

2014 IL App (1st) 123445-U
No. 1-12-3445-U
Order Filed June 13, 2014

SIXTH DIVISION

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

THE PEOPLE OF THE STATE OF ILLINOIS)	Appeal from the Circuit Court
<i>ex rel.</i> KUROUSH KHAJEHOSSEINI,)	of Cook County.
)	
Plaintiff-Appellant,)	
)	No. 12 CH 26062
v.)	
)	
KLUEVER & PLATT, LLC,)	
)	Honorable
Defendant-Appellee.)	LeRoy K. Martin,
)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *HELD:* The dismissal of the plaintiff's complaint was proper where this court determined that section 2.03(5) of the Illinois Credit Collection Act's exemption of licensed attorneys from the requirements of the Act included law firms. Since the plaintiff failed to file a timely appeal from the denial of his request for a temporary restraining order, the issue could not be raised in the present appeal. The circuit court's denial of the plaintiff's motion to reconsider the dismissal of the complaint was not an abuse of discretion where the plaintiff's argument was raised for the first time in the motion for reconsideration, and the motion lacked merit. The plaintiff's failure to support his argument with relevant authority forfeited review of the circuit court's order imposing sanctions; in any event, no abuse of discretion occurred where the plaintiff's arguments were contradicted by the record.

¶ 2 The plaintiff, Kuroush Khajehhosseini ¹(attorney Hosseini), appeals the dismissal of his complaint against the defendant, Kluever & Platt, LLC, with prejudice. On appeal, the plaintiff contends that: (1) the circuit court erred when it denied the plaintiff's motion for a temporary restraining order; (2) dismissal of the complaint was precluded by the existence of a genuine issue of material fact; (3) the circuit court erred when it denied the plaintiff's motion for reconsideration; and (4) the circuit court erred when it sanctioned the plaintiff pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994).

¶ 3 In section 1a of the Illinois Collection Agency Act (the Act) (225 ILCS 425/1a (West 2012)), the legislature declared the practice as a collection agency "to be a matter of public interest and concern that the collection agency profession merit and receive the confidence of the public and that only qualified entities be permitted to practice as a collection agency in the State of Illinois." 225 ILCS 425/1a (West 2012). The legislature enacted a registration requirement for persons or legal entities seeking to engage in the practice of debt collection. 225 ILCS 425/4 (West 2012). The legislature further determined that the practice of debt collection without the license required under the Act constituted a public nuisance and caused irreparable harm to the public and allowed individuals to maintain an action in the

¹ Also known as Cyrus K. Hosseini.

name of the People of the State of Illinois for injunctive relief against a person or entity not licensed under the Act. 225 ILCS 425/14a (West 2012).

¶ 4 On July 11, 2012, attorney Hosseini, on behalf of the People of the State of Illinois, filed a complaint alleging that the defendant violated the Act by engaging in debt collection without the license required by the Act. 225 ILCS 425/4 (West 2012). The complaint alleged that since 2001, the defendant had filed a minimum of 3,700 debt-collection lawsuits in Cook County and other counties in Illinois. The complaint further alleged that the defendant was not registered under Illinois Supreme Court Rule 721 (eff. July 1, 2003) during the time it engaged in debt collection.² The plaintiff sought to permanently enjoin the defendant from engaging in debt collection and to require the defendant to pay the costs of prosecuting the complaint, including reasonable attorney fees. The plaintiff also filed a verified motion for a temporary restraining order (TRO) and/or a preliminary injunction against the defendant.

¶ 5 On July 16, 2012, the circuit court denied the motion for a TRO finding that the defendant was a law firm, and the Act provided an exemption from its requirements to lawyers. 225 ILCS 425/2.03(5) (West 2012). The court further found that the plaintiff failed to show that a preliminary injunction should issue even if the defendant had not registered as an entity under Rule 721.³ On July 30, 2012, the plaintiff's motion for reconsideration of the July 16, 2012 order was denied.

¶ 6 The defendant filed a motion to dismiss the complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(9) (West 2012)) and for

²Rule 721 provides the requirements for law firms to operate as limited liability companies.

³In *Ford Motor Credit v. Sperry*, 214 Ill. 2d 371 (2005), our supreme court held that failing to register under Rule 721 did "not lead to the conclusion that the lawyers of the unregistered firm lacked either the authority or the competence to practice law." *Sperry*, 214 Ill. 2d at 387.

sanctions pursuant to Rule 137. The plaintiff moved to strike the defendant's motion on the ground that the motion to dismiss was not verified.

¶ 7 On August 22, 2012, the circuit court heard arguments on the defendant's motion to dismiss and the plaintiff's motion to strike. The court entered an order finding that the defendant was not required to comply with the registration requirement of the Act because it was exempt from the Act and denying the plaintiff's motion to strike the motion to dismiss. On August 28, 2012, the defendant filed a motion to modify the August 22, 2012, order, to reflect the circuit court's ruling on the motion to dismiss. On October 19, 2012, the circuit court entered an order conforming the August 22, 2012, written order to its ruling on that date dismissing the complaint with prejudice. The court denied the plaintiff's motion to reconsider of the dismissal of his complaint. The court found that there was a basis to impose Rule 137 sanctions against the plaintiff and ordered the plaintiff to pay \$500 to the defendant within 14 days of the order.

¶ 8 The plaintiff filed a notice of appeal, and the defendant filed a motion to dismiss. We ordered the defendant's motion taken with the case.

¶ 9 ANALYSIS

¶ 10 I. Temporary Restraining Order

¶ 11 The plaintiff contends that the circuit court erred when it denied his motion for a TRO. We do not reach the merits of this issue as explained below.

¶ 12 The appeal of an order denying a TRO is an interlocutory appeal as of right pursuant to Illinois Supreme Court Rule 307(a) (eff. Feb. 26, 2010). Rule 307(d) provides a process for the quick review of the granting or denial of a TRO in light of the short duration of a TRO, either due to expiration by its own terms or by its replacement with a preliminary injunction.

Bradford v. Wynstone Property Owners' Ass'n, 355 Ill. App. 3d 736, 740 (2005). Rule 307(d)(1) requires that the notice of interlocutory appeal be filed within two days of the entry of the order denying the motion. Ill. S. Ct. R. 307(d)(1) (eff. Feb. 26, 2010).

¶ 13 The circuit court denied the plaintiff's motion for a TRO on July 16, 2012. The plaintiff did file a motion for reconsideration, but the filing of such a motion does not extend the time for filing an interlocutory appeal. *Bradford*, 355 Ill. App. 3d at 739. In any event, the motion to reconsider was denied on July 30, 2012, and the plaintiff did not file a notice of appeal until November 15, 2012. "The failure to timely appeal from a trial court's order disposing of a motion to grant, deny, modify, dissolve, or refuse to dissolve a TRO renders that order the law of the case from which a later appeal cannot be taken." *Bradford*, 355 Ill. App. 3d at 739.

¶ 14 Since the plaintiff failed to timely appeal the denial of his motion for TRO, the circuit court's denial of the TRO became the law of the case and not subject to review in this appeal. *Bradford*, 355 Ill. App. 3d at 740.

¶ 15 II. Dismissal of the Complaint

¶ 16 The plaintiff contends that the circuit court erred when it dismissed the complaint. He maintains that whether the defendant was exempt from the licensing requirements of the Act presented a genuine issue of material fact precluding the dismissal of the complaint.

¶ 17 A. Standards of Review

¶ 18 This court's review of a dismissal under section 2-619 of the Code is *de novo*. *Schrager v. Bailey*, 2012 IL App (1st) 111943, ¶ 16. Our resolution of this issue requires that we construe the pertinent portions of the Act. Since the construction of a statute is a question of

law, our review is *de novo*. *In re Application of the County Treasurer & ex officio County Collector of Lake County*, 403 Ill. App. 3d 985, 990 (2010)

¶ 19 B. Discussion

¶ 20 Section 2.03 provides that the Act does not apply to "persons whose collection activities are confined to and are directly related to the operation of a business other than that of a collection agency, and specifically does not include the following: *** [l]icensed attorneys at law;" 225 ILCS 425/2.03 (West 2012). The plaintiff argues that the Act exempts only licensed attorneys, not law firms, from the registration requirement.

¶ 21 Our main objective in construing a statute is to ascertain and give effect to the legislative intent. *In re Application of the County Treasurer*, 403 Ill. App. 3d at 990. "Where the language is clear and unambiguous, the statute must be given its plain, ordinary, and popularly understood meaning without resort to further aids of statutory construction." *In re Application of the County Treasurer*, 403 Ill. App. 3d at 990.

¶ 22 The plaintiff argues that the plain language of the section 2.03 exempts only licensed attorneys, not their law firms. However, " 'where a plain or literal reading of a statute produces absurd results, the literal reading should yield.' " *Village of Ringwood v. Foster*, 405 Ill. App. 3d 61, 82 (2010) (quoting *People v. Hanna*, 207 Ill. 2d 486, 498 (2003)).

¶ 23 A "law firm" is defined as "[a]n association of lawyers who practice law together, usu. sharing clients and profits, in a business organized traditionally as a partnership but often today as either a professional corporation or a limited liability company." Black's Law Dictionary at 901 (8th ed. 2004). A law firm's practice of law on behalf of its clients is performed by the licensed attorneys who are members of or are employed by the firm. It

would be absurd to construe section 2.03 of the Act as exempting licensed attorneys but not the law firms of which they are members or employees.

¶ 24 Our construction of section 2.03 of the Act finds support in this court's recent decision in *Gibbs v. Blitt & Gaines, P.C.*, 2014 IL App (1st) 123681. In that case, the plaintiff alleged that the defendant law firm violated the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 *et seq.* (2006)) by violating the Act. The circuit court dismissed the claim finding that the law firm was exempt from the requirements of the Act. On appeal this court agreed. Citing to section 2.03(5) of the Act exempting licensed attorneys from the requirements of the Act, this court stated as follows:

"Blitt & Gaines is a law firm comprised of licensed attorneys who file suits on behalf of collection agencies. As such, we find it exempt from the requirements of the Illinois Act pursuant to the above provision." *Gibbs*, 2014 IL App (1st) 123681, ¶ 15.

¶ 25 We conclude that section 2.03(5)'s exemption of licensed attorneys from the requirements of the Act encompasses the law firms of which they are members or employees. Therefore, the dismissal of the complaint for injunctive relief was proper.

¶ 26 **III. Motion for Reconsideration**

¶ 27 The plaintiff contends that the circuit court erred when it denied his motion to reconsider the dismissal of the complaint. He maintains that in granting the defendant's motion to dismiss, the court misapplied existing law.

¶ 28 **A. Standard of Review**

¶ 29 Where a motion to reconsider is based only on the allegation that the circuit court misapplied existing law, the reviewing court applies the *de novo* standard of review.

Compton v. Country Mutual Insurance Co., 382 Ill. App. 3d 323, 330 (2008). "[W]here the denial of a motion to reconsider is based on new matters, such as additional facts or new arguments or legal theories that were not presented during the course of the proceedings leading to the issuance of the order being challenged, the abuse of discretion standard applies." *Compton*, 382 Ill. App. 3d at 330. As explained below, the abuse of discretion standard of review applies to this issue.

¶ 30 B. Discussion

¶ 31 The plaintiff argues that the grounds for the dismissal did not appear on the face of the complaint, and therefore, the motion to dismiss must be supported by an affidavit. 735 ILCS 2-619(a) (West 2012). Since the defendant failed to support its allegation there were duly licensed attorneys working under its name by an affidavit, the plaintiff maintains that the circuit court erred when it denied his motion to reconsider.

¶ 32 "The purpose of a motion to reconsider is to bring to a court's attention: (1) newly discovered evidence; (2) changes in the law; or (3) errors in the court's previous application of existing law." *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 280 (2009). A party forfeits legal theories and factual arguments by waiting to raise them for the first time in a motion to reconsider. *River Plaza Homeowner's*, 389 Ill. App. 3d at 280. In this case, the plaintiff's motion to strike raised only the defendant's failure to verify the motion to dismiss. Prior to the motion for reconsideration, he failed to argue that the motion to dismiss should be denied for lack of supporting affidavits. Therefore, the plaintiff forfeited this argument.

¶ 33 Even in the absence of forfeiture, the plaintiff's motion to reconsider was properly denied. Contrary to the plaintiff's assertion, whether the Act exempts law firms requires construction

of the Act and therefore presents a question of law, not of fact. *In re Application of the County Treasurer*, 403 Ill. App. 3d at 990. Nonetheless, the plaintiff maintains that there was no evidence in the record that the defendant was a law firm or that it employed attorneys. The record belies that assertion. In response to the complaint, the defendant, a limited liability company, represented itself in these proceedings. See *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 17 (a corporation must be represented by counsel in legal proceedings). The October 19, 2012, order indicates that it was prepared by Kluever & Pratt, LLC, "Atty. for: KLUEVER [&] PRATT, LLC." While another law firm also filed an appearance as co-counsel for the defendant, the plaintiff never objected to or challenged the defendant on the grounds that it was serving as its own attorney in this case. Moreover, in the July 16, 2012, order denying the plaintiff's motion for a TRO, the circuit court specifically found that the defendant was a law firm. As to employing attorneys, the plaintiff ignores the fact that, by definition, a law firm cannot conduct its legal activities without licensed attorneys. Even viewed in the light most favorable to the plaintiff, the record in this case clearly established that the defendant was a law firm employing licensed attorneys.

¶ 34 We conclude that the plaintiff forfeited the argument that the denial of his motion to reconsider was error. In any event, since the record clearly established that the defendant was a law firm, employing licensed attorneys, the motion to reconsider the dismissal of the complaint was not an abuse of discretion.

¶ 35 IV. Imposition of Sanctions

¶ 36 The plaintiff contends that the circuit court erred in finding his motion to reconsider contained arguments which were not well-founded in fact, and imposing a \$500 sanction.

¶ 37 A. Standard of Review

¶ 38 The applicable standard of review for the grant or denial of a motion for sanctions is abuse of discretion. *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 963 (2001).

¶ 39 B. Discussion

¶ 40 The plaintiff maintains that the circuit court abused its discretion when it ruled that the plaintiff's motion for reconsideration contained arguments not well grounded in fact and ordered him to pay \$500 to the defendant. The plaintiff forfeited our review of the alleged error.

¶ 41 Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), requires that a party support its argument with citations to authority. The plaintiff cites a case for the standard of review but did not otherwise support his argument that the circuit court abused its discretion in sanctioning him. In the absence of relevant authority, his argument is forfeited. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011).

¶ 42 In any event, the circuit court's imposition of the \$500 sanction was not an abuse of discretion. The plaintiff's arguments in seeking reconsideration, such as the complaint had not been dismissed, the defendant was not a law firm and that the facts set forth in the plaintiff's request to admit were admitted in spite of the fact that the complaint had been dismissed, were contradicted by the record and could not have been made in good faith.

¶ 43 In light of our decision, we need not address the defendant's motion to dismiss this appeal. Accordingly, the motion to dismiss is denied as moot.

¶ 44 CONCLUSION

¶ 45 The judgment of the circuit court is affirmed; motion to dismiss denied.

¶ 46 Affirmed; motion to dismiss denied.