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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re the Marriage of)	Appeal from the
)	Circuit Court of
NORA ZOLEN,)	Cook County.
Petitioner,)	
)	No. 03 D 5722
and)	
)	Honorable
STEVEN ZOLEN,)	Nancy J. Katz,
Respondent,)	Judge, presiding.
)	
_____)	
SHELDON ENGEL,)	
Third Party Plaintiff/Appellant,)	
)	
V.)	
)	
D & K REAL ESTATE SERVICE CORP.,)	
Third Party Defendant/Appellee.)	

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in denying third-party plaintiff's petition to enforce income withholding from third-party defendant where attorney's fees incurred from

enforcing a child support judgment are not child support under the Income Withholding for Support Act. 750 ILCS 28/1-60 (West 2014).

¶ 2 Attorney Sheldon Engel, third-party plaintiff, represented Nora Zolen in proceedings to enforce a child support judgment against Steven Zolen. From those proceedings, Engel was awarded a judgment against Steven for \$21,742 in attorney's fees. Engel subsequently served Steven's employer, D & K Real Estate Service Corp. (D & K), third-party defendant, with a "Notice of Income Withholding for Support" pursuant to the Income Withholding for Support Act (Act). 750 ILCS 28/20 (West 2014). D & K objected to the notice because it did not state that the attorney's fees were "for the support of a child" or how much and when to deduct wages. Thereafter, Engel filed a petition to enforce income withholding, which was denied. Engel appeals contending that the court erred in finding that the attorney's fees in this matter were not child support under the Act. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 **BACKGROUND**

¶ 4 On August, 17, 2015, on Engel's motion, the court revived a judgment from July 19, 2006, against Steven awarding Engel \$21,742 in attorney's fees. The fees were incurred from Engel's representation of Nora in obtaining child support. Thereafter, Engel mailed D & K a "Notice of Income Withholding for Support" (Notice) pursuant to the Act. 750 ILCS 28/35 (West 2014). The Notice was based upon the court's August 17th order. It listed the amount to be withheld from Steven's pay as "variable" and "biweekly" but did not specify an amount to be withheld from each paycheck. It further indicated that payment should be remitted to "Sheldon Engel, legal representative of Nora Zolen, custodian."

¶ 5 Despite receiving the Notice, D & K did not withhold wages for payment to Engel. It had already been withholding \$930 per paycheck for payment to Nora for child support pursuant

to a prior "Notice of Income Withholding for Support." Consequently, Engel petitioned the court to enforce the Notice and the court denied the petition. In doing so, the court explained that attorney's fees that are incurred from obtaining a child support judgment are not child support for purposes of the Act. Therefore, the Act does not provide Engel with a remedy for payment. Engel filed a notice of appeal based upon that order.

¶ 6 Subsequently, on March 23, 2016, Engel received a second judgment for attorney's fees against Steven in the circuit court. Instead of sending D & K a "Notice of Income Withholding for Support" pursuant to that judgment, Engel filed notice of appeal directly from that order. Engel named D & K as a party in the second notice of appeal, which was later consolidated with the first appeal by this court.

¶ 7 ANALYSIS

¶ 8 As an initial matter, we address D & K's contention that it is not a party to the second appeal because the order from which Engel appealed below only pertained to attorney's fees against Steven. We note that D & K was not a party to the court's second order for attorney's fees nor was it served with a notice to withhold payment from Steven pursuant to that order. Significantly, the second order for attorney's fees was not an adverse judgment against Engel and he does not contend that the court erred in awarding them. A party that has obtained all that has been asked for in the circuit court does not have standing to appeal that judgment. *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 36. Thus, the second appeal under case number 1-16-1346 is dismissed (*Strategic Energy, LLC v. Illinois Commerce Comm'n*, 369 Ill. App. 3d 238, 247 (2006)) and we address only the merits of the first appeal under case number 1-16-0387.

¶ 9 The primary issue in this appeal is whether attorney's fees incurred from obtaining and enforcing child support judgments are child support under the Income Withholding for Support Act (750 ILCS 28/35) so that an employer can be required to withhold wages from an employee pursuant the Act's terms. Engel contends that attorney's fees in this context are child support. D & K maintains that according to the language of the Act, attorney's fees are not "support of a child" and therefore it is not authorized to withhold pay.

¶ 10 Whether attorney's fees are "support of a child" under the Act is a question of statutory interpretation, which we review *de novo*. *In re Marriage of Branit*, 2015 IL App (1st) 141297, ¶ 17. In interpreting a statute, we must ascertain and give effect to the intent of the legislature. *Id.* "The best evidence of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning." *Crank v. Crank*, 374 Ill. App. 3d 1115, 1119 (2007). Where the language is unambiguous, we give it effect and we do not employ other aids of construction. *Id.*

¶ 11 The Act allows for income to be withheld after the "[e]ntry of order for support containing income withholding provisions" and a subsequent "income withholding notice" served upon an employer. 750 ILCS 28/20 (West 2014). It defines "[o]rder for support" as "any order of the court which provides for periodic payment of funds for the support of a child or maintenance of a spouse." 750 ILCS 28/15 (West 2014). Thus, an employer's obligation to withhold income arises when it is served an income withholding notice that is based upon a court order for child support or spousal maintenance. Although the Act does not specifically define what constitutes "support of a child," the plain meaning dictates that it refers to expenses directly associated with a child's livelihood. There is nothing in the language of the Act to suggest that its meaning would be extended to include attorney's fees.

Accordingly, as the plain language of the Act is unambiguous, we need not turn to aids of construction to determine its meaning and conclude that attorney's fees are not "support of a child" under the Act.

¶ 12 In this case, the Notice that was served upon D & K was based upon a court order for attorney's fees and requested that payment be made to Engel for legal services he provided. It was not an order mandating that Steven provide financial support for his children's or Nora's livelihood, the individuals to whom Steven owed support. We are mindful that the Act allows for payment to an "obligee" which is defined as "the individual to whom a duty of support is owed or to the individual's legal representative." It is clear, however, that regardless to whom the funds are remitted, they must be for "support" and not payment to an attorney. Therefore, the court order the Notice was based upon was not an "order for support" under the Act and D & K was not authorized by the Act to withhold Steven's income to pay Engel's attorney's fees.

¶ 13 We next address Engel's policy argument that attorney's fees incurred in obtaining an order for support are "in the nature of support," and therefore they are "support" for purposes of the Act. Specifically, he argues that because attorneys assist families in obtaining support, their services are essential to actually receiving child support. He points out that Illinois courts have acknowledged that the support of children is a compelling State interest (*In re Marriage of Miller*, 227 Ill. 2d 185, 197-98 (2007)), and thus, he argues, the State likewise has an interest in attorneys assisting families in obtaining support judgments. The Act facilitates the payment of child support by allowing for a greater percentage of income to be

withheld than other garnishment statutes¹, and by giving support judgments priority. 750 ILCS 28/35(c). Engel asserts that attorney's fees incurred in obtaining orders of support should be given the benefits of the Act in order to incentivize attorneys to assist families in this manner.

¶ 14 To support his argument that these attorney's fees are actually "child support," Engel urges us to consider cases interpreting the Federal Bankruptcy Act (11 U.S.C. § 523(a)(5)) that have concluded that attorney's fees are "in the nature of support." See *Nuellen v. Lawson*, 123 Ill. App. 3d 202 (1984); *Levin v. Greco*, 415 B.R. 663, 666 (N.D. Ill. 2009); *In re Wright*, 184 B.R. 318, 325 (Bankr. N.D. Ill. 1995); *Matter of Rios*, 901 F.2d 71, 72 (7th Cir. 1990); *Richards v. Loncar*, 14 B.R. 276, 279 (N.D. Ill. 1981). These courts reasoned, *inter alia*, that attorney's fees in child support cases are "in the nature of support," because attorneys' services are necessary to determine custody and obtain child support. *Levin*, 415 B.R. at 667. They also noted that if the debt is not paid by the debtor, it could be collected from the other spouse. *Id.* Thus, "a payment to the creditor is indirectly a payment to the spouse." *Id.*

¶ 15 Engel argues that the reasoning in the cases interpreting the Federal Bankruptcy Act should similarly apply here. We disagree. Engel ignores important differences between the Federal Act and the Illinois Income Withholding Act at issue in this case. The Federal Bankruptcy Act specifically refers to expenses that are "in the nature of support" (11 U.S.C. § 523 (a)(5)) whereas the Illinois Act solely refers to "support of a child or maintenance of a spouse." 750 ILCS 28/15 (2014). Therefore, unlike the Illinois Act, the language of the Federal Bankruptcy Act invites courts to determine what is "in the nature of support." In

¹For example, the Wage Deduction Garnishment Act (735 ILCS 5/12-803 (West 2014)) only allows 15 % of a person's income to be withheld from each paycheck but the Act allows for up to 60 % to be withheld (750 ILCS 28/35 (c); 15 U.S.C. § 1673(b)(2)(A),(B)).

addition, there is a significant difference between the consequences of discharging a debt in bankruptcy and finding that a debt does not fall under the Illinois Act. When a debt is discharged in bankruptcy, it is eliminated and the creditor has no recourse for collecting the debt. See 11 U.S.C. § 524(a). In contrast, here, if an attorney cannot require that an employer withhold wages under the Act, he may still pursue other means, such as the Wage Deduction Garnishment Act (735 ILCS 5/12-802) to collect the judgment. Regardless of whether the considerations relevant to the federal Bankruptcy Act are appropriate here, we decline Engel's request that we consider policy implications in making our determination as the legislature is in a better position than the court to resolve policy questions. See *Goldstein v. Grinnel Select Insurance Co.*, 2016 IL App (1st) 140317, ¶ 16.

¶ 16

CONCLUSION

¶ 17

In conclusion, attorney's fees related to obtaining and enforcing child support are not "support of a child" under the terms of the Act as presently written and we decline to extend the Act in the manner requested by Engel. The judgment of the circuit court is affirmed and the second appeal is dismissed.

¶ 18

Affirmed in part; dismissed in part.