

for \$20,000, and his attorney's costs totaled \$1,005.

In September 2009, acknowledging that pursuant to section 5(b) of the Workers' Compensation Act (820 ILCS 305/5(b) (West 2008)), the intervenors had a valid statutory lien against his \$20,000 settlement, the plaintiff filed a petition to adjudicate the lien, seeking to recover his attorney fees and costs. The plaintiff's suggested distribution of the \$20,000 settlement awarded him 25% of the gross settlement (\$5,000) plus costs (\$1,005), plus an additional 25% of the remaining balance of \$13,995 (\$3,498.75), plus 69.98% of his \$1,005 in costs (\$703.30), for a total of \$10,207.05 in attorney fees and costs. In response to the plaintiff's calculations, the intervenors cited *In re Estate of Dierkes*, 191 Ill. 2d 326 (2000), and contended that the plaintiff's attorney was only entitled to \$6,005, *i.e.*, "the statutory amount of 25% of the gross recovery, plus costs."

In October 2009, the circuit court entered an order adjudicating the intervenors' lien against the plaintiff's \$20,000 settlement award. Finding that the "clear holding" in *In re Estate of Dierkes* was controlling, the trial court awarded the plaintiff's attorney \$5,000 in attorney fees and \$1,005 in costs. The circuit court awarded the remaining \$13,995 to the intervenors as reimbursement for the plaintiff's workers' compensation payments, and the present appeal followed.

DISCUSSION

In pertinent part, section 5(b) states as follows:

"Out of any reimbursement received by the employer pursuant to this Section the employer shall pay his pro rata share of all costs and reasonably necessary expenses in connection with such third-party claim, action or suit[,] and where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other

agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement." 820 ILCS 305/5(b) (West 2008).

In *In re Estate of Dierkes*, the supreme court held that pursuant to section 5(b), where, as here, "the amount of compensation paid by the employer exceeds the employee's third-party recovery, then the employer is entitled to the entire recovery, less fees and costs." *In re Estate of Dierkes*, 191 Ill. 2d at 333. The court further held as follows:

"The statutory language 'in the absence of other agreement' refers to any agreement between the employer and the employee or the employee's attorney. Absent such an agreement, section 5(b) of the Act requires the employer to pay as the employee's attorney fees 25% of the gross amount of the reimbursement. If this does not satisfy the amount owed the attorney under [an] attorney-client agreement, then the attorney must seek any additional amounts from the client. The employer can not be expected to pay more than the statutorily required amount.' [Citation.]" *Id.* at 335.

Accordingly, an employee's attorney's recovery from the employer's reimbursement is limited to 25% of the gross, plus costs. *Id.* at 335-36. "Had the legislature intended the employer's reimbursement to be subject to additional setoffs, the legislature would have supplied them." *Id.* at 334.

Here, the plaintiff argues that "*Dierkes* needs to be modified" to allow for his proposed distribution, under which his attorney would recover approximately 50% of the \$20,000 settlement in fees and costs. As the intervenors correctly observe, however, *In re Estate of Dierkes* is controlling precedent, and we "are bound by the decisions of the Illinois Supreme Court" (*Mekertichian v. Mercedes-Benz U.S.A., L.L.C.*, 347 Ill. App. 3d 828, 836 (2004)). "After our supreme court has declared the law with respect to an issue, this court must follow that law, as only the supreme court has authority to overrule or modify its own decisions." *Id.*

On appeal, the plaintiff advances several arguments as reasons why *In re Estate of Dierkes* should be modified, and he can advance those arguments in the supreme court if he wishes to do so. See Ill. S. Ct. R. 315 (eff. Feb. 26, 2010). Here, however, the plaintiff asks us to do something we simply cannot do.

CONCLUSION

Rightfully relying on *In re Estate of Dierkes*, the circuit court properly distributed the plaintiff's \$20,000 settlement award. Accordingly, the circuit court's judgment is hereby affirmed.

Affirmed.