2016 IL App (1st) 151976-U

THIRD DIVISION
November 2, 2016

No. 1-15-1976

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HASTINGS MUTUAL INSURANCE COMPANY, Plaintiff-Appellant, v. ULTIMAGE BACKYARD, LLC, NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC., and JAVIER VASQUEZ, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 09 CH 07232 The Honorable Rodolfo Garcia, Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment

ORDER

¶ 1 *Held*: This court upheld the circuit court's judgment that the plaintiff insurance company owed workers' compensation coverage to the injured employee in a declaratory action case. The insurance company failed to establish the circuit court's decision violated the appellate court mandate following remand, and the insurance company failed to follow Supreme Court Rules regarding briefs before this court.

¶ 2 Following a stipulated bench trial, the circuit court determined Hastings Mutual Insurance Company was required to provide workers' compensation coverage to Ultimate Backyard's employee Javier Vasquez, who suffered a work-related injury. Hastings Mutual now appeals, arguing the court's judgment was improper. We affirm.

¶ 3 BACKGROUND

¶ 4 Hastings Mutual, a workers' compensation insurance carrier, issued Ultimate Backyard a policy for April 18, 2007 to April 18, 2008. In May 2008, Vasquez sustained an injury while on the job with Ultimate Backyard and subsequently filed a claim with the Illinois Workers' Compensation Commission (Commission), an administrative agency.

¶ 5 Hastings Mutual nonetheless filed an action in the circuit court for a declaration that it had no duty to defend or indemnify the insureds. Hastings Mutual argued it sent a cancellation notice on January 14, 2008, to be effectuated April 18, 2008. In other words, Hastings Mutual argued there was no policy coverage at the time of Vasquez's May 2008 injury because it had been cancelled in April.

¶ 6 Defendants Ultimate Backyard, Vasquez, and the National Council on Compensation Insurance (National Council)[1], which provides proof of insurance coverage for Illinois, all responded with motions to dismiss arguing the cancellation issue was a factual matter that should be resolved in the pending administrative proceedings before the Commission. The circuit court agreed and granted the motions to dismiss of both Ultimate Backyard and Vasquez. As to National Council, the court held the pleadings were stricken for failing to state a cause of action, but Hastings Mutual could replead them following a decision by the arbitrator/Commission. The court thus also denied Hastings Mutual's motion to stay the administrative proceedings.

¶ 7 The matter wended its way up to this court. In *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 33 (*Hastings I*), this court reversed and remanded the dismissal of the declaratory action.[2] We stayed the administrative proceedings before the Commission "until a decision is made by the [circuit] court regarding the issue of

[1] The National Council is a corporation servicing various states, including Illinois. Hastings Mutual is a member of the National Council.

[2] *Hastings I* provides a more detailed recitation of the facts leading up to that case.

insurance coverage." *Id*. at 1. We held the circuit court was in a better position to rule on the legal issue of whether Hastings Mutual's cancellation notice conformed with section 4(b) of the Workers' Compensation Act (Act) (820 ILCS 305/4(b) (West 2016)), as required. Section 4(b) says:

> "The insurance so *certified* shall not be cancelled or in the event that such insurance is not renewed, extended or otherwise continued, such insurance shall not be terminated until at least 10 days after *receipt by the Illinois Workers' Compensation Commission* of notice of the cancellation or termination of said insurance***." (Emphasis added).

¶ 8 In remanding the matter, this court noted it was undisputed that "the [National Council] logged and date stamped the notice of cancellation prior to its rejection."[3] 2012 IL App (1st) 101751, ¶ 33. In providing proof of workers compensation coverage, the National Council maintains and transmits insurance certification and cancellation notices to the Commission. The National Council thus serves as a repository tracking the various workers' compensation policies and acts as an agent for the Commission. 1984 Ill. Atty. Gen. Op. 42 (Sept. 13). In responsive pleadings, the National Council conceded that it rejected the cancellation notice, thus effectively conceding the National Council had received it. On remand, the task of the circuit court was thus to engage in statutory interpretation to determine the meaning of "receipt" by the Commission *vis a vis* the National Council and whether under the facts of this case the January 2008 cancellation notice was effective. As discussed in more depth below, following further proceedings, the matter proved not to be so simple.

[3] Hastings Mutual actually sent a hard copy cancellation notice first to what's called a "keying vendor." The keying vendor had to transform the hard copy into electronic form before then submitting it to the National Council.

¶ 9 On remand, Hastings Mutual filed a motion for judgment on the pleadings, arguing that under the directive of *Hastings I,* it was clear Hastings Mutual had complied with section 4(b)'s cancellation provision because the National Council as agent for the Commission had undoubtedly "received" the cancellation form in January 2008. Both Vasquez and the National Council filed answers to Hastings Mutual's third-amended complaint and also responded to the motion for judgment on the pleadings. The National Council denied that Hastings Mutual complied with section 4(b) and argued its system rejected the cancellation notice because the underlying policy was not logged into the system. Vasquez and the National Council asserted Hastings Mutual did not properly certify and cancel the insurance until September 2008. It is noteworthy that certification under the Act simply means that the employer guarantees it can actually pay for the required compensation and must file with the Commission a form showing compliance with the Act. See 820 ILCS 305/4(a)(5), (b) (West 2016). As a first step prior to cancellation, section 4(b) requires an employer's *insurance carrier* to send proof of that policy certification to the Commission within five days of the policy being effectuated. *Id.*

¶ 10 At various points, the parties relied on the deposition testimony of Bernadette Farinato, the National Council's support system manager.[4] According to Farinato, the National Council's database system rejected the January 2008 cancellation notice because there was no base policy on record and so nothing technically to "cancel." The system issued an error and reject report reflecting that no certificate of compliance for that policy existed with the Commission. Several days later, the National Council sent this report electronically to Hastings Mutual. Hastings

[4] At various points, Farinato's deposition testimony is difficult to follow because it references exhibits that either do not appear to be included in this record on appeal or are not clearly identified within the record. We note it is the appellant's responsibility to provide a sufficiently complete record on appeal and any doubts resulting from an insufficient record are resolved in favor of upholding the trial court's judgment. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Likewise, it is not this court's duty to fish out where in the voluminous record these exhibits reside. See *Cimino v. Sublette*, 2015 IL App (1st) 133373, ¶ 3.

Mutual did not respond or seek to formally certify and cancel the policy until months later on September 15, 2008, long after Vasquez's injury. This testimony was confirmed by certified Commission records, on which Vasquez relied. Farinato testified that insurance carriers are responsible for correcting any errors that appear on the error and reject report.

¶ 11 Given the disputed facts as to the effectiveness of the initial cancelation notice, the trial court denied Hastings Mutual's motion for judgment on the pleadings. The court, however, granted Hastings Mutual's default motion against Ultimate Backyard, and held Ultimate Backyard would be "bound by any future coverage decision" by the court.

¶ 12 The parties eventually filed various proposed findings of fact and conclusions of law before the court. As stated, the matter proceeded to a stipulated bench trial whereby the court ruled Hastings Mutual had not complied with section 4(b). The court held there was no certified policy on record with the Commission, and so it did not exist in the National Council's database as of January 2008. What was initially a legal question of defining "receipt" under the statute then became a mixed question of law and fact as to whether Hastings Mutual had adequately certified the policy in accordance with section 4(b) such that it could actually be canceled. The court held the policy had only been certified and cancelled in September 2008. Consequently, the National Council could not give effect to Hasting Mutual's initial January 2008 cancellation notice. Since the policy was still in effect as of May 2008, the court ruled Hastings Mutual owed workers' compensation coverage to Vasquez. Hastings Mutual was jointly liable with Ultimate Backyard for Vasquez's injury. This timely appeal followed.

¶ 13 ANALYSIS

¶ 14 Hastings Mutual now challenges the trial court's determination on appeal. Vasquez and the National Council have filed briefs in response. At the outset, we observe that in Illinois an

insurer's notice of cancellation for workers' compensation benefits must be in accord with the Act and Commission rules, or else the policy remains in effect. *Textile Maintenance v. Industrial Commission*, 263 Ill. App. 3d 866, 871 (1994); see *e.g. Casualty Insurance Co. v. Kendall Enterprises*, 295 Ill. App. 3d 582, 584, 587 (1998) (insurer that fails to properly cancel workers' compensation policy remains jointly liable with employer for benefits to injured employee). An insurance company is held to a strict standard when it attempts to cancel a policy for the nonpayment of a premium. *Textile Maintenance*, 263 Ill. App. 3d at 871. Moreover, an insurer who contends the insurance policy has been effectively canceled bears the burden of proof. *Ledbetter by Ledbetter v. Allandslee*, 153 Ill. App. 3d 163, 169 (1987). Whether an insurer has given a cancellation notice is sometimes a question of fact unless the material facts are undisputed. *Id*. at 170.

¶ 15 Hastings Mutual first contends the trial court on remand exceeded the appellate court's mandate in *Hastings I* and also improperly considered facts and issues in violation of the "law of the case" doctrine. On remand, if specific instructions are not given, the trial court is required to examine the court's opinion and determine from it what further proceedings would be proper and consistent with the opinion. *Aguilar v. Safeway Insurance Co.*, 221 Ill. App. 3d 1095, 1099 (1991). The correctness of a trial court's action on remand is to be determined from the appellate court's mandate, as opposed to the appellate court's opinion unless the mandate directs the trial court to proceed in conformity with the opinion. *Id*. In addition, although questions of law actually decided in a previous appeal are binding, matters concerning the merits of a controversy which were not decided by the appellate court do not become the law of the case. *Id*. at 1101; see also *People ex rel. Bernardi v. City of Highland Park*, 225 Ill. App. 3d 477, 482 (1992)

(noting, questions which have not actually been decided by the reviewing court and which were not at issue or involved in the appeal may be considered by the court in subsequent proceedings).

¶ 16 The mandate in *Hastings I* simply stated "reversed and remanded." Our prior decision was confined to determining whether Hastings Mutual's complaint should be dismissed, and whether the cause should proceed before the administrative agency given its expertise on factual issues. As the parties acknowledge, the circuit court holds concurrent jurisdiction over insurance coverage disputes involving workers compensation benefits. See *Employers Mutual Companies v. Skilling*, 163 Ill. 2d 284, 286 (1994) (jurisdiction is concurrent between circuit court and Commission on insurance coverage dispute). In *Hastings I*, we were tasked with deciding which was the better forum to entertain the declaratory action. We held the matter of compliance with section 4(b) involved a question of law best suited for the circuit court's resolution. *Hastings I*, 2012 IL App (1st) 101751, ¶ 33. In other words, we held the doctrine of primary jurisdiction, which calls for a circuit court to sometimes stay judicial proceedings pending referral of the controversy to an administrative agency, did not foreclose the circuit court from reviewing the case. See *Skilling*, 163 Ill. 2d at 290 (where question of law is presented in declaratory judgment suit involving insurance coverage dispute, circuit court's jurisdiction became paramount); see also *Segers v. Industrial Commission*, 191 Ill. 2d 421, 427 (2000) (primary jurisdiction involves a question of timing, not judicial competence to hear a particular case). We did not rule on the merits of the case since it reached us as a procedural matter from the motion-to-dismiss stage prior to any answers or formal discovery. We remanded the action to the circuit court for a ruling on statutory interpretation, but significantly, we did not limit proceedings in any other way.

¶ 17 The circuit court then properly allowed the record to develop in accordance with our prior opinion and the mandate. While the parties eventually agreed that the National Council *received* the cancellation notice, on remand they disputed whether it was effective when rejected by the National Council's database and thus never technically presented to the Commission. Pleadings on remand asserted the reason the database rejected the January 2008 cancellation notice was because it wasn't certified in conformity with the section 4(b) of the Act. The National Council, for example, filed its answer to Hastings Mutual's third-amended complaint and, in it, admitted its database automatically rejected the January 2008 cancellation notice but denied it was required to record that notice with the Commission or that the receipt of the notice qualified as "receipt" under section 4(b). The National Council affirmatively asserted Hastings Mutual failed to properly utilize the National Council's system and services. Citing Farinato's testimony, Vasquez asserted that the initial cancellation attempt was flawed, Hastings Mutual was responsible for correcting the matter, and Hastings Mutual did not in reality cancel the policy until September 2008.

¶ 18 There has never been any dispute that the policy was issued; the question is whether it was properly certified to and then canceled with the National Council and Commission. In essence, on remand, the matter became a mixed question of law and fact, but the ultimate goal remained to determine whether Hastings Mutual had complied with the legal mandate of section 4(b) and whether insurance coverage existed. Our initial opinion did not foreclose such factual and legal developments. We therefore reject Hastings Mutual's arguments that the trial court violated our mandate on remand or disturbed the law of the case. See *Chultem v. Ticor Title Insurance Co.*, 2015 IL App (1st) 140808, ¶ 51 (law of case doctrine inapplicable where opinion from prior appeal considered only procedural matter).

¶ 19 In reaching this conclusion, we also reject Hastings Mutual's related argument that the trial court erred in denying its motion for judgment on the pleadings. Hastings Mutual maintains it complied with section 4(b) because the National Council received the cancellation notice in January 2008, thus vitiating any future coverage. Judgment on the pleadings is proper where the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Gillen v. State Farm Mutual Auto Insurance Co.*, 215 Ill. 2d 381, 385 (2005). A party moving for section 2-615(e) judgment on the pleadings concedes the truth of the well-pleaded facts in the nonmovant's pleadings. *Allstate Property and Casualty Insurance Co. v. Trujillo*, 2014 IL App (1st) 123419, ¶ 16. The court must take as true all reasonable inferences from those facts but construe the evidence strictly against the movant and disregard any conclusory allegations or surplusage. *Id*. Clearly, where the pleadings put in issue one or more material facts, evidence must be taken to resolve such issues and a judgment may not be entered on the pleadings. *Zipf v. Allstate Insurance Co.*, 54 Ill. App. 3d 103, 108 (1977). As stated, following remand, an issue of mixed law and fact emerged as to the effectiveness of the cancellation notice notwithstanding its "receipt" by the National Council. Viewing these above-stated facts strictly against Hastings Mutual, as required, the trial court correctly denied Hastings Mutual's motion for judgment on the pleadings.

¶ 20 Hastings Mutual alternatively contends the trial court's rulings were simply incorrect and should be reversed. Hastings Mutual argues the National Council had no authority to reject the cancellation notice and, in support, points to an Illinois Attorney General opinion holding that the National Council could act as an agent for the Commission in receiving insurance certificates and cancellation notices because such actions were ministerial in nature. 1984 Ill. Atty. Gen. Op. 42 (Sept. 13). The Attorney General noted that generally administrative agencies cannot

delegate power, authority or functions which are quasi-judicial in character or require discretion or personal judgment. *Id*.

¶ 21 Hastings Mutual seems to argue the National Council's rejection of the notice in this case involved some sort of discretion or personal judgment in violation of that rule. Nothing in the record indicates this was the case. The database's automatic rejection of the cancellation notice due to the absence of the underlying policy involves a purely ministerial matter, which the National Council had the authority to perform.

¶ 22 We also note Hastings Mutual has not complied with Supreme Court Rules, which provides further basis for rejecting its argument. Rule 341(h)(7) (eff. Jan. 1, 2016) requires the appellant to set forth his contentions on appeal and the supportive reasoning, with citation to the authorities and the pages of the record relied on. Hastings Mutual makes various factual statements in its argument without citing the 15-volume record. It also relies on a number of cases but does not provide the proper citation or pin-cite. This court is not a repository for an appellant to foist the burden of argument and research. *Cimino v. Sublette*, 2015 IL App (1st) 133373, ¶ 3. Our docket is full, and noncompliance with the rules does not help us resolve appeals expeditiously. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15; see also *In re Guardianship of Tatyanna T.*, 2012 IL App (1st) 112957, ¶¶ 17-18 (appellant's failure to rely on adequate legal and factual support provides basis to dismiss appeal).

¶ 23 Hastings Mutual's failure to abide by the Supreme Court Rules, including Rule 341(h)(7), also supplies this court with the authority for rejecting the remainder of its arguments that the trial court's judgment was clearly erroneous, legally incorrect, and represented an abuse of discretion. Hastings Mutual has not expanded on its argument beyond bare assertions lacking legal support and also has failed to supply this court any citation to the record facts in support of

its argument. We further note that the present case comes to us following a stipulated bench trial, but Hastings Mutual does not cite to proposed stipulations or even the trial court's judgment in its argument section. Hastings Mutual also does not cite to any stipulations in its fact section, but rather cites to the judgment it ultimately seeks to overturn. While Hastings Mutual's fact section cites to the record, various citations are either incorrect or exaggerated. However, Rule 341(h)(6) (eff. Jan. 1, 2016) requires a statement of facts necessary for understanding the case, set forth accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal. *Hall*, 2012 IL App (2d) 111151, ¶ 9. Again, this court is not a repository for an appellant to foist the burden of argument and research, and it's not the reviewing court's job to sift through the record or complete legal research to find support for issues. *Cimino*, 2015 IL App (1st) 133373, ¶ 3. Under these circumstances, we decline to further address Hastings Mutual's remaining arguments, as Hastings Mutual has not provided a basis to disturb the trial court's judgment, and our review of the record has not disclosed any basis. Therefore, the arguments not properly raised on appeal are waived and cannot be raised in a reply brief. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Marzouki v. Marzouki*, 2014 IL App 1st 132841, ¶ 1

¶ 24 Finally, Hastings Mutual argues the January 2008 cancellation notice should have been retroactively applied. In support, Hastings Mutual cites only to its motion to reconsider. This argument misses the point that Hastings Mutual failed to comply with section 4(b) and, as the National Council notes, also was not raised properly in proceedings below, resulting in waiver. See *Edwards v. Lombardi*, 2013 IL App (3d) 120518, ¶ 16; *Stahelin v. Forest Preserve Dist. of Du Page County*, 401 Ill. App. 3d 1030, 1041 (2010) (arguments raised for the first time in a motion for reconsideration are forfeited on appeal).

¶ 25 CONCLUSION

¶ 26 Based on the foregoing, we affirm the judgment of the trial court finding Hastings Mutual is required to offer insurance coverage to Vasquez and that Hastings Mutual remains jointly liable with Ultimate Backyard. See 820 ILCS 305/4(g) (West 2016). Accordingly, we lift the stay imposed by *Hastings I*, so that the cause may proceed before the Commission if necessary.

¶ 27 Affirmed; Stay lifted.