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2024 IL App (3d) 230460-U

Order filed August 9, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

FIRST RESOLUTION INVESTMENT CORPORATION,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-23-0460
)	Circuit No. 11-LM-1675
)	
WILLIAM J. HOGAN,)	Honorable Jeffrey J. Tuminello,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ALBRECHT delivered the judgment of the court.
Justices Brennan and Davenport concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in denying defendant’s motion to vacate a turnover order when defendant did not provide the court with evidence that would rebut the presumption that plaintiff brought a claim against the correct debtor.

¶ 2 Defendant, William J. Hogan, appeals the Will County circuit court’s denial of his motion to vacate a turnover order entered against him and in favor of the plaintiff, First Resolution Investment Corporation (FRIC). On appeal, Hogan argues that he is not the William

J. Hogan FRIC seeks and that FRIC did not provide sufficient proof that he was the correct debtor. We affirm.

¶ 3

I. BACKGROUND

¶ 4

FRIC filed a collections action against William J. Hogan in Sangamon County on February 11, 2003. On June 27, 2003, default judgment entered in the amount of \$14,295.21. No further action was taken in Sangamon County after the court continued a citation proceeding on September 26, 2003.

¶ 5

On June 16, 2011, FRIC registered the Sangamon County judgment in Will County. The registration contained a cover sheet, affidavit of claim, and certified copy of the Sangamon County docket for the relevant case, which included a docket entry granting a default judgment against Hogan. On January 9, 2015, FRIC initiated wage deduction proceedings against Good Earth Greenhouse (Good Earth), Hogan's purported employer. Good Earth filed an answer asserting that FRIC failed to properly serve defendant and that there were deficiencies in the original judgment. The court entered a conditional judgment against Good Earth, finding that the employer failed to file a proper answer.

¶ 6

On February 22, 2017, the court converted the conditional judgment into a final judgment order. Good Earth and Hogan filed a motion to vacate, and the court entered an order vacating the final judgment against Good Earth only. The court later entered a final judgment against Good Earth on May 12, 2017. Hogan then moved to vacate that judgment, arguing, among other things, that FRIC failed to comply with revival and enforcement of judgment laws. Hogan maintained that he had never had any business with FRIC and denied being the correct Hogan responsible for the debt despite having the same first and last name and middle initial as the

defendant listed in the cause of action. On August 9, 2017, the court vacated the judgment against Good Earth. FRIC withdrew its wage garnishment action.

¶ 7 On October 31, 2019, FRIC moved to revive the original judgment. Hogan’s response made similar arguments to what he had argued previously, namely that he was not the correct Hogan FRIC was seeking and that FRIC did not produce sufficient evidence to properly register the judgment in Will County. The court entered two orders on February 14, 2020—a revival judgment order and an order Hogan’s counsel drafted which stated that the motion to revive judgment was granted “against a William J. Hogan, but not necessarily the William J. Hogan who appears today in this matter.” The docket entry for that day stated that “Defendant William Hogan (different defendant with same name)” was present in court that day.

¶ 8 On September 28, 2022, FRIC initiated non-wage garnishment proceedings against PNC Bank. PNC’s answer revealed that it was in possession of \$4,117.14 belonging to Hogan. FRIC served the notice of non-wage garnishment to Hogan on October 12, 2022.

¶ 9 The court entered a judgment and turnover order against PNC on November 7, 2022. The same day, Hogan filed an emergency motion to claim exemption. He later moved to vacate the garnishment turnover order. In the motion to vacate, Hogan argued that the February 14, 2020, order precluded further action against him, until FRIC proved he was the correct Hogan it sought. FRIC argued that the order in no way stated Hogan was not the correct defendant and that the burden of proof was on Hogan himself to prove he was not the debtor. The court denied Hogan’s motion to vacate the turnover order and his motion to reconsider. Hogan timely appealed.

¶ 10

II. ANALYSIS

¶ 11 On appeal, Hogan raises two arguments: (1) the court erred in denying his motion to vacate the turnover order because it already established there was uncertainty regarding whether he was the proper judgment debtor, and (2) the court failed to comply with Illinois Supreme Court Rule 280, which deprived him of the protections afforded by it. Ill. S. Ct. R. 280 (eff. Oct. 1, 2018).

¶ 12 A. Identity

¶ 13 Hogan first argues that FRIC failed to provide any proof of a contract or debt in the Will County matter. However, there is no requirement that FRIC do so in the manner Hogan describes. To enroll the judgment in Will County, FRIC was only required to file the Sangamon County judgment with the Will County circuit clerk. 735 ILCS 5/12-106 (West 2010) (“Upon the filing in the office of the clerk of any circuit court in any county in this State of a transcript of a judgment entered in any other county of this State, enforcement may be had thereon in that county, in like manner as in the county where originally entered.”). There is no requirement that the entire Sangamon County court file be filed in Will County, nor is there a requirement that FRIC reprove or relitigate its case when registering the judgment in a different county. See *id.*

¶ 14 The certified docket entry of the default judgment entered against Hogan in Sangamon County that FRIC filed in Will County sufficiently enrolled the Sangamon County case in Will County. To enroll the judgment, FRIC needed to file a “transcript of judgment” in Will County. 735 ILCS 5/12-106 (West 2010). Further, Illinois Supreme Court Rule 272 provides that “[i]f no such signed written judgment is to be filed, the judge or clerk shall forthwith make a notation of judgment and enter the judgment of record promptly, and the judgment is entered at the time it is entered of record.” Ill. S. Ct. R. 272 (eff. Jan. 1, 2018). Thus, if a written judgment order was not entered, the minute order or docket entry will suffice. See *e.g., id.; Drulard v. Country*

Companies, 99 Ill. App. 3d 1031, 1033-34 (1981) (finding that the minute order entered in a New Jersey case was a sufficient “judgment of record” as no separate order was filed); *Waukegan Hospitality Group, LLC v. Stretch's Sports Bar & Grill Corp.*, 2022 IL App (2d) 210179, ¶ 10 (docket entry was sufficient when no written judgment was entered for the purposes of timing of filing notice of appeal); *Berzana v. Mezyk*, 86 Ill. App. 3d 824, 826-27 (1980) (“We, therefore, conclude that judgments entered in the minute book in the Municipal Department of the circuit court of Cook County are ‘entered of record’ for purposes of Rule 272.”). In this case, the docket entry was filed, and no other record was required to register the judgment in Will County. Hogan’s argument that FRIC must once again prove its case in Will County when it already obtained a judgment in Sangamon County is therefore without merit.

¶ 15 Regarding the court’s alleged uncertainty that this William J. Hogan is the correct debtor, the record does not reflect what Hogan asserts—that the court believed he was not the judgment debtor. The language in the revival judgment order that it was entered against a William J. Hogan but “not necessarily” the William J. Hogan that appeared in court does not absolve Hogan of liability, does not place a requirement on FRIC to prove that he is indeed the correct debtor, and does not unequivocally state that the Hogan involved in this matter is not the debtor. While Hogan argues that his position is supported by the docket entry that states that “Defendant William Hogan (Different defendant with same name)” was present, it is well established that a docket entry does not control when a written order is also filed. See *First National Bank of Sullivan v. Bernius*, 127 Ill. App. 3d 193, 196 (1984) (finding a docket order does not control over the ultimate written order). Here, the docket entry, which identifies Hogan as a different defendant, conflicts with the written order, which indicates that the Hogan before it could indeed be the defendant named. The written order controls, thus there is nothing in the record that leads

this court to the conclusion that the circuit court eliminated the possibility of Hogan as the correct defendant. See *id.*

¶ 16 Moreover, nothing in the court documents indicate, as Hogan argues, that the circuit court placed any requirement on FRIC to prove Hogan was the correct defendant before continuing proceedings against him. If the court wished to require FRIC to provide additional evidence to prove Hogan was indeed the correct debtor, it would have included the requirement in an order. It did not; therefore, we cannot place that requirement on FRIC now.

¶ 17 Hogan also argues FRIC bears the burden to prove that he is the correct debtor in this action. He contends that his claim he was not the correct defendant created an additional obligation on FRIC to prove that he was. In general, identity of names raises a presumption that the person named and referred to in the previous record is one and the same. See *Clifford v. Pioneer Fire-Proofing Co.*, 232 Ill. 150, 154 (1907); *Filkins v. O'Sullivan*, 79 Ill. 524, 525 (1875); see also *People v. Davis*, 95 Ill. 2d 1, 31 (1983) (“We adopt the general rule that identity of name gives rise to a rebuttable presumption of identity of person”); *Bell v. Bankers Life & Casualty Co.*, 327 Ill. App. 321, 329-30 (1945) (“in the absence of evidence to the contrary identity of name raises the presumption of identity of person”). The records of Sangamon County clearly show that the person who FRIC sued and received a default judgment against bore the name of William J. Hogan. This judgment, in the absence of any evidence to the contrary, establishes that the William J. Hogan in said record is the same William J. Hogan who appeared in court in Will County.

¶ 18 Of course, this presumption is rebuttable, and Hogan may introduce evidence to prove that he is not the correct debtor. See *Diederich v. Walters*, 65 Ill. 2d 95, 100 (1976). However, Hogan did not offer any evidence to rebut this presumption of identity and did nothing to prove

that the debtor was not the same individual that appeared in court. Emails in the record indicate that FRIC asked that Hogan provide it with his social security number to show that he was not the correct debtor, and Hogan's attorney refused, claiming that it was FRIC's responsibility to prove he was the correct Hogan. It is Hogan's burden to rebut the presumption of identity by producing information to establish that he was the incorrect debtor. *Id.* In view of Hogan's failure to produce evidence that would rebut the presumption of identity, we may infer that if such evidence existed, he would have produced it. See *Bell*, 327 Ill. App. at 330. Because he did not, the circuit court did not err in entering judgment against him.

¶ 19 B. Illinois Supreme Court Rule 280

¶ 20 Regarding Hogan's second argument, that the court failed to require compliance with Illinois Supreme Court Rule 280, the rule sets forth certain procedural rules for collection matters. Ill. S. Ct. R. 280 (eff. Oct. 1, 2018). Hogan argues the court erred in not requiring FRIC to comply with these rules. Specifically, Hogan contends the court did not require FRIC to provide the form affidavit that must accompany a complaint for a debt buyer's collection action. *Id.*

¶ 21 The proceedings in this matter began in 2003 in Sangamon County and began again in Will County in 2011, with wage garnishment proceedings first being filed in 2015. Rule 280 did not become effective until 2018. *Id.* Thus, any requirement under the rule for initiating a collection case against a debtor does not apply to this case, as it began well before those requirements existed. Furthermore, Hogan never raised this argument or these shortcomings in response to FRIC's pleadings in the circuit court. See *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) ("It is well settled that issues not raised in the trial court are deemed waived and

may not be raised for the first time on appeal.”). Accordingly, any argument that Hogan may have wished to raise regarding Illinois Supreme Court Rule 280 is waived.

¶ 22

III. CONCLUSION

¶ 23

The judgment of the circuit court of Will County is affirmed.

¶ 24

Affirmed.