

THIRD DIVISION
MARCH 26, 2014

No. 1-13-0778

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ANITA WILSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 CH 50834
)	
DOROTHY BROWN, as Clerk of the Circuit Court)	
of Cook County and HUMANA HEALTH SERVICES,)	Honorable
)	Leroy Martin, Jr.,
Defendants-Appellees.)	Judge Presiding

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

Held: There was no error in the involuntary dismissal of the plaintiff's complaint to enforce the payment of a settlement agreement where (1) the defendant properly asserted as an affirmative defense that the settlement funds were required by court order to be deposited with the clerk's office; (2) the plaintiff had forfeited her right to appeal the order to deposit funds by failing to timely appeal; and (3) the order requiring the deposit of funds was not void.

¶ 1 The plaintiff, Anita Wilson, filed suit against the defendant, Humana Health Care Services, Inc., seeking to enforce a settlement agreement under which Humana agreed to pay the plaintiff a certain sum in damages in exchange for the dismissal of the plaintiff's claims against it. Humana moved for involuntary dismissal under section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2006)), asserting as an affirmative defense that, pursuant to a circuit court order, it had deposited the settlement proceeds with the clerk of the circuit court (the Clerk) pending resolution of third party claims against the funds. The court granted Humana's 2-619 motion and the plaintiff now appeals, contending: (1) Humana's motion failed to include affidavits or other material substantiating its "interpretation" of the orders mandating deposit of the funds with the Clerk's office; (2) the court lacked authority to enter the disputed orders; and (3) the disputed orders were void for lack of subject matter jurisdiction.

¶ 2 Over 10 years ago, the plaintiff was made the trustee of funds awarded to her minor son from a number of personal injury settlements entered into on his behalf. Disputes subsequently arose over the plaintiff's use of some of these funds, and those disputes were litigated before the circuit court in a series of proceedings, some of which were before the probate division. In the meantime, the court entered an order apportioning the anticipated proceeds from a separate pending lawsuit, filed by the plaintiff against Humana, to the plaintiff and to third party claimants from the probate litigation. When the Humana lawsuit settled, the circuit court ordered the proceeds of the settlement in the plaintiff's favor (settlement funds) to be deposited with the Clerk. The court subsequently ordered the Clerk to distribute a portion of the settlement funds to the third party claimants. That court's judgment was affirmed by this court. (*In re: The Estate of James J. Ayres, Jr.*, No. 1-09-1857 (2010)) (unpublished order under Supreme Court Rule 23). The plaintiff now brings the instant action against the Clerk and Humana, seeking, *inter alia*,

"enforcement of the order of compromise and settlement" entered in the plaintiff's lawsuit against Humana. On August 8, 2012, the plaintiff filed her second amended complaint (hereinafter the complaint), adding count III, which is the subject of this appeal.

¶ 3 The allegations of count III of the complaint are summarized as follows. In 2004, the plaintiff filed a suit for damages against Humana and other defendants (underlying lawsuit). The plaintiff subsequently entered into an agreement with Humana and the other defendants, under which she consented to settle and dismiss her claims against them in exchange for consideration of \$100,000. Accordingly, on October 10, 2006, the trial court entered a stipulated order dismissing the plaintiff's case against Humana with prejudice, but retaining jurisdiction to enforce the settlement.

¶ 4 Shortly thereafter, Humana filed an emergency motion requesting that the settlement funds be placed in a trust with the Clerk. The plaintiff raised an objection to the deposit of funds with the Clerk on the basis that there was no agreement or understanding between her and Humana that the funds would be paid to anyone other than the plaintiff. On October 13, 2006, the court entered an order directing that Humana "deposit the settlement proceeds [previously] agreed to" by the parties with the Clerk, and incorporating by reference the "remainder of the court's rulings."

¶ 5 The plaintiff alleged that on or about June 29, 2009, Humana received notice that the funds on deposit with the Clerk were to be paid out to persons other than the plaintiff. Attached to the complaint is correspondence from a court official, which informs the Clerk that the settlement funds were to be divided and disbursed pursuant to an order issued by the probate division of the circuit court. The correspondence provides that only a portion of the proceeds were to go to the plaintiff. The plaintiff sought judgment in the amount of the settlement

proceeds plus interest, on the basis that the defendants "willfully and intentionally failed to pay over and satisfy the consideration owed to her as part of the compromise and settlement," and instead permitted the settlement funds to be disbursed to persons other than her.

¶ 6 On November 16, 2012, Humana filed a section 2-619 motion to dismiss the complaint. In the motion, Humana acknowledged that it had originally agreed to pay settlement proceeds of \$100,000 to the plaintiff as reflected in the stipulated order of dismissal of October 10, 2006. However, as an affirmative defense, Humana asserted that this order was modified by a subsequent order of October 13, 2006, under which Humana was required to deposit the settlement proceeds with the Clerk. According to Humana, shortly after the October 10 dismissal order, it had been contacted by several parties purporting to assert their entitlement to funds from the settlements proceeds. Humana, as a consequence, filed an emergency motion to modify the order of October 10, as it did not want to pay out the proceeds in error or be liable to a third party. Humana further asserted that on November 1, 2006, the court modified the October 13 ruling with an order, attached to the 2-619 motion, mandating that Humana deposit the funds with the Clerk in an interest-bearing account "until further order of release" by the court and "plaintiff tendering [*sic*] executed release of claims." The November 1 order also contained language rendering its ruling final and appealable under Illinois Supreme Court Rule 304(a) (eff. January 1, 2006). However, according to Humana, the plaintiff never filed a notice of appeal or took any action to challenge the November 1, 2006, order or the prior orders. Accordingly, Humana sought involuntary dismissal of the plaintiff's action on the basis, in relevant part, that the court lacked jurisdiction over the plaintiff's claim because the claim was necessarily a challenge to the October 13, 2006, and November 1, 2006, orders in the underlying case, and that the time for appealing those orders had passed. In reply, the plaintiff asserted that

the court lacked authority to enter the October 13 order and that the order was "void." The trial court rejected the plaintiff's argument and dismissed the complaint with prejudice. This appeal followed.

¶ 7 On appeal, the parties do not dispute the stipulated settlement under which Humana agreed to pay \$100,000 to the plaintiff, nor that Humana was required by the subsequent orders to place those proceeds with the Clerk. Rather, the plaintiff's arguments on appeal involve the validity of the subsequent orders, and the power of the court to act contrary to the stipulated settlement and dismissal of October 10, 2006.

¶ 8 A motion to dismiss under section 2-619 is designed to dispose of issues of law and easily proved issues of fact at the outset of litigation. *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995); *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 680 (2000). When considering a 2-619 motion, we must take as true all well-pleaded facts and the inferences to be drawn from those facts (*McGee*, 315 Ill. App. 3d at 680), and interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189 (1997). A case may be dismissed under section 2-619(a)(9) where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 1998). Affirmative matter denotes something in the nature of a defense which negates the cause of action completely. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485-86 (1994). Our review of an involuntary dismissal under section 2-619 is *de novo*. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993).

¶ 9 First, the plaintiff argues that Humana's motion failed to meet the initial requirements of section 2-619 because it "never presented any actual evidence to prove [Humana's]

interpretation” of the orders of October 10, 13, and November 1, 2006. This argument is without merit. Affirmative defenses underlying a section 2-619 motion must either be apparent on the face of the complaint or be supported by affidavits or certain other evidentiary materials. *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997); *Kedzie & 103rd Currency Exchange*, 156 Ill. 2d at 116.

¶ 10 Attached to Humana’s 2-619 motion were copies of all three of the orders in support of its affirmative defense. These orders clearly set forth the court’s retention of jurisdiction to "enforce the settlement" after its dismissal of the underlying case, and its subsequent rulings that the settlement funds be deposited with the Clerk pending "further order of release" by the court. The plaintiff does not dispute the authenticity of these supporting documents or their express contents. Under these circumstances, we can conceive of little better evidence supporting Humana’s “interpretation” of the orders than copies of the orders themselves. We find that Humana has met its burden of going forward with evidence supporting its affirmative defense as required under section 2-619.

¶ 11 Next, the plaintiff argues that the trial court “lacked authority” to issue the orders of October 13 and November 1, because they were in derogation of the parties' settlement agreement memorialized in the October 10 dismissal order. She asserts that the October 10 order constituted a "consent judgment" which could not be altered or modified by the court without the consent of the parties. Thus, the subsequent orders mandating that the settlement proceeds be deposited with the Clerk were erroneous.

¶ 12 Humana argues that the plaintiff's assertions on this issue have been forfeited, because they should have been the subject of an appeal from the November 1 order. We agree. Under Supreme Court Rule 303(a)(1), a notice of appeal must be filed within 30 days of the entry of the

final judgment appealed from, or within 30 days after the entry of the order disposing of the last pending post-judgment motion. 210 Ill. 2d R. 303(a)(1). *In re Marriage of Valkiunas & Olsen*, 389 Ill. App. 3d 965, 966 (2008). Under Rule 304(a), once the trial court declares an order final and appealable, a party has 30 days to file a notice of appeal from that order, or the right to appeal will be deemed forfeited. 210 Ill. 2d R. 304(a); *Wool v. LaSalle Nat. Bank*, 89 Ill. App. 3d 560, 568 (1980). If the appeal is forfeited for failure to timely file, the underlying order becomes law, and is only subject to challenge if it is void. See *In re Marriage of Valkiunas & Olsen*, 389 Ill. App. 3d 966; *People v. Cavette*, 2011 WL 10481474.

¶ 13 In her brief on this issue, we note that the plaintiff makes passing references to the disputed orders as being "void" intertwined with her argument that the orders were erroneously entered. These are two very different contentions, as the allegation that an order is void attacks the court's jurisdiction to even have considered the issue as opposed to its alleged error in deciding it. Regardless, to the extent the plaintiff claims that the orders of October 13 and November 1 were erroneous as improperly interfering with the parties' settlement agreement, she has forfeited that argument by failing to timely appeal.

¶ 14 The plaintiff next contends that the order of October 13 was void for lack of subject matter jurisdiction. She makes several arguments in support of this claim, all without merit.

¶ 15 A judgment is rendered void only when the court entering it lacked either personal or subject matter jurisdiction. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174-75 (1998); see also *Johnston v. City of Bloomington*, 77 Ill. 2d 108, 112 (1979) (judgment in a civil proceeding may be collaterally attacked only where there is a total want of jurisdiction in the court which entered the judgment.) An error in the entry of a judgment will not make it void. Courts do not lose

jurisdiction by making a mistake in determining the facts, the law, or both. *Davis*, 156 Ill. 2d at 156; *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 165 (1983).

¶ 16 Subject matter jurisdiction is the power of the court to hear and determine the general question involved and the power to grant the particular relief requested. *In Re Estate of Steinfeld*, 158 Ill. 2d 1, 12 (1994). It is conferred on the courts by the constitution or statute. *Ardt v. Illinois Department of Professional Regulation*, 154 Ill. 2d 138, 145 (1992). Our constitution provides that circuit courts have "original jurisdiction of all justiciable matters", with certain explicit exceptions. Ill. Const. 1970, article VI, section 9. A justicable matter is one that involves the adverse legal interest of the parties. *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994).

¶ 17 The plaintiff first argues that the October 13 order was void because Humana obtained it under "false premises." Specifically, she argues that Humana's emergency motion to modify the order of October 10 could not qualify as a valid post-judgment motion because it was based upon a consent judgment.

¶ 18 Initially, we note that the plaintiff has failed to provide us with a copy of the alleged emergency motion or her response to it, so we are unable to verify the basis upon which it was brought. As appellant, she bore the burden of presenting this court with a sufficiently complete record to substantiate her arguments on appeal. *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 1074 (2005), quoting 210 Ill. 2d R. 341(h)(7). Regardless, there is no basis to conclude that the court lacked jurisdiction to entertain Humana's emergency motion. The plaintiff makes no argument, nor could she, that the circuit court lacked jurisdiction over her underlying lawsuit against Humana. In the October 10 order, the court explicitly retained jurisdiction to enforce the parties' settlement of that action. Further, it is beyond question that a trial court retains jurisdiction over

a cause for 30 days after entry of a final order or judgment. *Brewer v. Nat'l R.R. Passenger Corp.*, 165 Ill. 2d 100, 105 (1995). This rule applies even in the case of a consent decree under appropriate circumstances, such as where necessary to adapt to changes in the conditions surrounding the order. See *People ex rel. Fahner v. Colorado City Lot Owners & Taxpayers Ass'n*, 106 Ill. 2d 1, 8-9 (1985) (collecting cases.)

¶ 19 Last, the plaintiff argues, again without citation to relevant authority, that the court lacked the authority to order the settlement proceeds held by the Clerk in contravention of the settlement agreement. Again, this argument was forfeited by the plaintiff's failure to file an appeal from the November 1 order. Further, to the extent the plaintiff is arguing that the court lacked jurisdiction to control the settlement proceeds, this contention is without merit. The October 10 order retained jurisdiction to enforce the settlement agreement. Courts routinely order funds held by the Clerk's office pending the resolution of disputes involving the parties. See, e.g., *Madlener v. Finley*, 138 Ill. 2d 147 (1989), *Olson v. Olson*, 58 Ill. App. 3d 276. Finally, as to the disbursement of the proceeds, we resolved this issue in the plaintiff's previous appeal, where we held that, when the circuit court ordered Humana to pay to proceeds to the clerk, it expressly retained jurisdiction over the disposition of the funds. *In re: The Estate of James J. Ayres, Jr.*, No. 1-09-1857 (2010)) (unpublished order under Supreme Court Rule 23. Accordingly, because this issue was fairly and completely resolved in the prior appeal, the plaintiff is barred under the doctrine of collateral estoppel from reasserting it in this appeal. See *LaSalle Bank National Ass'n. v. Village of Bull Valley*, 355 Ill. App. 3d 629, 635-36 (2005).

¶ 20 Viewing the allegations of the complaint in the light most favorable to the plaintiff, we find that her claim is barred by the matter supporting Humana's section 2-216 motion to dismiss.

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We therefore affirm the judgment of the circuit court dismissing the complaint pursuant to the Code.

¶ 21 Affirmed.