2014 IL App (2d) 130433-U
No. 2-13-0433
Order filed March 10, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MICHELLE EVA McDONALD, Plaintiff-Appellant, v. HEALTH CARE SERVICE CORPORATION, Defendant-Appellee and Third-Party (The Blue Cross and Blue Shield Plan of Illinois, d/b/a Blue Cross and Blue Shield Association, Defendant-Appellee; The Village of Villa Park, Third-Party Defendant).	)	Appeal from the Circuit Court of Lake County. No. 09-L-1114 Honorable Jorge L. Ortiz, Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed Blue Cross and Blue Shield (BCBS) as a defendant where plaintiff sued for breach of contract and BCBS was not a party to the contract at issue; the trial court did not abuse its discretion by allowing Health Care Service Corp. (HCSC) to bring a third-party complaint against plaintiff's employer, The Village of Villa Park (Villa Park), where plaintiff is suing for breach of contract on the basis of the wrongful cancellation of her insurance and Villa Park was liable to indemnify HCSC for errors in reporting; the trial court properly granted HCSC's motion for summary judgment; affirmed.

¶ 2 This appeal arises from a lawsuit brought by *pro se* plaintiff, Michelle Eva McDonald, against defendants, Health Care Service Corp. (HCSC) and The Blue Cross and Blue Shield Plan of Illinois, d/b/a Blue Cross and Blue Shield of Illinois, d/b/a Blue Cross and Blue Shield Association (BCBS), to recover damages occasioned by the alleged wrongful cancellation of her continuing health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (29 U.S.C. §1161 *et seq*. (2006)). Plaintiff's former employer, the Village of Villa Park (Villa Park), was joined by HCSC as a third-party defendant to the lawsuit when HCSC filed a two-count indemnification and breach of contract claim against Villa Park.[1] The trial court granted BCBS's motion to dismiss with prejudice, finding that it was not a party to the contract alleged in plaintiff's breach of contract action. The trial court granted HCSC's motion for summary judgment against plaintiff. The court also entered summary judgment in favor of HCSC on its third-party claims against Villa Park. Plaintiff appealed for the first time in this matter. We held that the trial court erroneously determined that plaintiff's postjudgment motion was untimely and that it had no jurisdiction. Accordingly, we vacated the order and remanded the cause for the trial court to rule on the merits of plaintiff's postjudgment motion. *McDonald v. Health Care Service Corporation*, 2012 IL App (2d) 110779, ¶ 30 (*McDonald*). On remand, the trial court denied the postjudgment motion.

¶ 3 Plaintiff raises several arguments in the present appeal, including, but not limited, to whether the trial court erred by (1) granting BCBS's motion to dismiss; (2) granting HCSC's

[1]Villa Park is not a party to this appeal.

motion for leave to file a third-party complaint against Villa Park; (3) granting summary judgment in favor of HCSC; and (4) denying plaintiff's postjudgment motion. We affirm.

¶ 4 I. BACKGROUND

¶ 5 We reiterate those facts presented in this court's opinion in *McDonald* and add those facts which are necessary for the disposition of the instant appeal.

¶ 6 Plaintiff is a former employee of Villa Park. HCSC and Villa Park entered into an agreement to provide health care benefits to certain employees of Villa Park. Pursuant to the contract, Villa Park was obligated to furnish data to HCSC regarding those employees who were to be covered under Villa Park's policy and notify HCSC of any change in an employee's status under the policy. In addition, Villa Park was obligated to collect premiums from those persons covered under the policy. Section III(A) of the Group Administration Document provides, in part:

> "If insured contributions are required, [Villa Park] agrees to give all Eligible Persons an opportunity to subscribe to the coverage and further agrees to pay the premiums to [HCSC] and provide for the collection of any contributions from the persons to be covered through payroll withholding or otherwise."

¶ 7 Plaintiff was covered by Villa Park's group benefit health insurance plan. Upon plaintiff's retirement as an employee, she elected to enroll for COBRA continuation coverage. Villa Park, which was the COBRA administrator, notified HCSC that plaintiff elected COBRA continuation coverage.

¶ 8 Plaintiff paid the premium and Villa Park enrolled plaintiff in COBRA continuation coverage, effective November 1, 2007. Plaintiff was provided COBRA coverage for the month of November 2007. Villa Park sent an invoice to plaintiff, which stated that plaintiff was

required to pay her December 2007 COBRA premium by December 23, 2007. Villa Park sent plaintiff a letter advising that it had not received her December premium. Villa Park further advised plaintiff that it would cancel her coverage, effective December 1, 2007, if it did not receive her December COBRA premium by January 2, 2008. When plaintiff failed to make a subsequent COBRA payment, Villa Park directed HCSC to cancel plaintiff's COBRA coverage.

¶ 9 Villa Park was required to notify HCSC of those persons who were to be covered under the insurance policy, provide HCSC with completed applications, and notify HCSC of any change in a covered person's status under the policy. Villa Park also was required to provide notice regarding COBRA continuing coverage to those covered under its group policy. Section IV(F)(6) of the agreement provides:

> "If a Covered Person whose insurance terminates is entitled to exercise the conversion privilege specified in the Conversion Privilege section of the Certificate Booklet, it is [Villa Park's] responsibility to present written notice of the existence of the conversion privilege to the Insured or to mail such notice to the Insured's last known address."

¶ 10 The agreement also provides that Villa Park would be liable for any substantive error it made in keeping or reporting data which could materially affect an individual's coverage under the policy. Additionally, Villa Park agreed to indemnify and hold harmless HCSC for any loss, damage, expense, or liability that may arise from or in connection with untimely or inaccurate data provided by Villa Park to HCSC. Section IV(D) of the agreement provides, in part:

> "[Villa Park] must furnish to [HCSC] data as may be required by [HCSC] regarding the Covered Persons who are to be covered under the Policy. Such data may include, without limitation, a list of Covered Persons who are to be covered under the

Policy, completed application cards of the Insureds, information required by the Plan to identify dual coverage situations which are subject to Medicare Secondary Payer ("MSP") laws and information required for Certificate(s) of Creditable Coverage that will be issued by the Plan. It is [Villa Park]'s obligation to notify [HCSC] no later than thirty-one (31) days after the effective date of any change in a Covered Person's status under the Policy. All such notifications by [Villa Park] to [HCSC] (including, but limited to, forms and tapes) must be furnished in a format approved by [HCSC] and must include all information reasonably required by [HCSC] to effect such changes.

It is further understood and agreed that [Villa Park] is liable for any substantive error made by [Villa Park] in keeping or reporting data which may materially affect an individual's coverage under the policy and for any benefits paid for a terminated Covered Person if [Villa Park] had not timely notified [HCSC] of such Covered Person's termination.

[Villa Park] hereby agrees to indemnify and hold harmless [HCSC] and its employees and agents for any loss, damage, expense (including, but no limited to, reasonable attorneys' fees and costs) or liability that may arise from or in connection with untimely and/or inaccurate data provided by [Villa Park] to [HCSC] or data furnished by [Villa Park] to [HCSC] in a format not approved by [HCSC]."

¶ 11 Per the agreement, HCSC had the duty to issue "Certificates of Group Creditable Coverage" upon receiving direction from Villa Park regarding the cancellation of plaintiff's COBRA continuation coverage. On November 28, 2007, Villa Park directed HCSC to cancel plaintiff's coverage due to the termination of her employment. On January 7, 2008, Villa Park directed HCSC to cancel plaintiff's continuing coverage due to non-payment of premiums.

HCSC then issued the Certificates of Group Creditable Coverage pursuant to the direction of Villa Park and pursuant to section IV(G) of the agreement.

¶ 12 Plaintiff filed the present action against HCSC based on a breach of contract theory, alleging that her health insurance was improperly terminated. She alleged that HCSC breached its fiduciary duty to plaintiff: (1) by the "collection and application of premiums"; (2) by "failing to appropriate funds paid by the Plaintiff for premiums subject [to] the contract"; and (3) by "displacing [HCSC's] obligations to a third party." Plaintiff further alleged that HCSC "wrote the policy in a manner inconsistent with the Illinois Insurance Code and the Public Health Services Act with regards to municipal government employees."

¶ 13 HCSC then filed a third-party action against Villa Park, based on Villa Park's contractual duties to HCSC with respect to the administration of COBRA and on its agreement to indemnify and hold harmless HCSC for any loss, damage, expense, or liability that might arise from or in connection with untimely or inaccurate data provided by Villa Park to HCSC.

¶ 14 Thereafter, plaintiff filed a motion for summary judgment against HCSC, and HCSC filed a cross-motion for summary judgment against plaintiff. HCSC also filed a motion for summary judgment against Villa Park. Following argument, the trial court denied plaintiff's motion for summary judgment, and granted HCSC's motion against plaintiff on all of her claims, except on the issue of whether HCSC failed to appropriate funds paid by plaintiff for COBRA premiums.

¶ 15 HCSC filed a motion to reconsider, which the trial court granted on May 4, 2011. The trial court found that HCSC had no duty to collect plaintiff's premiums for COBRA coverage under her employer's group health benefit policy and did not collect plaintiff's premiums. The trial court also granted, in part, HCSC's summary judgment motion as to its indemnification and

breach of contract claims against Villa Park, finding that Villa Park had a duty to indemnify HCSC and that Villa Park breached the contract.

¶ 16 Plaintiff filed an "Affidavit of Service" indicating that she had served BCBS by certified mail. BCBS filed an appearance and a motion to dismiss. The trial court granted BCBS's motion to dismiss, finding that it was not a party to the contract alleged in plaintiff's breach of contract action.

¶ 17 As of May 4, 2011, plaintiff had no remaining claims against any party in the lawsuit. Also, as a result of the order, the sole issue remaining was between HCSC and Villa Park involving damages. The May 4 order also scheduled a settlement conference and a pre-trial conference on June 1 for presentment of pre-trial materials, including motions *in limine*, exhibits, and jury instructions regarding the only remaining issue for damages as to HCSC's third-party complaint against Villa Park.

¶ 18 On June 1, 2011, plaintiff filed a motion *in limine* requesting that the trial court bar the introduction of certain evidence at trial. On the same day, the trial court entered an order dismissing, with prejudice, the third-party complaint against Villa Park as a result of the settlement between HCSC and Villa Park. In the same order, the court also struck a trial date scheduled for June 6, 2011, which had been pending on the remaining issue of damages.

¶ 19 On June 30, 2011, plaintiff filed a postjudgment motion to vacate the judgment entered on June 1, requesting that the court vacate the "final judgment entered on June 1, 2011[,] and modify or vacate prior orders in conflict with the facts of this case." Plaintiff's motion requested that the court hold a pre-trial conference and settlement conference, rule on plaintiff's previous motion *in limine* (which had been filed after her claims had been dismissed), compel production

of unspecified documents allegedly withheld by HCSC and Villa Park, and award plaintiff sanctions and $4,900,000 in damages sought by plaintiff in her complaint.

¶ 20 On July 13, 2011, the trial court denied plaintiff's postjudgment motion on the basis that the motion was untimely and therefore, the court had no jurisdiction to hear the motion. Plaintiff appealed the July 13 order. As stated, we held the trial court erred in finding that it had no jurisdiction to hear the motion. Consequently, we vacated the order and remanded the cause to the trial court for it to rule on the merits of plaintiff's postjudgment motion. *McDonald*, at ¶ 30.

¶ 21 On remand, the trial court granted the law firm of Laner Muchin, Ltd. leave to file an appearance on behalf of HCSC and thus proceed with the same counsel as Villa Park. Plaintiff filed a motion to disqualify counsel. The trial court denied the motion on the basis that HCSC and Villa Park had waived all conflicts and potential conflicts, and consented to counsel's representation.

¶ 22 Following oral argument on plaintiff's postjudgment motion, the trial court denied the motion in its entirety, disposing of all matters before the trial court. Plaintiff timely appeals.

¶ 23 II. ANALYSIS

¶ 24 Prior to addressing the merits of this appeal, we must preliminarily address a motion that was taken with the case. While this case was pending on appeal, defendants filed a joint motion to dismiss the appeal for plaintiff's failure to serve defendants with a copy of her appellate brief or, in the alternative, to allow defendants additional time to respond once they received plaintiff's brief. The motion was granted, in part, giving defendants time to file their brief. The motion to dismiss was taken with the case. Since defendants were granted an extension of time to file their brief, the motion to dismiss is hereby denied.

¶ 25 A. Motion to Dismiss

¶ 26 Plaintiff first contends that the trial court erred by granting BCBS's motion to dismiss as a defendant, with prejudice. Plaintiff's argument focuses on whether BCBS was served properly. However, the trial court dismissed the complaint against BCBS because BCBS was not a party to the contract at issue. Thus, plaintiff's argument is unfounded. Regardless, we find the trial court properly dismissed BCBS.

¶ 27 BCBS filed a motion to dismiss pursuant to section 2-619 of the Code. 735 ILCS 5/2-619 (West 2010). "A motion for involuntary dismissal under section 2-619 admits all well-pleaded facts and reasonable inference therefrom," and the "motion should be granted only if the plaintiff can prove no set of facts that would support a cause of action." *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277-78 (2003). The standard of review for a section 2-619 motion is *de novo*. *Stark Excavating, Inc. v. Carter Const. Services, Inc.*, 2012 IL App (4th) 110357, ¶ 36.

¶ 28 In order for plaintiff to sustain her breach of contract action against BCBS, plaintiff was required to establish the existence of a contract between plaintiff and BCBS. *Payne v. Mill Race Inn*, 152 Ill. App. 3d 269, 273 (1987). It follows then that a breach of contract claim cannot stand if the defendant is not a party to the contract. Our review clearly shows that BCBS was not a party to the contract that provided health benefits to plaintiff. Rather, the contract was between Villa Park and HCSC. BCBS was not an insurer, licensed in any jurisdiction as an insurer, and did not issue insurance policies, underwrite insurance risks, or adjudicate insurance claims. Moreover, BCBS did not underwrite or adjudicate claims under the contract or provide health benefits to plaintiff in this case. In sum, BCBS was not a party to the contract and therefore, it cannot be liable for breach of that contract. Accordingly, we affirm the trial court's dismissal of BCBS as a defendant, with prejudice.

¶ 29 Plaintiff appears to argue some sort of agency or apparent authority theory between HCSC and BCBS to sustain her breach of contract action. However, plaintiff never pled either theory in her complaint and she has not requested leave to amend her pleadings. See *Knox College v. Celotex Corporation*, 88 Ill. 2d 407, 423-24 (1981) (fact pleading is required in Illinois). Even if plaintiff had, we find no evidence of any type of agency relationship or apparent authority between HCSC and BCBS.

¶ 30 B. Third-Party Complaint

¶ 31 Plaintiff next argues that the trial court abused its discretion by granting HCSC's motion for leave to file a third-party complaint against Villa Park. Section 2-406 of the Code (735 ILCS 5/2-406 (West 2010)) sets forth the requirements governing third-party complaints. Granting leave to file a third-party complaint falls within the circuit court's discretion. *Harshman v. DePhillips*, 218 Ill. 2d 482, 503 (2006).

¶ 32 Plaintiff's suit was based on the cancellation of her continuing COBRA coverage through her employment with Villa Park. The agreement between Villa Park and HCSC required Villa Park to administer the collections of premiums, notify HCSC of any changes, and indemnify HCSC of any errors in such collections or notifications. Under these circumstances, where plaintiff is suing for breach of contract on the basis of a wrongful cancellation of her COBRA coverage, we fail to see how the trial court abused its discretion by allowing HCSC to bring a third-party complaint against Villa Park.

¶ 33 C. Postjudgment Motion

¶ 34 Although plaintiff next contends that the trial court erred by denying her postjudgment motion, she fails to develop an argument as to why the postjudgment motion was denied in error, other than stating that the trial court should have ruled on her motion *in limine*. Appellants are

required to clearly define issues and support them with pertinent authority and cohesive arguments, and the failure to develop an argument results in forfeiture. *Sexton v. City of Chicago*, 2012 IL App (1st) 100010, ¶ 79. Regardless of forfeiture, the motion concerned the admissibility of evidence at trial. Once all claims were disposed of and the trial court struck the trial date, there was absolutely no reason for the trial court to rule on plaintiff's motion *in limine*.

¶ 35 C. Summary Judgment

¶ 36 While plaintiff's caption to this section only addresses the denial of plaintiff's motion for summary judgment, her argument is really tied to the trial court's granting of HCSC's cross-motion for summary judgment. Plaintiff's summary judgment arguments boil down to three areas: (1) HCSC breached its duty to notify her of her cancellation from COBRA coverage; (2) HCSC breached its duty to appropriate the money she sent in toward COBRA coverage; and (3) HCSC breached its obligation to plaintiff by improperly cancelling her COBRA coverage.

¶ 37 "Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741, 744 (2010). The standard of review for the entry of summary judgment is *de novo*. *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 284 (2002).

¶ 38 The determination of whether a contract imposes a particular duty is a question of law and thus, appropriately decided on a motion for summary judgment. *Fox v. Heimann*, 375 Ill. App. 3d 35, 44 (2007). Generally, the duty owed to a plaintiff is measured by the terms of the contractual obligation as reflected within the "four corners" of the contract. *Id.* Plaintiff did not identify any contractual provision requiring HCSC to give such notice, appropriate money, or

cancel plaintiff's coverage and, in the absence of a contractual provision to the contrary, HCSC had no such duty under the law.

¶ 39 1. Duty to Notify of Cancellation

¶ 40 Plaintiff relies on *Martz v. Union Labor Life Insurance Co.*, 573 F. Supp. 580 (N.D. Ill. 1983) (*rev'd*, 757 F. 2d 135 (7th Cir. 1983)), for the proposition that Illinois law requires HCSC to provide her with notice prior to canceling her coverage under the group policy. *Martz* concerned a declaratory judgment action in which the plaintiff argued that a subrogation provision added to the group policy under which he was covered was ineffective because he did not have prior notice of the modification to the policy. *Martz*, 573 F. Supp. at 580. The district court held that the plaintiff was entitled to notice and thus, the modification to the policy was not effective against him. *Id.* at 585. On appeal, however, the Seventh Circuit Court of Appeals held that, in the absence of a contrary contractual provision, the duty to give notice regarding cancellation or modification of the policy does not rest with the insurer. *Martz*, 757 F. 2d at 141. The court reasoned that the duty to provide notice should rest with the policyholder, as the insurer's direct relationship is with the policyholder and not the individual insureds. *Id.*

¶ 41 As in *Martz*, HCSC did not owe plaintiff a duty to provide her with notice prior to cancelling her coverage under the group policy. Here, Villa Park, plaintiff's employer and the policyholder, determined whether plaintiff should be covered under the plan, pursuant to its contract with HCSC, and it directed HCSC to cancel plaintiff's coverage for failure to pay the required COBRA premium. Since HCSC owed no duty to plaintiff to notify her when her coverage was cancelled, plaintiff cannot establish that HCSC breached its contract on this basis.

¶ 42 2. Duty to Appropriate Funds

¶ 43 Plaintiff alleges in her complaint that HCSC "breached their fiduciary duty failing to appropriate funds paid by the Plaintiff for premiums subject of the contract and thereby wrongfully cancelled the policy thereby depriving Plaintiff of her property interest in the contract." Although the trial court initially denied HCSC's motion for summary judgment on this point, HCSC established that it was entitled to judgment as a matter of law because it did not have a duty, fiduciary or otherwise, to collect or appropriate premiums. See *Nielsen v. United Services Auto Ass'n*, 244 Ill. App. 3d 658, 666 (1993) (in Illinois, there is no fiduciary relationship between insurance company and insured).

¶ 44 Under the contract, Villa Park had the explicit duty of collecting premium payments from individual insureds like plaintiff and forwarding them on to HCSC. Plaintiff cannot establish that HCSC breached its contract based on a failure to collect and appropriate premiums when, pursuant to the unambiguous language contained in the group contract, HCSC did not have any duty to collect premiums or, contrary to plaintiff's assertion, to determine whether to cancel plaintiff's policy. We further observe that the trial court correctly reconsidered its earlier ruling based on the deposition testimony from a Villa Park official and from plaintiff that the money paid by plaintiff for premiums was paid to Villa Park. Since HCSC owed no duty to plaintiff to appropriate funds, plaintiff cannot establish that HCSC breached its contract on this basis.

¶ 45 3. Cancellation of Coverage

¶ 46 HCSC established that it satisfied all of its obligations under the contract based on the information it received from Villa Park. As a preliminary matter, we note that HCSC did not administer the COBRA coverage for Villa Park, a fact which plaintiff knew or should have known. See *Phelps v. The Elgin Academy*, 125 Ill. App. 2d 364, 368 (1970). Pursuant to section IV(F)(6) of the group contract entered into between HCSC and Villa Park, Villa Park, not HCSC,

owed the duty to provide notice regarding continuing coverage to those covered under its group policy.

¶ 47 HCSC's sole duty was to issue to plaintiff a Certificate of Creditable Coverage upon termination of coverage. Specifically, HCSC was required by contract to issue a Certificate of Creditable Coverage, "based upon coverage under [HCSC] during the term of the Policy and information provided to [HCSC] by [Villa Park]."

¶ 48 The facts show that HCSC complied with its obligation to issue to plaintiff a Certificate of Creditable Coverage upon the information it received from Villa Park. Specifically, on November 28, 2007, and January 7, 2008, Villa Park directed HCSC to cancel plaintiff's coverage and continuing coverage, respectively. The November 28, 2007, cancellation was due to plaintiff's termination of employment, while the January 7, 2008, cancellation was due to non-payment of premiums. Thus, the evidence presented revealed that HCSC met its obligations under the contract based on the information it received from Villa Park. Because HCSC complied with its obligation under the contract, plaintiff cannot establish that HCSC breached its contract on the basis that HCSC improperly cancelled plaintiff's COBRA coverage.

¶ 49 In sum, plaintiff failed to establish that HCSC breached the contract. Accordingly, there was no genuine issue of material fact and the trial court properly granted summary judgment to HCSC.

¶ 50 C. Miscellaneous Issues

¶ 51 Plaintiff raises several other issues in the "Issues" section of her appellate brief, including, as defendants point out, whether the trial court erred in failing to conduct a pretrial conference and whether the trial court erred in denying her motion to disqualify defendants' attorneys. Because plaintiff fails to develop these arguments, they are forfeited. *Sexton,* 2012 IL

App (1st) 100010, ¶ 79. We have considered the remaining arguments and find them lacking in merit.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 54 Affirmed.