

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 240080-U

NO. 4-24-0080

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 27, 2024

Carla Bender

4th District Appellate Court, IL

ANNE DLUGI,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Winnebago County
GPM MIDWEST, LLC,)	No. 20L346
Defendant-Appellee.)	
)	Honorable
)	Ronald Anthony Barch,
)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Justices DeArmond and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying plaintiff’s motion to amend her complaint where she lacked standing to pursue her claim.

¶ 2 Plaintiff, Anne Dlugi, filed a personal injury lawsuit against defendant, GPM Midwest, LLC, after she was injured in the parking lot of a FasMart owned by defendant. In her amended complaint, plaintiff alleged her injuries were the result of defendant’s negligence and sought damages in excess of \$50,000. Prior to the filing of the personal injury lawsuit, plaintiff had filed for Chapter 13 bankruptcy in April 2017. See 11 U.S.C. § 1301 *et seq.* (2012). Plaintiff failed to inform the bankruptcy court of the personal injury lawsuit, and her bankruptcy case was closed in June 2022.

¶ 3 Defendant filed a motion for summary judgment, arguing (1) plaintiff should be judicially estopped from proceeding on the personal injury lawsuit based on her failure to disclose

the cause of action to the bankruptcy court and (2) plaintiff lacked standing to pursue the personal injury lawsuit as the claim belonged to the bankruptcy estate. Plaintiff filed her response to the motion for summary judgment, alleging (1) her claim should not be barred by judicial estoppel, as her failure to disclose her personal injury claim to the bankruptcy court was inadvertent and a mistake; (2) she does not lack standing to pursue her cause of action because her claim accrued after the bankruptcy filing; and, alternatively; (3) if she lacked standing to file her personal injury lawsuit, the court should dismiss without prejudice, allowing her time to petition to reopen her bankruptcy case and amend her pleadings in the circuit court to pursue her claim on behalf of the bankruptcy trustee. The court, following arguments, granted defendant's motion for summary judgment, finding plaintiff was judicially estopped from pursuing her personal injury claim and also lacked standing to pursue the claim. The court also denied plaintiff's request to amend her complaint, stating, "[Plaintiff's] request for time to reopen the bankruptcy case and thereafter pursue relief under a second amended complaint is denied." Plaintiff appeals, arguing the court erred in granting defendant's motion for summary judgment on the basis of judicial estoppel because it was not proven by clear and convincing evidence that plaintiff intended to deceive or mislead the bankruptcy court or, alternatively, the court erred in denying plaintiff's request to dismiss her complaint without prejudice, which in fact should be construed as a request to file an amended complaint. For the following reasons, we affirm.

¶ 4

I. BACKGROUND

¶ 5 On April 18, 2017, plaintiff filed a voluntary petition for Chapter 13 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois. Plaintiff's voluntary petition included a form entitled "Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys" (Rights and Responsibilities Agreement). The Rights and

Responsibilities Agreement included the following language:

“AFTER THE [BANKRUPTCY] CASE IS FILED

THE DEBTOR AGREES TO:

* * *

5. Contact the attorney immediately if the debtor loses employment, has a significant change in income, or experiences any other significant change in financial situation (such as serious illness, marriage, divorce or separation, lottery winnings, or an inheritance).

6. Notify the attorney if the debtor is sued or wishes to file a lawsuit (including divorce).”

Plaintiff, along with her bankruptcy attorney, electronically signed the Rights and Responsibilities Agreement. Plaintiff moved to modify her Chapter 13 plan twice during the pendency of her bankruptcy case, once in August 2020 and again in February 2022. The first motion to modify the Chapter 13 plan included a request to change the amount and length of repayments under the Chapter 13 plan. The second motion to modify included a request to correct an error in the order granting the first motion to modify the Chapter 13 plan. Ultimately, plaintiff’s bankruptcy was discharged on April 27, 2022, and the case was closed in June 2022.

¶ 6 However, in September 2020, while plaintiff’s bankruptcy case was pending, plaintiff filed a personal injury lawsuit against GPM Investments, LLC. Plaintiff later filed an amended complaint, adding defendant as a party. The amended complaint alleged plaintiff was injured on October 13, 2018, when she tripped and fell because of “uneven, broken and crumbled asphalt” in the parking lot of a FasMart owned by defendant and her injuries were a direct result of defendant’s negligence. Plaintiff sought damages in excess of \$50,000. At the time of filing her

complaint, plaintiff did not disclose this personal injury lawsuit to the bankruptcy court.

¶ 7 In July 2022, when answering interrogatories, plaintiff disclosed her closed bankruptcy case. Following this disclosure, plaintiff contacted her bankruptcy attorney on August 16 and notified him of the personal injury lawsuit. The bankruptcy attorney notified the bankruptcy trustee the same day.

¶ 8 Defendant moved for summary judgment on August 29, 2023, based on (1) the theory of judicial estoppel stemming from plaintiff's failure to disclose the personal injury lawsuit in her Chapter 13 bankruptcy and (2) plaintiff's lack of standing to pursue the personal injury lawsuit. In response to defendant's motion for summary judgment, plaintiff conceded the five prerequisites for judicial estoppel were met; however, because plaintiff had no intent to deceive or mislead the court, she argued judicial estoppel should not apply to her claim. Plaintiff attached affidavits from her bankruptcy attorney and personal injury attorney attesting plaintiff advised them she did not know she was required to disclose the personal injury lawsuit in her bankruptcy proceedings, despite having signed the Rights and Responsibilities Agreement. Plaintiff also argued she had standing to pursue the personal injury litigation because the claim accrued after the bankruptcy filing. However, if the court found she lacked standing, plaintiff alternatively requested the court dismiss without prejudice, allowing her time to petition to reopen her bankruptcy case and then later amend her complaint to "reflect the Estate as the proper party in th[e] lawsuit."

¶ 9 The circuit court heard arguments on defendant's motion for summary judgment on November 3, 2023, and took the matter under advisement. In December 2023, the court issued a written decision granting the motion for summary judgment based on judicial estoppel and lack of standing. Additionally, the court denied plaintiff's request to dismiss without prejudice so she could file an amended complaint.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Plaintiff appeals, contending the circuit court erred in granting defendant’s motion for summary judgment. In support of this contention, plaintiff argues judicial estoppel should not apply to her case because her failure to disclose the personal injury lawsuit in her bankruptcy proceedings was an inadvertent mistake and not an attempt to deceive or mislead the court. Additionally, plaintiff concedes she lacks standing to pursue the personal injury action but asserts the court erred in denying her request to dismiss her complaint without prejudice so she could have time to petition to reopen her bankruptcy proceedings and then file an amended complaint with the bankruptcy estate as the proper plaintiff. Because we find the court’s decision to deny plaintiff’s motion to amend her complaint dispositive, we address it first.

¶ 13 Our supreme court has explained, “In Illinois, a lack of standing is an affirmative defense that defendants have the burden to plead and prove. [Citation.] ‘The doctrine of standing is intended to assure that all issues are raised only by those parties with a real interest in the outcome of the controversy.’ ” *Duniver v. Clark Material Handling Co.*, 2023 IL 128141, ¶ 16 (quoting *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill. 2d 200, 206 (2000)).

¶ 14 In *Duniver*, the plaintiff was injured in the workplace and filed a personal injury lawsuit. *Id.* ¶ 1. One month after filing his personal injury lawsuit, the plaintiff filed for Chapter 13 bankruptcy and failed to disclose the ongoing personal injury lawsuit. *Id.* The defendants filed a motion for summary judgment, arguing the plaintiff lacked standing to pursue his personal injury claim because the claim belonged to the bankruptcy estate. *Id.* Upon receiving the defendants’ motion for summary judgment, the plaintiff “filed amended bankruptcy schedules disclosing his

personal injury case.” *Id.* The circuit court granted summary judgment, finding the plaintiff lacked standing to pursue the personal injury lawsuit. *Id.* The plaintiff then filed a motion for reconsideration, in which he informed the court, “(1) he had filed amended schedules in the bankruptcy proceedings disclosing the personal injury case *** and (2) the bankruptcy case was nonetheless dismissed *** due to [his] failure to make payments under the plan.” *Id.* ¶ 11. The circuit court denied the plaintiff’s motion for reconsideration. *Id.* On appeal, our supreme court held the plaintiff had standing to pursue the lawsuit. *Id.* ¶ 18. In reaching this decision, our supreme court noted the plaintiff “did file amended schedules disclosing this case prior to his bankruptcy action being dismissed.” *Id.* ¶ 19. Because of the plaintiff’s disclosure, after the bankruptcy case was dismissed, standing to pursue the personal injury lawsuit was revested in plaintiff. See 11 U.S.C. § 349(b)(3) (2012) (“[D]ismissal of a case *** reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case.”); *Holland v. Schwan’s Home Service, Inc.*, 2013 IL App (5th) 110560, ¶ 126 (concluding that, “after the bankruptcy court dismissed [the debtor]’s chapter 13 bankruptcy petition, [he] had standing to pursue his claim”). The court distinguished plaintiff’s situation from the one in *Barnes v. Lolling*, 2017 IL App (3d) 150157, ¶¶ 16-18, in which the plaintiff “received a discharge of debt without disclosing an accrued cause of action, and the court concluded the debtor had no standing to then pursue the claim.” *Duniver*, 2023 IL 128141, ¶ 19.

¶ 15 In this case, plaintiff concedes she lacks standing to pursue the personal injury lawsuit. We accept this concession. Plaintiff argues, however, the circuit court erred in denying her request to dismiss without prejudice so she could have time to petition the bankruptcy court to reopen her case and then file an amended complaint listing the bankruptcy trustee as the proper plaintiff.

¶ 16 We begin our analysis by noting plaintiff fails to articulate the standard of review this court should utilize when evaluating her claim the circuit court erred in denying her request to dismiss without prejudice so she could later file an amended complaint. See *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69 (noting that the denial of a motion to amend pleadings is reviewed for an abuse of discretion). Although plaintiff did not file a motion to amend her complaint, we construe her request the court enter dismissal without prejudice so she could later refile with the proper plaintiff listed as a motion to amend her complaint. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) (stating it is a motion’s substance, not its title, that determines the motion’s character). Furthermore, other than authority regarding her ability to attempt to petition to reopen her bankruptcy, plaintiff failed to cite any authority or argument with respect to why the court erred in denying her request for a dismissal without prejudice so she could later file an amended complaint. A reviewing court is not a depository into which the appellant may unload his burden of argument and research. *Elder v. Bryant*, 324 Ill. App. 3d 526, 533 (2001).

¶ 17 As noted in *Sheffler*, abuse of discretion is the proper standard of review to evaluate whether the court erred in denying plaintiff’s request to amend her complaint. “An abuse of discretion occurs only when the trial court’s decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court.” *Seymour v. Collins*, 2015 IL 118432, ¶ 41. Section 2-1005(g) of the Code of Civil Procedure states, “Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms.” 735 ILCS 5/2-1005(g) (West 2022). Our supreme court set forth four factors a court of review must consider when determining if the circuit court properly denied a party’s motion to amend: whether “(1) the proposed amendment would cure the defective pleading; (2) the

proposed amendment would surprise or prejudice the opposing party; (3) the proposed amendment was timely filed; and (4) the moving party had previous opportunities to amend.” *Sheffler*, 2011 IL 110166, ¶ 69.

¶ 18 In this case, we find the circuit court did not abuse its discretion in denying plaintiff’s request and dismissing her complaint with prejudice. Regarding the first factor, there is no guarantee any proposed amendment will cure plaintiff’s defective complaint. While plaintiff indicates she can petition to reopen her bankruptcy case, file amended schedules, and then file an amended complaint naming the bankruptcy estate as plaintiff, there is no assurance her petition to reopen the bankruptcy would be granted. Therefore, the curative nature of any proposed amendment is conditioned on the bankruptcy court allowing plaintiff’s petition to reopen. Moreover, there is no evidence plaintiff started the process to petition the bankruptcy court to reopen her case. The affidavits attached to plaintiff’s response to the motion for summary judgment establish plaintiff was notified by her personal injury attorney on or about July 25 or 26, 2022, she needed to advise her bankruptcy attorney of her personal injury case. Plaintiff then waited until August 16 to advise her bankruptcy attorney of the personal injury case. Defendant then filed a motion for summary judgment on August 29, and when plaintiff filed her response on October 10, plaintiff provided no evidence she had petitioned to reopen her bankruptcy case to remedy her failure to report the personal injury lawsuit. The pending action in the circuit court did not limit or restrain plaintiff from filing a petition with the bankruptcy court to reopen her bankruptcy case. Based on this timeline, we conclude the next two factors weigh in favor of the circuit court’s decision to deny plaintiff’s request to amend. Plaintiff’s request was untimely and would be prejudicial to defendant, as the personal injury action had been pending for over three years. Moreover, the motion for summary judgment was filed on August 29, 2023, and the hearing

thereon did not occur until November 3, 2023, during which plaintiff failed to take any action to remedy the standing issue. To allow plaintiff to amend without reopening the bankruptcy case would allow her to defeat the affirmative defense of standing without entirely resolving the standing issue. Finally, plaintiff was allowed a previous opportunity to amend her complaint in order to correctly name defendant. Based on an analysis of the four factors, we cannot conclude the court's decision to deny plaintiff's request for a dismissal without prejudice so she could file an amended complaint was unreasonable, arbitrary, or fanciful.

¶ 19 Because we conclude the standing issue is dispositive in this case, we need not address whether the circuit court erred in finding plaintiff was judicially estopped from pursuing her claim.

¶ 20

III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 22 Affirmed.