2015 IL App (2d) 141149WC-U

FILED: December 18, 2015

NO. 2-14-1149WC

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BURCH SERVICES, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Enrique Alvarez, Appellee).	))))))))	Appeal from Circuit Court of Kane County No. 14MR324 Honorable David R. Akemann, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court committed no error in finding the employer failed to file a bond in compliance with the Workers' Compensation Act and granting claimant's motion to quash summons and dismiss the employer's request for judicial review of the Illinois Workers' Compensation Commission's decision.

¶ 2 On June 12, 2007, claimant, Enrique Alvaraez, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), seeking benefits from the employer, Burch Services. Following a hearing, the arbitrator found claimant sustained accidental injuries that arose out of and in the course of his employment on September 11, 2006, and awarded claimant benefits under the Act, including wage dif-

ferential compensation. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision without further comment.

¶ 3 The employer sought judicial review in the circuit court of Kane County. Ultimately, the court granted a motion by claimant to quash summons and dismiss review on the basis that the employer failed to file a bond in compliance with the Act. The employer appeals, arguing the court erred in granting claimant's motion. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The record shows claimant worked for the employer as a heating, ventilation, and air conditioning (HVAC) installer. He sought workers' compensation benefits under the Act, alleging he suffered accidental work-related injuries on September 11, 2006, when he fell approximately 23 feet from a ladder and sustained fractures to his right arm, left arm, right leg, and right hip. On April 1, 2013, the arbitrator issued a decision in the matter, finding claimant sustained compensable injuries under the Act and awarding him wage differential benefits for the duration of his disability. On March 17, 2014, the Commission affirmed and adopted the arbitrator's decision. It set the bond for removal of the case to the circuit court at $75,000.

¶ 6 On April 14, 2014, the employer filed a request for summons and review in the circuit court of Kane County, seeking judicial review of the Commission's decision. The same date, it filed a document entitled "BOND—CERTIORARI—WORKERS' COMPENSATON," which identified the bond amount for removal to the circuit court as $75,000. The document was signed by Angela Howard on behalf of the employer. However, underneath the signature line, language that would have identified Howard "[a]s principal" for the employer was crossed out. Additional language was handwritten onto the document and identified Howard "as [a] former employee-not as principal" for the employer. The initials "AH" appear next to the handwritten

language. Further, the bond was also signed by William R. Madden on behalf of Hartford Fire Insurance Company, as surety.

¶ 7 On June 2, 2014, claimant filed a motion to quash summons and dismiss the employer's request for judicial review. Relevant to this appeal, he argued that contrary to section 19(f)(2) of the Act (820 ILCS 305/19(f)(2) (West 2006)) the bond filed by the employer with the circuit court "was not signed by any principal of" the employer. Claimant pointed out the bond document bore the signature of Howard, who signed specifically as a former employee of the employer and "not as principal." He maintained there was nothing in the record at the time of the filing of the bond to establish Howard's authority to bind the employer to pay the bond. Claimant asked the circuit court to enter an order quashing service of summons in the case and dismissing the employer's request for judicial review for lack of subject-matter jurisdiction.

¶ 8 On July 17, 2014, the employer filed a response to claimant's motion to quash and dismiss. It maintained its bond was sufficient because the bond document was signed by Howard who was a "prior owner" of the employer "and therefore a qualified principal." The employer argued that it was irrelevant that Howard signed the bond as a former employee since she was also a former owner of the employer. It further argued that, during the arbitration hearing in the underlying workers' compensation proceedings, Howard testified and identified herself as the employer's "director," stating "she 'was in charge of the payroll, human resources, accounts payable, accounts receivable. Basically the director of the office.' "

¶ 9 Additionally, the employer argued that, in September 2011, it underwent an involuntary dissolution and no longer had "an agent officially filed with the Office of the Illinois Secretary of State [(SOS)]." It attached a computer printout from the SOS's website, which identified the employer as being involuntarily dissolved on September 11, 2011. The printout identi-

fied Margaret Carlson as the employer's president and showed the employer's agent as having been "VACATED." The employer maintained that requiring it to have a bond signed by an "official agent" in order to file an appeal was "an extremely narrow and technical interpretation" of the Act, as well as "simply impossible." Further, the employer argued that preventing its appeal to move forward based on a technicality "would defeat the intention of the [A]ct[,] which allows appeals from the *** Commission to the Circuit Court."

¶ 10 On July 31, 2014, claimant filed a reply. He disputed that Howard had any ownership interest in the employer and noted she signed the bond document specifically "as [a] former employee-not as principal." Additionally, claimant argued the employer's claim that it was "impossible" to have the bond signed by an agent was belied by Howard's testimony at arbitration, which showed Howard's husband, Joe Howard, had been the employer's vice president and "could easily have signed the bond in compliance with" the Act. He attached a portion of the transcript from the arbitration hearing in which Howard identified Joe Howard as her husband and stated he was the employer's vice president and the current owner of another heating and air conditioning company.

¶ 11 The record shows, on August 7, 2014, the circuit court called the matter for hearing on claimant's motion to quash summons and dismiss judicial review. The employer failed to appear at the hearing and the court took the matter under advisement. On August 11, 2014, it granted claimant's motion to quash summons and dismiss judicial review on the basis that the employer's bond document was not in compliance with the Act's requirements and citing *Freedom Graphic Systems, Inc. v. Industrial Comm'n*, 345 Ill. App. 3d 716, 802 N.E.2d 1262 (2003).

¶ 12 On August 15, 2014, the employer filed a motion to vacate the circuit court's order. It argued it failed to appear at the August 7 hearing due to a "docketing error." The em-

ployer asked the court to grant its motion to vacate and allow the parties to present oral argument on claimant's motion to quash and dismiss. On August 28, 2014, the employer additionally filed a motion asking the circuit court to reconsider its decision to grant claimant's motion to quash and dismiss.

¶ 13 On September 4, 2014, the circuit court entered an order granting the employer 21 days "to file with the court documentation/evidence establishing Angela Howard's ownership interest/authority to bind [the employer] on the bond." The court also gave claimant time to respond to the employer's filing and set the matter for oral argument on October 16, 2014.

¶ 14 On September 24, 2014, the employer submitted Howard's affidavit. She averred as follows:

> "2. I was previously employed by Burch Services as an Office Manager on or around September 11, 2008.
>
> 3. As the Office Manager I had authority to sign company checks and contracts, thereby binding Burch Services on payment and labor obligations.
>
> 4. My deceased father was the original sole owner of Burch Services.
>
> 5. My father passed away in April 2006.
>
> 6. After my father passed away, my mother, Margaret Carlson, became the sole owner/President of Burch Services, with 100% ownership interest.
>
> 7. Burch Services formally stopped performing any business operation as of November 2010.

8. My mother, Margaret Carlson, passed away in April 2011.

9. Prior to her passing and through April 2011, my mother retained 100% sole ownership of Burch Services.

10. To my knowledge, no assets or property of, or ownership interest in, Burch Services was bequeathed to any surviving heirs in my mother's will.

11. To my knowledge, no other individual other than my mother, surviving or deceased, had any ownership interest in Burch Services when the company ceased operations in November 2010 or up to and after my mother passed away in April 2011."

¶ 15 The employer additionally submitted the affidavit of Mark Johnson. Johnson averred he was employed by Grinnell Mutual Reinsurance Company (Grinnell) as a claims director. He stated he was familiar with workers' compensation policies provided by Grinnell and asserted Grinnell had "an effective workers' compensation policy covering [the employer] for [claimant's] accident date of September 11, 2006." According to Johnson, under the policy, Grinnell provided workers' compensation benefits on behalf of the employer to injured workers. He stated the policy covered the workers' compensation claim at issue and "provide[d] that benefits will be paid assuming all other pre-conditions of the contract covering the workers' compensation [claim] are satisfied." The employer also submitted a copy of the workers' compensation insurance policy provided by Grinnell and covering the employer.

¶ 16 On October 16, 2014, the circuit court entered an order stating the matter was called for hearing on the employer's motion to reconsider and denying that motion. The appel-

late record does not contain a transcript of the hearing.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, the employer argues the circuit court erred by granting claimant's motion to quash summons and dismiss judicial review on the basis that it failed to file a proper appeal bond consistent with the requirements of section 19(f)(2) of the Act. For the reasons that follow, we affirm the circuit court's decision.

¶ 20 In workers' compensation proceedings, "the jurisdiction of the courts is never presumed." *Illinois State Treasurer v. Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 15, 30 N.E.3d 288. "[O]n appeal from a decision of the Commission, the circuit court obtains subject matter jurisdiction only if the appellant complies with the statutorily-prescribed conditions set forth in the Act." *Residential Carpentry, Inc. v. Kennedy*, 377 Ill. App. 3d 499, 503, 879 N.E.2d 439, 442-43 (2007). "[T]o vest the courts with jurisdiction to review Commission decisions, strict compliance with the provisions of the Act is necessary and must affirmatively appear in the record." *Illinois State Treasurer*, 2015 IL 117418, ¶ 15, 30 N.E.3d 288. "Whether a court has jurisdiction to review an administrative decision presents a question of law" and is subject to *de novo* review. *Illinois State Treasurer*, 2015 IL 117418, ¶ 13, 30 N.E.3d 288.

¶ 21 Section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2006)) requires that proceedings for review of Commission decisions "be commenced within 20 days of the receipt of notice of the decision of the Commission." Within that "20–day period, a written request to the clerk of the court for the issuance of a summons must be made." *Vallis Wyngroff Business Forms, Inc. v. Workers' Compensation Comm'n*, 402 Ill. App. 3d 91, 93, 930 N.E.2d 587, 589 (2010). "However, before a summons can be issued, a bond must be tendered to the clerk of the

circuit court." *Vallis*, 402 Ill. App. 3d at 93, 930 N.E.2d at 589. With respect to the bond required for review, section 19(f)(2) of the Act (820 ILCS 305/19(f)(2) (West 2006)) provides as follows:

> "No such summons shall issue unless the one against whom the Commission shall have rendered an award for the payment of money shall upon the filing of his written request for such summons file with the clerk of the court a bond conditioned that if he shall not successfully prosecute the review, he will pay the award and the costs of the proceedings in the courts. The amount of the bond shall be fixed by any member of the Commission and the surety or sureties of the bond shall be approved by the clerk of the court. The acceptance of the bond by the clerk of the court shall constitute evidence of his approval of the bond."

The statutory language clearly requires " 'that the bond is to be executed by the party against whom the award has been made.' " *Vallis*, 402 Ill. App. 3d at 93, 930 N.E.2d at 589 (quoting *Deichmueller Construction Co. v. Industrial Comm'n*, 151 Ill. 2d 413, 414, 603 N.E.2d 516, 517 (1992)).

¶ 22 "Because the appeal bond must be filed at the time the written request for summons is presented to the clerk of the court, it too must be filed within the 20–day deadline." *Residential Carpentry*, 377 Ill. App. 3d at 503, 879 N.E.2d at 443. "Strict compliance with the section 19(f)(2) bond requirement is necessary *** to confer jurisdiction upon the circuit court to review a decision of the Commission." *Vallis*, 402 Ill. App. 3d at 93-94, 930 N.E.2d at 589. A bond will be deemed sufficient where it clearly shows the amount of the bond, the principals, and

the surety. *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 326 Ill. App. 3d 438, 442, 761 N.E.2d 768, 771 (2001).

¶ 23 Additionally, the purpose of the Act's bond requirement "is to bind the principal" (*Freedom Graphic*, 345 Ill. App. 3d at 720, 802 N.E.2d at 1265) and provide "security to the injured employee that the party seeking review will pay the amounts due under the Commission's award if the appeal is unsuccessful" (*Illinois State Treasurer*, 2015 IL 117418, ¶ 34, 30 N.E.3d 288). "A bond is insufficient where the signature is one other than that of the principal because such a signature would not bind the corporation to payment of the bond." *Freedom Graphic*, 345 Ill. App. 3d at 720, 802 N.E.2d at 1265. "Corporations act through their officers and directors and are bound by their actions when performed within the scope of their authority." *First Chicago v. Industrial Comm'n*, 294 Ill. App. 3d 685, 691, 691 N.E.2d 134, 138 (1998). Thus, "a reasonable person would assume that a corporate officer has the authority to bind a corporation financially because decisions relating to a corporation's financial obligations are typically reserved for corporate officers and directors." *First Chicago*, 294 Ill. App. 3d at 691, 691 N.E.2d at 138.

¶ 24 On appeal, the employer first argues its bond was sufficient because Howard had the authority to financially bind the employer. After reviewing the record, we find both the appeal bond itself and Howard's affidavit belie that assertion. In this instance, Howard signed the bond document at issue on behalf of the employer. However, language on the document which would have identified her "[a]s [the employer's] principal" was crossed out and replaced with language that identified her "as [a] former employee-not as principal." The record indicates Howard initialed that change and, thus, reflects she was not someone with authority to bind the employer with respect to payment of the bond. As the bond failed to identify a principal—and, in fact, was signed by someone expressly stating she was not a principal—the bond was not in

compliance with the explicit requirements of the Act and, therefore, deficient.

¶ 25 In this case, the employer contends it received the Commission's decision on March 24, 2014. Thus, the 20-day statutory review period ended on April 14, 2014. In their briefs, both parties cite this court's decision *First Chicago* as providing authority for the employer to submit evidence regarding Howard's ability to bind a corporation after the expiration of that 20-day deadline. In that case, an individual signed an appeal bond for the corporate employer and, although the face of the bond document identified him "[a]s principal" for the employer, it did not identify his corporate office or authority to bind the employer. *First Chicago*, 294 Ill. App. 3d at 687, 691 N.E.2d at 135. The claimant filed a motion to quash summons and dismiss the action on the basis that the bond was insufficient to bind the employer because the individual signing the bond as principal did not sign "as an officer of [the employer] and did not indicate that [he] was authorized to execute the bond on [the employer's] behalf." *First Chicago*, 294 Ill. App. 3d at 687, 691 N.E.2d at 135. The circuit court granted the claimant's motion on the basis that the signing individual failed "to identify his authority" and the employer appealed. *First Chicago*, 294 Ill. App. 3d at 687, 691 N.E.2d at 136.

¶ 26 On appeal, we reversed the circuit court's judgment and remanded the matter with directions that the court allow the employer to present evidence identifying the individual who signed the bond as its principal. *First Chicago*, 294 Ill. App. 3d at 692, 691 N.E.2d at 139. In so holding, we first found that the Act contains no requirement that, to invoke the circuit court's subject-matter jurisdiction, an individual signing an appeal bond on behalf of a corporate employer must identify his or her status as an officer of the corporation. *First Chicago*, 294 Ill. App. 3d at 688, 691 N.E.2d at 136. Second, we held that, where the individual signing the appeal bond failed to identify his or her status and the claimant attacked the appeal bond after the

expiration of the 20-day statutory review period, the employer could submit evidence identifying the individual's corporate office and authority to bind the corporation. *First Chicago*, 294 Ill. App. 3d at 689, 691 N.E.2d at 137.

¶ 27 Initially, we note that the facts presented in *First Chicago* are distinguishable from those in the case at bar. Notably, unlike the bond in *First Chicago*, the bond in the present case did not identify Howard as the employer's principal and did set forth her status with the employer. Specifically, the record shows Howard crossed out language on the bond which would have identified her as the employer's principal and, instead, identified herself "as [a] former employee-not as principal." Thus, as Howard clearly identified herself as someone without authority to bind the employer to the bond, the applicability of *First Chicago* to the facts of this case is questionable.

¶ 28 Nevertheless, in contrast to what occurred in *First Chicago*, the circuit court in the instant case allowed the employer to present evidence of Howard's authority to bind it to the bond after the expiration of the 20-day statutory review period. The court found that additional evidence insufficient and we agree with its determination. The record shows the employer submitted Howard's affidavit. Although the employer had repeatedly argued before the circuit court that Howard had authority to bind it as a "prior owner" of the employer, her affidavit showed only that she "was previously employed by [the employer] as an Office Manager on or around September 11, 2008." Howard did not assert that she ever had an ownership interest in the employer or that she ever acted as a corporate officer or director. Rather, she averred that her parents had been the sole owners of the employer and were deceased. Additionally, claimant presented evidence that Howard had testified at arbitration that her husband had been the employer's vice president.

¶ 29 In her affidavit, Howard additionally averred that "[a]s the Office Manager [she] had authority to sign company checks and contracts, thereby binding [the employer] on payment and labor obligations." The employer relies on this statement as evidence of Howard's authority to bind the employer with respect to financial matters. However, given Howard's indication on the bond document that she was the employer's former employee and not its principal, her failure to identify herself as a corporate officer or director, and her statement that she was the employer's office manager "on or around September 11, 2008," we find this additional assertion in her affidavit fails to reflect that she had authority to make financial decisions for the employer or to bind it as to the bond.

¶ 30 Given the circumstances presented, the circuit court committed no error in finding the employer's bond was not signed by a principal of the employer. The record reflects the bond was not executed by "the one against whom the Commission shall have rendered an award for the payment of money" (820 ILCS 305/19(f)(2) (West 2006)) and was, therefore, deficient.

¶ 31 On appeal, the employer alternatively contends that the purpose behind the Act's bond requirement was met in this case because there is no danger of the underlying workers' compensation award going unpaid if the employer's appeal is unsuccessful. Specifically, it argues the bond required by the Commission was guaranteed by a surety, Hartford Fire Insurance Company, and the record contains evidence that the employer maintained a workers' compensation insurance policy through Grinnell.

¶ 32 We find the employer's argument unpersuasive as it ignores the explicit statutory language. As stated, section 19(f)(2) provides: "No such summons shall issue unless *the one against whom the Commission shall have rendered an award for the payment of money* shall upon the filing of his written request for such summons file with the clerk of the court a bond con-

ditioned that if he shall not successfully prosecute the review, he will pay the award and the costs of the proceedings in the courts." (Emphasis added.) 820 ILCS 305/19(f)(2) (West 2006). Thus, the Act clearly requires " 'that the bond is to be executed by the party against whom the award has been made.' " *Vallis*, 402 Ill. App. 3d at 93, 930 N.E.2d at 589 (quoting *Deichmueller*, 151 Ill. 2d at 414, 603 N.E.2d at 517). Here, without the signature of an individual with authority to bind the employer to the bond, the Act's requirements have not been met and the circuit court lacks jurisdiction to review the Commission's decision.

¶ 33 Finally, on appeal, the employer argues it is no longer in business and has no remaining assets or employees. It maintains that affirming the circuit court under such circumstances "would lead to the absurd consequence where a party obligated to pay is never allowed to" seek review of the Commission's decision. The employer contends due process concerns are raised because "the party that is obligated to pay, the insurance company, would have no recourse other than to accept the award."

¶ 34 Initially, we note the employer failed to cite any relevant authority with respect to its specific claim of a due process violation. A party forfeits an argument for purposes of appeal where it fails to support its argument with citation to authority. *Vallis*, 402 Ill. App. 3d at 94, 930 N.E.2d at 590.

¶ 35 Further, we note that "[t]he purposes of the Act do not concern themselves with an insurer's interests in intervention" and, instead, "[t]he purpose of the Act is to compensate claimants as early as possible for income lost due to job-related injuries." *QBE Insurance Co. v. Workers' Compensation Comm'n*, 2013 IL App (5th) 120336WC, ¶ 20, 993 N.E.2d 1090. Moreover, in this instance, there is nothing in the record to indicate that the employer's workers' compensation insurer was a "party" to the underlying workers' compensation proceedings as stated

by the employer in its brief. See *QBE Insurance Co.*, 2013 IL App (5th) 120336WC, ¶ 22, 993 N.E.2d 1090 ("The Act does not mandate that the insurance carrier be made a party to the proceedings. The statute merely provides that the insurance carrier 'may be made a party to the proceedings' in the event the employer does not pay the award.").

¶ 36 Finally, we note this court rejected a similar argument in *Vallis*. There, the employer argued "that, because it was out of business and it was impossible to have the bond executed by one of its officers or other employees, the bond executed by [an individual associated with the employer's insurer] substantially complie[d] with the requirements of section 19(f)(2) as [the employer's insurer was] the 'only entity which would be responsible to pay any eventual award.' " *Vallis,* 402 Ill. App. 3d at 94, 930 N.E.2d at 590. In rejecting the employer's argument, we stated as follows:

> "The argument is defeated *** by the unambiguous language of the statute which requires the bond to be executed by the party 'against whom the Commission shall have rendered an award.' [Citation.] In this case, that party is [the employer], not [the employer's insurance carrier]. When the requirements of a statute are clear and unambiguous, such as in this case, we must give the statute effect as written, without reading into it provisions that the legislature did not express. [Citation.]" *Vallis*, 402 Ill. App. 3d at 94, 930 N.E.2d at 590.

¶ 37 For the same reasons expressed in *Vallis*, the employer's argument in the instant case is also defeated.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the circuit court's judgment.

¶ 40 Affirmed.