No. 121078

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

AKEEM MANAGO, a deceased minor by and through April Pritchett, Mother and Next Friend,

Plaintiff-Respondent,

April Pritchett, Individually and as Special Administrator for the Estate of Akeem Manago,

Plaintiff,

vs.

THE COUNTY OF COOK,

Lienholder-Petitioner.

Chicago Housing Authority, a Municipal Corporation, and H.J. Russell and Company,

Defendants.

Appeal from the Appellate Court Illinois, First Judicial District,

No. 1-12-1365

There heard on appeal from the Circuit Court of Cook County, Illinois, Law Division,

No. 08 L 13211

Hon. Thomas L. Hogan,
Judge Presiding

REPLY BRIEF OF COUNTY OF COOK

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ORAL ARGUMENT REQUESTED

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ARGUMENT

The brief of Plaintiff-Respondent Akeem Manago ("Plaintiff") never mentions or discusses the purpose of the Lien Act, 770 ILCS 23/20 (2017). This Court articulated this purpose in *Maynard v. Parker*, 75 Ill. 2d 73, 74 (1979); *In re Estate of Cooper*, 125 Ill. 2d 363, 366 (1988); and *Cirrincione v. Johnson*, 184 Ill. 2d 109, 113-14 (1998); and the Appellate Court most recently articulated in *Wolf v. Toolie*, 2014 IL App (1st) 132243 at ¶37, namely, to

promote health care for the poor in Illinois by lessening the financial burden on hospitals that treat nonpaying accident victims. Plaintiff does not cite any of these cases in his brief.

As much as Plaintiff may prefer to ignore the Lien Act's purpose, the present appeal cannot be decided without consideration of the purpose of the Act. As this Court has said: "[L]egislative intent remains the primary consideration" in construing the meaning of a statute. *Paszkowski v. Metropolitan Water Reclamation District*, 213 Ill. 2d 1, 7 (2004). The decision of the panel majority below not only fails to further the purpose of the Lien Act but, in fact, contravenes its purpose.

I. The County's Lien Is Proper Under the Lien Act.

Statutory lien provisions such as the Lien Act are enacted to promote the health, safety, comfort, or well-being of the community. *See In re Estate of Cooper*, 125 Ill. 2d 363, 368 (1988). Such lien statutes are designed to lessen the financial burden that hospitals face in treating nonpaying accident victims, like Plaintiff here. *See Cooper*, 125 Ill. 2d at 368-369. In Illinois, the Lien Act allows hospitals to assist persons without regard to ability to pay, and as a result, to "enter into a creditor-debtor relationship without benefit of the opportunity usually afforded a creditor to ascertain the prospective debtor's ability to pay." *Cooper*, 125 Ill. 2d at 369; *Maynard*, 75 Ill. 2d at 75. Thus, the utilization of such liens to protect a hospital's

interests promotes health care for the poor of this State. *Cooper*, 125 Ill. 2d at 369.

With the foregoing in mind, Stroger Hospital's lien in the instant case properly attaches to Plaintiff's recovery. The Lien Act permits a healthcare provider such as Stroger Hospital to assert a lien in the amount of its "reasonable charges" upon all claims and causes of action of an "injured person" whose injuries it treats, provided that the lien does not exceed one third of the judgment recovered by the injured person in his cause of action. 770 ILCS 23/10(a) and (c) (2017).[1] This language shows that the "injured person" is one who has received bodily injuries because, after all, healthcare providers are in the business of treating bodily injuries.

The undisputed facts of this case reveal that:

- Plaintiff (not his mother) was injured, (*i.e.*, received bodily injuries);
- Plaintiff (not his mother) was treated for those injuries at Stroger Hospital, the bills for that treatment amounting to $79,512.53;
- Plaintiff's mother filed a personal injury suit on "behalf" of Plaintiff (*i.e.*, the injured person) against the persons responsible seeking recovery for Plaintiff Akeem Manago's (not anyone else's) bodily injuries;
- At trial, both Plaintiff and the defendants stipulated to the amount of Plaintiff's medical bills from Stroger

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[1] On behalf of Stroger Hospital, the County -- and no other health care provider -- attempts to assert a lien here. With regard to cases where multiple health care providers perform services, Section 23-10 provides that all health care liens shall not exceed 40% of the judgment recovered. *See* 770 ILCS 23/10(a) and (c) (2017).

Hospital, the stipulation constituting an admission from all parties that: (i) the bills represented treatment for Plaintiff's bodily injuries that were the subject of Plaintiff Akeem Manago's lawsuit against the responsible parties; and (ii) that the amount of the bills was reasonable;

- Plaintiff, (not his mother) was awarded a judgment of $200,000 representing compensation for his bodily injuries;

- Plaintiff (not his mother) therefore became a debtor of Stroger Hospital for purposes of the Lien Act and was obligated to pay for his treatment out of any resources available to him, *i.e.*, the $200,000.00 judgment; and

- Pursuant to the Lien Act, Stroger Hospital's lien attached to that $200,000 judgment to the extent of one-third of the judgment, *i.e.*, $66,666.66. *See* 770 ILCS 23/20 (2017).

Although Plaintiff filed a petition to adjudicate the lien, his petition did not contest either the relatedness of the bills to Plaintiff's injuries asserted against Defendants or the reasonableness of the charges. (R. Vol. 2, C00460-462.) Nor could he as he had already conceded these issues through his stipulation to the medical bills and had no basis upon which to assert otherwise. (*Id.*) Because neither the relatedness of the bills nor their reasonableness was ever placed into issue and was, in fact, conceded by the parties (R. Vol. 2, C481-486) and because the lien does not exceed one-third of the judgment (R. Vol. 2, C493), it is irrelevant that the trial court denied Plaintiff's mother compensation for medical bills pursuant to her family expenses statute ("FES") claim because she had no "expectation" of paying them.

Neither the Lien Act nor its predecessor the Hospital Lien Act -- or either of those statutes' legislative histories -- contain any mention whatsoever that a healthcare services lien does not attach to the judgment proceeds of an injured minor. In fact, no Illinois decision construing the Lien Act, or its predecessor, the Hospital Lien Act, has found that a healthcare services lien does not attach to the judgment proceeds of an injured minor. However, as the County established in its opening brief at pages 28-29, this Court and the appellate court have both concluded that a healthcare services lien asserted under the Lien Act or its predecessor does attach to the judgment proceeds of an injured minor. *See In re Estate of Cooper*, 125 Ill. 2d 363 (1988) ("as a debtor of [the treating hospital], the estate [of the minor] is obligated to pay for treatment rendered to [the minor] out of any available resources."); *see also In re Estate of Shannon Enloe*, 109 Ill. App. 3d 1089 (4th Dist. 1982).

Very few of the cases that Plaintiff cites contain even a passing reference to the Lien Act or its predecessor statute. Not one case that Plaintiff cites supports his proposition that a healthcare lien asserted under the Lien Act cannot be enforced against the judgment or settlement proceeds of a minor. Thus, when Plaintiff contends that the Lien Act compromises the principle that courts have a duty to protect a minor's interests (Pl. Br. at 24);[2] or the principle of full and fair compensation for injury (Pl. Br. at 24, 26); or

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2. Citations to Plaintiff's brief will be to "Pl. Br. at ___."

that the obligation to pay medical expenses lies in the parent and not the child (Pl. Br. at 26), the cases that Plaintiff cites do not consider the Lien Act or the jurisprudence of Illinois courts interpreting this statute.

Plaintiff attempts to distinguish *Enloe* but fails to do so. (Pl. Br. at 38-41.) *Enloe*, a case that is directly on point, held that a hospital lien is enforceable against a minor's personal injury claim because the lien is based upon the plain language of the Lien Act's statutory predecessor. *Enloe*, 109 Ill. App. 3d at 1091, 1092. Plaintiff argues that *Enloe* should have held that the FES trumps any rights that the hospital might have under the Lien Act. (Pl. Br. at 40-41.) But *Enloe* simply followed the plain language of the Lien Act and jurisprudence from this Court. *Enloe* is not the outlier. It is the established law of this State.

II. Plaintiff's Argument That The Lien Act Extends To Any Verdict Is Legally Groundless.

Plaintiff asks this Court for affirmance on the unfounded premise that without a decision affirming the panel majority below, the Lien Act might someday be interpreted to permit a lien to attach in instances involving a claim that is unrelated to the medical expenses that the lienor seeks. (Pl. Br. at 34-35.) Plaintiff's concerns are unfounded.

Plaintiff's argument about possible applications of the Lien Act to a lawsuit unrelated to the injuries for which the plaintiff was treated is inapplicable in the present appeal. It is uncontroverted here that the judgment Plaintiff received was pursuant to a lawsuit that did relate to the

injuries for which Plaintiff was treated at Stroger Hospital. In fact, Plaintiff even stipulated to the medical bills at trial. (Pl. Br. at 25.) No Illinois court has construed the Lien Act to permit liens to be asserted even against tort recoveries that are not based upon the injuries that the healthcare provider treated.

III. Plaintiff's Authority Is Inapposite.

In arguing that the panel majority below correctly invalidated the County's lien, Plaintiff does not cite the Lien Act but instead cites *Alvarez v. Pappas*, 229 Ill. 2d 217 (2008) and *Nelson v. Artley*, 2015 IL 118058. Plaintiff's reliance on these cases is misplaced.

Plaintiff cites *Alvarez* and *Nelson* for the proposition that the plain language of a statute need not be enforced if it "does not make sense" and that language may be filled in based on "common sense." (Pl. Br. at 20-21.) Neither *Alvarez* nor *Nelson* involved the Lien Act or its predecessor statute and have no bearing here. That said, *Alvarez* did not hold that the plain language of a statute could be ignored. To the contrary, *Alvarez* found that the language of Section 20-175 of the Property Tax Code was "unclear and ambiguous" and, thus, looked to the legislative history of the statute to determine "the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved." *Alvarez*, 229 Ill. 2d at 231. *Nelson* likewise did not endorse casting aside plain language. Rather, *Nelson* observed that a court may use "common sense" when interpreting a statute,

provided that common sense is "a shorthand for deductive reasoning based on the language and purposes of the law and the consequences of a contrary construction." *Nelson*, 2015 IL 118058 at ¶29. In his misreading of *Alvarez* and *Nelson*, Plaintiff invites this Court to substitute unmoored, free-wheeling principles for the legislative intent behind the Lien Act. This Court should decline that invitation.

IV. Plaintiff's Constitutional Arguments Lack Merit.

Plaintiff seemingly argues that the Lien Act, to the extent that it permits a lien to be asserted against a minor's recovery, would authorize an improper constitutional taking. (Pl. Br. at 33-35.) In this regard, Plaintiff suggests that the Lien Act might be interpreted to permit a lien to attach in instances involving a claim that is unrelated to the medical expenses that the lienor seeks. (Pl. Br. at 34-35.)

No court has held that the Lien Act permits liens to be asserted against tort recoveries that are not based upon the injuries that the healthcare provider treated and, in any case, it is undisputed that the judgment Plaintiff received in the instant case did relate to the injuries for which he was treated.

Plaintiff further contends that the Lien Act violates the equal protection clauses of the Illinois and federal constitutions because:

> allowing the hospital to recover directly from a child's recovery (for pain, suffering, permanent scarring, disability, loss of earning potential, etc.) would mean the child would have a lien on his or her award for the medical bills, but would not have the

> commensurate right to pursue the tortfeasor for the amount of those bills. An adult in the same situation would be able to recoup those costs from the tortfeasor. The Act thus discriminates against minors with no reasonable basis for doing so, and that violates the tenet of equal protection.

(Pl. Br. at 35.) Plaintiff cites no authority for this contention save for *Bartlow v. Costigan*, 2012 IL App (5th) 110519, and then only for the proposition that the state and federal equal protection clauses "require the government to treat similarly situated individuals in a similar manner" and that "the government [is prohibited] from according different treatment to persons who have been placed by a statute into different classes on the basis of criteria wholly unrelated to the purpose of the legislation." *Bartlow*, 2012 IL App (5th) at ¶ 69.

Plaintiff's reliance on *Bartlow* is misplaced. *Bartlow* involved a challenge to the Illinois Employee Classification Act and the classification of employees as independent contractors in the construction industry. No equal protection violation was found. Thus, *Bartlow* offers no support for Plaintiff's conclusory and undeveloped argument, which should be stricken pursuant to Supreme Court Rule 341(h)(7) (requiring arguments to be accompanied by a citation of authorities relied upon.) A conclusory and undeveloped argument does not meet the requirements of Supreme Court Rule 341(h)(7). *See, e.g., Sobczak v. GMC*, 373 Ill. App. 3d 910, 924 (1st Dist. 2007) (finding that such an argument did not satisfy the requirements of the Rule 341(e)(7), the

predecessor rule of Rule 341(h)(7)). The "lack of development leads to waiver of the issue." *Id.*

Even if the issue is not waived, Plaintiff's contention still lacks merit. In the instant case, Plaintiff quite plainly had a right to "pursue the tortfeasor for the amount of [the medical bills]" incurred in the treatment of his injuries through the lawsuit filed on his "behalf" (*see* 770 ILCS 23/20). In fact, he obtained a recovery for those injuries through that lawsuit. An adult would have had the same right to similarly pursue the tortfeasor for the amount of those bills. Plaintiff's contention is, therefore, meritless.

Plaintiff next contends that the "construction of the [Lien] Act "implicates due process concerns," because *Manago I* relied upon *Anderson v. Department of Mental Health & Developmental Disabilities*, 305 Ill. App. 3d 262, (1st Dist. 1999) in arguably expanding the scope of the Lien Act to permit liens to be asserted even against tort recoveries that are not based upon the injuries that were treated by the healthcare provider. (Pl. Br. at 35.) Plaintiff states:

> Akeem did not have or make a claim for the medical costs, and the circuit court denied his mother's effort to recover those expenses from the tortfeasor. This means that there is no causal relationship or nexus between the funds received by Akeem and the hospital, and thus no basis for the legislature to give Cook County in interest in Akeem's personal recovery.

(Pl. Br. 35-36)

Plaintiff supports his contention with a single citation: *Mason v. John Boos & Co.*, 2011 IL App (5th) 100399. Plaintiff cites *Mason* for the general

proposition that in construing a statute, the court must assume that the legislature did not intend an absurd result. *Id.* at ¶ 6. (Pl. Br. at 35.) As Plaintiff has presented another undeveloped argument, it should be stricken pursuant to Supreme Court Rule 341(e)(7). *See Sobczak*, 373 Ill. App. 3d at 924.

Once again, even if the contention is not waived, it lacks merit because as noted above, the majority below retracted the reliance it previously placed upon *Anderson* in *Manago I. See Manago II*, 2016 IL App (1st) 121365 at ¶37. Moreover, as has been repeatedly pointed out, a causal relationship does in fact exist between Plaintiff's recovery and the hospital bills, as the parties stipulating to these bills at trial demonstrates. (R. Vol. 2, C481-482, 484-485.) Plaintiff's contention is, therefore, groundless.

Plaintiff further complains that the Lien Act:

> creates an unjustifiable distinction between children who receive treatment for injuries versus children who are treated for disease, imposing financial obligations only upon those who are treated for injuries.

(Pl. Br. 39-40.) Plaintiff appears to be raising a constitutional challenge to the Lien Act but it is unclear exactly what that challenge is. Accordingly, Plaintiff's contention should be deemed waived under Supreme Court Rule 341(h)(7). Regardless, recall that the Lien Act was intended to encourage medical providers to become creditors where they might otherwise decline to do so (*see Maynard*, 75 Ill. 2d at 74) by making it easier for them to recover at

least a portion of their fees through the operation of the Lien Act's procedure for allocating recovery proceeds.

As to Plaintiff's distinction between injured minors and those treated for disease, it should be noted that a statute is not unconstitutional simply because it makes distinctions. The Legislature need not choose between legislating against all evils of the same kind or not legislating at all. Instead it may choose to address itself to what it perceives to be the most acute need. *Chicago Nat'l League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 367 (1985).

Plaintiff's constitutional arguments are groundless and do not preclude application of the plain language of the Lien Act.

V. Plaintiff's Statutory Construction Arguments Lack Merit.

Plaintiff's proposed reading of the Lien Act contorts its plain language. For example, Plaintiff contends that the minor's parent is the "injured person" for purposes of the Lien Act and that a minor child is not liable for and cannot sue to recover medical expenses. (Pl. Br. at 36-42.) In support of this contention, Plaintiff cites the FES and the Animal Control Act, *see* Pl. Br. at 36, and cases applying those statutes such as *Claxton v. Grose*, 226 Ill. App. 3d 829 (4th Dist. 1992); *Estate of Woodring v. Liberty Mutual Fire Insurance Co.*, 71 Ill. App. 3d 58 (2nd Dist. 1979); *In re Estate of Hammond*, 141 Ill. App. 3d 963 (1st Dist. 1986); *Kennedy v. Kiss*, 89 Ill. App. 3d 890 (1st Dist. 1980); and *Estate of Aimone v. State Health Benefit Plan/Equicor*, 248 Ill. App. 3d 882 (3rd Dist. 1993). As discussed in the County's opening brief at

pages 20-26, the FES and the Animal Control Act are inapposite here and Plaintiff's reliance upon them is misplaced.

Other cases that Plaintiff cites, such as *Beck v. Yatvin*, 235 Ill. App. 3d 1085 (1st Dist. 1992); *Peterson v. Hinsdale Women's Clinic*, 278 Ill. App. 3d 1007 (1st Dist. 1996); *Harvel v. City of Johnston City*, 146 Ill. 2d 277 (1992); *Pirrello v. Maryville Acad., Inc.*, 2014 IL App (1st) 133964 and *Clark v. Children's Memorial Hosp.*, 2011 IL 108656 do not involve the Lien Act and consequently cannot have considered its legislative intent. *See, e.g., Pirrello,* 2014 IL App (1st) 133964 at ¶22 (statute of limitations barred parents' FES claim for medical expenses of a minor); *see also Clark*, 2011 IL 108656 at ¶¶72-74 (holding that because parents had no duty to provide post-majority support, such expenses were not legal harms suffered by the parents and were not compensable damages in a wrongful birth action for purposes of the FES.) These cases are inapposite.

If anything, *Harvel* actually favors the County. In *Harvel*, this Court held that construing the Structural Work Act to permit the spouse of an injured worker to bring a cause of action for loss of consortium was consistent with the purposes of the Act. 146 Ill. 2d at 285. As argued in the County's opening brief and above and unlike *Harvel*, the decision in *Manago II* is an example of improper statutory construction -- the court incorrectly failed to consider the purposes of the statute whose meaning it was construing, *i.e.*, the Lien Act.

Finally, citing definitions of the word "lien" in the Uniform Fraudulent Transfer Act and Uniform Commercial Code, Plaintiff contends that Stroger Hospital cannot have a lien against Akeem Manago's recovery because Manago, as a minor, had no debt or obligation to the hospital for the payment of the medical treatment and could not bring an action for recovery of those sums. (Pl. Br. at 42-43.)

This reasoning is evasive. As noted above, the plain language of the Lien Act permits a lien to attach to the "verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person." 770 ILCS 23/20 (2017). The phrase "on behalf of the injured person" refers to the situation in which a bodily injured person, whether or not a minor, has a suit brought on his or her own behalf by another, whether an executor, parent or otherwise. Further, minors are "debtors" of treating hospitals. *See In re Estate of Cooper*, 125 Ill. 2d 363, 369 (1988) (characterizing the injured minor "as a debtor of [the treating hospital])."

If, as Plaintiff contends, the parent is the "injured person" under the Lien Act because the parent (an adult) is responsible for the payment of his or her minor child's expenses, the words "on behalf of the injured person" would be rendered meaningless, as there would seem to be no need for a second adult to bring an action on behalf of the "injured" parent. *See, e.g.*, *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990) ("A statute should be

construed so that no word or phrase is rendered superfluous or meaningless").

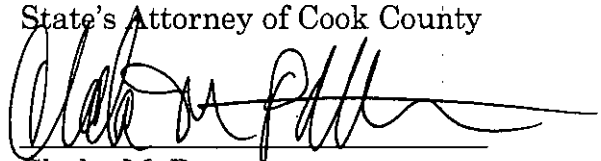
Plaintiff's statutory construction arguments do not aid his proposed reading of the Lien Act.

CONCLUSION

For the foregoing reasons, Stroger Hospital's lien in the amount of $66,666.66 is enforceable against the proceeds of the minor Akeem Manago's judgment. This Court, therefore, should reverse the decisions of the panel majority below and the circuit court and should remand the matter to the circuit court with instructions to direct Plaintiff's counsel to pay the County the escrowed sum of $66,666.66 in full satisfaction of the County's lien.

Respectfully submitted,

Kimberly M. Foxx
State's Attorney of Cook County

By: 

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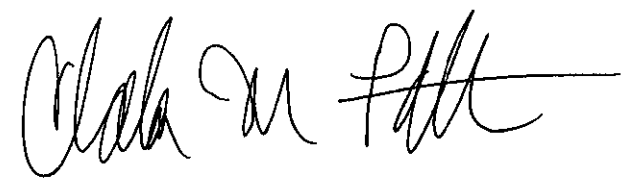
CERTIFICATION OF BRIEF

I, Chaka M. Patterson, Assistant State's Attorney, certify that this reply brief of lienholder-petitioner County of Cook, conforms to the requirements of Rules 341(a) and (b). This brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance and the certificate of service, is 15 pages long.



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