2017 IL App (1st) 163111-U

FOURTH DIVISION
August 24, 2017

No. 1-16-3111

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARK P. REED, Plaintiff-Appellee, v. ILLINOIS WORKERS' COMPENSATION COMM'N, TH RYAN CARTAGE COMPANY, and LD DRIVERS SERVICES, INC., Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County 16-L-50165 Honorable James M. McGing, Judge Presiding

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

O R D E R

Held: Employer waived almost all arguments on appeal by failing to first bring them in the trial court, and it was not an abuse of discretion to require employer to pay employee's attorney fees where employer never had a good faith dispute that its full payment was due on an award granted by the Illinois Workers' Compensation Commission.

¶ 1 Defendant TH Ryan Cartage Company/L&D Drivers Services, Inc. (TH Ryan), of Maywood, Illinois, appeals from an order resolving crossmotions for summary judgment in favor of its injured employee Mark P. Reed in a proceeding pursuant to section 19(g) of the Illinois Workers' Compensation Act to reduce to judgment a worker's compensation award for medical

services. 820 ILCS 305/19(g) (West 2014) (Act).[1] The circuit court's judgment includes $103,995 awarded by the Illinois Workers' Compensation Commission, $31,198.50 for Reed's attorney fees, $420.88 in circuit court costs, and 9% statutory post-judgment interest which has been accruing since the Commission's award in 2012. TH Ryan contends it does not need to pay the Commission's award unless TH Ryan's group health insurer sues Reed for reimbursement of the surgical expenses the Commission awarded as work-related and reasonable and necessary. We note that although the group health insurer is not a party, it is allied with Reed and that his attorney filed an affidavit during the circuit court proceedings indicating he represents their joint interests and will be compensated by the group health insurer. TH Ryan's second contention is that its tender of an $80,000 settlement check, which Reed and the group health insurer did not request and returned uncashed, legally and fully satisfied the Commission's $103,995 award. TH Ryan asks to vacate the money judgment and enter summary judgment in its favor because it owes nothing, or, in the alternative, to rule that the rejected check at least partially satisfied the Commission's award, leaving only $23,995 due upon which the the trial court must recalculate the attorney fees and interest.

¶ 2 Reed was 40 years of age and employed as a semi-truck driver on August 12, 2004 when his tractor-trailer combination "jack knifed" at approximately 60 miles an hour and caused him to suffer head and lower back injuries for which he received four surgeries, pain management therapy, and other medical treatment. TH Ryan paid Reed some benefits through the workers'

[1] There are various spellings of TH Ryan Cartage Company and L&D Drivers Services in the record on appeal and it is unclear whether they are separate entities. For instance, the arbitrator stated "T. H. Ryan Cartage Company" was Ryan's employer, the Commission indicated "L&D Driver Services, Inc." was the only respondent, and Reed alleged he "was an employee of Defendants." The Workers' Compensation Commission Division of this appellate court referred to "TH Ryan Cartage Co. and LD Drivers Services, Inc." in the singular and shortened the name to "TH Ryan." *TH Ryan Cartage Co. v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 143209WC-U. We have followed the approach of the appellate court.

compensation system for his medical services and temporary total disability, but disputed the necessity of his second back surgery and related care at Gottlieb Memorial Hospital in November 2006 at a cost of $103,995, and his emergency treatment at Illinois Masonic Medical Center in July 2009 for $9637. Reed's group health insurer, Blue Cross Blue Shield of Illinois, paid for the Gottlieb surgery but not the Illinois Masonic emergency treatment and asserted a right to reimbursement. TH Ryan does not dispute that the group health insurer is entitled to reimbursement from TH Ryan for paid medical expenses that are found to arise from a work-related injury and admits this in its opening brief and elsewhere as discussed below.

¶ 3 After a hearing in November 2011, an arbitrator determined that Reed's average weekly wage had been undercalculated due to the omission of "overtime" hours that were part of Reed's normal work day, that both the Gottlieb surgery and the Illinois Masonic emergency treatment were work-related and reasonable and necessary, and that Reed was entitled to prospective medical care in order to reach "maximum medical improvement." The arbitrator specified: "The respondent [TH Ryan] shall pay $113,632.00 for medical services, as provided in Section 8(a) of the Act. Respondent [TH Ryan] is entitled to a credit of $103,995.00 under Section 8(j) of the Act. Respondent [TH Ryan] shall hold Petitioner [Reed] safe and harmless for all claims that may be made against him by reason of having received such payment only to the extent of such credit." 820 ILCS 305/19(a)-(e) (West 2010) (providing for arbitration); 820 ILCS 305/8(a), (j) (West 2010) (providing for the calculation and payment of compensation). Thus, the amount awarded included the Gottlieb and Illinois Masonic care ($103,995 + $9637), the section 8(j) credit was for Blue Cross Blue Shield's payment of the Gottlieb expenses ($103,995), and no section 8(j) credit was awarded for the Illinois Masonic expenses ($9637) which appeared to be

unpaid. On October 15, 2012, the Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 4 TH Ryan sought judicial review of some aspects of the decision, specifically whether the overtime hours were part of Reed's normal workday and whether TH Ryan was entitled to a $9637 credit pursuant to section 8(j) of the Act for the Illinois Masonic bill even though it appeared to be unpaid. TH Ryan, however, did not dispute the necessity of Reed's surgery at Gottlieb or the related $103,995 credit pursuant to section 8(j) of the Act. Accordingly, Reed demanded immediate payment in full of the $103,995.[2] Instead, TH Ryan's workers' compensation insurance carrier, Liberty Mutual Insurance Company, issued an $80,000 check on December 31, 2012 payable to Reed and Blue Cross Blue Shield and wrote "NOTE: SETTLEMENT-MED" on its attached transmittal form. Reed and Blue Cross Blue Shield were not willing to settle his medical expenses award. Counsel representing Reed and Blue Cross Blue Shield returned the check and again continued to demand full payment of the Commission's $103,995 award, stating:

> "Upon receipt of this draft I contacted Blue Cross Blue Shield and advised them as to your attempted tender of only $80,000 of their lien amount. They have rejected your tender and still demand the full amount of their lien. (See Exhibit 1.)
>
> In addition, Mr. Reed incurred costs and attorneys fees in the within litigation and which both Mr. Reed and Blue Cross have agreed are due this firm, not to mention the costs and attorneys fees related to the 19(g) proceedings.

[2] On December 10, 2012, Reed went so far as filing a section 19(g) action in the circuit court of Cook County for judicial enforcement of the medical expense portion of the award that TH Ryan was not disputing, but his action was dismissed as premature due to the pending judicial review of the other portion of the award. *Reed v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 130681, 49 N.E.3d 930; 820 ILCS 305/19(g) (West 2012).

> I am therefore returning the draft in the amount of $80,000 since the tender of amounts less than the full amount owing is not a proper tender of payment. If you would like to re-issue a draft in the full amount of the Blue Cross lien that would be acceptable, however, we naturally will continue with our efforts to collect[] the penalties and costs due to your dilatory and unreasonable 'too little too late' efforts to pay this award of compensation."

¶ 5 The record on appeal does not include the document that was marked "Exhibit 1" and attached to counsel's letter, but it is not disputed that on this and other occasions, Blue Cross Blue Shield demanded full payment of the Commission's $103,995 award. For instance, on May 14, 2013, Suzanne Lolling, who was employed by Blue Cross Blue Shield as a corporate reimbursement/subrogation service representative sent Reed an "Update regarding [the] payment amount [due from him]." Lolling attached a "Consolidated Statement of Benefits" and again demanded Reed's full payment of the Commission's award with the addition of what appears to be interest, for a total of $104,164. The attached statement of benefits specified that it concerned Blue Cross Blue Shield's payments for medical care necessitated by Reed's work-related injury in 2004, it itemized the dates of Reed's medical care in November and December 2006, named the providers of his medical services (primarily Gottlieb Memorial, but also Apria Healthcare, Inc., and EBI LP), and stated the billed and paid amounts of group health insurance benefits. Lolling asked that Reed's attorney use an enclosed remittance form and "please call to verify the [updated] amount of our stated interest" before tendering Reed's payment to Blue Cross Blue Shield.

¶ 6 In 2014 and 2015 respectively, the circuit court and the appellate court affirmed the Commission's decision despite the employer's arguments regarding Reed's overtime hours and

its request for a section 8(j) credit for the $9637 Illinois Masonic bill for which TH Ryan had no evidence of payment by Blue Cross Blue Shield. See *TH Ryan Cartage Co. v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 143209WC-U.

¶ 7 When payment was still not forthcoming, Reed commenced this suit in early 2016.

¶ 8 When an employer fails or refuses to pay a final award, section 19(g) of the Act provides a speedy, statutory remedy for an employee-claimant to reduce the award to an enforceable judgment in the circuit court. *Franklin v. Wellco Co.*, 5 Ill. App. 3d 731, 734, 283 N.E.2d 913, 915 (1972) (the purpose of section 19(g) is to permit speedy judgment in cases where there has been a refusal to pay the award and a need to reduce the award to judgment to compel its payment); *Blacke v. Industrial Comm'n*, 268 Ill. App. 3d 26, 28, 644 N.E.2d 23, 24 (1994) (same); *Evans v. Corporate Services*, 207 Ill. App. 3d 297, 302, 565 N.E.2d 724, 728 (1990) (same); 820 ILCS 305/19(g) (West 2012). Monetary court judgments are valuable because the judgment creditor may issue garnishment proceedings and attach the debtor's assets to collect the judgment. See 735 ILCS 5/12-701 *et seq*. (West 2014).

¶ 9 The scope of a section 19(g) action is limited. The statutory prerequisites for obtaining a judgment require only that the claimant give notice to the employer of the time and place for entry of judgment and present the circuit court with a certified copy of the award or decision of the Commission. *Blacke*, 268 Ill. App. 3d at 28, 644 N.E.2d at 24; *Ahlers v. Sears, Roebuck Co.*, 73 Ill. 2d 259, 268, 383 N.E.2d 207, 211 (1978); 820 ILCS 305/19(g) (West 2014) (the "party may present *** a certified copy of the decision of the Commission when the same has become final, *** whereupon the court shall enter a judgment in accordance therewith."). Pursuant to section 19(g), judgment on the award must be entered without the court reviewing the Commission's decision or construing the Act. *Ahlers*, 73 Ill. 2d 268, 383 N.E.2d at 211. Unless a

party is claiming fraud in obtaining an award or lack of jurisdiction, the party cannot obtain review of the commission's award in the course of a section 19(g) proceeding. *Konczak v. Johnson Outboards, A Division of Outboard Marine Corp.*, 108 Ill. App. 3d 513, 517, 439 N.E.2d 16, 19 (1982).

¶ 10 The only proper avenue to contest the accuracy or validity of an award by the Commission is through a proceeding under section 19(f) of the Act, which is what TH Ryan did when it disputed the overtime calculation and the exclusion of the unpaid Illinois Masonic bill from the section 8(j) credit amount. See *Konczak*, 108 Ill. App. 3d at 516-17, 439 N.E.2d at 19 (indicating the exclusive means to contest the accuracy or validity of an award is through a proceeding under section 19(f) of the Act and that in a section 19(g) proceeding the court could not consider the employer's argument that an award was flawed because the employer paid the employee's medical expenses in full *prior* to the arbitrator's decision); *Franklin v. Wellco Co.*, 5 Ill. App. 3d 731, 734, 283 N.E.2d 913, 915 (1972) (indicating section 19(f) is "the exclusive means of appealing an award of the commission" and an employer "cannot have the award reviewed by filing an answer in an action brought by the employee under section 19(g) to enforce the award"); 820 ILCS 305/19(f) (West 2014) (indicating the Workers' Compensation Commission has exclusive jurisdiction to resolve disputed questions of fact and law that determine a claimant's rights to benefits and setting out procedures for the circuit court to review awards).

¶ 11 In the section 19(g) proceedings in the circuit court, Reed alleged there was no pending appeal or review and that the Commission's award had become "final and owing," that he had demanded that TH Ryan pay the $103,995 that he owed to Blue Cross Blue Shield, and that TH Ryan refused to tender that amount. TH Ryan argued for dismissal on grounds that "Plaintiff is

not entitled to the demanded payments because Defendants were awarded credit for the same." When this argument was rejected by the circuit court, TH Ryan filed an answer which included an affirmative defense that its tender of the $80,000 check in 2012, which Blue Cross Blue Shield and Reed had rejected, "fulfilled the [$103,995] award, there being no portion of the [$103,995] award that is not paid." Reed answered the affirmative defense as follows:

> "[TH Ryan] is attempting to play fast and loose with the fact[s] and is deliberately attempting to mislead this Court by referencing an unrelated agreement (which they were not a part to) reached between counsel for Mr. Reed and Blue Cross Blue Shield to resolve the apportionment of the award proceeds relative to the 8(j) issue and to resolve the issue of attorneys' fees and litigation costs owed to the law firm of Paul A. Coghlin and Associates for collecting the $103,995 [demand] of Blue Cross after substantial litigation and expense. That agreement called for Blue Cross Blue Shield to receive $80,000.00 and the law firm *** to receive $23,995.00 for a grand total of $103,995.00. Defendants were not a party to, or in any way a beneficiary of that agreement, nor would there be any reason for [Reed] to collect anything other than the full amount due and owing once the award became final and owing. In fact, due to their refusal to pay the award, the subject agreement they refer to has been frustrated."

Reed also indicated that only full payment was a proper defense to his section 19(g) action, full payment had not been made, and TH Ryan "continue[s] to use these legal proceedings to quibble and raise false issues *** to delay payment of the $103,995 due and owing." Both parties filed motions for summary judgment, which were briefed and argued, and resulted in judgment for Reed, which is now on appeal.

¶ 12 On appeal, TH Ryan continues to argue that Blue Cross Blue Shield's satisfaction of the Gottlieb surgery bill which resulted in the section 8(j) credit to TH Ryan means TH Ryan is under no obligation to pay the Commission's $103,995 award. TH Ryan contends that if Blue Cross Blue Shield later sues Reed for reimbursement, then TH Ryan is "required to indemnify, defend and hold harmless."

¶ 13 TH Ryan's first specific contention is that the judgment on Reed's section 19(g) complaint is in error because he asserted the rights of Blue Cross Blue Shield to reimbursement and he has no standing to litigate the rights of a third party. We will not address this "standing" argument because it was never presented in the trial court and it is a new argument on appeal. TH Ryan is asking this court of review to reverse the judge's ruling on grounds which the judge was never asked to consider.

¶ 14 In the trial court, TH Ryan made two arguments. In its motion to dismiss Reed's section 19(g) petition, TH Ryan argued that the arbitrator's credit negated any obligation to pay Reed. According to TH Ryan, entering judgment in Ryan's favor would "defeat the purpose of [the] Section 8(j) credit entirely" and render it "a nullity," and that Reed's complaint should be dismissed. In its reply memo, TH Ryan said, "If this Court disagrees and denies its motion, then [TH Ryan] will defend the section 19(g) motion on the basis that it made payment that was rejected."

¶ 15 In its subsequent response in opposition to Reed's motion for summary judgment/ crossmotion for summary judgment, TH Ryan relied entirely on *Evans*, 207 Ill. App. 3d at 303, 565 N.E.2d at 728, in which the court found that a *certified* copy of a final award or decision was a condition precedent to the entry of judgment on a section 19(g) petition and that a default judgment on a section 19(g) petition lacking this crucial document was void and properly

vacated by the trial court. TH Ryan cited *Evans*, however, for its additional statement regarding "tender of payment":

> "One of the purposes of the statute is to compensate a claimant who is compelled to incur additional expenses by reason of the refusal to pay an award by allowing him court costs and attorney fees. [Citation.] Proof of payment or tender of payment is a complete defense to a claim for judgment and attorney fees and costs [citation], but where anything is properly due the employee under the final award at the time of application for judgment is made, then the circuit court should enter judgment as provided in section 19(g)." *Evans*, 207 Ill. App. 3d at 303, 565 N.E.2d at 728.

TH Ryan argued that it was not required to pay Reed but only to "hold [him] safe and harmless," and had "tendered payment of $80,000 in order to honor the Blue Cross Blue Shield agreement in satisfaction of its right to reimbursement." Further, "Under *Evans*, either payment or tender of payment is sufficient. *** The tender of payment constitutes a complete defense to Reed's complaint for judgment pursuant to section 19(g)."

¶ 16 Thus, neither of the two arguments TH Reed made in the trial court (TH Ryan received a credit rather than an obligation to pay the Commission's award; and TH Ryan's $80,000 tender fulfilled its obligation to hold Ryan safe and harmless from all claims) was a "standing" argument. Our adversarial system does not allow TH Ryan to introduce new arguments now, so late in the proceedings. In order to assert standing, an Illinois defendant must plead standing as an affirmative defense or the theory is waived, and TH Ryan's only affirmative defense was that its $80,000 tender amounted to full payment of the Commission's $103,995 award. *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 24, 972 N.E.2d 1238 (refusing to address new standing argument on appeal). See generally *Greer v. Illinois Housing Development Authority*,

122 Ill. 2d 462, 494, 524 N.E.2d 561, 575 (1988) (holding that, in Illinois, lack of standing is an affirmative defense, and contrasting Illinois with federal courts "where lack of article III (U.S. Const., art. III) standing is a bar to jurisdiction"). TH Ryan waived the theory by failing to plead it in answer to Reed's complaint.

¶ 17 Furthermore, there is a general principle that when a party neglects to present a legal argument in the trial court and then presents it for the first time in the appellate court, the argument is forfeited. Appellate courts do not address new arguments because doing so is unfair to the opponent and to the trial judge who was never asked to consider the theory, judicial resources may be needlessly consumed by piecemeal rounds of trial court and appellate court proceedings, and resolution of the case is unnecessarily prolonged. This is an additional reason to find that TH Ryan's new "standing" argument has been forfeited. *Daniels v. Anderson*, 162 Ill. 2d 47, 59, 642 N.E.2d 128, 133 (1994) (finding forfeiture because allowing a party to change theories on appeal weakens the adversarial process and the system of appellate jurisdiction and may be prejudicial to the opponent); *McKay, Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 453, 879 N.E.2d 512, 527 (2007) (the forfeiture principle preserves finite judicial resources by creating an incentive for litigants to bring the trial court's attention to alleged errors, thereby giving the court an opportunity to correct its own mistake); *Western Casualty & Surety Co. v. Brochu*, 105 Ill. 2d 486, 500, 475 N.E.2d 872, 879 (1985) ("It is axiomatic that questions not raised in the trial court are deemed waived and may not be raised for the first time on appeal."); *Janssen by Janssen v. Turner*, 292 Ill. App. 3d 219, 228, 685 N.E.2d 16, 23 (1997) ("To address respondent's contention would require this court to speculate as to the nature of the arguments that could have been made, but were not.").

¶ 18 For the same reason, we decline to reach TH Ryan's new argument of statutory construction that Reed should not be permitted to use section 19(g) to reduce to judgment a section 8(j) credit for group health benefit payments. 820 ILCS 305/19(g) (West 2014); 820 ILCS 305/8(j) (West 2010). TH Ryan has never cited principles of statutory construction and has never before attempted to define the various terms of section 19(g), as it now does in its opening appellate brief.

¶ 19 TH Ryan's next contentions are closely related: that the legal doctrine of accord and satisfaction was triggered when TH Ryan tendered the $80,000 check payable to Reed and Blue Cross Blue Shield in full satisfaction of the Commission's $103,995 award, and that the 9% post-judgment interest dating to 2012 was improperly based on the full $103,995 which should have been reduced to $23,995 because of the $80,000 tender. These are also new arguments brought for the first time on appeal, and are forfeited. TH Ryan has not previously argued or cited authority regarding accord and satisfaction and although it somewhat argued tender of payment, albeit with citation to *Evans*, which did not concern payment or tender of payment, the record does not substantiate that TH Ryan tendered the $103,995 as ordered by the Commission and complied with the requirement to "hold Petitioner [Reed] safe and harmless for all claims that may be made against him by reason of having received such payment only to the extent of such credit."

¶ 20 The only proper avenue to contest the accuracy or validity of an award by the commission is through a proceeding under section 19(f) of the Act. *Konczak*, 108 Ill. App. 3d at 516-17, 439 N.E.2d at 19. TH Ryan contested the Commission's overtime finding and sought credit from the Commission for the Illinois Masonic bill, but TH Ryan never disputed the Commission's finding that the $103,995 Gottleib surgery expense was compensable under the

Act and it never reached a settlement with Reed and Blue Cross Blue Shield to reduce its $103,995 payment amount to an $80,000 payment.

¶ 21 It is clear from the record that Blue Cross Blue Shield repeatedly demanded that Reed repay the full cost of the Gottlieb medical care which was awarded to him by the Commission, $103,995, and that TH Ryan has not paid the group health insurer's claim and has failed to hold Reed safe and harmless from this claim for $103,995.

¶ 22 TH Ryan cites no authority for the proposition that TH Ryan could unilaterally reduce the Commission's award to $80,000 and pay any less than the $103,995 amount which was ordered by the Commission and demanded by Reed and Blue Cross Blue Shield. Moreover, the suggestion that Blue Cross Blue Shield would have to escalate its repeated payment demands into a collection suit against Reed in order to trigger TH Ryan's payment obligation is untenable and not supported by citation to any authority.

¶ 23 The $80,000 letter that TH Ryan clings to was superseded by counsel's prompt return of the check in early 2013 on grounds that it was an insufficient amount. If there was any doubt about the accuracy of counsel's return letter, it was resolved by any one of the following: (1) Blue Cross Blue Shield's additional demand letter dated May 14, 2013 in which corporate reimbursement/subrogation service representative Lolling told Reed to remit $104,164 and any additional interest that subsequently accumulated; or (2) by counsel's letter dated April 29, 2016 in which he indicated Blue Cross Blue Shield has "rejected your tender and still demands the full amount;" or (3) by counsel's affidavit dated May 10, 2016, filed in opposition to TH Ryan's motion to dismiss, in which counsel swore he represented the mutual interests of Reed and Blue Cross Blue Shield and that they were unwilling to settle with TH Ryan; or (4) by Reed's answer to TH Ryan's affirmative defense, in which Reed detailed on July 28, 2016, why TH Ryan could

not rely on the $80,000 letter and pointed out that TH Ryan was using the court system to quibble and delay payment of the $103,995 that was clearly due and owing; or (5) by counsel's affidavit dated July 27, 2016 filed as part of the crossmotions for summary judgment in which counsel again indicated he represented mutual interests and would be compensated by Blue Cross Blue Shield and that Liberty Mutual's $80,000 check had been rejected because it was tendered with the express intention that it be accepted in settlement and compromise of the $103,995 amount owed.

¶ 24 In short, TH Ryan has not paid the group health insurer's $103,995 claim and TH Ryan has failed to hold Reed safe and harmless from this claim, in violation of the Commission's clear award. Thus, TH Ryan's accord and satisfaction argument is not only new on appeal, it relies on a misstatement of the facts of this case because there was no tender and TH Ryan disregarded the Commission's order to "hold [Reed] safe and harmless for all claims made against him by reason of having received such payment" through the compensation system.

¶ 25 Summary judgment is to be granted "without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014); *Founders Insurance Co. v. American Country Insurance Co.*, 366 Ill. App. 3d 64, 69-70, 851 N.E.2d 120, 125 (2006); accord *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204, 1209 (1992). Summary judgment is considered a drastic measure but is an appropriate means of expeditiously disposing of a lawsuit in which the right of the moving party is clear and free from doubt. *O'Connor v. County of Cook*, 337 Ill. App. 3d 902, 906, 787 N.E.2d 185, 187 (2003) *Outboard Marine*, 154 Ill.2d at 102, 607 N.E.2d at 1209.

¶ 26 In this instance, all of the material allegations were clearly stated and established as true. Reed alleged the Commission's award included the $103,995 Gottlieb surgery bill which had been paid by Blue Cross Blue Shield, the Commission's award was final and entitled him to payment, he had demanded payment of $103,995, and TH Ryan refused to comply with the Commission's award. TH Ryan's answer acknowledged that the Commission awarded a $103,995 credit pursuant to section 8(j), that "Blue Cross Blue Shield [had a] reimbursement right," and that "[TH Ryan's] workers compensation carrier issued a check for $80,000.00 to fulfill the Blue Cross Blue Shield reimbursement right and thereby hold Mark Reed safe and harmless from all claims that may be made against him." However, the record, which included various letters, affidavits, and Reed's answer to TH Ryan's affirmative defense, thoroughly dispensed with the contention that $80,000 was enough to hold Reed safe and harmless from Blue Cross Blue Shield's claim. Although the documents had made clear that Reed and Blue Cross Blue Shield were unwilling to accept $80,000 in settlement of the $103,995 compensation award, Reed reiterated in his subsequent reply in support of his motion for summary judgment that $80,000 would not be acceptable to him or Blue Cross Blue Shield. This record showed that there was no genuine issue as to any material fact raised by Reed's complaint and TH Ryan's answer which included the affirmative defense of full payment, and that Reed was entitled to a judgment as a matter of law on his section 19(g) action.

¶ 27 TH Ryan next contends Reed was not entitled to attorney fees because there was no basis in the record to conclude that the employer's failure to pay the amount of the award was in bad faith. TH Ryan contends "as shown by the legal arguments made in the circuit court and this appeal, there is clearly a good-faith basis for [disputing an obligation to pay Reed]." We review the assessment of attorney fees under section 19(g) to determine whether the trial court abused

its discretion. *Aurora East School Dist. v. Dover*, 363 Ill. App. 3d 1048, 1056, 846 N.E.2d 623, 630 (2006). An abuse of discretion occurs where no reasonable person would agree with the trial court's view. *Aurora East*, 363 Ill. App. 3d at 1056, 846 N.E.2d at 630.

¶ 28 Courts do not automatically award attorney fees and costs in every section 19(g) case. *Ponthieux v. Fernandes*, 278 Ill. App. 3d 104, 109, 662 N.E.2d 169, 172 (1996); 820 ILCS 305/19(g) (West 2014). Attorney fees and costs will not be awarded unless there was a refusal to pay compensation or an installment when it became due. *Ponthieux v. Fernandes*, 278 Ill. App. 3d 104, 109, 662 N.E.2d 169, 172 (1996); *Evans*, 207 Ill. App. 3d at 303, 565 N.E.2d at 729 (denying attorney fees where employer paid full and recent award shortly after employee filed section 19(g) action).

¶ 29 The factors which may be relevant in determining whether an employer's failure to pay was unreasonable include: "(1) the presence or absence of a demand for payment, (2) the length of time which elapsed between the date the Commission's decision became final and the date of filing of the section 19(g) petition, (3) the negotiations and communications which took place between the parties during this period, (4) whether the decision of the Commission left room for good-faith disagreement as to the amount of payments owed by the employer, and (5) whether and when the employer made a good-faith offer of settlement." *Ponthieux*, 278 Ill. App. 3d at 115, 662 N.E.2d at 176. The trial court reasoned (1, 2, and 3) that the Gottleib surgery portion of the Commission's decision was final and undisputed as of October 15, 2012, and Reed filed his section 19(g) petition on March 8, 2016, meaning that TH Ryan had ample time to remit payment, and that although the record did not make clear how much the parties negotiated during that time period, it established that Reed did repeatedly demand payment before filing the petition. The trial court also held that (4 and 5) the Commission's decision did not leave room for

a good-faith disagreement as to the amount that TH Reed owed to Reed, and that the tender of an $80,000 check to settle a $103,995 claim was not sufficient to show good faith.

¶ 30 The record supports the trial court's conclusions and demonstrates that TH Ryan refused to pay compensation that was clearly due. Reed and Blue Cross Blue Shield have been waiting for payment of the Commission's award for four years. Moreover, the fact that TH Ryan abandoned its previous arguments and brought other theories on appeal speaks volumes. If the arguments had been genuine and the dispute in good faith, TH Ryan would have raised these issues in a timely fashion in the trial court and not have waited until after they had been waived. The purpose of the Act is to " 'protect injured employees, and their dependents, by providing a prompt, sure remedy for injuries and requiring that industry, rather than the individual, bear the cost of individual accidents' " *Ponthieux*, 278 Ill. App. 3d at 111, 662 N.E.2d at 174 (*quoting McGee v. Ractian Construction Co.*, 231 Ill. App. 3d 929, 936, 596 N.E.2d 1261, 1266 (1992)); *Shell Oil Co. v. Industrial Comm'n*, 2 Ill. 2d 590, 596, 119 N.E.2d 224, 228 (1954). It is apparent, however, that TH Ryan needlessly delayed resolution of Reed's claim and unnecessarily inflicted cost and aggravation by opposing his 19(g) petition with hazy, perfunctory arguments in the trial and appellate courts. We affirm the trial court's determinations that TH Ryan did not have a *bona fide* dispute that its payment was due on Reed's compensation award and that TH Ryan should therefore bear his attorney fees.

¶ 31 TH Ryan's only attempt to dispute the amount of fees awarded is to state that the award should be "at minimum, reversed and remanded for a hearing because the attorney's fees far out proportion any sanction that should have been awarded based upon the facts of this case. See *Kleiboeker v. Industrial Comm'n*, 236 Ill. App. 3d 1020, 1027, [602 N.E.2d 912, 917 (1992)]." This statement is the full extent of TH Ryan's presentation. An appellant waives any argument

unsupported by reasoned argument and citation to relevant authority. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Housing Authority of Champaign County v. Lyles*, 395 Ill.App.3d 1036, 1040, 335 I918 N.E.2d 1276, 1280 (2009) ("It is a rudimentary rule of appellate practice that an appellant may not make a point merely by stating it without presenting any argument in support."); *U.S. Bank Trust National Ass'n v. Junior*, 2016 IL App (1st) 152109, ¶ 19, 57 N.E.3d 588 (argument that is not properly developed does not merit consideration). TH Ryan has not provided reasoned argument or explained the relevance of the cited case. We find the contention forfeited.

¶ 32 In light of the record and arguments presented, we affirm the circuit court's summary judgment ruling which included the Commission's award, attorney fees, court costs, and post-judgment interest.

¶ 33 Affirmed.