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Wage rage: The argument for why confirmation is unnecessary to attach wages with a citation to discover assets after obtaining a judgment by confession

By Michael G. Cortina

"If you call a tail a leg, how many legs has a dog? Five? No, calling a tail a leg don't make it a leg."

—Abraham Lincoln

Once a creditor obtains a judgment by confession, that judgment is immediately enforceable with one exception—wage deductions.¹ In order to garnish wages under the wage deduction statute,² the judgment creditor must first issue a summons to confirm the judgment by confession, serve it, and have the judgment confirmed.³ The question arises, then, as to what should happen if a judgment creditor issues a citation to discover assets ("CDA") to the debtor's employer and finds wages that could be used to satisfy the judgment.⁴ Does the creditor have to confirm the judgment by confession now that wages have been discovered? This article argues that confirmation is not necessary if wages are discovered using a CDA but is required if a wage deduction is used.

The confusion stems from the Supplementary Proceedings statute, which states,

If the court determines that any property held by a third party respondent is wages pursuant to Section 12-801 [Wage Deduction statute], 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 and all other remedies allowed plaintiff and defendant pursuant to Part 8 of Article 12 of this Act.⁵

Some interpret k-5 to mean that a CDA that discovers wages automatically transforms the CDA into a wage deduction proceeding. This interpretation is supported by the statute's phrase "[i]f the court determines that any property held by a third party respondent is wages ..., the court shall proceed as if a wage deduction proceeding had been filed" For simplicity sake, this will be referred to as the "Transformative Argument." This interpretation, however, requires a tortured reading of the statute and would result in a senseless outcome.

The "Transformative Argument," if taken to its logical conclusion, would lead to an absurd result if a judgment by confession were at issue. Under this argument, if wages were discovered by a CDA, the creditor would be required to confirm the judgment by confession prior to engaging in the CDA-turned-wage deduction because wage deductions require confirmation of judgments by confession before being able to be utilized.⁶ That means that the creditor would have to dismiss the CDA, issue and serve the summons to confirm the judgment by confession, give the debtor a trial *do novo* and only then obtain the order for the attachment of wages. Because of the dismissal, the creditor would lose any priority it had when it first issued the CDA and all other collection proceedings

would have to come to a halt because the trial *de novo* would turn what was a final judgment into a non-final on-going proceeding. This could not be what was envisioned when paragraph k-5 was added to the Supplementary Proceedings statute.

If the legislature had intended to require judgment creditors to confirm confessed judgments prior to the issuance of CDAs, they would have done so. The Transformative Argument simply makes no sense.

The better and more rational reading of paragraph k-5 is the "Procedural Argument." This argument is simply that if a CDA is issued and wages are discovered, the *procedure* that the court should follow in order to complete the citation process is the *procedure* set forth in the wage deduction statute. Paragraph k-5 is not a substantive change that turns a CDA into a wage deduction, it is simply giving courts the *procedure* to follow if wages are discovered during the supplementary proceedings. Aiding this reading is the specific language of paragraph k-5 that states "the court shall *proceed as if* a wage deduction proceeding had been filed and *proceed* to enter such necessary and proper orders" Paragraph k-5 does not state that a CDA becomes a wage deduction proceeding, it merely states the procedure to complete the CDA.

In addition, courts have held that confirmation of a confessed judgment is a prerequisite for the issuance of a summons for a wage deduction,⁸ but no such prerequisite exists for the issuance of a CDA. This means

that before a wage deduction proceeding can begin and a wage deduction summons be issued, confirmation must occur. The fact that a CDA has already been issued and discovered wages as assets of the judgment debtor indicates that the legislature did not intend for judgments to be confirmed prior to the issuance of a CDA because of the simple fact that the CDA has already been issued and served. Wage deductions and CDAs are just not the same and the idea that a CDA is turned into a statutory wage deduction is an illogical one.

The history of the CDA and its interrelation with the wage deduction statute also lends credence to the Procedural Argument. The CDA statute was first enacted by the legislature in 1941.⁹ Its first use, however, was merely to discover assets and the statute was interpreted not to give the court any power to require any discovered assets to be turned over to the judgment creditor. In 1955, the legislature amended the CDA statute and it became much more effective.¹⁰ The wage deduction statute, on the other hand, was created in 1961, in order to create a distinction between garnishments and wage deductions.¹¹ While these three statutes serve different and discreet purposes, they are not meant to be the exclusive means to be utilized for the attachment of certain assets.

In *Kauck v. Matthews*,¹² the question at issue was whether a CDA could be used to obtain a judgment debtor's wages. The debtor argued that wages could only be obtained by adhering to the wage deduction statute, and since the judgment creditor used a CDA, not a wage deduction, that wages could not be attached. The court held that a CDA could attach wages, but what makes this even more important is the fact that *Kauck* was decided twenty years after the wage deduction statute came into effect. Until *Kauck*, there was no clear guidance or ruling that a CDA could be used to attach a debtor's wages.

After *Kauck*, however, there was no procedure on how a court was to act if a CDA discovered wages. Was the debtor entitled to limit the judgment creditor to only 15%

of his wages, as the wage deduction statute dictates, or does a CDA not have this limitation because it is not a proceeding under the wage deduction statute? Or, if wages are discovered, can the creditor compel the employer to appear in court to answer questions under oath, or is the creditor limited to only receiving a written response to wage deduction interrogatories? These questions and others relating to the procedures to be followed by a CDA that discovers wages remained until the legislature amended the CDA statute to add paragraph k-5.

Paragraph k-5 came into existence in 2008. This paragraph gives courts a clear procedure to follow when a CDA seeks to attach wages by simply stating that the court "shall proceed as if a wage deduction proceeding had been filed."¹³ It further states that the court is to grant the exemptions and grant both parties all of the remedies allowed under the wage deduction statute.¹⁴ If the legislature had intended for CDAs that discovered wages to require a summons to confirm a judgment by confession, they would have put that language into paragraph k-5. As the Illinois Supreme Court has stated, "where the language of a statute plainly reveals its intent, there is no need for this court to look further and that in applying the plain language of a statute, it is not this court's function to search for any subtle or not readily apparent intention of the legislature."¹⁵ Nothing in paragraph k-5 indicates that the legislature's intent was to require a summons to confirm if a CDA discovered wages and courts should not look for hidden intentions or subtle hints when the plain language is clear.

Finally, the only collection vehicle that requires the confirmation of a judgment by confession is a wage deduction.¹⁶ Wage deductions, garnishments and CDAs are all creatures of statute that are unknown to the common law. All three of these statutes, therefore, are in derogation of the common law and must be strictly construed.¹⁷ Further, because the CDA statute is in derogation of the common law, a court "may not presume that the legislature intended anything

other than that which the statute expressly states."¹⁸ Because the legislature did not specifically state that CDAs become wage deductions if wages are found, and because the legislature did not specifically require that CDAs that discover wages must confirm a judgment by confession before proceeding, it is error to interpret paragraph k-5 as requiring such confirmation.

Some judgment debtors have argued that when a CDA discovers wages that it is transformed from a CDA to a wage deduction. Just because they call the CDA a wage deduction does not magically change it into something it is not. Both are specific statutory procedures that must be strictly construed, and nothing in either statute specifically states that any type of transformation occurs.

Calling a CDA a wage deduction don't make it a wage deduction. ■

1. Michael G. Cortina, *Confessions of an Illinois Judgment*, Ill. B.J., vol. 98, no. 11, November, 2010.

2. 735 ILCS 5/12-801, et seq.

3. 735 ILCS 5/12-813.

4. This is a relatively rare situation because judgments by confession, in Illinois, can only be obtained for non-consumer debts (735 ILCS 5/2-1301(c)).

5. 735 ILCS 5/2-1402 (k-5).

6. 735 ILCS 5/12-813.

7. 735 ILCS 5/2-1402(k-5).

8. *City-Wide Realty Co. v. Fryer*, 70 Ill.App.3d 649, 651 (1st Dist. 1979).

9. *Kauck v. Matthews*, 100 Ill.App.3d 107, 108 (2nd Dist. 1981)(providing a history of the citation to discover statute and how it relates to wage deduction proceedings).

10. *Id.*

11. *Id.*

12. *Id.*

13. 735 ILCS 5/2-1402(k-5).

14. *Id.*

15. *Ready v. United/Goedecke Serv Inc.*, 232 Ill.2d 369, 401 (2008).

16. *Valley Pontiac-Cadillac-Jeep-Eagle, Inc. v. Thornton Pontiac Cadillac, Inc.*, 187 Ill. App. 3d 699 (3d Dist. 1989).

17. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 69 (2004)(noting that statutes in derogation of the common law must be strictly construed).

18. *Gallagher v. Union Square Condominium Homeowner's Association*, 397 Ill. App. 3d 1037, 1044 (2nd Dist. 2010)(citing, *Adams v. Northern Illinois Gas Co.*).

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