

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LUDMYLA SKORYCHENKO CARLBORG,

Plaintiff,

v.

ERNEST TOMPKINS,

Defendant.

ORDER

10-cv-187-bbc

On November 3, 2010, I granted plaintiff Ludmyla Skorychenko Carlborg's motion for summary judgment in this case, finding that defendant Ernest Tompkins failed to maintain plaintiff at an income of at least 125% of the federal poverty guidelines in violation of an I-864 affidavit of support. On November 5, 2010, the clerk of court entered judgment in favor of plaintiff in the amount of \$6,320.96. Now plaintiff has filed a letter with the court stating that she would like to garnish \$4,000 that defendant received in state and federal tax refunds in order to satisfy the judgment.

I will deny plaintiff's motion to initiate garnishment proceedings. Garnishment is a proceeding against a third party that is indebted to the defendant or has property belonging to the defendant in its possession. Wis. Stat. § 812.01. For example, if plaintiff averred that defendant had \$4,000 in a particular bank account, it might be possible to initiate

garnishment proceedings against the bank to recover the funds. In her motion, plaintiff alleges only that defendant has \$4,000 from tax refunds. She has not identified any third party from which to recover the money.

It may be that plaintiff is seeking a writ of execution from the court, since she has said that she wishes to “execute” the judgment. Under Fed. R. Civ. P. 69, this court must follow the execution procedures of Wisconsin. Under Wisconsin law, money judgments may be enforced by execution, and an execution of judgment “may issue at any time within 5 years after the rendition of the judgment.” Wis. Stat. §§ 815.02, 815.04(1)(a). Under a writ of execution, a judgment debtor, such as defendant, may be ordered to turn over money or personal property to satisfy a judgment, or if sufficient personal property cannot be found, a lien may be placed on the debtor’s real property, subject to certain exceptions. Id. §§ 815.05, 815.18, 815.20; see also Zahran v. Frankenmuth Mutual Insurance Co., 172 F.3d 54, 1998 WL 975072, *3 (7th Cir. 1998) (unpublished) (discussing Wisconsin’s writ of execution statute).

Before I will consider whether a writ of execution is appropriate, plaintiff and defendant must provide more information to the court. Plaintiff should submit an affidavit stating whether defendant has paid her any amount of the judgment and the basis for her assertion that defendant has \$4,000 in his possession. Defendant should submit an affidavit stating whether he has paid any amount on the judgment, whether he is receiving any income and whether he has cash or property in his possession or in any account that can be

used to satisfy the judgment. If defendant believes that any cash or property he has is exempt from garnishment or execution, he should explain why he believes it is exempt.

ORDER

IT IS ORDERED that

1. Plaintiff Ludmyla Carlborg's motion to initiate garnishment proceedings against defendant Ernest Tompkins's tax refund, dkt. #43, is DENIED.

2. Plaintiff may have until May 20, 2011 to inform the court whether she is seeking a writ of execution under Wis. Stat. § 815.05. If plaintiff is seeking a writ of execution, she must submit an affidavit stating whether defendant has paid her any amount of the judgment and the basis for her assertion that defendant has \$4000 in his possession.

3. Defendant may have until May 20, 2011 to inform the court whether he has paid any amount on the judgment he owes plaintiff, whether he has cash or property in his possession or any account that can be used to satisfy the judgment and whether he believes that any of his cash or property is exempt from garnishment or execution.

Entered this 11th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge