2019 IL App (1st) 172357-UB

SIXTH DIVISION
April 12, 2019

No. 1-17-2357

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARCIA DEMPE, as Guardian of the Person of Christopher Lindroth, Disabled; MARCIA DEMPE and FIRST MIDWEST BANK/WEALTH MANAGEMENT COMPANY, as Co-guardians of the Estate of Christopher Lindroth, Disabled, Plaintiffs, v. THE METROPOLITAN PIER AND EXPOSITION AUTHORITY, d/b/a McCORMICK PLACE EXPOSITION CENTER, Defendant (Global Experience Specialists, f/k/a GES Exposition Services, Incorporated, Defendant and Third-Party Plaintiff-Appellee; Coastal International, Incorporated, Third-Party Defendant-Appellant).	)	Appeal from the Circuit Court of Cook County. No. 08 L 7378 Honorable Thomas V. Lyons, II, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** Upon reconsideration after our supreme court remanded this case for reconsideration in light of *Sperl v. Henry*, 2018 IL 123132, we again hold that (1) the circuit court did not err in denying the employer's motion for a good faith finding and to enforce a settlement agreement, (2) the circuit court correctly determined the employer's worker's compensation liability that would cap the employer's third-party contribution liability, and (3) the circuit court erroneously

assessed postjudgment interest against the employer. We affirm in part, reverse in part, and remand.

¶ 2 BACKGROUND

¶ 3 This case is before us a fourth time. See *Dempe, et al. v. Metropolitan Pier & Exposition Authority, et al.*, 2016 IL App (1st) 142535-U, *appeal denied*, No. 120754 (July 18, 2016) (*Dempe I*); *Dempe, et al. v. Metropolitan Pier & Exposition Authority, et al.*, 2017 IL App (1st) 162235-U (*Dempe II*); *Dempe, et al. v. Metropolitan Pier & Exposition Authority, et al.*, 2018 IL App (1st) 172357-U (*Dempe III*). On March 19, 2019, we issued an order (1) affirming the circuit court's denial of the employer's motion for a good faith finding and to enforce a settlement agreement, (2) affirming the court's determination of the employer's worker's compensation liability, (3) reversing the circuit court's assessment of postjudgment interest against the employer, and (4) remanding for further proceedings. *Dempe*, 2018 IL App (1st) 172357-U. We have since vacated the judgment in that case pursuant to our supreme court's supervisory order directing us to do so and consider *Sperl v. Henry*, 2018 IL 123132, "on the issue of whether the circuit court erred in assessing Coastal International, Inc. for postjudgment interest ***." *Dempe, et al. v. Metropolitan Pier & Exposition Authority, et al.*, No. 124136 (Jan. 31, 2019) (supervisory order). When it issued the supervisory order, the supreme court denied the petition for leave to appeal brought by Global Experience Specialists, Inc. Thus, we have no basis to change our earlier disposition regarding (1) the circuit court's denial of the employer's motion for a good faith finding and to enforce a settlement agreement (*Dempe*, 2018 IL App (1st) 172357-U, ¶¶ 25-34) and (2) the court's determination of the employer's worker's compensation liability (*Id.* ¶¶ 35-40). The only issue presented for our consideration now is whether the circuit court erred in assessing postjudgment interest against the employer. The

order in *Dempe I* detailed the facts in this case, so we will limit our discussion to only those facts necessary to provide context for this appeal.

¶ 4 Christopher Lindroth, an employee of Coastal International, Inc. (Coastal), suffered serious injuries while working at a trade show held at McCormick Place. Lindroth's mother and co-guardian,[1] Marcia Dempe, brought this lawsuit alleging negligence and willful and wanton conduct against various entities including Global Experience Specialists, Inc. (GES), the official services contractor for the trade show. GES filed a separate complaint for contribution against Coastal. After trial, the jury returned a verdict of $34.15 million in favor of plaintiffs and against GES, but it also found Lindroth 35% at fault for his injuries, reducing the verdict to approximately $22.2 million. On GES's contribution claim, the jury allocated 75% of GES's responsibility to Coastal. On March 7, 2014, the circuit court entered judgment on the verdict against GES in the amount of $22,197,500, and found that the verdict was subject to contribution of 75% from Coastal pursuant to GES's claim of contribution.

¶ 5 GES filed a posttrial motion seeking, in part, to set the cap on Coastal's liability pursuant to *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155 (1991) (the *Kotecki* cap). Following a hearing, the circuit court determined that the *Kotecki* cap would be "the amount paid of the workers' comp[ensation] lien as of the time of the judgment" and any additional payments GES would make until the case was resolved. The court also entered an order finding "no just reason

[1] Dempe was appointed guardian of Lindroth's person and coguardian (along with First Midwest Bank/Wealth Management Company (First Midwest)) of Lindroth's estate. The Circuit Court of Lake County, Indiana, granted Dempe's petition to appoint First Midwest as coguardian of Lindroth's estate in December 2013, and First Midwest did not appear as a party until the fifth—and final—amended complaint. Nonetheless, for the sake of clarity, we shall refer to both plaintiffs as either "Dempe" or simply "plaintiff."

to delay enforcement or appeal as to plaintiff and GES's posttrial motions" pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)).

¶ 6 On March 28, 2014, Coastal and plaintiff entered into a signed settlement agreement in which Coastal agreed to offer $1 million (the limit of its insurance coverage) and a waiver of its workers' compensation lien rights on that $1 million conditioned upon the trial court dismissing with prejudice all claims against Coastal. On March 31, 2014, Coastal filed a motion for a good-faith finding, noting in part that the settlement agreement was "contingent upon [the circuit court] finding the settlement to be in good faith."

¶ 7 On May 19, 2014, GES objected to the proposed settlement, arguing that, pursuant to *Yoder v. Ferguson*, 381 Ill. App. 3d 353 (2008), its right to contribution from Coastal (approximating $16.65 million) would be extinguished for only $1 million. Attached to GES's objection was an affidavit from John P. Bergin, in which Bergin attested that he was an attorney whose primary focus since 1992 was workers' compensation claims. Bergin stated that he had been asked to opine as to the "future value of the underlying workers' compensation lien" to determine Coastal's contribution liability. After reviewing Lindroth's "Life Care Plan" as well various medical reports and testimony, Bergin concluded that the range of "indemnity permanent total benefits and the past workers' compensation payments" was between $18.5 million and $20.9 million. This range included both past and future worker's compensation benefits. In reply, Coastal did not file a counteraffidavit or otherwise challenge Bergin's opinion regarding the limit of Coastal's contribution liability.

¶ 8 Also attached to GES's objection was a "Certificate of Liability Insurance" and Coastal's income tax return for 2012. The insurance certificate listed four insurance policies, three of which are relevant here: a $1 million "General Liability" policy, a $1 million "Workers

Compensation and Employer's Liability" policy (denoted as "WC Statutory Limits"), and a $5 million "Excess/Umbrella Liability" policy. Coastal's tax return reported total assets of over $3.6 million, gross income of over $7 million, and net income (*i.e.*, after payments of $401,221 for the "compensation of officers") exceeding $600,000. The Metropolitan Pier and Exposition Authority (MPEA) joined GES's objection.

¶ 9 On May 27, 2014, plaintiff sent a letter to Coastal confirming its prior telephone conversation that plaintiff was withdrawing her consent to the agreement. On June 10, 2014, plaintiff filed her own objection to the settlement agreement. Plaintiff stated in her motion that, after the verdict and in anticipation of a lengthy appeals process, plaintiff needed money to remodel her son's home to allow him to live on the first floor and move out of the nursing home in which he had been receiving 24-hour care. Plaintiff added that, because she was faced with the immediate need to remodel her son's home and arrange for 24-hour care, she "simply acquiesced" in the settlement agreement.

¶ 10 On July 16, 2014, the circuit court held a hearing on Coastal's motion for a good-faith finding and to enforce settlement. The court explained that a refusal to find good faith did not necessarily equate to a finding of bad faith: instead, the court noted that "the most important thing *** is that this court owes a duty to Mr. Lindroth." The court further explained as follows:

> "Mr. Lindroth is a disabled individual, and in order to make a good faith finding in this particular case, I would have to treat it the same way I would juvenile and make sure that the guardian appointed was acting in his best interest."

The court recounted plaintiff's "stated purpose in open court" for her agreeing to a settlement was merely "to attempt to get some money up front so that the house that Mr. Lindroth is living

in with his mother could be updated to accommodate his obvious needs and disabilities." For that reason, the court denied Coastal's motion for a good-faith finding, and after noting the condition precedent to the settlement was consequently "not existent," the court then denied Coastal's motion to enforce the settlement.

¶ 11 The circuit court next rejected Coastal's argument that the court lacked jurisdiction to set the *Kotecki* cap, determining that the cap would be "the amount of the workers' compensation lien that has already been paid and will be paid in the future." The court elaborated as follows:

> "If a settlement is reached between Mr. Lindroth's representatives and GES or if the appellate court denies all appeals and orders GES to pay the judgment to the plaintiff, Coastal, in effect, would then *** have a very large *** workers' compensation lien, and would then get, in effect, a workers' compensation holiday because of the collateral source payment to Mr. Lindroth from GES.
>
> So for that reason *** the limit or the cap on Coastal will be the amount paid of the workers' comp[ensation] lien as of the time of the judgment *** and the additional payments *** that would be made and will continue to be made by the time this case is resolved and GES pays their judgment against *** plaintiff."

¶ 12 GES appealed the circuit court's order setting the *Kotecki* cap. *Dempe I*, 2016 IL App (1st) 142535-U, ¶ 45. Coastal filed a separate appeal challenging the court's denial of Coastal's motion for a good faith finding as to a proposed settlement between Coastal and plaintiffs and to enforce that settlement. *Id.* We consolidated GES's and Coastal's separate appeals. *Id.*

¶ 13 On March 31, 2016, we affirmed GES's appeal in part and dismissed it in part. *Id.* ¶¶ 88-90. We held that, despite having a Rule 304(a) finding, the circuit court's order setting the *Kotecki* cap was not a final order because GES had not yet paid more than its *pro rata* share of the judgment. *Id.* ¶ 53. We also dismissed Coastal's appeal for want of jurisdiction, because not all of the claims of all parties had been resolved (namely, the MPEA's indemnification motion was unresolved), and the court failed to make a Rule 304(a) finding as to the order denying Coastal's motion for a good faith finding and to enforce settlement. *Id.* ¶¶ 50-51.

¶ 14 On July 28, 2016, GES filed "release (satisfaction) of judgment" with the circuit court, indicating that plaintiff had executed the release on July 27, 2016, and had received "full satisfaction and payment of the judgment" against GES. GES then filed two notices of appeal: one within 30 days of the filing of the release and satisfaction of judgment (case no. 1-16-2235), and another within 30 days of the issuance of this court's mandate in *Dempe I* (case no. 1-16-2474). *Dempe II*, 2017 IL App (1st) 162235-U, ¶ 7. We consolidated the two appeals. *Id.*

¶ 15 On April 10, 2017, while the appeal in *Dempe II* was pending, the circuit court entered an agreed order dismissing with prejudice all of MPEA's remaining claims against Coastal.

¶ 16 On June 16, 2017, we issued our decision in *Dempe II*, holding that this court still lacked jurisdiction over GES's appeal concerning the *Kotecki* cap. We recounted that, in *Dempe I*, we dismissed GES's appeal of the order setting the *Kotecki* cap for want of jurisdiction because at that point in time, the record was devoid of any indication that GES had paid more than its *pro rata* share of the judgment. *Id.* ¶ 9 (citing *Dempe I*, 2016 IL App (1st) 142535-U, ¶¶ 53, 90). We held that, although GES produced a satisfaction and release, which established that it had paid more than its *pro rata* share of the judgment, we nonetheless still lacked jurisdiction

because the circuit court did not enter an order quantifying Coastal's liability to GES into a fixed amount of money. *Id.* ¶¶ 8-10. We thus dismissed GES's appeals in *Dempe II*. *Id.* ¶¶ 11-12.

¶ 17 On September 6, 2017, the circuit court entered judgment against Coastal and in favor of GES in the amount of $11,708,804.24, consisting of Coastal's *pro rata* 75% share of the judgment ($15,828,570) and 75% of the postjudgment interest ($3,095.073.30) less setoffs for payments by Coastal's insurers ($7,214,839.06). The court specifically noted that it did not believe that "what Coastal paid in workers' comp[ensation] absolves them [*sic*] from any obligation that the jury determined in the contribution claim." On September 25, 2017, Coastal filed its notice of appeal challenging the court's orders of July 16, 2014, and September 6, 2017.

¶ 18 ANALYSIS

¶ 19 Jurisdictional Defects in Prior Appeals

¶ 20 In *Dempe I*, we dismissed GES's appeal of the circuit court's order setting the *Kotecki* cap because, although the court made a finding pursuant to Rule 304(a) that there was no just reason to delay enforcement of its order, the order was nevertheless nonfinal because there was no evidence that GES had paid more than its *pro rata* share of the judgment. *Dempe I*, 2016 IL App (1st) 142535-U, ¶¶ 53, 88-90. We also dismissed Coastal's appeal from the court's denial of its motion for a good faith finding and to enforce settlement because the MPEA's indemnification motion against Coastal had not been resolved and there was no Rule304(a) language on the court's order. *Id.* ¶¶ 50-51. These two defects, however, were subsequently cured: (1) GES filed a "release (satisfaction) of judgment" with the court, showing that plaintiff had received "full satisfaction and payment of the judgment" from GES; and (2) the court entered an order dismissing all of MPEA's remaining claims against Coastal.

¶ 21 GES then appealed from the circuit court's order setting the *Kotecki* cap. *Dempe II*, 2017 IL App (1st) 162235-U, ¶7. This court, however, again dismissed GES's appeal from the order setting the *Kotecki* cap because, although GES produced a satisfaction and release, the court did not enter an order quantifying Coastal's liability to GES into a fixed amount of money. *Dempe II*, 2017 IL App (1st) 162235-U, ¶¶ 8-12. This defect was subsequently cured, as well, when the circuit court entered judgment against Coastal and in favor of GES in the amount of $11,708,804.24. Since the jurisdictional defects in both *Dempe I* and *Dempe II* have been resolved, we now turn to the appeal now before us.

¶ 22 Coastal's Brief

¶ 23 As an initial matter, GES complains that Coastal's brief fails to comply with Supreme Court Rule 342(a), which requires the appellant to provide an appendix with a table of contents to the record on appeal. See Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). Here, Coastal's brief contains no appendix or table of contents to the record.[2] The record on appeal in this case exceeds 40,000 pages, and appellant's failure to provide a table of contents only serves to delay the resolution of its claims.

¶ 24 Supreme court rules are not mere suggestions; they are rules that must be followed. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. "Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal." *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). We recognize, however, that striking a brief for failure to comply with supreme court rules is a harsh sanction. *In re Detention of Powell*, 217

[2] Coastal's defends this omission by referring this court to the "Joint Appendix as filed by Defendant/Appellant GES." Coastal may have been referring to the appendix filed in *Dempe I*. Even so, that appendix is of little use because, unlike the record filed in *Dempe I*, the record for this appeal is in electronic form and has different volume numbers.

Ill. 2d 123, 132 (2005); *People v. Thomas*, 364 Ill. App. 3d 91, 97 (2006). Moreover, we are able to locate the portions of the record that relate to Coastal's assertions on appeal. Accordingly, we will consider the merits of the appeal.

¶ 25 The Motion for Good-Faith Finding

¶ 26 Coastal contends on appeal that the circuit court erred in denying its motion for a good-faith finding and to enforce settlement with respect to a proposed agreement it had entered into with plaintiff. Coastal argues that it offered the full amount of its insurance coverage ($1 million) and that plaintiff should not have been allowed to withdraw from the agreement because of a unilateral mistake regarding the potential impact of *Yoder v. Ferguson*, 381 Ill. App. 3d 353 (2008) on GES's contribution judgment against Coastal.

¶ 27 GES first responds that Coastal's objection to the good-faith finding is moot because, since the court denied the good-faith finding, "the facts have changed": Coastal has since paid $7 million in insurance proceeds toward its contribution judgment and has been found to be fully insured for workers' compensation claims. GES, however, fails to fully develop this argument, merely quoting a general holding that mootness can arise when a change of circumstances prevents a reviewing court from granting effective relief. GES provides no discussion as to the applicability of the various exceptions to the mootness doctrine, or even the relevant standard of review. It is axiomatic that a reviewing court is not "a depository in which the appellant may dump the burden of argument and research"; rather, it is entitled to clearly defined appellate issues "*with pertinent authority cited*" and a coherent legal argument. (Emphasis added.) *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986).

¶ 28 In any event, we reject GES's incomplete argument on mootness. We are mindful that Illinois courts generally do not "consider issues where the result will not be affected regardless

of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). Setting aside whether various exceptions to the mootness doctrine apply, we do not view this case as moot because our holding could potentially affect the result. Specifically, if we were to hold that the circuit court erred in denying Coastal's motion for a good-faith finding and to enforce settlement, it would radically change contribution liability of Coastal to GES, as well as GES's liability to plaintiffs. We therefore reject GES's argument that this issue is moot and turn to the merits of Coastal's claim on appeal.

¶ 29 Whether a settlement was made in good faith is a matter left for the circuit court's determination "after consideration of all of the surrounding circumstances." *Dubina v. Mesirow Realty Development, Inc.*, 197 Ill. 2d 185, 191-92 (2001). "This totality-of-the-circumstances approach allows trial courts to give effect to the strong public policy favoring the peaceful settlement of claims, and at the same time allows trial courts to be on guard for any evidence of unfair dealing, collusion, or wrongful conduct by the settling parties." *Id.* We review a court's determination as to the good faith of a settlement for an abuse of discretion. *Id.* A court abuses its discretion only where its ruling is "arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the court's view." *TruServ Corp. v. Ernst & Young, LLP*, 376 Ill. App. 3d 218, 227 (2007).

¶ 30 In this case, plaintiff sought to enter into the settlement agreement because she was desperate to have her son (Lindroth) removed from the nursing home where he was being treated and into his home, but she needed funds urgently. On this basis, the circuit court could have reasonably concluded that the $1 million settlement offer, the maximum of Coastal's policy limits, but far below its $16.65 million pro rata share of contribution liability, was not the product of a true arms-length negotiation: rather, the trial court could have reasonably found

that, under the totality of the circumstances, plaintiff was pressured to accept this extraordinarily low settlement amount because of the urgency she felt to provide her son with adequate medical care. The court's rejection was also justified when comparing the proferred $1 million settlement amount with evidence of Coastal's (1) profitability (over $600,000 on revenue of over $7 million), (2) additional insurance limits ($7 million), and (3) assets (more than $3.6 million).

¶ 31 Furthermore, as the court noted, Lindroth, a seriously injured individual requiring lifelong medical care, is a favored person in the eyes of the law and the trial court has a special duty to protect his rights. See, *e.g.*, *In re Estate of Berger*, 166 Ill. App. 3d 1045, 1055 (1987) ("The court protects the incompetent as its ward, vigilantly guarding his property, and viewing him as a favored person in the eyes of the law."); *Bruso by Bruso v. Alexian Brothers Hospital*, 178 Ill. 2d 445, 454 (1997) ("Illinois law has long recognized that incompetents are favored persons in the eyes of the law and courts have a special duty to protect their rights."). Therefore, based upon both plaintiff's urgency in obtaining funds and the significant discount from Coastal's adjudged liability, the trial court's denial of a good-faith finding was not arbitrary, fanciful, or unreasonable, or one where no reasonable person would adopt the court's view. *TruServ*, 376 Ill. App. 3d at 227.

¶ 32 Moreover, the agreement itself contained a condition precedent that it would not be effective unless the circuit court entered a good-faith finding. A condition precedent is a condition in which performance by one party is required before the other party is obligated to perform. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 668 (2007). If a contract contains an express condition precedent, "strict compliance" with the condition is required. *Id.* "It is well established that where a contract contains a condition precedent, the contract does not become enforceable or effective until the condition is performed

or the contingency occurs." *Dodson v. Nink*, 72 Ill. App. 3d 59, 64 (1979) (citing *Hodorowicz v. Szulc*, 16 Ill. App. 2d 317, 320 (1958)). Here, the condition precedent was that the circuit court would find the settlement was made in good faith. No such finding occurred, so the agreement was not "enforceable or effective." *Id.*

¶ 33 *Kalman v. Bertacchi*, 57 Ill. App. 3d 542 (1978), which Coastal cites in support of its argument, is unavailing. In that case, there was no similar condition precedent. Rather, it was a case of buyer's remorse: the defendants accepted the plaintiff's proposed settlement amount under the misapprehension that the trial court had recommended the figure. *Id.* at 544-46. Thirty minutes after the settlement hearing—at which the trial court had repeatedly received both the defendants' assurances that they had no objection and also their understanding that the trial court would enforce the agreement if they did agree to it—the defendants sought to have the agreement set aside based upon their misunderstanding that the trial court had recommended the settlement amount. *Id.* The trial court refused to set aside the agreement. *Id.* at 546-47. This court affirmed. *Id.* at 550. In contrast, the case before us involves a condition precedent that was essential to the formation of a valid settlement agreement. *Kalman* is thus unavailing.

¶ 34 Accordingly, the trial court did not abuse its discretion in denying Coastal's motion for a good-faith finding and to enforce settlement.

¶ 35 The *Kotecki* Cap

¶ 36 Coastal next contends that the circuit court erred in determining the *Kotecki* cap, arguing that the Industrial Commission, and not the court, must determine the *Kotecki* cap. As noted above, on September 6, 2017, after entering judgment against Coastal and in favor of GES in the amount of $11,708,804.24, the circuit court further rejected Coastal's argument that its contribution liability should be limited to the amount of worker's compensation benefits Coastal

had already paid. Instead, the court found that Coastal's prior payments of worker's compensation did not "absolve[] them [*sic*] from any obligation that the jury determined in the contribution claim." In other words, limiting the *Kotecki* cap solely to worker's compensation already paid—as Coastal would like—would effectively reduce Coastal's fault allocation to an amount substantially below the 75% amount the jury allocated to it. Coastal asserts that, since all questions under the Illinois Worker's Compensation Act must be reviewed before the Illinois Worker's Compensation Commission (the Commission), the court should have required the parties to have the Commission determine Coastal's worker's compensation liability, which the court would use to determine the cap.

¶ 37 We reject Coastal's argument that the circuit court lacked jurisdiction to set the *Kotecki* cap. Although it is true that only the Industrial Commission is empowered to set the amount of workers' compensation that an employer must pay to an injured employee (*Branum v. Slezak Construction Co.*, 289 Ill. App. 3d 948, 968-69 (1997) (citing 820 ILCS 305/19 (West 1992))), the *Kotecki* cap does not establish the amount of workers' compensation due to an employee; rather, it places a ceiling on the contribution liability the employer owes to a third party (*id.* at 967 ("No workers' compensation adjudication is made within a contribution case, however, when a trial court determines the present cash value of future workers' compensation benefits under *Kotecki* ***.")). Coastal's reliance upon both *Branum* and also *Baltzell v. R & R Trucking Co.*, 554 F.3d 1124 (7th Cir. 2009), is therefore misplaced; both cases concerned the trial court's determination of the setoff against the plaintiff's recovery from the third party, which required a calculation of the employer's workers' compensation obligation. See *Branum*, 289 Ill. App. 3d at 968-69; *Baltzell*, 554 F.3d at 1131-32. The issue here, in contrast, concerns the limit on the

employer's *contribution* liability, which the trial court is manifestly empowered to determine. See *Branum*, 289 Ill. App. 3d at 968-69. Coastal's contention of error is therefore unavailing.

¶ 38 Coastal further complains that the trial court erred in setting Coastal's contribution liability in a lump sum amount. Coastal's argument, however, contains no citation to statutory or decisional authority that would support its claim. Accordingly, it is forfeited. See S. Ct. R. 341(h)(7) (eff.) (providing in part that the argument section of a brief "shall contain *** the authorities *** relied on. * * * Points not argued are waived ***.").

¶ 39 Coastal next argues that its contribution payments to GES should be made periodically as worker's compensation benefits are paid to Lindroth. They argue that, as postjudgment payments continue "from the pool of money collected by plaintiffs for Lindroth ***, the *Kotecki* cap limiting Coastal's liability in contribution would rise in conjunction with those payments." Coastal asserts that the circuit court's order setting the cap at $18.7 million subjects Coastal to the risk that it will pay both worker's compensation and contribution liability "for the same losses." It does not. Although Coastal is required to pay Lindroth worker's compensation, its contribution liability to GES is capped under *Kotecki* by the amount it will pay in worker's compensation. *Kotecki*, 146 Ill. 2d at 164-65. It is also well established that, to the extent that Lindroth has recovered damages from GES or any other third party, "the *** judgment received by [Lindroth] is dedicated to repaying workers' compensation paid by [Coastal]." *LaFever v. Kemlite Co.*, 185 Ill. 2d 380, 398-99 (1998); see also 820 ILCS 305/5(b) (West 2016). In fact, Coastal may claim a lien on Lindroth's recovery in an amount equal to the amount of workers' compensation due Lindroth. See 820 ILCS 305/5(b) (West 2016). Coastal's concern is thus unwarranted, so we necessarily reject its argument on this point.

¶ 40 Finally, Coastal argues in the alternative that we should remand this matter to the circuit court "to conduct discovery and present evidence" at a hearing. GES argues in response that this Coastal's argument is forfeited. Under the doctrine of invited error, "a party cannot complain of error which that party induced the court to make or to which that party consented." *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004). The rationale behind this doctrine is that "it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings." *Id.* Here, Coastal lodged no objection (other than jurisdiction) at the time of the hearing in 2014. Coastal neither presented an argument that GES's expert testimony was flawed nor supplied its own evidence of its future worker's compensation liability. As a result, Coastal may not now contend that a reopening of discovery and a new hearing is required. In the absence of any final adjudication by the Commission, we find no error in the court's reliance on Bergin's affidavit to set the *Kotecki* cap in the manner it did, namely, that Coastal's prior payment of worker's compensation did not absolve it "from any obligation that the jury determined in the contribution claim."

¶ 41 Postjudgment Interest

¶ 42 Finally, Coastal contends that the circuit court erred in assessing it for postjudgment interest on the judgment against GES. Coastal argues that there is no provision in the Joint Tortfeasors Contribution Act (the Contribution Act) allowing for postjudgment interest. Coastal further claims that, until the time of GES's payment, GES's contribution judgment "had no set number," so there was no judgment that Coastal could have satisfied, and consequently no ability to limit liability for postjudgment interest. GES responds that it is unnecessary for the Contribution Act to authorize interest because section 2-1303 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1303 (West 2016)) does.

¶ 43 This issue requires that we construe both section 2-1303 of the Code and the Contribution Act. The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature, "the surest and most reliable indicator of which is the statutory language statute itself, given its plain and ordinary meaning." *People v. Perry*, 224 Ill. 2d 312, 323 (2007). If the statutory language is clear and unambiguous, we must apply it as written without using extrinsic aids to statutory construction. *Id.* We may not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. *Id.* at 323-24. Since all provisions of a statutory enactment are viewed as a whole, we may construe words and phrases in isolation; instead, they are interpreted in light of other relevant portions of the statute. *Carver v. Sheriff of La Salle County*, 203 Ill. 2d 497, 507-08 (2003). We further presume that the General Assembly did not intend absurdity, inconvenience or injustice. *Id.* at 508. We review the construction of a statute *de novo. Perry*, 224 Ill. 2d at 324.

¶ 44 "It is settled law that an award of interest is not recoverable absent a statute or agreement providing for it." *In re Liquidation of Pine Top Insurance Co.*, 322 Ill. App. 3d 693, 699 (2001) (citing *Johnson v. Human Rights Comm'n*, 173 Ill. App. 3d 564, 568 (1988)). In addition, since interest statutes are in derogation of the common law, they must be strictly construed, and nothing may be read into them by "intendment or implication." *City of Springfield v. Allphin*, 82 Ill. 2d 571, 577 (1980) (citing *Summers v. Summers*, 40 Ill. 2d 338, 342 (1968)). Section 2-1303 of the Code provides in relevant part:

> "Judgments recovered in any court shall draw interest *** from the date of the judgment until satisfied ***. When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when made or rendered to the time of

> entering judgment upon the same, and included in the judgment."
>
> 735 ILCS 5/2-1303 (West 2016).

¶ 45 Section 2(a) of the Contribution Act provides that, with certain exceptions not applicable here, "where 2 or more persons are subject to liability in tort arising out of the same injury to [a] person ***, there is a right of contribution among them, even though judgment has not been entered against any or all of them." 740 ILCS 100/2(a) (West 2016). Section 2(b) of the Contribution Act provides in part that a the right of contribution exists "only in favor of a tortfeasor who has paid more than his *pro rata* share of the common liability, and his total recovery is limited to the amount paid by him in excess of his *pro rata* share. ***" 740 ILCS 100/2(b) (West 2016).

¶ 46 Here, the "common liability" in section 2(b) must be construed in light of the term "liability" in section 2(a). See *Moran v. Katsinas*, 16 Ill. 2d 169, 174 (1959) (holding that, when the same, or substantially the same, word appears in different parts of the same statute, it will be given a consistent meaning) (citing *People ex rel. Lipsky v. City of Chicago*, 403 Ill. 134 (1949),and *Stiska v. City of Chicago*, 405 Ill. 374 (1950)). In doing so, it is clear that common liability, pursuant to section 2(a), is the "liability in *tort*" arising out of an injury to a person. (Emphasis added.) 740 ILCS 100/2(a) (West 2016). Postjudgment interest is not liability in tort arising out of an injury to a person. Therefore, Coastal was not liable in contribution for the postjudgment interest from the date of the jury verdict until GES paid the judgment in full.

¶ 47 Moreover, even assuming, *arguendo*, that postjudgment interest is subject to contribution, GES would nevertheless still not be entitled to contribution for postjudgment interest. In *Dempe II*, we dismissed GES's appeal in part because Coastal's contribution liability had not been reduced to a fixed dollar amount. *Dempe II*, 2017 IL App (1st) 162235-U, ¶¶ 8-12. The terms

"awards, reports, and verdicts" in section 2-1303, are " '*liquidated sums* representing adjudications of disputed facts and issues upon which judgment must be entered before the award, report, or verdict can be enforced *** through the judicial process.' " (Emphasis added.) *Old Second National Bank v. Indiana Insurance Co.*, 2015 IL App (1st) 140265, ¶ 46 (quoting *Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 157 Ill. 2d 282, 301 (1993)). Consequently, the circuit court could not have assessed postjudgment interest against Coastal until the date of its order reducing Coastal's contribution liability to a fixed amount: September 6, 2017. At that point, however, there was no longer any judgment upon which interest was accruing: GES had filed its satisfaction and release establishing its payment of the entire judgment in July of the prior year. Therefore, even under this scenario, Coastal was not liable in contribution for postjudgment interest.

¶ 48 Finally, upon due consideration of the supreme court's decision in *Sperl*, we find no basis to reconsider our earlier finding regarding postjudgment interest. In *Sperl*, the court was called upon to determine whether one vicariously liable defendant had a right of contribution against another vicariously liable defendant "when their common liability arises from the negligent conduct of the same agent." *Sperl*, 2018 IL 123132, ¶ 1. The plaintiff sued DeAn Henry (the driver of a tractor-trailer), C.H. Robinson Company (CHR), and Toad L. Dragonfly Express, Inc. (Dragonfly), following a fatal multivehicle accident. *Id.* ¶ 3. CHR contracted to purchase, store, and transported produce to Jewel Food Stores, and Henry owned a semi-tractor that she leased to Dragonfly. *Id.* The jury returned a verdict in favor of the plaintiff and specifically found that the Henry was CHR's agent, resulting in CHR being vicariously liable. *Id.* ¶ 7. The jury awarded $23.775 million jointly and severally against Henry, CHR, and Dragonfly. *Id.* CHR eventually

paid the entire judgment, which exceeded $28 million, but later obtained a 50% contribution verdict against Dragonfly, which included postjudgment interest. *Id.* ¶¶ 10-13.

¶ 49 On direct appeal, Dragonfly argued that the Contribution Act was inapplicable because both it and CHR were only found vicariously liable and that, since both of them were each 100% liable, CHR did not pay more than its *pro rata* share of liability. *Id.* ¶ 14. The appellate court agreed with Dragonfly, reversing the circuit court's judgment awarding contribution to CHR and remanding to the circuit court for further proceedings. *Id.* ¶ 15.

¶ 50 On further appeal to the supreme court, CHR argued that there was a right of contribution between it and Dragonfly as vicariously liable defendants, and that it was entitled to contribution. *Id.* ¶ 19. The *Sperl* court agreed, holding that the Contribution Act did provide for a right of contribution between even vicariously liable defendants, and that the circuit court properly awarded CHR contribution against Dragonfly for "one-half of the total amount" of the judgment. *Id.* ¶ 33. The court thus reversed the appellate court and affirmed the circuit court. *Id.* ¶ 44.

¶ 51 In this case, unlike in *Sperl*, the parties' claims do not concern whether vicarious liability precludes a right of contribution; rather, their claims center on whether postjudgment interest should also be subject to contribution. The parties in *Sperl* apparently did not dispute the assessment of one-half of the postjudgment interest against Dragonfly under the Contribution Act, and the *Sperl* court was not asked to consider whether postjudgment interest was also properly subject to contribution. In fact, the term "postjudgment interest" appears only twice in *Sperl*: once in the background facts section, and once in the summary paragraph immediately before the conclusion heading, where the court states that it is affirming "the trial court's judgment awarding CHR contribution against Dragonfly in the amount of $14,326,665.54, constituting one-half of the total amount of the judgments, including postjudgment interest."

Id. ¶¶ 10, 42. Since *Sperl* concerned an issue that was not raised in this case and the court only fleetingly mentioned postjudgment interest in the context of the case history, we find that it does not alter our original holding.

¶ 52 We recognize that judicial *dicta*, which are comments in a judicial opinion that are unnecessary to the disposition of the case, nonetheless involve an issue briefed and argued by the parties and thus "have the force of a determination by a reviewing court and should receive dispositive weight in an inferior court." *People v. Williams*, 204 Ill. 2d 191, 206-07 (2003) (citing *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993)). There is nothing in *Sperl*, however, to indicate that the parties "briefed and argued" whether the Contribution Act applied to postjudgment interest. Therefore, the *Sperl* court's use of the term "postjudgment interest" cannot reasonably be considered judicial *dicta*.

¶ 53 We further acknowledge that *obiter dicta*, which are judicial comments that are unnecessary to a case disposition but do *not* involve an issue briefed and argued by the parties (*Hawes v. Luhr Brothers, Inc.*, 212 Ill. 2d 93, 100 (2004)), still "can be tantamount to a decision and therefore binding in the absence of a contrary decision of that court." *Cates*, 156 Ill. 2d at 80. The two brief references to postjudgment interest in *Sperl*, however, do not support application of this rule. One reference was within the facts section of the opinion to describe the makeup of the $28 million judgment. *Sperl*, 2018 IL 123132, ¶ 10. The other reference occurred in the last paragraph of the analysis section and similarly only described the makeup of the contribution judgment against Dragonfly that the *Sperl* court was affirming on another ground. *Id.* ¶ 42.

¶ 54 CONCLUSION

¶ 55 We stand by our determinations in *Dempe III* that (1) the circuit court did not abuse its discretion in denying Coastal's motion for a good faith finding and to enforce settlement (*Dempe*, 2018 IL App (1st) 172357-U, ¶¶ 25-34); and (2) the circuit court correctly determined Coastal's worker's compensation liability that would cap its contribution liability to GES (*Id.* ¶¶ 35-40). As we did in *Dempe III*, we reverse the court's allocation of a portion of GES's postjudgment interest liability against Coastal, and we remand the matter for modification of the September 6, 2017, judgment order to remove any portions thereof attributable to postjudgment interest, because *Sperl* does not require a different result. Accordingly, we affirm in part, and reverse and remand in part, the judgment of the Circuit Court of Cook County.

¶ 56 Affirmed in part; reversed in part; cause remanded.