

2019 IL App (1st) 180310-U

FIRST DIVISION
March 29, 2019

No. 18-0310

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 DISTRICT

RENARDO PAGE,	)	Appeal from the Circuit Court of
	)	Cook County
Plaintiff-Appellant,)	
)	
v.	)	No. 09 L 4177
)	
DONALD ARTLEY,)	
	)	Honorable Alexander P. White
Defendant.	)	Judge Presiding
)	

DESHAW NELSON,	)	Appeal from the Circuit Court of
	)	Cook County
Plaintiff-Appellee,)	
)	
v.	)	No. 15 L 12669
	)	(formerly No. 10 L 559)
)	
DONALD ARTLEY,)	
	)	Honorable Alexander P. White
Defendant.	)	Judge Presiding
)	

JUSTICE GRIFFIN delivered the judgment of the court.

Presiding Justice Mikva and Justice Pierce concur in the judgment.

ORDER

¶ 1 *Held:* Claimant Renardo Page waived and forfeited his right to seek a distribution of funds deposited with the trial court when he failed to raise any claim to the funds for seven years after the funds were designated for his co-claimant Deshaw Nelson.

¶ 2 Following an automobile accident where Plaintiffs Renardo Page and DeShaw Nelson were injured, Enterprise Leasing Company deposited \$50,000 with the court to satisfy its liability obligations. Page accepted \$25,000 as a partial settlement of his claim. Nelson did not accept a settlement and pursued Enterprise for \$600,000. The trial court held that Enterprise was not liable for any amount beyond what it deposited with the court. Therefore, the court granted a turnover of the remaining \$25,000 to Nelson. Nelson appealed to this court and then the supreme court, the latter holding that the trial court correctly determined that Enterprise's liability was exhausted and that Nelson could receive no more from Enterprise.

¶ 3 When Nelson returned to the circuit court to obtain the \$25,000 that had been held in escrow during his appellate proceedings, Page sprung up to stake his claim to the \$25,000, arguing that he had a superior right to the money because his judgment lien was first in time. The trial court found that the remaining \$25,000 should be awarded to Nelson, not Page. We affirm.

¶ 4 **BACKGROUND**

¶ 5 Three individuals, Renardo Page, DeShaw Nelson, and Antoine Ousley, were injured in a motor vehicle accident caused by Donald Artley who was driving a rental car without authorization. Artley was not insured. Page and Nelson each filed a lawsuit against Artley and against Enterprise Leasing Company, the owner of the vehicle. Page and Nelson each obtained a default judgment against Artley. Ousley also filed a lawsuit.

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¶ 6 Under the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* West 2016), Enterprise was arguably liable for up to \$100,000 for the occurrence, with a \$50,000 maximum per claimant, under its statutory “minimum responsibility” obligations. See 625 ILCS 5/9-101 (West 2016). Ousley settled his claims with Enterprise for \$50,000. Enterprise then opted to pursue an action for interpleader in which it deposited the remaining \$50,000 of its statutory liability limit with the court for allocation and distribution.

¶ 7 The trial court offered to split the available money between Page and Nelson. Page accepted the \$25,000, but Nelson declined. Nelson disputed that Enterprise’s liability should be limited to \$100,000. He had already secured a default judgment of \$600,000. Nelson contended that, since Enterprise was self-insured, the statutory liability limit did not apply. The trial court disagreed and held that Enterprise’s maximum liability was \$100,000. In its order disposing of the matter, the trial court explained that since \$75,000 of the available funds had already been allocated to others, Nelson was entitled to \$25,000.

¶ 8 Nelson appealed, and we reversed the trial court’s order, holding that Nelson was entitled to pursue his claim in full. *Nelson v. Artley*, 2014 IL App (1st) 121681, ¶ 37. The supreme court accepted the case on petition, reversed our judgment, and affirmed the circuit court’s judgment. *Nelson v. Artley*, 2015 IL 118058, ¶¶ 31-33.

¶ 9 After the supreme court’s ruling, Nelson returned to the trial court in an attempt to collect the \$25,000 memorialized in his turnover order. However, Page filed an amended petition for turnover in which he now seeks the \$25,000 for himself. There is no dispute between the parties that Page would have lien priority if that was determinative of the parties’ claims. So, the parties agree that Page is entitled to at least the \$25,000 he already received. Page, however, contends that

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he is entitled to the other \$25,000 available due to the superiority of his judgment lien. Nelson argues that the parties are each entitled to \$25,000. The trial court sided with Nelson, leaving each party with \$25,000. Page appeals.

¶ 10

ANALYSIS

¶ 11 This appeal calls for us to decide which plaintiff, Page or Nelson, is entitled to the remaining \$25,000 of the \$100,000 that was allotted to compensate the victims of the motor vehicle accident. One victim, Ousley, received \$50,000. Those funds are disbursed and are not at issue here. Of the \$50,000 remaining, Page already received \$25,000 because he accepted that amount as “partial satisfaction” of his claim. So this appeal requires us to determine who has the rights to the remaining \$25,000.

¶ 12 Page argues that he is entitled to the remaining \$25,000 because his judgment lien was first in time, so his claim should be satisfied before Nelson receives anything. Nelson argues that lien priority is irrelevant here and that the trial court properly divided the available funds equitably between the parties. The trial court did not err when it determined that Nelson is entitled to the remaining \$25,000.

¶ 13 The record reflects that Enterprise intervened and deposited the \$50,000 to be allocated to the parties. Page and Nelson filed cross motions for a turnover of those funds. On January 14, 2010, a turnover order was entered in Page’s case with Page receiving the allocation of \$25,000 that he accepted in settlement. Nelson, on the other hand, continued to litigate the case in an attempt to recover the full \$600,000 default judgment that had been entered in his favor. In the order terminating Nelson’s case, on May 10, 2012, the trial court entered a turnover order for \$25,000 in favor of Nelson and denied his claim for the \$600,000 he sought. It became a final

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order. *Xcel Supply LLC v. Horowitz*, 2018 IL App (1st) 162986, ¶ 29.

¶ 14 In the order in which a turnover was entered in Nelson’s favor, the trial court expressly stated that “[Nelson] is entitled to receive \$25,000.” That order disposed of Nelson’s citation proceedings in their entirety and the court’s order became a final adjudication of Nelson’s rights in the circuit court. Nelson appealed because he wanted more than the \$25,000 allotted to him in the circuit court’s judgment. Page, on the other hand, took no action with regard to the \$25,000 to which he now stakes a claim. Page asserted no cross-claim or other claim to the funds at the time Nelson was pursuing them and Page did not attempt to intervene to contest the turnover order being entered in Nelson’s case despite being aware of it, and despite being aware that Nelson’s pursuit of funds continued. As far as the record conveys, Page accepted his \$25,000 share of the proceeds and receded from view. Page’s cross-motion for turnover was effectively defeated or he acquiesced to its defeat when Nelson’s competing cross-motion was granted for \$25,000 and Page did nothing.

¶ 15 From the time the turnover order was entered in Page’s favor in his case on January 14, 2010, Page took no further action with regard to any claim he might have in connection with this occurrence. While Nelson was continuing to seek recompense from Enterprise, Page was apparently idle—for seven years. Page did not file a claim against Nelson or the funds, attempt to intervene, or take any other action to assert a right to anything other than the \$25,000 he received as partial satisfaction of the case he filed. Page waived and forfeited any rights he might have had to the \$25,000.

¶ 16 A waiver of a legal right results when a party pursues a course of action or inaction in a manner inconsistent with an intention to enforce that right. *Barker v. Leonard*, 263 Ill. App. 3d

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661, 663 (1994). Here, Page's conduct was inconsistent with an intention to secure anything more than the \$25,000 he accepted in 2010. During the seven years after he accepted \$25,000, Page did not act reasonably as a person who intended to lay claim to the other \$25,000 available. As our supreme court has observed, waiver is an intentional relinquishment of a known right, while forfeiture is the failure to timely assert the right. *Gallagher v. Lenart*, 226 Ill. 2d 208, 229 (2007). Here, Page forfeited his claim to the remaining \$25,000 by failing to timely assert a right to it in *either* his own case or in Nelson's case. He waived his claim by, despite having knowledge of Nelson's collection proceedings, choosing a course of complete inaction which was inconsistent with any intention to compete with Nelson for the available funds.

¶ 17 During the whole time Nelson was pursuing appeals, Nelson was still in possession \$25,000 turnover order in his favor. Again, the circuit court expressly found in that order that "[Nelson] is entitled to receive \$25,000." Although he was seeking more, Nelson always still had a valid and unchallenged turnover order for \$25,000 in his possession. It was not until August 10, 2017, more than seven years since there had been any activity on his part, that Page attempted to reassert his lien priority and recover the full \$50,000 available from Enterprise. For seven years the money sat in escrow, Nelson had a turnover order in his favor, and Page never made a claim to it, tried to get a turnover order of his own, or make an adverse claim to Nelson's turnover order.

¶ 18 Before each party was granted a turnover order of \$25,000 and their citation proceedings were made final, the parties actually had cross motions seeking turnovers of the full amount in their respective favors. But each party's circuit court litigation terminated with the party receiving a \$25,000 turnover order. By operation of law, or perhaps by Page's acquiescence, his claim for turnover of the full \$50,000 was defeated when the circuit court ordered a \$25,000 turnover in

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Nelson's favor. That defeat was secured when both Page and Nelson's citation proceedings were finalized and the orders terminating the claims became final and appealable orders. The time for Page to challenge the \$25,000 turnover order in Nelson's favor was then, not now.

¶ 19 If Page is correct—that the case turns on solely lien priority—then there was nothing preventing him from securing a turnover of the other \$25,000 all along. Nelson's appellate proceedings had nothing to do with Page, with lien priority, or even with the \$25,000 that is now contested. Page totally abandoned his claim. A party that sits on a putative claim for several years does so at its own peril because a party that fails to timely assert a claim forfeits that claim.

National Life Real Estate Holdings, LLC v. Scarlato, 2017 IL App (1st) 161943, ¶ 42.

¶ 20 By failing to assert any claim to the funds when they were allocated to Nelson in a turnover order, Page waived and forfeited his claim to the funds. His arguments here are years too late. In the turnover order in Page's case, he accepted \$25,000 as partial satisfaction and without prejudice to him attempting to secure more from Enterprise. But even though Page may not have waived his right to seek a greater share of the allocated funds at the time he accepted the \$25,000 as partial satisfaction, he did waive that right when he made no further effort to secure the available funds for the next seven years. During those seven years, the remaining \$25,000 had been allocated to Nelson. That allocation became a final order of the circuit court and it was appealed to both the appellate and supreme courts. Nelson did nothing to preserve any right he might have had to the money. His total inaction then is fatal to the claims he raises now.

¶ 21 CONCLUSION

¶ 22 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 23 Affirmed.