2013 IL App (1st)112807-U

SIXTH DIVISION
September 27, 2013

No. 1-11-2807

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DENNIS PROSIO, Plaintiff-Appellant, v. BADGER MUTUAL INSURANCE COMPANY, an insurance corporation, JAMES PAPAS and GENERAL INSURANCE SERVICES, INC., a corporation, Defendants-Appellees, (David Victor and Peregrine, Stime, Newman, Ritzman and Bruckner, Ltd., Defendants).	)	Appeal from the Circuit Court of Cook County. No. 2006 L 001253 Honorable Barbara A. McDonald, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Summary judgment for insurance agent and his agency was proper; the plaintiff's claims against the agent and his agency were barred by the limitations period. The trial court did not require the plaintiff to request the improper remedy of remand to the Industrial Commission, and the issue was rendered moot by the jury verdict for the insurance company. The jury's answer to the special interrogatory rendered harmless any error in the dismissal of the claims against the insurance company. The plaintiff forfeited his claim that the trial court's errors denied him a fair trial.

¶ 2 The plaintiff, Denis Prosio, filed a complaint against the defendants, attorney David Victor, the law firm of Peregrine, Stime, Newman, Ritzman and Bruckner, Ltd. (the law firm), Badger Mutual Insurance Company (Badger), James Papas (Mr. Papas)[1] and General Insurance Services, Inc. (GIS). The trial court granted summary judgment to Mr. Papas and GIS and dismissed them from the suit with prejudice.[2] Attorney Victor and the law firm entered into a settlement agreement with the plaintiff and were dismissed from the suit. The case proceeded to a jury trial solely against Badger on one count of fraud. The jury returned a verdict in favor of Badger and against the plaintiff. Following the denial of his posttrial motions, the plaintiff filed this appeal.

¶ 3 On appeal, the plaintiff contends that: (1) the trial court erred when it entered summary judgment for Mr. Papas and GIS; (2) the trial court's dismissal of counts III and IV of the amended complaint and restricting the plaintiff to equitable relief denied him due process of law; (3) the trial court erred when it found as a matter of law that Mr. Papas and GIS were not Badger's agents; and (4) the trial court's rulings denied the plaintiff a fair trial. We affirm the grant of summary judgment to Mr. Papas and GIS and the jury verdict in favor of Badger and

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[1] "Papas"is also spelled "Pappas" in the record.

[2] During the pendency of this appeal, Mr. Papas' death was spread of record, and Patricia Papas was substituted as administrator of the estate of James Papas.

against the plaintiff.

¶ 4 BACKGROUND

¶ 5 I. Facts

¶ 6 The plaintiff is the owner of Frank's Pizzeria (Frank's) located in Chicago. Prior to August 2002, he worked at another restaurant that he owned and where he was covered by workers' compensation insurance (WCI). After closing that restaurant, he began to work at Frank's. The plaintiff and Mr. Papas were long-time friends. Mr. Papas had secured insurance coverage for several of the plaintiff's businesses. On July 18, 2002, Mr. Papas' company, GIS, submitted the plaintiff's application for insurance coverage with Badger. On August 25, 2002, Badger issued the policy with the effective dates of August 25, 2002, to August 25, 2003. The policy provided WCI for Frank's employees, but excluded the plaintiff, as the owner, from WCI coverage. On December 24, 2002, the plaintiff was injured while unloading a truck at Frank's. Mr. Papas submitted the plaintiff's claim to Badger.

¶ 7 After receiving the plaintiff's claim, Lori Loveless, Badger's workers' compensation adjuster, contacted the plaintiff to discuss his injuries and where he should send his medical bills. Her subsequent review of the underwriting file revealed that the plaintiff had elected not to have WCI coverage for himself. On June 24, 2003, Ms. Loveless wrote to the plaintiff explaining that his injuries were not covered because he did not specifically elect to be covered, pursuant to section 1 of the Workers' Compensation Act (820 ILCS 305/1 (West 2002) (the Act)). In actuality, the plaintiff was automatically covered under section 3 of the Act unless he chose to opt out of coverage. See 820 ILCS 305/3 (West 2002).

¶ 8 The plaintiff retained attorney Victor to pursue a claim for workers' compensation. The parties entered into a settlement agreement of the plaintiff's claim against Badger, whereby the plaintiff was awarded $22,762.55. The settlement agreement was approved by the arbitrator on February 11, 2004. The agreement acknowledged that the coverage issue was disputed by Badger.

¶ 9 II. Circuit Court Proceedings

¶ 10 A. The Complaints

¶ 11 On February 6, 2006, the plaintiff filed suit against attorney Victor, the law firm, Badger, Mr. Papas and GIS. In count III, the plaintiff alleged that Badger's unreasonable denial of WCI coverage and refusal to pay the plaintiff's claim entitled the plaintiff to sanctions under section 155 of the Illinois Insurance Code (215 ILCS 5/155 (West 2006) (the Insurance Code)). In count IV, the plaintiff alleged, in the alternative, that Badger violated its duty of good faith and fair dealing owed the plaintiff by fraudulently maintaining that the plaintiff did not elect to have WCI coverage for himself.

¶ 12 On April 17, 2006, pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2006) (the Code)), Badger filed a motion to dismiss counts III and IV on the grounds that they were preempted by the Act or, in the alternative, pursuant to the doctrine of *res judicata*, they were barred by the settlement agreement. Exhibit A attached to the motion to dismiss was an application by the plaintiff for WCI, dated July 18, 2002. In the policy information portion of the application, there were two boxes, one for "participating" and one for "nonparticipating." The "nonparticipating" box was marked on the plaintiff's application. The

application was not signed by the plaintiff.

¶ 13 In light of facts revealed in discovery, on September 18, 2006, the plaintiff filed a motion for leave to file an amended complaint. On September 25, 2006, the plaintiff was granted leave to file the amended complaint. In support of counts III and IV, the amended complaint alleged that Badger knowingly misrepresented that its policy did not cover the plaintiff because he had "opted out" of the WCI coverage; failed to disclose that Mr. Papas made a mistake by excluding the plaintiff from WCI coverage; concealed the agency relationship between Mr. Papas and Badger; failed to disclose the existence of the unsigned application for insurance submitted to it by Mr. Papas; and failed to reveal to the plaintiff that an investigation resulted in the determination that a mistake was made when the policy was issued. Badger moved to dismiss counts III and IV of the amended complaint on the grounds of *res judicata* and failure to state a cause of action.

¶ 14 On December 13, 2007, the trial court granted Badger's motion to dismiss counts III and IV of the amended complaint with prejudice. The plaintiff was granted leave to file an equitable count seeking the vacation of the settlement agreement with Badger.

¶ 15 On January 11, 2008, the plaintiff filed his second amended complaint. The second amended complaint re-alleged counts III and IV of the amended complaint. Count V alleged that Badger committed common law fraud and violated the Illinois Consumer Fraud Act (815 ILCS 505/1 (West 2002)) and engaged in a civil conspiracy. The plaintiff requested that the February 11, 2004 settlement agreement be vacated and the matter remanded to the Industrial Commission or, in the alternative, a jury trial to determine damages.

¶ 16 Badger moved to dismiss the second amended complaint on the grounds that it exceeded the trial court's December 13, 2007 order. The plaintiff's request for money damages was stricken, and Badger was ordered to answer the second amended complaint.

¶ 17 On June 17, 2008, the plaintiff filed his third amended complaint re-alleging counts III and IV of the amended complaint and count V of the second amended complaint. The trial court ordered Badger's answer to the second amended complaint to stand as its answer to the third amended complaint.

¶ 18 B. Summary Judgment Proceedings

¶ 19 On September 25, 2009, Mr. Papas and GIS filed their motion for summary judgment. The motion asserted that the applicable two-year statute of limitations barred the plaintiff's claims against them and that fraudulent concealment did not apply to extend the limitations period . Mr. Papas and GIS maintained that the plaintiff knew or should have known as of Ms. Loveless' letter of June 24, 2003, that he had no WCI coverage. They further maintained that the plaintiff knew or should have known from the November 12, 2003 letter from attorney David Clark, with whom he discussed his potential claim against Mr. Papas and GIS, that he had a "very good claim" against Mr. Papas based on the failure to include the plaintiff in the WCI coverage. Therefore, the two-year limitations period expired on June 24, 2005, or at the latest November 12, 2005. On May 3, 2010, the trial court granted Mr. Papas' and GIS's motion for summary judgment.

¶ 20 C. Jury Trial

¶ 21 On July 7, 2011, a jury trial was held on count V, in which the plaintiff sought vacation of

the workers' compensation settlement based on his allegations of fraud against Badger. Following the presentation of evidence, the jury returned a verdict in favor of Badger and against the plaintiff. Pursuant to a special interrogatory, the jury found that the plaintiff advised Mr. Papas that he did not want to be covered by Badger's WCI policy for the policy period of August 25, 2002, through August 25, 2003. The trial court entered judgment on the jury's verdict.

¶ 22 The plaintiff filed posttrial motions seeking to vacate the order granting summary judgment to Mr. Papas and GIS, and for a new trial. Following the denial of both motions, the plaintiff filed a timely appeal.

¶ 23 During the pendency of this appeal, Badger filed a motion to strike issues raised for the first time in the plaintiff's rely brief. This court denied the motion but granted Badger leave to file a sur-reply to those issues.

¶ 24 ANALYSIS

¶ 25 I. Mr. Papas and GIS

¶ 26 The plaintiff contends that the trial court erred when it granted summary judgment to Mr. Papas and GIS on the ground that his claims of unreasonable and vexatious behavior in denying insurance coverage and breach of fiduciary duty against them were barred by the limitations period. The plaintiff relies on the fraudulent concealment statute and the continuing or repeated injury exception to the limitations period.

¶ 27 A. Standard of Review

¶ 28 We apply the *de novo* standard of review to the grant of summary judgment. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010). "Summary judgment is proper

if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Illinois Farmers Insurance Co. v. Hall*, 363 Ill. App. 3d 989, 993 (2006). A triable issue of fact exists where there is a dispute as to the material facts or where the material facts are undisputed, but reasonable persons might draw different inferences from the undisputed facts. *Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 215 (2001). Only where the right of the moving party is free from doubt will the court uphold the grant of summary judgment. *Hall*, Ill. App. 3d at 993.

¶ 29 B. Discussion

¶ 30 Section 13-214.4 of the Code provides in pertinent part as follows:

> "All causes of action brought by any person or entity under any statute or any legal or equitable theory against an insurance producer, registered firm, or limited insurance representative concerning the sale, placement, procurement, renewal, cancellation of, or failure to procure any policy of insurance shall be brought within 2 years of the date the cause of action accrues." 735 ILCS 5/13-214.4 (West 2006).

It is undisputed that the limitations period set forth in section 13-214.4 applied to the plaintiff's claims against Mr. Papas and GIS.

1. *Fraudulent Concealment*

¶ 31 The plaintiff does not argue that his February 6, 2006 complaint complied with the limitations period prescribed in section 13-214.4. Instead, he relies on the fraudulent concealment statute, which provides in pertinent part as follows:

> "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 735 ILCS 5/13-215 (West 2006).

¶ 32 The plaintiff argues that in his initial complaint, he was only able to allege that Mr. Papas and GIS breached their fiduciary duty to him. In the course of discovery, he learned of the existence of the unsigned application for WCI. He was then able to amend his complaint to allege additional causes of action against Mr. Papas and GIS based on the existence and their concealment of the unsigned application. Therefore, the plaintiff reasons that the fraudulent concealment statute extended the limitations period, and his February 6, 2006 complaint was timely. We disagree.

¶ 33 The fraudulent concealment statute incorporates the discovery rule. Under the discovery rule, the limitations period begins to run "when a person knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused." *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 415 (1981). At that point, the injured party bears the burden of inquiring further as to the existence of a cause of action. *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981). In most cases, when a party knew or should have known of both his injury and that it was wrongfully caused will be a disputed question of fact. *Witherell*, 85 Ill. 2d at 156. Where only one conclusion can be drawn from undisputed facts, the issue may be decided by the trial court. *Witherell*, 85 Ill. 2d at 156.

¶ 34 " Generally, the concealment must consist of affirmative acts or representations that are

calculated to lull or induce a claimant into delaying filing his claim or to prevent a claimant from discovering his claim." *Barratt v. Goldberg*, 296 Ill. App. 3d 252, 257 (1998). More than mere silence on the defendant's part and failure by the plaintiff to learn of the cause of action are necessary to constitute concealment. *Barratt*, 296 Ill. App. 3d at 257. The allegedly fraudulent statements or omissions that are the basis of the cause of action may not constitute a fraudulent concealment unless it is shown that they tend to conceal the cause of action. *Barratt*, 296 Ill. App. 3d at 257. Fraudulent concealment will not apply to prevent the running of the limitations period if the plaintiff discovers or should have discovered his cause of action concealed by the defendant while a reasonable amount of time remains within the limitations period. *Turner v. Nana*, 294 Ill. App. 3d 19, 27 (1997).

¶ 35 According to the plaintiff's deposition testimony, following Badger's June 24, 2002 denial of his workers' compensation claim, he contacted Mr. Papas, who assured him Badger had made a mistake and that the plaintiff had WCI coverage. Later, Mr. Papas admitted to the plaintiff that his office made the mistake and that it would be rectified. By August 11, 2003, his claim remained unpaid, and the plaintiff consulted with attorneys Victor and Clark, who were with the law firm. In his November 12, 2003 letter, attorney Clark advised the plaintiff that the law firm decided not to represent him in his dispute with Mr. Papas and GIS but stated further as follows:

> "This is not a comment upon the merits of your case against Mr. Pappas and General Insurance. To the contrary, we think you have a very good claim against Mr. Pappas' errors and omissions portion of his insurance policy, as his office appears to clearly have left you off the policy, when you should have been added. Additionally, Mr. Pappas

> (from all indications) knew that you would only be working at Frank's Pizzeria, and would need to have workers' compensation insurance."

Attorney Clark concluded the letter by stating that the law firm was offering no opinion as to the running of the statute of limitations but advised the plaintiff to retain an attorney as soon as possible.

¶ 36 Even if, as alleged by the plaintiff, Mr. Papas and GIS concealed from him the existence of the unsigned application until after he filed his complaint, the concealment did not prevent him from discovering he had a cause of action against Mr. Papas and GIS. Upon receiving Ms. Loveless' June 24, 2003 letter, the plaintiff not only knew that he had been denied coverage but knew or should have known that the denial was wrongfully caused. While he requested WCI coverage when he discussed the new policy with Mr. Papas, he now learned from Ms. Loveless that he did not specifically elect to be covered. In any event, there can be no doubt that as of November 12, 2003, the plaintiff knew or should have known from the contents of attorney Clark's letter not only that he was injured but that it was wrongfully caused by Mr. Papas' and GIS's actions or inactions. Therefore, under the discovery rule, the two-year limitations period began running no later than November 12, 2003.

¶ 37 The plaintiff argues that he did not know he had additional causes of action against Mr. Papas and GIS until he discovered the existence of the unsigned insurance application. "[T]he accrual of a cause of action does not await the awareness by a plaintiff that an injury was negligently inflicted, nor does it await the acquisition of knowledge of facts which would alert a reasonable person to suspect that a legal duty to him had been breached." *Knox College*, 88 Ill.

2d at 416 (citing *United States v. Kubrick*, 444 U.S. 111, 123-24 (1979)). The term " 'wrongfully caused' " does not connote knowledge of negligent conduct or knowledge that a cause of action exists. *Knox College*, 88 Ill. 2d at 416.

¶ 38 We conclude that the two-year limitations period began to run, at the latest, on November 12, 2003. Considering that the plaintiff then had the full two years provided for section 214.4 of the Code within which to file his complaint, the fraudulent concealment rule did not apply to toll the limitations period. *Turner*, 294 Ill. App. 3d at 27. The plaintiff failed to file his complaint by November 12, 2005, rendering his February 6, 2006 complaint untimely.

¶ 39 The cases relied on by the plaintiff are distinguishable. In *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240 (1994), the supreme court reversed summary judgment for the defendant, finding that there was a question of fact concerning when the plaintiff discovered its cause of action. In addition, since the defendant's actions in reassuring the plaintiff that its legal position was correct caused the plaintiff to delay filing its claim against it, the defendant was equitably estopped from raising the limitations period. *Jackson Jordan, Inc.*, 158 Ill. 2d at 251-53. Similarly in *Witherell*, while the plaintiff should have discovered earlier that she had not been properly diagnosed and treated, in view of the defendant-doctors' continued reassurances to her that her treatment was proper, the reviewing court determined that the defendant-doctors were equitably estopped from raising the limitations period as a defense. *Witherell*, 85 Ill. 2d at 160. In *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161 (1981), the court reversed summary judgment for the defendant finding that the date of discovery was a question of fact in that case. *Nolan*, 85 Ill. 2d at 171-72.

¶ 40 In the present case, it is uncontested that the plaintiff received the November 12, 2003 letter from attorney Clark. The only conclusion that may be drawn from that letter is that November 12, 2003 was the date of discovery by the plaintiff of both his injury and that it was wrongfully caused by Mr. Papas and GIS. Moreover, in *Jackson Jordan, Inc.* and *Witherell,* the courts addressed equitable estoppel, not fraudulent concealment. See *Witherell*, 85 Ill. 2d at 158 (the court chose not to consider the fraudulent concealment statute but applied the generally acceptable principles of equitable estoppel to the issue). In any event, neither fraudulent concealment nor equitable estoppel will apply where the party has ample time to file the action during the limitations period. See *Mauer v. Rubin*, 401 Ill. App. 3d 630, 649 (2010).

¶ 41 2. Continuing Violation

¶ 42 The plaintiff claims that the continuing tort or continuing violation rule applies in this case. Under that rule " 'the limitations period does not begin to run until the date of the last injury or the date the tortious acts cease.' " *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003) (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 345 (2002). The effect of a continuing tort is not to toll the statute of limitations due to the continuing injuries. Instead, the defendant's conduct is viewed as a continuous whole for prescriptive purposes. *Feltmeier*, 207 Ill. 2d at 279. "A continuing violation or tort is occasioned by continuing unlawful acts and conduct, not by continual ill effects from an initial violation." *Feltmeier*, 207 Ill. 2d at 278.

¶ 43 The plaintiff cites numerous cases for the general propositions of law applicable to the continuing violation rule but fails to explain how the rule applies in the instant case. In any

event, we find that the rule does not apply in this case. "[W]here there is a single overt act from which subsequent damages may flow, the statute begins to run on the date the defendant invaded the plaintiff's interest and inflicted injury, and this is so despite the continuing nature of the injury." *Feltmeier*, 207 Ill. 2d at 279. The plaintiff's claim against Mr. Papas and GIS arose from their submission of an application for insurance that excluded the plaintiff from WCI coverage. While the plaintiff's lack of WCI insurance may have caused him continuing financial problems, these were simply the effects from the submission of the application for insurance to Badger.

¶ 44 We conclude that the plaintiff's claims against Mr. Papas and GIS were barred by the statute of limitations. Therefore, summary judgment was properly entered in their favor.

¶ 45 II. Badger

¶ 46 A. Improper Remedy

¶ 47 The plaintiff contends that the trial court erred when it required him to request remand to the Industrial Commission (the Commission) for the determination of damages, penalties and attorney fees. He correctly notes that "[a] remand to the Commission is not proper since it has no jurisdiction to hear a common-law fraud case and therefore, no jurisdiction to assess damages in this case." *Roadside Auto Body v. Miller*, 285 Ill. App. 3d 105, 115 (1996).

¶ 48 The December 13, 2007, order provided in pertinent part as follows:

> "Badger Mutual Insurance Company's motion to dismiss is granted. Counts III and IV of Plaintiff's Amended Complaint are dismissed with prejudice. The plaintiff is given leave to file a count for equitable relief seeking to have the settlement contract vacated on or before [January 10, 2008]."

On January 11, 2008, the plaintiff filed his second amended complaint which now included count V against Badger alleging that the settlement was procured by fraud on the part of Badger. In his prayer for relief, the plaintiff requested "in the interest of justice and equity, that the Industrial Commission Lump-Sum settlement Order of February 11, 2004 be vacated and held or [*sic*] naught, rescinded, and the matter remanded to the Industrial Commission for future consideration." In the alternative, the plaintiff requested a jury trial and money damages.

¶ 49 The December 13, 2007 order in this case did not require the plaintiff to request remand to the Commission for the determination of damages. Rather, the plaintiff was granted leave to file an equitable count seeking to have the settlement agreement vacated. See *Roadside Auto Body*, 285 Ill. App. 3d at 112 (the circuit court was empowered to set aside the judgment of the Commission approving the parties' settlement agreement where the settlement was procured by fraud, unknown at time of the settlement).

¶ 50 While remand to the Commission would have been improper, the December 13, 2007 order did not mention remand to the Commission. Remand to the Commission was sought by the plaintiff in his prayer for relief in count V of the second amended complaint. "[T]he party inducing the error must bear its consequences." *Morris v. Banterra Bank of Hamilton County*, 159 Ill. 2d 551, 552 (1994).

¶ 51 In any event, the fact that the jury returned a verdict on count V in favor of Badger and against the plaintiff renders the issue of remand to the Commission moot. "An appeal is moot *** if events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief." *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005)

(the entry of the judgment of dissolution of marriage resolved all issues preventing the court from granting the wife effective relief on her challenge to the issuance of subpoenas).

¶ 52 B. Special Interrogatory

¶ 53 The plaintiff contends that the trial court erred when it dismissed counts III and IV of the amended complaint and ordered that the trial would proceed only on count V. The plaintiff argues that the trial court's orders deprived him of due process of law in that he was denied a hearing on his common law and statutory fraud claims and denied money damages. See *Northern Illinois Homebuilders Ass'n, Inc. v. County of Du Page*, 165 Ill. 2d 25, 45 (1995) (procedural due process requires the opportunity to be heard in a meaningful time and manner).

¶ 54 We need not address the plaintiff's due process claims. Even if the plaintiff's claims of error were valid, the errors would require reversal only if the jury's answer to the special interrogatory was against the manifest weight of the evidence. See *Beverly Bank v. Penn Central Co.*, 21 Ill. App. 3d 77, 82 (1974) (the jury's special finding rendered the error in dismissing the negligence count harmless where the special finding barred the plaintiff from any recovery).

¶ 55 The jury found in favor of Badger and against the plaintiff on whether the settlement agreement was the result of fraud on the part of Badger. In answer to the special interrogatory, the jury found that the plaintiff advised Mr. Papas that he did not wish to be covered by Badger's WCI policy for the policy period of August 25, 2002 through August 25, 2003.

¶ 56 "The answer of a jury to a proper special interrogatory as to a material question of ultimate fact is binding upon the trial court unless not supported by any competent evidence or unless it is against the manifest weight of the evidence." *Beverly Bank*, 21 Ill. App. 3d at 82. "A

finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Under this standard, the reviewing court gives deference to the finder of fact, in this case the jury, because it is in the best position to observe the conduct and demeanor of the parties and the witnesses. *Best*, 223 Ill. 2d at 350. We will not substitute our judgment for that of the jury regarding the credibility of the witnesses, the weight to be given the evidence, or the inferences to be drawn from the evidence. *Best*, 223 Ill. 2d at 350-51.

¶ 57 The plaintiff does not challenge the validity of the jury's answer to the special interrogatory. Even if we were to consider the issue, the answer does find support in the trial testimony. Mr. Papas testified that he had known the plaintiff for 50 years and had written the insurance policies for the plaintiff's various businesses. Prior to sending the plaintiff's application for WCI coverage to Badger, he discussed with the plaintiff whether he wanted WCI coverage. The cost of the coverage was based on the payroll amount, which would include the plaintiff's salary. The plaintiff told him that he did not want to spend the money for coverage for himself. Mr. Papas maintained that the plaintiff was never included on any policy for WCI coverage for his restaurants.

¶ 58 Mr. Papas could not recall the exact date of his conversation with the plaintiff, but it would have been within 60 days of the date the policy was to be renewed because he would need to discuss the extent of the coverage. His conversation with the plaintiff would have taken place within the 60 days prior to July 18, 2002.

¶ 59 When the plaintiff called to report his injury, Mr. Papas told him he did not have any WCI coverage. Mr. Papas explained that he submitted the plaintiff's claim to Badger because it was up to Badger to decide the coverage question. Mr. Papas denied telling the plaintiff that his office had made a mistake. After the plaintiff was denied coverage, Mr. Papas attempted to assist the plaintiff and spoke to an underwriter at Badger. Since the injury had already occurred, nothing could be done. On cross-examination, Mr. Papas acknowledged that the plaintiff had WCI coverage at Café Al Dente, one of his restaurants. He also acknowledged that the 1997 application for WCI coverage for Frank's excluded the plaintiff because he was working at Café Al Dente at the time.

¶ 60 The record on appeal does not contain the direct examination testimony of the plaintiff. On redirect examination, the plaintiff maintained that he had told Mr. Papas that he wanted WCI coverage for himself. The plaintiff never saw the unsigned application that was sent to Badger prior to the filing of the complaint in this case. Had he seen the application excluding him from WCI coverage, he would have directed Mr. Papas to correct it before it was submitted to Badger. The plaintiff also maintained that the $66,000 payroll amount shown on the 2002 application for WCI coverage included his salary. In rebuttal, the plaintiff testified that when he reported his accident to Mr. Papas, Mr. Papas told him he had coverage and to go see a doctor. After he received the June 24, 2003, letter from Ms. Loveless, he called Mr. Papas who told him not to worry, that there had been a mistake at Badger's end, and he would take care of it.

¶ 61 The credibility of the witnesses and the resolution of conflicts in the testimony are the province of the jury. It was the jury's duty to resolve the conflicting testimony of the plaintiff and

Mr. Papas, and we may not substitute our judgment for that of the jury. In this case, the jury specifically found Mr. Papas' testimony that the plaintiff chose to be excluded from WCI coverage more credible than the plaintiff's testimony that he told Mr. Papas that he wanted WCI coverage.

¶ 62 We cannot say the jury's special finding that the plaintiff chose to exclude himself from WCI coverage was unreasonable or arbitrary. The finding is supported by the evidence in the record before us, and the opposite conclusion is not clearly evident. Therefore, the jury's answer to the special interrogatory was not contrary to the manifest weight of the evidence.

¶ 63 C. Fair Trial

¶ 64 The plaintiff contends that other errors by the trial court denied him a fair trial. We disagree.

¶ 65 The plaintiff maintains that the trial court erred when it ruled that the advice the Badger attorneys gave to Ms. Loveless prior to advising the plaintiff that he did not have WCI coverage was protected by the attorney-client privilege. Even if the ruling was erroneous, it was relevant to the fraud claims in connection with the denial of WCI coverage to the plaintiff, and any error was rendered harmless by the jury's answer to the special interrogatory.

¶ 66 The plaintiff maintains that the following errors denied him a fair trial: the grant of summary judgment to Mr. Papas and GIS; the denial of the plaintiff's request to introduce the agency contract between Mr. Papas and GIS and Badger; the dismissal of the counts against Badger and the requirement that the plaintiff try the case only on the equitable count; and Mr. Papas' remark during his testimony that he had been sued by the plaintiff, which violated the trial

court's order not to refer to that fact.

¶ 67 The plaintiff's claims of error with connection to the dismissal of the counts against Badger and the limitation of the trial to equitable relief were resolved by the jury's answer to the special interrogatory. In any event, the plaintiff failed to provide citations to authority and provided little or no argument in support of any of these allegations of error in violation of Rule 341(h)(7) (eff. July 1, 2008)). The plaintiff's claims that these errors denied him a fair trial are forfeited. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011).

¶ 68 CONCLUSION

¶ 69 The judgment of the circuit court is affirmed.

¶ 70 Affirmed.