2017 IL App (1st) 162109-U

FIFTH DIVISION
September 7, 2017

No. 1-16-2109

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO FIREFIGHTERS UNION LOCAL NO. 2 and MARCUS BROWN,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
	)	No. 15 CH 17801
v.	)	
	)	
THE CITY OF CHICAGO,	)	Honorable Peter Flynn,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Burke and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: No public policy violation occurred in the arbitrator's decisions where plaintiff Brown consented to the disclosure of his medical records through his agreement to both the Last Chance Agreement and Chicago Fire Department medical authorization forms.

¶ 2 Plaintiffs, Chicago Firefighters Union Local No. 2 (Union) and Marcus Brown, filed an action in the chancery division of the circuit court seeking to vacate a labor arbitration award which upheld the discharge of Brown as a member of the Chicago Fire Department (CFD). The

City of Chicago (City) moved to dismiss plaintiffs' complaint under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)), which the court granted.

¶ 3 Plaintiffs appeal, arguing that the arbitrator's award finding good cause to terminate Brown should be vacated because it violated public policy where the evidence to support Brown's termination consisted of his medical records for substance abuse treatment that were disclosed following Brown's authorization.

¶ 4 Brown was hired by the CFD as a firefighter in 2001. In March 2005, Brown was absent without leave (AWOL) for multiple days. Subsequently, he was required to appear for a fitness for duty evaluation and drug screening by the medical division. The drug screening revealed the presence of cocaine metabolites in Brown's system. The positive drug screening violated CFD's general order #87-008, which, in relevant part, prohibits the use of illegal drugs by CFD employees.

¶ 5 Based on this violation, the CFD recommended Brown's termination. In May 2005, pursuant to the collective bargaining agreement (CBA) between the CFD and the Union, Brown was offered the opportunity to hold the discipline of termination in abeyance by entering into a "Supplemental Recommendation/Agreement," known as a Last Chance Agreement. The Last Chance Agreement holds the recommended discipline in abeyance under certain conditions. The agreement states that "any second involvement with drugs and/or alcohol will result in termination which will not be held in abeyance by any further participation in an employee assistance program."

¶ 6 In 2013, Brown was selected for a position in one of CFD's elite squads. The squads perform technical rescues, including rescuing people from confined spaces, using ropes to rescue

people from precarious position at heights, and water and ice rescues. There are 96 positions in the squad units out of more than 4,500 CFD firefighters.

¶ 7 On April 29, 2014, Chief Michael Fox, the assistant deputy fire commissioner of special operations, learned that Brown had failed to report for duty and was AWOL. He later found out that another firefighter, Christopher Penny, had spoken to Brown and that Brown told Penny that "the demons got him." Chief Fox was concerned for Brown's safety and asked Penny to find Brown and get him some help.

¶ 8 On May 1, 2014, Brown went to Little Company of Mary Hospital (LCM), but was initially denied admission. He returned the following day and was admitted to the behavior health unit (BHU). Brown spent five days at the BHU for inpatient care and, subsequently, participated in a 28-day outpatient program. Brown contacted a counselor with CFD's employee assistance program to inform her that he needed to go on medical "lay-up," which is a contractual benefit for CFD employees providing them with 365 days of sick leave over a two-year period with full salary and benefits for a nonduty illness or injury. Brown was placed on lay-up as of May 1, 2014, with the chief complaint listed as "depression/stress (emotional)" caused by "family issues."

¶ 9 As a condition of his medical lay-up, Brown was seen by the medical director of the CFD medical division. On May 22, 2014, Brown signed an authorization form for the "use and disclosure of protected health information." The authorization allowed LCM to disclose his protected health information (PHI) covering May 2, 2014 to May 22, 2014, to the medical director of the CFD medical division. The PHI selected by Brown for disclosure was laboratory reports and "Psychiatric/Psychological Diagnostic Evaluation, Intake, Treatment/Discharge Summaries and Laboratory Reports." On June 11, 2014, Brown signed another identical

authorization form covering May 7, 2014 to June 6, 2014. This form included the same PHI as the previous one, but added the disclosure of "Admission Record/Discharge Summary/History & Physical Records." The authorization forms include the following language:

> "I may revoke this authorization at anytime by notifying the above-listed health care provider in writing. However, I understand that such a revocation will not have any effect on any information already used or disclosed by the health care provider before or received the written notice of revocation. I understand that there is a potential that the information disclosed pursuant to this authorization may be subject to redisclosure by the recipient and will no longer be protected by the Health Insurance Portability and Accountability Act. This Authorization is voluntary and I may refuse to sign this Authorization form. I understand that the health care component may not condition treatment, payment, enrollment or eligibility for benefits on whether I sign this authorization, unless the treatment is research-related."

¶ 10 Before LCM would disclose Brown's medical information, Brown had to sign LCM's authorization for disclosure of information. The form stated:

> "I hereby authorize the use and/or disclosure of my individually identifiable mental health/alcohol and/or substance abuse/developmental disability information as described below in this section. I understand that this authorization is voluntary. No individual coerced me into signing this authorization, and I am

> providing this authorization under my own free will. I understand that once this information is received by the authorized person or agency, then it may no longer be protected by federal privacy laws. However, this information will continue to be protected by Illinois law and may be subject to redisclosure by the recipient only if I specifically provide permission for the disclosure."

¶ 11 Brown wrote on the form that "Dr. Hugh Russell/CFD Medical Division" was authorized to receive his PHI. Following the execution of these authorizations, LCM disclosed Brown's relevant medical records to the CFD medical division. These records included typed treatment plan notes, therapy notes, behavioral health diagnostic summary, and typed behavioral health patient database information. The records disclosed notations that Brown informed medical personnel that he last used cocaine on May 1, 2014. The records also contained notations that Brown reported that his longest period of sobriety was two to three years, and that "prior to admit he was smoking $200-300 of cocaine/day for the past week." A comment on the diagnostic summary stated:

> "PT REPORTS HE HAS BEEN EMPLOYED AS A CHICAGO FIRE FIGHTER X13 YEARS. PT REPORTS HE HAS NOT BEEN SHOWING UP TO WORK DUE TO THE SA. PT STATES HIS EAP IS INVOLVED AND ARE AWARE SOMEWHAT AS TO WHAT HAS BEEN GOING ON WITH HIM."

¶ 12 The diagnostic summary also included the following comment, "PT REPORTS HE RECENTLY RELAPSED ON COCAINE." The summary stated that Brown expressed concerns

over losing his job. The medical records listed major depression, suicidal ideation, and cocaine dependence.

¶ 13 The LCM records were sent to the CFD medical division and were reviewed by Chief Edgar Ignacio, the deputy district chief in the medical division. Chief Ignacio subsequently notified Chief Janice Hogan, the deputy chief of the labor relations division, about Brown's medical records indicating cocaine use. Chief Hogan was the officer responsible for making disciplinary recommendations. Upon the notification that the medical records indicated Brown had relapsed and used cocaine, she began disciplinary measures.

¶ 14 On June 26, 2014, Chief Hogan recommended that Brown be terminated as he was subject to the Last Chance Agreement and the medical records indicated a second involvement with cocaine, an illegal drug. In her memo, Chief Hogan stated, "It is evident by the records obtained by the Medical Division from [LCM], that FF Brown violated and failed to comply with the requirement of the Last Chance Agreement." In response, Brown submitted a memo to rebut the charge that he violated his Last Chance Agreement. In the memo, Brown denied using cocaine. He stated that he sought help on May 1, 2014, on his own accord "for fear of relapse and psychiatric treatment." He said that upon admission, he admitted to his past usage of cocaine, but it was "inaccurate" that he used cocaine on May 1. He stated that he did not use cocaine on that date or any time since signing the Last Chance Agreement. Following a review, Brown was terminated.

¶ 15 The Union filed a grievance challenging Brown's termination and invoked arbitration under the CBA. Prior to the arbitration hearing, the Union filed a motion *in limine* to bar the introduction of the medical and counseling summaries related to Brown's treatment at LCM. The motion was taken under advisement, and the arbitrator informed the parties that the contested

medical records would be conditionally received. The arbitration hearing was conducted in December 2014. In June 2015, the arbitrator issued its ruling on the Union's motion *in limine*.

¶ 16 In a 20-page written decision, the arbitrator denied the motion, noting that both parties presented "a number of salient arguments in support of their respective positions." The Union argued that the disclosure of Brown's medical records relating to substance abuse violated state and federal law. The arbitrator observed that the Union was arguing, in essence, that the authorizations Brown signed "permitted disclosure of his records to one specific individual, and one individual only: The CFD's Medical Director." The arbitrator stated that he did "not dispute the Union's reading of the state and federal requirements." The arbitrator noted that the matter before him focuses on "(1) the purported violation of a regulation pertaining to the disclosure of specific medical/substance abuse information and (2) whether the arguably wrongful disclosure should preclude reliance on this information by the CFD when it made the decision to terminate" Brown.

¶ 17 The arbitrator concluded that based on arbitral precedent, the exclusion of the evidence of employee's medical data, in part because "to exclude such evidence would be ignore the whole basis on which the employer acted." (Citation omitted.) Further, the arbitrator listed several other considerations that impacted his denial of the motion. First, the arbitrator noted that "there appears to have been a relatively long-standing and accepted practice of medical and other related data – pertaining to substance abuse and/or counseling – being forwarded on to individuals or entities outside the 'Medical Division.' " While not finding this a formal waiver by the Union, the arbitrator observed that the Union had a number of opportunities to file a grievance before the conduct in this case. Second, the authorization form signed by Brown include a notice that the information disclosed " 'may be subject to redisclosure,' " which put

Brown on notice. Third, specific legislation exists for the State to criminally prosecute any individual who violates an employee's privacy rights relating to the disclosure of counseling records, citing the Patients' Rights statute (20 ILCS 301/30-5 (West 2014)). Fourth, the Union has the right to modify the practice of disclosing medical data beyond the specific division or individual and subsequent use of the data by the employer. The Union can negotiate a change in the language of the Last Chance Agreement at the bargaining table.

¶ 18 In September 2015, the arbitrator issued his 29-page opinion and award finding that the City had just cause to terminate Brown based on his violation of the Last Chance Agreement. The arbitrator also considered and denied the Union's motion to reconsider the denial of its motion *in limine*. In reaching the merits, the arbitrator rejected the Union's argument that the City was required to test Brown for drugs and a positive test was required for disciplinary action. The arbitrator observed that the Last Chance Agreement uses the phrase "any second involvement," which is "clearly more encompassing, and provides for the exercise of greater discretionary action by the City, than the limitation inherent in the requirement that the employee 'tests positive for drugs.' "

¶ 19 The arbitrator then turned to the medical records and the notes and observations indicating cocaine use by Brown. The arbitrator considered the Union's argument that the medical records constituted hearsay and lack reliability. In response, the arbitrator noted that medical records, while not formally authenticated, were never disputed by the Union as being from LCM. The arbitrator concluded that "for all arbitral, and even judicial purposes, the documents produced by the City were *business records****." (Emphasis in original.) The arbitrator observed that other than Brown's denial, the record contained no evidence to dispute the notes and observations in the medical records as untrustworthy or unreliable.

"Applying common sense to the instant case means that the medical data upon which the City relied cannot simply be discounted. The information contained in the documents is not the result of an impromptu investigation put into motion by an employer because of an employee's alleged wrongdoing. The reports contain no *accusations* by any employee or other individual against [Brown] which logically cry out for an opportunity to cross-examine the accuser and delve into the author's motivation, perception, recollection and overall credibility. In the instant case, there is no dispute that the writings in the material are those of LCM personnel.

While I am troubled by the failure of the City to call as a witness one or more individuals who actually prepared the medical documents on which it has relied, or to explain the reason why no one appeared to provide such testimony, I cannot, as a result of such action default to the Union's position that the City's proffered evidence, without the authors who produced the critical commentary, is without probative value and therefore should be rejected. The seriousness of the allegations in this case, together with the public safety considerations, demand more than the boiler-plate application of arbitral precedent and technical rules of evidence that may apply in other circumstances. The reports submitted were of the type relied on by the City on a regular basis.

> Whether or not this reliance was acquiesced in, or even known, by the Union, there is nothing in the record to contradict the credible testimony of Assistant Deputy Chief Hogan that records of this sort pass her way on a regular basis and that employment decisions have routinely been made with respect to bargaining unit personnel based on such records.
>
> Finally, a critical ingredient in this case is [Brown's] own testimony, or lack thereof. [Brown] was unable to offer even a suggestion as to how or why the LCM records would contain such glaring admissions of cocaine use or why any of the intake or other medical personnel would have included in their type script such *specific* references to admissions of continued drug use."
>
> (Emphases in original.)

¶ 20 The arbitrator observed in a footnote that while Brown's drug tests were negative after he began counseling at LCM, those tests do not establish Brown's drug status when he went AWOL or was interviewed during the admission process. Based on this, the arbitrator concluded that the City had just cause to terminate Brown. The arbitrator specifically gave "weight to the nature of the responsibility encompassed by the duties and expectations" of Brown's job. "Because [Brown] occupied a position where it is critical that one's mental alertness and physical preparedness never be compromised, a defense to the evidence presented by the City cannot be based on evidentiary technicalities and mere denials."

¶ 21 In December 2015, the Union filed a complaint in the circuit court seeking to "vacate an arbitration award that contravenes paramount considerations of public policies clearly enunciated

in federal and state confidentiality laws." In February 2016, the City filed a motion to dismiss plaintiffs' complaint with prejudice pursuant to section 2-619(a)(9) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(9) (West 2014). The City argued that Brown's signed authorizations for the release of his medical records allowed the City to use the information in the records to discipline him in violation of the Last Chance Agreement. Following briefing, in July 2016, the trial court conducted a hearing on the motion to dismiss. The trial court subsequently granted the City's motion to dismiss, finding that "plaintiffs have not shown that the arbitration award *** contravenes a well defined public policy."

¶ 22 This appeal followed.

¶ 23 A motion to dismiss pursuant to section 2-619 admits the legal sufficiency of the complaint, but raises an affirmative defense or another basis to defeat the claims alleged. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10. Section 2-619(a)(9) permits involuntary dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2014). We review the section 2-619 dismissal of a complaint *de novo*. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55.

¶ 24 " 'A court's review of an arbitrator's award is extremely limited.' " *Griggsville-Perry Community Unit School Dist. No. 4 v. Illinois Educational Labor Relations Bd*., 2013 IL 113721, ¶ 18 (quoting *American Federation of State, County & Municipal Employees v. State*, 124 Ill. 2d 246, 254 (1988) (*AFSCME*)). "Where ' "the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept." ' " *Id*. (quoting *AFSCME*, 124 Ill. 2d at 255, quoting *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 37-38

(1987)). "Thus, a court has ' "no business weighing the merits of the grievance." ' " *Id.* (quoting *Misco*, 484 U.S. at 37, quoting *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 568 (1960)). "There is a presumption that the arbitrator did not exceed his authority." *Herricane Graphics, Inc. v. Blinderman Construction Co.*, 354 Ill. App. 3d 151, 155 (2004). "Thus, a court must construe an award, if possible, so as to uphold its validity." *Id.* at 155-56.

¶ 25 The Illinois Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 2014)) "contemplates judicial disturbance of an award only in instances of fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration." *American Federation of State, County & Municipal Employees, AFL-CIO v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996) (*AFSCME II*); see also 710 ILCS 5/12 (West 2014). "However, a court will vacate the award if it is repugnant to the established norms of public policy." *Chicago Transit Authority v. Amalgamated Transit Union, Local 241*, 399 Ill. App. 3d 689, 696 (2010); see also *AFSCME II*, 173 Ill. 2d at 306. " 'The "public policy" exception is narrow and its successful invocation requires a clear showing that the award violates some explicit public policy.' " *Id.* (quoting *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 460 (2005)). Put another way, "the public policy must be 'well-defined and dominant' and ascertainable 'by reference to the laws and legal precedents and not from generalized considerations of supposed public interests.' " *AFSCME II*, 173 Ill. 2d at 307 (quoting *W.R. Grace & Co. v. Local Union No. 759*, 461 U.S. 757, 766 (1983)). "In order to vacate an arbitral award upon these grounds, the contract, *as interpreted* by the arbitrator, must violate some explicit public policy." (Emphasis in original.) *Id.*

¶ 26 Here, plaintiffs argue that the arbitrator's denial of the motion *in limine* and his opinion and award on the merits violate the well-defined and dominant public policy to prohibit the disclosure of information collected as a result of treatment in a substance abuse program. In support, plaintiffs cite to the Patients' Rights statute (20 ILCS 301/30-5 (West 2014)) and the federal Public Health Services Act (42 U.S.C. § 290dd-2 (2014)), but base the bulk of their argument on appeal on the substance abuse regulations in the Code of Federal Regulations (42 C.F.R. § 2.1 *et seq.* (2014)). Plaintiffs assert that the arbitrator violated the Code of Federal Regulations because he failed to consider whether Brown's substance abuse treatment was entitled to special confidentiality status since LCM was a federally assisted drug abuse program. Plaintiffs further contend that the authorization for disclosure signed by Brown failed to comply with federal regulations and that the disclosure was limited to the CFD medical division. Thus, according to plaintiffs, the subsequent disclosure to Chief Hogan in the labor relations division was in violation of the federal regulations. Plaintiffs maintain that the arbitrator's decisions violated public policy by failing to recognize the noncompliance with federal regulations.

¶ 27 In response, the City argues that plaintiffs have failed to establish that the arbitrator's decisions fit within the narrow exception because the decisions were in contravention of a well-defined and dominant public policy that was clearly shown. The City does "not question that there is a compelling public policy of safeguarding the privacy of substance abuse records," but insists that the arbitration award upholding Brown's termination does not contravene that policy. The City maintains that there was no improper disclosure of Brown's records from LCM. Nevertheless, the City asserts that even if there was an unauthorized redisclosure of Brown's records in violation of the applicable statutes, that action would not be a basis to vacate the award. For the purposes of this appeal, the City assumes that Brown's medical records from

LCM were protected by state and federal statutes cited by plaintiffs and could not be disclosed without consent from Brown, but respond that Brown did consent to the release of his records to CFD, including use by the CFD's disciplinary officer. Additionally, in a footnote, the City observes that if the federal regulations governed LCM's disclosure of Brown's records, then it is unclear if LCM, not CFD, complied. The City contends that plaintiffs failed to show how CFD's internal use of records was restricted by federal law.

¶ 28 As the arbitrator noted, the crux of plaintiffs' argument is that the disclosure was limited to only the medical division of the CFD and additional consent from Brown was necessary to disclose the records for use by any other department in CFD. We disagree with plaintiffs' argument, and for the reasons that follow, we find that Last Chance Agreement when read with the CFD medical authorization forms shows that the CFD's use was not counter to federal regulations and no violation of public policy occurred in this case.

We first turn to the language of the Last Chance Agreement, signed by Brown in May 2005, and remained in effect for the duration of Brown's employment with CFD.

¶ 29 The agreement stated, in relevant part:

> "Rehabilitation assistance is available to employees at any time, but may be used only once to hold discipline in abeyance. Employees completing a full year of continued progress in a program will be given an oral reprimand with a clear warning that any **second involvement with drugs and/or alcohol will result in termination which will not be held in abeyance by any further participation in an employee assistance program.**
>
> ***

> Where the employee fails to properly participate or comply with the terms of the Supplemental Recommendation/Agreement, the Disciplinary Officer shall be so notified and the initial recommendation of discipline shall be imposed." (Emphasis in original.)

¶ 30 Next, it is undisputed the Brown signed two CFD authorization forms for the "use and disclosure of protected health information." The forms stated that "there is a potential that the information disclosed pursuant to this authorization may be subject to redisclosure by the recipient ***." These forms, collectively, released his LCM records from May 2, 2014 to June 6, 2014. These forms indicated that the information should be sent to the medical director of the CFD medical division and listed a mailing address as well as telephone and fax numbers. The authorizations were signed for Brown to seek a "lay-up," *i.e.*, paid medical leave from CFD after he went AWOL on April 29, 2014. In addition, Brown signed an authorization form provided by LCM which directed the information to be sent to "Dr. Hugh Russell/CFD Medical Division." However, the LCM authorization has no bearing on whether the CFD was permitted to disclose Brown's medical records within the department.

¶ 31 The City argues that Brown's agreement to the terms in the Last Chance Agreement "placed his continuing sobriety at issue for monitoring and review by CFD." We agree. We also note that plaintiffs do not discuss the relevance of the language requiring notification of the disciplinary officer in the Last Chance Agreement on appeal. In accordance with the medical authorizations, Brown's medical information was transmitted via fax to CFD medical division. The fax of records was received and reviewed by Chief Ignacio of the medical division. Chief Ignacio then notified Chief Hogan in the labor relations division about the indication of a drug

relapse by Brown, and disclosed the records to her. Under the Last Chance Agreement, Chief Ignacio was required to notify Chief Hogan, the disciplinary officer, of Brown's failure to comply with the terms of the Last Chance Agreement. While we are reviewing the arbitrator's decision, not the trial court, we agree with and quote the trial court reasoning on this issue in its ruling in the report of proceedings.

> "That question is not whether [the arbitrator's] decision, including his credibility, was correct. It is, rather, whether even on the assumption that his decision is entirely correct, the result that he reached should nevertheless be vacated, because upholding the City's discharge of Firefighter Brown contravenes public policies clearly enunciated in the federal and state confidentiality statutes.
>
> The union suggests that this question should be addressed in two parts. First, a court should determine whether a well-defined and dominant public policy can be identified; second, if the answer is yes, the next step is to decide whether the award violated the policy.
>
> In practice, I think those two things tend to collapse into one question, because in identifying the policy, you also have to decide how broad the policy is. If you argued that there is a federal and state public policy that firefighters should never be disciplined for or should never be fired for being on drugs as long as they seek help, it's not very hard to say that there is no such policy.

If, on the other hand, you say that there is a policy to preserve the confidentiality of medical records, well, yeah, there is such a policy; but was it violated here, given that Mr. Brown twice consented to the disclosure of information of the exact sort in question.

*** I can't conclude here that the discharge of Mr. Brown or that [the arbitrator's] upholding of the discharge of Mr. Brown manifestly contravened clearly enunciated, well-defined and dominant public policies articulated in federal and state confidentiality statutes.

That is so for, from my perspective, one primary reason and two secondary reasons. The primary reason is that the confidentiality policies embodied in both federal and state laws are, on the face of the laws and the regulations, not ironclad; they can be waived. [The arbitrator] concluded that they have been waived here.

The factual sufficiency of his determination that they have been waived seems to me is not properly before me on this motion. And looking at the documentary records before me, I would have to agree.

I reject the union's attempt to confine Mr. Brown's waiver only to disclosure to the named head of the fire department's medical division, because what it amounts to is signing a waiver

with one's fingers crossed and amounts to a trick. And in this context, especially in the context of the last chance agreement, telling somebody that they can have their fingers crossed and sign a last chance agreement is the worst policy I can imagine.

Secondarily, although there are clearly conflicting imperatives here, some aimed at protecting Mr. Brown, and some aimed at protecting the fire department and the people, where they really clash, to my way of thinking is not so much in the issues that are raised by the present motion, as in the arbitrator's credibility determination.

***

The issue here is, assuming that the records are correct, was [the arbitrator's] award proper, notwithstanding the public policy protecting the confidentiality of the records. And I think the answer to that question is yes. Because, as indicated, the federal and state protection of confidentiality is not absolute. Even on the face of the regulations, it can be waived. I think Mr. Brown waived it.

And the alternative, it seems to me, would be really to invalidate last chance agreements on the ground that they really aren't last chance agreements; they're more in the nature of a free pass, as long as the person in question has the wit to try to get into a rehabilitation program before things get really bad. That's not

> something that I can square with any sensible interpretation of public policy."

¶ 32 We agree that Brown consented to the disclosure of his medical records from LCM through the operation of Last Chance Agreement and the CFD authorizations, all signed by Brown. As the trial court observed, to find otherwise renders the Last Chance Agreement unenforceable and negates the significance of a "last chance." We " 'are not required to suspend common sense' " in interpreting the logical reach of the authorizations in the present case. *Filskov v. Board of Trustees of Northlake Police Pension Fund*, 409 Ill. App. 3d 66, 75 (2011) (Cunningham, J., dissenting) (quoting *People v. Jimerson*, 166 Ill. 2d 211, 227 (1995)). Since we conclude that Brown consented to the disclosure of his medical records to the CFD medical division and the disciplinary officer, we find that no violation of federal or state privacy regulations in the CFD's actions. Thus, the arbitrator's decision was not contrary to public policy.

¶ 33 Plaintiffs further contend that, assuming *arguendo* that redisclosure within the CFD was permissible, it was a violation of federal regulations to disclose his medical records to the arbitrator during the arbitration proceedings. According to plaintiffs, Brown should have signed a consent to disclose his medical records to the arbitrator. The City responds that this argument has been forfeited because the record does not establish that plaintiffs raised this basis in its motion *in limine* before the arbitrator. As the City points out, plaintiffs' motion *in limine* is not included in the record on appeal. Therefore, the only basis to discern plaintiffs' arguments in favor of barring the medical records are the arbitrator's summary of plaintiffs' position, which does not include this claim.

¶ 34 Plaintiffs, as the appellants, bear the burden of providing a sufficiently complete record to support his claim or claims of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellants. *Foutch*, 99 Ill. 2d at 392. In their reply, plaintiffs contend that the forfeiture argument is "a red herring" because the arbitrator's ruling on the motion was "not claim-specific" and he withheld making any rulings on whether the City's consent measured up to the federal law because he found " 'significant arbitral roadblocks' regarding his 'jurisdiction to make a determination that the state and/or federal requirement have in fact been violated.' "

¶ 35 Plaintiffs' assertion to avoid forfeiture fails to directly address the issue raised by the City, whether this basis was previously raised in the original motion *in limine* and considered by the arbitrator. The arbitrator devoted over four pages to summarizing plaintiffs' position on the motion *in limine*, but does not reference any claim that the redisclosure to the arbitrator himself was a further violation. Since the motion is not in the record, we must presume that the issue was not presented to the arbitrator in the motion and is being raised for the first time in this court. It is well established that issues raised for the first time on appeal are forfeited. *Forest Preserve District of Cook County v. Illinois Fraternal Order of Police Labor Council*, 2017 IL App (1st) 161499, ¶ 26. Absent any reference to this issue having been raised before the arbitrator, plaintiffs have forfeited this issue.

¶ 36 Because we have found that Brown consented to the disclosure of his medical records, we need not reach the question of whether a violation of the confidentiality regulations would warrant vacating the arbitrator's award.

¶ 37 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County upholding the arbitrator's award.

¶ 38 Affirmed.