

the circuit court's decision.

¶ 3 In this fourth appeal, the Wilsons seek relief from an order distributing the proceeds pursuant to Burkart's equitable lien. Among other contentions, the Wilsons argue that the circuit court lacked subject matter jurisdiction when it entered its previous judgment awarding Burkart an equitable lien. We agree and vacate the circuit court's order.

¶ 4 **FACTS**

¶ 5 On March 25, 2003, this court entered an order affirming in part and reversing in part a verdict reached by a jury on the Wilsons' complaint regarding the purchase of a residence. *Wilson v. Moore*, No. 5-01-0422 (2003) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). On September 30, 2004, this court addressed a second appeal brought by the Wilsons, and we affirmed the circuit court's finding that the original defendants, Paul R. Lauschke, Margi Moore, and Lauschke & Associates, did not violate the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 1996)). *Wilson v. Lauschke*, No. 5-03-0469 (2004) (unpublished order under Rule 23 (eff. July 1, 1994)). These decisions provide a description of the facts of the underlying litigation.

¶ 6 On March 9, 2005, this court issued the mandate based on its September 30, 2004, decision. Over two months later, on May 20, 2005, Burkart filed a motion to enforce and adjudicate attorney's lien, pursuant to the Attorneys Lien Act. 770 ILCS 5/1 (West 2004). In this motion, Burkart also requested the court to adjudicate in his favor an equitable lien on the underlying case's judgment proceeds. Thereafter, the circuit court acknowledged that the judgment against the original defendants had been fully satisfied and ordered that the judgment proceeds be deposited into an escrow account with the Bank of Edwardsville.

¶ 7 On April 9, 2008, the circuit court, Judge Barbara J. Crowder, entered an order holding, *inter alia*, that Burkart's attempted lien notice was ineffective to acquire a statutory attorney's lien because the lien notice involved proceeds the defendants no longer had in their

possession and was served after Burkart and the Wilsons had severed their attorney-client relationship. The court concluded, therefore, that Burkart's attempt to assert a statutory attorney's lien against the proceeds of the jury verdict had failed. Despite this conclusion, the court held that an equitable lien was created equal to 50% of the gross amount of the recovery and entered judgment in Burkart's favor.

¶ 8 On March 11, 2010, this court addressed the parties' third appeal, and we affirmed the circuit court's April 9, 2008, order denying the enforcement of a statutory lien but finding an equitable lien in favor of Burkart. *Wilson v. Burkart*, No. 5-08-0180 (2010) (unpublished order under Supreme Court Rule 23 (eff. May 30, 2008)). On September 29, 2010, the Illinois Supreme Court denied the Wilsons' petition for leave to appeal. 237 Ill. 2d 593 (2010) (table). The Illinois Supreme Court issued its mandate to the Fifth District Appellate Court on November 3, 2010.

¶ 9 On October 4, 2010, Burkart filed a motion to release the funds that had been deposited with the Bank of Edwardsville. On November 4, 2010, before this court issued its mandate affirming the appeal, the circuit court entered an order directing the Bank of Edwardsville to distribute the funds held in escrow, giving \$20,806.85 to Burkart and the remaining funds to the Wilsons. On November 10, 2010, this court's mandate was filed in the circuit court. On January 14, 2011, the circuit court denied the Wilsons' motion to reconsider its November 4, 2010, order. On February 11, 2011, the Wilsons filed a notice of appeal.

¶ 10 ANALYSIS

¶ 11 The Wilsons argue, *inter alia*, that the circuit court lacked subject matter jurisdiction to enter its April 9, 2008, order awarding Burkart an equitable lien. We agree.

¶ 12 Pursuant to the Illinois Constitution, the circuit court has, with certain limited exceptions not pertinent to this appeal, "original jurisdiction of all justiciable matters." Ill.

Const. 1970, art. VI, § 9. "Subject matter jurisdiction refers to a court's power both to adjudicate the general question involved and to grant the particular relief requested." *In re A.H.*, 195 Ill. 2d 408, 415 (2001). "Jurisdiction over the subject matter cannot be waived, nor may a party be deemed estopped to raise a claim for the lack of subject matter jurisdiction." *Gassman v. RGB Riverboat*, 329 Ill. App. 3d 224, 226 (2002). "A reviewing court has the obligation to satisfy itself of not only its own jurisdiction but also that of the lower court in the case under review." *Id.* "Subject matter jurisdiction is an issue of law that we review *de novo.*" *Id.*

¶ 13 Although the legislature has no authority to limit the circuit court's original jurisdiction to hear a justiciable matter, it may create a justiciable matter—and thereby expand the jurisdiction of the circuit court—by enacting a statute that creates rights or duties that have no counterpart in the common law or equity. *In re Estate of Gebis*, 186 Ill. 2d 188, 192 (1999). When a justiciable matter is statutorily derived, the legislature may define it in such a way as to limit or preclude the circuit court's authority. *In re A.H.*, 195 Ill. 2d at 416; *DeKing v. Urban Investment & Development Co.*, 155 Ill. App. 3d 594, 596-97 (1987). In such a case, the circuit court's power to act is controlled by statute, the circuit court is governed by the rules of limited jurisdiction, and the circuit court must proceed within the statute's strictures. *In re Estate of Gebis*, 186 Ill. 2d at 192-93. "That is, since the justiciable matter is statutory in origin, the legislature may impose nonwaivable conditions precedent to the circuit court's exercise of jurisdiction." *CPM Productions, Inc. v. Mobb Deep, Inc.*, 318 Ill. App. 3d 369, 374 (2000).

¶ 14 "While the failure to comply with such conditions may result in what many courts have deemed a 'lack of jurisdiction,' in reality the court suffers from an inability to exercise its constitutionally conferred jurisdiction." *Id.*; see also *In re C.S.*, 294 Ill. App. 3d 780, 786 (1998) (where a court in such a case fails to proceed in accordance with the strictures of the

statute, the court does not somehow lose its constitutionally conferred subject matter jurisdiction; instead, it simply proceeds in error because it lacked statutory authority). "Any action taken by the circuit court that exceeds its jurisdiction is void and may be attacked at any time." *In re Estate of Gebis*, 186 Ill. 2d at 193.

¶ 15 "The attorney's lien statute falls squarely within this exception to the circuit court's general jurisdiction and therefore the court's jurisdiction [is] limited by the language of the statute to consider only what the statute define[s] as a justiciable matter." *DeKing*, 155 Ill. App. 3d at 597. "Attorneys who do not strictly comply with the statute have no lien rights." *Id.*

¶ 16 The Attorneys Lien Act provides in pertinent part:

"Attorneys at law shall have a lien upon all claims *** which may be placed in their hands by their clients for suit or collection *** for the amount of any fee which may have been agreed upon by and between such attorneys and their clients ***. ***

To enforce such lien, such attorneys shall serve notice in writing *** upon the party against whom their clients may have such suits *** claiming such lien and stating therein the interest they have ***. Such lien shall attach to any verdict, judgment or order entered and to any money or property which may be recovered *** from and after the time of service of the notice. On petition filed by such attorneys or their clients any court of competent jurisdiction shall, on not less than 5 days' notice to the adverse party, adjudicate the rights of the parties and enforce the lien." 770 ILCS 5/1 (West 2004).

¶ 17 "Once the attorney's lien is perfected, upon petition 'any court of competent jurisdiction' may adjudicate the lien." *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 95 (2001); 770 ILCS 5/1 (West 2008). "This includes the circuit court that heard the underlying matter [citation], or the circuit court that has jurisdiction over the money

recovered [citation]." *Id.* "A petition under the Attorneys Lien Act is not a contract action against the attorney's client." *Id.* at 98. "Indeed, it is settled that, outside of the [Attorneys Lien] Act, attorneys can still sue their clients to recover for their services." *Id.*

¶ 18 Here, under the Attorneys Lien Act, the circuit court had subject matter jurisdiction to adjudicate only whether Burkart had a statutory lien and, if so, the amount of the lien and the manner of its enforcement. See *DeKing*, 155 Ill. App. 3d at 597. The circuit court and this court held that Burkart failed to comply with the Attorneys Lien Act (770 ILCS 5/1 (West 2004)) and therefore failed to perfect a statutory attorney's lien. See *Wilson v. Burkart*, No. 5-08-0180 (2010) (unpublished order pursuant to Supreme Court Rule 23 (eff. May 30, 2008)). Because Burkart failed to strictly comply with the Attorneys Lien Act, he had no lien rights. As such, the circuit court suffered from an inability to exercise its constitutionally conferred jurisdiction. See *CPM Productions, Inc.*, 318 Ill. App. 3d at 374.

¶ 19 The circuit court also lacked the authority to hear Burkart's equitable lien request, which was filed more than 30 days after final judgment in the underlying case. Indeed, Burkart cites no basis to support the circuit court's jurisdiction to hear his request for an equitable lien on the underlying judgment proceeds. See *Herlehy v. Marie V. Bistersky Trust*, 407 Ill. App. 3d 878, 899 (2010) (because movant did not file motion for attorney fees until six months after order became a final judgment, trial court lacked jurisdiction to consider the motion because it was untimely filed); *Holwell v. Zenith Electronics Corp.*, 334 Ill. App. 3d 917, 924 (2002) (holding that the circuit court did not have jurisdiction to address a petition for attorney fees on a *quantum meruit* basis filed in the case more than 30 days after final judgment was entered); *Sajdak v. Sajdak*, 224 Ill. App. 3d 481, 500 (1992) (finding that "[s]ince the claim of [the attorney] is based on his common law contractual right of *quantum meruit* without any statutory designation of a particular forum, we hold that the judge erred in denying the defendant's motion to dismiss [the attorney's] petition"). The circuit court

lacked jurisdiction to hear an untimely request for an equitable lien on the underlying proceeds of a judgment.

¶ 20 The dissent acknowledges that the circuit court lost its subject matter jurisdiction to vacate or modify the underlying judgment (*Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991)) but suggests that the court retained the inherent power to hear the cause as an "alleged claim fall[ing] within the general class of cases that the court has the inherent power to hear and determine" (*In re Luis R.*, 239 Ill. 2d 295, 301 (2010)). The dissent thereby skirts the 30-day time period requirement, which is clearly mandatory and jurisdictional. *Brewer v. National R.R. Passenger Corp.*, 165 Ill. 2d 100, 105 (1995) ("A trial court retains jurisdiction over a cause for 30 days after entry of a final order or judgment."); *Holwell*, 334 Ill. App. 3d at 922 ("In the absence of a timely filed postjudgment motion, a trial court loses jurisdiction over a case pending before it 30 days after the entry of a final judgment terminating the litigation."). Likewise, the dissent acknowledges that Burkart should have filed a new cause of action but dismisses his error as one in procedure. Yet, the Illinois Supreme Court has stated that "our rules of procedure have purpose and are to be adhered to by courts and counsel. If litigation is to have some finality, acts must be accomplished within the time prescribed by law." *People v. Wilk*, 124 Ill. 2d 93, 108 (1988).

¶ 21 Because the circuit court lacked jurisdiction to hear Burkart's request for an equitable lien on the judgment proceeds, its order entering the equitable lien in Burkart's favor was void, and the subsequent orders relying on the void order are likewise void. In light of this conclusion, we need not address the Wilsons' remaining contentions.

¶ 22 **CONCLUSION**

¶ 23 For the foregoing reasons, the April 9, 2008, order of the Madison County circuit court is vacated for want of jurisdiction.

¶ 24 Order vacated.

¶ 25 JUSTICE STEWART, dissenting:

¶ 26 I respectfully dissent from the majority's decision that the circuit court lacked subject matter jurisdiction to address Burkart's equitable lien on the judgment's proceeds.

¶ 27 This case began as a real estate dispute between the Wilsons and the original defendants over a real estate transaction. Burkart represented the Wilsons at the trial, and the circuit court entered a \$30,000 judgment in favor of the Wilsons and against the defendants on a jury's verdict. Both parties appealed, and on March 25, 2003, this court affirmed in part and reversed in part the circuit court's judgment. *Wilson v. Moore*, No. 5-01-0422 (2003) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). We remanded this case for further proceedings on the Wilsons' claim under the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 1996)). The circuit court subsequently granted a judgment in favor of the defendants on the consumer fraud count. The Wilsons again appealed the circuit court's judgment, and on September 30, 2004, this court affirmed the circuit court's judgment. *Wilson v. Lauschke*, No. 5-03-0469 (2004) (unpublished order under Rule 23 (eff. July 1, 1994)). This decision concluded the litigation between the Wilsons and the original defendants, and the \$30,000 judgment became a final judgment.

¶ 28 On May 20, 2005, Burkart filed a "Motion to Enforce and Adjudicate Attorney's Lien." This motion is the subject matter of the present appeal, and Burkart filed the motion more than 30 days after the judgment against the defendants became final. Count I of Burkart's motion asserted a statutory lien under the Attorneys Lien Act (770 ILCS 5/1 (West 2004)), and count II of the motion asserted an equitable lien. Burkart alleged in the motion that he had received a check from the defendants in the amount of the judgment plus interest,

totaling \$41,613.70. The defendants' check was made payable to Burkart's law firm and the Wilsons. Burkart further alleged in the motion that the Wilsons had rejected his proposed distribution of the proceeds and refused to endorse the check.

¶ 29 The Wilsons responded to Burkart's lien motion by filing a counterclaim alleging that Burkart committed negligence and legal malpractice during his representation. The Wilsons' counterclaim requested a judgment against Burkart in an amount in excess of \$50,000 and requested a jury trial on their counterclaim.

¶ 30 The Wilsons and Burkart then proceeded with extensive litigation in the circuit court over the course of several years that included interrogatories, requests to produce documents, depositions, the hiring of expert witnesses, motions for sanctions, motions for summary judgment, motions to bar testimony, and motions *in limine*. At some point during this litigation, the circuit court ordered the judgment proceeds to be deposited in an escrow account, and the circuit court, on the motion of the original defendants, acknowledged that they had satisfied their obligation on the underlying judgment.

¶ 31 On March 12, 2008, the circuit court entered a summary judgment in favor of Burkart on the Wilsons' negligence and malpractice counterclaim. On April 9, 2008, the circuit court entered another order finding that an equitable lien in favor of Burkart was created in the amount of 50% of the gross amount of the judgment's proceeds. The circuit court's order awarded Burkart "50% of the funds in the escrow account at the Bank (the initial check was \$41,613.70, so 50% of that is \$20,806.85)." The circuit court also denied Burkart's request for a statutory lien under the Attorneys Lien Act.

¶ 32 The Wilsons appealed the circuit court's rulings on their counterclaim and on Burkart's equitable lien, and the funds remained in the escrow account while that appeal was pending. On March 11, 2010, we affirmed the circuit court's judgment that denied the Wilsons' counterclaim and awarded Burkart 50% of the judgment's proceeds on his equitable lien. On

September 29, 2010, the supreme court denied the Wilsons' petition for leave to appeal.

¶ 33 On October 4, 2010, Burkart filed a motion in the circuit court alleging that there were no unresolved issues and that the court should direct the escrow bank to distribute the funds. The Wilsons objected to Burkart's motion for release of the funds, arguing that the supreme court's mandate had not been issued and would not be issued until November 3, 2010.

¶ 34 On November 3, 2010, the Wilsons filed a "Motion Pursuant to Rule 369 and 735 ILCS 5/2-1203." The Wilsons argued, among other things, that the circuit court lacked subject matter jurisdiction to adjudicate Burkart's equitable lien and, therefore, lacked jurisdiction to sign an order to distribute \$20,806.85 to Burkart. On November 4, 2010, the circuit court entered an order directing the escrow bank to release \$20,806.85 to Burkart. The Wilsons filed a motion to reconsider, which the circuit court denied on January 14, 2011. They now appeal.

¶ 35 The majority's decision agrees with the Wilsons that the circuit court lacked subject matter jurisdiction to adjudicate Burkart's claim for an equitable lien.¹ I disagree.

¶ 36 In *In re Luis R.*, 239 Ill. 2d 295 (2010), the supreme court recently addressed the issue of a circuit court's subject matter jurisdiction. In that case, the State filed a petition alleging that the respondent was a delinquent minor and requested that he be made a ward of the court. The respondent moved to dismiss the petition, arguing that he had reached the age of 21 and that the court was, therefore, without jurisdiction. The State, in turn, moved to prosecute the respondent under the criminal laws, but the circuit court granted the respondent's motion to dismiss.

¶ 37 Because the circuit court did not designate the basis for its decision, the supreme court

¹Although the majority decision contains an extensive analysis of the circuit court's jurisdiction to adjudicate Burkart's claim for a statutory lien, that discussion is *dicta* since the statutory lien claim was denied and Burkart did not appeal from that decision.

analyzed both the circuit court's personal jurisdiction as well as its subject matter jurisdiction. With respect to the circuit court's subject matter jurisdiction, the supreme court defined subject matter jurisdiction as a court's power " 'to hear and determine cases of the general class to which the proceeding in question belongs.' " *In re Luis R.*, 239 Ill. 2d at 300 (quoting *In re M.W.*, 232 Ill. 2d 408, 415 (2009) (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002))). The court stated: "except in the context of administrative review, an Illinois circuit court possesses subject matter jurisdiction as a matter of law over all 'justiciable matters' brought before it." *In re Luis R.*, 239 Ill. 2d at 301.

¶ 38 "Generally speaking, a 'justiciable matter' is 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' " *Id.* (quoting *Belleville Toyota, Inc.*, 199 Ill. 2d at 335). "To invoke a circuit court's subject matter jurisdiction, a petition or complaint need only 'alleg[e] the existence of a justiciable matter.' " *In re Luis R.*, 239 Ill. 2d at 301 (quoting *In re M.W.*, 232 Ill. 2d at 426). "Indeed, even a defectively stated claim is sufficient to invoke the court's subject matter jurisdiction, as '[s]ubject matter jurisdiction does not depend upon the legal sufficiency of the pleadings.' " *In re Luis R.*, 239 Ill. 2d at 301 (quoting *Belleville Toyota, Inc.*, 199 Ill. 2d at 340). "In other words, the *only* consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine. If it does, then subject matter jurisdiction is present." (Emphasis in original.) *In re Luis R.*, 239 Ill. 2d at 301.

¶ 39 The supreme court in *In re Luis R.* held that the State's petition stated a justiciable matter, and the circuit court's dismissal of the case based on the lack of subject matter jurisdiction was "in error." *Id.* at 303. The supreme court recognized that there may have been a fatal pleading defect in the petition, but "the court possessed the requisite subject

matter jurisdiction to adjudicate that petition." *Id.*

¶ 40 Likewise, in the present case, Burkart's lien motion set out a concrete controversy between himself and the Wilsons. Burkart's motion, therefore, raised a "justiciable matter" that was within the circuit court's subject matter jurisdiction as defined by the supreme court in *In re Luis R.* and in *Belleville Toyota, Inc.* Perhaps Burkart did not raise the matter in the proper way procedurally, but this defect in procedure did not defeat the circuit court's subject matter jurisdiction.

¶ 41 Two of the cases cited by the majority are based on the long-standing precedent that a circuit court loses jurisdiction 30 days after a judgment becomes final. *Herlehy v. Marie V. Bistersky Trust*, 407 Ill. App. 3d 878, 899 (2010) ("A trial court has jurisdiction over the underlying action until '30 days after entry of that final judgment [citations]; or 30 days after ruling on the last pending posttrial motion [citations].'" (quoting *F.H. Prince & Co. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 988 (1994))), and *Holwell v. Zenith Electronics Corp.*, 334 Ill. App. 3d 917, 922 (2002) ("In the absence of a timely filed postjudgment motion, a trial court loses jurisdiction over a case pending before it 30 days after the entry of a final judgment terminating the litigation.").

¶ 42 However, I believe that the majority's reliance on this general rule concerning subject matter jurisdiction is incorrect. After 30 days, the circuit court does not lose its subject matter jurisdiction over all justiciable matters. Instead, the jurisdiction that the circuit court loses is its subject matter jurisdiction to vacate or modify the underlying judgment. *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991) ("In general, a trial court loses jurisdiction to vacate or modify its judgment 30 days after entry of judgment [citations], unless a timely post-judgment motion is filed [citations].").

¶ 43 In the present case, Burkart's motion did not seek to vacate or modify the circuit court's judgment. The circuit court's judgment did not encompass any issues concerning

Burkart's equitable lien. Instead, Burkart's motion raised a new "justiciable matter." As the supreme court stated in *In re Luis R.*, in determining the circuit court's "subject matter" jurisdiction to consider Burkart's motion, "the *only* consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine." (Emphasis in original.) *In re Luis R.*, 239 Ill. 2d at 301. Perhaps Burkart should have sought an equitable lien by filing a new cause of action. However, if so, this is an error in procedure, not an error that deprived the circuit court of subject matter jurisdiction to adjudicate the issues raised. "In Illinois, because plenary jurisdiction is constitutionally vested in a unitary court, the failure of the parties or the court in a 'justiciable matter' to comply with the provisions of a statute or rule may give rise to questions of procedure, but not to questions concerning jurisdiction." *In re Marriage of Savas*, 139 Ill. App. 3d 68, 75 (1985).

¶ 44 I believe the circuit court had subject matter jurisdiction to enter the judgment that granted Burkart an equitable lien. Accordingly, I would affirm the circuit court's judgment.