Illinois Official Reports

Appellate Court

***Eckerty v. Eastern Illinois Foodbank*, 2022 IL App (4th) 210537**

Appellate Court Caption	DANA E. ECKERTY, Plaintiff-Appellant, v. EASTERN ILLINOIS FOODBANK, an Illinois Not-for-Profit Corporation, Defendant-Appellee.
District & No.	Fourth District No. 4-21-0537
Filed	September 15, 2022
Decision Under Review	Appeal from the Circuit Court of Champaign County, No. 19-L-112; the Hon. Jason M. Bohm, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Timothy J. Deffet, of Chicago, for appellant. Jessica B. Jackler, Storrs W. Downey, and Jeffrey E. Kehl, of Downey & Lenkov LLC, of Chicago, for appellee.
Panel	JUSTICE DeARMOND delivered the judgment of the court, with opinion. Justices Cavanagh and Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Dana E. Eckerty, sued defendant, Eastern Illinois Foodbank (EIF), alleging EIF unlawfully terminated his employment in retaliation for exercising his rights under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2018)). Pursuant to section 2-1005(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005(c) (West 2018)), defendant moved for summary judgment, which the trial court granted.

¶ 2 On appeal, Eckerty argues circumstantial evidence creates a genuine issue of material fact, making summary judgment inappropriate. We disagree, and we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 Eckerty began working at EIF in 2001, and aside from a period during 2004-05, when he managed a golf course, he remained employed there in various roles until July 2018. His last position as an operations associate involved working in the warehouse collecting and preparing orders for the foodbank's clients. Eckerty's job required him to stand or walk most of the day, and he often used a forklift to fulfill his duties. Over the course of his employment at EIF, Eckerty suffered three different work injuries that he immediately reported to EIF, pursuant to the company's policies. He injured his back in 2001, a trash compactor fell on his forearm in 2002, and he accidentally splashed bleach on himself in 2010. He received no negative treatment by anyone at EIF after these injuries, and he remained employed at EIF following each report.

¶ 5 On April 26, 2018, Eckerty left work at EIF without reporting any accident or injury to his supervisor or anyone at EIF. The next morning, at 6:07 a.m., Eckerty texted his immediate supervisor, Gavin Gordon, "Won't be in today. My hip is hurting." Gordon responded, "No problem, hope you feel better." Eckerty's contact with EIF over the next few weeks was through texts sent to Gordon. On May 9, 2018, he texted: "To See ortho on Friday @ 2. Carle just called to schedule today. Would have let you know sooner but I did not know. Still have problems walking & getting up and down." Gordon responded, "Thanks for letting me know." The next week, on May 15, 2018, Eckerty texted Gordon that he was scheduled for foot surgery on May 29. Gordon replied he would report the surgery to his superiors at EIF. Gordon inquired about the recovery time, and Eckerty responded it would be "6 to 8 weeks." Eckerty told Gordon he was "[s]till walking with a walker." During this time period, as he received them from Carle doctors, Eckerty would present EIF with notes placing him off work. An April 27, 2018, note stated: "Dana E Eckerty was seen in the office today for left hip pain. No work until follow up next week with primary MD due to severe hip pain and inability to walk." A May 4, 2018, note stated: "Mr. Dana E Eckerty is under my care for L hip pain. Please excuse him from work until evaluated per Orthopedics."

¶ 6 Eckerty attended a meeting at EIF on May 22, 2018, to discuss his leave of absence. He presented his superiors an undated treatment note from Dr. Sean Grambart, of Carle Orthopedics and Sports Medicine Foot & Ankle. The note outlined the proposed surgical plan for Eckerty's left foot, and the note indicated "overall recovery will take about 9 months on average." At the meeting, however, Eckerty could not provide a time frame for him returning to work. According to EIF's memo outlining the meeting, Eckerty "notified us of possible additional medical concern which could delay surgery. Waiting to hear back from [Eckerty]."

In his deposition, Eckerty stated Dr. Grambart wrote the note in 2017, but he did not have the foot surgery in 2017 because his mother was in hospice care at the time. Eckerty explained he had to have the foot surgery before he could have surgery to repair his hip. As he recounted in his deposition, "The hip was going to get replaced as soon as the foot gets healed. I could not give them a timeframe when to get my hip fixed, replaced." EIF superiors left the meeting not knowing what would happen. The memo documented their uncertainty, noting: "(1) At this time, nothing has been confirmed. (2) Need more information regarding accommodations needed. (3) [Eckerty] to keep us updated as information becomes available. (4) Will re-evaluate after more accurate timeline is available." EIF noted Eckerty's time and benefit "accruals will continue until all earned time has been exhausted." Upon inquiry from Eckerty about his health insurance, EIF informed him his insurance would continue so long as he retained full-time status and COBRA would be available if his status changed.

¶ 7 On June 7, 2018, via a telephone call, Eckerty informed EIF he underwent foot surgery. He was in a cast and a pin would remain in his foot until July 23. EIF noted Eckerty's "[a]ccruals will be exhausted during the 6/16-6/29 pay period."

¶ 8 On June 12, 2018, EIF held another telephonic meeting with Eckerty. He updated EIF on his recovery from foot surgery. He noted his latest doctor's note kept him off work until July 23. Eckerty acknowledged "his accruals will end during the 6/16-6/29 pay period but [he] *** need[ed] his insurance to continue." He inquired about COBRA. EIF again assured Eckerty he would retain his insurance if he remained a full-time employee.

¶ 9 On June 19, 2018, Eckerty phoned EIF to provide another status report. He indicated no changes in his recovery. He was still using a walker. He inquired again about his insurance coverage. He also inquired about "what plans EIF has for his employment status." He asked about COBRA, and EIF informed him it would calculate COBRA's cost and call him back with that number.

¶ 10 On July 3, 2018, Eckerty appeared for another meeting at EIF. Kelly Daly (senior vice president) and Patti Martin (administrative supervisor) confirmed Eckerty's paid time-off had expired and his employment with EIF would be terminated effective July 24, 2018. EIF presented Eckerty with a letter documenting the meeting. It read:

> "Dana Eckerty's position as Operations Associate is vital to the daily operations of EIF; therefore, EIF has hired a new temporary staff person during Dana Eckerty's absence to fulfil his duties. This has taken time away from other staff in that department to train and to insure that the duties are completed in the time and fashion required. Given all of the information that has been gathered to date, EIF believes that extending Dana Eckerty's leave of absence will only burden EIF, and prevent EIF from hiring a permanent replacement employee.
>
> Dana Eckerty's paid leave exhausted on June 22, 2018. His final check will be July 6, 2018. Given Dana Eckerty's tenure of 13 years and to give him sufficient notice, EIF will extend Dana Eckerty's employment until July 24, 2018 without pay. This will keep him eligible for EIF's health insurance thru July 31, 2018. If Dana Eckerty receives a medical authorization stating that he can safely return to work prior to that date, no action will be taken. If not, EIF will terminate employment on July 24, 2018 and send documentation to BPC at which time COBRA benefits will be extended. Should Dana Eckerty reach a fitness for duty after this date, he is encouraged to reapply for

employment and he will be considered for the reemployment as suitable positions are available."

When Eckerty was unable to return to work before July 24, EIF terminated his employment.

¶ 11 On August 18, 2018, Eckerty engaged an attorney and, pursuant to the Act, filed an Illinois Workers' Compensation Commission application for adjustment of claim. Nearly a year later, on July 31, 2019, Eckerty filed his complaint in the instant case, alleging one cause of action for retaliatory discharge. As the case plodded through discovery, the parties exchanged various motions to compel, motions for rules to show cause, and protective orders. Exercising its discretion, the trial court granted some motions and denied others. Eventually, the parties took depositions. Eckerty's counsel deposed four EIF employees: James Hires (chief executive officer), Daly (senior vice president), Martin (administrative supervisor), and Gordon (inventory management supervisor). All of the deponents testified Eckerty never reported a work accident or injury to them or anyone at EIF, neither on April 26, 2018, nor in the weeks and months afterward. Eckerty never indicated to them that his foot injury, hip pain, or inability to walk were related to his work at EIF. None knew of Eckerty's intent to file a workers' compensation claim. By and large, each deponent recalled Eckerty's termination proceeded as documented by EIF memos—Eckerty exhausted his paid leave time in June 2018, he could not provide a return-to-work date, and EIF retained him through July 2018 to allow Eckerty to retain his insurance through COBRA.

¶ 12 EIF likewise deposed Eckerty. He recalled EIF's procedures for reporting workplace accidents required injured workers to report accidents and injuries immediately to their direct supervisor. Eckerty noted he promptly reported his previous workplace accidents/injuries per EIF protocol. He testified he did not report a work injury or accident to anyone at EIF on Thursday, April 26, 2018. When asked why he did not follow EIF's procedures for reporting his 2018 injuries, as he had done in the past, Eckerty answered: "Because nobody was there. And, again, those were accidents. This is repetitive motion, two different things." He also claimed he did not report the injury for fear of other employees losing a safety bonus.

¶ 13 Eckerty further acknowledged that he did not report a workplace injury to Gordon in his text message the next day (Friday, April 27, 2018) because "that was up to the doctors to decide that." Eckerty testified his left foot condition began in "about 2016, early '17." He noted he did not report a workplace accident related to his left foot injury. Eckerty testified his hip conditions existed prior to April 26, 2018, estimating they began in March 2018. He said he could not walk and claimed EIF knew because "[e]verybody saw me for the past—prior two weeks walking in that place. I could barely walk. I walked the walls to get to that timecard, and people just looked at me." When asked if he reported to EIF that he suffered a workplace accident or injury during the May 22, 2018, meeting with EIF, he answered, "[N]o."

¶ 14 During his deposition, Eckerty acknowledged he could never provide EIF with a return-to-work date when he spoke with EIF in May and June 2018. Eckerty recalled Martin notified him of his termination and Eckerty understood the reason for his termination as "I can't do that position anymore. " He remembered telling Martin he could not do his job while using a walker, telling her he could not "do the job that I was hired to do." Eckerty recalled EIF advising him to reapply for employment if he regained the physical ability to do the job. He testified that, as of his deposition in August 2020, he could not physically perform his old warehouse job at EIF. Eckerty stated he did not file a workers' compensation claim before his July 2018 termination date. When asked why he waited to file a claim, he said: "Again I was

protecting people for the safety bonus." He stated he currently worked part-time at Dollar General with no restrictions. He had been "off work for about a year and a half" before he resumed working because he "had a year and a half of physical therapy three days a week" and he "couldn't walk."

¶ 15 EIF moved for summary judgment in January 2021. After months of delays while Eckerty unsuccessfully sought discovery of privileged documents, the trial court granted EIF summary judgment in August 2021. The trial court observed: "While Eckerty argues that there is a factual dispute about whether EIF discharged him for seeking medical attention of a work-related injury, there is no evidence to support this claim." The court further found, "even assuming Eckerty's injury was work-related, there is no evidence that EIF discharged him in retaliation for exercising his rights under the Act." The trial court then found: "It is undisputed that Eckerty was unable to perform the demands of his warehouse position." With these findings, the court concluded: "There is simply no evidence to suggest that anyone involved in Eckerty's discharge knew of his intended workers' compensation claim or that he took any protected activity under the Act. 'Without such evidence, [his] retaliation claim fails as a matter of law.' "

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Eckerty challenges the trial court's entry of summary judgment as erroneous and contrary to law "because genuine issues of material fact exist as to whether [he] was discharged for engaging in a protected activity." We disagree and affirm the trial court's judgment.

¶ 19 Section 2-1005(c) of the Code (735 ILCS 5/2-1005(c) (West 2018)) governs summary judgments, providing the trial court must enter judgment where "the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmovant, reveal that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Busch v. Graphic Color Corp.*, 169 Ill. 2d 325, 333, 662 N.E.2d 397, 402 (1996) (citing Ill. Rev. Stat. 1989, ch. 110, ¶ 2-1005(c)). Our supreme court observed "[t]he purpose of summary judgment is to determine whether a question of fact exists." *Busch*, 169 Ill. 2d at 333. Indeed, the first step in our *de novo* review is to review the record to determine if there exists a genuine issue of material fact. *Herman v. Power Maintenance & Constructors, LLC*, 388 Ill. App. 3d 352, 360, 903 N.E.2d 852, 859 (2009). "An issue is 'genuine' if the record contains evidence to support the position of the nonmoving party." *Herman*, 388 Ill. App. 3d at 360 (citing *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 670, 601 N.E.2d 1347, 1354 (1992)).

¶ 20 In the 1970s, "Illinois joined the growing number of states recognizing the tort of retaliatory discharge." *Slover v. Brown*, 140 Ill. App. 3d 618, 620, 488 N.E.2d 1103, 1105 (1986). "The tort is an exception to the general rule that 'at-will' employment is terminable at any time for any or no cause." *Slover*, 140 Ill. App. 3d at 620. Nevertheless, "retaliatory discharge is a narrowly defined cause of action." *Hess v. Clarcor, Inc.*, 237 Ill. App. 3d 434, 449, 603 N.E.2d 1262, 1272 (1992). "[A] review of Illinois case law reveals that retaliatory discharge actions are allowed in two settings." *Jacobsen v. Knepper & Moga, P.C.*, 185 Ill. 2d 372, 376, 706 N.E.2d 491, 493 (1998). One of those settings "is when an employee is discharged for filing, or in anticipation of the filing of, a claim under the Workers' Compensation Act." *Jacobsen*, 185 Ill. 2d at 376; see also *Slover*, 140 Ill. App. 3d at 620.

¶ 21 There are three necessary elements for a retaliatory discharge action alleging the employee was terminated for filing a workers' compensation claim: "(1) plaintiff's status as an employee of defendant before injury; (2) plaintiff's exercise of a right granted by the Act; (3) employee's discharge causally related to the filing of a claim under the Act." *Slover*, 140 Ill. App. 3d at 620-21. This case centers upon the third element—causality.

¶ 22 "Causality does not exist if the basis for discharge is valid and nonpretextual." *Slover*, 140 Ill. App. 3d at 621; see also *Hess*, 237 Ill. App. 3d at 449. Under Illinois law, an at-will employee may be fired for various valid reasons or even no reason. See *Hunt v. Davita, Inc.*, 680 F.3d 775, 778 (7th Cir. 2012). One valid reason for discharging an employee is absenteeism, "even if the absenteeism is caused by a compensable injury." *Hess*, 237 Ill. App. 3d at 449. Another valid reason for firing an employee is his inability to physically do the work. See *Hess*, 237 Ill. App. 3d at 449 ("An employer is not proscribed from discharging an employee who is physically unable to perform his work."). And "failure to return to work after medical leave expires" can provide yet another valid reason for firing an at-will employee. *Hunt*, 680 F.3d at 778-79. Where there exists a valid, nonpretextual reason for terminating the employee, courts will find causality lacking and the retaliatory discharge action necessarily fails.

¶ 23 Causality may exist, however, when the evidence reveals a connection between the employee's actions (or anticipated actions) pursuant to the Act and the employer discharging the employee. The employee "can carry his burden of proof" as to causality "by showing that [an employer's] explanation for [firing] him is not believable or that it raises a genuine issue of fact as to whether defendant was retaliating against him." *Herman*, 388 Ill. App. 3d at 364. Knowledge is key. Employers must have known the employee had filed or intended to file a workers' compensation claim for there to be causality. To be sure, we have said "[e]vidence that those responsible for plaintiff's termination *knew* he intended to file a workers' compensation claim is '*essential*' to a retaliatory discharge action." (Emphases added.) *Marin v. American Meat Packing Co.*, 204 Ill. App. 3d 302, 308, 562 N.E.2d 282, 286 (1990). The Seventh Circuit said it bluntly—"logic dictates that any inference of retaliatory intent must be based on the alleged retaliator's *knowledge* of the action allegedly retaliated for." (Emphasis added.) *Hunt*, 680 F.3d at 779.

¶ 24 Turning our attention to the record, we agree with the trial court that there is no evidence suggesting Eckerty's discharge from EIF was causally related to his activity pursuant to the Act; consequently, EIF was entitled to judgment as a matter of law. First, the established timeline works against Eckerty. The record indisputably shows that Eckerty filed his workers' compensation claim on August 16, 2018, a full six weeks *after* he learned on July 3, 2018, that he would be terminated effective July 24 if he could not return to full-duty work. At first blush, the fact Eckerty filed a claim for workers' compensation after he was fired belies a causal connection between his workers' compensation claim and his termination. How could EIF retaliate against Eckerty for something that had not yet happened? However, Illinois law notes timing is not necessarily dispositive on causality.

¶ 25 Though he makes little to no argument based on the case, Eckerty cites *Bray v. Stan's Rental, Inc.*, 196 Ill. App. 3d 384, 387, 553 N.E.2d 791, 792-93 (1990), where this court noted: "It is not necessary *** that the employee actually file a claim for workers' compensation prior to his discharge, but only that he seek medical attention for the injuries." With this citation he seems to imply that filing the workers' compensation claim *after* he was terminated is not fatal

to his retaliatory discharge claim. But *Bray* differs from this case. There, the employee undeniably suffered a work accident causing an injury when he hit his head on a warehouse beam and lost consciousness. *Bray*, 196 Ill. App. 3d at 385. He immediately reported the injury to his supervisor, and he eventually sought medical treatment for the injury, a concussion. *Bray*, 196 Ill. App. 3d at 385. After already missing five days of work due to the injury, the employee called in sick when he still suffered concussion symptoms, and his employer fired him the same day. *Bray*, 196 Ill. App. 3d at 385. The employee filed a workers' compensation claim a few weeks later. *Bray*, 196 Ill. App. 3d at 386. The employee claimed his employer told him he was fired because he was taking too many days seeing doctors and costing the company money. *Bray*, 196 Ill. App. 3d at 385-86. The employer denied making those statements and claimed the employee "was fired for a number of reasons, including tardiness and poor work performance." *Bray*, 196 Ill. App. 3d at 386. We see plainly that even though the workers' compensation claim in *Bray* postdated the termination, the employer's conflicting reasons for firing its employee prevented summary judgment. The Third District held, "[b]ased on this record, we find that at a minimum a genuine issue of material fact exists as to the reason behind the [employee's] discharge." *Bray*, 196 Ill. App. 3d at 387.

¶ 26 The differences between *Bray* and this case abound. Here, there was no witnessed accident and injury at Eckerty's workplace. In his deposition, Eckerty stated EIF employees saw him limping and using the wall to walk in the days and weeks leading up to his last day on April 26, 2018, but he also noted his hip injury was due to "repetitive motion," unlike his prior work injuries that "were accidents," which even he called "two different things." By his own admission, Eckerty did not immediately report the injury to anyone at EIF, let alone his immediate supervisor on or after April 26, 2018. Every EIF employee deposed in this matter denied that Eckerty reported a work-related injury on April 27, 2018, or in any of his contacts with EIF in May, June, and July 2018. So unlike in *Bray*, EIF did not know Eckerty was missing work and seeking treatment for a workplace injury. Finally, there is no evidence EIF offered contradictory reasons for Eckerty's discharge. EIF superiors consistently stated Eckerty was discharged because he could not physically perform his duties (walking, standing, driving a forklift), he could not provide a return-to-work date, and he exhausted all his paid leave. In his deposition, Eckerty voiced his understanding of why he was let go from EIF—"I can't do that position anymore." He noted 18 months passed before he was able to do any work at all. These factual differences preclude any effort to shoehorn these facts into *Bray*'s model. Consequently, the timeline is fatal to Eckerty's retaliatory discharge claim. With no reasonable inferences that EIF knew Eckerty suffered a work-related injury or suspected he intended to file a workers' compensation claim or evidence that EIF offered contradictory reasons for firing Eckerty, logic dictates that EIF could not retaliate against Eckerty for something it knew nothing about.

¶ 27 Second, as we previously explained (*supra* ¶ 23), knowledge is key for causality. There must be evidence the employer *knew* its injured employee intended to exercise his rights under the Act. See *Marin*, 204 Ill. App. 3d at 308 ("Evidence that those responsible for plaintiff's termination knew he intended to file a workers' compensation claim is 'essential' to a retaliatory discharge action."). As our *Bray* discussion illustrates, the record before us reveals no genuine issue of material fact as to whether EIF knew Eckerty intended to take any action pursuant to the Act. Previously, Eckerty reported work accidents and injuries pursuant to EIF's policies. Even taking as true Eckerty's statements that people at EIF saw him limping in the

days and weeks leading up to his last day of work on April 26, 2018, we cannot say EIF should have anticipated that Eckerty would file a workers' compensation claim when he had reported no injury. Any issue of fact relating to causality is not genuine because we see no evidence in the record supporting the position that EIF knew Eckerty suffered a work-related injury. See *Herman*, 388 Ill. App. 3d at 360 ("An issue is 'genuine' if the record contains evidence to support the position of the nonmoving party.").

¶ 28 Third, recall a valid, nonpretextual basis for discharging an employee precludes the causality finding necessary for a retaliatory discharge action. *Slover*, 140 Ill. App. 3d at 621. The record here shows no genuine issue of material fact relating to the basis for Eckerty's discharge—EIF terminated Eckerty for several valid, nonpretextual reasons. The evidence confirms EIF terminated Eckerty's employment because he could not physically perform the job, which required prolonged standing, walking, and driving a forklift. Eckerty admitted that even in August 2020, he was unable to do his old warehouse job at EIF. The evidence further showed Eckerty could not provide a return-to-work date. Initially, he provided a note giving a nine-month recovery period for his foot surgery. Eckerty later admitted he could not work for a period of 18 months. Finally, the evidence confirms Eckerty exhausted his paid leave time. EIF even extended Eckerty's employment to ensure he kept his health insurance through July 2018 and could buy COBRA afterwards. Eckerty admitted as much during his deposition. The reasons given are valid bases for terminating employment under Illinois law. *Hess*, 237 Ill. App. 3d at 449; *Hunt*, 680 F.3d at 778. Moreover, we see no pretext here, especially considering everything EIF did to extend Eckerty's employment and considering Eckerty received no negative treatment after prior work injuries.

¶ 29 Though his argument veers in many directions, often abruptly, Eckerty maintains that piecing together circumstantial evidence creates a "convincing mosaic" showing a genuine issue of material fact that precludes summary judgment. He points to EIF not offering him light duty; EIF allegedly not adhering to its nondiscrimination and informal resolution policies; the estimated cost of keeping Eckerty on light duty for one month; EIF's failure to review Eckerty's medical records; EIF's May 22, 2018, memo mentioning COBRA; four employee evaluations missing from Eckerty's personnel file (2007, 2008, 2008, 2010); and EIF allegedly deleting e-mails or memos relating to Eckerty. While we have given it a long look, we fail to see the convincing mosaic Eckerty claims these facts depict. None are relevant to our review. For example, an employer reviewing an employee's medical records or offering him light duty proves irrelevant to a retaliatory discharge claim. Likewise, we fail to see the relevance in what it would have cost EIF to keep Eckerty employed for one more month when Eckerty's foot surgery note anticipated a 9-month recovery period and he admitted he was not able to work for 18 months. Eckerty attempts to inject uncertainty about EIF's motives in firing him by bringing up irrelevant EIF policies or EIF's document retention. None of these points pertain to the retaliatory discharge elements, particularly whether there was a causal relationship between Eckerty filing a worker's compensation claim and his termination from EIF. A claimed "convincing mosaic" would have been unnecessary if Eckerty had simply informed his employer the reasons he was not reporting for work or was seeking medical care or surgical intervention were due to what he claimed to be "repetitive" work-related motion.

¶ 30 Ultimately, the uncontroverted evidence in the record confirms EIF did not know Eckerty intended to file a workers' compensation claim or that he had been seeking medical attention for a work accident or injury. Consequently, there is no genuine issue of material fact as to the

third element for retaliatory discharge (causality), and EIF is entitled to judgment as a matter of law. See *Herman*, 388 Ill. App. 3d at 360 (giving summary judgment standard and explaining when an issue is "genuine").

¶ 31 We pause briefly to address Eckerty's other argument. He argues the trial court erred in ruling on various discovery motions, including motions to compel, motions to strike, motions for protective orders, and motions for rule to show cause. However, Eckerty's initial brief failed to cite the standard of review—abuse of discretion—and therefore failed to properly present a cogent argument as to why the trial court's decisions were erroneous. Furthermore, during oral argument, he sought to argue, for the first time, a *de novo* standard should apply to a review of discovery orders, while at the same time asserting he properly raised the abuse of discretion standard in his reply brief. Raising issues during argument or in a reply brief is not permitted under Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020), and "[b]are contentions in the absence of argument or citation of authority do not merit consideration on appeal and are deemed waived." *Obert v. Saville*, 253 Ill. App. 3d 677, 682, 624 N.E.2d 928, 931 (1993).

¶ 32 Waiver notwithstanding, we elect to address Eckerty's argument. Regarding the abuse of discretion standard, "a decision will be deemed an abuse of discretion only if the decision is 'unreasonable and arbitrary or where no reasonable person would take the view adopted by the [trial] court.' " *Pekin Insurance Co. v. St. Paul Lutheran Church*, 2016 IL App (4th) 150966, ¶ 69, 78 N.E.3d 941 (quoting *Gulino v. Zurawski*, 2015 IL App (1st) 131587, ¶ 64). Based on our review of the record and considering this highly deferential standard, we cannot say the trial court abused its discretion in ruling on the various discovery motions mentioned in Eckerty's brief. Contrary to Eckerty's argument, none of them had any impact on the evidence available for consideration of EFI's summary judgment motion. The trial court denied Eckerty's May 2020 motion to compel deposition of EIF's employee after hearing argument, noting both side's frustration with the slow litigation but acknowledging the COVID-19 pandemic "dealt *** a hand that no one anticipated." The depositions were eventually taken, and taken before the summary judgment motion was argued, so any evidence Eckerty considered relevant from the depositions was available to him. The trial court denied Eckerty's September 2020 motion to strike defendant's objections and compel discovery answers because Eckerty failed to comply with Illinois Supreme Court Rule 201(k) (eff. July 1, 2014), finding "plaintiff's motion and reply fail to include a statement that plaintiff's counsel had 'personal consultation and [made] reasonable attempts to resolve differences.' " We are unpersuaded by Eckerty's counsel's argument that any discussions he had with opposing counsel before, during, or after the depositions constituted compliance with Rule 201(k). The trial court denied Eckerty's October 2020 motion for a protective order when, after reviewing the deposition at issue along with the briefing, it determined there were " a number of objections—some of which were unnecessary—the Court does not agree with plaintiff's contention that the objections that improperly coached the witness." Finally, the trial court denied the March 2021 motion for rule to show cause after reviewing *in camera* the 195 pages of disputed discovery documents and finding all the documents postdated Eckerty's termination, nothing "could be characterized in any way as an admission by a party opponent," and the documents did not relate to Eckerty's treatment for his medical conditions. The trial court gave Eckerty's motions careful consideration and its decisions denying the motions were not unreasonable or arbitrary. *Pekin Insurance Co.*, 2016 IL App (4th) 150966, ¶ 69.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.