

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).

FIFTH DIVISION
June 16, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---------------------------------------|---|----------------------|
| CARMEN LOPEZ-VAZQUEZ, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff and Petitioner-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 12 L 854 |
| |) | |
| MARSHALLS OF IL, LLC, and CERMAK |) | |
| PLAZA ASSOCIATES, LLC, |) | |
| |) | |
| Defendants, |) | |
| |) | |
| (Illinois Neurospine Institute, P.C., |) | Honorable |
| |) | Daniel T. Gillespie, |
| Respondent-Appellant). |) | Judge Presiding. |

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

ORDER

¶1 *Held:* When adjudicating the health care services liens after the parties in a personal injury action received a binding arbitration award, the circuit court properly adjudicated the liens of the health care professionals, including those who reached an agreement with the plaintiff to

release their liens for a reduced amount, by awarding all the health care professional lien holders a proportionate share of 20% of the arbitration award.

¶2 On appeal, respondent Illinois Neurospine Institute, P.C. (INI), a health care services lien holder in this personal injury action, contends the circuit court failed to adjudicate its lien to the maximum extent provided under the law, and failed to adjudicate the liens of the other lien holder respondents to zero dollars because they agreed to release their liens for a reduced amount and did not appear at the lien adjudication hearing.

¶3 For the reasons that follow, we affirm the judgment of the circuit court.

¶4 I. BACKGROUND

¶5 Plaintiff Carmen Lopez-Vazquez filed a personal injury action in 2012 seeking damages for injuries she sustained when, on August 27, 2011, she allegedly slipped and fell due to liquid that had accumulated on the floor of the premises owned, controlled, maintained or leased by defendants Marshalls of IL, LLC, and Cermak Plaza Associates, LLC. The claim was resolved by binding arbitration, in which the arbitrator ruled against plaintiff on the issue of liability and plaintiff received a settlement amount of \$220,000. The trial court dismissed the cause with prejudice in October 2015 and retained jurisdiction to enforce the terms of the settlement and adjudicate liens. Plaintiff acknowledged that 29 lien holders, including Dr. Ronald Michael, the sole owner of INI, had created enforceable health care services liens in this matter.

¶6 In November 2015, plaintiff moved the court to adjudicate the health care services liens. She alleged that she had followed the recommendations of her medical “treaters” but much of the treatment was not medically necessary or related to the injury in this case and the billing for her care was not reasonable, customary or fair. She stated she had incurred \$518,986.93 in medical bills, all of her medical treatment was provided on a lien basis, and over \$300,000 of that

treatment was related to a 2012 lumbar fusion surgery performed by Dr. Michael of INI. Plaintiff's billing expert reviewed all but one medical bill for \$11,030, which was unknown at the time, for reasonableness. The billing expert reviewed \$507,956.93 in bills and concluded that only \$257,258 of it was usual, customary and reasonable. Furthermore, a neurosurgeon retained by plaintiff opined that her lumbar fusion surgery performed by Dr. Michael was unnecessary and unrelated to the accident at issue and the medical treaters had grossly overcharged plaintiff for treatment. The neurosurgeon also opined that the surgery was a failure and it was medical negligence to have performed the surgery.

¶7 In February 2016, INI responded that if it was the only health care professional to appear and have its lien adjudicated, it would recover the maximum of \$44,000, or 20% of the \$220,000 arbitration award.

¶8 Prior to the hearing to adjudicate the liens, plaintiff and 28 of the 29 total health care services lien holders agreed to resolve the 28 liens for specified portions of the settlement funds. Specifically, 12 health care providers agreed to release their liens for a total of \$43,844, and 16 health care professionals agreed to release their liens for a total of \$15,905.95. The 28 lien holders signed the release of liens in December 2015 and January 2016. INI did not agree to release its \$146,256.59 lien for health care professional services.

¶9 At the April 2016 lien adjudication hearing, Dr. Michael testified concerning the treatment and care he rendered to plaintiff and the reasonableness of INI's lien. Plaintiff argued that, based on the \$220,000 settlement, \$44,000 was available for the health care provider liens and \$44,000 was available for the health care professional liens. Concerning the latter liens, plaintiff argued that due to her agreements with the 16 other professional lien holders to reduce

their liens to a total of \$15,905.95, the most Dr. Michael of INI could recover was \$28,094.05 (*i.e.*, \$44,000 minus \$15,905.95).

¶10 INI argued that the trial court should not consider plaintiff's agreements to reduce the total liens of the other 16 professional and 12 provider lien holders to \$15,905.95 and \$43,844, respectively, when adjudicating INI's lien to calculate its share of the \$220,000 settlement. INI argued that the other lien holders failed to personally appear at the *in rem* proceeding to have their liens adjudicated and perfected. INI also argued that it was the only lien holder because the 28 other respondents had released their liens pursuant to their side agreements with plaintiff to divvy up the settlement proceeds. INI asserted that as the sole lien holder, it was entitled to recover a maximum of one-third of the \$220,000 settlement, or \$73,333.

¶11 After hearing arguments from both parties, the trial court adjudicated 20% of the settlement, or \$44,000, among the 12 health care providers pursuant to their agreements with plaintiff to release their liens for a total of \$43,844. The trial court also ruled that 20% of the settlement, or \$44,000, was available for the 17 health care professionals, and awarded INI \$33,000 for its lien. This left \$11,000 for the 16 other health care professionals, who had agreed with plaintiff to reduce their liens to a total of \$15,905.95. The trial court ordered that the \$11,000 would be distributed among them in shares proportionate to their agreed upon portion of the total \$15,905.95 in reduced liens. When INI's counsel clarified that the court was not reducing INI's lien due to any finding concerning reasonableness, the trial judge responded, "No, I just tried to make a Solomon-like decision."

¶12 INI appealed the trial court's order adjudicating its lien.

¶13

II. ANALYSIS

¶14 On appeal, INI argues the trial court erred in its application of the Health Care Services Lien Act (Act) (770 ILCS 23/1 *et seq.* (West 2010)) to INI's lien because (1) INI was the only entity holding a health care services lien against plaintiff's settlement at the time of the adjudication hearing and the only entity to participate in the adjudication hearing, (2) the trial court did not have discretion to deviate from the statutory formula when adjudicating liens, and (3) the language of the Act controls over plaintiff's agreements with the other lien holders to reduce their liens for a specified portion of the arbitration award. INI contends the trial court improperly reduced its lien to \$33,000, or 15% of plaintiff's \$220,000 recovery, when INI was entitled to \$73,333, or one-third of plaintiff's recovery.

¶15 The issue before us involves the construction of a statute, which is a question of law and is reviewed *de novo*. *McVey v. M.L.K. Enterprises, LLC*, 2015 IL 118143, ¶11. The court's primary objective in construing a statute is to ascertain and give effect to the legislature's intent. *Id.* The plain language of the statute is the most reliable indication of the legislature's intent, and when the language is clear, it must be applied as written without resort to aids or tools of interpretation. *Id.*

¶16 The Act provides, in pertinent part, that:

“(a) *Every health care professional and health care provider [of treatment of an injured person] shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges ***. The total amount of all liens under this Act, however, shall not exceed 40% of the verdict, judgment, award, settlement, or*

compromise secured by or on behalf of the injured person on his or her claim or right of action.

(c) All health care professionals and health care providers holding liens under this Act with respect to a particular injured person shall share proportionate amounts within the statutory limitation set forth in subsection (a).

The statutory limitations under this Section may be waived or otherwise reduced only by the lien holder. No individual licensed category of health care professional (such as physicians) or health care provider (such as hospitals) as set forth [in the section 5 definitions in this Act], however, may receive more than one-third of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action. *If the total amount of all liens under the Act meets or exceeds 40% of the verdict, judgment, award, settlement, or compromise, then:*

(1) all the liens of the professionals shall not exceed 20% of the verdict, judgment, award, settlement, or compromise; and

(2) all the liens of the providers shall not exceed 20% of the verdict, judgment, award, settlement, or compromise;

provided, however, that the health care services liens shall be satisfied to the extent possible for all health care professionals and health care providers by reallocating the amount unused within the aggregate total limitation of 40% for all health care services liens under this Act; and provided further that the amounts

of liens under paragraphs (1) and (2) are subject to the one-third limitation under this subsection.” (Emphasis added.) 770 ILCS 23/10 (West 2010).

The Act further provides that “[o]n petition filed by the injured person or the health care professional or health care provider and on the petitioner’s written notice to all interested adverse parties, the circuit court shall adjudicate the rights of all interested parties and enforce their liens.” 770 ILCS 23/30 (West 2010). Nothing in the Act “shall be construed as limiting the right of a health care professional or health care provider, or attorney, to pursue charges for the services it furnishes to an injured person. Notwithstanding any other provision of law, a lien holder may seek payment of the amount of its reasonable charges that remain not paid after the satisfaction of its lien under this Act.” 770 ILCS 23/45 (West 2010).

¶17 In accordance with the plain language of the Act, the total health care services liens in the instant case exceeded 40% of the settlement, so the two groups, health care professionals and providers, were each entitled to a maximum 20% share of the settlement. 770 ILCS 23/10 (c)(1), (c)(2) (West 2010). Accordingly, a health care professional such as Dr. Michael of INI in this case was entitled to a proportionate share of \$44,000, which represents 20% of plaintiff’s recovery. INI was not the only health care services lien holder entitled to adjudication and enforcement of its lien. The plaintiff presented the trial court with undisputed evidence of all the liens and stipulated that the other 28 lien holders had filed liens in accordance with the terms of section 23/10(b) of the Act (770 ILCS 23/10(b) (West 2010)).

¶18 Furthermore, those 28 lien holders did not, as INI insists, merely release or withdraw their liens. Rather, they agreed with plaintiff to release their liens in exchange for a reduced specified portion of the \$88,000 available for health care services liens. Nothing in the Act prevents the parties from entering into such an agreement, which was in no way contrary to the

plain terms of the Act and did not control or interfere with the trial court's adjudication of the liens under the Act. Moreover, our construction of the Act is consistent with the provision that nothing in the Act shall be construed as limiting the rights of health care services lien holders to pursue collection through all available means of their reasonable charges that remain unpaid after the satisfaction of their liens under the Act. 770 ILCS 23/45 (West 2010).

¶19 We reject INI's interpretation of the Act, which would undermine judicial economy by reducing the incentive for parties to reach settlement agreements that provide for a pro-rata or proportionate share of settlement funds consistent with the provisions of the Act. Furthermore, neither the plain language of the Act nor any relevant case law supports INI's assertion that a health care services lien holder must be present at and participate in the adjudication hearing in order to have its lien enforced.

¶20 INI misconstrues the Act to support its claim that it was entitled to one-third of plaintiff's recovery. The Act provides that no individual *licensed category* of health care professional or health care provider may receive more than one-third of the settlement. 770 ILCS 23/10(c) (West 2010). Section 5 of the Act categorizes the licensed professionals as licensed physicians, dentists, optometrists, naprapaths, clinical psychologists, or physical therapists. 770 ILCS 23/5 (West 2010). The categories of licensed providers include licensed hospitals, home health agencies, ambulatory surgical treatment centers, long-term care facilities, or emergency medical services personnel. *Id.* Contrary to INI's assertion on appeal, this one-third provision is a further limitation on the 40% limit on all liens under the Act. It does not provide a basis to award any individual professional or provider 33.3% of the plaintiff's recovery. Rather, it provides that when the court determines the lien holders' proportionate shares of the recovery, no particular *category* of professional or provider is allotted more than one-third of the recovery.

¶21 We note one small error in the trial court's adjudication of the liens. The health care providers agreed to reduce their liens to a total of \$43,844, which was less than the \$44,000 allotted to them under the Act and resulted in an unused amount of \$156. In contrast, the \$44,000 allotted to the health care professionals was not sufficient to satisfy their liens where the trial court awarded INI \$33,000 and the 16 other professionals agreed to reduce their total liens to \$15,905.95. Section 10(c) provides that all the liens shall be satisfied to the extent possible by reallocating an unused amount within the total 40% of the recovery available to lien holders under the Act. 770 ILCS 23/10(c) (West 2010). Accordingly, the court should have reallocated the \$156 unused amount toward the satisfaction of the total agreed upon \$15,905.95 lien of the 16 other professionals. This error, however, had no effect on INI's \$33,000 and the 16 other professional lien holders did not appeal the trial court's ruling.

¶22

III. CONCLUSION

¶23 For the foregoing reasons, we affirm the judgment of the trial court.

¶24 Affirmed.