

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

PACE SUBURBAN BUS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 2016 CH 3783
)	
ALPHONSO ALEXANDER,)	The Honorable
)	Neil H. Cohen,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶1 *HELD:* The circuit court properly had subject matter jurisdiction to consider the legal question of judicial estoppel; therefore, the order denying defendant’s motion to dismiss was not void and since it is not a final order this court lacked jurisdiction to consider the appeal.

¶2 Defendant, Alphonso Alexander, appeals the denial of his motion to dismiss in favor of plaintiff, Pace Suburban Bus (Pace). Defendant contends the circuit court erred in denying his motion where the court lacked subject matter jurisdiction to consider

plaintiff's declaratory action requesting that defendant be judicially estopped from proceeding with his workers' compensation claim. Based on the following, we find this court lacks jurisdiction to consider defendant's appeal.

¶3

FACTS

¶4 The following set of facts detail the two proceedings at issue and move chronologically between the proceedings to describe the events as they unfolded.

¶5 Plaintiff employed defendant as a bus operator. On March 22, 2008, defendant was injured while alighting from his bus. As a result, on June 20, 2008, defendant filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2016)), seeking benefits for his injuries. An arbitration proceeding was held on January 15, 2014. However, nearly one year prior to the arbitration proceeding, on January 31, 2013, defendant filed for Chapter 13 Bankruptcy. In his bankruptcy petition, defendant denied having a workers' compensation claim. On May 7, 2013, defendant's bankruptcy petition was accepted as true and a bankruptcy plan was confirmed. The bankruptcy case was dismissed on October 3, 2013, due to defendant's failure to comply with the plan.¹

¶6 Then, on December 15, 2015, the arbitrator issued a decision in defendant's workers' compensation claim, finding defendant sustained an injury arising out of and in the course of his employment with plaintiff and was entitled to benefits under the Act. Plaintiff responded by filing an appeal of the arbitrator's decision with the Illinois Workers' Compensation Commission (Commission).

¹ The case was reinstated on November 12, 2013, and dismissed again on July 8, 2014. No order of discharge was ever entered.

¶7 In addition, on March 16, 2016, plaintiff filed the underlying complaint for declaratory relief, alleging defendant's workers' compensation award as entered by the arbitrator should be barred because defendant was judicially estopped from proceeding with the workers' compensation hearing due to his factually inconsistent positions in two different judicial proceedings in that he denied the workers' compensation claim in his bankruptcy petition. According to plaintiff, it first learned of defendant's bankruptcy proceeding on February 22, 2016.

¶8 In response, on May 23, 2016, defendant filed motions to dismiss pursuant to sections 2-619(a)(1) (735 ILCS 5/2-619(a)(1) (West 2016)) and 2-615 (735 ILCS 5/2-615 (West 2016)) of the Code of Civil Procedure based on a lack of subject matter jurisdiction and a failure to state a claim, respectively. On July 21, 2016, the circuit court denied both of defendant's motions to dismiss. In a written order, the circuit court reasoned that, with regard to the section 2-619(a)(1) motion, subject matter jurisdiction was vested with the court because the question of whether defendant's workers' compensation claim was barred by the doctrine of judicial estoppel was a question of law properly decided by the court. The court explained that the legal question in consideration did not involve the expertise of the Commission. With regard to the section 2-615 motion, the circuit court found that an actual, current controversy existed between the parties despite the fact that defendant's appeal of the arbitrator's decision remained pending. The court reasoned that the matter was not on administrative review, but instead was before it to answer whether defendant was judicially estopped from continuing to pursue his workers' compensation claim. The court additionally clarified that its review

was not “in any way dependent on any facts at issue in the workers’ compensation proceeding.”

¶9 On July 25, 2016, defendant filed another motion to dismiss, this time relying on section 2-619(a)(9) of the Code of Civil Procedure. In his motion, defendant argued that plaintiff’s declaratory action was barred by “an other affirmative matter,” namely, the dismissal of his bankruptcy proceeding.

¶10 Then, on July 26, 2016, the Commission affirmed and adopted the arbitrator’s decision finding in favor of defendant’s workers’ compensation claim. On August 17, 2016, plaintiff filed a request for administrative review of the Commission’s decision before the circuit court. That case remains pending on administrative review.

¶11 On October 17, 2016, the circuit court ruled on defendant’s second motion to dismiss in the underlying action, denying the motion because there were matters of material fact preventing dismissal of plaintiff’s declaratory claim. This appeal followed.

¶12 ANALYSIS

¶13 Defendant contends the circuit court erred in denying his section 2-619(a)(1) dismissal motion where it lacks subject matter jurisdiction to consider plaintiff’s declaratory action. Defendant recognizes that this court does not have jurisdiction to consider an order denying a motion to dismiss. Defendant, however, argues that, because the circuit court lacked jurisdiction to enter its order, the order was void and may be attacked on appeal at any time. See *Eckel v. MacNeal*, 256 Ill. App. 3d 292, 296 (1993) (a void judgment, which may be defined as one in which the rendering court lacked subject matter or personal jurisdiction, may be attacked at any time, in any court, either directly or collaterally); see also *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38. In the

alternative, defendant submits that the circuit court's void ruling is tantamount to the denial of a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2016)), which has been deemed a final order and immediately reviewable pursuant to Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010). See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002).

¶14 In order to determine whether jurisdiction has properly vested with this court, we first must ascertain whether the circuit court's order denying defendant's motion to dismiss was void. We, therefore, must consider whether the circuit court erred in denying defendant's section 2-619(a)(1) motion to dismiss.

¶15 A section 2-619 dismissal motion admits the legal sufficiency of the plaintiff's complaint, but asserts a defense defeating the claim. *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 14. We review *de novo* a circuit court's denial of a section 2-619(a)(1) motion alleging that the court lacked subject matter jurisdiction to consider the complaint. See *id.* *De novo* review means a reviewing court performs the same analysis as the circuit court and need not defer to the lower court's judgment or reasoning. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20.

¶16 Defendant argues that the Commission has exclusive jurisdiction to decide whether he is entitled to workers' compensation benefits; therefore, according to defendant, the circuit court's order is void as it lacked subject matter jurisdiction. In contrast, plaintiff argues that the question of whether defendant is judicially estopped from pursuing his workers' compensation claim is a question of law for which the circuit court has concurrent jurisdiction with the Commission.

“Subject matter jurisdiction refers to a court’s power to hear and decide cases of a general class. [Citation.] With the exception of the power granted by statute to review administrative action, a circuit court’s subject matter jurisdiction is conferred entirely by the Illinois Constitution. [Citations.] Under the Illinois Constitution of 1970, circuit courts have original jurisdiction of all justiciable matters except when this court has exclusive and original jurisdiction relating to redistricting of the General Assembly and the Governor’s ability to serve or resume office. [Citations.] Accordingly, except in the context of administrative review, a circuit court has subject matter jurisdiction as a matter of law of all justiciable matters brought before it. [Citation.] The legislature may divest circuit courts of their original jurisdiction by enacting a comprehensive administrative scheme, but it must do so explicitly. [Citation.]” *Id.* ¶ 15.

¶17 The legislative sections of the Act relevant for jurisdictional purposes are section 18 and section 19(f)(1). Section 18 of the Act provides: “[a]ll questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Commission.” 820 ILCS 305/18 (West 2016). Section 19(f)(1) governs the appeals of Commission decisions, providing, in relevant part that “the Circuit Court *** shall by summons to the Commission have power to review all questions of law and fact presented by such record.” 820 ILCS 305/19(f)(1) (West 2016).

¶18 Our supreme court has advised that, under certain circumstances, both the Commission and the circuit court have concurrent jurisdiction to decide a question raised in a workers’ compensation case. *Employers Mutual Cos. v. Skilling*, 163 Ill. 2d 284, 288 (1994). The *Skilling* court found that section 18 of the Act is not explicit enough to divest

a circuit court of jurisdiction. *Id.* at 287. Similarly, nothing in section 19(f)(1) limits a court's ability to review legal questions which did not arise under the Act and which were not part of an administrative action, such as the question of judicial estoppel in this case. See *Fredericks*, 255 Ill. App. 3d at 1035-36. We, therefore, find that the circuit court and the Commission have concurrent jurisdiction.

¶19 We further find the doctrine of primary jurisdiction does not apply, such that the circuit court need not refer the matter to the Commission. More specifically, “under the doctrine of primary jurisdiction, a matter should be referred to an administrative agency when (1) the agency has a specialized or technical expertise that would help resolve the controversy, or (2) when there is need for uniform administrative standards. [Citations.] Conversely, if an agency's technical expertise is not likely to be helpful or there is no need for uniform administrative standards, courts need not relinquish their authority over a matter to the agency.” *Fredericks v. Liberty Mutual Insurance Co.*, 255 Ill. App. 3d 1029, 1034 (1994); see also *Skilling*, 163 Ill. 2d at 288-89.

¶20 Here, the issue before the circuit court was a question of law, namely, whether, as a matter of law, defendant was judicially estopped from asserting his workers' compensation claim after previously having pledged in his bankruptcy petition that he did not have such a claim. Our supreme court has advised that:

“It is the particular province of the courts to resolve questions of law such as the one presented in the instant declaratory judgment case. Administrative agencies are given wide latitude in resolving factual issues but not in resolving matters of law.” *Skilling*, 163 Ill. 2d at 289.

In this case, the question before the circuit court avoids all of the factual issues in the workers' compensation claim; it is not a determination of defendant's entitlement to relief under the Act. As such, the legal question is not within the province of the Commission and is properly considered by the circuit court. This case is in line with the conclusions of *Fredericks* and *Skilling* and distinguishable from *Country Insurance & Financial Services v. Roberts*, 2011 IL App (1st) 103402, ¶ 14, and *Hollywood Trucking, Inc. v. Watters*, 385 Ill. App. 3d 237, 245 (2008). We, therefore, conclude that the circuit court's order denying defendant's motion to dismiss was not void. Accordingly, this court lacks jurisdiction to consider defendant's appeal because the dismissal order was not a final order.

¶21

CONCLUSION

¶22 Where this court lacks jurisdiction to consider defendant's appeal, the appeal must be dismissed.

¶23 Appeal dismissed.