In Brief

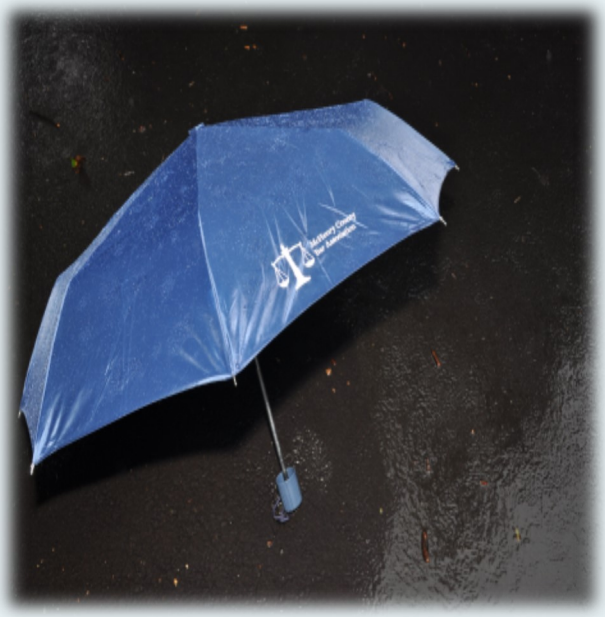
McHenry County Bar Association Quarterly Publication—August 2020

Golf Outings Past

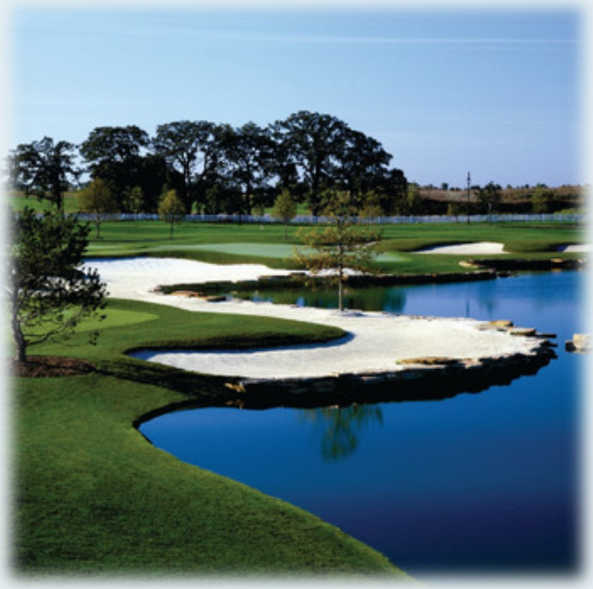
2007

2008

2009



2020



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2018/19

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Upcoming Events

Date	Event	Location	Time
August 18	Board of Governors Meeting	Virtual	Noon
August 25	General Meeting	Virtual	Noon
September 3	Criminal Law Section Meeting	Virtual	Noon
September 8	Family Law Section Meeting	Virtual	Noon
September 10	Civil Law Section Meeting	Virtual	Noon
September 15	Board of Governors Meeting	Virtual	Noon
September 22	General Meeting	Virtual	Noon
October 1	Criminal Law Section Meeting	Virtual	Noon
October 13	Family Law Section Meeting	Virtual	Noon
October 20	Board of Governors Meeting	Virtual	Noon
October 27	General Meeting	Virtual	Noon

Board Meeting Minutes

April Meeting Minutes

May Meeting Minutes

June Meeting Minutes

Inside this issue:

President's Page

By Jenette Schwemler

2020/21 MCBA President

When I started on the Executive Board of the McHenry County Bar Association, I never imagined practicing law during a government shutdown. I never thought I would watch court on YouTube or argue my case on something called Zoom. The only Zoom I knew of was a kids TV show that was on in the 1970s. Throughout the pandemic, I realized how important it is to find new ways to adapt my practice. After over 20 years of taking for granted things like going to lunch with colleagues, negotiating face to face at the courthouse, and not asphyxiating myself with a mask during an argument, it is time for me to embrace this new "bizzaro world."

I believe it is important for our organization to provide help and support to our members in how to maneuver during these strange days. Reluctantly, I had to admit that I needed help from the younger generation on how to use Zoom and found out just how hard it is to teach an old dog new tricks. Hard, but not impossible. Even when we emerge from the pandemic, I believe many of the new tricks we were required to learn (like Zoom) will become part of our everyday practices. My goal is to have the MCBA be a resource that can help make this transition.

As part of helping with this transition, the MCBA will continue to post standing orders and revised standing orders of the McHenry County judges. We will provide information for online continuing legal education opportunities offered by the ARDC. We are looking into providing relevant continuing legal education where a member can choose to attend the event in person or via Zoom. As always, members are encouraged to suggest other ideas to enhance the services offered by the MCBA.

While we all try to find our way through this maze of uncertainty, I hope to keep the comradery of the organization alive by offering a Zoom Virtual Attorneys Lounge where attorneys can meet and network or otherwise "hold court." We had our first lounge on July 8th, and I met a couple new attorneys and shot the breeze with a few I've known for a while. We are also offering a Zoom Virtual Happy Hour where attorneys can socialize. The first happy hour was on July 30th, and unfortunately, I could not attend. However, I heard we had a good mix of attorneys who participated. Staying in touch and talking with our colleagues can be fun and provide a little stress relief from our day to day practices that now have the added stress of the pandemic.

With this unprecedented situation, the MCBA will take advantage of the COVID-19 shutdown and continue to try new ideas to make participation in the organization easier and more convenient. Some ideas will work and some will not. I ask members to be patient with us as we figure out this new landscape. While I sincerely appreciate the convenience of technology that allows us to stay in touch, at some point, I hope that we return to something close to how things were. Until then, stay safe and remember, the MCBA is here for you.

The Zoom Attorney Primer

By: Brian K. Stevens

In an effort to modify aspects of the court system to limit the number of in-court participants, while at the same time maintain access to justice for the litigants and the public, many courthouses and law firms have moved to virtual court calls and videoconferencing. One of the most popular formats is Zoom. In this article, we will take a look at some of the basics of that virtual meeting application.

In case you don't know, Zoom is the premier videoconferencing program currently in use for, not only law-related communications, but business meetings of all kinds. Even better, it has been approved *safe* for adults over 40. Having learned to use Zoom a good two months ago, I am a bona fide expert on the topic, qualified to give advice beyond my years, much like a newly married man dispenses sage wisdom to his bachelor friends.

How to get Zoom

The first step to becoming proficient in this virtual world is to get the Zoom App. For this, you go to the *App Store.* Note: It is on your phone. Go there and download it. If you don't know how to download, immediately search your family members for a 12-year-old to help you. Also, don't fall for that common teenager trick of being told the App Store is located at Algonquin Commons, only to drive around for an hour and not find it or any parking. Not that I would ever fall for that ruse more than once.

With the Zoom App loaded on your phone or laptop, the next step is to get started. You do not need an account to join meetings, but you do need your own account, if you want to host, schedule and manage your own meetings. Make an account to have the flexibility to be a Host. You will want to do this, if for no other reason than to use Zoom for family virtual meetings and have fun muting your brother-in-law throughout.

How to Join a Meeting

Armed with your account, you can join meetings with ease. All you need is the link sent to you from the Host. Click on that link and it will take you to the "Join" page. You will need to enter the Meeting ID that the Host sent you. If they did not send you a Meeting ID number, they likely invited youby mistake. You should turn off your computer and spend the rest of the night brooding about how much fun they are having without you. Similarly, if the Meeting ID is not accurate, they ditched you again, just like that time you all agreed to meet up at that authentic Albanian bar and grill in Edgewater, and they went to Rush Street instead. Chalk it up to experience. It is probably your hair. Assuming, however, the Meeting ID was for you and is accurate, now you are ready to join the fun.

How to Appear on Zoom

To prepare for the Zoom meeting, you should dress at least as well as you would dress if you were appearing in person, or more accurately, dress *half* as well. This means being besuited impeccably from the waist up. Your camera will only display this portion of you. Therefore, the time you would finish getting dressed is better used for additional sleep or leveling up on Angry Birds. This is one of the isolated times that your Brooks Brothers jacket and club tie pairs nicely with your old high school gym shorts and Nike slides.

The room you will use for your Zoom appearance is just as important. You don't need to dust or vacuum, but you should take the *Gilmore Girls* box set off the shelf behind you. Replace it with your law school Con Law textbook or a picture of you shaking hands with Mike Ditka, if you have one laying around.

Your Zoom environment should also be free from distraction. I like to tape a sign to the outside of my office labelled "Zoom Meeting - in progress!" That lets my family know they should only interrupt me for emergencies, as when my son barges in to complain that I am using all the Wi-Fi bandwidth and we have slower internet service than most villages in the Amazon basin.

You are now almost ready to hit the "Join" button. Before doing so, you should turn off your video and audio to make sure you look and sound your best. This is the time to check your hair and make sure you don't still have sleep lines on your face. Test your voice by singing anything from the *Sound of Music* . Edelweiss is good. When you feel you are at the peak of your physical attractiveness, then hit "Join." You will usually be moved to a "Waiting Room" where the Host will then have to admit you to the meeting. Be patient. The Host has many ministerial, pre-meeting details to which he or she is attending, including, most importantly, frantically opening the App themselves as they, too, have overslept.

Once they admit you, turn on your video, so the Host can see your smiling face and make some small-talk comment about not having seen you since yesterday. Laugh or better yet, come back with your own witticism about "Needing to stop meeting like this!" As a precursor, don't forget to "Unmute" yourself before talking each time, so you don't appear like Harpo Marx for the duration of the meeting.

Lastly, once you are on camera and in the Zoom meeting, don't leave for any reason. No one can resist the empty net and that is the time you will be asked to comment on what was just covered. Also, a judge with a good sense of humor will immediately call your case, so the entire courtroom can wait and watch for the moment you re-appear with the overloaded bagel you couldn't wait to have. And yes, no one will tell you, that for the rest of the Zoom meeting, you had cream cheese on the end of your nose.

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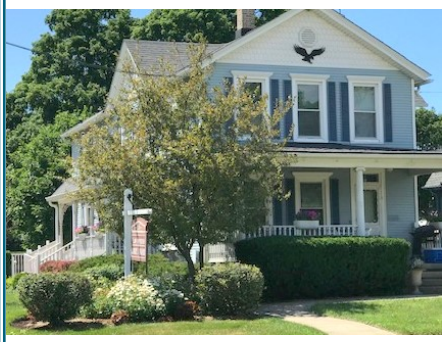

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Using Zoom For Court: A Review After 8 Weeks

By: Honorable Justin Hansen

I will admit that I started this article with a grand plan. It's summer and the baseball season has started. So, I was going to use the tried and true analogy of baseball as our court system. I would make a very clever comparison between the introduction of instant replay to the introduction of Zoom, and continue that analogy to the expansion of instant replay with the possibilities for expanding the use of Zoom.

This article will not be that clever. My own schedule got busier and Mr. Bligh (our MCBA newsletter chair) is a real taskmaster, so I'll place blame on the deadline. Forgive me as you see fit.

Still, I have some thoughts on Zoom that I'd like to share with you. The 22nd Judicial Circuit has been using Zoom to varying degrees in many courtrooms since June 1. In my family division courtroom, I use it frequently. Every day, people appear remotely for court. Although I have not kept an official tally, I would approximate that at least half of the cases I've addressed since June 1 have included at least one Zoom appearance. Most of these have been court dates for status, case management or presentment of motions. Occasionally, I will conduct hearings over Zoom-- some with just argument and some with evidence. Based upon my own experience and some input from my colleagues, I offer the following reactions to using Zoom for court.

1. Public feedback was appreciated and helpful. After we drafted the *Guidelines For Virtual Courtroom Proceedings In The Twenty-Second Judicial Circuit*, we sent it out for review and comment. Happily, some of the first comments received were along the lines of, "Thanks for asking!" I was reminded that our local bar and our partners in the justice system are engaged and willing to discuss improvements and how to implement those improvements. Not surprisingly, many of the comments that followed were helpful from a practical and a legal perspective. I can speak for my colleagues and say that we are thankful for your input and will continue to look for constructive ways to invite review and comment.

2. Zoom is often more efficient for both attorneys and self-represented litigants. At least anecdotally, there is evidence that remote appearances can be more efficient than a traditional court appearance. I hear attorneys scheduling appearances with me via Zoom on days they also have to appear in other counties. Self-represented litigants have an easier time appearing in court because they can take less time away from work. We have heard similar praise about the convenience of remote appearances from elderly parties, students, and non-local parties. Attorneys that appear via Zoom are able to appear from their office and, it would appear, work on something else while waiting for their case to be called. I don't mean to discount the value of speaking face to face at the courthouse. In person discussions at the courthouse can be very productive. But, based upon the past couple months, Zoom offers efficiencies that traditional court appearances cannot match.

3. We're all getting better at this with time. As expected, there were some hiccups early on with Zoom. In my courtroom, many of those were based upon unfamiliarity with the platform. I will admit that (more than once), I gave my opening monologue to the people in my courtroom and on Zoom, only to realize I was muted and nobody appearing remotely heard a word I said. Given that we wear masks in court, the Zoom participants probably didn't even know I was talking – they probably just saw me looking at my camera for an unusual period of time while nothing happened. Over the past several weeks, I've gotten better at Zoom and so have the parties appearing before me. We are all doing a better job of waiting a second or two before speaking to account for an audio delay and avoid interruptions. Attorneys are figuring out how to be present and waiting for their case in my virtual courtroom while simultaneously doing the same in other courtrooms. Orders after court are coming in faster, or even beforehand, and my fellow judges and I are getting better at electronically handling the simple orders ourselves.

Relatedly, the technology is also improving. We've upgraded from the cameras in or on our monitors to standalone devices with 360-degree cameras, multi-directional microphones, and good quality speakers.

4. Certain aspects of the platform are more useful than expected. I have found Zoom to be easily adaptable to the courtroom setting, but there are certain features that didn't seem appropriate. For instance, I initially turned off the chat function out of concern that it could be used to communicate among participants during a hearing. That concern has not been realized, mostly because we have very few evidentiary hearings via Zoom. At the suggestion of an attorney, I turned the chat function back on and now attorneys can let me know via the chat that their case is ready to be called. The "hand raise" function has been used similarly. Other features have proven even more useful than I originally expected. The waiting room and livestream features can be used in conjunction by attorneys to see progress on the court call, or to check whether I am on the bench or on recess.

5. Certain aspects of the platform should be used sparingly by the Court. I'm thinking specifically of the "mute" function, although this point would also apply to sending people out of a courtroom or turning off someone's video. I've used the mute feature once. It was during a pretrial conference, when the spirited conversation devolved into bickering about how much each side had billed for

fees. My patience thinned and I muted the parties so they would stop arguing. In retrospect, I wish I hadn't done that. While there's nothing wrong with instructing parties to stop talking, or to at least talk one at a time, the mute button is an abrupt way of making that happen and all the more so because it is harder on Zoom to pick up non-verbal cues of impatience or displeasure. Also, Zoom cannot capture and transmit audio as well as our ears, especially from multiple speakers at the same time, so it's probably fair to assume the parties can't always tell who is trying to talk or if everyone is talking at once, especially if some people are in the courtroom and wearing masks. Altogether, these are good reasons to be mindful about when these functions are appropriate and how they will be perceived.

6. Zoom may not be for everyone. Thankfully, we were able to reestablish many of our courthouse operations on June 1, 2020. Our courtrooms reopened and many cases resumed moving forward. While many people have appeared via Zoom, others have resumed coming to the courthouse including some of the regular attorneys. That's not a surprise, nor is it an issue. Keep in mind, our short term goal with Zoom was to provide an alternative that allowed meaningful participation in court system while reducing the number of people coming into the courthouse and the attendant health concerns. Assuming it can be done safely, it's fine to appear in person for a particular case. It is similarly understandable if you want to conduct an evidentiary hearing in-person. But, know that Zoom stands as an alternative means of access, if and when it's a fit for you, your client and your case.

7. It is not likely to go away, even when the pandemic resolves. I doubt that remote court appearances are a temporary measure. Many of the possible efficiencies noted above will still be possible after COVID-19 is no longer a pressing concern. Again, it is just anecdotal, but we have heard feedback that asks us to continue to offer the remote courtroom because it is better for parties given their health, job status, or place of residence. Let's not overlook, it might also be safer: not only because of COVID-19, but also because of issues including domestic violence, child abuse, harassment, or witness intimidation. My colleagues and I will have to deal with these kinds of requests on a case-by-case basis, but these issues combined with the success we have seen thus far make me think that Zoom will be in place long-term.

If we look beyond case-by-case advantages, there are other reasons to believe remote appearances are not a momentary trend. In traffic court, the notices that accompany traffic tickets have been modified to explain the Zoom option. It will slowly but surely make its way into the speech officers give at traffic stops and into common knowledge about traffic court. Many of our standing orders have been updated and our Supreme Court has modified its rules to allow for increased remote appearances[2]. Other states have similarly expanded the use of remote appearances and even a cursory review of those changes suggests that many of them are not meant to be temporary[3]. While remote court appearances may change or expand over the next several months, I predict it will be a means of accessing the courts that is here to stay.

8. The tales of inappropriateness have not come to pass. In the early days of Zoom court, news outlets were quick to pick up stories about people appearing for court via Zoom in less than acceptable ways. A popular story originates from a letter sent by a judge in Weston, Florida, reminding the attorneys to dress appropriately -- not shirtless, not in bed, and not with a beach cover-up. Those details were highlighted in subsequent news coverage, far more often than the sheer number of people who appeared via Zoom without any sort of incident, clothing-related or other[4]. Here, only a few people have caught my eye. Driving while Zooming is not okay. Answering the phone during your court proceeding is not okay. Leaving your tie on the rack for a Zoom status date? Eh. If that's a problem, it's not one that needs my attention. Overall, the positive usage has far outweighed any negatives.

Overall, I am positive about the use of Zoom in the past 8 weeks. Thank you for your participation and flexibility while we rolled out this program. I hope that you have a similar perspective on its short-term value and long-term viability. If so, or if not, please feel free to send me additional feedback about what went well or poorly so we can continue to improve this means of accessing our justice system.

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[1]If you're interested, the final version of the Guidelines can be found on the 22nd Judicial Circuit website

[2]Ill. Sup. Ct. Rule 45 now says courts may permit participants in nontestimonial civil and criminal matters to make a court appearances remotely, including by telephone or video conference. Rule 241 was amended to provide for the use of video conference technology in civil trials and evidentiary hearings

[3]The National Center for State Courts has collected information about various state court changes at https://www.ncsc.org/newsroom/public-health-emergency.

[4]https://www.local10.com/news/local/2020/04/13/judge-to-lawyers-please-get-out-of-bed-and-put-on-a-shirt-for-zoom-court-hearings/

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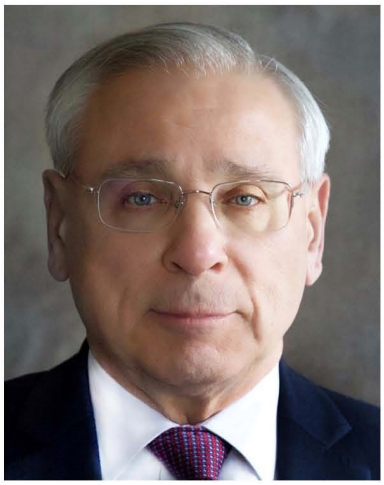
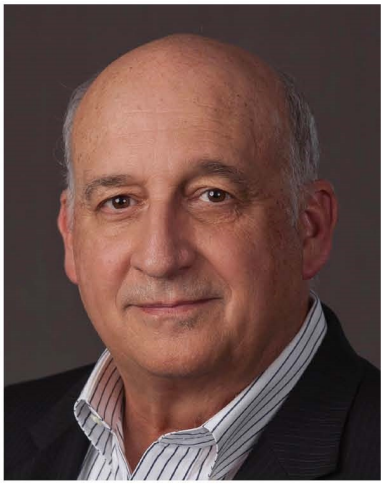


Hon. Michael J. Fusz, ret.



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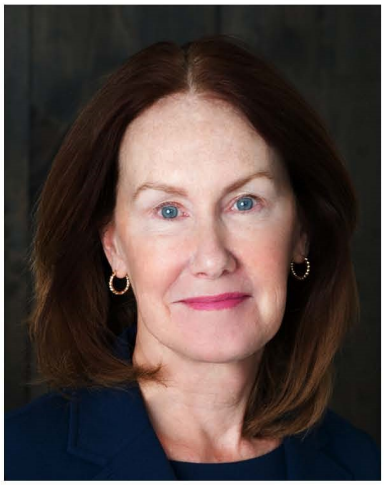
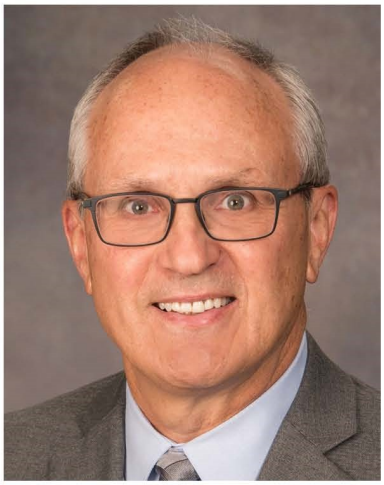


Hon. Margaret Mullen, ret.



Hon. J. Edward Prochaska, ret.

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Second District Civil Decision Digest

Decisions Posted April – July 2020

Andrew J. Mertzenich

*The content, citations, and analysis provided are for informational use only. No legal advice is being presented herein. An in-person consultation coupled with in-depth and independent research should be made before citing a case.

**Cases are arranged by type, and then chronologically by decision posting date with the most recent appearing last in the section.

Contents

Civil Procedure

Prinova Solutions, LLC v. Process Technology, LLC, 2018 IL App (2d) 170666

Posted: 06/23/2020

Facts: The Plaintiff filed a complaint stating that the Defendant had sold defective equipment to them, and that there were breaches of warranties and contracts. The defendant was successful under a 2-615 Motion to Dismiss and was dismissed from the suit. Plaintiff filed an amended complaint and served the respondent with discovery. Defendant filed an amended motion to dismiss and for a protective order, arguing that because they had been dismissed, they could not be named as a respondent in discovery.

Procedural History: The trial court found in favor the Plaintiff based upon a first district case that was contemporaneously decided. The Defendant asked the question to be certified and the trial court allowed the question.

Issues Raised on Appeal: Whether a defendant who was previously dismissed from a suit can subsequently be made a respondent to discovery and, in turn be converted into a named defendant again.

Applicable Law: Section 2-402 allows service upon respondents in discovery, even if they are not an original party to the case.

Outcome and Analysis: Certified question answered in the affirmative. Nothing in section 2-402's plain language precludes a party who was previously named as a defendant and dismissed without prejudice from being named as a respondent in discovery in an amended complaint.

Avery v. GRI Fox Run, LLC, 2020 IL App (2d) 190382

Posted: 04/15/2020, Corrected 06/24/2020

Facts: Plaintiff landlords sued Defendants regarding alleged ordinance violations on a property. The trial court dismissed the suit, finding that the complaint's allegations lacked specificity, were conclusory, and were insufficient. Plaintiffs amended, making significant changes and additions.

Procedural History: Plaintiffs' second amended complaint was dismissed pursuant to section 2-615 of the Code of Civil Procedure.

Issues Raised on Appeal: Whether sufficient facts were stated with enough specificity for the Complaint to survive a Motion to Dismiss.

Applicable Law: While the plaintiff is not required to set forth evidence in his or her complaint, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions. A pleading that merely paraphrases the elements of a cause of action in conclusory terms is insufficient. Nevertheless, a complaint will be deemed sufficient if the allegations contained therein "reasonably inform the

defendants by factually setting forth the elements necessary to state a cause of action."

Outcome and Analysis: Reversed and remanded. The complaint reasonably informed defendants of their noise-ordinance-violation claims. In addition, Illinois law does not require plaintiffs to set forth evidence in their complaint, only the ultimate facts to be proved. The plaintiffs stated facts that were requisite to their cause of action, and, thus, dismissal was not appropriate.

Trackman v. Michela, 2019 IL App (2d) 190131

Posted: 04/27/2020

Facts: The parties were children of the decedent. Plaintiff also filed against the defendant's children and his own children. Plaintiff alleged tortious interference with his inheritance, defendant's undue influence over the Decedent, and lack of testamentary capacity.

Procedural History: On defendant's motion, the trial court dismissed all three counts with prejudice, holding that they failed to state a claim upon which relief could be granted. The appellate court reversed and remanded the issue as to certain counts. Plaintiff then filed an amended complaint. Plaintiff subsequently moved for voluntary dismissal with the Order stating that "The Plaintiff is given leave to dismiss this lawsuit without prejudice and with leave to refile within the time provided by rule." Plaintiff refiled the suit against the Defendant, Defendant moved to dismiss based on the doctrine of *res judicata*.

Issues Raised on Appeal: Whether the doctrine of *res judicata* prohibited the Plaintiff from filing their amended complaint and litigating the issue after voluntary dismissal. Whether the plaintiff was barred from bringing their action due to final judgment having been entered.

Applicable Law: Illinois law uses the "transactional test" to determine whether two causes of action are identical for res judicata purposes.

Outcome and Analysis: *Res judicata* barred the filing of the second cause of action. Plaintiff's first action ended with a final order as to a specific count. While the remaining counts were left free to amend. The Plaintiff then voluntarily dismissed his remaining counts with leave to refile. However, the trial court's order did not deprive defendant of her right to raise the affirmative defense of *res judicata* against the new action. The right to file a new action meant just that and only that. It did not mean a right to be immunized against the perils of refiling. Further, a final order had entered on a single count. Therefore, the dismissal by the circuit court was affirmed.

Kun Mook Lee v. Young Rok Lee, 2019 IL App (2d) 180923

Facts: Plaintiff and Defendant were members of the same church. Plaintiff came to Defendant's property to assist in cutting down a tree, even though Defendant did not request assistance. Plaintiff and a helper used two ladders that were tied together were erected and placed against the very limb to be cut. Plaintiff then cut the limb and fell, sustaining life-threatening injuries.

Procedural History: Plaintiff filed a complaint for negligence, arguing that the Defendant failed to provide appropriate tools, safe instruction, a safe place to perform the work, and appropriate safety equipment and failed to adequately supervise the work and secure the debris. Defendant filed a motion for summary judgment. After a hearing, the trial court granted the motion.

Issues Raised on Appeal: Whether the Motion for summary judgment was properly granted. Specifically, whether the "open-and-obvious" rule could be raised in a premises liability case.

Applicable Law: The pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Outcome and Analysis: Affirmed. Defendant was entitled to raise the open-and-obvious rule to either an ordinary negligence claim or a premises liability claim. Furthermore, a landowner does not have a duty to protect an invitee from open-and-obvious conditions on the landowner's property. Therefore, the Defendant had no duty, and summary judgment was appropriate.

Grant v. Rancour, 2020 IL App (2d) 190802

Posted: 06/15/2020, Corrected 06/23/2020

Facts: On August 20, 2013, defendant turned her vehicle into the path of the vehicle occupied by plaintiffs. plaintiffs filed a five-count complaint alleging negligence by defendant. Defendant disclosed expert witnesses in their disclosures made under Illinois Supreme Court Rule 213. Plaintiffs sought information on the experts, and Defendant furnished information for one, but not the other. Plaintiffs filed a motion to compel supplemental written discovery. The trial court found that supplemental discovery should be disclosed. Furthermore, the Defendant had abused discovery, and the trial court encouraged Plaintiff's counsel to file a petition for fees and costs relating to the abuses. The court gave a specified time to either settle the case, produce records, of submit an affidavit stating the records did not exist.

Procedural History: At a later proceeding, the court found that the Defendant had not cured the conditions outlined in the sanctions order, found them in contempt of court, and ordered a daily fine. The Defendant appealed.

Issues Raised on Appeal: (1) the trial court had no personal jurisdiction over the entities from whom discovery was sought; (2) the court abused its discretion in granting the motions to compel, and defendant complied in good faith with all discovery requirements; (3) noncompliance with the discovery order was based on a good-faith effort to secure an interpretation of an issue that would serve defendant and the court, and, therefore, the contempt finding should not stand

Applicable Law: An order should be construed reasonably to give effect to the discernable intent of the court. Furthermore, Personal Jurisdiction dictates whether a court has power over an entity or individual. Secondly, Discovery is intended to be a cooperative undertaking by counsel and the parties, conducted largely without intervention of the court, for the purposes of ascertaining the merits of the case, which in turn promotes a fair settlement or a fair trial. Finally, when an attorney's noncompliance with a discovery order is based on a good faith effort to secure an interpretation of an issue to serve his or her client and the court, a civil contempt finding should not stand

Outcome and Analysis: Affirmed in part, vacated in part. The Orders at issue show the clear and discernable intent of the court to direct its order at defendant, not onto unserved parties. There was no problem with clarity of the Order, the Defendant simply failed to take any action whatsoever to comply with the court's order. In addition, the court did not abuse its discretion in its discovery order by granting the motions to compel and ordering defendant to provide amended answers to the supplemental interrogatories. Finally, because Defendant sought the contempt order as a procedural mechanism to initiate the appeal of the discovery and sanctions orders, the per-day fine would be reasonably vacated.

BankUnited National Ass'n v. Giusti, 2020 IL App (2d) 190522

Posted: 06/15/2020, Corrected 06/23/2020

Facts: More than seven years after sale to a bona-fide purchaser, the Defendant in an action petitioned the court to void a default judgment in a foreclosure action. Defendant argued that the summons was defective, and, as such, the court lacked personal jurisdiction over him.

Procedural History: The respondent filed a motion to dismiss the Petition. The court determined that the bona-fide purchaser's rights were protected under section 2-1401(e) of the Code of Civil Procedure. As there was no jurisdictional defect indicated on the face of the record, the trial court dismissed the Petition. Petitioner timely appealed.

Issues Raised on Appeal: Whether the summons in the matter was deficient. Specifically, the Defendant argues that the summons did not state that the Defendant was the "defendant" in the action, but only had his name on the document. As such, he argued that he was not properly apprised of the suit. The issue then becomes whether the trial court lacked personal jurisdiction over the Defendant and, thus, the order for foreclosure and rights of a third-party purchaser were voidable. Defendant also contends that he was improperly served within Cook County by a special process server not appointed by the Court.

Applicable Law: When a voidness challenge is brought more than 30 days after a default judgment, it may be considered under section 2-1401. Notwithstanding that, in a foreclosure sale action, the operative question is whether third party (*aka* bona-fide purchaser) rights have attached. If such third-party rights are attached, the only proper attack is based upon personal jurisdiction defects. Regarding an alleged defect in service by a special process server must indicate a jurisdictional defect on its face. Furthermore, a lack of jurisdiction apparent from the record may not be established by going beyond the face of the record.

Outcome and Analysis: Affirmed. The court had personal jurisdiction over the Defendant in the action. the purpose of a summons is to notify a party that an action has been commenced against him. Generally, a court should hold form over substance elevated when viewing a summons. Here, the summons was substantially compliant with applicable Supreme Court rules and was served upon the Defendant. As to the technical defects in this matter, there were only two names listed on the summons, and defendant would have known if he were the plaintiff. No defect regarding the summons was apparent from the face of the record. The place where the defendant was to be served had portions located within both Du Page and Cook counties. To determine the exact county served, materials outside the record are required and nothing in the record (which is the extent of analysis) indicates improper service.

Divorce

***In re* Marriage of Brnuke, 2019 IL App (2d) 190201**

Posted: 04/01/2020

Facts: The parties were married on February 1, 1986. No children were born to or adopted by the parties during the marriage. The judgment for dissolution of marriage (JDOM) was entered on April 30, 2012. On January 5, 2017, Petitioner (*pro se*) filed both a "Petition to Review/Extend Maintenance" and a "Petition to Modify (Increase) Maintenance" which alleged that Petitioner was presently unemployed and Respondent received a promotion and earned substantially more income than he did when the JDOM was entered. The Petitioner requested permanent maintenance based upon the allegation that there was a *substantial change in* the positions of the parties.

Procedural History: The court granted the petition to extend maintenance but denied the petition to increase maintenance. The court also denied Respondent's "petition to terminate or abate maintenance," ordering him to continue to pay Petitioner $3000 per month until he retires, at which time maintenance will terminate.

Issues raised on Appeal: Whether the trial court abused its discretion in granting the Petition to extend maintenance and denying the Petition to increase maintenance.

Applicable Law: When one seeks to extend an award of rehabilitative maintenance, the burden lies on the party seeking the extension to show he or she has met the affirmative duty of acquiring sufficient training or education to find employment. Secondly, Maintenance may be awarded only if the recipient spouse lacks sufficient property, including marital property apportioned to him or her in the divorce, to provide for his or her reasonable needs, is unable to support him or herself through appropriate employment, or is otherwise without sufficient income. However, where there is no provision for review, a motion to reconsider maintenance initiates a modification proceeding rather than a review proceeding. In a modification proceeding, maintenance will not be altered absent proof of a substantial change in circumstances. Proof of a change in circumstances is not required in a review proceeding.

Outcome and Analysis: Affirmed. The trial court did not abuse its discretion in extending the maintenance until the Respondent retired. The Respondent was in good health and still had working years ahead of him. Further, the Petitioner was never informed, either in the JDOM or by the court at the prove-up, that she had a duty to seek training or education to continue receiving maintenance. Secondly, the trial court was within its discretion in finding that an increase in Maintenance was inappropriate. Maintenance is appropriate to ensure that a former spouse maintains the standard of living established during the marriage. The Petitioner enjoyed that standard, even though the Respondent's position had changed for the better.

_In re_ Marriage of Izzo, 2019 IL App (2d) 180623

Posted: 04/23/2020

Facts: Petitioner and Respondent divorced in 2007. The judgment ordered Respondent to pay Petitioner monthly child support. Respondent petitioned to reduce his payments of monthly child support based upon his retirement and the Petitioner's increase in wealth. The trial court denied the petition to modify, finding no substantial change in circumstances. The court determined that Petitioner's increase in wealth, employment income, and passive income could not constitute a substantial change in circumstances because such increases were contemplated at the time of the original judgment. The court also determined that Respondent's unemployment could not constitute a substantial change in circumstances because it was voluntary.

Procedural History: The Circuit Court denied the Petition for modification.

Issues Raised on Appeal: Whether the trial court was correct in its determination that no substantial change in circumstances had occurred.

Applicable Law: A child-support judgment generally can be modified only upon a showing of a substantial change in circumstances. The determination of review of a trial court's modification decision is based on abuse of discretion.

Outcome and Analysis: The Appellate Court reversed and remanded. An alleged change in circumstances must have occurred at a time proximate to the filing of the petition to modify. The general rule remains that the change must have occurred since the entry of the most recent support order. Here, there were changes in income, parenting time, and other factors giving rise to a finding of a "significant change." On remand, the trial court is to determine the new support amount.

_In re_ Marriage of Wilhelmsen, 2019 IL App (2d) 180898

Posted: 05/13/20

Facts: The couple divorced in 2013. Respondent had petitioned several times to modify child support and had even declared voluntary personal bankruptcy. The court, after the bankruptcy, denied further motions for modification. Respondent filed a final motion to modify and this motion was granted.

Procedural History: The trial court held a hearing, after which it determined that the child support obligation would be reduced. However, the court ordered that Respondent would pay 40% of the child's college expenses. Respondent Appeals.

Issues Raised on Appeal: (1) whether the trial court properly applied factors under Section 513 of the Marriage and Dissolution of Marriage Act.

Applicable Law: Preliminary matter: Respondent failed to attach a transcript and any exhibits of the proceeding wherein they alleged an error occurred. Therefore, the Appellate Court was forced to conclude that the expenses were properly allocated as to the tuition.

Outcome and Analysis: Judgment Affirmed. There wasn't any information that would direct the Appellate court to reverse the decision.

_In re_ Marriage of Slesser, 2019 IL App (2d) 180505

Facts: Respondent was the beneficiary of a revocable trust that had loaned him several hundred thousand dollars to fund a construction business. On December 1, 2015, petitioner filed for dissolution of the marriage. On July 27, 2017, respondent filed an amended petition for declaratory judgment. The main issue on appeal was whether the trial court had correctly interpreted the evidence/documents in regard to a specific lot ("Lot 7") and the value thereof.

Procedural History: The trial court issued its written judgment for dissolution of marriage. The judgment placed a value of between $400,000 and $425,000 on Lot 7.

Issues Raised on Appeal: Whether the trial court's determination of the status of the "loans" was supported by a preponderance of the evidence.

Applicable Law: A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based on the evidence

Outcome and Analysis: Affirmed. Respondent presented no evidence to illustrate any obligation to repay his parents' trusts. When asked to provide proof of an actual loan, respondent could not do so. The mere fact that respondent had his attorney draft and record mortgages, without evidence of an obligation to actually repay the trusts any amount of money, is not sufficient to create an encumbrance on Lot 7 and reduce its value.

Elections and Public Office

Shannon-DiCianni v. Du Page Cty Officers Elect. Board, 2020 IL App (2d) 200027

Posted: 04/21/20

Facts: Petitioner filed nominating papers to be a candidate for office in a primary election. An objection was made on several grounds, including that the candidate used a false name. The Board agreed with the objector and removed Petitioner's name from the ballot.

Procedural History: The circuit court found in favor of the Board and Petitioner appealed. The Appellate Court issued a minute order previously that affirmed the circuit courts ruling. This opinion explains their decision.

Issues raised on Appeal:

1. Whether the Board's determination to remove Petitioner's name from the ballot was "clearly erroneous" and whether the Petitioner's nominating papers violate the Illinois Election Code.
2. Whether the Board properly ordered that petitioner's name would not appear on the primary ballot.

Applicable Law: 10 ILCS 5/7-10.2.

Outcome and Analysis: Decision of the Board affirmed. Although a candidate may combine her given name with her initials or nickname in her nominating papers, any combination of names must be "in addition to" her surname. Thus, under the plain and unambiguous language of the statute, petitioner was not permitted to combine her nickname with her surname by using a hyphen. [Reviewer's comment, "yes, it all came down to a comma"]. Therefore, the Board's determination that the candidate's name was disallowed was not clearly erroneous. As to whether the name should not appear on the ballot, "The second sentence of section 7-10.2, which outlines the requirements when a candidate changes her name, provides that the "failure to meet these requirements shall be grounds for denying certification of the candidate's name for the ballot or removing the candidate's name from the ballot, as appropriate."

Jaros v. Village of Downers Grove, 2020 IL App (2d) 180654

Posted: 06/25/2020

Facts: The village removed plaintiff from his seat on the public library Board of Trustees. The reason for the removal was based upon a report stating the plaintiff made bigoted comments at meetings of the Board. The Plaintiff sued for redress for both the report and his removal from the Board.

Procedural History: The trial court dismissed the matter with prejudice, and later denied a motion for leave to file an amended complaint.

Issues Raised on Appeal: Whether the reported statement was actionable defamation. Specifically, the Appellant (Plaintiff) stated in the Complaint that his reputation *as an attorney*, rather than as a trustee, was damaged. Thus, the question before the District Court was whether the reported statement defamed plaintiff in his occupation as attorney.

Applicable Law: A statement is considered defamatory if it tends to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with him or her. Some professions are not associated with such a high degree of personal character but are, nonetheless, regarded as positions of trust and so are governed by codes of ethics. One example are attorneys. If one makes a statement that would characterize a professional as not conforming to professional ethics, then it may be actionable as a defamation *per se*.

Outcome and Analysis: Affirmed. The statement attributed to him would not itself constitute a violation of professional ethics. Plaintiff did not make the alleged remark in the course of representing a client, thus the rule of professional conduct cited by the Plaintiff does not apply. Nor is it manifest from the reported statement that plaintiff lacks ability or integrity as an attorney. A statement is not defamatory simply because it paints the plaintiff as a bad character. More particularly, an attack on personal integrity becomes an actionable attack on professional integrity only when the statement is directly related to job skills or function. Here, the Plaintiff failed to show that.

Foreclosure & Real Estate Transactions

JPMorgan Chase Bank, N.A. v. Robinson, 2020 IL App (2d) 190275

Posted: 04/13/2020

Facts: Plaintiff bank filed a complaint to foreclose a mortgage against defendant. The bank issues several summons. Defendant was served. After defendant did not appear, Plaintiff moved for a default judgment. The court granted the motion and entered a default judgment of foreclosure and sale. The property was sold and the property was purchased. Almost seven years after the sale, the Defendant filed a motion to quash service and vacate all orders, stating that he was improperly served by a special process server in Cook County. Respondents filed Motions to dismiss.

Procedural History: All motions were dismissed. The trial court took judicial notice that the location of the property was within a municipality that was in different counties, Cook and Du Page.

Issues Raised on Appeal: Whether the Defendant was properly served and, as such, whether personal jurisdiction attached.

Applicable Law: Personal jurisdiction may be acquired either by the party's making a general appearance or by service of process as statutorily directed. Furthermore, where the rights of innocent third-party purchasers have attached, a judgment can be collaterally attacked only where an alleged personal jurisdictional defect affirmatively appears in the record. Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment does not affect the rights of a bona fide purchaser. A lack of jurisdiction is apparent from the record if it does not require inquiry beyond the face of the record.

Outcome and Analysis: Affirmed. The special-process-server affidavit shows that substitute service of the summons and the complaint was made on defendant in Chicago in zip code 60623. To support his argument, defendant cites a map of the area within the zip code, which shows that it is within Cook County. Defendant's citation to the map defeats his argument, however, because it leads the Court beyond the face of the record. As to the mortgagees following a bona fide purchase, a mortgage of realty is afforded the same protections as a bona fide purchaser if the mortgage is supported by consideration and secured in good faith, without knowledge or notice of adverse claims.

U.S. Bank, National Ass'n v. Reinish, 2020 IL App (2d) 190175

Posted: 04/21/20, Corrected 06/24/2020

Facts: Mortgagee issues a mortgage to the bank. Mortgagee defaulted. Bank moved for summary judgment. The respondent argued that she never received a notice of acceleration and that sending such notice was a condition precedent to the filing of a complaint to foreclose.

Procedural History: In their answer, Defendant/Respondent generally denied the foreclosure complaint's written allegations. Bank moved for summary judgment. Respondent replied with affidavit indicating that they did not receive the notice. Bank filed a reply asserting that the mortgage contract did not require a notice of acceleration, because Defendant defaulted on her obligation to make monthly mortgage payments. The trial court heard argument on the motion for summary judgment and ultimately granted the motion. The property was sold at a judicial foreclosure sale on January 8, 2018, and the sale was confirmed without objection. Appeal was timely.

Issues raised on Appeal:

1. Whether the mortgage contract required a notice of acceleration be sent to the mortgagee when mortgagee was in default. Specifically, whether a genuine issue of material fact existed.
2. Whether the Defendant met the pleading requirements to properly disallow judicial admission of facts within the foreclosure Complaint.

Applicable Law: Summary judgment is properly granted where the pleadings, depositions, and admissions on file, together with any affidavits, indicate that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Outcome and Analysis: Trial Court's Judgment for Foreclosure is affirmed. The bank followed the appropriate format of the Complaint under the Foreclosure act. If the complaint follows the prescribed format, it is statutorily deemed and construed to include certain allegations including "any and all notices of default or election to declare the indebtedness due and payable or other notices required to be given have been duly and properly given." Furthermore, without specific facts alleged in a verified

counterclaim, answer, or affirmative defense, a nonspecific denial is deemed a judicial admission that cannot later be disputed to defeat a motion for summary judgment.

U.S. Bank N.A. v. Gold, 2019 IL App (2d) 180451

Posted: 06/02/2020

Facts: A foreclosure action was filed against the Defendant. Defendant argued that the Plaintiff improperly accelerated the Mortgage. Plaintiffs filed for summary judgment.

Procedural History: The Court of Lake County entered summary Judgment in a foreclosure action and ordered sale of the property. The day of the hearing, the Defendant filed a counter-affidavit to Plaintiff's affidavit in support of summary judgment indicating a defect in the acceleration notice.

Issues raised on Appeal: Defendant's only argument on appeal was that the trial court erred in striking his counter affidavit in opposition to summary judgment as "untimely and conclusory."

Applicable Law: An affidavit may be timely filed at the time of the hearing.

Outcome & Conclusion: Affirmed. Nevertheless, the affidavit was properly stricken. the affidavit did not comply with Rule 191(a), as it contained a legal conclusion upon which defendant's entire claim was based. Thus, it was not truly an affidavit but a pleading attempting to raise an affirmative matter. As such, it was untimely and properly stricken. Furthermore, Summary Judgment was appropriate because the Defendant did not allege that he was prejudiced by the default notice, nor does he now argue that he was prejudiced.

Kai v. Board of Directors of Spring Hill Building 1 Condominium Ass'n, 2020 IL App (2d) 190642

Posted: 06/03/2020, Corrected 06/24/2020

Facts: Defendants had a requisite majority under the Condominium Property Act to force a bulk sale of condominium units. The defendant Board Members voted for a bulk sale and used an entity that they created and solely owned for the purposes of acquiring the remaining units in the association. Under the terms of sale, owners would receive an amount substantially less than the sale price for comparable units.

Procedural History: This Appeal came after the trial court's granting of a Motion to Dismiss.

Issues Raised on Appeal: Whether the procedures in the Condominium Property Act constituted the sole remedy available to the plaintiffs, regardless of any breach of fiduciary duty by the defendants.

Applicable Law: In construing a statute, the court's task is to ascertain and give effect to the legislature's intent.

Outcome and Analysis: Affirmed in part, remanded in part. For counts remanded, the legislature did not directly and explicitly supplant the right of condominium owners to sue for breach of fiduciary duties under the common law with statutorily exclusive remedies. Therefore, even though the correct procedure was followed under the Act, the Act was not the only remedy available to the Plaintiffs. Therefore, the Motion to Dismiss was wrongfully granted in part as to those claims.

Municipal, Zoning, Taxes, and Land Use

United City of Yorkville v. Fidelity & Deposit Co. of Maryland, 2019 IL App (2d) 180230

Posted: 04/24/2020

Facts: Defendant homebuilder entered into an annexation agreement with the Plaintiff City. The agreement provided that the Defendant would make certain improvements to the subdivision. Defendant, however, went bankrupt during the improvements. Third parties purchased lots in the subdivision but refused to make improvements to the subdivision.

Procedural History: The trial court dismissed the complaints pursuant to 2-619. The trial court cited that liability did not attach to the third parties under the various agreements and covenants. The appellants filed motions to reconsider dismissal.

Issues Raised on Appeal: Whether, the complaint was appropriately dismissed. Respondents argued that liability should not be attached as they were "merely successor owners" of property and not "successor developers."

Applicable Law: In construing a contract, the primary goal is to give effect to the intent of the parties, and the language of the contract governs.

Outcome and Analysis: Reversed and remanded. The language of the agreement mandates that a party's duties under the Annexation Agreement transfer to successors in interest. More important, the agreement permits a residential purchaser to take on development duties; it does not permit a successor developer to absolve itself of development duties. In this matter, the plaintiffs had properly alleged the successor companies were responsible for the improvements, and the Appellate Court could not say that the defendants breached the agreement as a matter of law. The defendants, under the agreement, had become successors and that it was properly alleged their breach of the annexation agreement.

The court also looked as to whether a surety relationship was formed between the defendants and cross-appellant.

Invenergy Nelson, LLC v. Rock Falls Township High School District No. 301, 2020 IL App (2d) 190374

Facts: The County Board of Lee County sought to induce commercial development by adopting a Tax Abatement Resolution in 2000. One energy company attempted to build a generating facility on land subject to the abatement, but ultimately filed bankruptcy before completion. Another company, the Plaintiff, approached the Board seeking an abatement on their development, which they had completed and brought into operation in 2016. The Board refused to honor the abatement.

Procedural History: The plaintiff, Invenergy Nelson LLC (Invenergy), filed a two-count complaint, raising a tax objection and requesting declaratory relief. The Board brought a Motion to dismiss pursuant to Section 2-615. The Court granted the Motion.

Issues Raised on Appeal: (1) whether the 2000 abatement resolution ran with the land, rather than expired after a certain period.

Applicable Law: The statutes granting tax exemptions on property must be strictly construed in favor of taxation and that a party claiming an exemption has the burden to conclusively prove that it is entitled to an exemption.

Outcome and Analysis: Affirmed. The Complaint failed to allege specific facts to support the allegation that the abatement resolution ran with the land, as opposed to it expiring after 10 years under the Tax Statute. In addition, the Plaintiff never had an agreement with the Board, rather, the Plaintiff sought merely to assume a benefit that had passed.

Orders of Protection

Maurissa J.B. v. Ingrida K., 2019 IL App (2d) 190107

Facts: Petitioner sought an Order of Protection based upon an emotionally abusive relationship with Respondent and a physically abusive relationship with their child.

Procedural History: An Emergency Order of Protection was granted. A hearing on a Plenary Order followed. The trial court found that the Respondent had harassed petitioner, and therefore entered a Plenary Order of Protection.

Issues Raised on Appeal: Whether the granting of a Plenary Order was against the manifest weight of the evidence.

Applicable Law: Proceedings to obtain an order of protection are civil and are governed by the preponderance-of-the-evidence standard. "Abuse" is defined to include physical abuse, harassment, or intimidation of a child but does not include reasonable direction of a child by a parent or person in loco parentis.

Outcome and Analysis: Reversed. the trial court's finding of harassment was not based on evidence adduced at the hearing, and therefore, it is against the manifest weight of the evidence. Furthermore, the witness relied upon when stating the "emotional abuse" upon the Petitioner came from a non-expert witness. Reversal is warranted.

Personal Injury & Pensions

Village of Buffalo Grove v. Board of Trustees of the Buffalo Grove Firefighters' Pension Fund, 2020 IL App (2d) 190171

Posted: 04/01/2020

Facts: A firefighter had a dangerous job. The job requirements included the ability "to face possible exposure to carcinogenic dusts, such as asbestos, toxic substances such as hydrogen cyanide, acids, carbon monoxide, or organic solvents either through inhalation or skin contact." The cancer, unfortunately, killed him. Because of the aggressiveness of the cancer, Independent Medical Examinations (IMEs) were based solely on a review of the deceased's medical records and the medical literature, not on any examination of the deceased. Nevertheless, when he died, the Board had not yet ruled on his applications for disability pensions, as it was required to wait for a third IME report. His widow applied for survivor benefits. The Board granted interim nonduty pension benefits. The Board heard the three applications on March 23, 2018. The Village successfully petitioned to intervene in the Board proceedings, which consisted solely of oral argument. In May 2018, the Board issued its decision, with a finding that the cancer was caused by the occupation, and, therefore, his application should be granted.

Procedural History: By a 3 to 2 vote, the Board declared the deceased's disability pension applications moot and granted his widow's application for survivor's benefits at a duty pension level. The Village filed an action for administrative review in the circuit court. The circuit court affirmed the Board's decision.

Issues Raised on Appeal: (1) Whether the record support's the Board determination that the decedent's cancer was caused by an act of duty or the cumulative effects of acts of duty; (2) whether there was a lack of evidence of causation demonstrates that the Board impermissibly applied the occupational disease statute's presumption of causation, and (3) whether the decedent's disability pension applications were moot. (the Appellate Court addressed the issues in reverse).

Applicable Law: In an administrative review case, the appellate court reviews the decision of the agency, not that of the trial court. A matter is moot if no actual controversy exists or if events have occurred that make it impossible to grant effectual relief.

Outcome and Analysis: Affirmed. A firefighter's survivors may receive a continuation of the deceased firefighter's occupational disease disability pension if the firefighter dies while (a) still disabled and (b) receiving such a pension. Here, however, the second of these requirements was not met. As to the evidence of causation, the Board's decision was supported by the expert opinions contained in the IME reports as well as by evidence of the decedent's fire calls.

Olson v. Lombard Police Pension Fund, 2020 IL App (2d) 190113

Posted: 06/03/2020

Facts: Plaintiff filed an application for disability in 2015 on an incident that occurred in 2013 for which he alleges a back injury that leaves him permanently disabled. No one disputes that plaintiff is permanently disabled and that he suffered an injury on September 18, 2013, during an act of duty. However, no record existed in department records of the alleged back pain, only of a leg injury. Medical records from therapy indicated injury and back pain. Upon review by the Pension Board, the Board concluded that the evidence established plaintiff had a preexisting history of lower back complaints and discomfort, but that these issues were neither caused nor exacerbated by the incident or any "act of duty," as necessary for establishing entitlement to "line-of-duty" disability pension benefits. The Plaintiff sought review in the trial court.

Procedural History: The trial court found that the decision of the Board was not against the manifest weight of the evidence and affirmed the decision of the Board.

Issues Raised on Appeal: Whether the decision of the Board is contrary to the manifest weight of the evidence.

Applicable Law: To obtain a line-of-duty disability pension, a plaintiff must prove that the duty-related injury "is a causative factor contributing to the claimant's disability." Furthermore, it is the Plaintiff's burden to prove a causal connection between preexisting conditions and a specific act of duty supported by the record and not against the manifest weight of the evidence.

Outcome and Analysis: Affirmed. Plaintiff seeks compensation for a back injury being exacerbated by an on-duty injury. However, Plaintiff' did not complain of lower back pain after the incident, and the first instances of any back pain were a mere 3 months prior to the injury. Furthermore, there were no reports or records of back pain from the physicians who treated plaintiff shortly after the incident. Thus, the Board's decision was supported by the record.

Torts

Tirio v. Dalton, 2019 IL App (2d) 181019

Posted: 05/13/2020

Facts: The Plaintiff filed a petition pursuant to Supreme Court Rule 224 to ascertain the identities of potential defendants. Respondents filed a combined objection and motion to dismiss the Rule 224.

Procedural History: The Motion was denied, and the Respondents were ordered to comply with the Order by December 13, 2018. Respondents requested a stay pending appeal, which was also denied. The Respondents failed to comply "for the sole purpose of preserving the status quo pending appeal."

Issues Raised on Appeal: (1) whether the complaint was sufficient to withstand a 2-615 dismissal (aka, whether the Plaintiff has pleaded sufficient facts), (2) whether the trial court erred in denying their motion to stay enforcement of the disclosure order, (3) whether the case was moot.

Applicable Law: Too many for a digest. However, Analysis alludes to the applicable rules/laws.

Outcome and Analysis: Judgment by the Trial Court Affirmed. Case is not Moot under the Public-Interest Exception. The allegations of the complaint adequately laid out the case for Defamation *per se*, as they infer that the Plaintiff had commissioned a crime. The doctrine of innocent construction does not apply as the common construction of the words used in the statements have defamatory meaning within the context of the entire statement. Further, the words do not represent a protected opinion, they assert facts that can be verified and were specified. The doctrine of substantial truth did not apply as the Complaint sufficiently alleges falsehood. Regarding the Motion to Stay, which was denied by the trial judge, the Appellate Court deferred to the trial court, as only an abuse of discretion would warrant reversal.

Prutton v. Baumgart, 2020 IL App (2d) 190346

Posted: 06/24/2020

Facts: Plaintiff filed a five-count complaint. Plaintiff alleged negligence in the care and delivery of her child, whereby her child sustained significant and permanent injuries. The informed consent and authorization contained language that Physicians at

the care facility were independent contractors and did not work for Defendant. Defendant hospital filed a motion for summary judgment, arguing that the Plaintiff had failed to show agency of the personnel who delivered the child and the Defendant facility.

Procedural History: After hearing, the trial court issued a ruling and granted Summary Judgment. Specifically, the trial court found the plaintiff had not met her burden as to actual reliance on the hospital's conduct. A timely appeal pursuant to Supreme Court rule 304(a) followed.

Issues Raised on Appeal: Whether the Defendant hospital had effectively disclaimed so as to bar recovery.

Applicable Law: Under the doctrine of apparent authority, a hospital can be held vicariously liable for the negligent acts of a physician providing care at the hospital, regardless of whether the physician is an independent contractor, unless the patient knows, or should have known, that the physician is an independent contractor. Furthermore, the Plaintiff must have reasonably relied upon this belief to recover.

Outcome and Analysis: Affirmed. The trial court correctly granted summary judgment in Defendant's favor. Even though Plaintiff was in labor when she signed consents and disclaimers, one who signs a document is charged with knowing its contents, even if the person is illiterate or does not speak English. The consents were neither ambiguous or confusing as the authorization was a single page and the applicable language brought to the Plaintiff's attention in bold font.

Rosenbach v. Six Flags Entertainment Corp., 2017 IL App (2d) 170317

Posted: 6/26/2020

Facts: The Illinois legislature passed the Act in 2008 to provide standards of conduct for private entities in connection with the collection and possession of biometric identifiers and biometric information. Six Flags implements a biometric fingerprint scanning and identification process for season-pass holders at Great America. Plaintiffs and others had their biometric data collected, recorded, and stored by Six Flags. Plaintiff sued defendants for fingerprinting season-pass holders without properly obtaining written consent and without properly disclosing their plan for the collection, storage, use, or destruction of the biometric identifiers or information. Plaintiff alleged violations of the Act and unjust enrichment.

Procedural History: Defendants filed a motion to dismiss pursuant to section 2-619. The Defendants also filed a motion to certify the question to the Appellate Court. That motion was granted.

Issues Raised on Appeal: (1) Whether an individual is an aggrieved person under the Act and may seek statutory liquidated damages when the only injury he or she alleges is a violation of the Act by a private entity that collected his or her biometric identifiers and/or biometric information without providing him or her the disclosures and obtaining the written consent and (2) whether an individual is an "aggrieved person" under the Act and may seek injunctive relief authorized under the Act when the only injury he or she alleges is a violation of section 15(b) of the Act by a private entity that collected his or her biometric identifiers and/or biometric information without providing him or her the disclosures and obtaining the written consent required by the Act.

Applicable Law: 740 Ill. Comp. Stat. 14/15 *et seq.* This is a question of statutory construction. The Appellate Court's primary objective in construing a statute is to ascertain and give effect to the legislative intent, and the surest and most reliable indicator of that intent is the plain and ordinary meaning of the statutory language itself. When a statute contains a term that is not specifically defined, it is entirely appropriate to look to the dictionary to ascertain the plain and ordinary meaning of the term.

Outcome and Analysis: The certified question is answered in the negative and the cause is remanded. Black's Law Dictionary defines "aggrieved party" as "[a] party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment." Furthermore, if the Illinois legislature intended to allow for a private cause of action for every technical violation of the Act, it could have omitted the word "aggrieved" and stated that every violation was actionable. A determination that a technical violation of the statute is actionable would render the word "aggrieved" superfluous. Therefore, a plaintiff who alleges only a technical violation of the statute without alleging some injury or adverse effect is not an aggrieved person under section 20 of the Act

Trusts, Estate Planning, & Probate

***In re.* S.F., a minor**

Posted: 04/02/2020

Facts: S.F. was born June 15, 2010. On March 23, 2015, respondent was appointed as plenary guardian of S.F. However, for almost 12 months in 2015, S.F. lived and resided with the Petitioners. On March 23, 2015, respondent was appointed as plenary guardian of S.F. In the fall of 2015, the relationship between the parties began to deteriorate. On December 31, 2015, petitioners filed their petition seeking removal of respondent as plenary guardian.

Procedural History: On December 21, 2018, the trial court entered a written order in which it referenced its removal of respondent as guardian. The order then evaluated best-interest factors and concluded that designating petitioners as plenary guardians was in S.F.'s best interest.

Issues Raised on Appeal: Whether the Petitioners had standing to petition to remove the respondent as guardian and whether removal as guardian was warranted.

Applicable Law: "Interested person" in relation to any particular action, power or proceeding under this Act means one who has or represents a financial interest, property right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse's or child's award and the representative.

Outcome and Analysis: Affirmed. Although respondent waived her objection to petitioners' standing, the Appellate Court chose to address it on the merits because the issue is important. The Appellate court found that petitioners' relationship with S.F. was "founded in trust or confidence" during the 11 months she resided with the petitioners full time, just before they filed their petition for removal. Therefore, they constated "interested persons" and had standing to bring the Petition for removal. Secondly, as to the issue of removal, the trial court's decision to remove respondent as guardian for good cause was based upon her "refusal to obey court orders, [and] to meet with the GAL, and her willingness to substitute her judgment for that of the court." Furthermore, on appeal, Respondent does not contest the trial court's findings or conclusion. Thus, there is no reversible error.

Ashby v. Pinnow, 2020 IL App (2d) 190765

Posted: 06/24/2020

Facts: The plaintiff and defendants were co-trustees on a trust established by their parents. The trust provided that, upon the parents' deaths, the trust assets would be divided in equal shares among the children. However, after their parents' deaths, the defendants conveyed the portion of the land that contained the family home to themselves. The plaintiff filed a three-count complaint against the defendants. The defendants asserted that all three counts should be dismissed because (1) the trust and Trust Act gave two of the three trustees the right to convey trust property without having to provide notice to the third trustee and (2) they had the right to convey the real estate to themselves as beneficiaries under the trust without notifying the plaintiff. The defendants further asserted that the third Count should be dismissed because it was time barred.

Procedural History: The circuit court dismissed the complaint with prejudice pursuant to 2-619 of the Code of Civil Procedure.

Issues Raised on Appeal: Whether the Complaint gives rise to a genuine issue of Material facts and whether an affirmative matter bars recovery under the stated cause of action.

Applicable Law: The trust would be governed under the Trust Act. Secondly, the doctrine of "unclean hands" precludes a party from taking advantage of his own wrong. Finally, the statute of limitations for a breach-of-fiduciary-duty claim is five years; but, the limitation period to bring an action is extended if a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled to bring an action.

Outcome and Analysis: Affirmed in part, remanded in part. As to count I, the plaintiff's pleadings create a genuine issue of material fact. The defendants were required by the Trust act to provide written notice to the plaintiff before taking an action, such as transferring property out of the trust. The pleadings alleged to say they did not comply. Furthermore, the plaintiff is entitled to equitable relief because the Defendants are unable, on the face of the complaint, to establish "unclean hands" and they have brought no evidence of unclean hands. Because there were issues of material fact, these issues preclude dismissal. As to the 5-year statute of limitations, no concealment can happen if a party could have discovered the truth of the alleged impropriety through reasonable inquiry. In this case, the defendants' recording of the deeds with the Kendall County Recorder of Deeds on September 28, 2010, put the plaintiff on notice of the deeds' existence, and that is when the statute began to run.

Worker's Compensation

O'Neil v. Illinois Workers' Compensation Comm'n, 2020 IL App (2d) 190427WC

Posted: 06/15/2020, Corrected 06/24/2020

Facts: Claimant was employed by respondent as a marine technician. Claimant sustained a knee injury while at work. The Respondent allowed Claimant to go home that day and authorized several treatments for the injury. Respondent's insurance company, approximately a week before surgery to treat the injury was to be undertaken, communicated to the attending physician that they had revoked the surgery authorization for claimant, citing the need for an "[a]dditional investigation." The claimant's medical records indicated that he had had surgery on the knee previously. However, the previous surgery was actually performed approximately three inches lower on the same leg as evidenced by a scar on the Claimant's leg. The arbitrator for the matter ordered respondent to authorize the surgery prescribed. The arbitrator also considered whether penalties and attorney fees should be imposed upon respondent. The arbitrator concluded that respondent "offered no good-faith arguments at trial indicating there was a

genuine controversy pertaining to the payment of benefits under the Act, i.e., authorizing the surgery," and, thus, awarded attorneys' fees and penalties.

Procedural History: The workers' Compensation Commission reversed the award or fees and penalties. The circuit court of Lake County affirmed the decision by the Illinois Workers' Compensation Commission reversing an award of attorney fees and penalties assessed by an arbitrator against a respondent. Claimant timely appealed.

Issues Raised on Appeal: Whether it was within the statutory authority of the Commission to award attorneys' fees and to impose penalties under section 19(l) of the Act based on respondent's unreasonable delay.

Applicable Law: Section 19(l): In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000.

Outcome and Analysis: Affirmed. the plain language of the statute contains no language authorizing an arbitrator or the Commission to assess penalties for an employer's failure, neglect, refusal, or unreasonable delay in authorizing medical treatment.

About the Contributor

Andrew J. Mertzenich is appellate counsel at Prime Law Group, LLC. Andrew has argued before the Second District Appellate Court for the State of Illinois and contributes opinions on amicus briefs for organizations wishing to file into cases. Andrew also presents CLE on Appellate Practice for bar associations throughout the area and provides consultation services to local attorneys and litigants on how best to approach their appellate issues. He publishes the quarterly *Second District Civil Decision Digest* for several local bar associations.

Outside of law, Andrew is a passionate musician. He is Principal Organist at Court Street United Methodist Church in Rockford, IL. Andrew also volunteers with the Land of Lincoln Theatre Organ Society as a technician and performer. He donates regularly to several causes and sits on the Boards of the American Guild of Organists – Rockford Chapter and the Land of Lincoln Theatre Organ Society. He is also a regular listener and contributor to National Public Radio (NPR).

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