court, under the attorneys fees provision of the Ordinance (Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991)), also awarded Barber \$2,000 in attorneys fees. As previously discussed, sections 12-176 and 12-177 of the Code allow for judgments between the same parties to be set off against one another; subject to the list of exceptions in section 12-178 of the Code. 735 ILCS 5/12-176 to 12-178 (West 2012). It follows that Barber's judgment of \$1,100 can be set off against Muir's judgment of \$2,900. Section 12-178 of the Code, however, specifically exclude's Barber's judgment of \$2,000 of attorneys fees from the set off provisions of sections 12-176 and 12-177. (735 ILCS 5/12-178 (West 2012) ("It shall not be allowed as to so much of the first judgment as *is due to the attorney* in that action for his or her fees and disbursements therein.")(Emphasis added.). Therefore, the

circuit court erred in this case by allowing Barber's judgment of \$2,000 in attorneys fees to be set off against Muir's judgment because attorneys fees are preferred over Muir's claims as a judgment creditor.

¶ 18 In conclusion, we stress that we render no opinion regarding the circuit court's findings that its March 2, 2011, judgment was void or its finding that an award of attorneys fees under section 5-12-180 of the Ordinance is made in the party's name as opposed to counsel of record's name. We find this to be the appropriate course of action because Barber has not asked us to review that portion of the circuit court's order, and in fact, argued that she had "no quarrel" with that portion of the order. It is also appropriate because Barber does not contest those portions of the order and did not provide any legal authority for their review. We also stress that it is unclear from the record whether Muir ever collected the remainder of the judgment owed to him from Barber. As such, we offer no opinion on the parties' ability to set off their respective judgments after the entry of this order. Rather, our discussion of the parties' ability to set off their judgments is meant only to illustrate and highlight that the judgment of attorneys fees entered in Barber's favor is not subject to being set off.

¶ 19 Accordingly, we vacate that portion of the circuit court's June 17, 2013, order providing that Barber's judgment of attorneys fees may be set off against the judgment awarded in Muir's favor. In accordance with Barber's brief, we affirm the remainder of the circuit court's order and remand the matter for proceedings consistent with this order.

¶ 20 **CONCLUSION**

¶ 21 The judgment of the circuit court of Cook County is affirmed in part and vacated in part.

¶ 22 Affirmed in part and vacated in part. Cause remanded.