2016 IL App (1st) 141615-U

Cons. Nos. 1-14-1615; 1-14-1927; 1-14-2459

Third Division
November 9, 2016

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TIBERIU KLEIN, individually and as Third Party Intended Beneficiary Heir of/and the Estate of Claudia Zvunca, deceased.	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	No. 09 L 10077
v.	)	Honorable Lorna Propes, Judge, presiding.
MARK E. MCNABOLA, MICHAEL COGAN, ALICE DOLAN, EDWARD MCNABOLA, and COGAN & MCNABOLA, P.C., LAW FIRM, KEVEN CHERN and as agent of MACEY CHERN DIAB and MACY CHERN DIAB REFERRAL AGENCY, GREGORY MARSHALL individually and as agent of COGAN MCNABOLA, JEANINE L. STEVENS, THOMAS A. CLANCY, JOSUA STERN and CLANCY & STEVENS LAW FIRM, an Illinois Professional Corporation, JOHN F. CUSHING individual and as business agent of AMBROSE & CUSHING, ROBERT E. DOOLEY individual and as agent of GREYHOUND LINES, INC., a Delaware Corporation, and GREYHOUND LINES, INC., JAMES P. NAGLE, individually, NAGLE & NAGLE LAW	)	

FIRM, CASSIDAY SCHADE & GLOOR, LLP,	)
	)
Defendants.	)
	)
(Mark E. McNabola, Michael Cogan, Alice Dolan, Edward McNabola, Cogan & McNabola, P.C. Law Firm, Gregory Marshall, Greyhound Lines, Inc., James P. Nagle, Nagle & Nagle, and Cassiday Schade & Gloor, LLP, Defendants-Appellees).	)

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concur in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not err in denying plaintiff's section 2-1401 petition to vacate a prior dismissal; court properly granted defendants' motions to dismiss where claims were refilled beyond the statute of limitations and plaintiff requested that remaining claims be dismissed with prejudice; trial court properly denied motion to amend the complaint; trial court did not err in denying plaintiff's motion to substitute judge as of right.

¶ 2 The instant appeal is one piece of a complicated puzzle that prior courts have described as a "convoluted attorney created labyrinth" (*MB Financial, N.A. v. Stevens*, No 11 C 798 (N.D. Ill. July 5, 2011), "mired in delays and impeded in its resolution" (*Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197, ¶ 7), and "lengthy and somewhat confusing" (*Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197, ¶ 8). Indeed, this case is related to several lawsuits filed in both the federal and the circuit court that have produced over 25 appeals, many of which exemplify appalling abuse of the judicial system. To the extent possible, we limit our discussion to the claims at issue in this appeal. A thorough recitation of the facts can be found in this court's prior orders and opinions related

to this case, of which we take judicial notice[1]: *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768; *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197; *Cushing v. Greyhound Lines, Inc*., 2013 IL App (1st) 103176-U; and *Klein v. Greyhound Lines, Inc.*, 2013 IL App (1st) 112055-U. Here, suffice it to say that the impetus of the multiple related wrongful death, survival, malpractice, and fraud cases was the tragic death of plaintiff's wife, Claudia Zvunca, after being struck by a Greyhound bus in Colorado, which was witnessed by her then eight-year old daughter Cristina. This appeal arises from the circuit court's denial of plaintiff's section 2-1401 petition to vacate an order voluntarily dismissing case number 07 L 2063, which alleged legal malpractice against several attorneys who represented the estate of Claudia Zvunca and fraud, civil conspiracy, and tortious interference against Greyhound. Plaintiff also appeals the court's dismissal of case number 09 L 10077, which, *inter alia*, re-alleged the claims that had previously been dismissed in 07 L 2063. Additionally, plaintiff asserts that the court improperly denied him leave to amend his complaint and that Judge Lorna Propes should not have presided over 09 L 10077. For the following reasons, we affirm the judgments of the circuit court.

¶ 3 BACKGROUND

¶ 4 A brief history of the underlying wrongful death action is provided, as some context is necessary. On May 3, 2002, plaintiff, represented by Nagle & Nagle, filed the first wrongful death and survival action against Greyhound Lines, Inc. (Greyhound), and its driver Wesley Jay Tatum in the circuit court of Cook County. Plaintiff brought the claims "individually and as Executor of the Estate of Claudia Zvunca" and claimed wrongful death damages for both himself and Cristina. Claudia had died intestate, however, and plaintiff had not been

[1] Courts are entitled to take judicial notice of a plaintiff's underlying cause of action. *O'Callaghan v. Sartherlie*, 2016 IL App (1st) 142152, ¶ 20.

appointed representative of Claudia's estate or appointed the special administrator. In addition, plaintiff had never adopted Cristina and was not her legal guardian. In Illinois, only the representative of the estate has authority to bring a wrongful death action, not a beneficiary. See *Nagel v. Inman*, 402 Ill. App. 3d 766, 770 (2010). Despite plaintiff being merely a beneficiary and not the proper party to bring these claims, this issue was not immediately addressed. Greyhound removed the case to federal court based on diversity and thereafter filed a motion for *forum non conveniens*, which was granted, and the case was transferred to Colorado. Just prior to the expiration of the statute of limitations, plaintiff attempted to add the designer of the bus, Motor Coach Industries International (Motor Coach), an Illinois corporation, as a defendant. The Colorado court denied the motion to amend the complaint because the case had been pending in Colorado for almost two years and was close to trial.

¶ 5 On February 18, 2003, plaintiff retained Cogan, McNabola & Dolan, LLC (Cogan law firm), as substitute counsel in the Colorado action. In November 2003, plaintiff filed a petition in the probate division of the circuit court of Cook County to appoint Greg Marshall, a paralegal in the Cogan law firm, as the independent administrator of Claudia's estate. That motion was granted and letters of office were issued to Marshall. On January 15, 2004, the Cogan law firm filed a second wrongful death action in the circuit court of Cook County, this time on behalf of Marshall. This wrongful death action included Motor Coach as a defendant. On April 6, 2004, the complaint was amended to add Greyhound and Tatum as defendants.

¶ 6 In April 2004 plaintiff discharged the Cogan law firm and on April 27, 2004, plaintiff retained the law firm of Clancy & Stevens (the Clancy law firm). The Cogan law firm withdrew and the Clancy law firm substituted as counsel for Marshall in the Illinois action

and as counsel for plaintiff in the simultaneous Colorado action. In May 2004, the Illinois case was voluntarily dismissed. On September 14, 2004, the Clancy law firm filed a third wrongful death action in the circuit court of Cook County numbered 04 L 10431, later renumbered 07 L 3391. The lawsuit was filed on behalf of Marshall as independent administrator of the estate of Claudia Zvunca, deceased, and Cristina Zvunca, a minor, by Paul Brent as next friend. The complaint alleged claims for both plaintiff and Cristina against Motor Coach and for Cristina against Greyhound and Tatum, including a claim for Cristina's emotional distress. The case was assigned to Judge Susan Zwick. The Colorado action remained pending, and after a series of motions and interlocutory appeals to this court, the Colorado court ruled that the Illinois action took precedence.

¶ 7 On April 27, 2005, Marshall resigned as the administrator of the estate and on May 13, 2005, the probate court appointed F. John Cushing as the independent administrator of the estate. Thereafter, the Clancy law firm amended the complaint to remove Marshall and add Cushing as administrator and on August 26, 2005, Cushing retained the Clancy law firm to represent the estate. On September 30, 2005, at plaintiff's request, the probate division terminated Cushing's independent administration of the estate and made him a supervised administrator.

¶ 8 On February 23, 2007, plaintiff, *pro se*, filed the instant action (07 L 2063) alleging breach of fiduciary duty, fraud, abusive filing of process, breach of contract, negligence, tortious interference, and civil conspiracy against various defendants including Cushing, Marshall, attorney Jeanine Stevens, the Clancy law firm, Cogan McNabola, Cassiday Schade & Gloor (Greyhound's counsel), and Nagle & Nagle. The complaint also named Greyhound as a defendant and alleged civil conspiracy, fraud, and "tortious interference." The claims

generally alleged that plaintiff's attorneys conspired with Greyhound to allow the statute of limitations to run on the estate's claims. At the time, plaintiff was merely a beneficiary of the estate, not the administrator. Nevertheless, despite lacking the authority to do so, he personally filed the action as "personal representative of the estate of Claudia Zvunca" and asserts that he filed the case "to protect the estate's interests." Subsequently, plaintiff retained attorney David Novoselsky. On May 27, 2007, Novoselsky filed a motion to substitute counsel in 07 L 2063 and soon after filed a motion to voluntarily dismiss the case. That motion was granted and 07 L 2063 was dismissed on August 22, 2008.

¶ 9 The protracted procedural history of the underlying Illinois wrongful death and survival case (07 L 3391) after the dismissal of 07 L 2063 is extremely complicated and the details are unnecessary for our discussion. We note, however, that Novoselsky filed case number 09 L 10417 on behalf of "the estate of Cristina," which again alleged negligent infliction of emotional distress based upon the underlying incident. During the pendency of the wrongful death action, Novoselsky also filed malpractice and child abuse lawsuits in federal court on behalf of plaintiff and the estate of Cristina and then in the circuit court of Cook County (09 L 6397) against in the Clancy law firm, Jeanine Stevens, and Cushing. The court later found that these lawsuits were an attempt to create conflicts of interest so that the defendants would be removed from their roles in the wrongful death case, and sanctioned Novoselsky for filing lawsuits that he was aware had no merit. See 09 L 6397. Although Novoselsky was successful at having the Clancy law firm removed, and was briefly successful at having Cushing removed, both were ultimately reinstated.[2] In addition Novoselsky and Greyhound filed over eight motions to substitute Judge Zwick for cause, one of which was eventually

[2] This court found that the Clancy law firm was improperly removed in *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103191.

granted.[3] After Judge Zwick was substituted, the case was heard by several other judges in the circuit court of Cook County at various points in the litigation.

¶ 10 At some point the relationship between Novoselsky and plaintiff deteriorated and plaintiff discharged him. Novoselsky was still involved in the case, however, because remarkably, he had been appointed by the court to represent Cristina's estate, despite the appellate court's prior finding that Cristina and plaintiff's interests were adverse. After discharging Novoselsky, on August 26, 2009, plaintiff *pro se* refiled the claims that were dismissed in 07 L 2063 in case number 09 L 10077. The complaint consisted of 192 pages containing approximately 25 counts essentially realleging the same claims from 07 L 2063 that the estate's attorneys had conspired with Greyhound. Each of the defendants filed motions to dismiss by February 3, 2010, and asserted, *inter alia*, that the refiling of 07 L 2063's claims was barred by the various claims' statutes of limitation and section 13-217 of the Code of Civil Procedure (Code) limiting refiling claims that have been voluntarily dismissed to one year. Greyhound additionally asserted that plaintiff failed to state a claim against it because any alleged claim of misconduct on behalf of Greyhound would need to be brought in the case under which any alleged misconduct occurred, not in a separate action. Plaintiff did not respond to the motions to dismiss at that time, however, he did file another lawsuit numbered 10 L 8992 alleging, *inter alia*, malpractice, fraud, civil conspiracy, and defamation against various attorneys, including Novoselsky, the guardian *ad litem* representing Cristina, and two judges. That case was later voluntarily dismissed without prejudice.

[3] This court later overruled the grant of the motion to substitute Judge Zwick for cause in *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103191.

¶ 11 As 09 L 10077 was pending, the litigation continued in the Illinois wrongful death and survival action 07 L 3391. On June 16, 2011, a hearing was held in front of Judge Maddux on a motion to consolidate all cases related 07 L 3391, including 09 L 10077 and two probate cases. At that hearing, Judge Maddux granted the motion to consolidate, stayed all cases, and placed them on the appellate calendar. Plaintiff filed an interlocutory appeal contending that the court had no authority to enter its order consolidating and staying the various actions. The appellate court affirmed the consolidation and additionally instructed:

> "Any further orders in these various related lawsuits, including those pertaining to reassignment or control of the docket, are to be made by a judge other than Judge Maddux, based on his prior acknowledgement of a conflict." *Klein v. Greyhound Lines, Inc.*, 2013 IL App (1st) 112055-U.

¶ 12 Following remand, the stay was lifted on the consolidated cases and they were transferred to "Room 2005." On December 4, 2014, a status hearing was held on these cases before the presiding judge of the Law Division, Judge Maddux. Plaintiff's new attorney requested that the cases be transferred to the probate division for reassignment given the appellate court's directive that Judge Maddux could not be involved in the case. Judge Maddux denied the request, stating:

> "I'm sure the Appellate Court would understand the difference between having – making rulings on the substance of the case as opposed to the ministerial function of the assignment which is the matter for the presiding judge of the Law Division.
>
> This is a Law Division case. It has nothing to do with probate, as far as I'm concerned, and the assignment arena. It belongs in the Law Division and the Law Division will have the assignment.

> What the Appellate Court obviously does not – did not understand is that we have a random reassignment system. It is not based upon the feelings or the judgment being made as to whom the case might be assigned.
>
> That being the case, the matter is being placed into the computer which has the 27 *** trial judges in the computer. It will be random assignment according to the rules pertaining to the assignment of the cases in the Law Division."

The random computer assignment system then assigned the consolidated cases to Judge James Flannery and Judge Maddux signed an order assigning him the cases. That same day Judge Flannery determined that he knew many of the attorneys who were involved in the case and recused himself from the malpractice cases 09 L 6397, 09 L 10077, and 10 L 8892, as well as the probate cases, but retained the underlying wrongful death action 07 L 3391[4] and the negligent infliction of emotional distress claim 09 L 10417[5]. The cases from which Judge Flannery recused himself were transferred back to Judge Maddux, who again used the random computer assignment system to reassign the cases to Judge Lorna Propes.

¶ 13 Judge Propes entered a briefing schedule on all pending motions, including the motions to dismiss 09 L 10077, which had been pending since 2010. Plaintiff was required to respond to the motions by January 31, 2014. Recognizing that this case had been delayed, Judge Propes noted that she wanted to move the case forward. Plaintiff did not respond to the motions to dismiss. Instead, he motioned the court to intervene in a Supreme Court Rule 137 proceeding pending in case number 09 L 6397 and also requested that the court transfer the case to Judge Zwick. Both motions were denied. On February 3, 2014, plaintiff filed a motion to substitute Judge Propes as of right, which was denied. Judge Propes's order

[4] We note that this case ultimately settled before Judge John Kirby.
[5] Case number 09 L 10417 was later voluntarily dismissed by Novoselsky.

denying the motion states that it was denied "for reasons set forth in the record," however we do not have a transcript of the proceeding or a bystander's report. On February 13, 2014, plaintiff filed a motion requesting that Judge Propes "voluntarily recuse herself" because she had been assigned the cases by Judge Maddux. Judge Propes denied the motion.

¶ 14 Thereafter, plaintiff finally responded to the Nagle law firm and the Cogan law firm's motions to dismiss but did not respond to Greyhound's motion. On April 22, 2014, before the court ruled on the motions to dismiss, plaintiff filed a petition to vacate the voluntary dismissal of 07 L 2063 pursuant to section 2-1401 of the Code. That petition was denied as untimely on April 23, 2014. Subsequently, on May 19, 2014, the court granted the attorney defendants' section 2-619 motions to dismiss with prejudice because the statute of limitations had expired and the case was refiled more than a year after 07 L 2063 was dismissed. The court also granted Greyhound's section 2-615 motion to dismiss, however it was dismissed without prejudice and plaintiff was granted leave to refile those claims. Plaintiff chose not to amend the claims against Greyhound. Instead, he requested leave to amend the complaint to add a count titled "Third Party Contingent Liability Claims Against All Defendants," which was denied. Thereafter, plaintiff requested that the court dismiss the claims against Greyhound with prejudice so that he could appeal all of the claims at the same time. The court granted his request and on August 6, 2014, the claims against Greyhound were dismissed with prejudice for want of prosecution.

¶ 15 ANALYSIS

¶ 16 Initially, we address defendants' contention that this court should disregard statements in plaintiff's brief that request this court to "incorporate by reference" arguments made in prior motions filed in the circuit court but not made in his appellate brief. We agree with

defendants that to avoid forfeiture arguments must be made in the appellate brief (Ill. S. Ct. 341 (h) (7) (eff. Feb. 6, 2013); *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010)) and it is not sufficient to incorporate arguments made in prior court documents merely by directing this court to them. See *Id.* (citing *People v. Guest*, 166 Ill. 2d 381, 414 (1995)). The appellate court is entitled to have clearly defined issues, cohesive legal arguments, and citations to relevant authority. *Mack v. Viking Ski Shop, Inc.*, 2014 IL App (1st) 130768, ¶ 17. Accordingly, we reject plaintiff's request to consider arguments not made in his brief and consider only arguments properly raised.

¶ 17 Additionally, we must address other deficiencies in plaintiff's brief. In violation of Illinois Supreme Court Rule 341(h)(7), plaintiff's argument is replete with conclusions and factual assertions that are not supported by the record. Ill. S. Ct. R. 341 (h)(7); *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 15. This court is not a repository into which a party may dump the burden of argument and research, and failure to comply with supreme court rules warrants non-consideration of the argument. *O'Callaghan*, 2015 IL App (1st) 142152, ¶ 15. We note that his discussion primarily focuses on the misconduct of his former attorney David Novoselsky, who is not a defendant in this case. Plaintiff argues in a rambling manner that Novoselsky's misconduct provides a reason to void all of the orders he procured in the course of his representation of plaintiff, but provides no legal support for this proposition. Further, plaintiff conflates matters relevant to other related cases with the claims before this court in the instant appeal and consistently misapprehends prior court opinions and orders. We are aware that plaintiff has hired and fired many attorneys during the course of this and the related litigation and his *pro se* filings are nothing short of prolific. In fact, he files motions *pro se* even when represented. It is plaintiff's right to proceed *pro se*, however, we

admonish him that his *pro se* status does not exempt him from complying with supreme court rules. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010). Nevertheless, we can ascertain the issues to be decided from defendants' cogent briefs, and thus we choose to address the merits of this appeal in order to establish a clear record and to reach a final disposition. *Id.*; *Twardowski v. Holiday Hosp. Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 18 A. Section 2-1401 Petition in Case 07 L 2063

¶ 19 Plaintiff first contends that the court erred in denying his section 2-1401 petition seeking to vacate the order voluntarily dismissing case number 07 L 2063. Specifically, he argues that the order dismissing the case could be attacked at any time because it was void. This argument is based on the fact that it was dismissed by Novoselsky, who, plaintiff points out, this court determined in case number 09 L 6397, was acting with an ulterior motive to "take over" the litigation in the underlying wrongful death and survival action. Defendants assert that the court properly denied this motion because the order was not void and the petition was filed more than two years after the dismissal.

¶ 20 A petition filed pursuant to section 2-1401 of the Code enables litigants to obtain relief from a judgment between 30 days and two years after entry of an order. 735 ILCS 5/2-1401 (West 2012). The purpose of section 2-1401's time limitation is to establish stable and final judgments. *Parker v. Murdock*, 2011 IL App (1st) 101645, ¶ 16. " 'The two-year period of limitations has been *strictly* construed by the courts, and we cannot, even if the circumstances were believed to warrant it, extend this limitation by judicial fiat.' " *Id.* (quoting *Sidwell v. Sidwell*, 127 Ill. App. 3d 169, 173 (1984)). Nevertheless, it is well established that a void order can be attacked at any time. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38. Thus,

a section 2-1401 petition contesting a void order can be filed at any time. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). An order is void where the court lacks jurisdiction. *LVNV Funding, LLC,* 2015 IL 116129, ¶ 39. Although in the past what constituted a lack of jurisdiction was ambiguous, our supreme court clarified that, in non-administrative cases, general jurisdiction is conferred on the circuit court by the Illinois Constitution and rejected the idea that the court did not have jurisdiction where it lacked "inherent power" to enter a judgment based upon statute. *Id.* ¶¶ 38-39. Accordingly, "subject matter jurisdiction is defined solely as the power of a court to hear and determine cases of a general class which the proceeding in question belongs." *Id.* ¶ 39.

¶ 21 Klein's initial complaint for case number 07 L 2063 was filed on February 22, 2007, and was voluntarily dismissed on August 22, 2008. He filed his section 2-1401 petition on April 22, 2014, well beyond the two-year time limitation. Therefore, in order for his petition to be timely, the underlying order must be void. Plaintiff asserts that the order is void because of Novoselsky's subsequent misconduct but does not explain how the court would be divested of jurisdiction based upon an attorney's improper litigation strategy. Rather, it is apparent from the record that the court had jurisdiction over 07 L 2063. Plaintiff invoked the court's jurisdiction by alleging fraud, tortious interference, and malpractice claims in his complaint and the circuit court has general jurisdiction to hear these categories of claims. Although this court stated in the related case 09 L 6397 that Novoselsky filed inappropriate lawsuits against the attorneys representing the estate and its administrator for the purpose of creating conflicts of interest (see 09 L 6397), that is not a basis for finding all orders Novoselsky procured void. In addition to Novoselsky's actions being irrelevant to the court's jurisdiction, there is

nothing in the record that supports plaintiff's conclusion that the dismissal of 07 L 2063 was part of Novoselsky's improper scheme.

¶ 22 Klein alternatively argues that the order is void because Novoselsky did not represent the estate and thus he did not have authority to voluntarily dismiss the estate's claims. He contends that the estate "would have never consented" to the claims being dismissed. We agree with plaintiff that actions on behalf of the estate must be brought by its administrator (see *Nagel v. Iman*, 402 Ill. App. 3d 766, 770 (2010)) and that Novoselsky did not represent the estate. Plaintiff cites *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768, for the proposition that "[a]n order entered as to the estate claims, without authority and without consent of the estate, is void." However, that case relied upon an erroneous understanding that the circuit court's jurisdiction is based upon inherent power conferred by statute, which our supreme court has subsequently rejected. *LVNV Funding, LLC*, 2016 IL 116129, ¶¶ 38-39. Here, regardless of who has the authority under the statute to represent the estate, the court had jurisdiction to hear 07 L 2063.

¶ 23 Moreover, plaintiff's argument is misplaced because the lawsuit was not brought by the estate. He commenced the lawsuit without authority and then hired Novoselsky, who, perhaps realizing that plaintiff could not properly bring that lawsuit, voluntarily dismissed it. Therefore 07 L 2063 was voluntarily dismissed by the party that initiated it. We note that Cushing, the administrator of the estate at that time, was aware that Klein wanted the malpractice and fraud claims to be filed and decided not to bring them. If the estate had wanted to pursue these claims, it would have been able to file a lawsuit within the statute of limitations or within a year of the voluntary dismissal. See 735 ILCS 5/13-217 (West 2012). Accordingly, the court did not err in denying plaintiff’s section 2-1401 petition.

¶ 24 B. Case 09 L 10077

¶ 25 a. Involuntary Dismissal

¶ 26 Plaintiff next contends that his refiled claims in 09 L 10077 were improperly dismissed as untimely. Defendants respond that the court did not err in dismissing these claims because they were not refiled within one year of plaintiff's voluntary dismissal or within each claim's statute of limitations. Defendants Cassiday Schade & Gloor and Greyhound additionally argue that plaintiff failed to state a claim against them because, as adversaries, they did not owe him a duty and claims for the alleged misconduct are barred by an absolute attorney privilege. Greyhound also contends that plaintiff forfeited review of the dismissal of the claims against it because plaintiff "never resisted dismissal of the lawsuit at [sic] to Greyhound."

¶ 27 1. Greyhound

¶ 28 First, we address Greyhound's argument that plaintiff forfeited his claims against it by failing to contest the dismissal below. Arguments not made before the trial court are forfeited and cannot be raised for the first time on appeal. *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 54. Greyhound filed its motion to dismiss pursuant to both sections 2-615 and 2-619 of the Code. In support of its 2-615 motion to dismiss for defects apparent on the face of the complaint, Greyhound contended, *inter alia*, that plaintiff failed to state a claim because he failed to allege that as his adversary Greyhound owed him a duty and failed to allege damages. The court initially dismissed the claims against Greyhound without prejudice and granted plaintiff leave to refile. Plaintiff chose not to do so, but rather, requested that the claims be dismissed with prejudice so that

all of the pending claims in this action would be final and he could appeal to this court.[6] Plaintiff never argued below that the dismissal was improper because his complaint sufficiently stated a claim against Greyhound. In fact, plaintiff never filed a response to Greyhound's motion to dismiss. Consequently, the claims against Greyhound are forfeited. *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 54 (2016). Moreover, as Greyhound points out, plaintiff requested that the claims against Greyhound be dismissed with prejudice and "a party cannot request to proceed in one manner and then later contend on appeal that the course of action was in error." (Internal quotation marks omitted.) *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 63. Therefore, the court did not err in dismissing the claims against Greyhound with prejudice.

¶ 29 2. Attorney Defendants

¶ 30 We now turn to the claims against the attorney defendants. A defendant is entitled to dismissal of an action under section 2-619(a)(5) of the Code if it is not commenced within the time allowed by law. *Hassebrock v. Ceja Corp.*, 2015 IL App (5th) 140037, ¶ 26. Section 2-1009 of the Code permits a plaintiff to voluntarily dismiss his case without prejudice. 735 ILCS 5/2-1009 (West 2012). Under section 13-217 of the Code, when a case is voluntarily dismissed, it may be refiled within one year of the dismissal or within the limitations period, whichever is greater. 735 ILCS 5/13-217 (West 2012). Case number 07 L 2063 was dismissed on August 22, 2008. Therefore, pursuant to section 13-217, the claims were required to be refiled by August 22, 2009. Plaintiff refiled these claims on August 26, 2009, four days late. August 26, 2009, did not fall on a weekend or a court holiday that would have

[6] We note that the order dismissing the claims against the attorney defendants contained Illinois Supreme Court Rule 304 (a) language. Ill. S. Ct. R. 304(a) (eff. February 26, 2010).

tolled the time for filing. Thus, the time for refiling the claims under section 13-217 of the Code had lapsed.

¶ 31 Therefore, we must determine whether any of plaintiff's remaining claims were still within the limitations period on August 26, 2009. The complaint for case number 09 L 10077 is 192 pages long with at least 25 counts. All of the claims relate to the alleged agreement between various attorneys and Greyhound to allow the limitations period to run on the estate's claims and can be classified as fraud, malpractice, or tortious interference claims. We note that although plaintiff claimed civil conspiracy, civil conspiracy is not in and of itself a cause of action for which relief can be granted. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 109. Actions against attorneys arising out of their professional services "based on tort, contract, or otherwise" must be brought within two years from the time the person bringing the action knew or reasonably should have known of the injury from which damages are sought. 735 ILCS 5/13-214.3 (West 2012). It is apparent that plaintiff knew of his claims on February 22, 2007, when he initially filed 07 L 2063. Therefore, to be filed within the limitations period he was required to file his claims against the attorney defendants by February 22, 2009. Case number 10077 was filed August, 26, 2009, months after the limitations period had run. Plaintiff maintains that the five-year general limitations period applies (735 ILCS 5/13-205 (West 2012)). We disagree. Section 13-214.3 is clear that it applies to all claims that arise from the provision of professional legal services (735 ILCS 5/214.3; *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶23) and plaintiff's allegations each relate to these attorneys in their professional capacity. Accordingly, the court did not err in finding that plaintiff's claims against the attorney defendants were untimely.

¶ 32 3. Absolute Attorney Litigation Privilege

¶ 33 Greyhound and Cassiday Shade & Gloor alternatively argue that because they were plaintiff's adversaries, the claims alleged by plaintiff are barred by the absolute attorney litigation privilege. As we have already determined that the court properly dismissed these claims, we need not address whether they would be barred by the absolute attorney litigation privilege.

¶ 34 b. Denial of Motion for Leave to Amend the Complaint

¶ 35 Plaintiff next contends that the court erred when it denied his motion for leave to file a first amended complaint in 09 L 10077. Defendants maintain that the court's denial of his motion to amend was proper because refiling would not have saved his claims, which were dismissed as untimely. A plaintiff does not have an absolute right to amend his complaint. *CitiMortgage, Inc. v. Parille*, 2016 Ill App (2d) 150286, ¶ 44. It is a matter within the court's discretion and we will not reverse the denial of a motion to amend absent an abuse of that discretion. *Id.* We note that we do not have a transcript or a bystander's report setting forth the reasons this motion was denied. It is the appellant's burden to supply the appellate court with a sufficiently complete record of the proceedings below for our review. *Foutch v. O'Bryant*, 99 Ill. 2d 398, 391-92 (1984). Without the court's reasoning, we cannot say that denying the motion was an abuse of discretion. This finding is further supported by the fact that plaintiff's proposed amendment was to add a count for "Third Party Contingent Liability Claims Against All Defendants," which would not have cured plaintiff's failure to file within the statute of limitations as to the attorney defendants. See *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69 (explaining that in determining whether a court has abused its discretion the court considers whether the proposed amendment would cure the defective pleading.)

¶ 36 c. Judge Lorna Propes

¶ 37 Plaintiff finally contends that Judge Propes should not have presided over 09 L 10077 because she should have granted his motion to substitute judge as of right and because the order assigning her the cases that was signed by Judge Maddux was void. Defendants argue that Judge Propes did not err in denying the motion to substitute judge as of right and that without a transcript of the proceedings we must presume that Judge Propes acted consistently with the law. They further argue that the assignment of the cases by Judge Maddux was proper, but even if it was not, any error would be harmless.

¶ 38 Section 2-1001(a)(2) of the Code allows litigants one substitution of judge as of right. 735 ILCS 5/2-1001(a)(2) (West 2012). "The right to substitution of judge is absolute when properly made, and the circuit court has no discretion to deny the motion." *Cincinnati Ins. Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 23. A motion for substitution of judge is properly made when it is brought prior to a substantial ruling in the case and is not made to delay or to avoid trial. *Illinois Licensed Beverage Ass'n, Inc. v. Advanta Leasing Services*, 333 Ill. App. 3d 937, 932 (2002). "A motion for substitution of judge as of right may *** be properly denied, even if the judge presiding did not rule on a substantial issue, if the litigant ' had the opportunity to test the waters and form an opinion as to the court's disposition' of an issue." *Cincinnati Ins. Co.*, 2012 IL App (1st) 111792, ¶ 23 (quoting *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 245-46 (2006)).

¶ 39 We do not have a transcript or bystander's report for the February 2, 2014, hearing at which Judge Propes denied plaintiff's motion for substitution of judge as of right. We again state that it is the appellant's responsibility to provide this court with a record for review. *Foutch*, 99 Ill. 2d at 391-92. Where the record is incomplete, we will presume that the court

acted in conformity with the law and had a sufficient factual basis for its ruling and any doubts that arise from the incompleteness of the record will be resolved against the appellant. *Id.* We note that this case has been plagued by delay and the motions to dismiss had been pending for approximately four years. In addition, several judges had already been involved in the case and disqualified for various reasons. Further, plaintiff brought the motion for substitution of judge only after Judge Propes had already denied his motions to intervene in the sanctions action and to transfer the case to Judge Zwick. Thus, as the record suggests multiple reasons for the denial of the motion, we will resolve our doubts against plaintiff and presume that the motion was denied because the court found that it was a delay tactic and plaintiff was judge shopping.

¶ 40 We next address plaintiff's contention that the order assigning the case to Judge Propes is void because it was signed by Judge Maddux, who was instructed by the appellate court not to be involved in this case. We agree with plaintiff that where the reviewing court issues a mandate with specific directions, the lower court must comply with them (*McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 44) and where the reviewing court's mandate determines the merits of the case, the circuit court is only authorized to enter the decree. *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 49. Here, however, the appellate court did not decide the merits of the case, it affirmed the court's consolidation of the cases below. Therefore, the mandate from the appellate court revested the circuit court with general jurisdiction. See *Erti v. City of DeKalb*, 2013 IL App (2d) 110199, ¶ 21 (stating that the appellate court's mandate revests the circuit court with jurisdiction). As noted above, an order is only void where the court lacked jurisdiction. *LVNV Funding, LLC*, 2015 IL 116129, ¶ 39. Accordingly, the order signed by Judge Maddux was not void. Nevertheless, the trial court "must obey precise and

unambiguous directions on remand" (*McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 44) and Judge Maddux should have heeded the appellate court's directive and avoided involvement in this case. His entering the order reassigning the case does not require reversal, however, because his actions were ministerial. See *Brzowski v. Brzowski*, 2014 IL App (3d) 130404, ¶19 (explaining that where a judge is disqualified he lacks authority to enter additional orders in the case except for ministerial acts such as transferring the case to another judge and entering " 'housekeeping" orders.' " *Id.* (citing *Moody v. Simmons*, 858 F. 2d 137, 143 (3rd Cir. 1988))). Judge Maddux's actions in this case after remand did not require discretion. He merely input the case into the computer system for random assignment and signed the order assigning the case to the selected judge. Thus, although we cannot condone Judge Maddux's failure to honor this court's mandate, we find no legal error and Judge Propes properly presided over 09 L 10077.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons we affirm the judgments of the circuit court.

¶ 43 Affirmed.