2018 IL App (1st) 1171076-U

THIRD DIVISION
March 28, 2018

No. 1-17-1076

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DARRYL L. HEARD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 L 10793
	)	
CITY OF CHICAGO,	)	Honorable
	)	James P. Flannery,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred when it granted defendant's motion to intervene, allowing the City of Chicago to intervene as a subrogee of plaintiff and when it granted defendant's motion to assert a statutory workers' compensation lien against plaintiff's third-party settlement proceeds. The trial court also erred when it entered an order requiring plaintiff to convey his third-party settlement to defendant as full settlement of defendant's statutory lien pursuant to section 5(b) of the Illinois Workers' Compensation Act. We reverse for the reasons set forth below.

¶ 2 On appeal, plaintiff Darryl Heard (hereafter, plaintiff), contends that the circuit court erred when it granted defendant City of Chicago's (hereafter, the City), motion to intervene and its motion asserting a statutory workers' compensation lien against plaintiff's third-party

settlement proceeds. In addition, plaintiff contends that under the Illinois Insurance Guaranty Fund Act (hereafter, Guaranty Fund Act) (215 ILCS 5/532 (West 2016)), the City, as a workers' compensation carrier, is not entitled to subrogation in this case against plaintiff's third-party settlement proceeds paid by the Illinois Guaranty Fund (hereafter, the Fund). We agree and therefore reverse the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 In 2008, plaintiff filed a workers' compensation claim against the City for on-the-job personal injuries he sustained while working as a City of Chicago employee. Plaintiff subsequently settled his claim with the City for $143,878.70. Plaintiff then filed a third-party lawsuit against the negligent party for his personal injuries. Plaintiff's third-party claim was turned over to the Fund pursuant to the Guaranty Fund Act after the insurance company liable for his claim became insolvent. Plaintiff received a settlement paid by the Fund in the amount of $45,000. According to plaintiff, this settlement included a set-off, pursuant to the Guaranty Fund Act, meaning that the settlement amount was reduced based on plaintiff's previous settlement with the City.

¶ 5 In 2017, after plaintiff's third-party claim settled, the City filed a motion to intervene and a motion asserting a statutory workers' compensation lien against plaintiff's third-party settlement proceeds under section 5(b) of the Illinois Workers' Compensation Act (hereafter, Workers' Compensation Act) (820 ILCS 305/5(b) (West 2016)). The circuit court granted the City's motions and entered an order requiring plaintiff to convey his third-party settlement proceeds, paid by the Fund, to the City as full settlement of the City's statutory lien pursuant to section 5(b) of the Workers' Compensation Act. 820 ILCS 305/5(b) (West 2016).

¶ 6 Plaintiff appealed and now challenges that judgment.

¶ 7 ANALYSIS

¶ 8 Initially, we observe that the record on appeal consists of only a common law record, containing the City's motions and the circuit court's orders, absent a report of proceedings. A plaintiff's failure to include a transcript, however, is not fatal if the record contains sufficient documents to allow meaningful review of the merits on appeal. *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 20 (citing *Whitmer v. Munson*, 335 Ill. App. 3d 501, 511-12 (2002)). Because we have the relevant pleadings and court orders and since this case involves a matter of pure statutory interpretation, we proceed in our *de novo* review. *Solon v. Midwest Med. Records Ass'n, Inc.*, 236 Ill. 2d 433, 439 (2010).

¶ 9 In this case, the City claimed that under section 5(b) of the Workers' Compensation Act, an automatic statutory lien attached to plaintiff's third-party settlement proceeds paid by the Fund. 820 ILCS 305/5(b) (West 2016) (section 5(b) of the Workers' Compensation Act states that an employer "may have or claim a lien upon any award, judgment or fund out of which such employee might be compensated from such third party"); see also *In re Estate of Dierkes*, 191 Ill. 2d 326, 328 (2000). Plaintiff contends, nonetheless, that the Guaranty Fund Act precludes the City from asserting a subrogation claim in this case against his third-party settlement proceeds.

¶ 10 The supreme court has continuously observed that the purpose of the Guaranty Fund Act is " 'to place claimants in the same position that they would have been in if the liability insurer had not become insolvent.' " *Skokie Castings, Inc. v. Illinois Insurance Guaranty Fund*, 2013 IL 113873, ¶ 29 (quoting *Lucas v. Illinois Insurance Guaranty Fund*, 52 App. 3d 237, 240 (1977)) (where the *Lucas* court noted that the Fund is "not a collateral or independent source of recovery; rather, it is a substitution when the expected coverage ceases to exist"). Moreover, the Guaranty Fund Act serves public policy by protecting injured claimants from losses, which stem from the liability of insured parties, while also affording protection to the liable insured parties where

their insurance carrier has become insolvent. See *Skokie Castings, Inc.*, 2013 IL 113873, at ¶ 29. Arguably, the Guaranty Fund Act also benefits insurers in this regard by providing insured parties with a sort of "insurance" for their policy, which in turn would seemingly incentivize people to purchase insurance coverage initially. See *id.* Clearly, the Guaranty Fund Act is a protective measure created in the event of insolvency, and thus, it would seemingly violate public policy if the Fund was obligated to also protect claims made by solvent companies. See *Pierre v. Davis*, 165 Ill. App. 3d 759, 761 (1987) ("It is clear that the legislature did not want the assets of the Fund depleted to reimburse solvent insurance companies for payments made to claimants").

¶ 11 As previously stated, plaintiff's third-party settlement was paid by the Fund pursuant to the Guaranty Fund Act after the insurer initially liable for his third-party claim became insolvent. The parties do not dispute whether plaintiff's third-party claim against the insolvent insurer was a "covered claim" under the Guaranty Fund Act. Rather, the parties dispute whether the City's subrogation claim is a "covered claim" under the statute.

¶ 12 Plaintiff argues that the City's subrogation claim is not a "covered claim" under the Guaranty Fund Act's statutory definition. In addition, plaintiff argues that under the Guaranty Fund Act, the City, as a solvent self-insured workers' compensation carrier, is precluded from asserting a subrogation claim against his third-party settlement proceeds paid by the Fund. The City disagrees, arguing that its subrogation claim is a "covered claim" because the statute only applies to "insurers" and the City argues that, as a "home-rule municipality," it is not an "insurer" under the Guaranty Fund Act's statutory definition. We agree with plaintiff for the reasons set forth below.

¶ 13 This case involves a matter of statutory interpretation. *Solon*, 236 Ill. 2d 433 at 439 (2010). In interpreting a statute, our main objective is to ascertain and give effect to the intent of the legislature. *Id*. at 440. The most reliable indicator of intent is found in the language of a statute, which is to be given its plain and ordinary meaning. *Id*. A statute should be read as a whole, meaning we consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it. *Id.* at 440-41 ("We construe the statute to avoid rendering any part of it meaningless or superfluous [Citation.] We do not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent [Citation.]"). As we find here, where the language of the statute is clear and unambiguous, we must give the statute effect without resorting to other aids of construction. *Id*.

¶ 14 The Guaranty Fund Act applies only to "covered claims," meaning unpaid claims for losses, which arise out of or within the coverage of an applicable insurance policy recognized by the statute. 215 ILCS 5/534.3 (West 2016). The Guaranty Fund Act's "Covered claim" provision describes various types of claims that are recognized under the statutory definition and to which the statute applies. Section 534.3(b) of the Guaranty Fund Act also specifically states that a " 'Covered claim' *does not* include:

> (v) any claim for any amount due any *insurer** as subrogated recoveries*** or otherwise. No such claim held by a[n] *insurer** may be asserted in any legal action against a person insured under a policy issued by an insolvent company other than to the extent such claim exceeds the Fund obligation limitations," except in certain circumstances not applicable here. *Id*.

¶ 15 In addition, the Guaranty Fund Act states that a coverage policy providing for workers' compensation is a type of insurance policy recognized by the statute. 215 ILCS 5/535 (West

2016) (section 535 of the Guaranty Fund Act states that "[f]or purposes of administration and assessment, the Fund shall be divided into 2 separate accounts: (a) the automobile insurance account; and (b) the account for all other insurance to which this Article applies, including Workers' Compensation").

¶ 16 The City's assertion that its subrogation claim is a "covered claim" relies on its argument that, as a "home-rule municipality," it does not qualify as an "insurer" under the Guaranty Fund Act's statutory definition. We disagree and find that the City, here, has narrowly construed the Guaranty Fund Act by conveniently omitting relevant portions of the statute to its advantage. See *In re County Collector*, 2014 IL App (2d) 140223, ¶ 17 ("One section of a statute should not be interpreted in a way that renders another section of the same statute irrelevant").

¶ 17 We conclude, based on our statutory interpretation, that workers' compensation carriers are "insurers" under the Guaranty Fund Act's statutory definition.[1] Aside from relying on pure statutory support to reach our conclusion, we also find the court's reasoning in *Skokie Castings, Inc*., 2013 IL 113873 at ¶ 33, persuasive. There, the court explained that "[f]or purposes of the Fund, a covered workers' compensation claim is therefore an unpaid claim for a loss 'arising out of and within the coverage of' a workers' compensation insurance policy to which this portion of the Insurance Code applies and which is in force at the time of the occurrence giving rise to the unpaid claim." *Id*. In addition, the court explained that employers who elect to avail themselves of the provisions of the Workers' Compensation Act must make provisions for securing repayment of the compensation provided for by the statute and indicated that one way employers may do so is by purchasing insurance. *Id*. The court further explained that purchasing insurance is not an employer's only option and that an employer may, instead, elect to demonstrate to the

[1] The "Classes of insurance" provision of section 4(d) of the Illinois Insurance Code plainly states that workers' compensation carriers are "insurers" under the statute: "(d) Workers' compensation. Insurance of the obligations accepted by or imposed upon employers under laws for workers' compensation." 215 ILCS 5/4 (West 2016).

Illinois Workers' Compensation Commission that it possesses the financial resources to self-insure. *Id*.

¶ 18 The court in *Skokie Castings, Inc.*, has merely provided the different means available by which an employer may demonstrate to the Illinois Workers' Compensation Commission that it maintains sufficient insurance for securing repayment. See *id*. The court did not, as the City argues, determine that "self-insured" employers are not "insurers" for purposes of the Guaranty Fund Act. See *id*. Therefore, the City's claim that it is not an "insurer" because it is a "self-insured" workers' compensation carrier fails. [2] The City's reliance on *Skokie Castings, Inc. v. Illinois Insurance Guaranty Fund*, 2012 IL App. (1st) 111533 in making its claim is misplaced for many reasons, namely the court there merely pointed out that other jurisdictions, such as New Jersey and New Mexico, in the past have ruled that self-insured employers under their state's workers' compensation laws were not "insurers" for purposes of their state's guaranty laws. Moreover, Rule 341(i) (eff. Nov. 1, 2017) requires the appellee to set forth contentions on appeal and the reasons therefor, with citation to the authorities. Here, the City has simply asserted, in a conclusory fashion, that "self-insured employers are not insurers for purposes of the state guaranty fund." It is not our job as the reviewing court to complete legal research to find support for arguments found in an appellee's brief. *Cimino v. Sublette*, 2015 IL App (1st) 133373, ¶ 3. We therefore find that the City, as a self-insured workers' compensation carrier, is precluded from asserting a subrogation claim against plaintiff's third-party settlement proceeds paid by the Fund. [3]

[2] In its brief, the City concedes that it is a self-insured workers' compensation carrier.

[3] In its brief, the City contends that there is no proof of the Fund's involvement in this matter and notes that we only have the common law record before us. We find that the City's argument is disingenuous at best. In its brief, the City concedes that the third-party's insurance company was liquidated. It also concedes that defense attorneys approved by the Illinois Insurance Guaranty Fund substituted in for the third-party's previous attorneys. Moreover, a circuit court order dated April 25, 2014 shows the Fund's involvement in this matter. We conclude therefore, that

¶ 19 Based on all of the above, the City is not entitled to plaintiff's third-party settlement proceeds paid by the Fund.

¶ 20 CONCLUSION

¶ 21 Based on the foregoing, we reverse the judgment of the circuit court.

¶ 22 Reversed.

the record contained sufficient evidence to adequately apprise this court of the Fund's involvement and has allowed us a meaningful review of the merits on appeal.