2017 IL App (1st) 170094-U
No. 1-17-0094

THIRD DIVISION
December 27, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SEAN A. GALLA,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
v.	)	
	)	No. 13 L 2858
SECURA INSURANCE HOLDINGS, INC.,	)	
	)	
Defendant-Appellant,	)	The Honorable
v.	)	Brigid Mary McGrath,
	)	Judge, presiding.
LULAY LAW OFFICES,		
Party-Interveners-Appellees.		

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

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in entering judgment in favor of attorneys and in denying defendant's motion to vacate where defendant failed to establish that the court did not have subject matter jurisdiction, the statute of limitations had expired, and attorneys had already been paid for services rendered.

¶ 2 This appeal arises from an order entered in the circuit court of Cook County adjudicating an attorney's lien under the Attorneys Lien Act (Act) (770 ILCS 5/1 (West 2008)) in favor of

Lulay Law Offices (LLO) and against Secura Insurance Holdings, Inc (Secura).[1] Secura now appeals, contending that the court abused its discretion in adjudicating the lien and in denying its motion to vacate the award. Secura argues, *inter alia*: (1) the court did not have subject matter jurisdiction, (2) the applicable statute of limitations was violated, and (3) the attorneys had already been paid for their services. We affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On August 21, 2007, Sean Galla suffered injuries due to a vehicle collision. The at-fault driver possessed auto insurance through State Farm Insurance with liability limits of $25,000. Galla possessed a policy of Underinsured Motorist Insurance (UIM) through Secura with a limit of $500,000.

¶ 5 Galla hired LLO to represent him. On June 26, 2008, LLO sent a letter to Secura advising that Galla was making a claim for benefits under the medical payment and underinsured portions of his policy. The letter further stated that LLO claimed "a lien for any amounts paid under the medical payments and underinsured provisions of Mr. Galla's policy." The same day LLO served a notice of attorney's lien upon Secura and State Farm, claiming a lien for attorney fees of one-third of any amounts paid to Galla, pursuant to the Illinois Attorneys Lien Act (Act) (770 ILCS 5/1 (West 2008)). The lien stated that Galla "has agreed to pay as compensation for services rendered and to be rendered a sum equal to 1/3 of whatever amount may be recovered from said claim by suit, settlement or otherwise, plus costs and expenses."

¶ 6 On July 10, 2008, LLO reached a tentative settlement with State Farm on behalf of the at-fault driver for the policy limits of $25,000. The settlement remained pending while LLO was endeavoring to resolve several issues including, negotiating the lien imposed upon the tentative

[1] The parties throughout the proceedings referred to defendant as Secura Insurance Holdings Inc., however, in its motion to vacate, Secura Supreme Insurance Company stated that it was improperly sued as such.

settlement under the Worker's Compensation Act by Galla's employer, and determining whether Galla's employer or his personal UIM policy had greater coverage. LLO was also required to give whichever carrier would be providing UIM coverage, notice of the tentative settlement and an opportunity to elect to advance the tentative settlement from the UIM coverage, to preserve its subrogation rights against the at-fault driver per the policy terms and the Illinois Insurance Code.

¶ 7 Subsequently, Galla discharged LLO and hired another law firm. In August 2009, Secura exercised its election under the policy to advance the $25,000 tentative settlement from its UIM coverage in lieu of permitting Galla to settle directly with the at-fault driver. Secura wrote a check payable to Galla and his current attorneys. Secura made no provision for LLO's attorney's lien.

¶ 8 On March 20, 2013, Galla filed the underlying lawsuit against Secura seeking the UIM coverage that remained, following Secura's $25,000 payment. Thereafter, Secura moved for partial summary judgment seeking (among other things) a set-off of the $25,000 from its UIM coverage, thereby reducing the limit from $500,000 to $475,000. On May 19, 2015, the court entered an order granting the set-off.

¶ 9 On July 15, 2015, Secura and Galla settled Galla's claim for the remaining $475,000 in UIM coverage in the amount of $450,000. The court dismissed the underlying lawsuit, specifically "reserving jurisdiction to effectuate settlement, including enforcement, adjudication of liens, approval where necessary and any other pendant matters."

¶ 10 Subsequently, Galla filed a petition to adjudicate LLO's attorney's lien on the settlement and served LLO with notice. LLO filed a response seeking attorney fees based on *quantum meruit* for the work it performed in pursuit of the UIM claim and also for the work it performed in pursuit of the $25,000 tentative settlement.

¶ 11 On February 3, 2016, the circuit court granted the petition in part and awarded LLO $5,075 in adjudication of its lien. The court declined to rule on any aspect of what LLO was due from the $25,000 payment, stating that its "ruling is without prejudice to any rights Lulay Law Offices has regarding the $25,000 previously paid as this is not before the court."

¶ 12 Thereafter, LLO filed a motion to reconsider a portion of the court's order entered February 3, 2016, which brought forth a claim of enforcement of its lien upon the $25,000, against Secura under the Act, requesting a judgment in the amount of $8,333.33. Several dates were set and noticed, with LLO appearing, and the court confirming that Secura declined to appear and declined to file a response. On August 15, 2016, in Secura's absence, the court granted the motion. Secura filed a motion to vacate this order, which was denied on December 19, 2016. This timely appealed followed.

¶ 13 II. ANALYSIS

¶ 14 Motions to vacate judgments which are filed within 30 days of the entering of the judgment are governed by section 2–1203 of the Code of Civil Procedure (Code), which states in pertinent part: "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(a) (West 2014); *Arient v. Shaik*, 2015 IL App (1st) 133969, ¶ 26. The moving party has the burden of establishing sufficient grounds to vacate a judgment. *Espedido v. St. Joseph Hospital*, 172 Ill. App. 3d 460, 467 (1988). The trial court's decision to grant or deny a motion to vacate is discretionary and will not be reversed on appeal unless that discretion has been abused. *Id.*; *Zanzig v. H.P.M. Corp.*, 134 Ill. App. 3d 617, 625 (1985). A trial court abuses its discretion when it acts arbitrarily without the employment of conscientious judgment or if its decision exceeds the bounds of reason and

ignores principles of law such that substantial prejudice has resulted. *Wells Fargo Bank, N.A. v. Hansen*, 2016 IL App (1st) 143720, ¶ 14; *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941 (1999).

¶ 15 As an initial matter, Secura assigns error to the circuit court's order of August 15, 2016, which is included in its notice of appeal. Secura contends that the court abused its discretion in granting LLO's motion to reconsider and adjudicating LLO's attorney's lien. This contention must be rejected. The common law record contains an order from August 15, 2016, granting the motion, and awarding LLO $8,333.33 in attorney fees. However, the record on appeal does not include any transcript or report of the August 15, 2016, hearing on the motion. Thus, we do not know the basis of the court's granting of the motion.

¶ 16 "From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). An issue relating to the basis for the circuit court's conclusions obviously cannot be reviewed absent a report or record of the proceedings. To support a claim of error, the appellant has the burden to present a sufficiently complete record. *Corral v. Mervis Industries*, Inc., 217 Ill. 2d 144, 156 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). In the absence of the same, as is the case here, we must presume that the circuit court's decision conformed to the law. See *Corral*, 217 Ill. 2d at 157; *Webster*, 195 Ill. 2d at 433–34; *Foutch*, 99 Ill. 2d at 393–94. Accordingly, we find no error.

¶ 17 Before addressing the merits of the remaining issues, we will examine the nature of an attorney's lien and procedures relating to the enforcement and adjudication of the same under the Act.

¶ 18 The Attorneys Lien Act provides in pertinent part:

> "Attorneys at law shall have a lien upon all claims * * * which may be placed in their hands by their clients for suit or collection * * * for the amount of any fee which may have been agreed upon by and between such attorneys and their clients * * *. To enforce such lien, such attorneys shall serve notice in writing * * * upon the party against whom their clients may have such suits * * * claiming such lien and stating therein interest they have * * *. Such lien shall attach to any verdict, judgment or order entered and to any money or property which may be recovered * * * from and after the time of service of notice. On petition filed by such attorneys or their clients any court of competent jurisdiction shall, on not less than 5 days' notice to the adverse party, adjudicate the rights of the parties and enforce the lien. 770 ILCS 5/1 (West 2008).

¶ 19 The Act sets forth the requirements for effective liens. The attorney must have been hired by a client to assert a claim. *People v. Philip Morris, Inc.*, 198 Ill 2d 87, 94-95 (2001). The attorney must then perfect the lien by serving notice, in writing upon the party against whom the client has the claim. The lien attaches from and after the time of service of the statutory notice. *Id*.; citing *Rhoades v. Norfolk & Western Ry*., 78 Ill. 2d 217, 227 (1979). The notice of lien informs the party of the claim and prohibits resolution of the suit or claim in disregard of the lien. *Kovitz Shifrin Nesbit, P. C. v. Rossiello*, 392 Ill. App. 3d 1059, 1064 (2009). Once the attorney's lien is perfected, upon petition, any court of competent jurisdiction may adjudicate the lien. *Standidge v. Chicago Rys. Co*., 254 Ill. 524, 533 (1912). At the hearing on the petition, the court must hear evidence as to the services rendered by the attorney and decide the rights of the parties. *Id.* We now turn to Secura's remaining issues.

¶ 20 1. Subject Matter Jurisdiction

¶ 21 Secura contends that the Act limits the circuit court's jurisdiction. Secura argues that the court did not have subject matter jurisdiction to adjudicate LLO's attorney's lien because it neither heard the underlying matter nor did it have jurisdiction over the settlement proceeds by a timely filed petition.

¶ 22 We find no such language limiting the court's jurisdiction to either the court that heard the underlying claim or the court that had control over the proceeds. In fact, in *Philip Morris,* our supreme court stated that a court of competent jurisdiction under the Act *"includes* the circuit court that heard the underlying matter or the circuit court that has jurisdiction over the money recovered. [Emphasis added]." 198 Ill. 2d at 95. We observe that include is defined as indicating a partial list. Black's Law Dictionary (10th ed. 2014). Further, in *Standidge*, 254 Ill. at 531, our Supreme Court found that the following clause in the Act, "[o]n petition filed by such attorneys or their clients any court of competent jurisdiction shall, on not less than five days' notice to the adverse party, adjudicate the rights of the parties and enforce such lien" was manifestly used by the legislature to confer jurisdiction to enforce the lien upon courts that could not exercise it without such a provision. The statute is not limited to any particular court or class of courts, as it may be filed in any court of competent jurisdiction. Thus, indicating a legislative intent for expansive court jurisdiction, including the court herein.

¶ 23 Secura next contends that the $25,000 payment at issue in LLO's motion to reconsider involved settlement proceeds from a tort claim against the at-fault driver, and not recovery from the UIM contract between Secura and Galla. Secura argues that the court did not hear the underlying tort claim, thus it did not have jurisdiction over the settlement proceeds.

¶ 24 Defendant's argument lacks merit. The $25,000 was a voluntary payment that Secura elected to pay to preserve its right to subrogate any amount paid under the UIM policy and in accordance with section 5/143a-2 of the Illinois Insurance Code. Section 5/143a-2 provides in pertinent part:

> "(6) Subrogation against underinsured motorists. No insurer shall exercise any right of subrogation under a policy providing additional underinsured motorist coverage against an underinsured motorist where the insurer has been provided with written notice in advance of settlement between its insured and the underinsured motorist and the *insurer fails to advance a payment to the insured, in an amount equal to the tentative settlement,* within 30 days following receipt of such notice. (Emphasis added). 215 ILCS 5/143a-2 (West 2015).

Further, Secura, in its motion for partial summary judgment, requested that the court find the $25,000 was a set-off against its UIM coverage, thus lowering the maximum amount available from $500,000 to $475,000. The court granted the motion.

¶ 25 LLO's attorney's lien included any amounts paid by Secura to Galla, with regard to the underinsured provisions of Galla's policy. The $25,000 payment to Galla was recovery from Secura's UIM coverage obligations and was inextricable from the UIM policy. Moreover, the court was compelled to make factual and legal rulings with regard to the payment. Accordingly, we find that the circuit court had subject matter jurisdiction to adjudicate LLO's attorney's lien with respect to the $25,000.

¶ 26 2. Statute of Limitations

¶ 27 Secura alternatively contends that LLO's claim for attorney fees is barred by the statute of limitations because LLO failed to petition the court to enforce its lien within five years of the

August 2009, $25,000 payment. Secura acknowledges that the Act does not provide a specific statute of limitations in which an attorney must bring his petition for fees, but argues that the default/catchall provision of section 13-205 of the Code of Civil Procedure should apply. Section 13-205 states in pertinent part that: "all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (West 2014). LLO responds that this argument was waived. We agree.

¶ 28 Secura maintains that since no action was taken on its part with regard to the adjudication of the lien, it did not waive its right to enforce the 5 year statute of limitations. Indeed, it is because of its inaction, in light of several court orders, that we find that the court correctly found that Secura waived this argument. Waiver is defined as the intentional relinquishment of a known right. *Ryder v. Bank of Hickory Hills*, 142 Ill. 2d 98, 105 (1991); *Vaughn v. Speaker*, 126 Ill. 2d 150, 162 (1988). A waiver may be either expressed or implied, arising from acts, words, conduct or knowledge of the insurer. *Home Insurance Co. v. Cincinnati Ins. Co*., 213 Ill. 2d 307, 326 92004). An implied waiver arises when conduct of the person against whom waiver is asserted is inconsistent with any intention other than to waive it. *Id.*; see *Phillips v. Elrod*, 135 Ill. App. 3d 70, 74 (1985) (finding waiver can arise by conduct inconsistent with an intent to enforce a right). The bar interposed by an ordinary statute of limitations is a procedural issue that can be waived. *Id*.

¶ 29 As previously noted, on September 23, 2015, Galla filed a motion to adjudicate LLO's attorney's lien, setting October 1, 2015, for presentation and giving Secura proper notice. On November 1, 2015, Galla and LLO appeared and a briefing schedule was set. Secura failed to appear. On November 30, 2015, Galla and LLO appeared for status, and a hearing was set for February 3, 2016. Secura did not appear or thereafter file a response. On February 3, 2016, Galla

and LLO attended oral argument and an order was entered. The court granted LLO attorney fees in the amount of $5,075, but did not address the $25,000 payment, as the court found that that was "not before the court." Secura again failed to appear. Subsequently, LLO filed a motion to reconsider a portion of the February 3, 2016, order. On March 15, 2016, a briefing schedule was set for LLO's motion. Secura was ordered to respond by April 12, 2016, and a hearing was set for May 2, 2016. Due to a scheduling mistake, LLO did not appear, believing the hearing was set for May 3. On May 2, 2016, no parties appeared and no action was taken. LLO appeared on May 3 and requested a new hearing. On May 24, 2016, the court entered an order stating that it "directed LLO to call the other attorneys and confirm that they would not be filing any responses, and LLO having spoken with (Secura's attorneys) this AM by phone and confirmed this." The court then set a hearing for August 15, 2016. On that date the court entered an order, again stating that LLO had called (Secura's attorneys) and they said they would not be responding or appearing. The order further stated that "The Court, and the parties * * * waited for Secura to appear but it did not, nor file any response, it is ordered that: The Court grants LLO's motion * * *." Secura followed with a motion to vacate.

¶ 30 On December 19, 2016, at the hearing on Secura's motion to vacate, the court, in explaining its previous ruling of August 15, 2016, stated that: "Counsel, and had you been here perhaps earlier, this was briefed. This was argued. Two hearings regarding this. * * * The statute of limitations issue was argued and bringing it up again after—that ship has sailed. That can be waived."

¶ 31 We find *Washington v. Clayter*, 91 Ill. App. 3d 489, 494 (1980), to be instructive. In *Clayter*, the circuit court refused to vacate the judgment entered against the defendant at trial,

and the appellate court affirmed finding that the defendant had abandoned his defense by refusing to comply with the court's directives. The court stated that:

> "[i]f the orders of a court are to have any binding force, disregard of court-ordered time limits cannot be condoned, particularly where employed to defeat a subsequent judgment. Under defendant's theory of the case, he would have the right to repeatedly raise a collateral defense without fulfilling his obligation to present evidence thereon. Quite the contrary, once a collateral defense is raised, it surely must be pursued, or else be held abandoned. Accordingly, defendant's noncompliance with the court order of May 17 and attendant failure to follow through with his claim of improper service manifested an abandonment of his contentions. As a consequence, the continuation of the cause to default was proper under the circumstances presented by the instant case."

¶ 32 Similarly, here, Secura's conduct in disobeying and ignoring the court's orders justified the court's treatment of Secura as having relinquished its right to assert a limitations defense. Secura choose not to participate by brief or attendance at any hearing leading to the order of February 3, 2016. Furthermore, Secura declined to brief or appear, to argue against LLO's motion to reconsider. Thus, we find that Secura, through its inaction, waived its argument regarding the statute of limitations. We also must stress that court orders are not simply suggestions. Circuit courts have the inherent right to control their docket and require parties to adhere to their orders. See *Insulated Panel Co. v. Industrial Comm'n.,* 318 Ill. App. 3d 100, 102 (2001) (holding trial court had inherent power to control docket). Accordingly, we conclude that LLO was not barred from asserting its lien against Secura by the running of a statute of limitations.

¶ 33 3. Double Compensation

¶ 34 Finally, Secura alternatively contends that LLO was already compensated for the work it performed with the proceeds from the UIM settlement and a workers' compensation claim. Secura maintains that LLO is attempting to "double-dip." Secura argues that LLO is not entitled to additional fees because the work performed could be simultaneously attributed to the UIM claim, the workers' compensation claim or the tort claim. However, Secura's entire argument regarding LLO's claim that it is owed additional fees and Secura's assertion that LLO is attempting to "double-dip" lacks citation to legal authority.

¶ 35 Illinois Supreme Court Rule 341(h)(7) (eff. June 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. See *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶¶ 38, 39; *Baez v. Rosenberg*, 409 Ill. App. 3d 525, 534 (2011) (holding that a party forfeits review of an argument unsupported by citation to authority). Secura's argument does not have one authority cited in support. It simply cites the record four times referring to LLO's evidence of work performed.

¶ 36 The appellate court is not a depository in which the appellant may dump the burden of argument and research. *Id.* Here, Secura has done exactly that—it has dumped arguments upon this court without the mandatory support required by our supreme court. Accordingly, the issue raised by Secura is forfeited for our consideration on appeal.

¶ 37 III. CONCLUSION

¶ 38 We conclude that Secura acted in derogation of LLO's rights following notice of the lien. If the defendant does not respect the lien, then the defendant becomes liable for the attorney fees. *Phillip Morris*, 198 Ill. 2d at 98 (citing *Sutton v. Chicago Rys. Co.*, 258 Ill. 551, 553 (1913). See

McArdle v. Great American Indem., 314 Ill App. 455, 463 (1942) (finding judgment against defendant in favor of attorney for full one-third fee recited in lien when defendant paid entire settlement to plaintiff). Consequently, LLO was entitled to its fee and Secura was responsible for payment of the same. Accordingly, the court did not abuse its discretion in denying Secura's motion to vacate. For the foregoing reasons we affirm the judgment of the circuit court of Cook County

¶ 39 Affirmed.