2016 IL App (2d) 161107-U
No. 2-16-1107
Order filed November 14, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

STEVEN G. GARRIS, Plaintiff-Appellant, v. THE VILLAGE OF LAKE ZURICH and JASON T. SLOWINSKI, as Village Manager of the Village of Lake Zurich, Defendants. (The Village of Lake Zurich, Defendant-Appellee).	)	Appeal from the Circuit Court of Lake County. No. 14-MR-1602 Honorable Thomas M. Schippers, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendants summary judgment on plaintiff's complaint for coverage under section 10 of the Public Safety Employee Benefits Act, as plaintiff did not reasonably believe that he was responding to an "emergency" when he was injured during a controlled training exercise; although plaintiff asserted that he was in imminent danger because he was rapidly descending head first, his complaint and sworn testimony established that he was feet first.

¶ 2 Plaintiff, Steven G. Garris, appeals from an order of the circuit court of Lake County entering summary judgment for defendants, the Village of Lake Zurich (Village) and Jason T. Slowinski, as village manager, on Garris's amended complaint for declaratory judgment. Garris sought a declaratory judgment that, pursuant to the Public Safety Employee Benefits Act (Act) (820 ILCS 320/1 *et seq.* (West 2016)), the Village was obligated to pay premiums for health insurance coverage for Garris and his dependents. We affirm.

¶ 3 The summary of facts that follows is gleaned from the pleadings, discovery depositions, and various exhibits appearing in the record on appeal.[1] Garris was employed by the Village as a firefighter/paramedic, with the rank of lieutenant. On March 1, 2012, Garris participated in an exercise called "Personal Escape Bags Inservice." The exercise involved the use of rappelling equipment designed to assist firefighters escaping from buildings. While performing the exercise, Garris sustained a broken ankle. Captain Robert Bachler of the Lake Zurich fire department (Department) prepared an "Employer's First Report of Injury," which states that, according to Garris, " 'his foot was hung up on the window ledge and he rolled his ankle as he descended.' " The report indicated that Garris's injury was caused by "[his] weight acting as force against the injured extremity while repelling [*sic*]." Garris filled out a form entitled "Employee's Statement of Incident," which requested an explanation of "exactly what

[1] Most of the facts set forth herein are also found in defendant's "Statement of Material Facts," which was submitted to the trial court pursuant to a local rule. 19th Judicial Cir. Ct. R. 2.04(A)(3)(a) (eff. Dec. 1, 2006). We note that Garris failed to properly respond to the statement and that, pursuant to the local rule in question, the facts set forth therein are deemed admitted. 19th Judicial Cir. Ct. R. 2.04(B)(3)(b) (eff. Dec. 1, 2006).

happened." Garris wrote, "foot got caught under sill 2nd floor, descending device let go quicker than anticipated foot got caught body weight and let go."

¶ 4 Bachler prepared a "Supervisor's Investigation Report" describing the incident, in pertinent part, as follows:

> "Lt. Garris was in full turnout gear and was practicing repelling [*sic*] from the third floor window of the training tower with the new personal escape bag. Lt. Garris was rigged with a hasty harness that was tied into a 540 belay device (Fall Safety Device). Lt. Garris had the escape rope anchored to the stand pipe system on the third floor and then to the fastening ring of his gut belt. Lt. Garris went out the window and was set to repell [*sic*]. Lt. Garris repelled [*sic*] down a few feet and had his feet on the wall of the training tower. Lt. Garris then squeezed the lever again to repell [*sic*] some more when he went down at a faster rate of descent, but the speed change did not activate the 540 belay safety device (Lack of speed, not a malfunction). At this point, Lt. Garris stated his foot was wedged under the second floor window sill, which caused the rotation of his ankle when he descended past the extremity. Lt. Garris no longer had his feet on the wall and now had his feet straight [*sic*] down towards the ground."

¶ 5 Garris was unable to return to work as a firefighter and he applied to the Board of Trustees of the Firefighters Pension Fund of the Village of Lake Zurich (Pension Board) for a line-of-duty disability pension. A hearing was held on Garris's application. Garris testified that a fellow firefighter, Danny Gonzales, assisted him in performing the Personal Escape Bags Inservice exercise. Garris testified that the exercise entailed the use of a device for building escapes called a "bail-out bag." Garris began the exercise by climbing through a third-floor window in the Department's training tower. Garris testified:

> "I got out the window fine; however coming down head first towards the ground is never comfortable. I stopped myself in order to turn around so I could come down feet first.
>
> On doing that I got myself turned around. I started proceeding down the wall, and then the accident occurred. Don't know why the device seemed to have slipped a little bit more than I was familiar with. My foot, I stuck my foot out to slow down my fall. I hit. It must have got stuck or affixed to a certain spot. I slipped past that point, and I broke my ankle."

Following the hearing, the Board awarded Garris a line-of-duty disability pension.

¶ 6 Garris subsequently requested that the Village pay premiums for health-insurance coverage for him and his dependents pursuant to the Act. In order to determine whether Garris and his dependents were entitled to benefits under the Act, the Village conducted an investigatory hearing at which Garris testified under oath. Before performing the exercise giving rise to his injury, Garris watched a training video that was five to seven minutes long. Garris was aware that the purpose of the exercise was to familiarize himself with the rappelling device. Garris testified as follows about what transpired during the exercise itself:

> "So I was in the front of the window. I dove out. The [rappelling] device did stop me; however, I was looking down at the concrete below me head first which is never the way if you're going to hit you don't want to go head first. When I stopped I was transferring myself to the position where more commonly do [*sic*] is walk down with a control [*sic*] descent. In doing the transfer to get my head above me and my feet below me the device slipped. Not knowing, again not knowing when it's going to stop *** I stuck my foot out stuck my hand out just because I wanted to stop and break my fall so I didn't hit head first."

¶ 7 Garris testified that he had been instructed by the training officer, Captain Michael Wenzel, to treat the exercise as if it were a real emergency. Later, however, Garris testified that *he and Gonzales agreed* that the exercise would be performed in a manner that simulated an emergency, with Garris climbing out the training-tower window head first. Garris testified that Gonzales rigged his safety line. Garris had no issue with the way Gonzales set up the safety line and there was no one Garris trusted more than Gonzales.

¶ 8 The Village denied Garris's request for benefits under the Act, and Garris commenced the action giving rise to this appeal. With reference to the training exercise during which he was injured, Garris alleged in his amended complaint that he jumped out the training-tower window head first and then "turned himself around from being upside down and with his feet first towards the ground, began to propel [*sic*] down to the ground floor from the third floor." He further alleged that, while he was rappelling, the rappelling device malfunctioned and he began to fall.

¶ 9 Garris testified at a discovery deposition, as did Wenzel. Wenzel testified that he had been appointed to the position of Division Chief in charge of training and safety. He was in charge of organizing and scheduling training Lake Zurich firefighters. He also conducted some of the training, along with other firefighters who had qualified to act as instructors. The lesson plan for the Personal Escape Bags Inservice was developed by the head of the Technical Rescue Technician Team (TRT Team), whose members perform rope rescues, confined-space rescues, structural-collapse rescues, and trench rescues. Garris had been a member of the TRT Team. He had a "vertical 2" certification, denoting proficiency in advanced rope-rescue techniques.

¶ 10 The Personal Escape Bags Inservice involved use of a piece of equipment referred to as the Sterling Rope F4 Escape Device (Sterling F4). Wenzel explained that the Sterling F4 was a

self-locking rappel device. He described it as "a red piece of aluminum with 4 holes in it and a handle on the side and, Carabiners to attach to your belt." Wenzel added that the Sterling F4 was "a [rappel] brake device." A rope threads through the holes and the handle acts as a brake on the rope, allowing the user to control his or her descent. When the handle is not squeezed, the rope locks. Squeezing the handle releases the brake. Training for use of the Sterling F4 consisted of a PowerPoint presentation with videos and then using the Sterling F4 to descend from the Department's training tower. Firefighters were not required to perform the training quickly. Rather they were to take it step by step in order to become comfortable using the Sterling F4. Wenzel testified that, during the training, firefighters were attached to a safety line that would lock if they descended too quickly. Indeed, firefighters like Garris with advanced rappelling skills might be comfortable descending more quickly than the safety line would allow. Once the safety line locks, someone needs to release it before the firefighter can continue his or her descent. With the safety line attached, there was no way for a firefighter to fall to the ground.

¶ 11 Wenzel testified that after Garris was injured the Sterling F4 that Garris used was secured in the office of Deputy Chief Donald Golubski. Wenzel subsequently tested that unit and experienced no problems with it.

¶ 12 Garris testified at his deposition that, before sustaining his injury, he had been off work for over a month. He returned in February 2012. The Department's chief removed Garris from the TRT team just prior to March 1, 2012, so that Garris could catch up on training exercises that he had missed. Garris had previously been a member of the team for more than 10 years. The Personal Escape Bags Inservice was among the exercises Garris needed to complete when he returned to work. Garris explained that "in service training" is mandatory training on the use of equipment before the equipment is put into use in the field, *i.e.* "in service." Before performing

the exercise, Garris viewed a PowerPoint presentation that might have had a video embedded in it. He testified that he performed the exercise in the way that it was described in the video.

¶ 13 Garris began to perform the Personal Escape Bags Inservice exercise by climbing through a window head first. He then tried to reposition himself with his feet toward the ground. While he was making this transition the device slipped. Garris testified:

> "There was a period of—there was free fall. You don't have time—I certainly didn't take the time to think during that brief feeling of uncertain doom. All I was thinking was I don't want to hit head first and get my feet underneath me. What transpired with 100 percent accuracy I could not tell you. I remember the device slipped. I tried to get my feet underneath me so I hit feet first versus head first. The injury occurred. I stopped. I spoke with [Gonzales]. I told him I thought I broke my leg. We battered [*sic*] back and forth as we commonly did. I finished the exercise and got down to the ground. When these ropes were released off of me, the tension holding me up I could not support myself. I went to the ground."

Garris testified that his leg struck the window sill. He believed that that was how he broke his ankle, although he might have struck his leg against the wall or something else.

¶ 14 We note that, at his deposition, Garris acknowledged that his testimony at the Pension Board hearing was the closest in time to the incident in which he was injured. He further acknowledged that that testimony would be the most accurate.[2]

[2] We also note that Garris was served with an interrogatory asking him to "[i]dentify with specificity the emergency that arose during [his] use of the Personal Escape Bag." Garris's sworn answer stated, in pertinent part, that the "best information" as to that interrogatory was found in the Employer's First Report of Injury, the Employee's Statement of Incident, the

¶ 15 Before turning to the merits, we note that the Village contends that this appeal should be dismissed because Garris's brief violates certain requirements of Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016). First, the Village notes that Garris failed to include a statement of points and authorities as required under Rule 341(h)(3) (eff. Jan. 1, 2016). Plaintiff filed his brief without the required statement of points and authorities. However, after the Village filed its brief, Garris separately filed a statement of points and authorities. As the defect has been corrected, we choose not to dismiss the appeal on this basis. The Village also notes the absence, in some instances, of reasons or citations to authority for certain arguments (in violation of Rule 341(h)(7) (eff. Jan. 1, 2016)) and the recitation of certain facts without citations to the record on appeal (in violation of Rule 341(h)(6) (eff. Jan. 1, 2016)). Although we consider dismissal of this appeal to be too harsh a sanction for those lapses, we will not consider the arguments and facts in question.

¶ 16 The following principles govern our review of the trial court's summary-judgment ruling:

> "Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. [Citation.] Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt. [Citation.] Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied. [Citation.] In determining the existence of a genuine issue of material fact, courts must

---

Supervisor's Investigation Report, and his testimony before the Pension Board. Garris also made reference to his testimony at the Village's investigatory hearing. Sworn answers to interrogatories are treated as affidavits for summary-judgment purposes. *Estate of Henderson v. W.R. Grace Co.*, 185 Ill. App. 3d 523, 527 (1989).

consider the pleadings, depositions, admissions, exhibits, and affidavits on file in the case and must construe them strictly against the movant and liberally in favor of the opponent. [Citation.] In appeals from summary judgment rulings, we conduct a *de novo* review." *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 48.

¶ 17 At issue is whether defendants were entitled to summary judgment on Garris's claim for a declaratory judgment that he was entitled to benefits under the Act. Section 10 of the Act (820 ILCS 320/10(a) (West 2016)) provides, in pertinent part:

"(a) An employer who employs a full-time *** firefighter, who *** suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support or the child is a full-time or part-time student and is dependent for support. ***

* * *

(b) In order for the *** firefighter, spouse, or dependent children to be eligible for insurance coverage under this Act, the injury or death must have occurred as the result of *** the *** firefighter's response to what is reasonably believed to be an emergency ***."

¶ 18 The term "catastrophic injury" is "synonymous with an injury resulting in a line-of-duty disability" (*Krohe v. City of Bloomington*, 204 Ill. 2d 392, 400 (2003)), and the award of a line-of-duty disability pension conclusively establishes a catastrophic injury. *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 25. Garris was awarded a line-of-duty disability pension as a result

of the injury sustained in the March 1, 2012, incident. Accordingly, as defendants acknowledge, Garris suffered a catastrophic injury. The point of contention is whether the injury was the result of Garris's response to what he reasonably believed to be an emergency. 820 ILCS 320/10(b) (West 2016). For the reasons set forth below, we conclude that it was not.

¶ 19 Garris contends that, in determining whether he reasonably believed that there was an emergency, we should consider his subjective view of the situation. Garris cites several cases that neither arise from the Act nor otherwise support the proposition for which he cites them. In *Merlo v. Orland Hills Police Pension Board*, 383 Ill. App. 3d 97 (2008), the court held that a police officer who responded to a report of juveniles engaged in mischievous conduct was performing an act of duty when he injured himself trying to remove concrete blocks that the juveniles had stacked in a parking lot. The officer's subjective belief regarding whether he was performing an act of duty played no role in the *Merlo* court's decision. In *Harroun v. Addison Police Pension Board*, 372 Ill. App. 3d 260 (2007), an off-duty police officer was injured in an altercation with an individual who was apparently trying to break into the officer's neighbor's home. We held that the officer was performing an act of duty even though the altercation did not occur during his shift. As in *Merlo*, the officer's subjective belief whether he was performing an act of duty was not a factor in the outcome of the case.

¶ 20 In *Grigoleit v. Department of Employment Security*, 282 Ill. App. 3d 64 (1996), it was held that, for purposes of deciding eligibility for unemployment benefits, the determination whether an applicant voluntarily discontinued employment is a question of intent. Garris makes no effort to demonstrate how that holding is applicable here. Similarly, we fail to see the relevance of cases cited by Garris involving the existence of probable cause for issuance of an arrest warrant (*People v. Tisler*, 103 Ill. 2d 226 (1984)) and grounds for a police officer to frisk a

suspect for weapons (*People v. Day*, 202 Ill. App. 3d 536 (1990)). Having failed to cite any relevant authority, Garris has likewise failed to establish any analytical significance of his subjective view of the incident.

¶ 21 To determine whether Garris was responding to what he reasonably believed to be an emergency, we must consider the definition of "emergency." Our supreme court has held that, for purposes of section 10(b), an emergency is "an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response." *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 64. In *Gaffney*, the court consolidated appeals arising from the denial of benefits under the Act to firefighters Michael P. Gaffney and Brian J. Lemmenes, who were injured in separate incidents. Gaffney was injured during a training exercise involving a live fire on the third floor of a building. As Gaffney's crew was advancing from the second floor to the third floor, with no visibility, their hose became entangled in a loveseat. Gaffney followed the hose back to the loveseat. He injured his shoulder when he moved the loveseat to free the hose. Our supreme court held that Gaffney was entitled to benefits under the Act. The court reasoned that the hose becoming entangled was an unforeseen circumstance that involved imminent danger to the crew, which was stranded in the stairwell to the third floor, without water to extinguish the fire. At that point, the training exercise turned into an emergency. The court observed:

> "Any fire, even one set in a training exercise, carries the potential for a life-threatening situation. No matter how many safety precautions are taken, there is always a chance that a person may be injured or even killed in these circumstances. Here, Gaffney's injury occurred in response to something that went wrong in the training exercise, turning it into an emergency. In freeing the hose line from the obstruction,

> Gaffney put himself at risk of becoming lost and disoriented in the smoke-filled building. Importantly, Gaffney did not have the option of ending his participation in the exercise after it became an emergency." *Id.* ¶ 67.

In contrast, the court found no emergency in Lemmenes's case. Lemmenes injured his knee during a training exercise that entailed the simulated rescue of a trapped firefighter. There was no fire, and the "trapped" firefighter, who was supposedly running out of air, was not in any real danger.

¶ 22 With the foregoing in mind, we consider whether there is a genuine issue of material fact as to whether Garris's injury was the result of his response to what he reasonably believed to be an emergency. The training exercise here was a controlled exercise. Unlike the exercise in the eponymous appeal in *Gaffney*, the exercise here did not involve smoke or fire. Although Garris chose to treat the exercise like an actual emergency, the record reflects that the purpose of the exercise was to give firefighters the opportunity to become comfortable with the Sterling F4 in a low-pressure setting before the device went into service. Moreover, because the Village's firefighters were not familiar with the device, it was not an unforeseen circumstance that firefighters might descend more rapidly than they expected. However, the exercise involved the use of a safety line to prevent firefighters from actually falling. Indeed, Wenzel went so far as to testify at his deposition that, with the safety line attached, there was no way for a firefighter to fall to the ground. We note that, at the investigatory hearing conducted by the Village, Garris testified that he had no issue with the manner in which the safety line was set up by a trusted fellow firefighter.

¶ 23 Although the Personal Escape Bags Inservice was a controlled exercise, Garris argues that the safety line did not "preclude him from reasonably believing that he was in imminent

danger" when he started to descend more quickly than expected. Be that as it may, Garris's underlying theory of the danger that he claims gave rise to an emergency is factually untenable. Garris argues that "[f]earing uncertain doom if he did not immediately try to prevent harm to himself, [he] *tried to get his feet underneath him in an effort to hit the ground feet first and not head first if he were to fall all the way to the bottom of the Training Tower concrete floor*." (Emphasis added.) The crux of Garris's claim that he reasonably believed that an emergency existed—*i.e.* that he was in imminent danger (notwithstanding the safety line) and that an urgent response was required—because if he continued to fall he would land on his head. Under this theory, the urgent response that was required was for Garris to reorient himself so that he would land on his feet. This theory does not align with the facts established by the record, however.

¶ 24 At the investigatory hearing before the Village and at his discovery deposition, Garris did testify that his head was pointed toward the ground when the Sterling F4 supposedly slipped. As seen, however, the earliest reports of the incident—including Garris's own "Employee's Statement of Incident"—make no mention of Garris being upside down at that point. More importantly, in sworn testimony before the Pension Board, Garris indicated that he came out of the window head first, stopped, *turned himself around*, and proceeded down the wall. Garris testified, "*then* the accident occurred." (Emphasis added.) It is clear from this description that Garris's feet were pointed toward the ground when the accident occurred. At his deposition, Garris acknowledged that, because his testimony before the Pension Board was closest in time to the incident, it would be the most accurate. Furthermore, in his amended complaint, Garris alleged that, after exiting through the window head first, he "turned himself around from being upside down and with his feet first towards the ground, began to propel [*sic*] down to the ground floor from the third floor."

¶ 25 Garris cannot establish the existence of a genuine issue of material fact by contradicting his own sworn testimony at the Pension Board hearing. See *In re Marriage of Palacios*, 275 Ill. App. 3d 561, 569 (1995) (counteraffidavit that was contrary to admissions at deposition did not create a genuine issue of material fact). Nor can Garris rely on testimony contradicting his own amended complaint. "Generally, '[a]llegations contained in a complaint are judicial admissions and are conclusive against the pleader.' " *Roti v. Roti*, 364 Ill. App. 3d 191, 200 (2006) (quoting *Calloway v. Allstate Insurance Co.*, 138 Ill. App. 3d 545, 549 (1985)). We thus find no genuine issue of material fact as to whether Garris was injured responding to what was reasonably believed to be an emergency. Accordingly, the trial court properly entered summary judgment.

¶ 26 Garris details the adverse economic consequences for him that resulted from becoming disabled. We fail to see how those consequences have any bearing on the issue in this appeal. Finally, Garris argues that due process and "elementary fairness" dictate that the summary judgment be reversed. Garris contends that courts considering equitable questions are governed by principles of fair dealing. Garris fails to explain how that rule applies here. Garris evidently believes that the entry of summary judgment improperly deprived him of a hearing on the issue of whether he was injured responding to what he reasonably believed to be an emergency. Garris cites no authority in support of the argument, so it is forfeited. *International Union of Operating Engineers Local 965 v. Illinois Labor Relations Board, State Panel*, 2015 IL App (4th) 140352, ¶ 20.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 28 Affirmed.