2012 IL App (1st) 112675-U

FOURTH DIVISION
September 27, 2012

No. 1-11-2675

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
HECTOR F. SALVADOR, JR.,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 10 D 6753
	)	
DAUREEN T. SALVADOR,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
COLUMBIA COLLEGE CHICAGO,	)	The Honorable
	)	John T. Carr,
Third Party-Respondent/Appellee.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

HELD: While petitioner properly served income withholding notice by ordinary mail, finding of nonperformance cannot be entered in his favor because he failed to comply with statutory requirements regarding both its preparation and in proving that it was served.

¶ 1 Petitioner-appellant Hector F. Salvador, Jr. (petitioner), filed a petition for rule to show cause, wherein he sought a finding of nonperformance and statutory sanctions against third-party respondent/appellee Columbia College Chicago (Columbia) pursuant to the Illinois Income Withholding for Support Act (Act). 750 ILCS 28/1 *et seq.* (West 2010). The trial court denied his petition, finding that he failed to meet certain statutory notification requirements. Petitioner appeals, contending that the notice he provided was proper, that the court erred in its findings, that Columbia knowingly violated the Act, and that the imposition of sanctions on Columbia was mandatory. He asks that we reverse and remand the matter to the trial court for a determination of the total statutory penalties to be assessed against Columbia. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 In May 2007, a California court dissolved the marriage of petitioner and Daureen T. Salvador,[1] entering a Judgment of Dissolution of Marriage (Judgment). Following this, Daureen relocated to Chicago and became employed by Columbia. The Judgment, along with a copy of petitioner and Daureen's Marital Settlement Agreement (Agreement), was enrolled in Illinois on July 8, 2010. The Judgment ordered spousal support to be paid as set forth in the Agreement, which provides that Daureen is to pay petitioner 50% of her "gross income from employment" each month from June 2007 to June 2019, or until petitioner remarries. The Agreement also states that the amount of spousal support to be paid by Daureen to petitioner is "never [to] be less than the sum of $3,000 for any particular month." (Emphasis in original.)

[1]Daureen is not a party to this appeal.

¶ 4 On October 18, 2010, petitioner filled out a preprinted "Notice to Withhold Income for Support" form (the Notice) from the Cook County Clerk of the Court's Office and sent it to Columbia via regular mail. In it, petitioner struck out the preprinted form language stating that the Notice was based upon an "Order for Support" and replaced it with language stating that it was based on the Judgment and Agreement. He then requested that Columbia withhold $3,000, or one-half of Daureen's gross monthly income, whichever is greater. Finally, he deleted the preprinted form language which states that the payor (*i.e.*, Columbia) is to pay the money withheld to the Illinois State Disbursement Unit, and replaced it with language ordering the funds "to be paid over and sent directly to the oblige[e] at: Hector Salvador," and provided a California address.

¶ 5 Petitioner did not receive any funds from Columbia. On November 19, 2010, petitioner sent Columbia a letter requesting compliance with the Notice and stating that he would be seeking statutory penalties against Columbia under the Act. Again, petitioner did not receive any funds from Columbia. In January 2011, petitioner filed a motion to add Columbia as a third-party defendant as well as a petition for rule to show cause and other relief asking that the Notice be enforced and that penalties be imposed upon Columbia.[2]

¶ 6 The trial court held a hearing on the petition for rule to show cause. During this, petitioner's attorney's clerk testified that she "mail[ed]" the Notice, along with a letter dated

[2]We note for the record that, in light of petitioner's motions, and beginning with Daureen's February 1, 2011 paycheck, Columbia began deducting $3,000 per month and sent the withheld funds to the Illinois State Disbursement Unit; Columbia continued to do so until March 11, 2011, when Daureen's employment was terminated.

October 18, 2010, to Linda Williams, Columbia's payroll manager. The clerk described that she then called Williams twice in November 2010; the first time was to verify that Williams had received the Notice, Judgment and Agreement she had mailed, and the second time was to inform her that petitioner had not yet received any funds. The clerk testified Williams confirmed to her during their telephone conversation that she had received the Notice. In addition, David Pasulka, petitioner's divorce attorney, testified that he prepared the November 19, 2010 letter, which he addressed to Williams, stating the Columbia had not sent any funds to petitioner in accordance with the Notice. On cross examination, Pasulka was asked if he had a certified mail return receipt evidencing he had sent the November 19, 2010 letter to Williams. Pasulka produced two receipts: however, the first had a tracking number from January 2011, and the second showed a number with a December 7, 2010 delivery date and signature by someone named "Gedyn, Jackson." In addition, Pasulka confirmed that there was no tracking or certification number listed in or on the November 19, 2010 letter itself. Further, Pasulka admitted that he did not remember if he had attached a copy of the Notice and/or copies of the Judgment and Agreement to the November 19, 2010 letter.

¶ 7 At the close of the hearing, the trial court concluded that there was no evidence to show that Columbia ever received the Notice. After examining the evidence, the court stated that petitioner provided no proof that the Notice and accompanying letter of October 18, 2010 was sent to Columbia, as the two certified mail return receipts presented by his attorney originated long after that date. Moreover, the court noted that the same was true regarding the November 19, 2010 letter. As the court pointed out, the only certified mail return receipt produced that may

have been related to its possible delivery was dated December 7, 2010, some 17 days later. The court stated that this did not "make any sense" and, thus, did not "have any connection with" what the certified mail return receipt indicated was the tracking and confirmation number. Ultimately, the trial court denied petitioner's petitioner for rule to show cause, concluding that it was not "satisf[ied] *** by a preponderance of the evidence that the notice to withhold was sent *** to Columbia."

¶ 8 ANALYSIS

¶ 9 Petitioner presents several contentions on appeal. First, citing section 20 of the Act, he alleges that service of the Notice via regular mail to Columbia was proper. He also claims that the trial court erred in finding that Columbia never received the Notice. He further asserts that Columbia knowing violated the Act by failing to send him the funds and that sanctions for this are mandatory under the Act. Columbia, meanwhile, argues that there was never any court order including an income withholding provision, that the Notice failed to comply with mandatory statutory provisions, and that a certified mail return receipt was required under the circumstances. Based on our review of the record, we ultimately agree with Columbia.

¶ 10 Our standard of review is two-fold here. In reviewing the legal effect of undisputed facts, our review is *de novo*. See *In re Marriage of Gulla and Kanaval*, 382 Ill. App. 3d 498, 502-03 (2008) (citing *In re Marriage of Chen*, 354 Ill. App. 3d 1004, 1011 (2004)). Also, when we are called upon to review the trial court's interpretation of the provisions of a statute, such as the Act herein, our review is *de novo*, as well. See *Gulla*, 382 Ill. App. 3d at 503; *Chen*, 354 Ill. App. 3d at 1011. However, because the trial court is the trier of fact in cases without a jury, we will not

disturb its factual findings unless they are against the manifest weight of the evidence. See *Gulla*, 382 Ill. App. 3d at 503; *Chen*, 354 Ill. App. 3d at 1011. A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent, or when it appears to be unreasonable, arbitrary or contrary to the evidence. See *Ahmad v. Board of Educ. of City of Chicago*, 365 Ill. App. 3d 155, 162 (2006); *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 88 (1998).

¶ 11 We further note that the primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. See *Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421 (2002); *In re Marriage of Levinson*, 2012 IL App (1st) 112567, ¶ 34. The best indicator of this is the language of the statute at issue, to which we give its plain and ordinary meaning. See *Land*, 202 Ill. 2d at 421; *Levinson*, 2012 IL App (1st) 112567, ¶ 34. We cannot examine portions of the statute in isolation but, rather, we must interpret all of the relevant sections together as a whole. See *Levinson*, 2012 IL App (1st) 112567, ¶ 34 (citing *In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002). Where the language of the statute is clear and unambiguous, it prevails and we will apply the statute without any further aids of statutory construction. See *Land*, 202 Ill. 2d at 421-22; *Levinson*, 2012 IL App (1st) 112567, ¶ 34.

¶ 12 The parties on appeal agree that there are, essentially, two sections of the Act at play here: section 20 and section 35. Those state, in relevant part:

> "§ 20. Entry of order for support containing income withholding provisions; income withholding notice.
>
> (a) In addition to any content required under other laws, every order for

support *** shall:

(1) Require an income withholding notice to be prepared and served immediately upon any payor of the obligor by the obligee or public office, unless a written agreement is reached between and signed by both parties providing for an alternative arrangement, approved and entered into the record by the court, which ensures payment of support. In that case, the order for support shall provide that an income withholding notice is to be prepared and served only if the obligor becomes delinquent in paying the order of support;

***

***

(c) The income withholding notice shall:

(1) be in the standard format prescribed by the federal Department of Health and Human Services; and

***

(7) state the duties of the payor ***; and

***

(12) direct any payor to pay over amounts withheld for payment of support to the [Illinois] State Disbursement Unit.

***

> (g) The obligee or public office may serve the income withholding notice on the payor or its superintendent, manager, or other agent by ordinary mail or certified mail return receipt requested, by facsimile transmission or other electronic means, by personal delivery, or by any method provided by law ***.
>
> ***
>
> § 35. Duties of payor.
>
> (a) It shall be the duty of any payor who has been served with an income withholding notice to deduct the amount designated in the income withholding notice ***. The payor shall pay the amount withheld to the [Illinois] State Disbursement Unit ***. A finding of a payor's nonperformance within the time required under this Act must be documented by a certified mail return receipt showing the date the income withholding notice was served on the payor." 750 ILCS 28/20, 35 (West 2010).

¶ 13 Having outlined these sections, we note at the outset a threshold matter raised by Columbia, which argues that the Act does not apply at all to the instant cause because there has not been a court order mandating that it withhold Daureen's wages. Citing section 20(a)(1), Columbia states that there must be an "order for support containing income withholding provisions" which notifies the payor about its obligations pursuant to that order for support or, in the alternative, there must be an order for support that "provide[s] that an income withholding

notice is to be prepared and served" on the payor. See 750 ILCS 28/20(a)(1) (West 2010). Columbia continues that, because there was no specific "order of support" either "containing income withholding provisions" or directing that an income withholding notice was to be prepared, Columbia is not subject to the Act. Petitioner counters that the Judgment comprises the requisite "order for support" to make the Act applicable here, and that immediate withholding is not necessary under the alternative provisions of section 20(a)(1).

¶ 14 Regarding this threshold matter, we find petitioner's argument to be persuasive. The Act refers to an "order for support." Specifically, section 15 of the Act itself defines "order for support" as "any order of the court which provides for periodic payment of funds for the support *** or maintenance of a spouse, whether temporary or final." See 750 ILCS 28/15(a) (West 2010). The Judgment entered in petitioner's underlying divorce from Daureen orders her to pay him "spousal support" until June 2019 or until he remarries. The Judgment, therefore, qualifies as an order for support as contemplated in the Act, even if "order for support" was not included in its title.[3]

¶ 15 In addition, and as we have noted above, while Columbia is correct that section 20(a)(1) requires "an income withholding notice to be prepared and served immediately" upon a payor, the remainder of that section provides for an exception: "unless a written agreement is reached between and signed by both parties providing for an alternative arrangement, approved and entered into the record by the court, which ensures payment of support." 750 ILCS 28/20(a)(1)

[3]This is, presumably, why petitioner crossed out the phrase "order for support" on the preprinted notice of withholding form he filled out and referenced the Judgment and Agreement in its place.

(West 2010). In that situation, the immediate preparation and service of an income withholding notice is not required, but may be postponed and completed once (and only if) the obligor becomes delinquent in paying the order of support. See 750 ILCS 28/20(a)(1) (West 2010). In the instant cause, the Judgment and Agreement, entered by the California divorce court and enrolled in Illinois, can be said to constitute this "written agreement," since they were reached between and signed by both petitioner and Daureen, entered into the record, and completed in an effort to ensure payment of the ordered support. As such, then, and contrary to Columbia's threshold argument, the exception applies and the immediate preparation and service of an income withholding notice to Columbia would not technically be required under section 20(a)(1) in order for the Act to be applicable in this cause. See 750 ILCS 28/20(a)(1) (West 2010). Rather, as the section permits, a income withholding notice under this alternative provision was not required to be prepared and served on Columbia until (and when) Daureen, the obligor, became delinquent in paying petitioner. See 750 ILCS 28/20(a)(1) (West 2010).

¶ 16 However, even accepting this threshold argument, this is here that our agreement with petitioner ends. This is because, as Columbia points out, petitioner failed to comply with the statutory requirements of the Act regarding both his preparation of a notice to withhold and in proving that Columbia received it.

¶ 17 First, we turn to petitioner's preparation of the notice to withhold. As demonstrated in the record, on October 18, 2010, petitioner filled out a preprinted Notice form from the Cook County Clerk of the Court's Office and sent it to Columbia. In addition to other changes, he deleted the preprinted form language which states that the payor (*i.e.*, Columbia) is to pay the

money withheld to the Illinois State Disbursement Unit, and replaced it with language ordering the funds "to be paid over and sent directly to the oblige[e] at: Hector Salvador," and provided his home address in California.

¶ 18 By making this revision, petitioner effectively vitiated the propriety of the Notice he prepared. Section 20(c) of the Act begins with the statement that "The income withholding notice *shall* ***," and goes on to prescribe 13 separate requirements that must be included in the notice in order to render it proper. 750 ILCS 28/20(c) (West 2010) (emphasis added). The language of this section is clear and unambiguous; the use of the word "shall" indicates that these are mandatory obligations under the Act which must be followed, without exception. See *Dunahee v. Chenoa Welding & Fabrication, Inc.*, 273 Ill. App. 3d 201, 205 (1995). One of these, subsection 12, mandates that an income withholding notice must "direct any payor to pay over amounts withheld from payment of support to the State Disbursement Unit." 750 ILCS 28/20(c)(12) (West 2010). In accordance with the Act, then, a proper income withholding notice requires the obligee to notify the payor that it is to send the funds it withholds from the obligor to the Illinois State Disbursement Unit, which will then disburse the funds to the obligee. Section 20(c)(12) leaves no room for an alternative to this arrangement between the obligee and the payor. This legal relationship is further verified by section 35 of the Act, which repeatedly describes the principal duty of the payor as the payment of the amount withheld explicitly, and solely, to the State Disbursement Unit–and not to anyone else, including the obligee. See 750 ILCS 28/35(a) (West 2010) (ordering that "The payor shall pay the amount withheld to the State Disbursement Unit," warning of penalties incurred "If the payor knowingly fails *** to pay any

amount withheld to the State Disbursement Unit," and making several additional references to this unit as the proper depository for the withheld funds).

¶ 19 In the instant cause, the October 18, 2010 Notice at issue fails to comply with section 20(c)(12) of the Act. Again, petitioner specifically deleted the language in the preprinted form he filled out ordering Columbia, as the payor, to pay over any withheld funds to the Illinois State Disbursement Unit and, instead, wrote in the direction that Columbia was to pay over the funds to him personally at his home address in California. By doing so, petitioner failed to follow the mandates of the Act and, simply put, failed to create a proper income withholding notice.

¶ 20 In his reply brief, petitioner attempts to refute his actions by noting that, while he did make the changes to the body of the preprinted form as cited, he did not change the bottom of page two of the Notice, which reads: "Remittance Information: *** You must send the amount withheld to the State Disbursement Unit" and provides its address. According to petitioner, this was sufficient to notify Columbia of its requirement to send the withheld funds to the State Disbursement Unit rather than to petitioner personally and, thus, the Notice was proper despite his changes. Based on our review of the record here, we find that this argument lacks merit.

¶ 21 Clearly, petitioner took it upon himself to change the preprinted form as he wished. As we have noted, the section at issue was not the only one that he modified; rather, he struck out, deleted and substituted language throughout the Notice at his whim. That the bottom of page two of the Notice remained unchanged with the direction to send payment to the State Disbursement Unit was, in our opinion, an oversight on his part. That is, we believe he simply forgot to change the very bottom of that page, as he did the main body of the form, to direct

payment to himself and now uses this as his linchpin.

¶ 22 Regardless, however, the point is that, again, petitioner was the one who chose to change the preprinted form in contravention of the Act. By doing so, he created a striking ambiguity, with one portion of the Notice ordering Columbia to send the withheld funds to him and the other portion ordering it to send them to the State Disbursement Unit. Ultimately, the Notice, as modified by petitioner, creates an obvious conflict to anyone trying to determine where to send the withheld funds. Thus, even were we to accept his argument that he retained at least some language directing that Columbia should send the funds to the State Disbursement Unit, the confusion he created by failing to abide by section 20(c)(12) of the Act makes the Notice improper. It is akin to a drafting error in the creation of a contract; when an ambiguity arises within the terms used, these are construed against the drafter who used those terms to create the ambiguity and in favor of the other party. See, *e.g.*, *Duldulao v. St. Mary of Nazareth Hosp. Center*, 115 Ill. 2d 482, 493 (1987); *Ohio Cas. Ins. Co. v. Oak Builders, Inc.*, 373 Ill. App. 3d 997, 1001 (2007). Here, with his modification regarding where to send the withheld funds, and with his contravention of section 20(c)(12) of the Act, we must construe the error against petitioner.

¶ 23 In addition to his failure to comply with the requirements regarding the preparation of the Notice itself, we further find that petitioner cannot prevail on his claims on appeal because he has failed to provide sufficient proof pursuant to the Act demonstrating that Columbia ever received the Notice.

¶ 24 Petitioner cites section 20(g), which states that an obligee "may serve the income

withholding notice on the payor *** by ordinary mail or certified mail return receipt requested, by facsimile transmission or other electronic means, by personal delivery, or by any method provided by law for service of a summons." 750 ILCS28/20(g) (West 2010). Relying on this, he argues that, since the evidence at trial, namely the testimony of his attorney's law clerk, showed the Notice was mailed to Columbia on October 18, 2010, he completed proper service under the Act. Columbia, meanwhile, directs our attention to section 35(a) of the Act, which states that "[a] finding of a payor's nonperformance *** must be documented by a certified mail return receipt showing the date the income withholding notice was served on the payor." 750 ILCS 28/35(a) (West 2010). Relying on this, Columbia posits that petitioner's failure to produce such a receipt renders a legal finding in his favor impossible.

¶ 25 Columbia is correct.

¶ 26 While at first glance it would appear that petitioner and Columbia are citing conflicting sections of the Act, a review of these shows no ambiguity whatsoever. Rather, their language is clear and complementary. Undoubtedly, section 20(g) permits a obligee to serve his notice of withholding upon the payor by virtually any means: fax, email, personal delivery, certified mail, or even, as petitioner points out, ordinary mail; it does not mandate any one specific type of service. See 750 ILCS 28/20(g) (West 2010). Ordinary mail is the method by which petitioner chose to serve Columbia in this cause. As his attorney's law clerk testified, she prepared the Notice on behalf of petitioner per the attorney's direction and mailed it to Columbia on October 18, 2010. Pursuant to the Act, petitioner did nothing wrong here.

¶ 27 However, section 35(a) instructs the parties to a lawsuit stemming from a withholding

situation as to what is required as the burden of proof in a court of law. One of these requirements is that a finding of nonperformance "must be documented by a certified mail return receipt showing the date the income withholding notice was served on the payor." 750 ILCS 28/35(a) (West 2010). Accordingly, section 35(a) warns the obligee that, in order to prove up a claim that a payor has failed to withhold funds, the obligee must come to court in possession of a certified mail return receipt showing that the withholding notice was served on the payor. Again, the language is clear: a court will not declare nonperformance without this necessary documentation. See 750 ILCS 28/35(a) (West 2010).

¶ 28 There is no issue concerning irreconcilability here. Rather, while section 20(g) allows some laxity in the service of an income withholding notice, section 35(a) makes clear that the burden of proof is on the obligee should he come to court. In other words, the Act allows an obligee the leeway to select whichever method of service he prefers upon the payor; however, section 35(a) tells him that, whatever his choice at the time, he must remember that, should he institute a lawsuit claiming that the payor failed to obey the notice to withhold, he will be required to prove this with a certified mail return receipt showing that the payor was, indeed, served with the notice in the first place.

¶ 29 In the instant cause, while his service of the Notice by ordinary mail upon Columbia was proper under section 20(g), petitioner, who found himself in a court of law, failed to meet his burden of proof under section 35(a) when he failed to produce at trial a certified mail return receipt showing the date the October 18, 2010 Notice was served on Columbia. Again, petitioner's attorney's law clerk testified only that she prepared the Notice and mailed it via

ordinary mail. She further stated that she spoke to Columbia payroll manager Williams via telephone, but she did not have a certified mail return receipt for the Notice. The only other evidence petitioner provided at trial in this regard was the testimony of his attorney, Pasulka. Yet, Pasulka did not testify at all regarding the October 18, 2010 Notice, as he did not prepare or mail it. And, just as his law clerk, Pasulka did not have a certified mail return receipt for the Notice.

¶ 30 The only thing Pasulka did testify to is that he prepared the November 19, 2010 letter. This letter, which Pasulka wrote and mailed a full month after the Notice, asked Columbia to comply with the Notice and warned that petitioner would be seeking statutory penalties under the Act if it did not. On cross-examination, Pasulka produced two certified mail return receipts he claimed evidenced that he served this letter on Columbia. However, the first had a tracking number from January 2011, a fact which the trial court found rendered it completely removed from the November 19, 2010 letter. The second certified mail return receipt, which the court commented might be connected to the letter, showed a tracking number with a December 7, 2010 delivery date and a signature by someone named "Gedyn, Jackson." However, the December 7, 2010 date on the receipt is some 17 days after Pasulka testified he prepared and sent the November 19, 2010 letter, and the signature on the receipt is from someone who petitioner never even asserted was an employee or agent of Columbia. Further, and most critical here, Pasulka admitted in his testimony that he could not remember whether he had attached a copy of the October 18, 2010 Notice to the November 19, 2010 letter. Thus, even if petitioner had been able to produce a certified mail return receipt for the letter, according to the testimony he presented

there is still no sufficient proof that Columbia was ever served with the Notice.

¶ 31 Ultimately, here, there is no certified mail return receipt in the record demonstrating that Columbia received the Notice. While it was permissible for petitioner to use ordinary mail as a method of service under section 20(g), it is this item of proof, as specified in section 35(a), that he needed to produce at trial. Without it, he cannot meet the requirements of the Act and, thus, he cannot prevail.

¶ 32 In his reply brief on appeal, petitioner lays out both section 20(g) and section 35(a) and argues that a "close reading" of these "precludes" the above interpretation. As he cites the sections, he adds emphasis on the phrase "an income withholding notice" in section 20(g) and emphasis on the phrase "a finding of nonperformance" in section 35(a) and insists that these sections have nothing to do with the other. That is, he argues that section 20(g) applies while section 35(a) does not because his case involves a income withholding notice and not a "finding of nonperformance" and, thus, the date the Notice was served on Columbia is irrelevant.

¶ 33 Petitioner's argument is misplaced. He is treating the phrase "finding of nonperformance" as a physical thing that he thinks "must be documented" and concludes that this has nothing to do with his cause. This is wholly incorrect. A finding of nonperformance, pursuant to the Act, is a legal concept, not a physical thing, and it is not somehow mutually exclusive of an income withholding notice. Rather, a finding of nonperformance is a cause of action that a party undertakes pursuant to the Act when the payor fails to perform in accordance with an income withholding notice. Ironically, this is exactly what petitioner himself did here: he proceeded in this cause in the trial court seeking a finding of nonperformance on the part of Columbia for

failing to pay him withheld funds in accordance with the Notice. Again, section 20(g) describes the available methods for serving an income withholding notice, while section 35(a) mandates the type of proof necessary to prevail upon nonperformance. Contrary to petitioner's argument, these sections are not mutually exclusive nor irrelevant to each other. Instead, they clearly operate together regarding a cause of action seeking a finding of nonperformance involving an income withholding notice.

¶ 34 While we have been unable to find a case directly on point with the instant cause here, our decision is in line with one case of note, which is actually cited by both parties on appeal in support of their different arguments and was discussed at length before the trial court: *Chen*. We wish to address that now.

¶ 35 *Chen* is a particularly contentious point between the instant parties. Petitioner relies on *Chen* for his proposition that his service of the Notice on Columbia via ordinary mail was proper but states that the remainder of the case is inapplicable to his situation, while Columbia insists that petitioner misunderstands that case as a whole as it considered several different portions of the Act.

¶ 36 The facts in *Chen* are a bit complex, but its outcome supports our conclusions here. In *Chen*, an order for the withholding of child support was entered in 1997 (1997 support order) requiring Greg's employer to withhold money each week from his paycheck to be sent to the circuit clerk of Du Page County, which would then be forwarded to his ex-wife Erika. Greg began working at Elmhurst Dodge, Inc. in 1998, and a copy of this order to withhold was served on Dodge by certified mail with proof of service. Dodge complied with the withholding

requirements. However, Greg left Dodge and began working at Auto Mall, an affiliated but wholly separate company, in July and August 2000. This time, Greg personally served the comptroller of this new company with the support order. Auto Mall withheld money from Greg's paychecks (he earned four during this time), but Erika never received any money. On August 4, 2000, Erika served a newly revised notice to withhold income (2000 support order) on Auto Mall by certified mail, with different provisions and penalties listed therein, as well as the direction that the funds should be sent to the Illinois State Disbursement Unit. Erika eventually filed suit against Auto Mall, alleging that it had failed to pay over the support in accordance with the notices and asserting that various penalties should be assessed. The trial court agreed in part with Erika and entered an award in her favor, but she appealed because she believed the penalties assessed were not enough under the circumstances. See *Chen*, 354 Ill. App. 3d at 1005-10.

¶ 37 While a great portion of *Chen* deals with the penalty provisions of the Act which does not concern us herein, the overall tone of the cause supports our conclusion. For example, one issue raised was whether Greg's first four paychecks (those earned before the 2000 support order was created and served) at Auto Mall should be considered in assessing penalties under the Act; Erika asserted that they should have been because Dodge was properly served with the 1997 support order and Auto Mall was affiliated with Dodge, while Auto Mall asserted that they should not since the 1997 support order failed to provide notice of the Act's penalty provisions as required. See *Chen*, 354 Ill. App. 3d at 1011-12. Regarding this issue, the *Chen* court conducted an examination of sections 20 and 35 of the Act, similar to what we have done herein. It began by noting that section 20 clearly mandates, with use of the word "shall," certain requirements

necessary for a proper income withholding notice. In that case, the key was section 20(c)(7), which requires these notices to state the duties of the payor and the fines and penalties for failure to withhold. See *Chen*, 354 Ill. App. 3d at 1012. Because the 1997 support order did not include the statutory $100-per-day penalty, but listed only a $200 total fine, the *Chen* court held that Erika's recovery was limited accordingly, even though the record showed that Auto Mall had actual notice of the 1997 support order. See *Chen*, 354 Ill. App. 3d at 1012 (inclusion of this penalty was mandatory obligation in order to give notice to payor for failure to pay over withheld income). It further noted that, unlike the 1997 support order, the 2000 support order for withholding did include the proper penalties. See *Chen*, 354 Ill. App. 3d at 1012. However, because Erika did not serve this new, revised support order by certified mail until August 4, 2000 and, thus, did not have the requisite proof under section 35(a) of the Act–a certified mail return receipt–covering the time before that date, Greg's four paychecks issued before then could not be subject to the penalty provisions under the Act. See *Chen*, 354 Ill. App. 3d at 1013 (reviewing section 35(a) and reaffirming that the burden of proof in order for an obligee to obtain a finding of nonperformance in a court of law is a certified mail return receipt showing the date the income withholding notice was served on the payor).

¶ 38 Petitioner is correct that *Chen* stands for the proposition that service of an income withholding notice can be accomplished via several different methods. There is a brief portion of *Chen* that discusses section 20(g) of the Act and notes its permissive language regarding service. See *Chen*, 354 Ill. App. 3d at 1014-15 (finding that Greg's service of the 1997 support order via personal delivery to Auto Mall's comptroller satisfied the statutory requirements). However, the

remaining relevant portions of *Chen* clearly support our holding here. At its core, *Chen* reaffirms that there are certain statutory requirements every income withholding notice must contain pursuant to section 20(a); that, if one of these is missing, the payor cannot be held accountable even if it had actual notice of the withholding notice; and that, without a certified mail return receipt documenting the payor's receipt of the withholding notice as required under section 35(a), a finding of nonperformance cannot be entered against the payor. These are the same principles we espouse herein.[4]

¶ 39 Ultimately, in the instant cause, while petitioner properly served Columbia with the Notice via ordinary mail under section 20(g), the Notice itself was faulty pursuant to section 20(c)(12) due to his deletion of the payor's requirement to send the withheld funds to the State Disbursement Unit, and petitioner has not met his statutory burden of proof required under section 35(a) due to his failure to provide the court with a certified mail return receipt proving Columbia received the Notice. Therefore, we cannot order a finding of nonperformance in petitioner's favor.

¶ 40 CONCLUSION

¶ 41 Accordingly, for the foregoing reasons, we affirm the judgment of the trial court.

¶ 42 Affirmed.

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[4]The other cases petitioner cites, as well as the remainder of his brief on appeal, deal with the penalty provisions of the Act. However, because we had decided this cause on more threshold issues (*i.e.*, the propriety of the Notice and proof of service), we need not address petitioner's claims regarding the imposition of penalties on Columbia or those cases. See, *e.g.*, *In re Marriage of Miller*, 227 Ill. 2d 185 (2007); *Gulla*, 382 Ill. App. 3d 498 (2008) (assessing penalties when employer-payors disregarded proper income withholding notices, as proved up by obligees with certified mail return receipts in accordance with Act).