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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE CITY OF CHICAGO, an Illinois municipal corporation,)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,)	
v.)	
)	No. 12 CH 44855
CITY OF HARVEY, an Illinois municipal corporation,)	
Defendant-Appellant,)	The Honorable Kathleen M. Pantle, Judge, presiding.
VILLAGE OF DIXMOOR,)	
VILLAGE OF EAST HAZEL CREST,)	
VILLAGE OF HAZEL CREST,)	
VILLAGE OF HOMEWOOD,)	
VILLAGE OF POSEN, Illinois municipal corporations,)	
Defendants-Appellees.)	

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court retained jurisdiction to enforce the consent decree and appoint a receiver, and the court's appointment of a receiver without an evidentiary hearing was not an abuse of discretion.

¶ 2 Plaintiff, City of Chicago, (Chicago) filed an action against defendant, City of Harvey (Harvey) in the circuit court of Cook County to collect unpaid water bills. The court entered a

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consent decree. Subsequently, the court found that Harvey violated the consent decree, and granted Chicago's motion to appoint a receiver. In this appeal, Harvey contends that the court erred because (1) it lost jurisdiction to enforce the consent decree and appoint a receiver. In the alternative, Harvey contends that the court erroneously: (2) found that Harvey violated the consent decree; and (3) appointed a receiver without an evidentiary hearing. We affirm.

¶ 3

BACKGROUND

¶ 4

Since 1917, Harvey has purchased water from Chicago and resold it to its residents, its businesses, and downstream municipalities, which are the villages of Dixmoor, East Hazel Crest, Hazel Crest, Homewood, and Posen. The downstream municipalities paid Harvey for their water usage. After Harvey fell behind on its water payments to Chicago in 2012, Chicago sued Harvey in the circuit court of Cook County. In November 2014 the court entered summary judgment against Harvey in the amount of \$26,303,339.02. Subsequently, the parties agreed to settle the case by consent decree, which was entered on January 20, 2015.

¶ 5

The consent decree forgave some of Harvey's interest owed to Chicago in exchange for Harvey agreeing to certain obligations and consequences should it fail to meet its obligations. Specifically, Harvey was obligated to satisfy its outstanding water bills to Chicago in monthly installments of \$243,919.66 and to pay its future water bills in a timely manner, and in the case of default, the 2014 judgment would be reinstated as a final judgment and the downstream municipalities would pay Chicago directly for the water supplied by Harvey.

¶ 6

The consent decree also implemented section 11-129-11 of the Illinois Municipal Code. That section requires that "all revenue derived from the operation of a water-supply system * * * shall be set aside * * * in a special fund * * *. The fund shall be used only for the purpose of paying the cost of operating and maintaining the water-supply system, improvement or

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extension, providing an adequate depreciation fund, and paying the principal and interest on the bonds issued by the municipality * * * ." 65 ILCS 5/11-129-11 (West 2014). The consent decree provides in pertinent part in paragraph 5 that "Harvey agrees that on a monthly basis it will deposit * * * all revenue or income generated by its waterworks system * * * into a specific, identified and segregated bank account * * * ." Paragraph 6 states in relevant part that "Harvey agrees that it will use Water Revenue first for statutorily-approved water-related expenses and that it will not use any Water Revenue for non-water-related expenses, if water-related expenses remain unpaid."

¶ 7 The consent decree, in paragraph 12, outlines procedures to aid in resolving any potential violations. Specifically, Chicago may send Harvey's comptroller a request for clarification detailing Harvey's alleged unauthorized transactions that are violations of paragraphs 5 and 6 of the decree. Harvey then must respond by either agreeing to cure the unauthorized transactions within 30 days or explain why such transactions are not unauthorized. If Harvey fails to cure the unauthorized transactions or Chicago rejects Harvey's claim of legitimate transactions, then Chicago must make a request to the court to find the transactions unauthorized. The consent decree defines an unauthorized transaction as a "transaction from the Water Account that fails to comply with Paragraphs 5 and 6 of this Consent Decree."

¶ 8 Further, paragraph 22(a) of the consent decree states in relevant part: "If an event of Default by Harvey occurs, Chicago reserves the right to pursue all available remedies at law or equity against Harvey for all outstanding debts, including interest and penalties, in addition to all remedies provided for herein." Lastly, paragraph 34 grants the court "jurisdiction over the Lawsuit for the purposes of interpretation, implementation and/or enforcement of the terms and conditions of this Consent Decree."

¶ 9 Although Harvey made regular installment payments during 2015, it eventually missed several in 2016. "Thus, in September 2016 Chicago moved for final judgment against Harvey contending that it had repeatedly defaulted under the consent decree. On December 9, 2016, Chicago sent Harvey a request for clarification pursuant to the consent decree regarding potential unauthorized transactions. The letter outlined violations of paragraph 5; alleging a failure to deposit \$5.98 million of water revenue into the water fund in 2015 and failure to deposit \$2.75 million of water revenue into the water fund in 2016. The letter also outlined violations of paragraph 6; alleging improper transfers of over \$26 million of water revenue from the water fund to the general fund, misuse of water revenue to pay non-water-related expenses, and fraudulent use of water revenue to pay various non-city bills, including to Kay Jewelers, Kohl's Department Store, a Capital One credit card and to make a contribution to a college fund account.

¶ 10 Harvey did not cure the issues within 30 days and summarily rejected the alleged violations in a letter from Harvey's comptroller dated December 16, 2016. In the letter, Harvey stated that its "simple response to your assertions is for you to review pages 14-17 of the City's Annual Financial Reports for April 30, 2015 and 2016."

¶ 11 On January 20, 2017, in a final judgment order, the court found Harvey in default under the consent decree. The court noted that as of January 13, 2017, Harvey had failed to make the installment payments due on September 1, 2016, October 1, 2016, November 1, 2016, December 1, 2016 and January 1, 2017. The court prohibited Harvey from paying non-water-related expenses with water revenue while water-related expenses remain unpaid, reinstated the 2014 judgment against Harvey in the amount of \$21,724,070.70, and ordered the downstream

municipalities to begin to pay Chicago directly. Harvey was to continue to bill its residents and businesses and to collect those fees.

¶ 12 In February 2017, Chicago filed a motion to declare transactions relating to Harvey's water account unauthorized transactions under the consent decree and for appointment of a receiver as an independent monitor (motion to declare). The motion reiterated Chicago's allegations of unauthorized transactions in its letter of December 2016. Chicago further argued that appointment of a receiver was necessary to protect the water supply of the downstream municipalities which depend on Harvey for their water.

¶ 13 In April, Harvey responded that the court lacked jurisdiction to implement a remedy not provided for in the consent decree. Also in April, after Chicago received financial records it had sought by subpoena from Harvey's bank, it filed a supplemental memorandum in support of its motion to declare. Subsequently, Harvey filed a motion to strike Chicago's supplemental memorandum and also filed a response to Chicago's motion to declare.

¶ 14 On July 19, 2017, the circuit court denied Harvey's motion to strike and granted Chicago's motion to declare. The court found that Harvey had made fraudulent payments and unauthorized transactions in violation of the consent decree. It also found that Harvey failed to deposit all of the water revenue into the water fund, in violation of Illinois law and the consent decree. The court observed that the statements in the 2015 and 2016 Annual Reports were an admission that Harvey had used water revenue in violation of paragraph 6 of the consent decree. The court held that the \$8 million of unaccounted water revenue and the \$26 million inter-fund transfers were in violation of the consent decree. The court noted that at no time had Harvey offered an explanation as to when these funds were transferred, how the funds would be paid back and on what timeline. Further, the court explained that the "people who live in the

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downstream municipalities and the City of Harvey depend on Harvey's water system for their supply of clean, potable water. The water system must be maintained and funds are needed to properly maintain that system." Also, the court determined that "[i]t is undisputed that Harvey's water fund finances are in disarray, and are being unlawfully raided by Harvey's government to pay for non-water related expenses." The court concluded that "the appointment of a receiver is necessary and imperative to protect the water supply for the people who depend on Harvey's water system." In granting Chicago's motion to appoint a receiver, the court reasoned that it did not have to wait for a disaster

¶ 15 On July 21, 2017, Chicago filed its motion proposing an individual to be appointed as a receiver. Thereafter, Harvey filed its response and objections to the appointment of a receiver as well as to Chicago's proposed receiver. Harvey also filed its motion to reconsider the court's order of July 19, 2017. On July 27, 2017, the court denied Harvey's motion to reconsider and overruled Harvey's objections to the appointment of a receiver.

¶ 16 Subsequently, Harvey filed a notice of interlocutory appeal of the circuit court's orders of July 19, 2017, and July 27, 2017. On August 4, 2017, the court denied Harvey's objections to Chicago's proposed receiver and, in a separate order, the court appointed Chicago's proposed receiver. Harvey filed an amended notice of interlocutory appeal of the court's orders of July 19, 2017, July 27, 2017 and both August 4, 2017, orders. Additional pertinent facts will be discussed in the context of the issues raised on appeal.

¶ 17 ANALYSIS

¶ 18 I. Jurisdiction

¶ 19 Harvey contends the circuit court lost jurisdiction to enforce the consent decree and appoint a receiver after entry of a final judgment. Generally, a circuit court retains jurisdiction

over cases pending before it until such time as a final judgment is entered in the case, and the litigation is effectively terminated between the parties in the trial court. *Brigando v. Republic Steel Corp.*, 180 Ill. App. 3d 1016, 1020 (1989). The court does, however, have a 30-day period after the entry of a final judgment within which it may hear post-trial motions or other motions, and at the end of this 30-day period, the judgment becomes final in the sense that, when the 30-day period expires, the court loses its jurisdiction to alter its judgment orders. *Id.* Thus, 30 days after the entry of a final judgment, a trial court loses jurisdiction to amend, modify, rehear, retry, vacate, or grant other relief of a similar nature from the final judgment order. *Id.* Whether the circuit court has jurisdiction is a question of law, the review of which is *de novo*. *Northwest Diversified, Inc. v. Desai*, 353 Ill. App. 3d 378, 395 (2004).

¶ 20 In the case at bar, Harvey argues that: (A) the circuit court's orders issued subsequent to February 20, 2017, are void *ab initio*; and (B) there were no post-judgment motions that would have extended the court's jurisdiction.

¶ 21 A. Final Judgment

¶ 22 Harvey argues that since the January 20, 2017, order was a final judgment, any orders entered subsequent to 30 days after that final judgment, or February 20, 2017, are void *ab initio*. In its reply brief, Harvey attempts to clarify its argument by asserting that 30 days after the final judgment, all orders beyond enforcing specific consent decree remedies are void, particularly, the July 19, 2017, and the August 4, 2017, orders appointing a receiver.

¶ 23 We observe that in some limited circumstances, a circuit court may retain jurisdiction to enforce its own orders after the 30-day time period has lapsed. *Brigando*, 180 Ill App. 3d at 1020. For example, in *Comet Casualty Co. v. Schneider*, 98 Ill. App. 3d 786, 790 (1981), where the circuit court entered a consent judgment, i.e., a judgment consented to by all of the parties

and which was also approved and entered by the trial court, the court had jurisdiction after the 30-day period had lapsed, to order the continuing performance of certain specific acts by the parties, which had been included as part of the consent judgment entered by the court. *Brigando*, 180 Ill. App. 3d at 1020. A circuit court may also, at times, retain jurisdiction to enforce its order after the lapse of the 30-day period where the judgment contemplates or orders future performance by the parties. *Id.*; *Adam–Martin Construction Co. v. Brandon Partnership*, 135 Ill. App. 3d 324, 326 (1985) (set-off of arbitration award).

¶ 24 Here, in order to determine if the court retained jurisdiction to enter orders 30 days after the entry of its January 20, 2017, order, we must examine the scope of the order. In its order, the court found Harvey in default and subject to final judgment in the amount of \$21,724,070.70 under the terms of the consent decree. The order directed "Harvey to continue to provide water and accurately invoice for water provided to the Downstream Municipalities who are defendants in this case, and the Downstream Municipalities are to make all future payments for water due to Harvey directly to Chicago until the final judgment amount is paid in full. * * * Harvey is prohibited from paying non-water-related expenses with Water Revenue while water-related expenses remain unpaid, and Harvey is to provide Chicago with quarterly reports on the Water Fund * * *." On review, we find the order included the terms of the consent decree and contemplated future conduct. *County of Cook v. Illinois Fraternal Order of Police Labor Council*, 358 Ill. App. 3d 667, 671 (2005) (holding a court has the inherent authority to enforce its orders and judgments); *Brigando*, 180 Ill. App. 3d at 1020 (same).

¶ 25 Moreover, the consent decree signed by the parties expressly directs a series of performances of specific acts and creates unequivocal rights and obligations on the part of the parties subsequent to its entry. The provisions of the consent decree were not self-executing, but

were prospective and executory in terms of the relief granted, some of which were to take place beyond the 30 day period ordinarily considered jurisdictional. See *Comet*, 98 Ill. App. 3d at 789. Furthermore, in the case of default, paragraph 22 of the decree provides for the availability of all available remedies at law or equity. Moreover, paragraph 34 provides for the court to retain jurisdiction for the interpretation, implementation and/or enforcement of the terms and conditions of the consent decree. Thus, we find that the circumstances present here, indicate that the court retained jurisdiction to enforce its order and the consent decree. *Id.* at 791.

¶ 26 Accordingly, under the circumstances in this case, we hold that it was within the jurisdiction of the court to entertain enforcement proceedings, including granting to Chicago any equitable remedy not specified in the decree, subsequent to the entry of the final judgment and passage of thirty days. *Id.*

¶ 27 B. Extension of Jurisdiction

¶ 28 Harvey next argues that Chicago's successive motions to enforce the consent decree are not post-judgment motions as contemplated by section 2-1203 of the Code of Civil Procedure. 735 ILCS 5/2-1203 (West 2014). Section 2-1203 states in pertinent part that in "all cases tried without a jury, any party may, within 30 days after the entry of the judgment * * * file a motion for rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203. Harvey contends that Chicago's motions could not have extended the court's jurisdiction beyond the initial 30 days after entry of the final judgment since they were not directed against the judgment. Here, the post-judgments motions contemplated in Section 2-1203 were not necessary as the court did not lose jurisdiction by operation of the passage of time. See *Brigando*, 180 Ill. App. 3d at 1020; *Comet*, 98 Ill. App. 3d at 791.

¶ 29 The court retained jurisdiction beyond the 30-day period subsequent to its final judgment order of January 20, 2017, to enforce the consent decree and appoint a receiver. Accordingly, we hold that all orders entered by the court after February 20, 2017, including the July 19, 2017, and August 4, 2017, orders appointing a receiver are not void.

¶ 30 II. Court's Findings

¶ 31 In the alternative, Harvey challenges the findings of the circuit court that Harvey made fraudulent payments and engaged in unauthorized transactions and in so doing violated the consent decree. Chicago responds that this issue was forfeited. We agree with Chicago.

¶ 32 Issues not raised in the circuit court are deemed forfeited and may not be raised for the first time on appeal. *1010 Lake Shore Ass'n v. Deutsche Bank Nat. Tr. Co.*, 2015 IL 118372, ¶¶ 14-15 (citing *WISAM 1, Inc. v. Illinois Liquor Control Comm'n*, 2014 IL 116173, ¶ 23). The purpose of this court's forfeiture rules is to encourage parties to raise issues in the trial court, thus ensuring both that the trial court is given an opportunity to correct any errors prior to appeal and that a party does not obtain a reversal through his or her own inaction. *Id.*

¶ 33 Harvey did not present any argument in the circuit court challenging the allegations in Chicago's motion to declare and Chicago's supplemental memorandum. Indeed, the court stated numerous times in its order of July 19, 2017, that its findings were "undisputed" as Harvey failed to address the issues in its response to Chicago's motion to declare and in its response to Chicago's supplemental memorandum. In fact, Harvey never specifically responded until after the court issued its decision. On July 25, 2017, Harvey filed its motion to reconsider with responsive arguments. This was too late. See *Caywood v. Gossett*, 382 Ill. App. 3d 124, 133-34 (2008) (holding arguments raised for the first time in a motion for reconsideration in the circuit

court are forfeited on appeal). Consequently, Harvey has forfeited this issue by failing to timely raise it in the circuit court. *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 15.

¶ 34

III. Appointment of a Receiver

¶ 35

Harvey also contends that the circuit court erred in granting the appointment of a receiver without first conducting an evidentiary hearing specifically on an imminent danger or harm to the community. In support, Harvey argues that there was an insufficient showing of necessity or danger because there was never an interruption of services to the downstream municipalities, or any issues with the drinking water. Further, Harvey contends that the circuit court erred in denying its motion to strike Chicago's April 2017 supplemental memorandum because it was filed on the eve of the hearing and without leave of court.

¶ 36

We note initially that Harvey's claimed error regarding denial of its motion to strike Chicago's memorandum lacks citation to any legal authority. Illinois Supreme Court Rule 341(h)(7) (eff. November 1, 2017), requires that the argument section of an appellate brief contain citations to authorities and to pages of the record relied on, and failure to include mandatory citations may result in forfeiture of the unsupported arguments. Ill. S. CT. R. 341(h)(7); *United Legal Foundation v. Pappas*, 2011 IL App (1st) 093470, ¶ 15; *Baez v. Rosenburg*, 409 Ill. App. 3d 525, 534 (2011). Accordingly, the issue raised by Harvey is forfeited for our consideration. We now turn to the merits of Harvey's argument with respect to the court's appointment of a receiver.

¶ 37

Before proceeding, however, we note that Harvey, relying on *Bank of America, N.A. v. 108 N. State Retail, LLC.*, 401 Ill. App. 3d 158, 165 (2010), asserts that the standard of review for circuit court orders granting a motion to appoint a receiver is generally an abuse of discretion, however, because in this case, the court has not made findings of fact following an evidentiary

hearing, our review is *de novo*. Harvey's reliance on *Bank of America* is misplaced. *Bank of America* relates to foreclosure law which severely circumscribed the court's exercise of discretion. We agree with Chicago that the applicable standard of review is abuse of discretion.

¶ 38 The appointment of a receiver resides in the arsenal of equitable remedies to be used when in the sound discretion of the chancellor it is needed to insure complete justice is done between the parties. *Leib v. Toulin, Inc.*, 113 Ill. App. 3d 707, 718 (1983); *Hurst v. Papierz*, 16 Ill. App. 3d 574, 581 (1973). However, it is a harsh remedy and should not be exercised doubtfully, but only after the court has been convinced that such remedy is absolutely necessary to prevent irreparable losses. *Id.* at 718-19. An abuse of discretion exists when no reasonable person would agree with the position of the circuit court. *Brax v. Kennedy*, 363 Ill. App. 3d 343, 355 (2005).

¶ 39 In addressing Harvey's contention that the court erred when, in the exercise of its equitable powers, it entered its order appointing a receiver without an evidentiary hearing, we observe that there are circumstances where a hearing is not necessary. In the case at bar, the order appointing a receiver was fully warranted under the circumstances presented. See *Hurst*, 16 Ill. App. 3d at 581-82 (holding that the particular circumstances surrounding the case are the criteria by which to judge whether or not the appointment of a receiver was reasonable and not * * an abuse of discretion). The court found that Harvey "had failed to follow the law, failed to follow its own Consent Decree, failed to follow this Court's order, failed to offer an accounting of where the missing Water Revenue is, and failed to grasp the severity of their years of illegal conduct." Further, the court asserted that "Harvey's demonstrated history of misusing Water Revenue not only make a receiver appointment appropriate, but necessary to ensure that Harvey follows the law, the Consent Decree, and this Court's orders."

¶ 40 The court explained that "the people who live in the downstream municipalities and the City of Harvey depend on Harvey's water system for their supply of clean, potable water. The water system must be maintained and funds are needed to properly maintain that system." The court observed that "[i]t is undisputed that Harvey's water fund finances are in disarray, and are being unlawfully raided by Harvey's government to pay for non-water related expenses." The court reasoned that it did not have to wait for a disaster. In fact, the villages of Homewood and Hazel Crest, two downstream municipalities, stated in their response to the appointment of a receiver, that they "wholeheartedly agree with the Court's repeated observations that it would be wrong for the Court to await a disaster before intervening by way of the Receiver appointment." The court concluded that "the appointment of a receiver is necessary and imperative to protect the water supply for the people who depend on Harvey's water system." We agree. Consequently, we find there was a sufficient showing of imminent danger and harm to the community, absent a hearing, for the appointment of a receiver. *See Leib*, 113 Ill. App. 3d at 719 (finding that "an appointment of a receiver is appropriate only in cases of urgent necessity where there is a present danger * * * and an imminent danger of dissipation * * *").

¶ 41 As we have found support for the court's order appointing a receiver, we need not address Harvey's contention that it is an improper application of the court's inherent power to appoint a receiver to protect and ensure payment to Chicago. Accordingly, the court's appointment of a receiver without an evidentiary hearing was not an abuse of discretion.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 44 Affirmed.