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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PRIVATEBANK AND TRUST COMPANY,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 15-L-12
)	
RICHARD M. GATTO and BACCHUS I, INC., jointly and severally,)	Honorable
)	
Defendants,)	
)	Brian R. McKillip
(Richard M. Gatto, Defendant-Appellant).)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in entering turnover order against judgment debtor for bank account allegedly consisting of wages already paid by debtor's employer.

¶ 2 Defendants, Richard M. Gatto and Bacchus I, Inc., breached a promissory note held by plaintiff, the PrivateBank and Trust Company. Plaintiff obtained a consent judgment of more than \$1.4 million against defendants and commenced supplementary proceedings for enforcement under section 2-1402 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402

(West 2016)). Plaintiff issued a third-party citation to Bank of America to discover Gatto's assets. The trial court ultimately entered a wage deduction order for 15% of Gatto's wages and a turnover order for a portion of his Bank of America account.

¶ 3 Gatto appeals the turnover order, arguing that a portion of the bank account is exempt from turnover because the account was fully funded by his wages. The "wages" that are subject to collection to satisfy the judgment are limited to 15% of the gross amount paid, while Gatto's "assets" that are subject to collection are limited only by a \$4,000 personal property exemption that was granted by the trial court in this case. Even assuming that the funds in Gatto's account can be traced to his employer, we hold that they are not "wages" for purposes of the 15% wage garnishment cap. Once the funds were deposited into the account, they were no longer "owed by" his employer, and therefore, not "wages" that would be subject to the statutory exemption. See 735 ILCS 5/12-801 (West 2016) (wages are "any hourly pay, salaries, commissions, bonuses, or other compensation owed by an employer to a judgment debtor"). We affirm.

¶ 4 I. BACKGROUND

¶ 5 Most of the operative facts are not in dispute. On July 14, 2011, defendants executed a promissory note with plaintiff. The note required defendants to make monthly principal and interest payments of \$8,793, beginning on August 15, 2011. The note provided that defendants would be in default if, among other things, they failed to make any payment when due under the note. Defendants stopped making payments in November 2013. Under the terms of the note, plaintiff declared the entire unpaid principal balance and all accrued unpaid interest immediately due. Plaintiff demanded payment, which defendants failed to pay.

¶ 6 Plaintiff filed its complaint for breach of the note on January 7, 2015. The parties entered into settlement negotiations, and on March 16, 2016, the parties filed a stipulated motion to

dismiss. The motion requested an order dismissing the case without prejudice, with the trial court retaining jurisdiction to enforce the terms of the settlement agreement.

¶ 7 On August 30, 2016, plaintiff moved to reopen the case and enter a consent judgment. On September 7, 2016, the trial court entered a consent judgment against defendants, jointly and severally, in the amount of \$1,458,792.

¶ 8 Plaintiff issued citations to defendants to discover assets. Plaintiff also issued third-party citations to Gatto's employer, the Alter Services Group (Alter), and Bank of America. On February 7, 2017, Bank of America answered that it held \$10,060 in a "Checking and/or Now Account" in Gatto's name.

¶ 9 On February 21, 2017, plaintiff moved for garnishment of Gatto's wages from Alter. However, plaintiff concedes its status as a secondary creditor because a prior judgment creditor already is receiving a garnishment of 15% of Gatto's wages. On May 2, 2017, the trial court entered a wage deduction order but limited any wage deduction as required by statute to a maximum of 15%, which is currently being received by the other judgment creditor.

¶ 10 Also on May 2, 2017, the court ordered Bank of America to turn over \$6,060 from Gatto's account, which represented the reported balance of \$10,060 minus a \$4,000 personal property "wild card" exemption set forth in section 12-1001(b) of the Code. See 735 ILCS 5/12-1001(b) (West 2016) (a debtor's equity interest in personal property, not to exceed \$4,000 in value, is exempt from judgment). The written order states that "there is no just reason to delay enforcement or appeal pursuant to Supreme Court Rule 304(a) [(eff. Feb. 26, 2010)]." On May 24, 2017, Gatto filed a timely notice of appeal.

¶ 11

II. ANALYSIS

¶ 12 In the supplementary proceedings, the trial court entered two orders against Gatto: a wage deduction order for up to 15% of wages from his employer and a turnover order for \$6,060 from the Bank of America account. Gatto contends that the orders have allowed plaintiff to improperly circumvent the Wage Deduction Statute (735 ILCS 5/12-801 *et seq.* (West 2016)) by garnishing 15% of his wages while effectively collecting the remaining 85% of those wages through the turnover order.

¶ 13 Gatto argues that the turnover order resulted from the trial court's misinterpretation of section 2-1402 of the Code and various sections of the Wage Deduction Statute (735 ILCS 5/12-801 *et seq.* (West 2016)). When interpreting a statute, the court's primary objective is to ascertain and give effect to the intent of the legislature. *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 25. The most reliable indicator of legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning. The provisions of a statute must be viewed as a whole, with the relevant statutory provisions construed together and not in isolation. The court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute in one way or another. The interpretation of a statute presents an issue of law, which we review *de novo*. *J & J Ventures Gaming*, 2016 IL 119870, ¶ 25. In this case, we review *de novo* the trial court's ruling in the supplementary proceedings where we are interpreting various statutes and the court did not conduct an evidentiary hearing or make factual findings. See *PNC Bank, N.A. v. Hoffman*, 2015 IL App (2d) 141172, ¶ 29.

¶ 14 Civil judgments are enforced through supplementary proceedings pursuant to section 2-1402 of the Code, which authorizes a judgment creditor to attempt to find any assets that may be held by the judgment debtor or third parties. 735 ILCS 5/2-1402 (West 2016). Section 2-

1402(a) provides a mechanism by which the judgment creditor may initiate those proceedings by serving citations to discover assets. 735 ILCS 5/2-1402(a) (West 2016). Section 2-1402(c) specifies the actions that a trial court may take when “assets or income of the judgment debtor not exempt from the satisfaction of a judgment” are discovered in a citation proceeding. 735 ILCS 5/2-1402(c) (West 2016). Subsection (c)(3) permits the trial court to:

“[c]ompel any person cited, other than the judgment debtor, to deliver up any assets so discovered, to be applied in satisfaction of the judgment, in whole or in part, when those assets are held under such circumstances that in an action by the judgment debtor he or she could recover them in specie or obtain a judgment for the proceeds or value thereof as for conversion or embezzlement. ***” 735 ILCS 5/2-1402(c)(3) (West 2016).

¶ 15 The plain and ordinary language of section 2-1402(c)(3) means that a judgment creditor such as plaintiff may obtain “assets or income of a judgment debtor” held by a third party, like Bank of America, unless the assets or income are exempt from the satisfaction of a judgment. Gatto contends that his Bank of America account contained funds that are exempt from collection because they consist “solely of wages” paid by his employer.

¶ 16 Gatto argues that section 12-803 of the Wage Deduction Statute, which applies to the wage deduction order, should also apply to the turnover order directed to his bank account. 735 ILCS 12-803 (West 2016). As applied to Gatto, section 12-803 limited “[t]he wages, salary, commissions and bonuses subject to collection under a deduction order, for any work week [to be] 15% of such gross amount paid for that week.” See 735 ILCS 5/12-803 (West 2016). Gatto concludes that the turnover order should have been likewise limited to 15% of the account that remained after the \$4,000 personal property exemption. We disagree.

¶ 17 Gatto claims that the legislature intended the section 12-803 partial wage exemption, or garnishment cap, to also apply to wages already paid. Gatto relies on section 2-1402(c)(2), which provides that, when applying a judgment debtor's income to satisfy the judgment, "the judgment debtor shall not be compelled to pay income which would be considered exempt as wages under the Wage Deduction Statute." 735 ILCS 5/2-1402(c)(2) (West 2016). Gatto contends that his interpretation is reinforced by section 2-1402(k-5), which applies the same exemption to property held as wages by a third party. Section 2-1402(k-5) provides that, "if the court determines that any property held by a third party respondent is wages pursuant to section 12-801, the court shall proceed as if a wage deduction proceeding had been filed and proceed to enter such necessary and proper orders as would have been entered in a wage deduction proceeding including but not limited to the granting of the statutory exemptions allowed by Section 12-803 ***." 735 ILCS 5/2-1402(k-5) (West 2016).

¶ 18 Gatto's novel interpretation disregards the unambiguous language of section 12-801 of the Wage Deduction Statute, which defines "wages" as "any hourly pay, salaries, commissions, bonuses, or other compensation *owed by* an employer to a judgment debtor." (Emphasis added.) 735 ILCS 5/12-801 (West 2016). Once a judgment debtor receives income from his employer, it is no longer "owed by" the employer, and thus, ceases to be "wages" under the definition set forth in section 12-801. See *In re Meier*, 550 B.R. 384, 391 (Bankr. N.D. Ill. App. 3d. 2016) ("Because Meier was in possession of the earnings at issue, the [Wage Deduction Statute] is not applicable"). We agree with plaintiff that the funds in the Bank of America account were not "wages" under the Wage Deduction Statute, and therefore section 2-1402(c)(2) does not apply. Instead, section 2-1402(c)(3) makes the funds subject to turnover as Gatto's assets.

¶ 19 As plaintiff points out, the legislature has created several exemptions from judgment or attachment, including the \$4,000 personal property “wild card” exemption granted in this case. See 735 ILCS 5/12-1001(b) (West 2016). Gatto has cited no authority to show that “wages” are identified as personal property that is traceable for purposes of exemption. If the legislature had intended to exempt from turnover wages that have been paid already, it could have made those funds traceable as it has done with workers compensation payments and life insurance proceeds. *In re Thum*, 329 B.R. 848, 853 (Bankr. C.D. Ill. 2005).

¶ 20 Gatto argues, as a policy matter, that the funds deemed to be income specifically should be exempt under section 12-1402(c)(2) because “[t]he legislature did not intend for a creditor to collect 15% of a debtor’s wages through a wage garnishment, and then collect the remaining 85% through a motion for turnover.” But the *Thum* court cogently explained why garnishment caps are not intended as a way to shelter wages as Gatto has proposed:

“In light of the purpose for wage garnishment caps, it is perfectly understandable that Illinois would protect a portion of unpaid wages from garnishing creditors, while affording no special protection to wages once paid. The purpose of garnishment caps is to protect a wage earner living paycheck to paycheck from losing his entire earnings so that he is left destitute with no ability to pay necessary family living expenses. Presumably, by receiving 85% of his pay, he is at least able to pay the rent and put food on the table. [Citation omitted.] Once he deposits the wages into a bank account, however, the funds become fair game for creditors. An insolvent person may not accumulate and shelter funds in a bank account simply because they derive from wages. It is entirely rational that the Legislature would enact wage garnishment caps as a limited,

non-bankruptcy protection for accrued wages while leaving the wild card exemption as the sole source of protection for paid wages.” *Thum*, 329 B.R. at 855.

¶ 21 Finally, Gatto cites several cases applying the garnishment cap in section 12-803 of the Wage Deduction Statute, but those cases are factually distinguishable. Here, Gatto’s bank account was allegedly funded entirely from wages that already had been paid by his employer, while the cases on which Gatto relies involve funds that were still owed by the employers to the judgment debtors. See 735 ILCS 5/12-801 (West 2016) (wages defined as “any hourly pay, salaries, commissions, bonuses, or other compensation *owed by* an employer to a judgment debtor”)

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, the turnover order entered by the circuit court of Du Page County is affirmed.

¶ 24 Affirmed.