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Office of the Attorney General
State of Iowa

Opinion No. 80-7-16

July 17, 1980

COUNTIES AND COUNTY OFFICERS: County Clerk; Satisfaction of judgments. Sections 624.20 and 624.37, The Code 1979. A clerk of court is not required to, but may refuse to enter a satisfaction of judgment when the judgment debtor has paid the judgment in full but the judgment creditor's whereabouts are unknown and the judgment is not acknowledged. If the clerk of court refuses to enter a memorandum of satisfaction, the judgment debtor may by motion attempt to have the court rendering the original judgment order the clerk to enter such a memorandum. (Swanson to Rush, State Senator, 7/17/80)

Honorable Bob Rush
State Senator

Dear Senator Rush:

You have requested the opinion of the Attorney General regarding the duty of a clerk of court to enter a satisfaction of judgment when the judgment creditor cannot be located. The specific factual situation as stated by you is as follows:

A judgment debtor in a small claims action has paid the full amount of the judgment, together with the required interest and costs, to the Linn County Clerk of Court. The clerk has refused to enter a memorandum reflecting satisfaction of the judgment because the judgment creditor has not acknowledged the satisfaction and the judgment creditor's whereabouts are unknown. In connection with this factual situation, you have raised two questions:

- 1) Does the Clerk have the authority or a duty to enter a memorandum showing the judgment to be satisfied?
- 2) If the Clerk does not have such authority or duty, what recourse is available to the judgment debtor?

It is the opinion of this office that when faced with this situation, a clerk of court does not have an enforceable duty to enter a memorandum of satisfaction. However, the judgment debtor can, by means of Rule 256, Iowa Rules of Civil Procedure, make a motion to the court which rendered the original judgment to direct the clerk to enter a memorandum of satisfaction, and thus obtain the desired result.

As a beginning point, Sections 624.20 and 624.37, The Code 1979, govern a clerk's actions when satisfying a judgment. Those sections provide:

§ 624.20 Satisfaction of Judgment. Where a judgment is set aside or satisfied by execution or otherwise, the clerk shall at once enter a memorandum thereof on the column left for that purpose in the judgment docket.

§ 624.37 Satisfaction of Judgment—penalty. When the amount due upon judgment is paid off, or satisfied in

full, the party entitled to the proceeds thereof, or those acting for him, must acknowledge satisfaction there-of upon the record of such judgment, or by the execution of an instrument referring to it, duly acknowledged and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to do so for thirty days after having been requested in writing shall subject the delinquent party to a penalty of fifty dol-lars, to be recovered in an action therefor by the party aggrieved.

*2 When § 624.20 is read alone, it would appear that the payment of the judgment in this factual situation would require the clerk to enter a memorandum of satisfaction because the judgment has been satisfied by a tender of payment in full (the 'or otherwise' language of the statute). Section 624.37, however, seems to require more.

The affect of § 624.37 upon § 624.20 was discussed in 1977 Op. Att'y. Gen. 310. That opinion held that a judg-ment is not completely satisfied until the judgment creditor acknowledges the satisfaction of the judgment. The language of § 624.37 is mandatory, stating that 'the person entitled to the proceeds . . . must acknowledge satis-faction thereof'. (Emphasis supplied). Accordingly, when faced with a situation where the judgment creditor cannot be found, a clerk of court is justified in refusing to enter a memorandum of satisfaction.

It seems clear that the above opinion was grounded upon the fear that clerks who were forced to enter satisfac-tions without receiving acknowledgments would become liable for keeping track of the funds. Indeed, in certain situations, such fears may be justified. It therefore seems logical to extricate the clerk from such a dilemma by having the satisfaction ordered by the court.

Before discussing the recourse available to the judgment debtor, it should be pointed out that conversations with various clerks around the state have revealed that as a matter of practice, clerks often do enter a memorandum of satisfaction in this situation. The funds collected, but not acknowledged and received, are then turned over to a trust account or to a county account for unclaimed funds and judgments. It appears that Sections 624.20 and 624.37 do not require a clerk to follow this procedure, but that numerous clerks do indeed resolve the situation in this manner, and we do not wish to discourage such a commonsense resolution of the issue. The previously cited opinion of the Attorney General indicates only that a judgment is not completely satisfied until acknow-ledged. That opinion offers no guidance as to what should be done when acknowledgment is impossible, nor does it suggest that it is unlawful for a clerk to enter a satisfaction without obtaining an acknowledgment.

Having established that a clerk is authorized, but is not required to enter a memorandum of satisfaction in the situation that you have described, the judgment debtor who has tendered the judgment and attendant costs in full to the clerk does have an interest in having the judgment removed from the docket. It appears that the judgment debtor can request that the court that rendered the judgment direct the clerk of court to enter a memorandum of satisfaction.

Many states have statutory provisions relating to a court order to enter a memorandum of satisfaction. Iowa does not have such a statutory provision, but the Rules of Civil Procedure contemplate such an action. Rule 256 provides:

*3 Judgment discharged on motion. Where matter in discharge of a judgment has arisen since its rendition, the defendant or any interested person may, on motion in a summary way, have the same discharged in whole or in part, according to the circumstances.

This rule provides the judgment debtor with a vehicle for having the memorandum of satisfaction entered. The judgment debtor should prepare a motion and utilize supporting affidavits from the clerk of court showing both the payment in full and that diligent efforts have been made to contact the unavailable judgment creditor. As

provided in Rule 256, if the court is satisfied 'according to the circumstances' that a memorandum of satisfaction should be entered, the court could direct the clerk to enter the memorandum. The court could also direct the disposition of the unclaimed funds, perhaps utilizing some of the options mentioned above that are currently being used by some of the clerks of court around the state.

Various authorities support the above method as a means of resolving this problem. As a general matter, Freeman on Judgments states:

§ 1163 Compelling Satisfaction. Whenever the defendant is entitled to have a judgment discharged or satisfied of record because of its payment or performance or by reason of other facts entitling him to that relief, he may compel this to be done by an appropriate proceeding, the nature of which depending to some extent upon the facts and the statutes, if any, covering the matter. . . . A party claiming the right to have a judgment satisfied of record may have this alleged right determined upon motion to the court in which the judgment is entered, the authorities quite generally, either by virtue of statute or independent thereof, recognizing the power of a court to control its records in this way or by an equivalent rule or order to show cause.
2 Freeman on Judgments 2403 (5th ed. 1925). See also 49 C.J.S. Judgments § 581 (1947).

Iowa case law lends further support to the above general statement. The power to order the entry of a satisfaction of judgment is a part of a court's inherent power to enforce its own decrees. Dunton v. McCook, 120 Iowa 444, 94 N.W.2d 942, 944 (1903). Dunton construed previous statutory language almost identical to the present wording of Iowa Rule 256. As a part of this inherent power, a court can render an order against a clerk of court. Hornish v. Ringen Stove Co., 116 Iowa 1, 89 N.W. 95, 97 (1902).

No cases have been found in any jurisdiction where the judgment creditor has failed to claim the proceeds of a judgment that have been paid in full. The situation is similar, however, to one in which the judgment creditor wrongfully refuses to acknowledge a satisfaction of judgment and several cases deciding that issue are analogous to the present situation. In Rother v. Monahan, 60 Minn. 186, 62 N.W. 263 (1895), the court stated that while a mere tender of the amount of judgment does not extinguish a judgment lien, if the judgment creditor wrongfully refuses the tender, the judgment debtor can apply to the court to enter a satisfaction of judgment. The Minnesota court referred to a statute quite similar in language to Iowa Rule 256 in Warren v. Ward, 91 Minn. 254, 97 N.W. 886 (1904). The court ordered satisfaction of the judgment based upon a motion supported by affidavits showing that '. . . such facts and conditions exist as are tantamount to such payment'. 97 N.W. at 887. The same result has been obtained when a claimant against an estate refuses to satisfy his allowed claim. See In re Mathews Estate, 134 Neb. 607, 279 N.W. 301 (Neb. 1938).

*4 In conclusion, under the fact situation that you have outlined, Sections 624.20 and 624.37 justify, but do not require, a clerk of court's decision to refuse to enter a memorandum of satisfaction of judgment. A judgment is not completely satisfied until the judgment creditor acknowledges the satisfaction of judgment. In order to have the payment of the judgment duly noted if the clerk is unwilling to do so, the judgment debtor may move to have the memorandum of satisfaction entered on the record. The motion should be made to the court which rendered the original judgment and should be supported by affidavits or other evidence that shows both the payment of the judgment in full and that diligent efforts have been made to locate the judgment creditor. The ultimate disposition of the paid-in funds would be left to the discretion of the court.

Very truly yours,
Jon K. Swanson
Assistant Attorney General