2016 IL App (4th) 150142-UB

NO. 4-15-0142

Order filed December 1, 2015

Modified upon denial of rehearing January 6, 2016

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MARGIE A. YAGER, MARK FRITCHER, LARRY FIRST, EDWARD A. BUGGER, and JOHN E. STAGGS II,	)	Appeal from Circuit Court of Champaign County
Plaintiffs, and	)	No. 95L1336
EDWARD ATKINS, M.D., and MARK SCHACHT, M.D.,	)	
Petitioners-Appellants, v.	)	
HEALTH CARE SERVICE CORPORTATION, a Mutual Legal Reserve Company, d/b/a/ Blue Cross Blue Shield of Illinois,	)	Honorable Michael Q. Jones,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's dismissal of petitioners' first amended section 2-1401 petition, which was filed 17 years after the final judgment, was proper where petitioners failed to show the judgment was void.

¶ 2 Petitioners, Edward Atkins, M.D., and Mark Schacht, M.D., appeal the Champaign County circuit court's February 17, 2015, order dismissing their petition brought under section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2014)) based on the expiration of the statute of limitations. On appeal, petitioners argue the court's dismissal was erroneous because (1) the original judgment was void because not all of the plaintiff classes received proper notice and (2) the court had jurisdiction because the

settlement classes were still "open." We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Original Proceedings

¶ 5 On September 7, 1995, plaintiffs, Margie Yager and Mark Fritcher, filed a class action complaint against defendant, Health Care Service Corporation. Plaintiffs alleged they were insureds who had paid premiums directly or through their employers to defendant in return for health insurance policies or health plans underwritten by defendant. Plaintiffs brought the action on behalf of all similarly situated insureds. The complaint challenged defendant's practice of calculating its insured's copayment amounts, reimbursement liens, and coverage maximums using a health care facility's full billed charges for covered services and not passing on any discounts in costs defendant later received under agreements with the health care facility. The term "reimbursement liens" refers to defendant's assertion of liens and/or seeking reimbursement from its members injured by an act or omission of another person or entity for payments received by such members whether by action at law, settlement, or otherwise to the extent that defendant provided benefits to such members. Plaintiffs amended the complaint several times, including adding plaintiff, Larry First, as a named plaintiff.

¶ 6 In June 1996, the parties submitted a settlement agreement to the circuit court for approval. Along with the settlement agreement, plaintiffs amended their complaint to add two additional named plaintiffs, John E. Staggs II, and Edward A. Bugger. The amendment stated, *inter alia*, Staggs had a minor daughter, who was a dependent under his group health benefit plan, and she incurred medical expenses that caused her to reach or exceed her overall lifetime benefit maximum. As to Bugger, he too had a minor daughter, who was covered under his benefit plan with defendant, and she incurred medical expenses initially paid by defendant but

the money was later paid back to defendant on her behalf pursuant to the reimbursement lien process.

¶ 7 After months of litigation, which included amendments and numerous objections, the circuit court entered its final, written order approving the class-action settlement on March 28, 1997. In the order, the court defined the settlement class as follows:

> "All current and former HCSC [(defendant)] members and other persons covered by HCSC or by a benefit plan underwritten, administered or provided by HCSC who have, or have had, any coinsurance obligations, out-of-pocket maximums and/or benefit maximums and/or reimbursement liens in connection with HCSC coverage underwritten, administered or provided by HCSC on or after January 1, 1989. [*See*, Settlement Agreement, Article VI]."

Moreover, the court found the settlement agreement, as amended, was in the class's best interests because, *inter alia*, it had resulted in the development of a new methodology, which provided "real and valuable prospective relief to current and future subscribers by passing along to them a proportional share of the discounts negotiated by the defendant." The court also found notice to the class had comported with "all due process requirements."

¶ 8 As to the language of the approved settlement agreement, Article VI of the agreement contained the same language defining the settlement class as the above-quoted language from the circuit court's final order. Moreover, the agreement provided for three separate settlement funds. A fund for claimants who reached and exceeded their overall benefit maximums between January 1, 1989, and June 5, 1996, the date of the circuit court's preliminary approval of the settlement agreement. Another fund for claimants who made payments to

defendant between January 1, 1989, and June 5, 1996, as part of defendant's reimbursement lien process. The third fund was for claimants who were once covered under defendant's coverage agreements between January 1, 1989, and June 5, 1996, but were no longer covered by defendant on June 5, 1996. The maximum amount of money defendant was obligated to pay was $8.67 million.

¶ 9 In addition to the three settlement funds, the settlement agreement provided for a new methodology for calculating deductibles, coinsurance obligations, out-of-pocket maximums, and benefit maximums. Under the agreement, defendant had to use the new methodology until July 1, 2011, but thereafter, it was no longer obligated to use it. The agreement also required defendant to submit the new methodology to the Illinois Department of Insurance (Department). The Department's approval of the new methodology was "a condition subsequent to this Agreement." If the Department did not approve the language of the new methodology, then defendant could declare the agreement null and void. As to reimbursement liens, the settlement agreement stated the following: "Pursuant to the terms of the Coverage Agreements, [defendant's] reimbursement liens in the past have been, now are and will continue to be calculated based on the facilities' full billed charges for covered services, without taking into account the contractual allowances, if any, resulting from [defendant]'s Hospital Agreements."

¶ 10 B. Section 2-1401 Petition

¶ 11 In June 2014, Atkins filed a section 2-1401 petition, seeking to vacate the circuit court's March 28, 1997, order based on fraud. On November 12, 2014, Atkins filed a first amended petition for section 2-1401 relief, adding Schacht as a petitioner, individually and as a parent and next of friend of his minor dependents.

¶ 12 In December 2014, defendant filed a combined motion to dismiss petitioners' first

amended section 2-1401 petition pursuant to section 2-619.1 of the Procedure Code (735 ILCS 5/2-619.1 (West 2014)). The motion asserted (1) petitioners lacked standing to bring the petition, (2) the statute of limitations had expired, and (3) the petition was facially insufficient to state a cause of action. Petitioners filed a response, and defendant filed a reply. On February 17, 2015, the circuit court held a hearing on defendant's motion to dismiss petitioners' first amended section 2-1401 petition. After hearing the parties' arguments, the court granted the motion to dismiss, finding the class-action judgment was not void and thus the petition was barred by the two-year statute of limitations.

¶ 13 On February 25, 2015, petitioners filed a notice of appeal from the circuit court's dismissal of their section 2-1401 petition, which listed the judgment date as February 17, 2014. On March 12, 2015, petitioners filed a timely amended notice of appeal, which corrected the incorrect judgment date and was in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 14 II. ANALYSIS

¶ 15 Section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2014)) establishes a comprehensive procedure for seeking relief from final orders and judgments more than 30 days after their entry. A section 2-1401 proceeding is commenced by the filing of a petition "supported by affidavit or other appropriate showing as to matters not of record." 735 ILCS 5/2-1401(b) (West 2014). "To be entitled to relief under section 2-1401, the petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the

section 2-1401 petition for relief." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21, 499 N.E.2d 1381, 1386 (1986). The petitioner has the burden of establishing the elements by a preponderance of the evidence. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 95, 858 N.E.2d 1, 7 (2006).

¶ 16 A section 2-1401 petition must be filed within two years of the entry of judgment. 735 ILCS 5/2-1401(c) (West 2014). However, the two-year limitation period does not apply when the petitioner alleges the judgment is void. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 202 (2002). A void judgment or order is one " 'entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved.' " *Sarkissian*, 201 Ill. 2d at 103, 776 N.E.2d at 201 (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 861 (1945)). A judgment or order is also void where it was produced by fraud. *Settlement Funding, LLC v. Brenston*, 2013 IL App (4th) 120869, ¶ 32, 998 N.E.2d 111. However, "[n]ot all judgments procured by fraud are void." *Settlement Funding*, 2013 IL App (4th) 120869, ¶ 32, 998 N.E.2d 111. "[O]nce a court acquires jurisdiction, subsequent fraud, concealment, or perjury will not render its order void." *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 165, 449 N.E.2d 812, 815 (1983). Only judgments procured by "fraud that prevents a court from acquiring jurisdiction or provides merely colorable jurisdiction are void *ab initio*." *Settlement Funding*, 2013 IL App (4th) 120869, ¶ 32, 998 N.E.2d 111. Additionally, when a petitioner challenges a judgment on voidness grounds, the petitioner does not need to establish it acted with due diligence or to allege that a meritorious defense existed. *Sarkissian*, 201 Ill. 2d at 104, 776 N.E.2d at 202.

¶ 17 Absent an evidentiary hearing on a section 2-1401 petition, we review *de novo* the

petition's dismissal. *People v. Vincent*, 226 Ill. 2d 1, 18, 871 N.E.2d 17, 28 (2007). Moreover, the reviewing court may affirm the dismissal on any basis supported by the record, regardless of the reasoning or the grounds relied upon by the circuit court. *People v. Harvey*, 379 Ill. App. 3d 518, 521, 884 N.E.2d 724, 728 (2008).

¶ 18 While the circuit court proceedings focused more on petitioners' argument the class-action judgment was void due to fraud, petitioners on appeal only claim the judgment is void due to a lack of personal jurisdiction as a result of a lack of notice of the settlement judgment to and inadequate representation of future insureds and the estates of minors and disabled individuals. They also claim the circuit court erred by dismissing the action because it still had jurisdiction of the judgment as a result of the settlement classes still being open. However, defendant suggests petitioners have forfeited that issue by failing to raise it in the circuit court and by presenting a vague argument without any citation to the record. While in their reply brief petitioners did note they raised the issue in the circuit court, they did not address their failure to cite specific evidence or argue why this court should consider hypothetical examples. A party's failure to provide relevant citations to the record in support of an argument violates Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) and results in forfeiture of the issue. *Mikrut v. First Bank of Oak Park*, 359 Ill. App. 3d 37, 51, 832 N.E.2d 376, 387 (2005). "This court 'is not a depository in which an appellant may dump its arguments without factual foundation in hopes that [the court] will sift through the entire record to find support for a determination favorable to appellant's position.' " *Mikrut*, 359 Ill. App. 3d at 51, 832 N.E.2d at 387 (quoting *Coffey v. Hancock*, 122 Ill. App. 3d 442, 444, 461 N.E.2d 64, 66 (1984)). Accordingly, we find petitioners have forfeited their open-settlement-class argument.

¶ 19 As to personal jurisdiction, the judgment at issue was rendered in a class action

suit. "Class action suits have long been recognized as exceptions to the general rule that absent parties may not be bound by a judgment *in personam*." *Frank v. Teachers Insurance & Annuity Ass'n of America*, 71 Ill. 2d 583, 592, 376 N.E.2d 1377, 1380 (1978). Thus, the Second District's *In re Estate of Ostern*, 2014 IL App (2d) 131236, ¶ 1, 23 N.E.3d 391, which was cited by petitioners, is distinguishable from this case as it addressed personal jurisdiction in the context of an order creating a trust for an estate.

¶ 20 The only case cited by petitioners that addresses a class-action suit postjudgment is *Hansberry v. Lee*, 311 U.S. 32 (1940). There, the United States Supreme Court held the defendants were not bound by a decree rendered in the prior class action suit because their interests had not been adequately represented in that suit. *Hansberry*, 311 U.S. at 45. While the Supreme Court found inadequate representation of the defendants' interests, it did not vacate the class-action judgment. Petitioners fail to cite any authority a final judgment in a class action suit is void and can be vacated where some affected individuals were not given notice of the settlement or did not have their interests adequately represented. In addition to *Hansberry*, petitioners cite *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 350 (1971), where the Supreme Court again addressed estoppel and allowed for the defense of estoppel by one facing a charge of infringement of a patent, which had previously been declared invalid. The third case cited by petitioners is *Frank*, 71 Ill. 2d at 586-87, 376 N.E.2d at 1378, which addressed the propriety of the circuit court's order in a *pending* class-action suit that required the plaintiff to give individual notice of the pending action to all identifiable class members because due process requirements necessitated such notice. Thus, even if we were to find error regarding the handling of the interests of minors or disabled adults or future subscribers, petitioners have failed to show that error would result in the class-action judgment

being void.

¶ 21 Accordingly, we find the trial court did not error by finding petitioners' first-amended section 2-1401 petition untimely under the two-year statute of limitations.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the Champaign County circuit court.

¶ 24 Affirmed.