BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
JOHNS MANVILLE, a Delaware Corporation,	)	
Complainant,	)	PCB No. 14-3
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 2, 2023, I caused to be filed with the Clerk of the Pollution Control Board of the State of Illinois, Johns Manville's Response in Opposition to Illinois Department of Transportations' Motion to Stay, a copy of which is attached hereto and herewith served upon you via e-mail.

JOHNS MANVILLE

By: /s/ Susan E. Brice

Dated: October 2, 2023

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Johns Manville's Response in Opposition to Illinois Department of Transportations' Motion to Stay was filed on October 2, 2023 with the following:

Don Brown, Clerk
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and that true copies were emailed on October 2, 2023 to the parties listed on the foregoing Service List.

/s/ Susan E. Brice

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,	)	
	)	
Complainant,	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

JOHNS MANVILLE'S RESPONSE IN OPPOSITION TO ILLINOIS DEPARTMENT OF TRANSPORTATION'S MOTION STAY

Respondent, Johns Manville ("JM"), by its undersigned counsel, responds and objects to Illinois Department of Transportation's ("IDOT") inapplicable Motion for Stay. Because the Illinois Pollution Control Board's ("Board") order is a solely a judgment for money, Illinois Supreme Court Rule 305(a) applies, which states that "enforcement of a judgment for money only, or any portion of a judgment which is for money, shall be stayed only if a timely notice of appeal is filed and an appeal bond or other form of security… , is presented to, approved by and filed with the court within the time for filing the notice of appeal…" IL Sup. Ct. R. 305(a). IDOT has failed to file an appeal bond at all, let alone within the time for filing the notice of appeal; thus, no stay may be considered.

JM contacted the Illinois Attorney General's Office ("IAGO") on September 20, 2023 to collect its judgment, two days after it was due to be paid. During that call, JM notified the IAGO that it had failed to post a bond or pay the judgment. After that call, IDOT filed this improper Motion to Stay in an effort to thwart the Board's Order and forestall JM's attempts to enforce the judgment that IDOT refuses to pay.

IDOT's Motion is silent as to any Rule furnishing the Board with the power to entertain this Motion. That is because none exists. Rule 305(a) applies to monetary judgments and provides

an automatic stay of the judgment if a bond or similar instrument is approved. It provides no mechanism to seek a stay of the judgment. Rule 305(b), by contrast, applies to "Nonmoney Judgments and Other Appealable Orders" and allows for the filing and granting of a motion to stay if certain equitable considerations are met. IL Sup. Ct. R. 305(b). Unlike Rule 305(a), the requirement of a bond is not mandatory under Rule 305(b). *Id*. IDOT's Motion glosses over this pivotal procedural point, improperly assuming that a Motion to Stay is appropriate in the case of a money judgment and mistakenly addressing discretionary facts that are inapplicable here.

But even if the Board were to circumvent the mandates of Rule 305(a) and consider IDOT's Motion, the Motion to Stay was admittedly untimely and does not meet discretionary standards. IDOT's Motion to Stay ("Mot.") at ¶3 (there are two paragraphs noted as ¶3). IDOT has not demonstrated that a stay is necessary to secure the fruits of the appeal, nor that they will have any success on the merits of their appeal. Rather, JM would be highly prejudiced by a stay. JM has diligently enforced this matter with the Board for over 10 years and is entitled to the judgment the Board issued in its Order.

I. The Board Lacks Power to Entertain this Motion to Stay.

IL Supreme Court Rule 305(a) dictates stays on of monetary judgments, stating in relevant part:

> The enforcement of a judgment for money only, or any portion of a judgment which is for money, shall be stayed only if a timely notice of appeal is filed and an appeal bond or other form of security, including, but not limited to, letters of credit, escrow agreements, and certificates of deposit, is presented to, approved by and filed with the court within the time for filing the notice of appeal or within any extension of time granted under paragraph (c) of this rule. Notice of the presentment of the bond or other form of security shall be given by the judgment debtor to all parties. The bond or other form of security ordinarily shall be in an amount sufficient to cover the amount of the judgment and costs plus interest reasonably anticipated to accrue during the pendency of the appeal…
> Ill. Sup. Ct. R. 305(a)

Notably, the Rule contains no means to file a Motion to Stay. Rather, under Rule 305(a), entitled "Stay of Enforcement of Money Judgments," "[i]n order to stay a money judgment pursuant to Rule 305(a), the judgment debtor filing an appeal must post an appeal bond that covers the money damages portion of the order." *Sullivan v. OHIC*, 2014 IL App (1st) 111125-U, P155 (holding that when judgment debtor did not post a bond and thus did not obtain an automatic stay under Rule 305(a), that creditor could collect the judgment).[1] Rule 305(b), however, allows for motions to stay and empowers a court or other tribunal to grant a discretionary stay from enforcement of non-money judgments. After all, if they both applied to money judgments, then 305(a)'s bond mandate would be rendered superfluous.

This distinction is addressed in *In re Marriage of Schmid*, 2016 IL App (4th) 150900-U, P65. In that case, the appellate court affirmed the lower court's denial of the stay of monetary judgment because the movant "filed his notice of appeal before an appeal bond was 'presented to, approved by, and filed with the court'…" *Id.* at ¶66, *citing* IL S. Ct. R. 305(a) (eff. July 1, 2004).[2] The appellate court concluded that the lower court was correct to deny the stay "because the rule's procedural requirements had not been met." *Id*. The Court also noted that, unless an extension is granted, the bond should have been filed within the time frame for filing a timely notice of appeal. *Id.* at ¶67.

Consistent with the holdings in *Sullivan* and *Schmid*, the Administrative Office of the Illinois Courts for Civil Appeals specifically states that a stay of money judgments requires "[a] timely Notice of Appeal and Appeal Bond must be filed in the circuit court"… and "must be

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[1] *Sullivan v. OHIC,* 2014 IL App (1st) 111125-U, June 27, 2014 was filed under Supreme Court Rule 23(e). However, because motions to stay under Rule 305(a) are determined by lower courts, they appear not to be in searchable orders; thus, this opinion was included to further inform the Board and is attached as Exhibit 1.

[2] Similar to *Sullivan*, *In re Schmid*, 2016 IL App (4th) 150900-U, Sept. 30, 2016 was filed under Supreme Court Rule 23(e), and is included to further inform the Board and is attached as Exhibit 2.

enough to cover the judgment, interest, and any costs." Administrative Office of the Illinois Courts Civil Appeals – FAQ, July 2022, p. 3, attached as Exhibit 3. The same guidance provides that in order to stop the enforcement of a "judgment that does not involve money, you must comply with Rule 305(b)," which may include the filing of an appeal bond. *Id*. Similarly, Illinois legal associations clearly state that for monetary judgments, a bond or other security must be presented with the appeal and do not describe any allowance for not timely posting the bond. *See* Christine Olson McTigue, *Stays Of Judgment Pending Appeal Pursuant to Supreme Court Rule 305,* Vol. 26 (2013-14), DCBA Brief;[3] *A Guide to Illinois Civil Appellate Procedures,* Appellate Lawyers Association, (updated and revised in October 2022).[4]

IDOT's reliance on *Stacke v. Bates,* 138 Ill. 2d 295 (1990), is improper. *Stacke* was decided under the prior version of Rule 305(b), which at the time expressly allowed for stays of "the enforcement of a judgment for money only not stayed by compliance with paragraph (a) of this Rule."[5] IL Sup. Ct. R. 305(b) (prior version) (effective July 1, 1982). The current version of 305(b) is entitled "Stays of Enforcements of *Nonmoney Judgments* and Other Appealable Orders" and states it applies to any judgment "***other than a judgment, or portion of a judgment, for money***." IL Sup. Ct. R. 305(b) (emphasis added). This change occurred in 2004. At that time, Rule 305(b) was amended to clarify its inapplicability to monetary judgments. The Illinois Supreme Court Committee Comments on Rule 305(b) state that the paragraph "has been amended to clarify that it is inapplicable to appeals from monetary judgments."[6] IL Sup. Ct. R. 305(b), Committee

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[3] https://www.dcba.org/mpage/vol260314art3

[4] https://applawyers.org/resources/Documents/Guide/FINAL%202022%20Guide%20-%20UPDATED%2011-4-22.pdf.

[5] *See Libertyville v. Moran*, 179 Ill. App. 3d 880, 883-884 (2nd Dist. 1989); and the 1991 IL Sup. Ct. Rule 305(b) attached as Exhibit 4.

[6] The Amended Rule 305(b) provides that "[O]n notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, *other than a judgment, or portion of a judgment,*

Comments (adopted June 15, 2004). Therefore, *Stacke,* decided in 1990, is no longer good law as applied to monetary judgments and Section 305(b) and its equitable consideration have no place here.

This is the exact same argument that the People made in *People v. Toyal America, Inc.* PCB 00-211 (Sept. 16, 2010). The People argued that "under Supreme Court Rule 305(a), the respondent is not entitled to a stay of the judgment, unless it provides 'an appeal bond or other form of security' (Sup. Ct. R. 305(a)), to ensure that respondent will pay what is owed if the judgment is affirmed." In *Toyal*, the Board denied the stay, but did not address the People's Rule 305(a) argument for reasons that remain unclear. Now that the roles are reversed, and the government is the judgment debtor, the government wants to ignore its prior argument in *Toyal*.

While JM recognizes that the Board still cites to *Stacke* in its decisions, it should not rely on it here. Not only is *Stacke* a Section 305(b) case, but also the amendments to Rules 305(a) and (b) in 1994 rendered *Stacke* obsolete as to money judgments. *See supra*, p. 4. *In re Posner*, 610 B.R. 586, 591 (November 13, 2019) (applying Illinois law) ("In Illinois …to stay enforcement of a judgment that awards money, Illinois Supreme Court Rule 305 requires judgment debtors to post a bond or other form of security.") It appears that it appears that various tribunals might have overlooked this change to Rule 305(b), as its text now expressly states that it applies to any judgment "***other than a judgment, or portion of a judgment, for money***." IL Sup. Ct. R. 305(b) (emphasis added); *Drennan v. Susman (In re Estate of Susman)*, 2012 IL App (2d) 110121-U, P49

for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. (emphasis added). IL Sup. Ct. R. 305(b).

(recognizing the distinction between Rule 305(a) and (b) and that (b) applies to "nonmoney judgments").[7]

IDOT relies on Rule 335(g) to support its Motion. While Rule 335 provides that certain orders of an administrative agency shall be reviewed directly by the Appellate Court, it provides no independent authority to seek a stay; it provides that when a motion for a stay is made involving an agency order, the motion for stay should be made "in the first instance to the agency." IL Sup. Ct. R. 335(g). In fact, Rule 335 acknowledges that other rules apply to direct administrative appeals, namely Rules 301 through 373, except Rule 326. IL Sup. Ct. R. 335(i)(1). Here, Rule 305(a) governs, as it serves as the Rule applicable to appeals of money judgments and establishes the requirements to trigger the automatic stay.

IDOT cites to Rule 305(i) for the proposition that the Board "may" issue a "stay without a bond or other security posted by Respondent, a State Agency." Mot. at ¶2. This Rule, however, must be read in tandem with Rule 305(b), which sets forth the procedures involving a motion to stay. But, as previously noted, Rule 305(b) does not apply here because the appeal involves a money judgment, which is exclusively dealt with under Rule 305(a).

The Illinois Supreme Court has stated that its rules are not suggestions, but "have the force of law, and the presumption must be that they will be obeyed and enforced as written." *Bright v. Dicke*, 166 Ill. 2d 204, 210, 652 N.E.2d 275, 278, 209 Ill. Dec. 735 (1995). Here, Rule 305(a) is clear. Because IDOT failed to file an appeal bond with their notice of appeal within the time for filing the notice of appeal, IDOT may not be granted a stay.

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[7] Similar to *Sullivan* and *In re Schmid*, this case was also filed under Supreme Court Rule 23(e), and is included to further inform the Board and is attached as Exhibit 5.

II. IDOT's Motion is Too Late.

In the alternative, if the Board were to ignore the Illinois Supreme Court's amendments and hear this Motion to Stay a monetary judgment under 305(b), IDOT would still lose. First, IDOT concedes its Motion to Stay is untimely. In Paragraph 3 of its Motion, IDOT states that "IDOT inadvertently failed to simultaneously move for a stay" when it filed its Cross-Appeal. Mot. at ¶3. Here, IDOT not only failed to seek a stay with its Cross Appeal, but also only asked for a stay after the judgment was owed to JM and JM contacted the IAGO. The Motion should be denied.

III. IDOT cannot meet the High Bar for a Stay Pending an Appeal

Setting aside the timing argument, if the Board were to consider the Motion despite its irrelevance and insist on applying *Stacke* (which is inapposite here), IDOT cannot crest the high bar the Board has established for a discretionary stay. Under *Stacke*, discretionary stays are granted if the movant can show that the stay is necessary to secure the "fruits of the appeal," that the stay would not cause substantial harm to the other party, and that the movant possesses a "substantial case on the merits."

A. JM would be Highly Prejudiced by a Stay

IDOT's claim that it requires the stay to secure the fruits of the appeal is absurd. IDOT cannot even muster an argument to support this nonsensical claim that it needs a stay to secure the money at issue. The claim that JM will not be prejudiced must be similarly rejected. Again, IDOT does not explain why JM would not be prejudiced or harmed by what it characterizes as a judgment that "only directs the payment of money." Mot. at ¶2. To the contrary, JM has diligently prosecuted this case for 10 years. After years of litigation, the Board correctly held that IDOT had violated the Illinois Environmental Protection Act and that it should pay JM $620,203 in costs as a result of those violations. In other words, for ten years IDOT has wrongfully refrained from reimbursing

JM the money it expended because of IDOT's illegal conduct. More time is neither warranted nor appropriate. By refusing to pay JM, IDOT is knowingly forcing JM to spend even more money to enforce this Board's valid Orders. This gamesmanship is highly prejudicial to JM.

Also, IDOT's claim of preserving taxpayer funds is preposterous. The Board's finding that IDOT was liable for $620,203 is remarkably close to IDOT's own expert's opinion that IDOT owed $600,500. Based upon their own expert's opinion, IDOT should have allocated *at least* $600,500 to pay the costs, and in fact more to ensure payment could be made.

B. IDOT Lacks a "Substantial Case on the Merits" of its Appeal

IDOT's claim that it has presented a "substantial case on the merits" of its appeal is unfounded. As demonstrated by the two cases IDOT relies upon in its Motion, the Board has a high bar to establish that there is a substantial case on the merits of the appeal. IDOT has not met that bar. In both cases relied upon by IDOT, the Board found that there was not a substantial case on the merits for either case, and denied the motion for a stay. *Toyal,* PCB 00-211 at p. 5; *Phillips 66 Company v. Illinois EPA,* PCB 12-101 (August 8, 2013) *slip op.* at 6-7. In fact, the Board has repeatedly denied motions for stay because the movant did not show a substantial case on the merits of the appeal. *See e.g. Reliable Stores, Inc. v. OFSM*, PCB1 9-2 (Dec. 2, 2021), *slip-op* p. 4 (Board denied motion for stay because no showing of a substantial case on the merits of the appeal); *People v. AET Environmental, Inc. v. E.O.R. Energy LLC,* PCB 07-95 (June 20, 2013), *slip-op.* p. 5 (same); *People of the State of Illinois v. Community Landfill Company Inc. et. al.,* PCB 03-191 (Nov. 5. 2009), *slip-op.* p. 4 (same).

Here, IDOT's claim that it has a substantial case on the merits of its appeals related to the State Lawsuit Immunity Act and Court of Claims Act is meritless. IDOT has had <u>*two*</u> opportunities to argue that the State Lawsuit Immunity Act and Court of Claims Act applied to this case. They

first made that argument in the liability phase and they reasserted it during the damages phase. Both times, the Board correctly denied IDOT's sovereign immunity claims and found that the State Lawsuit Immunity Act does not confer sovereign immunity on IDOT in actions under Section 31(d) of the Act and, even if it did, the Board found that the Act clearly and unequivocally waives sovereign immunity in this matter. *Johns Manville v. IDOT*, PCB14-3, Dec. 15, 2016 Order, p. 17 and Aug. 3, 2023, pp.12-14.[8] Because the Board has twice found against IDOT on these issues, there is plainly no substantial case on the merits of its appeal.

IV. Conclusion

IDOT's motion must be denied because it did not file a bond and, as a matter of law, no stay can be entered under Illinois Supreme Court Rule 305(a). But if that were not the law, IDOT has provided no rationale as to why a stay should be entered based upon equitable considerations. For the foregoing reasons, JM requests that the Board deny IDOT's motion for stay.

Respectfully submitted,

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[8] In comparison, JM's appeal has a case on the merits of the appeal because it is related to the final costs the Board determined IDOT owed, which JM contends was contrary to the law and against the facts presented and the expert witness testimony, including the incorrect admission of unreliable expert opinion.

EXHIBIT 1

Sullivan v. OHIC

Appellate Court of Illinois, First District, Sixth Division

June 27, 2014, Decided

Nos. 1-11-1125 and 1-12-2395 (consolidated)

Reporter
2014 IL App (1st) 111125-U *; 2014 Ill. App. Unpub. LEXIS 1422 **; 2014 WL 2925752

RHONDA SULLIVAN, Individually and As Mother and Next Friend of Beau Sullivan, a Minor, and JASON SULLIVAN, Plaintiffs-Petitioners-Appellees, v. OHIC, f/k/a Ohio Hospital Insurance Company, a Corporation, Defendant (Law Office of Kenneth C. Chessick, M.D., Respondent-Appellant).RHONDA SULLIVAN, Individually, and As Mother and Next Friend of Beau Sullivan, a Minor, and JASON SULLIVAN, Plaintiffs-Petitioners-Appellants, v. OHIC, f/k/a Ohio Hospital Insurance Company, a Corporation, Defendant (Law Office of Kenneth C. Chessick, M.D., Respondent-Appellee).

Notice: THIS ORDER WAS FILED UNDER *SUPREME COURT RULE 23* AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER *RULE 23(e)(1)*.

Prior History: [1]** Appeal from the Circuit Court of Cook County. No. 02 L 5040. Honorable Susan F. Zwick, Judge Presiding.

Disposition: Appeal number 1-11-1125; orders vacated. Appeal number 1-12-2395; appeal dismissed.

Judges: PRESIDING JUSTICE ROCHFORD delivered the judgment of the court. Justice Reyes concurred in the judgment. Justice Lampkin dissented.

Opinion by: ROCHFORD

Opinion

Held: After 30 days, the circuit court lacked subject-matter jurisdiction to vacate the dismissal with prejudice of a bad-faith action based on a settlement, and enter orders as to the distribution of the settlement proceeds and attorney fees pursuant to a local rule relating to minors' settlements. Therefore, the circuit court's orders entered pursuant to a motion for review of the settlement pursuant to the local rule are void and vacated. The appeal based on efforts to enforce those void orders is dismissed as moot.

ORDER

[*P1] Plaintiffs-petitioners-appellees/petitioners-appellants, Rhonda Sullivan, individually and as mother and next friend of Beau Sullivan, a minor, and Jason Sullivan (together, the Sullivans) brought suit in the circuit court of Cook County (circuit court) against OHIC, an insurance company, claiming bad faith relating to the Sullivans' medical-negligence **[**2]** claims against its insured (bad-faith action). The Law Office of Kenneth C. Chessick, M.D. (Chessick), represented the Sullivans in the medical-negligence action which was pursued in the circuit court of Ogle County. Chessick also represented the Sullivans in the bad-faith action. On November 12, 2009, after the bad-faith action was settled, the circuit court entered an order dismissing that suit with prejudice. The Sullivans later discharged Chessick. On March 12, 2010, the Sullivans, through their new attorneys, filed a motion seeking review of the bad-faith settlement pursuant to Cook County Circuit Court *Rule 6.4* (*Cook Co. Cir. Ct. R. 6.4* (eff. Jan. 2, 2001)) (*Rule 6.4*). The circuit court, pursuant to this motion, vacated the dismissal, found the settlement was reasonable, determined the distribution of the settlement proceeds, and awarded attorney fees to Chessick.

[*P2] Chessick appeals (appellate case number 1-11-1125), from the various orders of the circuit court which were entered after the November 12, 2009, dismissal order. Chessick argues, *inter alia*, that these orders are void because the circuit court lacked subject-matter jurisdiction and personal jurisdiction over the parties. Chessick further **[**3]** argues the circuit court disregarded orders entered by the Ogle County probate court and *Rule 6.4* was inapplicable and unconstitutional.

[*P3] The Sullivans have appealed the circuit court's orders denying their motion for a money judgment and an award of interest against Chessick and declining to rule on their motion to reconsider that order (appellate case number 1-12-2395). The Sullivans filed those motions after Chessick had filed its notice of appeal.

[*P4] We vacate the circuit court's orders entered after the dismissal of the bad-faith action which are the subject of Chessick's appeal, finding the circuit court lacked subject-matter jurisdiction pursuant to the motion for *Rule 6.4* review. Additionally, we dismiss the Sullivans' appeal as moot.

[*P5] Beau Sullivan (the minor) sustained injuries in connection with his premature birth at Rochelle Community Hospital (hospital) in October 1994. In 1996, the Sullivans pursued a medical-negligence action against the hospital and a doctor seeking recovery on behalf of the minor and his parents in the circuit court of Ogle County. Chessick represented the Sullivans pursuant to a contingency-fee agreement. In 1999, the Sullivans' claims against the doctor were settled for **[**4]** a present cash value of $950,000, an amount within the $1 million limits of the doctor's liability insurance. A guardianship estate for the minor was then opened in the probate division of the Ogle County court. According to the record, the same Ogle County circuit court judge oversaw the medical-negligence case (case number 96 L 23), and the minor's probate case (case number 99 P 33). The Ogle County court approved the Sullivans' settlement with the doctor, and awarded Chessick attorney fees (which were 33.33% of the settlement recovery) and litigation costs.

[*P6] In 2001, the medical-negligence suit against the hospital proceeded to a jury trial. The jury awarded the Sullivans $10 million in damages, which exceeded the hospital's limits of coverage under its liability policy issued by OHIC. The Sullivans and the hospital reached a compromise of the jury's verdict whereby the Sullivans received the $6 million policy limits and an assignment of the hospital's claims against OHIC for breach of the covenants of good faith and fair dealing. The Ogle County court approved the settlement, Chessick's attorney fees (37% of the recovered amount), and litigation costs. The Ogle County court also approved **[**5]** the withholding of $100,000 for future litigation costs as to the bad-faith action against OHIC. A guardian *ad litem* (GAL) was charged with effectuating the settlement.

[*P7] In 2002, the Sullivans, as assignees of the hospital, filed the bad-faith action in the circuit court alleging claims of bad faith and breach of fiduciary duty against OHIC for its failure to settle the medical-negligence action. Chessick again represented the Sullivans pursuant to a contingency-fee agreement. After the case was assigned for trial in November 2009, the parties agreed to settle the matter for $2,750,000. On November 12, 2009, the circuit court entered an agreed order dismissing the bad-faith action with prejudice "pursuant to the settlement." The order stated the circuit court "retain[ed] jurisdiction of [the bad-faith action] to enforce the terms of the settlement" and directed OHIC to pay the settlement by December 11, 2009, "[i]f payment is not received by December 11, 2009, statutory interest shall accrue ***." Beau Sullivan was 15 years old at that time. Chessick did not present to the circuit court a petition to approve the settlement and distribution on behalf of a minor pursuant to *Rule 6.4*.

[*P8] On November 30, 2009, Chessick **[**6]** filed a final litigation inventory for the bad-faith action in the Ogle County probate case, listing the distribution of proceeds from the $2,750,000 bad-faith action settlement as: $1,292,500 in attorney fees to Chessick (based on a 47% contingency-fee agreement); a $24,571 balance in the advanced litigation costs of $100,000, and $1,482,071 settlement proceeds due to the Sullivans.

[*P9] On December 3, 2009, the Ogle County probate court entered an order that "received and approved" the final litigation inventory; ordered Chessick to hold the $1,482,071 settlement proceeds pending further court order as to allocation; appointed a new GAL; and set the cause for further status in February 2010. There is no indication in the record that the Ogle County probate court conducted a review to determine whether the settlement of the bad-faith action on behalf of the minor was fair and reasonable.

[*P10] On January 5, 2010, the Sullivans, by letter, discharged Chessick. On January 11, 2010, the Ogle County probate court granted Chessick leave to withdraw as counsel and granted the Sullivans' new attorney leave to appear. The Ogle County probate court ordered Chessick to deliver to the Sullivans' new attorney **[**7]** a $700,000 check payable to Rhonda and Jason Sullivan as their share of the settlement proceeds and to transfer to the clerk of the Ogle County circuit court on behalf of the minor the balance of the settlement funds—$782,071.

[*P11] On March 12, 2010, the Sullivans' new attorney filed in the circuit court a "Motion to Request Presentation of a Petition to Approve Settlement and Distribution on Behalf of Beau Sullivan, a Minor" (motion for *Rule 6.4* review). The Sullivans alleged that although the bad-faith action had been dismissed with prejudice pursuant to a settlement, and the Ogle County probate court had entered an order allowing attorney fees and distribution of the settlement, there had been no compliance with the procedure set forth in *Rule 6.4*. *Rule 6.4* provides as follows:

> "The procedure to be followed in cases involving claims of minors or disabled persons pending in divisions other than the Probate Division shall be as follows:
>
> (a) The judge hearing the case, upon the approval of a settlement as fair and reasonable or upon the entry of a judgment, shall adjudicate liens, determine the expenses, including attorneys' compensation, to be deducted from the settlement or judgment and shall determine the net **[**8]** amount distributable to the *minor* or disabled person.
>
> (b) Except as otherwise limited by rule or statute, attorneys' compensation shall not exceed one-third of the recovery if the case is disposed of in the trial court by settlement or trial. If an appeal is perfected, the compensation to be paid to the attorney shall not in any event exceed one half of the recovery.
>
> (c) The order approving the settlement or the order entering the judgment shall provide that the amount distributable to the minor or disabled person shall be paid only to a representative of the minor or disabled person appointed by the Probate Division and upon presentation of an order entered in the Probate Division approving the bond or other security required in connection therewith, except that if the amount distributable to the minor or disabled person does not exceed $10,000, and no representative has been appointed in the Probate Division, the judge hearing the case may by order provide for the distribution to a parent or person standing *in loco parentis* to the minor or to the spouse or relative having the responsibility of the support of the disabled person in accordance with the provisions of *755 ILCS 5/25-2*.
>
> (d) The distributable **[**9]** amount received by a representative of a minor or disabled person pursuant to the provisions of this section shall be accounted for and administered in the Probate Division as in any other estate of a minor or disabled person." (Emphasis added.) *Cook Co. Cir. Ct. R. 6.4* (eff. Jan. 2, 2001).

[*P12] The Sullivans requested that the circuit court order Chessick to file a petition to approve the minor's settlement and distribution and set a date certain for a hearing on such a petition. The service list showed the motion for *Rule 6.4* review was served on Chessick by facsimile. The service list did not show service on OHIC.

[*P13] In a written response, filed on March 29, 2010, Chessick argued, *inter alia*, that the motion for *Rule 6.4* review should be denied because Chessick has been discharged and, thus, could not now file a petition under *Rule 6.4* on behalf of the Sullivans; the circuit court lacked subject-matter jurisdiction because the bad-faith action was dismissed almost four months ago; the circuit court lacked personal jurisdiction over Chessick who was neither a party nor a representative of a party; and the settlement funds had already been distributed with the knowledge and consent of the Sullivans, the GAL appointed **[**10]** by the Ogle County probate court, and the Ogle County probate court. Chessick also maintained that the bad-faith action was based on an assignment of the hospital's rights against OHIC, and did not involve a minor's claim and, therefore, *Rule 6.4* was inapplicable.

[*P14] On March 31, 2010, the motion for *Rule 6.4* review was presented to the circuit court. The circuit court, having noted the jurisdictional issues raised by Chessick in its response to the motion for *Rule 6.4* review, set an additional briefing schedule for the jurisdictional issues to be further addressed by the Sullivans and Chessick. The Sullivans were to respond to Chessick's response by April 21, 2010, and Chessick was to reply by May 5, 2010. The order stated the circuit court would issue a written ruling on May 12, 2010.

[*P15] On April 21, 2010, rather than file a response brief, the Sullivans filed a petition to vacate the November 12, 2009 dismissal order pursuant to *section 2-1401* of the Code of Civil Procedure (Code) (*735 ILCS 5/2-1401* (West 2010)), and a motion seeking to stay the briefing schedule on its motion for *Rule 6.4* review until the circuit court ruled on their *section 2-1401* petition. The Sullivans argued that their *section 2-1401* petition was timely filed, they acted with diligence, a meritorious claim **[**11]** existed and, the dismissal of the bad-faith action without a *Rule 6.4* review was not due to their inexcusable neglect.

[*P16] In the alternative, the Sullivans argued that the circuit court had jurisdiction, aside from *section 2-1401* of the Code, to review and vacate the 2009 dismissal order because section 5/19-8 of the Probate Act of 1975 (Probate Act) (*755 ILCS 5/19-8* (West 2010)), requires leave of court to compromise any claim of a minor and *Rule 6.4* requires the trial court to determine the reasonableness of the settlement, expenses, attorney fees, and net amount distributable to the minor.

[*P17] The certificate of service stated that the *section 2-1401* petition and the motion for stay were served on Chessick by facsimile. The service list did not include proof of service on OHIC.

[*P18] On April 23, 2010, the GAL filed in the Ogle County probate court a motion to reconsider the December 2009 order that had approved the final litigation inventory submitted by Chessick. The GAL specifically challenged the award of 47% of the settlement as attorney fees to Chessick. The Ogle County probate court granted the Sullivans and Chessick leave to respond to the GAL's motion and ordered the Sullivans to continue to hold the $700,000 proceeds from the bad-faith settlement which were **[**12]** previously allocated to the parents pending further order of the court.

[*P19] On May 21, 2010, Chessick filed a surreply in opposition to the motion for *Rule 6.4* review pursuant to the circuit court's briefing schedule. Chessick continued to argue the circuit court no longer had subject-matter jurisdiction and lacked personal jurisdiction over Chessick.

[*P20] As part of the same surreply, Chessick also argued that the Sullivans' *section 2-1401* petition was "improper" because the Sullivans had agreed to the settlement with OHIC, signed a release, and agreed to Chessick's costs and attorney fees; OHIC had paid the settlement proceeds; and the Ogle County probate court had already distributed those funds.

[*P21] At a hearing on June 30, 2010, the circuit court acknowledged that the motion for *Rule 6.4* review and the *section 2-1401* petition were pending. The circuit court expressed its belief that Chessick had not filed a "complete and appropriate response" to the *section 2-1401* petition.

[*P22] The circuit court had concerns about whether the *section 2-1401* petition had been served on OHIC. During the hearing, the Sullivans' attorney represented that the *section 2-1401* petition had been sent to the registered agent of OHIC and the Sullivans had "heard nothing." The transcript of proceedings for the **[**13]** hearing does not reflect that the Sullivans presented any proof of service of the *section 2-1401* petition on OHIC in accordance with the applicable rules.

[*P23] During the hearing, the circuit court remarked that its order scheduling the hearing had informed the parties that the *section 2-1401* petition would not be argued. The circuit court went on to say:

> "THE COURT: So the first thing that has to be done, the first thing I have to take a look at is jurisdiction from both sides. Do I have it? Because if I don't, then everything we've done so far is going to be either void or voidable.
>
> When I first look at this, or set this hearing, I specifically said in the order that the *[section 2-1401]* issue would not be argued. And the reason is the statute, as well as the requirements of *[section 2-1401]*, are very clear. They're very clear. You follow the rules. You give me — you give me the work, you give me the petition, I can rule on the paperwork. And that was what I intended to do if we got to the *[section 2-1401]* issue.

> We didn't get there because I wanted to hear from both sides whether or not they believe — and I'm sure that the Chessick firm believes that I don't, and [the Sullivans' attorney's] position is that I do — is that since the Court retained jurisdiction **[**14]** to effectuate the terms of the settlement under the court order, does that include requiring a [Rule 6.4]— does that include this situation? And under this situation, do the Circuit Court rules apply."

[*P24] The circuit court asked Chessick and the Sullivans to address whether Rule 6.4 applied to the bad-faith action which was based on an assignment of the hospital's rights against OHIC, and whether the circuit court continued to have jurisdiction to consider the motion for Rule 6.4 review because it had retained jurisdiction to effectuate the terms of the settlement. Although the section 2-1401 petition was discussed, the hearing was not directed at determining whether the Sullivans had met the standards or requirements for the granting of their section 2-1401 petition. After the hearing, the circuit court entered an order which stated a written decision on both the section 2-1401 petition and the motion for Rule 6.4 review would be issued on July 8, 2010.

[*P25] On July 8, 2010, the circuit court entered an order, pursuant to the Sullivans' "motions" for Rule 6.4 review. In its order, the circuit court vacated the November 12, 2009, dismissal order and reinstated the bad-faith cause. The circuit court found that, in the dismissal order, it had expressly retained jurisdiction **[**15]** to enforce the settlement; Rule 6.4 was applicable in this matter; the Ogle County probate court's December 3, 2009 order did not satisfy the requirements of either Rule 6.4 or the provisions of the Probate Act as to settlements involving minors; and the Ogle County probate court's order allowing disbursement of funds was premature. The July 8, 2010 order did not refer to or address the merits of the Sullivans' section 2-1401 petition. The order directed the Sullivans to present a petition for the distribution of attorney fees. The Sullivans and Chessick filed separate petitions as to attorney fees.

[*P26] At an August 20, 2010, status call, the circuit court discussed the remaining issues, including approval of the settlement. The circuit court, during those discussions, stated: "There is no [section 2-1401] issue at this juncture. Those issues are moot."

[*P27] On August 27, 2010, the circuit court entered an order finding Chessick was entitled to attorney fees of $907,500, which represented 33% of the bad-faith action settlement recovery, and $73,173.28 in litigation costs, with $1,769,326.72 remaining for allocation to the Sullivans. The case was set for status on the allocation of the settlement proceeds.

[*P28] Chessick filed a motion for reconsideration **[**16]** of the August 27, 2010, order arguing, *inter alia*, that Rule 6.4 violated the rights of parties to enter into contingency-fee contracts and, thus, was unconstitutional.

[*P29] On December 20, 2010, the circuit court entered an order which granted Chessick's motion and vacated the August 27, 2010, order. The circuit court found Rule 6.4 was constitutional on its face but the rule had not been applied constitutionally where the circuit court had failed to consider whether Chessick was entitled to enhanced fees. The circuit court stated it would now consider Chessick's fee petition pursuant to the standards applicable for an award of enhanced fees.

[*P30] On January 3, 2011, the circuit court entered an order denying Chessick an award of enhanced fees. The circuit court determined, however, that in its August 27, 2010, order, it had improperly calculated attorney fees based on 33% of the total bad-faith settlement rather than the correct multiplier of 33.33% under Rule 6.4. Accordingly, the January 3, 2011, order awarded Chessick attorney fees of $916,575 and litigation costs of $74,046.48 (based on further documentation of expenses). The case was again set for status on the allocation of the remaining settlement proceeds.

[*P31] **[**17]** The circuit court, on January 13, 2011, entered an order which allocated the bad-faith settlement proceeds: 75% to the minor and 25% to his parents. Based on that allocation, Chessick moved to recalculate the award of attorney fees, contending it was entitled to an additional $96,240, as to the parents' allocation, based on a 1996 contingency agreement setting attorney fees for the parents' recovery at 47%.

[*P32] On March 28, 2011, the circuit court entered an order finding that the parties' 2002 contingency fee agreement, not the 1996 contingency-fee agreement, governed and provided for attorney fees at 37% of the parents' recovery. In its order, the circuit court "reaffirmed" the $2,750,000 settlement was fair and reasonable and distributed $2,062,500 to the minor, and $687,500 to his parents. The order awarded Chessick $941,796.25 in attorney fees, which was 33.33% of the minor's recovery (or $687,431.25) and 37% of his parents' recovery (or $254,365). The order did not expressly direct Chessick to pay the Sullivans the excess fees which he had received based on the order of the probate court of Ogle County. The circuit court's order did instruct Chessick to pay the minor $25,953.52—the **[**18]** remainder of the $100,000 advanced for the costs of the bad-faith action. Consequently, after the deduction of attorney fees and costs, the circuit court held that the net amount distributable to the minor was $1,401,022.27 and the amount to his parents was $433,135. The March 28, 2011 order provided that the approved settlement and disbursement amounts were to be paid only to a guardian appointed by the Ogle County probate court and "this order shall be effective only after the entry in the appropriate probate division of an order approving bond or other security required to administer the settlement and distribution provided for in this order."

[*P33] On April 14, 2011, Chessick filed its notice of appeal from the circuit court's orders entered on July 8, 2010, August 27, 2010, December 20, 2010, January 3, 2011, and March 28, 2011.

[*P34] In April 2011, the GAL filed in the Ogle County probate case an amended motion to reconsider the December 2009 order which had approved the final litigation inventory submitted by Chessick. On February 16, 2012, the Ogle County probate court vacated its earlier order which approved Chessick's final litigation inventory based in part on a finding that the circuit **[**19]** court of Cook County had jurisdiction over the issue of attorney fees.

[*P35] On March 28, 2012, the Sullivans filed in the circuit court a "Motion On Judgment," which stated that Chessick had failed to disgorge $350,703.75 in attorney fees as required by the March 28, 2011, order, and did not file an appellate bond or move to stay enforcement of the March 28, 2011, order in accordance with *Illinois Supreme Court Rule 305*. *Ill. S. Ct. R 305* (eff. July 1, 2004). The Sullivans requested the entry of a judgment order against Chessick for $350,703.75 and interest.

[*P36] Chessick opposed the motions, arguing, *inter alia*: (1) the March 28, 2011, order had not entered a money judgment against Chessick and, therefore, it was not required to file an appeal bond; (2) the circuit court lacked jurisdiction to make any non-collateral ruling concerning the orders which were the subject of Chessick's pending appeal; and (3) entering a judgment against Chessick would violate its due process rights based on the lack of *in personam* jurisdiction.

[*P37] On May 23, 2012, the circuit court denied the Sullivans' motion for judgment and interest. The Sullivans then moved for reconsideration of this order.

[*P38] At the hearing on the motion to reconsider, the circuit court stated that **[**20]** it had denied the initial motion for judgment because it had assumed that no money judgment had been entered against Chessick, and it lacked jurisdiction because of Chessick's appeal. The circuit court granted the Sullivans leave to amend their motion to reconsider to address these issues.

[*P39] At the July 12, 2012, hearing on the amended motion to reconsider, the circuit court stated that Chessick's appeal had divested it of authority to enter an order declaring that the March 28, 2011, order was a money judgment and awarding interest. The circuit court's July 12, 2012, written order stated that it "decline[d] to render an opinion on said motion based upon a lack of jurisdiction as case [was] pending on appeal."

[*P40] On August 13, 2012, the Sullivans appealed these orders. The two appeals were consolidated. We will first consider Chessick's appeal (appellate case number 1-11-1125).

[*P41] Chessick argues the circuit court's orders vacating the dismissal of the bad-faith action and determining Chessick's attorney fees and litigation costs, pursuant to the motion for *Rule 6.4* review, were void because: (1) the

circuit court had lost subject-matter jurisdiction, as the Sullivans' motion for Rule 6.4 review was filed more than 30 **[**21]** days after the dismissal entered in November of 2009; (2) the Sullivans' motion for Rule 6.4 review was not brought for the purpose of enforcing the terms of the settlement with OHIC; (3) the Cook County circuit court lacked jurisdiction over the *res* (settlement proceeds) and; (4) the circuit court lacked personal jurisdiction over Chessick.

[*P42] While the parties have not questioned this court's appellate jurisdiction as to Chessick's appeal, we have an independent duty to determine whether we have jurisdiction to decide the issues presented. Cangemi v. Advocate South Suburban Hospital, 364 Ill. App. 3d 446, 453, 845 N.E.2d 792, 300 Ill. Dec. 903 (2006).

[*P43] This court's jurisdiction extends only to appeals from final judgments, orders, or decrees, unless the appeal is within the scope of an exception established by our supreme court allowing appeals from interlocutory orders. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Almgren v. Rush-Presbyterian-St. Luke's Medical Center, 162 Ill. 2d 205, 210, 642 N.E.2d 1264, 205 Ill. Dec. 147 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." Brentine v. Daimler Chrysler Corp., 356 Ill. App. 3d 760, 765, 826 N.E.2d 1057, 292 Ill. Dec. 621 (2005). Where an action involves multiple parties or multiple claims, an order that disposes of fewer than all of the claims is not **[**22]** appealable unless the trial court makes "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

[*P44] The Sullivans' section 2-1401 petition was never ruled upon and remains pending. Thus, the orders on appeal did not resolve the claims raised in the section 2-1401 petition and did not include Rule 304(a) findings. However, a section 2-1401 petition is considered a new and separate proceeding and, therefore, not a continuation of the original action. See People v. Kane, 2013 IL App (2d) 110594, ¶ 13, 379 Ill. Dec. 1, 5 N.E.3d 737. Accordingly, the Sullivans' section 2-1401 petition does not involve unresolved claims within the bad-faith action itself, and Rule 304(a) findings were not required for appellate review of the orders from which Chessick appeals. See generally, People v. Walker, 395 Ill. App. 3d 860, 867, 918 N.E.2d 1260, 335 Ill. Dec. 447 (2009) (finding a postconviction petition and a section 2-1401 petition are actions separate from one another, and the pendency of an appeal in one does not affect the trial court's ability to consider the other). We therefore find we have jurisdiction to consider Chessick's appeal from the circuit court's orders entered pursuant to the motion for Rule 6.4 review.

[*P45] Accordingly, we turn to consider the issue of whether the circuit court had subject-matter jurisdiction over the motion for Rule 6.4 review, as we find our decision on that **[**23]** issue is dispositive as to Chessick's appeal.

[*P46] We review *de novo* the issue of a trial court's subject-matter jurisdiction. In re Estate of Ahern, 359 Ill. App. 3d 805, 809, 835 N.E.2d 95, 296 Ill. Dec. 240 (2005). Subject-matter jurisdiction refers to the court's power both to adjudicate the general issues involved and to grant the particular relief requested. In re Estate of Gebis, 186 Ill. 2d 188, 192, 710 N.E.2d 385, 237 Ill. Dec. 755 (1999). If a court acts to resolve questions or provide relief beyond its jurisdiction, its orders are void. Ahern, 359 Ill. App. 3d at 809.

[*P47] After 30 days have elapsed from the entry of a final judgment, a trial court lacks jurisdiction to amend or modify the judgment. Director of Insurance ex rel. State v. A and A Midwest Rebuilders, 383 Ill. App. 3d 721, 722, 891 N.E.2d 500, 322 Ill. Dec. 485 (2008); Universal Outdoor, Inc. v. City of Des Plaines, 236 Ill. App. 3d 75, 80, 603 N.E.2d 585, 177 Ill. Dec. 515 (1992). A trial court possesses the power to retain jurisdiction to enforce a settlement agreement. Director of Insurance ex rel. State, 383 Ill. App. 3d at 723. The intent of the trial court to retain jurisdiction may be found in an express statement of retained jurisdiction. Id. at 725. A court's retention of jurisdiction cannot be "construed as a retention of jurisdiction to reverse its ruling or to 'nonenforce' the agreement." Universal Outdoor, Inc., 236 Ill. App. 3d at 83.

[*P48] The circuit court found it had subject-matter jurisdiction, both to hear the motion for Rule 6.4 review and enter its subsequent orders, based on its statement in the order dismissing the bad-faith action with prejudice that it retained jurisdiction to enforce the settlement. Our holding in Holwell v. Zenith Elecs. Corp., 334 Ill. App. 3d 917,

779 N.E.2d 435, 268 Ill. Dec. 821 (2002), is instructive as to whether the circuit **[**24]** court had subject-matter jurisdiction on this basis.

[*P49] In the *Holwell* case, the plaintiff agreed to settle her minor-son's suit against Zenith and filed a petition seeking approval of the settlement and distribution of attorney fees to both the plaintiff's current attorney and her discharged attorney, the Loggans firm. Id. at 919. The circuit court granted the petition and dismissed the action on December 14, 2000. *Id.* In its order, the circuit court allowed the distribution of fees to the Loggans firm as was requested in the petition. Id. at 919-20. On April 25, 2001, the Loggans firm filed a motion asserting that it had not received the full amount of the awarded fees and sought an order directing Zenith to pay the remaining fees owed. Id. at 920. On May 14, 2001, John B. Petrulis, an attorney who had done work on the case before being suspended from the practice of law, sought a portion of the Loggans firm's fees. *Id.* The circuit court denied both motions and also ordered that the remainder of the fees, which had previously been awarded to the Loggans firm, be paid to the estate of the minor. Id. at 921.

[*P50] On appeal we first addressed the question of whether the circuit court had jurisdiction over Mr. Petrulis' motion for fees. **[**25]** We set forth the applicable law as follows:

> "In the absence of a timely filed postjudgment motion, a trial court loses jurisdiction over a case pending before it 30 days after the entry of a final judgment terminating the litigation. [Citation.] After the expiration of that 30-day period, the trial court lacks the necessary jurisdiction to amend, modify, or vacate its judgment. [Citation.] These general propositions of law are not without exception, though. A court may at any time modify its judgment to correct a clerical error or a matter of form so that the record conforms to the judgment actually rendered. This power may not, however, be employed to correct judicial errors or supply omitted judicial action. [Citation.] Additionally, courts retain jurisdiction to enforce the terms of a judgment. [Citation.]" Id. at 922.

Based on these principles, we concluded that the circuit court lacked jurisdiction to consider Mr. Petrulis' motion as it sought an order awarding fees which could not "be deemed the correction of a clerical error or the enforcement of the court's December 14, 2000, order." Id. at 923.

[*P51] We then considered whether the circuit court continued to have jurisdiction to order the Loggans firm **[**26]** to return fees which had been approved at the time of the dismissal to the estate of the minor. The minor's estate argued the circuit court had continuing jurisdiction to modify the fee award under Rule 6.4 because the award to the Loggans firm, at the time of the dismissal, should have been made on a *quantum meriut* basis. We held:

> "The pertinent question, however, is not whether the trial court applied an incorrect standard when it awarded the Loggans Firm $500,000 in fees on December 14, 2000, but whether, on September 14, 2001, the trial court had jurisdiction to modify the terms of its earlier order. The [the minor's] Estate offers no authority to support a finding that the trial court had such jurisdiction. We conclude that it did not." Id. at 925.

[*P52] In this case, the bad-faith action was dismissed with prejudice on November 12, 2009. The Sullivans filed their motion for Rule 6.4 review on March 12, 2010, four months after the dismissal. Thus, the circuit court had lost jurisdiction to grant any additional relief, or to amend, modify, or vacate the dismissal order. As set forth in *Holwell*, the circuit court did retain jurisdiction to correct a clerical error or matters of form in the dismissal order. It cannot **[**27]** be argued that the Sullivans' motion for Rule 6.4 review and the circuit court's orders dealt with such corrections.

[*P53] The circuit court here expressly retained jurisdiction to *enforce* the settlement in the November 12, 2009, dismissal order. However, the only settlement terms included in that order required OHIC to pay the settlement amount by a certain date or face interest charges. By the time the motion for Rule 6.4 review was filed, OHIC had timely paid the settlement amount, the releases had been signed, and the Ogle County probate court had begun to distribute the proceeds. The circuit court's orders at issue here did not serve to enforce the settlement terms between the Sullivans and OHIC. Instead, the circuit court vacated the dismissal order and, pursuant to Rule 6.4, then determined how the settlement proceeds should be distributed and awarded attorney fees. Those orders of the circuit court were designed to correct perceived errors as to noncompliance with Rule 6.4 and, thus, were beyond

the circuit court's retained jurisdiction to enforce the settlement. The Rule 6.4 review may have been entirely proper before the case was dismissed, but the circuit court was divested of subject-matter jurisdiction after 30 days **[**28]** to enter the orders which are on appeal.

[*P54] Finally, we respectfully decline to consider the Sullivans' section 2-1401 petition as a vehicle to review the circuit court's orders as urged by the dissent. We have several reasons for not proceeding in that manner.

[*P55] Initially, we note the circuit court's orders at issue were not entered pursuant to the Sullivans' section 2-1401 petition. It is quite clear from the record that the circuit court did not base its orders on the section 2-1401 petition, and the parties on appeal do not even suggest such an idea. Neither the Sullivans nor Chessick were afforded an opportunity to fully address the section 2-1401 petition below. Furthermore, the issue of whether this court could find the circuit court had subject-matter jurisdiction as to the orders on appeal pursuant to an *unresolved* section 2-1401 petition was never raised nor addressed by the Sullivans and Chessick on appeal.

[*P56] We find it significant that the record does not demonstrate OHIC was properly served with the section 2-1401 petition or even the motion for Rule 6.4 review. To proceed now on the Sullivans' section 2-1401 petition without proof of valid service on OHIC would be contrary to the notice provisions of section 2-1401(b). 735 ILCS 5/2-1401(b) (West 2008) ("All parties to the petition shall be notified as provided by rule."). **[**29]**

[*P57] Furthermore, there is no argument that Chessick was served improperly with the section 2-1401 petition. We believe the circuit court should have an opportunity to initially determine whether Chessick has consented to jurisdiction as to the section 2-1401 petition, if appropriate. Our supreme court recently held that " 'a party who submits to the court's jurisdiction does so only prospectively and the appearance does not retroactively validate orders entered prior to that date.' " BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, ¶ 26, 379 Ill. Dec. 85, 6 N.E.3d 162 (citing In re Marriage of Verdung, 126 Ill.2d 542, 547, 535 N.E.2d 818, 129 Ill. Dec. 53 (1989)). A finding by this court on appeal that Chessick waived infirmities in the service of the section 2-1401 petition, even if proper, should operate prospectively and not retroactively. Retroactive operation is what we would accomplish, in essence, if we were to now review the circuit court's prior orders as if the orders were entered under section 2-1401.

[*P58] The dissent finds review of the section 2-1401 petition may proceed now, in part, because the standard of review as to a section 2-1401 petition determination would be *de novo*, citing People v. Vincent, 226 Ill. 2d 1, 871 N.E.2d 17, 312 Ill. Dec. 617 (2007). It is true, as the dissent states, that under *Vincent*, when the circuit court dismisses a section 2-1401 petition, or enters judgment on the pleadings without an evidentiary hearing, the review would be *de novo*. Id. at 14. However, after *Vincent*, there has been some debate **[**30]** as to the applicable standard of review for section 2-1401 petitions under all circumstances. In Cavalry Portfolio Services v. Rocha, 2012 IL App (1st) 111690, ¶ 10, 979 N.E.2d 930, 366 Ill. Dec. 129, we explained:

> "However, many, more recent decisions of the appellate court have recognized that the *Vincent* decision dealt with a narrow issue under section 2-1401(f) in which a judgment was challenged for voidness. The *Vincent* decision did not involve the due diligence, meritorious defense, and two-year limitation requirements that apply to other actions brought under section 2-1401. Rockford Financial Systems, Inc. v. Borgetti, 403 Ill.App.3d 321, 326-27, 342 Ill.Dec. 691, 932 N.E.2d 1152, 1158 (2010); see also Blazyk v. Daman Express, Inc., 406 Ill.App.3d 203, 206, 346 Ill.Dec. 427, 940 N.E.2d 796, 798-99 (2010). The *Borgetti* court found that the allegation of voidness in *Vincent* had nothing to do with equitable principles. Borgetti, 403 Ill.App.3d at 327, 342 Ill.Dec. 691, 932 N.E.2d at 1158. The court found that 'equitable principles and the exercise of discretion still apply in section 2-1401 proceedings not involving judgments alleged to be void.' Id. at 328, 342 Ill.Dec. 691, 932 N.E.2d at 1159. The *Borgetti* court reasoned that due diligence cannot be reviewed under the *de novo* standard because it is a mixed question of law and fact, and is a fact-intensive inquiry suited to balancing and not bright lines. Id. at 324, 342 Ill.Dec. 691, 932 N.E.2d at 1156. The court held that a typical section 2-1401 analysis is two-tiered: (1) the issue of a meritorious defense is a question of law and subject to *de novo* review; and (2) if a meritorious defense exists, then the issue of due diligence is subject to abuse of discretion review. Id. at 327, 342 Ill.Dec. 691, 932 N.E.2d at 1159. We **[**31]** agree with the holding and reasoning in *Borgetti*

and *Blazyk*. Thus, we apply the *de novo* standard in reviewing whether Rocha presented a meritorious defense in his section 2-1401 petition, and apply the abuse of discretion standard in reviewing whether he complied with the due diligence requirements of section 2-1401." Cavalry Portfolio Services, 2012 IL App (1st) 111690, ¶ 10.

[*P59] We do know that the circuit court found Rule 6.4 to be applicable to the bad-faith settlement, which is the central issue in the Sullivans' section 2-1401 petition. However, because the circuit court never resolved the section 2-1401 petition, did not determine whether Chessick had waived personal jurisdiction as to the petition, and did not decide whether the Sullivans acted diligently in light of all the relevant circumstances surrounding the dismissal and settlement, we cannot say for certain *how* the circuit court would have decided the section 2-1401 petition (on a motion to dismiss, judgment on the pleadings, or after a hearing), or *what* the circuit court would have found as to all the relevant issues under section 2-1401. Thus, we cannot know whether *de novo* review would be the only applicable standard of review.

[*P60] Any review of the section 2-1401 petition now would be of the orders entered by the circuit court on the motion for Rule 6.4 review. Our supreme court in In re Haley D., 2011 IL 110886, ¶ 59, 959 N.E.2d 1108, 355 Ill. Dec. 375, a case **[**32]** cited in the dissent as authority to do so, did exercise its supervisory authority to recast a section 2-1401 petition as a motion pursuant to section 2-1301 of the Code (735 ILCS 5/2-1301 (West 2008)). However, there was no issue in *Haley D.* as to the circuit court's jurisdiction to enter the order on review, as a final judgment had not been entered in the circuit court. Id., ¶ 61. In this case, a final judgment had been entered four months prior to the circuit court actions that are now on appeal, at a time when the circuit court no longer had subject-matter jurisdiction. We do not believe *Haley D.* supports a recasting of the motion for Rule 6.4 review as a section 2-1401 petition by this court.

[*P61] We fully agree with the dissent that the rights of Beau Sullivan, a minor, must be zealously guarded. We agree that it is unfortunate the issues cannot be decided on their merits in this appeal. Because a minor's interests are involved here, we wish to make sure any determination of his rights is made without jurisdictional challenge.

[*P62] For the reasons stated, on Chessick's appeal number 1-11-1125, we find the circuit court lacked subject-matter jurisdiction to enter the orders at issue pursuant to the motion for Rule 6.4 review, and vacate as void the orders of the **[**33]** circuit court of Cook County entered on July 8, 2010, August 27, 2010, December 20, 2010, January 3, 2011, and March 28, 2011. In doing so, we do not express any opinion as to the substance of the circuit court's rulings.

[*P63] Additionally, our decision to vacate the above-listed orders renders moot the Sullivans' appeal from the circuit court orders relating to their attempt to enforce those orders. Therefore, we dismiss the Sullivans' appeal (number 1-12-2395).

[*P64] Appeal number 1-11-1125; orders vacated.

[*P65] Appeal number 1-12-2395; appeal dismissed.

Dissent by: LAMPKIN

Dissent

[*P66] JUSTICE LAMPKIN, dissenting:

[*P67] I disagree with the majority's conclusion and would find that the Circuit Court of Cook County had jurisdiction pursuant to the petition filed by the Sullivans under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). I would affirm the circuit court's judgment that approved the settlement on behalf of Beau as fair and reasonable and determined Chessick's attorney fees, costs, and the net amount distributable to Beau. I would reverse, however, the circuit court's denial of the Sullivans' motion for a judgment order and the assessment of pre- and postjudgment interest. I would hold that the circuit court had jurisdiction, **[**34]** in the

absence of a stay, to enforce the judgment that was pending on appeal and to assess pre-and postjudgment statutory interest, which were collateral or incidental matters to the judgment. However, before addressing the merits of the issues raised by the parties in this consolidated appeal, I will briefly respond to the main arguments raised in the majority opinion concerning subject matter and personal jurisdiction.

[*P68] First, the record does not support the majority's assertion that the parties were not afforded an opportunity to fully address the *section 2-1401* petition before the circuit court. In their 2-1401 petition, the Sullivans argued that their petition was timely filed within two years of the court's November 2009 dismissal order and Beau's status as a minor extended his time to file such a petition. The Sullivans also argued that relief under *section 2-1401* of the Code was proper because they proved, by a preponderance of the evidence, that they had a meritorious claim, the adverse judgment was not entered due to their own inexcusable neglect, and they were diligent in presenting the *section 2-1401* petition. Specifically, the Sullivans contended that (1) the Cook County court would not have entered the 2009 dismissal **[**35]** order if the judge had known Beau was a minor because *Rule 6.4* would have triggered the protections accorded to minors and the court would have conducted an inquiry into Chessick's 47% attorney fee; (2) the Sullivans had trusted and relied upon Chessick, which had represented them since at least 2002, and reasonably expected Chessick to comply with all applicable court rules; and (3) the Sullivans filed their *section 2-1401* petition only five months after entry of the November 2009 dismissal order and after they had consulted with another attorney in January 2010 and learned that Chessick did not comply with *Rule 6.4*. Jason Sullivan's affidavit was attached to the 2-1401 petition and averred that Beau Sullivan was born on October 30, 1994, and was 15 years old when the Cook County court entered the order dismissing the bad-faith action on November 19, 2009.

[*P69] In the alternative, the Sullivans argued that the Cook County court had jurisdiction, aside from *section 2-1401* of the Code, to review and vacate the 2009 dismissal order because the Probate Act of 1975 (Probate Act) (*755 ILCS 5/1-1 et seq.* (West 2010)) requires review and approval by the trial court of any compromise that involves the claims of a minor and *Rule 6.4* requires the trial court to determine **[**36]** the expenses, attorney fees, and net amount distributable to the minor. The Sullivans moved the court to stay the briefing schedule on their motion for *Rule 6.4* review until after the court ruled on their *section 2-1401* petition.

[*P70] Chessick filed a reply that opposed both the motion for *Rule 6.4* review and the 2-1401 petition. Specifically, Chessick argued that the Sullivans' 2-1401 petition was "improper" because the Sullivans had agreed to the settlement with OHIC, signed a release, and agreed to Chessick's costs and attorney fees; OHIC had already paid the settlement proceeds; and the Ogle County court had already distributed the settlement proceeds. Chessick argued that *section 2-1401* of the Code was "not a vehicle to reinstate the [Cook County court] with jurisdiction without any meritorious claim or defense"; was "not a mechanism to appeal or review the orders of the [Ogle County court]"; and was not "a mechanism that serves as an alternative to a separate, new lawsuit for new claims and causes of action against discharged counsel."

[*P71] The record establishes that Chessick had the opportunity to respond to the 2-1401 petition and did so in writing. If Chessick failed to fully avail itself of the opportunity by filing a better, **[**37]** more comprehensive response, then Chessick should suffer any consequence. See *People v. Vincent, 226 Ill. 2d 1, 9, 871 N.E.2d 17, 312 Ill. Dec. 617 (2007)* ("If the respondent does not answer [a 2-1401 petition], this constitutes an admission of all well-pleaded facts [citation], and the trial court may decide the case on the pleadings, affidavits, exhibits and supporting material before it, including the record of the prior proceedings.") Chessick is a law firm, and I see no reason to coddle it under the circumstances of this case. Moreover, the record establishes that the Sullivans asked the circuit court to rule on their 2-1401 petition before addressing the merits of their motion for *Rule 6.4* review, but the circuit court did not do so. Under these circumstances, it makes no sense to punish the Sullivans for the circuit court's failure to recognize the correct basis for its jurisdiction.

[*P72] Second, the Sullivans *did* argue on appeal, in their June 4, 2012 appellate brief at pages 18 to 21, that *section 2-1401* of the Code is a basis of jurisdiction. Specifically, the Sullivans claim the circuit court's exercise of jurisdiction is supported by either the circuit court's retention of jurisdiction in its November 2009 dismissal order or *section 2-1401* of the Code.

[*P73] Third, the majority cites no authority **[**38]** to support the proposition that proper service of the 2-1401 petition on OHIC is dispositive of the issue of the circuit court's jurisdiction over Chessick. According to the record, the Sullivans verbally informed the circuit court that they had served their 2-1401 petition on OHIC's registered agent, but the affidavit of service in the record does not prove that notice was served on OHIC either by summons, prepaid certified or registered mail, or by publication. I would not find, based on the appellate record before us, that the circuit court had personal jurisdiction over OHIC because OHIC, unlike Chessick, did not respond to the 2-1401 petition in any way and, thus, did not submit to the circuit court's jurisdiction. Nevertheless, I do not find that OHIC is an opposing party to the 2-1401 petition. The main issues in this dispute—*i.e.*, the applicability of *Rule 6.4* to the bad-faith action settlement and its effect on Chessick's attorney fees and litigation costs—are irrelevant to OHIC, which paid the settlement amount in full years ago. The Sullivans were clear in their submissions and argument to this court and the circuit court that they were not challenging the reasonableness of the **[**39]** settlement amount reached with OHIC; rather, they were challenging only the reasonableness of Chessick's attorney fees and costs.

[*P74] Fourth, the majority cites no authority to support the proposition that the circuit court "should have the opportunity to determine if Chessick consented to jurisdiction as to the 2-1401 petition." There is no factual dispute concerning Chessick's response to the petition and participation in the circuit court proceedings, so, as an issue of law, there is only one determination the circuit court could reach: *i.e.*, Chessick submitted to the circuit court's jurisdiction. Moreover, there is no issue here of the improper retroactive application of jurisdiction because jurisdiction is applied prospectively only from the time Chessick submitted to the circuit court's jurisdiction through its actions.

[*P75] Fifth, the Illinois Supreme Court stated in *Vincent, 226 Ill. 2d at 18*, that a *de novo* standard of review applies when a 2-1401 petition is granted or denied on the pleadings alone. An Illinois appellate court case, *Cavalry Portfolio Services v. Rocha, 2012 IL App (1st) 111690, 979 N.E.2d 930, 366 Ill. Dec. 129*, attempts to limit *Vincent* to the narrow issue of 2-1401(f) voidness challenges, which do not involve due diligence and meritorious defense issues and have nothing to do with equitable **[**40]** principles. I see no basis in *Vincent* for the limit *Cavalry* attempts to impose. It is well established that parties may challenge void orders at any time without even invoking *section 2-1401* of the Code. *735 ILCS 5/2-1401(f)* (West 2006) (nothing in *paragraph (f) of section 2-1401* affects any existing right to relief from a void order or judgment); *Sarkissian v. Chicago Board of Education, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 267 Ill. Dec. 58 (2002)*; *GMB Financial Group, Inc. v. Marzano, 385 Ill. App. 3d 978, 994, 899 N.E.2d 298, 326 Ill. Dec. 81 (2008)*. In addition, *Vincent* explained that it was inaccurate to view 2-1401 relief in strictly equitable terms because it is a purely statutory remedy. *Vincent, 226 Ill. 2d at 16* ("Because relief is no longer purely discretionary, it makes little sense to continue to apply an abuse of discretion standard on review."); see also *Rockford Financial Systems, Inc. v. Borgetti, 403 Ill. App. 3d 321, 330, 332, 932 N.E.2d 1152, 342 Ill. Dec. 691 (2010)* (Jorgensen, J., concurring) (disagreeing with the majority's use of the abuse-of-discretion standard and explaining that the reviewing court applies *de novo* review to the trial court's effective grant of summary judgment and does not "perform a direct, 'naked' review of the due diligence issue").

[*P76] Furthermore, here, where the circuit court—under the erroneous belief that the basis for its jurisdiction was its retained authority to enforce the terms of the settlement—vacated its November 2009 dismissal order without any misgivings concerning the merits of the Sullivans' motion for *Rule 6.4* review, their diligence, **[**41]** or any unfairness to Chessick, then I see no reason to presume that a reassessment by the circuit court of *section 2-1401* relief would result in a different outcome. A reversal or remand here does not comport with the efficient use of judicial resources. In general, courts should not find technical excuses to avoid deciding the merits of disputes when no delay or harm was caused by the technical violation to any party. Here, where the error in claiming the correct basis for jurisdiction was the trial court's rather than the Sullivans', I see no basis to penalize the Sullivans.

[*P77] Sixth, I disagree with the majority's assertion that "we cannot say for certain *how* the circuit court would have decided the *section 2-1401* petition (on a motion to dismiss, judgment on the pleadings, or after a hearing)." According to the record, the circuit court informed the parties that it would rule on the *section 2-1401* issue based on the submitted paperwork if the court did not think it had retained jurisdiction pursuant to the November 2009 dismissal order. Consequently, this court can safely infer the circuit deemed there were no legal or factual issues that necessitated any further hearing on the 2-1401 petition.

[*P78] Seventh, the majority misconstrues **[**42]** my citation to *In re Haley D., 2011 IL 110886, 959 N.E.2d 1108, 355 Ill. Dec. 375 (2011)*, which supports the proposition here that remand to the circuit court for its formal entry of a decision on the 2-1401 petition is not necessary. Consequently, the majority's attempt to distinguish *Haley D.*—on the basis that there was no issue as to the trial court's jurisdiction to enter the order because there was no final judgment—is not persuasive. See also, *Id. ¶ 103* (Theis, J., concurring, joined by Garman, J.) ("Contrary to the majority opinion, orders terminating parental rights in Juvenile Court proceedings are typically final orders."). Moreover, I am not "recasting" the motion for *Rule 6.4* review as a 2-1401 petition. There is no question that the Sullivans filed an actual 2-1401 petition here and asked the circuit court to rule on it before addressing the *Rule 6.4* issue; the circuit court simply failed to claim jurisdiction on that correct basis. Jurisdiction to decide the *Rule 6.4* issue was proper and timely under 2-1401, and that jurisdiction does not evaporate simply because the circuit court erroneously thought it retained jurisdiction pursuant to the terms of its November 2009 dismissal order.

[*P79] Eighth, Beau is not a minor anymore, but even if he was, my position that the circuit **[**43]** court had jurisdiction to vacate the dismissal order would not be based on the litigant's status as a minor. Moreover, I do not overlook the jurisdiction requirements based on sympathy for his situation. I would simply exercise this appellate court's authority under *Supreme Court Rule 366(a)(5)* (eff. Feb. 1, 1994) to make the order the circuit court should have made because:

(1) the Sullivans filed a timely 2-1401 petition and asked the circuit court to rule on it before ruling on the *Rule 6.4* issue;

(2) there is no requirement that a circuit court must conduct a hearing on 2-1401 petitions in all instances. See *Vincent, 226 Ill. 2d at 9* ("Where a material issue of fact exists, summary judgment is inappropriate and an evidentiary hearing—a trial in effect—is required in ruling on the petition."). Anyway, the record does not indicate that Chessick requested such a hearing, and Chessick has not identified a material issue of fact warranting an evidentiary hearing;

(3) at the June 30, 2010 hearing, the circuit court acknowledged that its order scheduling the hearing had informed the parties that the *section 2-1401* issue would not be argued because the requirements of *section 2-1401* of the Code were very clear and the court intended to rule on the submitted "paperwork" if it **[**44]** reached the *section 2-1401* issue;

(4) the *section 2-1401* meritorious defense issue is determined as a matter of law based on the court's analysis of the application of *Rule 6.4* to the bad-faith action settlement; and

(5) the circuit court could have reached only one conclusion on the *section 2-1401* due diligence issue: there was due diligence where:

(a) the Sullivans' April 2010 *section 2-1401* petition was filed only about five months after the Cook County court's November 2009 dismissal order pursuant to the bad-faith action settlement; four months after the Ogle County court in December 2009 gave Chessick legal fees that amounted to 47% of the settlement recovery; three months after the Sullivans fired their long-time, trusted attorney Chessick; and one month after the Sullivans' new attorney asked the Cook County court for *Rule 6.4* review; and
(b) Beau—who was a minor when the November 2009 dismissal order was entered—was not legally bound by any action his parents took (or failed to take) to settle the cause of action on his behalf.

[*P80] Turning to the merits of the parties' consolidated appeal, respondent Chessick appeals from the judgment of the circuit court of Cook County that approved the settlement as fair and reasonable on behalf of the minor and determined **[**45]** the amount of Chessick's attorney fees and litigation costs. Chessick argues the Cook County court's July 8, 2010 order and all subsequent memorandum orders are null and void because (1) the Cook County court lacked subject matter jurisdiction and personal jurisdiction over the parties; (2) the Cook County court cannot review or disregard the orders entered by the Ogle County court; (3) the Cook County court determined attorney

fees and costs pursuant to Rule 6.4, which was inapplicable because the bad-faith action was the hospital's assigned claim against OHIC and, thus, did not involve the claim of a minor; and (4) Rule 6.4 is unconstitutional.

[*P81] The Sullivans appeal the circuit court orders that denied their motion for a judgment order against Chessick and to assess pre-and postjudgment interest against Chessick. The Sullivans argue the circuit court erred by finding that it did not have jurisdiction to enter a judgment order against Chessick for the $350,703.75 in excess fees Chessick was withholding from the Sullivans and to assess pre- and postjudgment interest against Chessick after it filed a notice of appeal without obtaining a bond or otherwise staying the proceedings pending its appeal.

[*P82] Subject **[**46]** Matter Jurisdiction and Personal Jurisdiction

[*P83] Chessick argues the Cook County judgment concerning Chessick's attorney fees and litigation costs is void because the Cook County court lacked subject matter jurisdiction and personal jurisdiction. Chessick contends the Cook County court did not have jurisdiction because (1) more than 30 days had elapsed from the entry of the November 2009 dismissal order to the filing of the Sullivans' motion for Rule 6.4 review; (2) the Sullivans' motion for Rule 6.4 review was not brought for the purpose of enforcing the terms of the settlement with OHIC; (3) assuming, *arguendo*, that the bad-faith action involved a minor's claim, only the probate court's approval was required; (4) the Cook County court lacked jurisdiction over the *res* (settlement proceeds); (5) the Cook County court lacked jurisdiction over Chessick; and (6) ordering Chessick to pay money previously distributed pursuant to the Ogle County order amounted to an unconstitutional taking without due process and without jurisdiction.

[*P84] *De novo* review applies to the issue of whether a trial court has subject matter jurisdiction over certain proceedings. *In re Estate of Ahern, 359 Ill. App. 3d 805, 809, 835 N.E.2d 95, 296 Ill. Dec. 240 (2005)*. *De novo* review also applies to the issue of personal jurisdiction **[**47]** when the trial court has heard no testimony and determined personal jurisdiction based only on documentary evidence. *Gaidar v. Tippecanoe Distribution Service, Inc., 299 Ill. App. 3d 1034, 1039-40, 702 N.E.2d 316, 234 Ill. Dec. 150 (1998)*. Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceeding in question belongs. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 334, 770 N.E.2d 177, 264 Ill. Dec. 283 (2002)*. Personal jurisdiction is derived from the actions of the person sought to be bound; a person may consent or submit to personal jurisdiction by his appearance or by filing documents, or personal jurisdiction may be imposed upon him by effective service. *Meldoc Properties v. Prezell, 158 Ill. App. 3d 212, 216, 511 N.E.2d 861, 110 Ill. Dec. 684 (1987)*.

[*P85] I agree with the circuit court that it possessed the necessary jurisdiction to vacate its 2009 dismissal order and conduct a Rule 6.4 review of the settlement in the bad-faith action, but I do so for different reasons. *Burton v. Estrada, 149 Ill. App. 3d 965, 975, 501 N.E.2d 254, 103 Ill. Dec. 233 (1986)* (the reviewing court may affirm the vacation of a dismissal order on any ground supported by the record). The circuit court believed it had jurisdiction because it had retained jurisdiction to enforce the terms of the settlement in the bad-faith action and that settlement was not complete where it involved a minor and the court had not yet approved the settlement and determined attorney fees and costs in accordance with Rule 6.4 and the Probate Act. I would find, however, **[**48]** that, because the 2009 dismissal order was not void, the Sullivans properly and timely sought relief from the 2009 dismissal order under section 2-1401 of the Code, and the circuit court's failure to take jurisdiction on that basis did not deprive it of jurisdiction to review the settlement pursuant to Rule 6.4.

[*P86] In *In re Marriage of Mitchell, 181 Ill. 2d 169, 692 N.E.2d 281, 229 Ill. Dec. 508 (1998)*, the court addressed the issue of void and voidable orders. The court stated:

[*P87] "The question of whether a judgment is void or voidable depends on whether the court entering the challenged order possessed jurisdiction over the parties and the subject matter. [Citation.] If jurisdiction is lacking, any subsequent judgment of the court is rendered void and may be attacked collaterally. [Citation.] 'Judgments entered in a civil proceeding may be collaterally attacked as void only where there is a total want of jurisdiction in the court which entered the judgment, either as to the subject matter or as to the parties.' [Citation.] A voidable

judgment, however, is one entered erroneously by a court having jurisdiction and is not subject to collateral attack. [Citation.] Once a court has acquired jurisdiction, an order will not be rendered void merely because of an error or impropriety in the issuing court's **[**49]** determination of the law. [Citations.]" *Id. at 174*.

[*P88] In *In re Marriage of Mitchell*, the father challenged, based on lack of specificity, the child support provision of a settlement agreement incorporated into an earlier judgment dissolving the marriage. *Id. at 172*. The trial judge, *sua sponte*, determined that the child support provision was void because it was expressed in terms of a percentage of income and, thus, violated the statute that required orders for child support to be expressed as a specific dollar amount. *Id.* Our supreme court held that the order awarding support was voidable rather than void because the judge had jurisdiction over the parties and the subject matter, and, although the judgment was erroneous, the judge had authority to enter the child support order. *Id. at 176*. Here, the 2009 dismissal order was voidable rather than void because the Cook County court had jurisdiction over the bad-faith action and the parties therein, and, although it was error (see discussion in section III of this dissent) to fail to review the settlement on behalf of the minor assignee plaintiff in accordance with the procedure set forth in the local court rule, the judge had authority to enter an order dismissing an **[**50]** action pursuant to a settlement.

[*P89] I agree with the majority that the contested actions of the circuit court at issue in Chessick's appeal were not authorized by the court's retention of jurisdiction to enforce the terms of the bad-faith action settlement. This court has explained that:

> "In the absence of a timely filed postjudgment motion, a trial court loses jurisdiction over a case pending before it 30 days after the entry of a final judgment terminating the litigation. [Citation.] After the expiration of that 30-day period, the trial court lacks the necessary jurisdiction to amend, modify, or vacate its judgment. [Citation.] These general propositions of law are not without exception, though. A court may at any time modify its judgment to correct a clerical error or a matter of form so that the record conforms to the judgment actually rendered. This power may not, however, be employed to correct judicial errors or supply omitted judicial action. [Citation.] Additionally, courts retain jurisdiction to enforce the terms of a judgment. [Citation.]" *Holwell v. Zenith Electronics Corp., 334 Ill. App. 3d 917, 922, 779 N.E.2d 435, 268 Ill. Dec. 821 (2002)*.

[*P90] I agree with Chessick and the majority that the circuit court did more than merely enforce the terms of the settlement between the Sullivans **[**51]** and OHIC. Specifically, OHIC already had paid the settlement funds in full. Furthermore, the circuit court vacated its 2009 dismissal order, which was a final judgment terminating the litigation. At the time the Sullivans filed their motion for *Rule 6.4* review, the circuit court of Cook County had lost jurisdiction to grant any additional relief or amend, modify, or vacate its November 2009 dismissal order. Moreover, the circuit court's adjudication of the Sullivans' motion for *Rule 6.4* review cannot be deemed the correction of a clerical error or the enforcement of the terms of the bad-faith action settlement.

[*P91] The Sullivans, however, also filed a timely 2-1401 petition to vacate the November 2009 dismissal order, and Chessick answered that petition on the merits in its reply in opposition to the motion for *Rule 6.4* review. *Section 2-1401* establishes a comprehensive, statutory procedure that allows for the vacatur of a final order or judgment older than 30 days. *735 ILCS 5/2-1401* (West 2010). *Section 2-1401* requires that the petition be filed in the same proceeding in which the order or judgment was entered, but it is not a continuation of the original action. *735 ILCS 5/2-1401(b)* (West 2010). *Section 2-1401* also requires that the petition be supported by affidavit or other appropriate **[**52]** showing as to matters not of record, and must be filed not later than two years after the entry of the order or judgment, unless an exception for legal disability, duress, or fraudulent concealment of the ground for relief applies. *735 ILCS 5/2-1401(b)*, *(c)* (West 2010). "Relief under *section 2-1401* is predicated upon proof, by a preponderance of the evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *People v. Vincent, 226 Ill. 2d 1, 7-8, 871 N.E.2d 17, 312 Ill. Dec. 617 (2007)*.

[*P92] Proceedings under *section 2-1401* are subject to the usual rules of civil practice. *Id. at 8*. Because *section 2-1401* petitions are essentially complaints inviting responsive pleadings, when the respondent chooses to answer on the merits rather than attacking the sufficiency of the petition, the respondent is deemed to have waived any

question as to the petition's sufficiency, and the petition will be treated as properly stating a cause of action. *Id.* Among other dispositions, the trial judge may dismiss the petition or may grant or deny it on the pleadings alone. *Id. at 9*. If, at the trial level, a petition is to be treated like a complaint, then the issue of whether the trial court correctly entered either a judgment on the pleadings **[**53]** or a dismissal for failure to state a cause of action is subject to *de novo* review. *Id. at 14-15*.

[*P93] According to the record, the circuit court indicated that it would rule on the 2-1401 petition on the pleadings alone if the court reached the *section 2-1401* issue. The circuit court believed it had retained jurisdiction to conduct a *Rule 6.4* review on other grounds aside from *section 2-1401*, but, as discussed above, those other grounds were an erroneous basis for jurisdiction and the circuit court should have ruled on the Sullivans' 2-1401 petition. Although this court could reverse and remand to give the circuit court the opportunity to rule on the 2-1401 petition, this court has discretion to "make any order that ought to have been given or made" by the circuit court. *Supreme Court Rule 366(a)(5)* (eff. Feb. 1, 1994). Furthermore, no injustice would result to the parties from this court's determination that jurisdiction was properly acquired pursuant to the Sullivans' timely filed 2-1401 petition. The 2-1401 petition was before the circuit court, was fully briefed, and sought the same relief as the motion for *Rule 6.4* review.

[*P94] In *In re Haley D., 2011 IL 110886, 959 N.E.2d 1108, 355 Ill. Dec. 375*, the State, upon a determination of neglect, filed a petition to terminate the parents' parental rights. The circuit court entered a default **[**54]** against the father, and he timely moved to set aside the default under *section 2-1301(e)* of the Code (*735 ILCS 5/2-1301(e)* (West 2010)), which provides that the court may in its discretion set aside any default upon any terms and conditions that shall be reasonable. *Id. at ¶ 66*. The State, however, incorrectly insisted, and the circuit court erroneously agreed, that the father was required to resort to relief under *section 2-1401* of the Code, which imposes a substantially greater burden on the petitioner to show by a preponderance of the evidence the existence of a meritorious claim in the original action and due diligence in pursuing the claim and in presenting the 2-1401 petition. *Id.* The circuit court's failure to consider the father's request under the standards of *section 2-1301* was reversible error, but our supreme court decided the request for 2-1301 relief on the merits instead of reversing and remanding to give the circuit court the opportunity to exercise its discretion and apply the correct standard. *Id. at ¶¶ 66-68*. Specifically, our supreme court found that the undisputed facts permitted only one conclusion in the case—that the father's request for relief should have been granted—and a remand would serve no purpose and merely would **[**55]** delay the ultimate resolution, which was contrary to the court's express policy to resolve as expeditiously as possible appeals involving questions of child custody, adoption, termination of parental rights or other matters affecting the best interests of a child. *Id. at ¶68*.

[*P95] Like the court in *In re Haley D.*, I would proceed by evaluating the Sullivans' 2-1401 petition on the merits instead of reversing and remanding the matter to the circuit court. Unlike in *In re Haley D.*, the circuit court's exercise of discretion is not at issue here because, at the trial level, the Sullivans' 2-1401 petition was to be treated like a complaint, so this court would review *de novo* the issue of whether the circuit court should have granted or denied the petition. See *Vincent, 226 Ill. 2d at 14-15*. Furthermore, as discussed below, the undisputed facts and the governing legal principles permit only one conclusion in this case: the Sullivans' 2-1401 petition should have been granted. Therefore, a remand under these particular circumstances would serve no purpose but merely would delay the ultimate resolution of this proceeding, which has already been protracted for too long.

[*P96] It is clear from the record that the Sullivans had a meritorious *section 2-1401* **[**56]** claim. It is undisputed that Beau Sullivan was a minor when the circuit court entered the 2009 dismissal order. Moreover, as discussed in section III of this dissent, I would conclude that Beau's status as a minor meant that *Rule 6.4* applied and the trial court's approval of the settlement and determination of attorney fees and costs was required even though Beau was an assignee of the hospital's claim against OHIC. It is also undisputed that the circuit court of Cook County, where the bad-faith action was filed, litigated and settled, did not conduct a *Rule 6.4* review before entering the 2009 dismissal order. Illinois courts have held that neither a next friend nor a court-appointed guardian can approve a settlement of a minor's claim without court approval. *Ott v. Little Co. of Mary Hospital, 273 Ill. App. 3d 563, 571, 652 N.E.2d 1051, 210 Ill. Dec. 75 (1995)*. "Similarly, a parent has no legal right, by virtue of the parental relationship, to settle a minor's cause of action; and court review and approval of a settlement reached by a parent also is mandatory." *Id.*; see also *Wreglesworth v. Arctco, Inc., 316 Ill. App. 3d 1023, 1028, 738 N.E.2d 964, 250 Ill. Dec.*

495 (2000) ("any settlement of a minor's claim is unenforceable unless and until there has been approval by the probate court."); Villalobos v. Cicero School District 99, 362 Ill. App. 3d 704, 841 N.E.2d 87, 298 Ill. Dec. 944 (2005) (a release signed by a parent on behalf of a minor is unenforceable if it is not approved by the probate court in accordance with Illinois law). Furthermore, the Sullivans were not guilty of inexcusable neglect where they trusted and relied upon Chessick, which had represented them since 1996, and reasonably expected Chessick to comply with all applicable court rules. Finally, the Sullivan's section 2-1401 petition was presented to the Cook County court only five months after entry of the November 2009 order and after the Sullivans had consulted another attorney in January 2010 and learned that Chessick did not comply with Rule 6.4.

[*P97] Chessick's personal jurisdiction argument also lacks merit. As discussed above, a 2-1401 petition is not a continuation of the original action; it essentially is a complaint inviting a responsive pleading. Vincent, 226 Ill. 2d at 8. A party seeking relief under section 2-1401 must give notice to opposing parties according to the Illinois Supreme Court Rules. 735 ILCS 5/2-1401(b) (West 2010). Supreme Court Rule 106 (eff. Aug. 1, 1985) directs the moving party to provide notice *via* the methods set forth in Supreme Court Rule 105 (eff. Jan. 1, 1989). Supreme Court Rule 105 provides that notice be directed to the party and must be served either by summons, prepaid certified or registered mail, or by publication. If the notice is invalid, the trial court lacks jurisdiction and its subsequent orders are likewise invalid. Welfelt v. Schultz Transit Co., 144 Ill. App. 3d 767, 772, 494 N.E.2d 699, 98 Ill. Dec. 577 (1986). One exception to this rule, however, is when an opposing party appears and argues the merits of a 2-1401 petition despite the failure of receipt of proper notice. *Id.* Under those circumstances, a court will deem the respondent to have waived the jurisdictional defect **[**57]** as to the section 2-1401 proceeding. Dargis v. Paradise Park, Inc., 354 Ill. App. 3d 171, 177, 819 N.E.2d 1220, 289 Ill. Dec. 420 (2004).

[*P98] Challenges to personal jurisdiction are governed by section 2-301 of the Code (735 ILCS 5/2-301(a), (a-5) (West 2010). Since its amendment in 2000, section 2-301 provides, in pertinent part:

> "(a) Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of the State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in Section 2-619.1. ***
>
> (a-5) If the objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301(a), (a-5) (West 2010).

[*P99] The record indicates that Chessick received **[**58]** the 2-1401 petition by facsimile. Nevertheless, Chessick's appearance before the Cook County circuit court by filing a responsive pleading to the 2-1401 petition and other motions without ever filing a motion in compliance with subsection (a) of section 2-301 of the Code means Chessick has waived all objections to the court's personal jurisdiction over Chessick in this matter prospectively.

[*P100] Finally, Chessick argues that the Cook County ruling ordering Chessick to pay money that was previously distributed pursuant to the December 2009 Ogle County order amounted to an unconstitutional taking without due process and without jurisdiction. Chessick, however, fails to provide adequate argument and cite relevant authority to support this argument and therefore has forfeited it on review. See Wilson v. Continental Body Corp., 93 Ill. App. 3d 966, 969, 418 N.E.2d 56, 49 Ill. Dec. 412 (1981). Such forfeiture notwithstanding, this argument is rendered moot by the February 2012 Ogle County court order that vacated the December 2009 order. See In re Nancy A., 344 Ill. App. 3d 540, 548, 801 N.E.2d 565, 279 Ill. Dec. 891 (2003) ("A moot question is one that existed but because of the happening of certain events has ceased to exist and no longer presents an actual controversy over the interests or rights of the party."). Furthermore, because Chessick actively participated in the Rule 6.4 hearings before the Cook **[**59]** County court, which had personal and subject matter jurisdiction over the matter, Chessick's unconstitutional-taking-without-due-process argument merits no further consideration by this court.

[*P101] II. The Ogle County Order

[*P102] Chessick argues the judgment of the Cook County court is void because that court could not review or disregard the December 2009 order of the Ogle County court. Chessick argues Ogle County clearly had jurisdiction over the distribution of the bad-faith action settlement and properly exercised that jurisdiction. Chessick cites *People ex rel. Phillips Petroleum Co. v. Gitchoff, 65 Ill. 2d 249, 257, 357 N.E.2d 534, 2 Ill. Dec. 367 (1976)*, which stated that "[o]ne circuit judge may not review or disregard the orders of another circuit judge in the judicial system of this State."

[*P103] I disagree with Chessick's contention that the Cook County court improperly reviewed or disregarded the order of the Ogle County court. As discussed above, jurisdiction in Cook County was proper. Furthermore, *Rule 6.4* provides that "[t]he judge hearing the case" must approve the settlement as fair and reasonable, determine the attorney fees and costs to be deducted from the settlement, and determine the net amount distributable to the minor. *Cook Co. Cir. Ct. R. 6.4(a)* (Jan. 2, 2001). Because this 6.4 review by the trial judge **[**60]** in the bad-faith action in Cook County was required, the matter should not have been filed and addressed in the probate case in Ogle County before the Cook County court made the requisite findings. Moreover, after Chessick filed the final litigation inventory in the Ogle County probate case, the Ogle County court likewise failed to make the requisite findings under its own local rule (see 15th Judicial Cir. Ct. R. 10.1 (April 1, 2007)), which is similar to *Rule 6.4*.

[*P104] In addition, in February 2012, after the submission of briefs and a hearing, the Ogle County court vacated its December 2009 order based on lack of jurisdiction. In so ruling, the Ogle County judge acknowledged that the bad-faith action involved a minor; that *Rule 6.4* applied and the case was brought prematurely to the probate division of the Ogle County court; and that Ogle County had a local rule similar to *Rule 6.4*. The Ogle County judge stated that the Cook County court had jurisdiction over the attorney fee issue because it was the court where the bad-faith action was pending.

[*P105] The record establishes that the Ogle County court did not inquire into or make any findings concerning the fairness and reasonableness of the bad-faith action settlement **[**61]** on behalf of the minor as required by the Probate Act and the local rules of both the Cook County and Ogle County courts. Judicial scrutiny of settlements and fees is mandated as necessary to protect fully the interests of minors and ensure the proceeds are distributed in accordance with the minors' best interests. The Cook County court properly complied with the law by requiring Chessick to submit a petition to approve the settlement and belatedly fulfill its obligations under *Rule 6.4* and justify the 47% attorney fee taken in a case involving a minor.

[*P106] III. Claim of a Minor

[*P107] Chessick argues the judgment of the Cook County court is void because the court determined attorney fees and litigation costs pursuant to *Rule 6.4*, and, according to Chessick, *Rule 6.4* is inapplicable because the bad-faith action was the hospital's assigned claim against OHIC and, thus, did not involve the claim of a minor.

[*P108] *Rule 6.4* addresses the procedure to be followed in cases involving claims of minors pending in divisions other than the probate division. When a settlement occurs, *Rule 6.4* requires the judge hearing the case, upon approval of the settlement as fair and reasonable, to determine attorney fees, costs, and the net amount distributable to **[**62]** the minor. *Cook Co. Cir. Ct. R. 6.4* (Jan. 2, 2001).

[*P109] Chessick argues *Rule 6.4* was not applicable because the bad-faith action did not involve the claim of a minor but, rather, the hospital's potential claims against OHIC, which were assigned to the Sullivans. When the Sullivans filed the bad-faith action as assignees, they stood in the shoes of the hospital. Accordingly, the Sullivans' personal injuries were not being litigated but, rather, the contract and quasi-contract rights of the hospital *vis-a-vis* OHIC. Although Beau Sullivan had a potential interest in the outcome of the bad-faith action against OHIC, the assigned causes of action prosecuted were those of the hospital, not the Sullivans. Chessick argues the

assignment did not change the nature of the claim and make it a minor's claim. Chessick asserts the mere fact that a recovery of proceeds in the bad-faith action will benefit Beau, a minor, does not transform the cause of action into the minor's personal injury claim or cause of action. Chessick argues that the typical concerns of a court in determining the reasonableness of a settlement of a minor's personal injury claim are simply not present in the bad-faith action.

[*P110] To support this **[**63]** argument, Chessick cites a March 2007 memorandum to all Cook County judges from the presiding judges of the law, probate, and municipal divisions of Cook County (Joint Memorandum). According to Chessick, the Joint Memorandum indicates that the application of *Rule 6.4* is limited to cases involving a minor's or disabled person's personal injury, wrongful death, or survival action because it is entitled "Final Procedures Concerning Settlement of Minors' and Disabled Persons' Personal Injury and Wrongful Death Cases & Sample Orders." Furthermore, the Joint Memorandum, in discussing *Rule 6.4* review procedures, mentions only the following actions involving minors and disabled persons: (1) personal injury cases, (2) actions brought under the Wrongful Death Act; and (3) actions that survive the plaintiff's death.

[*P111] Chessick's arguments are not persuasive. The plain language of *Rule 6.4*, which states "the procedure to be followed in cases involving claims of minors," indicates that *Rule 6.4* applies to all claims of minors, regardless of the particular cause of action. To find otherwise would eliminate judicial scrutiny and frustrate Illinois public policy concerning the court's role to protect minors involved in litigation. **[**64]** Specifically, public policy requires that the rights of minors are to be guarded carefully. *Ott, 273 Ill. App. 3d at 570*. This policy is reflected in the statutory requirement of the Probate Act that the courts approve or reject any settlement agreement proposed on a minor's behalf. See *755 ILCS 5/19-8* (West 2010) ("By leave of court without notice or upon such notice as the court directs, a representative may compound or compromise any claim or any interest of the ward or the decedent in any personal estate or exchange any claim or any interest in personal estate for other claims or personal estate upon such terms as the court directs."). "Every minor plaintiff is a ward of the court when involved in litigation, and the court has a duty and broad discretion to protect the minor's interests." *Ott, 273 Ill. App. 3d at 570-71*. Court approval of any settlement involving the claim of a minor is mandatory. *Burton v. Estrada, 149 Ill. App. 3d 965, 976, 501 N.E.2d 254, 103 Ill. Dec. 233 (1986)*. The Probate Act requires that the terms and conditions of any proposed compromise must be submitted to, inquired into, and passed upon by the court having special jurisdiction of the estate of minors. *Mastroianni v. Curtis, 78 Ill. App. 3d 97, 99-100, 397 N.E.2d 56, 33 Ill. Dec. 723 (1979)*.

[*P112] I do not agree with Chessick's assertion that the narrower language of the Joint Memorandum limits or takes precedence over the broad language of *Rule 6.4*. The stated **[**65]** objective of the procedures described in the Joint Memorandum "is to permit the total disposition by the Law Division or Municipal Department of any case in which appropriate Probate Division action is not necessary while, at the same time, ensuring that appropriate Probate Division involvement is not eliminated by reason of an overly broad Law Division or Municipal Department order." Cook Co. Cir. Ct. Joint Memorandum at 7. Although most claims involving minors commonly come before the circuit court as personal injury, wrongful death, and survival actions, the court's duty to protect minors involved in litigation is not limited to those three causes of action. Furthermore, the bad-faith claim at issue here was a tort claim (see *Schal Bovis, Inc. v. Casualty Insurance Co., 314 Ill. App. 3d 562, 574, 732 N.E.2d 1082, 247 Ill. Dec. 750 (1999)*), and arose from the settlement agreement concerning the unpaid portion of the Sullivans' $10 million jury verdict award in their medical negligence claim against the hospital, which primarily awarded damages for Beau's injuries. The bad-faith claim the hospital assigned to the Sullivans would not have existed but for the jury award against the hospital, and it was assigned to the Sullivans to permit them to be compensated and made whole. The petition Chessick **[**66]** presented to the Ogle County court on behalf of the Sullivans for approval of the settlement with the hospital stated that the Sullivans intended to pursue the hospital's claims against OHIC "for the benefit of Beau Sullivan." In addition, the $100,000 from the hospital settlement that was used to cover the litigation costs of the bad-faith action was taken from Beau Sullivan's probate estate, and not from his parents.

[*P113] I agree with Chessick that an assignment of claims does not alter the nature of the assigned claims to be prosecuted or vest the assignee with greater rights than the assignor possessed. See *Reimers v. Honda Motor Co., 150 Ill. App. 3d 840, 843, 502 N.E.2d 428, 104 Ill. Dec. 165 (1986)*. I disagree, however, with Chessick's assertion that the application of *Rule 6.4* here somehow alters the nature of the assigned bad-faith claim or gives Beau

greater rights with respect to the actual claim. Because Rule 6.4 is applied at the time the claim has been resolved by judgment or settlement, I reject Chessick's assertion that Rule 6.4 alters the claim substantively. I would hold that Rule 6.4 applied to the settlement of the bad-faith action at issue here because that case involved the claim of an assignee-plaintiff who was a minor.

[*P114] IV. Constitutionality of Rule 6.4

[*P115] Chessick argues that Rule 6.4 is unconstitutional on its **[**67]** face and as applied in this case because it: (1) conflicts with the right to contract and eliminates judicial determination of the reasonableness of contingency-fee agreements involving minors; (2) violates procedural due process; and (3) is unconstitutionally vague.

[*P116] It is well settled that local rules adopted by the courts must be consistent with the rules of our supreme court and Illinois statutes, must be procedural in nature, and cannot modify or limit the substantive law. Leonard C. Arnold, Ltd. v. Northern Trust Co., 116 Ill. 2d 157, 167, 506 N.E.2d 1279, 107 Ill. Dec. 224 (1987). See also Illinois Supreme Court Rule 21(a) (eff. Dec. 1, 2008) ("A majority of the circuit judges in each circuit may adopt rules governing civil and criminal cases which are consistent with these rules and the statutes of the State, and which, so far as practicable, shall be uniform throughout the State."); 735 ILCS 5/1-104(b) (West 2010) ("Subject to the rules of the Supreme Court, the circuit and Appellate Courts may make rules regulating their dockets, calendars, and business."); 705 ILCS 35/28 (West 2010) ("[the circuit] courts may, from time to time, make all such rules for the orderly disposition of business before them as may be deemed expedient, consistent with law."). Furthermore, for guidance in addressing Chessick's constitutional challenges to Rule 6.4, this court may **[**68]** look to the same principles applicable to the construction of statutes. See People v. Marker, 233 Ill. 2d 158, 164-65, 908 N.E.2d 16, 330 Ill. Dec. 164 (2009) (the interpretation of supreme court rules is guided by the same principles applicable to the construction of statutes); *Premier Electrical Construction Co. v. American National Bank of Chicago, 276 Ill. App. 3d 816, 834, 658 N.E.2d 877, 213 Ill. Dec. 128 (1995)* (a local court rule has the force of a statute and is binding on the trial court and the parties).

[*P117] With rules, like statutes, the court's goal is to ascertain and give effect to the drafters' intentions, and the most reliable indicator of intent is the language used, which must be given its plain and ordinary meaning. Marker, 233 Ill. 2d at 165. Furthermore:

> "The constitutionality of a statute is a question of law subject to *de novo* review. [Citations.] Statutes are presumed to be constitutional, and the party challenging the validity of the statute has the burden to clearly establish the constitutional invalidity. [Citations.] A court must construe a statute so as to affirm its constitutionality, if the statute is reasonably capable of such a construction. [Citation.] Accordingly, if [a] statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity. [Citation.]" (Internal quotation marks omitted.) People ex rel. Sherman v. Cryns, 203 Ill. 2d 264, 290-91, 786 N.E.2d 139, 271 Ill. Dec. 881 (2003).

[*P118] Chessick's challenges to the constitutionality of Rule 6.4 are framed as both facial **[**69]** and as-applied challenges.

> "A facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully [citation] because an enactment is facially invalid only if no set of circumstances exist under which it would be valid. The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity. [Citations.] In contrast, in an 'as-applied' challenge a plaintiff protests against how an enactment was applied in the particular context in which the plaintiff acted or proposed to act, and the facts surrounding the plaintiff's particular circumstances become relevant. [Citation.] If a plaintiff prevails in an as-applied claim, he may enjoin the objectionable enforcement of the enactment only against himself, while a successful facial attack voids the enactment in its entirety and in all applications. [Citation.]" Napleton v. Village of Hinsdale, 229 Ill. 2d 296, 305-06, 891 N.E.2d 839, 322 Ill. Dec. 548 (2008).

[*P119] If Chessick's theories of unconstitutionality were to prevail, *Rule 6.4* would be declared void completely, not just as applied to Chessick. See *Morr-Fitz, Inc. v. Blagojevich, 231 Ill. 2d 474, 498, 901 N.E.2d 373, 327 Ill. Dec. 45 (2008)* (citing *Napleton, 229 Ill. 2d at 306*). Accordingly, although Chessick labels its challenge as both facial and as-applied, there is no discernible as-applied challenge **[**70]** in the theories presented by Chessick. Rather, Chessick challenges *Rule 6.4* as unconstitutional on its face.

[*P120] A. Right to Contract

[*P121] First, Chessick contends that *Rule 6.4* conflicts with the right to contract because the clear and unambiguous language of *Rule 6.4* creates an absolute barrier to attorney fees in excess of one-third of the recovery. Chessick argues this absolute barrier is contrary to substantive Illinois law, which provides that "a contingent-fee agreement, entered into on behalf of a minor by his next friend, is enforceable unless the terms are unreasonable." *Leonard C. Arnold, Ltd. v. Northern Trust Co., 116 Ill. 2d 157, 166, 506 N.E.2d 1279, 107 Ill. Dec. 224 (1987)*.

[*P122] "The right of individuals to contract as they deem fit is grounded in the *due process clause*, which provides that no person "shall be deprived of life, liberty or property without due process of law." *R.W. Dunteman Co. v. C/G Enterprises, Inc., 181 Ill. 2d 153, 167, 692 N.E.2d 306, 229 Ill. Dec. 533 (1998)* (quoting *Ill. Const. 1970, art. I, § 2*, and citing *U.S. Const., amend. V*). Freedom to contract, however, "is a qualified right and is subject to the reasonable and legitimate exercise of the police power of the State." *Illinois Housing Development Authority v. LaSalle National Bank, 139 Ill. App. 3d 985, 990, 487 N.E.2d 772, 94 Ill. Dec. 15 (1985)*. Furthermore, the contracts implicated by *Rule 6.4* are attorney fee agreements that involve clients who are minors or disabled persons and, thus, are not presumed to be mentally competent to enter into a contract. See *755 ILCS 5/11-1* (West 2010) (a person who has attained the age of 18 years is of legal age for all **[**71]** purposes except as otherwise provided by statute); *Terrace Co. v. Calhoun, 37 Ill. App. 3d 757, 761, 347 N.E.2d 315 (1976)* (if a minor enters into a contract, that contract is voidable).

[*P123] Whether *Rule 6.4* unconstitutionally impinges upon an individual's freedom to contract is a due process question. Because *Rule 6.4* does not affect fundamental rights, it satisfies the requirements of due process so long as it is rationally related to a legitimate governmental purpose. See *Alarm Detection Systems, Inc., v. The Village of Hinsdale, 326 Ill. App. 3d 372, 381, 761 N.E.2d 782, 260 Ill. Dec. 599 (2001)*. I believe that *Rule 6.4* furthers the public policy to protect minors and disabled persons involved in litigation by requiring, in cases pending outside the probate division, that the judge hearing the case approve the fairness and reasonableness of a settlement, determine attorney fees and costs, and determine the net amount distributable to the minor or disabled person. Thus, *Rule 6.4* does not violate due process because it advances a legitimate governmental interest.

[*P124] I also reject Chessick's assertion that *Rule 6.4* changes the substantive law by creating an absolute barrier to attorney fees that exceed one-third of the recovery. *Rule 6.4* is procedural and similar to a Nineteenth Judicial Circuit rule that was upheld in *Leonard C. Arnold, Ltd., 116 Ill. 2d 157, 506 N.E.2d 1279, 107 Ill. Dec. 224*. In *Arnold*, the plaintiffs, attorneys who represented a minor in a tort case and had a contingency fee agreement **[**72]** that would give them 33.33% of the total recovery, challenged the validity of a local court rule that placed restrictions on the enforcement of contingent-fee agreements involving minors. The rule required attorneys representing a minor or an incompetent to submit sworn petitions when their contingent fees exceeded 25% of the amount collected in settlements of their client's personal injury cause of action. The rule provided that in such situations, the trial court shall fix the attorney fees at whatever amount it considers fair and reasonable without regard to the 25% limitation. *Id. at 166*. Our supreme court noted that significant public policy considerations supported the enforcement of reasonable contingent fee agreements because such agreements are the "poor man's key to the courthouse door," and contingent fees are "rooted in our commitment to equal justice for both those of moderate means and the wealthy." *Id. at 164*. The court looked at the purpose and effect of the challenged rule (to protect minors while avoiding mini-trials over fees and preventing the depletion of the minor's estate), found that it was based on the court's special duty to protect minors, and held that it did not improperly **[**73]** change the

substantive law but only provided "a procedural mechanism for enforcing the restriction embodied in the substantive law." *Id. at 167*

[*P125] Unlike the rule at issue in *Arnold*, *Rule 6.4* does not expressly state that the court may set attorney fees at whatever amount it considers fair and reasonable without regard to the 33.33% limitation. Nevertheless, I would find that *Rule 6.4* does not unconstitutionally create an absolute ceiling on attorney fees in cases involving minors but only establishes a benchmark for the reasonableness determination. In interpreting the meaning of *Rule 6.4*, this court presumes that absurd, inconvenient or unjust results were not intended. See generally, *Sandholm v. Kuecker, 2012 IL 111443, ¶ 41, 962 N.E.2d 418, 356 Ill. Dec. 733*. The 33.33% attorney fee limitation is qualified; it applies "[e]xcept as otherwise limited by rule or statute." *Cook Co. Cir. Ct. R. 6.4(b)* (Jan. 2, 2001). A law is facially invalid only if no set of circumstances exist under which it would be valid (*Lebron v. Gottlieb Memorial Hospital, 237 Ill. 2d 217, 228, 930 N.E.2d 895, 341 Ill. Dec. 381 (2010)*), and the Cook County court has implemented procedures for *Rule 6.4* that provide the court the flexibility to award enhanced fees which are reasonable. Specifically, the procedures of the Cook County court provide that an attorney may move for approval of enhanced fees "[i]n special circumstances, where an attorney **[**74]** performs extraordinary services involving more than usual participation in time and effort." Cook Co. Cir. Ct. Joint Memorandum at 4 (Mar. 2007). The procedures also provide that the "court, in its discretion, may determine whether such additional fees are justified based on the criteria enumerated in *Illinois Supreme Court Rule [of Professional Conduct of 2010 1.5* (eff. Jan. 1, 2010)] and other pertinent factors." Cook Co. Cir. Ct. Joint Memorandum at 4 (Mar. 2007). Consequently, *Rule 6.4* is not unconstitutional where the court may consider fee petitions that exceed the 33.33% benchmark as petitions for enhanced fees pursuant to the procedures instituted by the circuit court.

[*P126] B. Procedural Due Process

[*P127] Second, Chessick contends *Rule 6.4* violates procedural due process because it creates an absolute barrier to attorney fees in excess of 33.33% without expressly providing a mechanism for a fair opportunity to present evidence that a higher percentage of recovery is reasonable and warranted in a case.

[*P128] I would conclude that there is no due process violation because, as discussed above, there is no absolute barrier to enhanced fees and the procedural safeguards that provide for a hearing protect the interests **[**75]** of both the attorney and the minor. Courts must consider three factors when determining whether an individual had received the process the constitution finds due: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail. *In re Robert S., 213 Ill. 2d 30, 48-49, 820 N.E.2d 424, 289 Ill. Dec. 648 (2004)*. At issue here are the attorney's property interest in his fees, the policy of promoting access to the courts through reasonable contingency-fee agreements, and the court's duty to protect minors involved in litigation.

[*P129] Cook County's oversight of minors' settlements is constitutional because the concurrent operation of *Rule 6.4* and the Joint Memorandum provides procedural safeguards that protect the rights of attorneys without hindering the court's duty to protect the rights and property of minors. These procedural safeguards provide for a hearing in the trial court for the approval of the minor's settlement, attorney fees, and litigation **[**76]** costs. In special circumstances, the attorney may move for approval of additional compensation. When the court considers enhanced fees, it should determine the reasonableness of the fee based on the time and labor required; the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or circumstances; the nature and length of the professional relationship with the client; the experience, reputation and ability of the lawyer performing the services; and whether the fee is fixed or contingent. *Ill. S. Ct. R. Prof. Conduct of 2010 1.5* (eff. Jan. 1, 2010).

[*P130] C. Unconstitutionally Vague

[*P131] Third, Chessick argues *Rule 6.4* is unconstitutionally vague because it does not define what constitutes a minor's claim; interprets the phrase "if an appeal is perfected" inconsistently with the common meaning of that phrase; and fails to indicate whether the trial judge's decision pursuant to *Rule 6.4* is **[**77]** merely advisory for the probate court.

[*P132] In analyzing these challenges to the constitutionality of *Rule 6.4*, this court again looks to the principles governing the analysis of the constitutionality of statutes.

> "A statute violates the *due process clauses of the United States Constitution* or the *Illinois Constitution* on the basis of vagueness only if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts. [Citation.] In order to succeed on a vagueness challenge to a statute that does not involve a *first amendment* right, a party must establish that the statute is vague as applied to the conduct for which the party is being prosecuted. [Citations.] A statute is not vague, and therefore does not violate due process, if the duty imposed by the statute is set forth in terms definite enough to serve as a guide to those who must comply with it. [Citation.] [T]he party must show that the statute did not provide clear notice that the party's conduct was prohibited. [Citations.] In other words, the provisions of a statute must be definite so that a person of ordinary intelligence [has] a reasonable opportunity to know what is prohibited, so that he may act accordingly. **[**78]** [Citation.] When the statute is examined in the light of the facts of the case and the statute clearly applies to the party's conduct, then a challenge to the statu[t]e's constitutionality based upon vagueness will be unsuccessful." (Internal quotation marks omitted.) *People ex rel. Sherman v. Cryns, 203 Ill. 2d 264, 291-92, 786 N.E.2d 139, 271 Ill. Dec. 881 (2003)*.

[*P133] Here, Chessick asserts that *Rule 6.4* is unconstitutionally vague concerning the definition of a minor's claim and thereby fails to give attorneys notice concerning when *Rule 6.4* is applicable. I disagree. *Rule 6.4* states that it is "[t]he procedure to be followed in cases involving claims of minors or disabled persons pending in divisions other than the Probate Division." *Cook Co. Cir. Ct. R. 6.4* (Jan. 2, 2001). Black's Law Dictionary defines "claim," as, *inter alia*, the "aggregate of operative facts giving rise to a right enforceable by a court," and "[a]n interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; cause of action." Black's Law Dictionary 240 (7th ed. 1999). There is nothing in the plain language of *Rule 6.4* that suggests it only encompasses a personal injury or wrongful death cause of action, or that it would be defined as anything other than its common meaning.

[*P134] I also reject **[**79]** Chessick's argument that *Rule 6.4* is unconstitutionally vague because it states "[i]f an appeal is perfected, the compensation to be paid to the attorney shall not in any event exceed one half of the recovery." *Cook Co. Cir. Ct. R. 6.4(b)* (Jan. 2, 2001). There is nothing vague about this directive; if a notice of appeal is filed, the trial court has discretion to award a higher fee but that higher fee is capped at one half of the recovery. The mere filing of a notice of appeal does not automatically trigger an attorney fee of one half of the recovery; the court must determine whether a higher fee is justified based upon the facts of the particular appeal.

[*P135] I also reject Chessick's assertion that *Rule 6.4* is unconstitutionally vague because it does not clarify whether the trial court's *Rule 6.4* ruling would only be advisory for the probate court. "A local rule has the force of a statute and is binding on the trial court as well as the parties." *Premier Electrical Construction Co., 276 Ill. App. 3d at 834*. Compliance with *Rule 6.4* is mandatory. It requires the court hearing the case to approve any proposed settlement as fair and reasonable and to determine attorney fees and costs and the net amount distributable to the minor. The net amount distributable to the minor, as determined **[**80]** by the trial court, "shall be accounted for and administered in the Probate Division." *Cook Co. Cir. Ct. R. 6.4(d)* (Jan. 2, 2001). Nothing in the plain language of *Rule 6.4* indicates that the trial courts' determinations on these matters are merely advisory.

[*P136] I would hold that the provisions of *Rule 6.4* are set forth in terms definite enough to afford an individual of ordinary intelligence with clear notice as to what procedure is mandated in cases involving the claims of minors or

disabled persons that are pending outside the probate division of the court. I would conclude that Chessick has not met its burden of rebutting the presumption of constitutionality and establishing that the provisions of Rule 6.4 are vague as applied to Chessick's conduct.

[*P137] V. Circuit Court's Application of Rule 6.4

[*P138] Chessick argues the Cook County court erroneously applied Rule 6.4 because (1) the court used the wrong standard from a medical negligence case to determine the reasonableness of attorney fees in this bad-faith action; (2) Chessick's attorney fees were reasonable, warranted and earned where the Sullivans freely signed the contingency-fee agreement and a 10% increase to the court-approved 37% attorney fees in the medical negligence case **[**81]** was reasonable for seven years of additional litigation in the bad-faith action; and (3) Chessick's litigation expenses were recoverable pursuant to the applicable contingency-fee agreement, reasonable, and well supported.

[*P139] Chessick initially complains that the trial court used the wrong standard to determine the reasonableness of Chessick's attorney fees and should have used the standard articulated in Leonard C. Arnold, Ltd., 116 Ill. 2d 157, 506 N.E.2d 1279, 107 Ill. Dec. 224. That case, however, did not articulate any standard beyond the general proposition that a contingent-fee agreement entered into on behalf of a minor by his next friend is enforceable unless the terms are unreasonable. Chessick also summarily complains that the trial court should have awarded attorney fees based on Chessick's 1996 contingency-fee agreement with the Sullivans instead of the 2002 agreement, and that the 49% fee provision should apply because an appeal was perfected in the bad-faith action. Chessick, however, provides no argument to support these assertions and has therefore forfeited them on review. Wilson, 93 Ill. App. 3d at 969. Such forfeiture notwithstanding, the plain language of the contracts between Chessick and the Sullivans establishes that the 2002 agreement controls the determination of **[**82]** fees in the settled bad-faith action and the 49% fee provision is inapplicable because it was not "necessary to engage in an appeal."

[*P140] I now address whether the trial court abused its discretion in applying Rule 6.4. The party requesting attorney fees bears the burden of presenting sufficient evidence to support a trial court's decision as to their reasonableness. Chicago Title & Trust Co. v. Chicago Title & Trust Co., 248 Ill. App. 3d 1065, 1072, 618 N.E.2d 949, 188 Ill. Dec. 379 (1993). In assessing the reasonableness of attorney fees, the trial court should consider, *inter alia*, the skill and standing of the attorneys employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation. *Id.* Furthermore, the criteria enumerated in Illinois Supreme Court Rule of Professional Conduct of 2010 1.5 is utilized to evaluate fee awards in accordance with Rule 6.4. See Cook Co. Cir. Ct. Joint Memorandum (Mar. 2007). A trial court's decision concerning the reasonableness of attorney fees is reviewed for an abuse of discretion. Clay v. County of Cook, 325 Ill. App. 3d 893, 898, 759 N.E.2d 6, 259 Ill. Dec. 526 (2001). " 'An abuse of discretion occurs where no reasonable person would agree with the **[**83]** position adopted by the trial court.' " Id. at 901 (quoting Schwartz v. Cortelloni, 177 Ill. 2d 166, 176, 685 N.E.2d 871, 226 Ill. Dec. 416 (1997)).

[*P141] The trial court held a Rule 6.4 hearing and allowed Chessick to fully present evidence and brief and argue its position for enhanced fees above the percentage stated in the 2002 retainer agreement and the percentage allowed in Rule 6.4. The record establishes the trial court considered Chessick's request for enhanced fees in accordance with the factors enunciated in Clay, 325 Ill. App. 3d 893, 759 N.E.2d 6, 259 Ill. Dec. 526. In denying the request for enhanced fees above 33.33% for the minor's portion, the trial court noted that Chessick's overall risk concerning litigation costs was reduced because the minor's estate had advanced $100,000 to Chessick for costs. The trial court also stated that Chessick failed to support its arguments with affidavits or evidence, so there was no testimony to establish that a 47% recovery was an ordinary and customary fee in bad-faith actions. Furthermore, there were no affidavits from individuals outside of Chessick to indicate the novelty of the case and no facts to judge the attorneys' skills and expertise in prosecuting the bad-faith claim. The trial court's orders concerning Chessick's fee petition and motions to reconsider were carefully considered, thoughtfully written **[**84]** and logically

persuasive. I would find no abuse of discretion in the trial court's application of Rule 6.4 to the bad-faith action settlement.

[*P142] I also would find that the trial court properly disallowed expenses for computerized legal research (see *Guerrant v. Roth, 334 Ill. App. 3d 259, 267-70, 777 N.E.2d 499, 267 Ill. Dec. 696 (2002)* (computerized legal research expenses are part of the attorney's fees and are not separately recoverable pursuant to a contingency-fee agreement unless the agreement explicitly provides for reimbursement and there is a corresponding reduction in attorney fees)), and $73.55 in other unsubstantiated expenses.

[*P143] VI. The Sullivans' Appeal

[*P144] On appeal, the Sullivans argue that the circuit court erroneously ruled that it lacked jurisdiction to (1) enforce the March 28, 2011 order, despite the absence of an appeal bond by Chessick to stay enforcement of the final judgment, and (2) consider the Sullivans' claim for pre-and postjudgment interest. Before considering the merits of the Sullivans' appeal, I address this court's jurisdiction to consider the appeal.

[*P145] The finality of an order is determined by an examination of the substance as opposed to the form of that order. *Gutenkauf v. Gutenkauf, 69 Ill. App. 3d 871, 873, 387 N.E.2d 918, 26 Ill. Dec. 88 (1979)*. Appellate jurisdiction is limited to review of final judgments unless an order falls within **[**85]** a statutory or supreme court exception. *Pekin Insurance Co. v. Benson, 306 Ill. App. 3d 367, 375, 714 N.E.2d 559, 239 Ill. Dec. 640 (1999)*. An order is said to be final if it "disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof." (Internal quotation marks omitted.) *In re Estate of French, 166 Ill. 2d 95, 101, 651 N.E.2d 1125, 209 Ill. Dec. 677 (1995)*.

[*P146] Here, to determine the substance of the circuit court's postjudgment action, this court examines the May 23, 2012 and July 12, 2012 orders to determine the effect those orders had on the parties. As will be discussed below, I would conclude that, although the trial judge did not have jurisdiction to modify the March 28, 2011 order, she did have jurisdiction to enforce it and consider the Sullivans' claim for pre- and postjudgment interest. The orders in question disposed of the Sullivans' motion for judgment and for pre- and postjudgment interest and foreclosed them—based on the trial court's belief that it lacked jurisdiction—from commencing proceedings to enforce the judgment against Chessick and request interest during the pendency of Chessick's appeal despite the absence of any stay. The circuit court's jurisdictional ruling must be subject to appeal, for otherwise there would be no review of a court's jurisdiction. I would conclude that the circuit **[**86]** court's denial of the Sullivans' motion for judgment and for pre- and postjudgment interest was a final and appealable order under *Illinois Supreme Court Rule 301* (eff. February 1, 1994).

[*P147] Chessick argues that the Sullivans' appeal should be dismissed because the circuit court's July 12, 2012 order was not a final or appealable order. According to Chessick, the circuit court did not deny the Sullivans' motion to enforce the judgment and award pre- and postjudgment interest but, rather, declined to enter an opinion on the motion while Chessick's appeal of the case was pending. Chessick's characterization of the circuit court's ruling, however, is not accurate.

[*P148] According to the record, on May 23, 2012, the circuit court denied the Sullivans' motion to enforce the judgment and award pre- and postjudgment interest based on lack of jurisdiction. The Sullivans timely moved the court to reconsider its ruling. A hearing was held, and the Sullivans were given leave to amend their motion to reconsider. At the July 12, 2012 hearing on the amended motion to reconsider, the circuit court stated that it agreed with the Sullivans' argument that the March 28, 2011 order was a judgment because the court had required Chessick to pay **[**87]** a sum certain and there was no "wiggle room." Nevertheless, the court stated that it believed Chessick's appeal had divested the court of its authority to make a declaration that the March 28, 2011 order was a judgment and the Sullivans were entitled to interest. In its written July 12, 2012 order, the circuit court stated that it "decline[d] to render an opinion" on the amended motion to reconsider based upon a lack of jurisdiction.

[*P149] Chessick's argument that the Sullivans have not appealed a final order erroneously focuses on the vague wording of the July 12, 2012 ruling on the amended motion to reconsider while ignoring the clear and final ruling in the May 23, 2012 order that denied the motion for judgment and pre-and postjudgment interest. A court order is not interpreted in a vacuum; it must be construed in a reasonable manner so as to give effect to the apparent intention of the trial court. *Dewan v. Ford Motor Co., 343 Ill. App. 3d 1062, 1069, 799 N.E.2d 391, 278 Ill. Dec. 673 (2003)*. If a trial court's oral pronouncement conflicts with its written order, the oral pronouncement controls. *Danada Square LLC v. KFC National Management Co., 392 Ill. App. 3d 598, 608, 913 N.E.2d 33, 332 Ill. Dec. 438 (2009)*. The circuit court's use of the word "decline" in its July 12, 2012 written order was a poor word choice because the circuit court's oral pronouncement essentially denied the Sullivans' motion **[**88]** to reconsider based upon a lack of jurisdiction. It seems quite apparent that it was the intention of the court to dispose of the Sullivans' motion for judgment and interest because the court thought it lacked jurisdiction and intended that its order to that effect was an order of final disposition. Nevertheless, assuming, *arguendo*, that the July 12, 2012 order did not constitute a denial of the motion to reconsider, it still disposed of the motion to reconsider and made the May 23, 2012 order, which denied the Sullivans' motion for judgment and for pre-and postjudgment interest, a final and appealable order.

[*P150] In their appeal, the Sullivans argue the circuit court has jurisdiction to compel Chessick to disgorge the Sullivans' money and pay pre- and postjudgment statutory interest because Chessick did not stay, pursuant to *Illinois Supreme Court Rule 305(a)* (eff. July 1, 2004), the March 28, 2011order, which was a money judgment, and because these postjudgment matters were collateral or incidental to the judgment on appeal. I agree.

[*P151] A judgment has a limited life; after seven years, it cannot be enforced unless and until revived. See *735 ILCS 5/12-108* (West 2010); *First National Bank of Marengo v. Loffelmacher, 236 Ill. App. 3d 690, 695, 603 N.E.2d 80, 177 Ill. Dec. 299 (1992)*. Here, the Sullivans' motion to enforce the judgment is well within the **[**89]** seven-year time limit. Until enforcement is stayed, the circuit court can enter orders enforcing the judgment or order under review. *Williamsburg Village Owners Association v. Lauder Associates, 200 Ill. App. 3d 474, 480-82, 558 N.E.2d 208, 146 Ill. Dec. 245 (1990)*. A trial court is not required to specifically reserve jurisdiction to enforce a judgment after it becomes final. *Cities Service Oil Co. v. Village of Oak Brook, 84 Ill. App. 3d 381, 384, 405 N.E.2d 379, 39 Ill. Dec. 626 (1980)*.

[*P152] "[J]udicial power essentially involves the right to enforce the results of its own exertion. [Citation.] A court has inherent power to enforce its orders and decrees and should see to it that such judgments are enforced when called upon to do so. [Citation.]" *Id.*

[*P153] I would conclude the circuit court erred when it ruled that Chessick's notice of appeal had divested the court of jurisdiction to consider the Sullivans' motion for judgment and interest.

[*P154] Without citation to any relevant authority, Chessick argues that it was not required to file an appeal bond to stay enforcement of the final judgment because the circuit court never entered a money judgment against Chessick. According to Chessick, the March 28, 2011 order did not constitute a money judgment against Chessick because the order anticipated and required further action by the Ogle County court. Chessick provides no argument to support this assertion and has therefore forfeited it on review. *Wilson, 93 Ill. App. 3d at 969*. Such **[**90]** forfeiture notwithstanding, I would reject Chessick's argument that the March 28, 2011 order determining Chessick's attorney fees and litigation costs and the amounts due to the Sullivans was not a money judgment. The terms of the March 28, 2011 order clearly required Chessick to pay the Sullivans a sum certain based on the difference between the amount of attorney fees and costs Chessick took from the bad-faith action settlement and the amount approved by the Cook County Circuit Court. The circuit court even stated on July 12, 2012, that the March 28, 2011 order was a judgment because the court had required Chessick to pay a sum certain without any "wiggle room."

[*P155] When, on February 16, 2012, the probate division in Ogle County vacated its December 2009 order granting Chessick attorney fees and costs, Chessick lost its only remaining justification to continue to hold the fees and costs in excess of the amount approved by the Cook County Circuit Court. Moreover, it is well established Illinois law that when a judgment debtor has not obtained a stay in accordance with *Supreme Court Rule 305(a)*, a judgment creditor can collect from the judgment debtor when the subject judgment is on appeal. *Long v. Duggan-*

Karasik Construction Co., 25 Ill. App. 3d 236, 238, 323 N.E.2d 56 (1974); Colon v. Marzec, 116 Ill. App. 2d 278, 281, 253 N.E.2d 544 (1969). In order to stay **[**91]** a money judgment pursuant to Rule 305(a), the judgment debtor filing an appeal must post an appeal bond that covers the money damages portion of the order. See Bricks, Inc. v. C&F Developers, Inc., 361 Ill. App. 3d 157, 162, 836 N.E.2d 743, 297 Ill. Dec. 12 (2005). The bond requirement gives the judgment creditor security during the pendency of the appeal; it ensures that if the judgment is affirmed, the judgment creditor will be paid that which is owed. *Id.* Here, a final judgment was issued and Chessick chose not to obtain a stay and post a bond. Because Chessick did not obtain a stay and post a bond, the circuit court has jurisdiction to execute its judgment.

[*P156] A timely filed notice of appeal vests jurisdiction in the appellate court in order to permit review of the judgment so that it may be affirmed, reversed, or modified. Steinbrecher v. Steinbrecher, 197 Ill. 2d 514, 527 n.4, 759 N.E.2d 509, 259 Ill. Dec. 729 (2001). Once the notice of appeal is filed, the appellate court's jurisdiction attaches *instanter*, and the cause of action is beyond the circuit court's jurisdiction. Daley v. Laurie, 106 Ill. 2d 33, 37-38, 476 N.E.2d 419, 86 Ill. Dec. 918 (1985). However, the circuit court retains jurisdiction after a notice of appeal is filed to determine matters collateral or incidental to the judgment. General Motors Corp. v. Pappas, 242 Ill. 2d 163, 173-74, 950 N.E.2d 1136, 351 Ill. Dec. 308 (2011) (after a notice of appeal was filed, the circuit court maintained jurisdiction to award interest on tax refunds as provided by the Property Tax Code); Moenning v. Union Pacific R.R. Co., 2012 IL App (1st) 101866, ¶ 29, 966 N.E.2d 443, 359 Ill. Dec. 122 (circuit court had **[**92]** jurisdiction to adjudicate an attorney's lien after the filing of a notice of appeal because it was collateral to the judgment on appeal).

[*P157] "Collateral or supplemental matters include those lying outside the issues in the appeal or arising subsequent to delivery of the judgment appealed from." (Internal quotation marks omitted.) Moenning, 2012 IL App (1st) 101866, ¶ 22. Our supreme court has "specifically recognized that a stay of judgment is collateral to the judgment and does not affect or alter the issues on appeal." General Motors Corp., 242 Ill. 2d at 174 (citing Steinbrecher, 197 Ill. 2d at 526). Because the issues involved in Chessick's appeal in the consolidated case are not affected or altered by the enforcement of the judgment or assessment of statutory pre- and postjudgment interest, the circuit court has jurisdiction to hear these matters. Accordingly, I would reverse the judgment of the circuit court, which found that it lacked jurisdiction to consider the Sullivans' postjudgment motion, and remand this cause to the circuit court to consider the Sullivans' requests for judgment and for pre- and postjudgment interest.

[*P158] In conclusion, I would affirm the judgment of the circuit court of Cook County concerning the determination of Chessick's attorney fees and litigation costs and of the **[**93]** amounts due to Beau Sullivan and his parents. However, I would reverse the circuit court's judgment that it lacked jurisdiction to rule on the Sullivans' motion to enforce the judgment in the absence of a stay and to assess pre- and postjudgment interest.

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EXHIBIT 2

In re Marriage of Schmid

Appellate Court of Illinois, Fourth District

September 30, 2016, Filed

NO. 4-15-0900

Reporter
2016 IL App (4th) 150900-U *; 2016 Ill. App. Unpub. LEXIS 2127 **

In re: MARRIAGE OF VALERIE F. SCHMID, Petitioner-Appellee, and MARTIN L. SCHMID, Respondent-Appellant.

Prior History: **[**1]** Appeal from Circuit Court of DeWitt County. No. 13D51. Honorable William Hugh Finson, Judge Presiding.

Disposition: Affirmed in part and reversed in part; cause remanded with directions.

Judges: JUSTICE HARRIS delivered the judgment of the court. Justices Turner and Appleton concurred in the judgment.

Opinion by: HARRIS

Opinion

ORDER

[*P1] *Held*: (1) The trial court committed no error in treating respondent's pension benefits, which accrued during the parties' marriage, as marital property to be distributed between the parties.

(2) The trial court did not abuse its discretion in distributing the parties' marital property.

(3) The trial court committed no error in ordering petitioner was entitled to her share of respondent's pension benefits as of the date the court entered its property distribution order.

(4) The trial court's classification of a tract of land deeded to respondent during the marriage as marital property was against the manifest weight of the evidence.

(5) The trial court committed no error in denying respondent's motion for a stay of judgment relating to the award to petitioner of a portion of respondent's pension benefits.

[*P2] Petitioner, Valerie F. Schmid, brought an action to dissolve her marriage to re-spondent, Martin L. **[**2]** Schmid, and, in July 2015, the trial court entered a judgment of dissolution of marriage. Martin appeals, arguing the court (1) erred in treating his pension benefits, which were in pay-out status, as property to be distributed between the parties rather than a "stream of income"; (2) inequitably distributed the parties' marital property; (3) improperly set the date upon which Valerie was entitled to receive her share of his pension benefits; (4) erroneously classified a tract of land deeded to Martin during the marriage by his mother's trust as marital property; and (5) improperly terminated an automatic stay of judgment pertaining to Martin's pension qualified domestic relation order (QDRO). We affirm in part, reverse in part, and remand with directions.

[*P3] I. BACKGROUND

[*P4] The parties were married on April 29, 1989, and had one child. Martin also had a child from a previous relationship. On September 13, 2013, Valerie filed her petition for dissolution of marriage. The parties' children were both adults at the time of the divorce proceedings.

[*P5] In November and December 2014, the trial court conducted hearings in the matter. Valerie, age 50, testified she owned a hair salon in Atlanta, Illinois, **[**3]** which she had operated since 1996. The land upon which her salon sat was conveyed to the parties by Valerie's father and Martin helped improve the property and turn it into a hair salon. Prior to the parties' separation in November 2012, Valerie worked four days a week at her salon. However, since that time, she worked five days a week "[t]o pay bills." Valerie testified she worked 9 to 10 hours per day and hoped to continue working for the next 5 years. She described her health as "[f]airly good" but stated she saw a chiropractor and experienced back pain due to being on her feet all day. Valerie stated her knee also bothered her, noting she previously had knee surgery. She further identified a social security statement showing she was entitled to social security benefits of $657 per month at age 62. If she waited until age 70 to receive benefits, she would be entitled to $1,199 per month.

[*P6] Martin, age 59, testified he worked for Caterpillar for approximately 35 years, from August 1974 to April 2008. In 2008, he retired from Caterpillar at age 52. He received a pension from Caterpillar that, at the time of the hearing, paid him a gross amount of $2,800 per month. However, Martin testified that, **[**4]** in November 2017, after he reached age 62, his benefit would be reduced to $1,363.50 per month. He identified a social security earning statement showing he was eligible for social security benefits of $1,538 per month once he turned 62 in September 2017. Martin testified he planned to "draw" social security benefits at age 62 due to the reduction of his monthly Caterpillar pension benefit.

[*P7] Martin asserted that, during the marriage, he "worked all the overtime [he] could" to pay off debt or save for retirement. He agreed that Valerie also worked during the marriage and took care of the parties' children. Martin testified that, while working for Caterpillar, he was on his feet "basically all the time." He underwent back surgery prior to his retirement and had several steroid injections. Following surgery, he continued to experience back-related symptoms, including "a kink in [his] back." Martin testified his back condition continued to be physically limiting. Additionally, he stated that, at the time of his retirement, his legs hurt every day and his knees bothered him. He also underwent surgery on his left knee and had a lot of "dental issues." Further, Martin testified he had an accident **[**5]** at work that damaged his occipital nerve and caused headaches and affected his left eye. He stated he retired in 2008 because his "body was wearing out." Valerie testified it was Martin's plan to retire in 2008 at age 52, while she recommended he wait until 2012, when the parties' daughter would graduate from college.

[*P8] Martin testified that, during the marriage, the parties kept their finances separate and both maintained his or her own checking and savings accounts. He stated he and Valerie each paid his or her own bills and "split stuff at home." Martin denied that the parties ever combined their money and asserted they continued to keep separate finances following their separation. However, he acknowledged helping Valerie with real estate taxes for a period of time after the parties separated. Martin testified that if he were to lose part of his retirement income, he would be unable to continue the lifestyle he had lived during the parties' marriage and separation.

[*P9] Both parties submitted financial affidavits. Valerie identified her affidavit, in which she reported a weekly gross income of $500 from her hair salon and tips ranging from $25 to $35 per night from bartending at a tavern. **[**6]** She testified she worked at the tavern one day a week and most Saturdays. Evidence showed the tavern was owned by Aper Property Management, a limited partnership in which Valerie had a 20% interest. Valerie's father, Ronald Aper, testified he was a general partner in Aper Property Management and gifted a 20% interest in the partnership to each of his three daughters. Valerie denied making any monetary investments in Aper Property Management.

[*P10] Ronald testified the tavern owned by Aper Property Management had been sold on contract to a buyer who defaulted. Both Ronald and Valerie testified it was their intention to operate the tavern until it could be sold. In 2014, the tavern was remodeled. Ronald stated his daughters, including Valerie, helped out with the tavern. He asserted Valerie donated her time and denied that she invested any money into the tavern. Valerie denied having a long-

term plan to work at the tavern. Further, Ronald testified he invested $75,000 of his own money for remodeling the tavern and for taxes, which he considered a loan and a debt owed by the tavern.

[*P11] Valerie calculated her gross income in 2013 was $28,606. After deductions for federal and state taxes and health **[**7]** insurance, she calculated an annual net income of $14,341.64, or a monthly net income of $1,195.14. In her financial affidavit, Valerie also reported monthly living expenses of $2,757.74; however, that amount included $839.29 per month for health insurance (an amount she also deducted from her calculations of gross income to reach her net income). Valerie testified that health insurance figure represented an estimate from Caterpillar of the amount it would cost her to continue her health insurance coverage under the *Consolidated Omnibus Budget Reconciliation Act (COBRA) (29 U.S.C. § 1161 et seq. (2014))* once the parties were divorced. Valerie described her coverage through Caterpillar as an "80/20 plan," with a $500 deductible that covered medical, dental, and vision. She testified she was happy with her current insurance and had contacted two other insurance companies that had deductibles that "started at a couple-thousand dollars."

[*P12] Martin's financial affidavit stated his monthly gross income from all sources totaled $3,278.17. That amount included his Caterpillar pension benefit of $2,800 per month and "income from the Schmid Family Trust," which averaged $478.17 per month. Martin described the Schmid **[**8]** Family Trust as "com[ing] from his dad" and stated the trust owned "the family farm," which consisted of 175 acres in DeWitt County. The beneficial owners of the trust were Martin and his eight siblings, each of whom owned different interests in the trust. Martin testified he received $5,558 in trust income in 2012, and approximately $3,800 in trust income in 2013. Evidence showed Martin's percentage share of the assets in the trust was 11.8%.

[*P13] In his financial affidavit, Martin identified his net monthly income as $2,625.39, after deductions from his gross income for federal taxes and medical insurance. Martin testified he paid $539.70 per month for medical insurance for himself and Valerie. He believed the parties' daughter had also been covered by his insurance but agreed she was currently employed, with her own insurance coverage. Martin acknowledged that his health insurance payment would be less after the divorce but stated he did not know by how much. His affidavit further reflected monthly expenses totaling $1,468.48.

[*P14] The evidence showed Martin had a 401(k) retirement account, which, in December 2014, was valued at $330,600.73. That amount included $10,600.55 worth of shares of Caterpillar **[**9]** stock that Martin obtained prior to the marriage. Martin testified he planned to start taking withdrawals from his *401(k)* "probably when [he] turn[ed] 59 and a half" in March or April 2015. Valerie testified she had a PNC investment account into which she deposited $150 per month. She identified a statement, which valued the account at $31,266.44. Valerie testified she also had an individual retirement account (IRA) into which she deposited $200 each month. Her IRA had a balance of $25,315.14. Valerie testified she failed to include the $200 she deposited each month into her IRA in the monthly expenses she identified in her financial affidavit.

[*P15] The evidence further showed the parties owned two separate residences, one in Missouri, where Martin resided, and one in Waynesville, Illinois, where Valerie lived and which had been the marital residence. Martin testified the Missouri property consisted of 134 acres and a residence, as well as another 36 acres at a separate location. Valerie testified the parties purchased the Missouri property as a retirement home. She did not object to Martin retaining the Missouri property after the divorce. The parties agreed that the value of the Missouri property **[**10]** was $240,000.

[*P16] Valerie testified the Waynesville property consisted of a "ranch house" on 3.9 acres with a big yard and a hayfield. She stated hay had been planted on a portion of the 3.9 acres for approximately 10 years and Martin and his brother had a deal to plant the hay, divide it up, and sell it. Valerie estimated the hayfield took up approximately two acres. Martin testified that, in a good year, it was possible to get approximately 3,000 bales of hay from the property and earn between $5 and $6 a square bale.

[*P17] Martin testified the Waynesville property was owned by his parents and conveyed to him in portions. According to Martin, separate conveyances were made because the initial property given to him before the marriage "was pie-shaped, and [his] dad didn't like the looks of it. So he was trying to square it up." Martin identified

a quit-claim deed he signed in April 1997, which transferred the tract of land that included the marital residence and was described as "Lot 1 of Schmid Subdivision," to himself and Valerie as joint tenants. He identified a second quit-claim deed, dated November 1999, which transferred property identified as "[p]art of Lot Three (3) of 'Schmid Subdivision'" **[**11]** from Martin's mother to Martin and Valerie as joint tenants with rights of survivorship. Finally, he identified a "Trustee's Deed," dated April 2002, which conveyed property described as "[a] triangular strip of land consisting of 1.08 acres *** being a Part of Lot Three (3) of 'Schmid Subdivision'" to Martin in fee simple ownership. The deed further set forth the ownership interest conveyed as "Sole Ownership by [Martin] and Transferable on Death to Valerie ***, Wife of the Grantee." Martin testified he thought one of the "strips" given to him by his parents to "square [the property] up" was still his. The parties stipulated that the value of the Waynesville real estate in its entirety was $165,000.

[*P18] On March 23, 2015, the trial court entered an order setting forth its findings with respect to the distribution of the parties' property. The court awarded Valerie marital property, including the Waynesville real estate in its entirety; the property in Atlanta, Illinois, on which she operated her hair salon; two vehicles; various bank accounts; her investment account; her IRA; various items of personal property; half of the marital share of Martin's Caterpillar 401(k) account; and half **[**12]** of the marital share of Martin's Caterpillar pension. It awarded Martin marital property, including the Missouri real estate; nine vehicles; various bank accounts; various items of personal property, including his collection of firearms; half the marital share of his Caterpillar 401(k) account; and half of the marital share of his Caterpillar pension.

[*P19] In reaching its decision, the trial court recognized that the allocation of Martin's Caterpillar pension was a major issue in the case. It noted Valerie argued the pension should be treated as property and the marital portion of the pension split between the parties, while Martin maintained his pension should be treated as a "'stream of income'" and awarded to him in its entirety as the pension was in pay-out status and his primary means of supporting himself. After reviewing case law submitted by Martin, the court elected "to treat the pension as property." Taking into consideration the needs of the parties and the relevant statutory factors, the court determined an award of 50% of the marital share of the pension to each party was "a just and equitable distribution."

[*P20] The trial court also noted the parties had no significant debt. Further, **[**13]** it stated that, excluding its award of a bank account that it ordered distributed equally between the parties and its allocation of Martin's Caterpillar pension, it awarded marital property totaling $447,644.09 to Valerie and $473,327.09 to Martin. The court found there was "a large enough disparity in the value of the property awarded" that an equalization payment was necessary and ordered Martin to pay Valerie $12,841.50 within two years. Finally, the court ordered each party barred from seeking or receiving maintenance from the other.

[*P21] On July 28, 2015, the court entered its judgment of dissolution of marriage, dissolving the parties' marriage and incorporating its March 23, 2015, property distribution order. It also entered QDROs with respect to Martin's Caterpillar pension plan and his 401(k) account.

[*P22] On August 12, 2015, Martin filed a motion to reconsider. Relevant to this appeal, he argued the trial court erred in awarding Valerie the Waynesville property in its entirety, contending a parcel of land associated with that property had been transferred solely to him and constituted his nonmarital property. Martin asked that the property be either awarded to him or that he be compensated **[**14]** for its value. He also argued the court's order failed to include the value of the land in Atlanta, Illinois, where Valerie operated her hair salon. Martin noted he submitted evidence showing that the tract of land at issue was gifted to both parties by Valerie's father. Further, he asserted that the parties stipulated prior to trial that the land was valued at $8,000. Martin maintained that the failure by the court to include this $8,000 within its calculations resulted in an improper equalization payment.

[*P23] Additionally, Martin argued that the court erred in treating his Caterpillar pension as marital property. Rather, he maintained his pension should have been treated as income and awarded solely to him. Alternatively, Martin argued that he be awarded maintenance "in light of his lack of income."

[*P24] On August 24, 2015, Valerie filed a motion to clarify. She asserted Martin had continued to receive the entirety of his pension payment throughout the course of the dissolution and noted the trial court's "order did not

specify when the award of one-half of the marital interest in the [pension was] to be effective." Valerie argued it was appropriate that the order awarding her half of the **[**15]** marital share of the Caterpillar pension be effective retroactive to January 13, 2014, the date Martin filed his response to her petition for dissolution of marriage. Alternatively, she argued the court's order regarding the pension distribution should be effective March 23, 2015, the date its order allocating the parties' marital property was entered.

[*P25] On October 1, 2015, the trial court conducted a hearing on the pending motions; however, a transcript of the hearing does not appear in the appellate record. That same day, the court entered an order addressing both Valerie's motion to clarify and Martin's motion to reconsider. It stated as follows:

> "1. The Motion to Clarify is granted. [Valerie] is entitled to her share of the marital portion of the pension effective March 23, 2015.
> 2. The Motion to Reconsider is granted as to the value of the commercial real estate in Atlanta, [Illinois]. The [$8,000] value of the land was omitted and is awarded to [Valerie]. This reduces the equalization payment to $8,841.50.
> 3. The remainder of the Motion to Reconsider is denied."

[*P26] Docket entries reflect that, during the October 1, 2015, hearing, Valerie's counsel made a motion for the posting of an **[**16]** appeal bond by Martin. On October 29, 2015, Martin filed a notice of appeal and a motion for an extension of time to file an appeal bond.

[*P27] On November 16, 2015, a hearing was held by telephone regarding the issue of an appeal bond. Though no transcript of the hearing exists, the parties filed a bystander's report setting forth what occurred at the hearing. The report stated Martin moved for a stay of enforcement of his Caterpillar QDRO. Valerie objected to the motion and the trial court denied Martin's request for a stay. The report further stated as follows:

> "5. Regarding the value of Judgment and pertaining to the Appeal Bond, the parties stipulated to the amount Caterpillar calculated for [Valerie's] monthly benefit amount, namely $832.16 per month.
> 6. The Court further ordered that Appeal Bond be set at $15,000.00 and to be served by irrevocable letter of credit over objection of [Valerie's attorney] to letter of credit."

On December 1, 2015, an appeal bond order was filed, stating Martin had secured an irrevocable letter of credit from DeWitt Savings Bank in the amount of $15,000. The court accepted and approved the bond as security, finding it sufficient security to protect Valerie's **[**17]** interests.

[*P28] II. ANALYSIS

[*P29] A. Pension Benefits

[*P30] On appeal, Martin challenges the trial court's distribution of property and, in particular, its distribution of his Caterpillar pension. Under *section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act)* (*750 ILCS 5/503(d)* (West 2014)), the trial court "shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors." Factors for consideration include:

> "(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate *** and (ii) the contribution of a spouse as a homemaker or to the family unit;
> (2) the dissipation by each party of the marital or non-marital property[;]
> * * *
> (3) the value of the property assigned to each spouse;
> (4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody **[**18]** of the children;
(6) any obligations and rights arising from a prior marriage of either party;
(7) any antenuptial agreement of the parties;
(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;
(9) the custodial provisions for any children;
(10) whether the apportionment is in lieu of or in addition to maintenance;
(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." *Id.*

[*P31] Although "[a]n award of property in just proportions does not mean equal proportions" (*In re Marriage of Walker, 386 Ill. App. 3d 1034, 1042, 899 N.E.2d 1097, 1104, 326 Ill. Dec. 446 (2008)*), this court has held that "[e]qual distribution of marital property is generally favored, unless application of the statutory factors demonstrates an equal division would be inequitable" (*In re Marriage of Minear, 287 Ill. App. 3d 1073, 1083, 679 N.E.2d 856, 864, 223 Ill. Dec. 405 (1997)*). Ultimately, "[t]he goal of apportionment of marital property is to attain an equitable distribution." *In re Marriage of Price, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236, 369 Ill. Dec. 287*.

[*P32] 1. *Caterpillar Pension as Income or Marital Property*

[*P33] Martin first argues the trial court improperly treated his Caterpillar pension as property. He contends that, because his Caterpillar pension had **[**19]** matured and was in pay-out status, the court should have considered it as income rather than marital property to be distributed at the time of dissolution. Further, Martin asserts the court improperly disregarded his pension's "income stream attribute," as well as the overall financial circumstances of the parties. He argues he should be awarded the "sole use of his pension benefits as his income."

[*P34] Initially, we agree with Martin that this first issue, relating to the trial court's classification of his pension as marital property, presents a question of law. As a result, it is subject to ***de novo*** review. *In re Marriage of Abrell, 236 Ill. 2d 249, 255, 923 N.E.2d 791, 794, 337 Ill. Dec. 940 (2010)*.

[*P35] As stated, the Act requires that a trial court divide marital property "in just proportions." *750 ILCS 5/503(d)* (West 2014). Marital property generally "means all property acquired by either spouse subsequent to the marriage." *750 ILCS 5/503(a)* (West 2014). The Act "specifically provides that pension benefits tied to contributions made during the marriage are marital property." *In re Marriage of Mueller, 2015 IL 117876, ¶ 18, 34 N.E.3d 538, 393 Ill. Dec. 337*; see also *750 ILCS 5/503(b)(2)* (West 2014) ("For purposes of distribution of property *** all pension benefits *** acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of the marriage are **[**20]** presumed to be marital property."); *Smithberg v. Illinois Municipal Retirement Fund, 192 Ill. 2d 291, 303, 735 N.E.2d 560, 567, 248 Ill. Dec. 909 (2000)* (stating the proposition that retirement benefits are marital property to the extent that the beneficial interest was acquired during the marriage "has been so firmly established in this state over the years as to be beyond dispute").

[*P36] Both the Act and relevant case authority clearly establish that pension benefits acquired during a marriage constitute marital property. The fact that Martin's pension in the instant case had matured and was in pay-out status at the time of dissolution proceedings does not alter the fact that a large portion of the beneficial interest in his pension was acquired during the parties' marriage and as a result of marital contributions. To the extent Martin argues otherwise, we disagree. The trial court committed no error in classifying the Caterpillar pension benefits acquired during the parties' marriage as marital property.

[*P37] We also disagree with Martin's contention that the trial court improperly ignored his pension's "income stream attribute," finding the record clearly refutes that contention. When attempting to reach an equitable

distribution of marital property, a court must consider relevant factors, including the **[**21]** "amount and sources of income" for each party. *750 ILCS 5/503(d)(8)* (West 2014). Here, in addressing Martin's Caterpillar pension, the trial court noted Valerie's income from her hair salon and the fact that Martin was retired and received a gross pension benefit of $2,800 per month. In fact, the trial court found "no evidence that [Martin had] any other income" despite Martin's report in his financial affidavit of monthly income from the Schmid family trust. Moreover, in distributing the property, the court expressly stated it considered the respective needs of the parties and the statutory factors set forth in *section 503(d)*, which necessarily includes consideration of income. Thus, contrary to Martin's assertions on appeal, the court's decision to treat "the pension as property" was not a refusal to consider the pension's income stream characteristics. Rather, it was a rejection of Martin's contention that the pension should be considered only as income and awarded to him in its entirety.

[*P38] A pension benefit which accrues during a marriage may be both marital property and a source of income. However, its status as a source of income does not negate its status as a marital asset to be distributed in just proportions. **[**22]** Rather, when distributing a pension as marital property, the court considers the income of the parties under *section 503(d)*, which may include monthly benefits from a pension that has matured. In this instance, the trial court committed no error in finding Martin's Caterpillar pension was marital property to be distributed in just proportions and after consideration of all relevant factors, including the parties' income and economic circumstances.

[*P39] 2. *Distribution of Pension Benefits in Just Proportions*

[*P40] Martin next argues that the trial court's apportionment of his pension benefits resulted in an inequitable distribution of marital assets. He contends the court's distribution reduces his income such that he will require an award of maintenance to maintain the standard of living to which he was accustomed during the marriage.

[*P41] A trial court "has broad discretion in the distribution of marital assets." *Walker, 386 Ill. App. 3d at 1042, 899 N.E.2d at 1104*. On review, the court's distribution of marital property will not be disturbed absent an abuse of discretion. *Price, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236*. "An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court." *Id. ¶ 30*.

[*P42] Further, we note "[t]he issue of maintenance is *** 'integrally related' **[**23]** to the trial court's allocation of *** property," and the Act requires a trial court to consider whether an apportionment of property "'is in lieu of or in addition to maintenance.'" *In re Marriage of Jensen, 2013 IL App (4th) 120355, ¶ 39, 988 N.E.2d 1102, 370 Ill. Dec. 746* (quoting *750 ILCS 5/503(d)(10)* (West 2010)). "Where the property available to [a] spouse is sufficient to satisfy that spouse's needs and entitlements, the use of maintenance should be limited," and an award of maintenance may be unnecessary if sufficient marital property is found. *In re Marriage of Aschwanden, 82 Ill. 2d 31, 38, 411 N.E.2d 238, 242, 44 Ill. Dec. 269 (1980)*.

[*P43] The evidence showed that Valerie asserted a gross annual income of $28,606 in 2013. According to Valerie's calculations (taken from her testimony and financial affidavit), her net monthly income was $2,034.43 after deductions for state and federal taxes. Valerie reported living expenses of $1,918.45. However, the evidence also showed that Valerie was covered by Martin's health insurance during the marriage and, therefore, had no expense related to health insurance. She testified that, after the parties divorced, she could continue with the same insurance through COBRA at a cost of $839.29 per month. When her net monthly income is reduced by her proposed health insurance cost, it totals $1,195.14. Although Martin complains that Valerie did not **[**24]** investigate "more affordable insurance options," it is clear from the evidence presented that Valerie's expenses for health insurance will most assuredly increase following the parties' divorce. When Valerie's proposed health insurance costs are taken into consideration, her monthly expenses exceed her monthly net income.

[*P44] The evidence with respect to Martin established that he was retired and received Caterpillar pension benefits of $2,800 per month—an amount that will be reduced to $1,363.50 per month after he reaches age 62 and becomes eligible for social security benefits. Martin reported a gross monthly income from all sources totaling $3,278.17, which included his Caterpillar pension benefits ($2,800) and income from his family's trust (averaging

$478.17 per month). He reported a net monthly income of $2,625.39—after deductions for taxes and health insurance—and claimed monthly living expenses totaling $1,468.48. Thus, Martin's monthly net income exceeded his monthly living expenses ($2,625.39 - $1,468.48 = $1,156.91 in income exceeding expenses). Further, Martin asserted he paid $539.70 per month for medical insurance that included costs associated with Valerie. Although, on **[**25]** appeal, he asserts that his trial testimony showed that his health insurance "cost would not be substantially less once [Valerie] was removed from the policy," the record actually shows Martin acknowledged that his payment would be less after the divorce, although he did not know by how much.

[*P45] On appeal, Valerie asserts that "[p]er the [trial] court's allocation of the pension, Martin will receive about $1,800 per month *** while Valerie will receive about $1,000 per month." Martin does not dispute this calculation (although documents he submitted to the court after trial indicated Valerie's monthly share totaled $832.16). Thus, under the court's order, Valerie's gross monthly income will increase from approximately $2,383 per month to approximately $3,383 per month, while Martin's gross monthly income will decrease from $3,278.17 to approximately $2,278.17. Given that Valerie's income will be insufficient to meet her monthly living expenses once insurance costs are considered, while Martin's income far exceeded his expenses and evidence indicated his insurance-related expenses will decrease, we find no inequity in the court's pension distribution.

[*P46] Additionally, we reject Martin's contention **[**26]** that the remaining factors for consideration in *section 503(d)* warrant a different result. The parties had a lengthy marriage and were both in their fifties at the time of trial. Both worked during the marriage. Martin retired from Caterpillar at age 52 and Valerie operated a hair salon. Valerie expected to continue working for the next five years. Evidence also showed that, while Martin worked a significant amount of overtime during the marriage, Valerie spent a greater portion of her time caring for the parties' home and children. Both parties reported suffering from various health-related problems. The evidence further showed the parties had various marital assets and no significant debts.

[*P47] In dividing the marital assets, the trial court made an equal distribution. In its March 2015, property distribution order, the trial court stated that, excluding a bank account and the Caterpillar pension, both of which it had apportioned equally between the parties, it had awarded $447,644.09 worth of marital property to Valerie and $473,327.09 worth of marital property to Martin. It then found "a large enough disparity in the value of the property awarded to the respective parties that it [was] necessary **[**27]** to order an equalization payment." The court ordered Martin to pay Valerie the sum of $12,841.50 within two years. Following Martin's motion to reconsider, the court agreed with Martin's contention it had omitted the value of the parties' commercial real estate in Atlanta, Illinois ($8,000), when calculating the value of marital property awarded to Valerie and, thus, it reduced the equalization payment to $8,841.50 to account for its error.

[*P48] Ultimately, we recognize that the trial court has broad discretion when distributing property. Given the relevant factors for consideration, we cannot say the court abused its considerable discretion in dividing Martin's Caterpillar pension. Moreover, we reject Martin's contention that the court's division of his pension warrants an award of maintenance in his favor. The record reflects the court's distribution is sufficient such that Martin will be able to continue to meet his needs as identified at trial. Conversely, if the Caterpillar pension had been awarded solely to Martin, the court's property distribution would be insufficient to meet Valerie's needs. Under the circumstances presented, we find no abuse of discretion by the court.

[*P49] B. Effective **[**28]** Date of Pension Distribution

[*P50] On appeal, Martin next argues the trial court erred by granting Valerie's motion to clarify and setting March 23, 2015—the date of its property distribution order—as the effective date for the distribution of Martin's Caterpillar pension. He maintains the court erred in selecting a date prior to the entry of its July 28, 2015, dissolution judgment.

[*P51] The record shows, on March 23, 2015, the trial court entered its memorandum order, setting forth its findings and orders with respect to property distribution. As discussed, the court determined it was "a just and equitable disposition of the pension" to award Valerie "50% of the marital share." The court ordered Valerie's counsel "to prepare a QDRO order consistent" with its decision. On July 28, 2015, the judgment of dissolution of

marriage was entered and incorporated the court's March 2015 order. The same date, a QDRO pertaining to the Caterpillar pension plan was filed. The QDRO provided, in part, as follows:

> "8. Commencement of Alternative Payee's Benefit.
>
> Payment of the Alternative Payee's Share of Plan Benefits shall commence as soon as is administratively feasible following the date this Order is accepted **[**29]** as a QDRO by the Plan Administrator."

[*P52] On August 24, 2015, Valerie filed her motion to clarify, noting the QDRO was forwarded to Caterpillar on July 29, 2015, and Martin had continued to receive the entirety of his pension payment. She asserted the trial court failed to specify "when the award of one-half of the marital interest in the property [was] to be effective." Valerie asked the court to make its order effective on January 13, 2014, the date she filed her petition for dissolution of marriage, or March 23, 2015, the date of the court's memorandum order distributing property. Further, she asserted it was "appropriate that [the court] enter an order establishing payment by [Martin] to [Valerie] for her share of the marital payments made to him from the effective date of the award to the date Caterpillar effectuates the [QDRO]." On October 1, 2015, the court granted the motion to clarify, stating as follows: "The Motion to Clarify is granted. [Valerie] is entitled to her share of the marital portion of the pension effective March 23, 2015."

[*P53] Citing *section 1056(d)(3)(D)* of the Employee Retirement Income Security Act of 1974 (*29 U.S.C. § 1056(d)(3)(D) (West 2014)*), Martin argues the trial court's grant of Valerie's motion to clarify **[**30]** rendered the QDRO noncompliant with statutory requirements because it altered "the substance of the QDRO that was entered and require[d] the pension plan administrator to pay [Valerie] a portion of benefits that it already paid." Here, however, Valerie's motion to clarify did not ask that the trial court change the substance of the QDRO. Rather, in her motion, Valerie requested the court specify the date on which she was entitled to begin receiving her share of Martin's pension benefits and enter an order requiring Martin to pay her that share from the effective date set by the court until "the date Caterpillar effectuate[d] the [QDRO]." Thus, the QDRO entered in July 2015 was not altered by the court's grant of Valerie's motion to clarify and the court's ruling did not violate statutory requirements.

[*P54] Additionally, as stated, "pension benefits tied to contributions made during the marriage are marital property." *Mueller, 2015 IL 117876, ¶ 18, 34 N.E.3d 538*. The trial court's distribution of marital property will not be disturbed on review absent an abuse of discretion. *Price, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236*.

[*P55] Here, the record shows that throughout the underlying proceedings, the parties were living separate and apart and maintaining separate finances. Further, Martin's pension was in pay-out **[**31]** status and he was receiving monthly pension benefits in full. In March 2015, the trial court entered its property distribution order, stating Valerie was entitled to 50% of the marital share of the Caterpillar pension. Under these circumstances, the court's finding that Valerie was entitled to her share of the pension benefits as of the date it entered its property distribution order was not an abuse of discretion. Martin's arguments on appeal fail to persuade us otherwise.

[*P56] C. Classification of Waynesville Real Estate

[*P57] On appeal, Martin next argues the trial court improperly characterized a parcel of land comprising 1.08 acres of the Waynesville real estate as marital property. He maintains the 1.08 acres was his nonmarital property as it was acquired through inheritance and "conveyed directly to [him] by way of his mother's trust." Martin asserts the inheritance was neither gifted nor transferred to the marital estate.

[*P58] Under the Act, "[t]here is a rebuttable presumption that all property acquired by either spouse after the date of marriage but before the entry of judgment of dissolution is marital property, regardless of how title is held." *In re Marriage of Schmitt, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228, 330 Ill. Dec. 508 (2009)*. "The party seeking to rebut the presumption has **[**32]** the burden of presenting evidence to show that the property was acquired by an excepted method enumerated in *section 503(a)*" of the Act. *In re Marriage of Walker, 203 Ill. App. 3d 632, 634, 561 N.E.2d 390, 391, 149 Ill. Dec. 112 (1990)*. "The party claiming that the property is nonmarital has the burden of proof, and any doubts as to the nature of the property are resolved in favor of finding that the property is marital."

Schmitt, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. Pursuant to *section 503(a)(1)* of the Act (*750 ILCS 5/503(a)(1)* (West 2014)), property may be deemed nonmarital if it is "acquired by gift, legacy or descent."

[*P59] "A trial court's classification of an asset as marital or nonmarital property will not be overturned unless it is against the manifest weight of the evidence." *In re Marriage of Abrell, 386 Ill. App. 3d 718, 724, 898 N.E.2d 1163, 1169, 325 Ill. Dec. 884 (2008)*. "A court's decision is contrary to the manifest weight of the evidence if the opposite conclusion is clearly evident or if its findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Marriage of Berberet, 2012 IL App (4th) 110749, ¶ 60, 974 N.E.2d 417, 362 Ill. Dec. 896*.

[*P60] Here, the Waynesville property, on which the marital residence was located, was the subject of three separate conveyances during the parties' marriage. First, in April 1997, the section of the Waynesville property on which the marital residence sat was transferred from Martin to Martin and Valerie as joint tenants through a quit-claim deed. In November 1999, a second quit-claim deed transferred **[**33]** ownership of a separate portion of the Waynesville property from Martin's mother to Martin and Valerie as joint tenants with rights of survivorship. Finally, in April 2002, a trustee's deed conveyed the 1.08 acres at issue on appeal from Martin's mother's trust to Martin. The deed set forth the interest conveyed as fee simple ownership to Martin but also noted the ownership interest was "Sole Ownership by [Martin] and Transferable on Death to Valerie ***, Wife of the Grantee."

[*P61] Martin does not dispute that the tracts of land which were the subject of the April 1997 and November 1999 conveyances were marital property; however, he does challenge the trial court's finding with respect to the 1.08 acres conveyed in April 2002. As stated, he argues it was conveyed to him in fee simple ownership and constituted his nonmarital property. We agree. Although a presumption exists that property obtained during the marriage is marital property, that presumption was rebutted in this instance by the April 2002 deed, which supported Martin's assertions that the property was conveyed solely to him. Despite language in the deed that the property was "Transferable on Death to Valerie," Valerie had no **[**34]** coownership interest in the 1.08 acres. See *In re Marriage of Nicks, 177 Ill. App. 3d 76, 79, 531 N.E.2d 1069, 1071, 126 Ill. Dec. 442 (1988)* ("The affirmative act of placing title to nonmarital property in joint tenancy or some other form of coownership with a spouse will support a presumption of [a] gift to the marital estate."). Thus, the trial court's classification of the 1.08 acres conveyed to Martin in April 2002 as marital property was against the manifest weight of the evidence.

[*P62] On appeal, Martin asks that he be granted either title of the property as his nonmarital property or a reimbursement from Valerie for the value of the property. We accept this latter request and find that, while title of the property should remain with Valerie as ordered by the trial court, Martin is entitled to receive a reimbursement for the value of the property from Valerie. However, because the record contains insufficient evidence from which to determine the value of the 1.08 acres separate and apart from the other two parcels of land, we remand the matter to the trial court for the limited purpose of hearing additional evidence and determining the property's value. The court should also modify its allocation of property in the dissolution judgment accordingly.

[*P63] D. Stay of Judgment

[*P64] Finally, **[**35]** on appeal, Martin argues the trial court "improperly terminated" an automatic stay of judgment pertaining to the Caterpillar pension QDRO. He contends *Illinois Supreme Court Rule 305(a)* (eff. July 1, 2004), concerning stays of the enforcement of money judgments, provided for an automatic stay under the circumstances presented, *i.e.*, where he timely filed a notice of appeal and an appeal bond was entered.

[*P65] *Illinois Supreme Court Rule 305* (eff. July 1, 2004) provides as follows:

> "**(a) Stay of Enforcement of Money Judgments**. The enforcement of a judgment for money only, or any portion of a judgment which is for money, shall be stayed if a timely notice of appeal is filed and an appeal bond or other form of security, including *** letters of credit, *** is presented to, approved by, and filed with the court within the time for filing the notice of appeal or within any extension of time granted under *paragraph (c)* of this rule. *** The bond or other form of security ordinarily shall be in an amount sufficient to cover the amount of the judgment and costs plus interest reasonably anticipated to accrue during the pendency of the appeal. ***

> **(b) Stays of Enforcements of Nonmoney Judgments and Other Appealable Orders**. *** [O]n notice and motion, and an opportunity for opposing **[**36]** parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. ***
>
> **(c) Extensions of Time**. On motion made within the time for filing the notice of appeal or within any extension granted pursuant to this paragraph, the time for the filing and approval of the bond or other form of security may be extended by the circuit court or by the reviewing court or a judge thereof, but the extensions of time granted by the circuit court may not aggregate more than 45 days unless the parties stipulate otherwise. ***
>
> **(d) Stays by the Reviewing Court**. *** [A]pplication for a stay ordinarily must be made in the first instance to the circuit court. A motion for a stay may be made to the reviewing court, or to a judge thereof, but such a motion must show that application to the circuit court is not practical, or that the circuit court has denied an application or has failed to afford the relief that the applicant has requested, and must be accompanied by suggestions in support of the motion and a supporting record **[**37]** [citation], if the record on appeal has not been filed. If a stay is granted by the reviewing court or a judge thereof, the clerk shall notify the parties and transmit to the clerk of the circuit court or administrative agency a certified copy of the order granting the stay."

"*Rule 305(a)* automatically grants a stay of enforcement of judgments for money if the procedures are followed, and *Rule 305(b)* allows a discretionary stay from enforcement of judgments for money." *Stacke v. Bates, 138 Ill. 2d 295, 303, 562 N.E.2d 192, 195, 149 Ill. Dec. 728 (1990)*.

[*P66] Here, the record shows the trial court denied a motion by Martin to stay enforcement of his Caterpillar pension QDRO on November 16, 2015, after he filed his notice of appeal but before an appeal bond was "presented to, approved by, and filed with the court" on December 1, 2015. *Ill. S. Ct. R. 305(a)* (eff. July 1, 2004). Thus, the court did not violate *Rule 305(a)* when denying Martin's motion for a stay because the rule's procedural requirements had not been met.

[*P67] Additionally, we question whether the appeal bond at issue was timely filed. Under *Rule 305(a)*, an appeal bond must be presented, approved, and filed "within the time for filing the notice of appeal or within any extension of time granted under *paragraph (c) of [Rule 305*]." *Id.* *Subsection (c)* provides that the time for filing an appeal bond may be extended **[**38]** when the party seeking an extension makes a motion which is granted by the trial court. *Ill. S. Ct. R. 305(c)* (eff. July 1, 2004). In this instance, the appeal bond, filed December 1, 2015, was not filed within the time frame for filing a timely notice of appeal. Further, although the record reflects Martin moved for an extension of time, the record fails to show that the court ever granted his motion.

[*P68] Finally, we agree with Valerie's assertion on appeal that, even if the court committed error, the proper manner of addressing that error was for Martin to seek a stay with this court on review. See *Ill. S. Ct. R. 305(d)* (eff. July 1, 2004); *Horvath v. Loesch, 87 Ill. App. 3d 615, 620, 410 N.E.2d 154, 158, 43 Ill. Dec. 154 (1980)* (stating the remedy for the improper denial of a request for a stay is "to renew immediately [the motion for a stay] in the appellate court rather than to attack belatedly the trial court's action [on] appeal"). The appellate record fails to reflect Martin requested a stay in this court. Given these facts, we find no support in the record for Martin's contention that the trial court improperly terminated an automatic stay under *Rule 305(a)*.

[*P69] III. CONCLUSION

[*P70] For the reasons stated, we reverse the trial court's finding that the 1.08 acres of property in Waynesville, Illinois, conveyed solely to Martin **[**39]** in April 2002, was marital property. We remand the matter to the trial court with directions for it to conduct a hearing to determine the value of that property, order reimbursement for the value of the property to Martin with Valerie receiving title, and modify its property allocation consistent with its findings. We otherwise affirm the court's judgment.

[*P71] Affirmed in part and reversed in part; cause remanded with directions.

KRISTEN GALE

End of Document

EXHIBIT 3

ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS
CIVIL APPEALS - FAQ

This document provides information for self-represented litigants in filing an appeal from a circuit court order or judgment in a civil case to the Illinois Appellate Court. It does not discuss how to file an appeal in a criminal case or in federal court.

The civil appeals process is difficult. The process involves many strict deadlines and adherence to Illinois Supreme Court Rules ("Rules"). You are strongly encouraged to speak to a lawyer about your appeal. Should you decide to appeal your case without a lawyer, you will need to follow the Rules just like those parties who have an attorney. You will also need to do a significant amount of legal research and write lengthy briefs in order to convince the appellate court that your position is correct. You can search for a lawyer with experience in appeals to represent you at Illinois Lawyer Finder (outside Cook) or Chicago Bar Association Lawyer Referral Service (in Cook).

The material presented herein is legal information and aims to provide general resources for you. This FAQ is not a substitute for legal counsel and does not constitute legal advice. You must speak with a lawyer to receive legal advice. This resource is neither legal authority nor a substitute for the requirements found in the Rules.

SECTION TWO: STEPS AND FORMS

1.) **What steps are involved in filing an appeal?**
There are numerous steps involved with filing an appeal, all of which have very specific deadlines. If you miss a deadline, you may lose your right to appeal. If you miss a deadline, you will need to file a motion with the appellate court for an extension of time. Be certain to consult the Illinois Supreme Court Rules for complete information. Further details are available by reviewing the sections within this manual:

Step 1: File the Notice of Appeal
Step 2: Request Preparation of Record (Common law record)
Step 3: Request Report of Proceedings (Transcripts)
Step 4: File the Docketing Statement
Step 5: File the Appellant's Brief
Step 6: Wait for the Appellee's Brief – Response filed by the Appellee (optional)
Step 7: File the Appellant's Reply Brief – Reply filed by the Appellant (optional)
Step 8: Oral Argument (optional and if granted by the court)
Step 9: The Appellate Court will issue a decision
Step 10: Petition for Rehearing or Petition for Leave to Appeal to the Illinois Supreme Court (optional – only if you disagree with the appellate court's decision)

ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS
CIVIL APPEALS - FAQ

A one-page overview of an appeal from a final judgment or order may be found here.

2.) **How do I make a request to the appellate court to ask for more time?**
All requests to the appellate court must be made by a motion. Motions must be in writing - the appellate court does NOT hear oral arguments for motions. You will need submit a motion that tells the court exactly what you want and why you think the court should grant your request.

If you need more time to file a document, such as a Notice of Appeal or Brief, you must file a motion with the appellate court for an extension of time. You must also submit a proposed order along with your motion. A statewide standardized form for filing a motion is available on the Illinois Courts' website. There is also a one-page overview of filing motions and the required steps. The local rules for your appellate district may have different requirements for what must be included in your motion.

In general, filing a motion will require these steps:

- You must send or "serve" your motion to the other parties in the case. However, if any party has a lawyer, you must send your motion to their lawyer.
- You must file your motion and the proposed order with the court along with proof of service – this tells the court that you served the other parties with the motion.
- You must pay any fees associated with the filing OR if you are unable to pay the fees, submit an Application for Waiver of Court Fees (Appellate) found at: https://www.illinoiscourts.gov/documents-and-forms/approved-forms/.
- The appellate court will decide if your motion will be granted or denied. It may take several weeks for the court to decide on your motion. You will receive a copy of the order once the court has made a decision.

3.) **What forms do I need to file an appeal?**
Many of the forms you will need for your appeal are available on the Illinois Courts' website. These forms are fillable pdfs, meaning you can type directly into the forms, save them, and then upload them for e-filing. You also have the option of printing the forms, handwriting your information, and then scanning the forms to upload for e-filing.

The approved statewide standardized forms currently available on the Illinois Courts' website are:

- Notice of Appeal
- Request for Preparation of Record on Appeal

ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS
CIVIL APPEALS - FAQ

- Request for Report of Proceedings (Transcripts)
- Bystander's Report or Agreed Statement of Facts
- Docketing Statement
- Certification for Exemption From E-Filing
- Fee Waiver
- Motion form (general)
- Appellant's Brief
- Appellee's Brief
- Appellant's Reply Brief
- Petition for Rehearing

4.) **How do I file documents for my appeal?**

As of July 2017, e-filing is mandatory for all civil appeals. Please visit the Illinois Courts' website to register for an Electronic Filing Service Provider (EFSP), which you will then use to file all of the forms necessary to complete your appeal. You must first register for an account before you will be able to e-file your documents with the court.

If you need help, each appellate clerk's office has a public computer terminal and scanner for you to register with an EFSP and then e-file your documents. If you handwrote your documents, you need to first scan and then upload the documents into the EFSP.

You must e-file all court documents in civil cases in Illinois unless (1) you are an inmate in a prison or jail and you do not have a lawyer; (2) you are filing a will; (3) you are filing into a juvenile court case; (4) you have a disability that prevents you from e-filing; or (5) for good cause. The first 4 exemptions are automatic and you do not need to submit additional paperwork.

In limited circumstances, the fifth exemption (good cause) may allow you to file paper documents if one of these circumstances applies:

(a) I am representing myself and do not have the Internet or a computer in my home. My only access is through a public terminal at a courthouse, library, or other location. This poses a financial or other hardship.

(b) I am representing myself and have trouble reading, writing, or speaking in English.

(c) I am filing a document in a sensitive case, such as a petition for an order of protection or a civil no contact/stalking order.

(d) I tried to e-file my documents, but I was unable to complete the process because the equipment or assistance I need is not available.

If you qualify for the exemption, to request that you are able to file paper documents instead of e-filing, you must complete a Certification for Exemption From E-Filing and file it with the appellate court. Please note, if you received an e-filing exemption in the circuit court, you need to file a new one with the appellate court (the exemption does not automatically carry over). If you have any questions about the exemption, please contact your local appellate clerk's office.

5.) **Can I respond to a motion by my opponent?**

Yes. You can file a written response to the motion with the clerk of the appellate court. Generally, you must file the response within 5 days after you receive the motion by email or personal service, or 10 days after you receive the motion by mail. You must send your response to the other parties and file a proof of service along with your response to the motion.

EXHIBIT 4

ILLINOIS
REVISED STATUTES
1991

STATE BAR ASSOCIATION EDITION

Containing
The General and Permanent Laws of Illinois
Through P.A. 87–847 of the 87th General Assembly
Convened January 9, 1991
Adjourned July 19, 1991
Reconvened October 22, 1991
Adjourned sine die November 8, 1991

Volume 4

Chapters 108½ to 119
Pensions
to
Replevin

COMPILED AND EDITED
UNDER
SMITH–HURD CLASSIFICATION

ST. PAUL, MINN.
WEST PUBLISHING CO.

(ii) It shall bear the title of the case, naming and designating the parties in the same manner as in the circuit court and adding the further designation "appellant" or "appellee," *e.g.*, "Plaintiff-Appellee."

(iii) It shall be designated "Notice of Appeal," "Joining Prior Appeal," "Separate Appeal," or "Cross-Appeal," as appropriate.

(2) It shall specify the judgment or part thereof appealed from and the relief sought from the reviewing court.

(3) It shall contain the signature and address of each appellant or his attorney.

(4) The notice of appeal may be amended without leave of court within 30 days after the entry of the judgment, or, if a timely post-trial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending motion. Thereafter it may be amended only on motion, in the reviewing court. Amendments relate back to the time of the filing of the notice of appeal. An amendment specifying a part of the judgment not specified in the original notice of appeal may not be made later than 30 days after the entry of the judgment, or, if a timely post-trial motion directed against the judgment is filed, whether in a jury or a nonjury case, later than 30 days after the entry of the order disposing of the last pending motion, except upon motion pursuant to paragraph (e) of this rule.

(d) Service of Notice of Appeal. No later than 7 days after the notice of appeal or an amendment as of right is filed in the circuit court, the party filing it shall serve, in a manner provided by Rule 11, a copy of the notice of appeal and notice of the date of filing upon every other party and upon any other person or officer entitled by law to notice of the appeal. Proof of service must be filed within 7 days after service is made, and no action shall be taken until it is filed.

(e) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the $25 filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.

(f) Docketing. Upon receipt of the copy of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or receipt of a motion for leave to appeal under paragraph (e) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

(g) Docketing Statement; Filing Fee. Within 14 days after the filing of a notice of appeal the appellant shall file with the clerk of the reviewing court a docketing statement, together with proof of service thereof, and the required filing fee of $25, if not already paid pursuant to paragraph (e) of this rule. The form and contents of the docketing statement shall be as follows:

Docket Number In The Reviewing Court

Case Title (Complete) Appeal from _____ County
Circuit Number _____
Date of Notice of Appeal

_____
Trial Judge_____

DOCKETING STATEMENT
(Civil)

If Any Party Is A Corporation Or
Association, Identify Any Affiliate,
Subsidiary, Or Parent Group _____

Counsel On Appeal
For Appellant(s)
Name: _____
Address: _____
Telephone: _____
Trial Counsel,
If Different
Name: _____
Address: _____
Telephone: _____

Counsel On Appeal
For Appellee(s)
Name: _____
Address: _____
Telephone: _____
Trial Counsel,
If Different
Name: _____
Address: _____
Telephone: _____

Court Reporter(s)
(If more space is needed, use other side.)
Name: _____
Address: _____
Telephone: _____

Approximate Duration of
Trial Court Proceedings
To be Transcribed _____
Nature of Case:

Order (final or interlocutory)	_____
Administrative Review	_____
Contract	_____
Estates	_____
Personal Injury	_____
Tort	_____
Domestic Relations	
Is Child Custody Or	
Support Involved?	_____
Products Liability	_____
Forcible Detainer	_____
Other	_____

Brief Description Of The Nature Of The Case And The Result In The Trial Court (If appropriate, set forth any reasons for an expedited schedule.)

General Statement Of Issues Proposed To Be Raised (Failure to include an issue in this statement will not result in the waiver of the issue on appeal.)

I, as attorney for the appellant, hereby certify that on _____ I asked the clerk of the circuit court to prepare
(Date)
the record and on _____ I made a written request to the
(Date)
court reporter to prepare the transcript.
Date _____

_____
Appellant's Attorney

I hereby acknowledge receipt of an order for the preparation of a report of proceedings.

_____
Court Reporter or
Supervisor

_____
(Date)

Within 7 days thereafter, appellee's attorney, if it is deemed necessary, may file a short responsive statement with the clerk of the reviewing court.

Amended April 27, 1984, eff. July 1, 1984.

304. (Supreme Court Rule 304). Appeals from Final Judgments that Do Not Dispose of an Entire Proceeding

(a) Judgments As To Fewer Than All Parties or Claims—Necessity for Special Finding. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying enforcement or appeal. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.

(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:

(1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.

(2) A judgment or order entered in the administration of a receivership, rehabilitation, liquidation, or other similar proceeding which finally determines a right or status of a party and which is not appealable under Rule 307(a).

(3) A judgment or order granting or denying any of the relief prayed in a petition under section 2–1401 of the Code of Civil Procedure.

(4) A final judgment or order entered in a proceeding under section 2–1402 of the Code of Civil Procedure.

Amended Nov. 21, 1988, eff. Jan. 1, 1989.

305. (Supreme Court Rule 305). Stay of Judgments Pending Appeal

(a) Stay of Enforcement of Judgment for Money Only.

(1) An appeal stays the enforcement of a judgment for money only if a notice of appeal is filed within 30 days after the entry of the judgment appealed from and a bond in a reasonable amount to secure the appellee is presented, approved, and filed within the same 30 days or within any extension of time granted under subparagraph (2) of this paragraph. Notice of the presentment of the bond shall be given to the appellee.

(2) On motion made within the same 30 days or any extension thereof, the time for the filing and approval of the bond may be extended by the trial court or by the reviewing court or a judge thereof, but the extensions of time granted by the trial court may not aggregate more than 45 days unless the parties stipulate otherwise. A motion in the reviewing court for any extension of time for the filing and approval of the bond in the trial court must be supported by affidavit and accompanied by either the record on appeal or such parts of it as are relevant.

(b) Stay of Enforcement of Judgments and Appealable Orders by Order of Court.

(1) On notice and motion, and an opportunity for opposing parties to be heard, the trial court, or the reviewing court or a judge thereof, may stay pending appeal the enforcement of a judgment for money only not stayed by compliance with paragraph (a) of this rule, or the enforcement, force and effect of any other final or interlocutory judgment or judicial or administrative order.

(2) Application for a stay ordinarily must be made in the first instance to the trial court. A motion for a stay may be made to the reviewing court, or to a judge thereof, but such a motion must show that application to the trial court is not practicable, or that the trial court has denied an application or has failed to afford the relief that the applicant has requested, and must be accompanied by suggestions in support of the motion and by the record on appeal or a short record.

(3) The stay, whether granted by the trial or reviewing court, shall be conditioned upon such terms as are just. A bond may be required in any case, and in the case of a judgment for money, or a stay for the protection of interests in property, shall be required.

(4) An appeal from an order dissolving an injunction does not continue the injunction in force unless the trial court, or the reviewing court or a judge thereof, so orders for good cause shown and upon such terms as are just, which may include the filing of a bond.

(5) If a stay is granted by the reviewing court or a judge thereof, the clerk shall notify the appellee and transmit to the clerk of the trial court a certificate in substance as follows:

_____ Court of Illinois

I hereby certify that the force and effect of the judgment in the case of _____ vs. _____, Case No. _____, entered by the Circuit Court of _____ on _____, 19___, and described in the notice of appeal filed in the circuit court by _____ on _____, 19___, has been stayed pending appeal and the enforcement thereof is hereby suspended.

WITNESS, _____, 19___
(SEAL)

_____
Clerk of Court

(c) When Notice of Appeal is Amended. If a notice of appeal is amended to specify parts of the judgment not specified in the original notice of appeal, the stay of the judgment described in the original notice of appeal does not extend to any added part of the judgment, but a stay of the added part may be obtained under the same conditions and by the same procedure set forth in paragraphs (a) and (b) of this rule.

(d) Condition of the Bond. If an appeal is from a judgment for money, the condition of the bond shall be for the prosecution of the appeal and the payment of the judgment, interest, damages, and costs in case the judgment is affirmed or the appeal dismissed, except that the bond of an executor or administrator shall be conditioned upon payment in due course of administration and that the bond of a guardian for a minor or a person under legal disability shall be conditioned on payment as he has funds therefor. In all other cases, the condition shall be fixed with reference to the character of the judgment.

(e) Approval of Security by Clerk. A court or judge may by order authorize the clerk to approve the security upon the bond.

(f) Changing the Amount, Terms, and Security of the Bond after the Appeal is Docketed. After the case is docketed in the reviewing court, that court or a judge thereof upon motion may change the amount, terms, or security of the bond, whether fixed by it or by the trial court, and failure to comply with the order of the reviewing court or judge shall terminate the stay.

(g) Appeals by Public Agencies. If an appeal is prosecuted by a public, municipal, governmental, or quasi-municipal corporation, or by a public officer in his official capacity for the benefit of the public, the trial court, or the reviewing court or a judge thereof, may stay the judgment pending appeal without requiring that any bond be given.

(h) Insurance Policy as Bond. The filing of an insurance policy pursuant to section 392.1 of the Illinois Insurance Code (Ill.Rev.Stat.1969, ch. 73, par. 1004.1) shall be considered the filing of a bond for purposes of this rule.

(i) Effect on Interests in Property of Failure to Obtain Stay. If a stay is not perfected within 30 days of the entry of the judgment appealed from, or within any extension of time granted under subparagraph (a)(2) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final.

(j) Land Trust Bond. The filing of a bond by a beneficiary under a land trust where the land trust is a party shall be considered filing of a bond for purposes of this rule.

Amended May 28, 1982, eff. July 1, 1982.

306. (Supreme Court Rule 306). Appeals From Orders of the Circuit Court Granting New Trials and Granting or Denying Certain Motions

(a) Procedure.

(1) *Petition for Leave to Appeal.* An appeal may be taken in the following cases only on the allowance by the Appellate Court of a petition for leave to appeal:

(i) from an order of the circuit court granting a new trial;

(ii) from an order of the circuit court denying a motion to dismiss on the grounds of *forum non conveniens;* , or from an order of the circuit court allowing or denying a motion to transfer a case to another county within this State on such grounds;

(iii) from an order of the circuit court denying a motion to dismiss on the grounds that the defendant has done nothing which would subject him to the jurisdiction of the Illinois courts;

(iv) from an order of the circuit court granting or denying a motion for a transfer of venue based on the assertion that the defendant is not a "resident" of the county in which the action was commenced, and no other legitimate basis for venue in that county has been offered by the plaintiff; or

(v) from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules.

The petition shall contain a statement of the facts of the case, supported by reference to the record, and of the grounds for the appeal. It shall be duplicated, served, and filed in the Appellate Court in accordance with the requirements for briefs within 30 days after the entry of the order.

(2) *Cross-Appeal Unnecessary.* If the petition for leave to appeal an order granting a new trial is granted, all rulings of the trial court on the post-trial motions are before the reviewing court without the necessity of a cross-appeal.

(b) Record on Appeal. The record on appeal shall consist of whatever is necessary to present the questions for review and shall be filed with the petition.

(c) Answer; Supplemental Record on Appeal. Any other party may file an answer within 21 days after the due date of the petition, together with a copy, certified by the clerk of the trial court, or any additional parts of the record he desires to have considered by the Appellate Court. The answer must be duplicated in the manner prescribed for briefs, and filed with proof of service. No reply will be received except by leave of court or a judge thereof.

(d) Appendix to Petition; Abstract. The petition shall include, as an appendix, a copy of the order appealed from, and of any opinion, memorandum, or findings of fact entered by the trial judge, and a table of contents of the record on appeal in the form provided in Rule 342(a). If the Appellate Court orders that an abstract of the record be filed, it shall be in the form set forth in Rule 342(b) and shall be filed within the time fixed in the order.

(e) Extensions of Time. The above time limits may be extended upon notice and motion, accompanied by an affidavit showing good cause, filed before expiration of the original or extended time.

(f) Stay; Notice of Allowance of Petition. If the petition is granted, the proceedings in the trial court are stayed. Upon good cause shown, the Appellate Court or a judge thereof may require the petitioner to file an appropriate bond. Within 48 hours after the granting of the petition, the clerk shall send notice thereof to the clerk of the circuit court.

(g) Briefs. A party may allow his petition or answer to stand as his brief or may file a further brief in lieu of or in addition thereto. If he elects to allow his petition or answer to stand as his brief, he must notify the other parties and the clerk of the Appellate Court on or before the due date of his brief. If the appellant elects to file a further brief, it must be filed within 35 days from the date on which permission to appeal was allowed. If other briefs are filed, the schedule shall be as provided in Rule 343.

(h) Oral Argument. If the petition is granted, oral argument may be requested as provided in Rule 352(a).

Amended Sept. 16, 1983, eff. Oct. 1, 1983.

307. (Supreme Court Rule 307). Interlocutory Appeals as of Right

(a) Orders Appealable; Time. An appeal may be taken to the Appellate Court from an interlocutory order of court

(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction;

(2) appointing or refusing to appoint a receiver or sequestrator;

(3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed;

(4) placing or refusing to place a mortgagee in possession of mortgaged premises;

(5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan association, currency exchange, insurance company, or other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets;

(6) terminating parental rights or granting, denying or revoking temporary commitment in adoption cases;

(7) determining issues raised in proceedings to exercise the right of eminent domain under section 7–104 of the Code of Civil Procedure,[1] but the procedure for appeal and stay shall be as provided in that section;

(8) denying a petition for waiver of parental notice of abortion pursuant to section 5 of the Parental Notice of Abortion Act of 1983 (Ill.Rev.Stat.1987, ch. 38, par. 81–61 *et seq.*).

The appeal must be perfected within 30 days from the entry of the interlocutory order by filing a notice of appeal designated "Notice of Interlocutory Appeal" conforming substantially to the notice of appeal in other cases. The record must be filed in the Appellate Court within the same 30 days unless the time for filing the record is extended by the Appellate Court or any judge thereof.

(b) Motion to Vacate. If an interlocutory order is entered on *ex parte* application, the party intending to take an appeal therefrom shall first present, on notice, a motion to the trial court to vacate the order. An appeal may be taken if the motion is denied, or if the court does not act thereon within 7 days after its presentation. The 30 days allowed for taking an appeal and filing the record begins to run from the day the motion is denied or from the last day for action thereon.

(c) Time for Briefs and Abstract if an Abstract is Required. Unless the Appellate Court orders a different schedule or orders that no briefs be filed, the schedule for filing briefs shall be as follows: The brief of appellant shall be filed in the Appellate Court, with proof of service, within 7 days from the filing of the record on appeal. Within 7 days from the date appellant's brief is filed, the appellee shall file his brief in the Appellate Court with proof of service. Within 7 days from the date appellee's brief is filed, appellant may serve and file a reply brief. If the Appellate Court so orders, an abstract shall be prepared and filed as provided in Rule 342.

(d) Appeals of Temporary Restraining Orders; Time; Memoranda.

(1) *Petition; Service; Record.* Unless another form is ordered by the Appellate Court, review of the granting or denial of a temporary restraining order as authorized in paragraph (a) shall be by petition filed in the Appellate Court, but notice of interlocutory appeal as provided in paragraph (a) shall also be filed, within the same time for filing the petition. The petition shall be in writing, state the relief requested and the grounds for the relief requested, and shall be filed in the Appellate Court, with proof of personal service, within two days of the entry or denial of the temporary restraining order from which review is being sought. An appropriate supporting record shall accompany the petition, which shall include the notice of interlocutory appeal, the temporary restraining order or the proposed temporary restraining order, the complaint, the motion requesting the granting of the temporary restraining order, and any supporting documents or matters of record necessary to the petition. The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it.

(2) *Legal Memoranda.* The petitioner may file a memorandum supporting the petition which shall not exceed 15 typewritten pages and which must also be filed within two days of the entry or denial of the temporary restraining order. The respondent shall file, with proof of personal service, any responding memorandum within two days following the filing of the petition, supporting record, and any memorandum which must be personally served upon the respondent. The respondent's memorandum may not exceed 15 typewritten pages and must also be personally served upon the petitioner.

(3) *Replies; Extensions of Time.* Except by order of court, no replies will be allowed and no extension of time will be allowed.

(4) *Time for Decision; Oral Argument.* After the petitioner has filed the petition, supporting record, and any memorandum and the time for filing any responding memorandum has expired, the Appellate Court shall consider and decide the petition within two days thereafter. Oral argument on the petition will not be heard.

(5) *Variations by Order of Court.* The Appellate Court may, if it deems it appropriate, order a different schedule, or order that no memoranda be filed, or order the other materials need not be filed.

EXHIBIT 5

Drennan v. Susman (In re Estate of Susman)

Appellate Court of Illinois, Second District

November 8, 2012, Order Filed

Nos. 2-11-0121, 2-11-0314, 2-11-0978 cons.

Reporter
2012 IL App (2d) 110121-U *; 2012 Ill. App. Unpub. LEXIS 2734 **

In re ESTATE OF DONALD E. SUSMAN, Deceased;(Kathy A. Drennan, as Independent Executor of the Estate of Donald E. Susman, Deceased, Plaintiff-Appellee, v. Robert Susman and Susman Linoleum and Rug Company, Inc., Defendants-Appellants; North Star Trust Company, Defendant).In re ESTATE OF DONALD E. SUSMAN, Deceased;(Kathy A. Drennan, as Independent Executor of the Estate of Donald E. Susman, Deceased, Petitioner-Appellee, v. Robert Susman, Contemnor-Appellant; Susman Linoleum and Rug Company, Inc. and North Star Trust Company, Defendants).

Notice: THIS ORDER WAS FILED UNDER *SUPREME COURT RULE 23* AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER *RULE 23(e)(1)*.

Subsequent History: Appeal denied by *Drennan v. Susman (In re Estate of Susman), 985 N.E.2d 306, 2013 Ill. LEXIS 341, 368 Ill. Dec. 733 (Ill., 2013)*

Related proceeding at *Susman v. North Star Trust Co., 2015 IL App (1st) 142789, 2015 Ill. App. LEXIS 231, 391 Ill. Dec. 352, 30 N.E.3d 622 (2015)*

Decision reached on appeal by *Estate of Susman v. Susman (In re Estate of Susman), 2016 IL App (2d) 140242-U, 2016 Ill. App. Unpub. LEXIS 103 (2016)*

Decision reached on appeal by *Susman v. Susman (In re Estate of Donald E. Susman), 2016 IL App (2d) 150472-U, 2016 Ill. App. Unpub. LEXIS 1645 (2016)*

Prior History: [1]** Appeal from the Circuit Court of Lake County. Nos. 08-P-725, 09-CH-3765, 10-CH-1479. Honorable Diane E. Winter, Judge, Presiding.

Disposition: No. 2-11-0121, Dismissed. No. 2-11-0314, Dismissed. No. 2-11-0978, Affirmed.

Judges: PRESIDING JUSTICE JORGENSEN delivered the judgment of the court. Justices Hudson and Birkett concurred in the judgment.

Opinion by: JORGENSEN

Opinion

ORDER

Held: In appeal No. 2-11-0978 (*Susman III*), the trial court did not err in: (1) denying defendants' request to stay the circuit court proceedings during the pendency of *Susman I,* where the court's grant of partial summary judgment in the first appeal (No. 2-11-0121, *Susman I*) was a final order as to the particular claims ruled on and where the remaining claims were not so interrelated with the claims on appeal such that they were dependent

on each other; or in (2) denying defendants' motion to vacate the parties' settlement agreement, where, assuming without deciding that an alleged IRPC Rule 8.4(g) violation can form the basis for invalidating a settlement agreement and that such alleged violation can be based in part upon one's own attorney's comments, the court's credibility determinations were not against the manifest weight of the evidence and **[**2]** where the court did not err in denying defendants' request to present a rebuttal witness. Given that we affirm the judgment in *Susman III* and that there are no remaining controversies, appeal Nos. 2-11-0121 (*Susman I*) and 2-11-0314 (*Susman II*) are dismissed as moot.

[*P2] Following Donald E. Susman's death, disputes arose concerning the appropriate disposition of his ownership interest in the family business and of the real property (held in a land trust) upon which the business is located. These consolidated appeals followed. For the following reasons, we affirm the third appeal, No. 2-11-0978 (*Susman III,* concerning defendants' requests to stay the trial court proceedings and their motion to vacate the settlement agreement), and dismiss as moot appeal Nos. 2-11-0121 (*Susman I,* concerning the land trust) and 2-11-0314 (*Susman II,* concerning a contempt order).

[*P3] I. BACKGROUND

[*P4] A. Procedural History

[*P5] Donald E. Susman died in 2008. At the time of his death, Donald and his brother, defendant Robert Susman, owned equal shares in the family business, Susman Linoleum and Rug Company, Inc. Susman Linoleum is located on real property in Gurnee that is held in a land trust and of which defendant North **[**3]** Star Trust Company is the successor land trustee. The land trust (No. 1570) was created by Matt and Angeline Susman, Donald's parents, in 1961. Matt and Angeline were the initial beneficiaries under the trust. The trust provided that, upon their deaths, their beneficiary interests in the trust would pass to two of their children, Donald and Robert Susman. Matt passed away in 1996, and Angeline died in 2001.

[*P6] Subsequent to Donald's death in 2008, plaintiff, Kathy A. Drennan, the executor of Donald's estate, requested that North Star distribute one-half of the trust property, but received no response. Thereafter, plaintiff sued North Star. After being served with process, North Star issued a trustee's deed that conveyed an undivided one-half interest in the trust property to plaintiff. That deed was recorded on March 20, 2009. North Star subsequently confessed error (because the conveyance was made without Robert's consent), and the transfer gave rise to two consolidated chancery proceedings (not relevant to these appeals), which were consolidated with the probate action (case No. 08-P-725) that is the subject of these consolidated appeals.[1]

[*P7] As to the probate action, in an October 1, 2009, amended, six-count complaint, plaintiff raised claims for breach of contract, *i.e.,* a shareholder agreement, (count I, against Robert, individually), specific performance of a shareholder agreement that governed the Susman Linoleum shares owned by Donald and Robert (count II, against Robert, individually),[2] dissolution of the corporation (*805 ILCS 5/12.10* (West 2008)) (count III), unjust enrichment for rent for use of the land on which Susman Linoleum is located (count IV, against Susman Linoleum), partition and sale of land (*735 ILCS 5/17-101* (West 2008)) (count V), and (in the alternative to count V) dissolution of the land trust and a judicial sale (count VI). The parties' dispute focused on two issues: (1) the appropriate disposition of the real property held in the land trust and upon which Susman Linoleum is located; and (2) management of Susman Linoleum (equally owned by Donald and Robert) and the appropriate disposition of Donald's ownership interest in the business. The **[**5]** dispute over the disposition of Donald's shares in the business involved additional disputes

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[1] Specifically, in chancery case No. 09-CH-3765, **[**4]** Robert and Susman Linoleum sued North Star to quiet title and for damages for slander of title. In chancery case No. 10-CH-1479, North Star sued to quiet title.

[2] The shareholder agreement provided that, upon the death of either Donald or Robert, the surviving party would purchase the stock from the decedent's estate.

over its assets (the business was estimated to be worth about $1 million, $800,000 of which consisted of cash and securities) and plaintiff's concern that Robert might attempt to take Susman Linoleum assets for his personal benefit (including payment of personal legal fees). The trial court entered an order on May 21, 2009, directing that Robert and Susman Linoleum refrain from making any payments from company assets absent court order and after proper notice other than payments in the ordinary course of business.

[*P8] On March 26, 2010, plaintiff moved for partial summary judgment (as to count V or, in the alternative, count VI). As to count V, plaintiff argued that she possessed an undivided one-half interest in the trust property; that no joint consent existed to continue the trust; that Robert refused to purchase the estate's interest in the property or cooperate in selling the interest to a third party; and that plaintiff was entitled to **[**6]** a partition and sale of the trust property. In the alternative, plaintiff argued as to count VI that she and Robert did not share a common purpose for the trust property (where she was obligated to liquidate and distribute estate assets to Donald's legatees so as to close his estate, and where Robert sought to use the property for Susman Linoleum). The Susman defendants (Robert and Susman Linoleum) filed a cross-motion for partial summary judgment (as to counts V and VI).

[*P9] On January 6, 2011, the trial court granted plaintiff summary judgment on count VI of her amended complaint and denied all other such motions. The court found that the land trust was created on May 20, 1961, specified a fixed duration of 20 years, and did not state that a purpose or objective was to maintain property for a particular use or business. The court further found that there were no amendments to the land trust agreement, that the trust expired, and that no purpose was identified within the trust that remained unfulfilled. The trial court ordered termination of the trust and a judicial sale, but it reserved a date for the judicial sale pending trial on the remaining causes of action.

[*P10] On January 31, 2011, **[**7]** the Susman defendants appealed the January 6, 2011, order (appeal No. 2-11-0121, *Susman I,* involving the land trust). They also moved to suspend trial and discovery, pending resolution of the *Susman I* appeal. On February 7, 2011, the Susman defendants filed a postjudgment motion to vacate the January 6, 2011, order. On February 14, 2011, defendants filed a second motion in the trial court, asking the court to stay the proceedings as to the land trust, pending the *Susman I* appeal. On February 17, 2011, the Susman defendants filed an amended notice of appeal, specifying that appeal was taken pursuant to *Illinois Supreme Court Rules 303* (eff. May 30, 2008) (appeals from final judgments in civil cases) and *304(b)(1)* (eff. Feb. 26, 2010) (final judgments as to fewer than all parties or claims appealable without a special finding; judgment or order entered in the administration of an estate "which finally determines a right or status of a party"). Following a hearing, the trial court, on February 24, 2011, denied the Susman defendants' postjudgment motion and its motions seeking to stay the trial court proceedings. The court noted in its written order that, if plaintiff sought in this court **[**8]** to dismiss the appeal in *Susman I* and if this court denied plaintiff's motion, the Susman defendants "are granted leave to move to reconsider the denial of a stay pending appeal." At the hearing, the court noted that its January 6, 2011, order was not a final order because it did not finally determine the right or status of any party and that there was in the order a reservation of a judicial sale. However, the court noted that it would reconsider its findings if this court denied the motion to dismiss the appeal: "you may certainly file the motion to reconsider and I'll reconsider this finding."

[*P11] Also on February 24, 2011, the court adjudged Robert in indirect civil contempt and ordered him to segregate and freeze $73,000 of Susman Linoleum assets. Robert moved to vacate the order, and, on March 24, 2011, the trial court denied his motion. The court continued sentencing to April 7, 2011. On March 28, 2011, Robert filed a notice of appeal of the contempt finding (appeal No. 2-11-0314, *Susman II*).

[*P12] On March 30, 2011, plaintiff filed in this court a motion to dismiss the appeal in *Susman I,* arguing that the trial court's January 6, 2011, order was not a final and appealable order under **[**9]** *Rules 303* or *304(b)(1)*.

[*P13] On April 12, 2011, defendants filed *instanter* a renewed motion to stay the proceedings as to the land trust, noting that a motion to dismiss the appeal had been filed in this court; however, they did not present any argument on the motion to the court that day. Also on this date, the parties convened for trial on the remaining counts of plaintiff's complaint. However, before trial commenced, the parties entered into a purported settlement agreement (discussed below).

[*P14] On May 11, 2011, this court denied plaintiff's motion to dismiss the appeal in *Susman I*.

[*P15] On May 12, 2011, the Susman defendants moved to vacate the settlement agreement order, arguing that: (1) the court lacked jurisdiction; (2) the attorneys involved coerced the purported settlement through violations of *Rule 8.4(g) of the Illinois Rules of Professional Conduct* (IRPC) (*Ill. Rs. Prof'l Conduct R. 8.4(g)* (eff. Jan. 1, 2010) (presenting, participating in presenting, or threatening "to present criminal or professional disciplinary charges to obtain an advantage in a civil matter")); and (3) the purported agreement was obtained through fraudulent misrepresentation, duress, and coercion and was unconscionable. **[**10]** On May 17, 2011, the Susman defendants moved for reconsideration of the trial court's February 24, 2011, order that denied staying the proceedings, arguing that the trial court lacked jurisdiction to render rulings as to the trust property because this court had asserted jurisdiction over the appeal and, they asserted, (implicitly) found that the January 6, 2011, order was a final order.

[*P16] In July and August 2011, the trial court heard testimony on the Susman defendants' motions to vacate and reconsider (and for which defendants filed a combined memorandum). Subsequent to plaintiff's case-in-chief, it denied the Susman defendants' request to continue the hearing to present a rebuttal witness. On July 19, 2011, the court denied defendants' motion to reconsider, finding that the remaining issues in the trial court were separate from those on appeal in *Susman I* and that it had jurisdiction over the remaining issues. On September 9, 2011, the trial court denied the motion to vacate the settlement agreement order. Defendants filed an emergency motion to reconsider and vacate the court's September 9, 2011, order and to re-open proofs, which the court denied on September 26, 2011.

[*P17] On September **[**11]** 27, 2011, Robert filed a notice of appeal of the April 12, 2011, order as well as all other orders in the probate action (appeal No. 2-11-0978, *Susman III*).

[*P18] B. Settlement Agreement

[*P19] As noted above, on April 12, 2011, the parties convened for trial on the remaining counts (*i.e.*, **[**12]** counts I through IV) of plaintiff's complaint. However, rather than proceeding to trial, the parties engaged in settlement negotiations and entered into a settlement agreement. The settlement agreement, incorporated into an agreed order, provided that: (1) the parties shall market the trust property for sale; (2) Robert purchase the estate's stock in Susman Linoleum for $650,000; (3) that the Susman defendants shall dismiss all appeals; (4) Susman Linoleum shall continue to occupy the premises until any sale and during that time pay, in lieu of any rent, the real estate taxes, insurance, maintenance, and utilities; and (5) no parties shall file any petitions for attorney fees against the Susman defendants. Further, in the agreed order, the trial court noted that it retained jurisdiction to enforce the agreement, that the findings of contempt against Robert were stricken, and that all trial dates were stricken.

[*P20] On May 12, 2011, the Susman defendants moved to vacate the settlement agreement order, arguing, *inter alia,* that the attorneys involved coerced the purported settlement through violations of *IRPC Rule 8.4(g)*; that the purported agreement was obtained through fraudulent misrepresentation, **[**13]** duress, and coercion and was unconscionable; and that the trial court lacked jurisdiction to enter the order because the appellate court had asserted jurisdiction over *Susman I.* Attached to the motion were affidavits from Robert, Derrick Noble (Susman Linoleum's store manager), and Dr. Joseph Olinger (Robert's physician). Specifically, defendants alleged that plaintiff's attorneys suggested during the settlement negotiations that Robert should settle the case because his daughter, attorney Barbara Susman, had violated the IRPC. They argued that the comments constituted violations of *IRPC Rule 8.4(g)*. Defendants further alleged that an attorney or attorneys in this case has/had filed complaints against Barbara and that "the logical implication" of raising the attorney disciplinary issue as to Barbara was that, if defendants settled the case, plaintiff's counsel would "rescind their [disciplinary] grievances against" Barbara. Such threats, according to defendants, were *per se* violations of *IRPC Rule 8.4(g)* and, accordingly, the settlement agreement is void.

[*P21] On June 6, 2011, defendants filed a combined memorandum in support of their motions to vacate (the settlement order) and reconsider **[**14]** (the denial of their stay requests). As relevant to *Susman III,* defendants alleged attorney misconduct at the settlement conference. Defendants retained as an expert Mary Robinson, a former administrator of the Illinois Attorney Registration and Disciplinary Commission (ARDC). Robinson opined that Robert's and Noble's averments raised a concern about a violation of *Rule 8.4(g)*. She further opined that a threat related to a pending grievance is potentially more abusive because of the implication behind the threat that the attorney may be able to influence the outcome (*i.e.,* a grievance cannot be withdrawn; therefore, any implication that an attorney can influence the process is patently false). Defendants further noted that Robinson opined that it was significant that the threat was made to a layperson, who may not have the experience and knowledge of an attorney as to disciplinary commission threats or understand whether charges may result in stringent disciplinary action. Robinson opined that the alleged charges were, according to defendants, "on the low end of the spectrum" and that disbarment was not an option if the charges were valid.

[*P22] On July 19, and August 25, 2011, the court **[**15]** held an evidentiary hearing on defendant's motion to vacate. Defendants called Dr. Olinger, Noble, Robinson, and Robert.

[*P23] Dr. Olinger, Robert's treating physician, testified that Robert suffers from hypertension and takes medications for the condition, as he did during the time in question. According to Dr. Olinger, he saw Robert and Barbara on May 12, 2011. The purpose of their office visit was to tell Dr. Olinger about a hypertensive episode on April 12, 2011, and to request an opinion letter. They reported that Robert had, on April 12, 2011, a flushed face, mouth quiver and/or drool, and some anxiety-driven shortness of breath. Dr. Olinger testified that drooling, gasping for breath, and wheezing are not typical presentations for hypertensive episodes. However, Dr. Olinger opined that Robert's cognitive state was altered by stress and probable blood pressure elevation and medication.

[*P24] Derrick Noble, Susman Linoleum's store manager, testified that he has worked at Susman Linoleum for six years and has known Robert for that long. He was present at most of the settlement discussions on April 12, 2011. Noble arrived at the courthouse on that date between 11:45 a.m. and noon. Mitchell **[**16]** Iseberg (one of Robert's attorneys) arrived at 12:10 p.m. Noble was at the courthouse for about 2 1/2 hours. He is aware that Robert suffers from high blood pressure and can note from Robert's appearance when he is suffering undue stress from his condition. Noble testified that he has observed Robert have three or four previous high-blood-pressure episodes. During the episodes, Robert's face turns red and he sweats, drools, and gasps for air. In the past, Noble has either taken Robert to the hospital or to the doctor.

[*P25] Noble further testified that, during the negotiations, while in a conference room, attorney Iseberg told Robert and Noble that plaintiff wanted $650,000 (for the estate's interest in Susman Linoleum) to settle, stated that he believed it was a good offer, and then stated that there were "egregious charges against Barbara in this case and settling it [for $650,000] can assist with making, could assist with making the charges go away." Noble further testified that Iseberg stated that Barbara (who represented Susman Linoleum) could possibly lose her law license due to the charges. Noble could not recall if Barbara was present when Iseberg spoke to Robert. Immediately after **[**17]** Iseberg mentioned the charges, it appeared to Noble that Robert began having a high-blood-pressure episode. He gasped for air, his face turned red, he was sweating, and he pounded his fists on the desk. When these episodes occur, Robert is not in the right state of mind. Noble removed Robert from the conference room and attempted to calm him down in the hallway. Two-to-three minutes later, attorney Santi, who represented Donald's children, approached them (Noble and Robert were alone, according to Noble) and stated that the $50,000 difference (defendants had offered $600,000) could be paid later. He also repeated that there were serious charges against Barbara. Noble testified that Robert began repeating "we got to help her, we got to help her;" however, Noble acknowledged that he did not mention this in his affidavit. Also, Noble did not mention to anyone else the conversation with Santi. That day, Noble did not call Robert's doctor or take Robert to the hospital. Noble told Robert that he should go to trial; he did not favor a settlement: "[w]hen I saw the settlement going through at the tail end I walked out." In his affidavit, Noble stated that he believed that the threats against **[**18]** Barbara prevented Robert from comprehending the consequences of agreeing to the terms of the settlement agreement.

[*P26] Robinson testified as an expert that she served as the administrator of the ARDC from 1992 through 2007. In forming her opinions, Robinson relied on Robert's and Noble's affidavits, as well as Noble's testimony.

Addressing first the hallway conversation where Santi allegedly approached Robert and Noble, Robinson opined that it violated *Rule 8.4(g)*. Addressing second the conversation with Iseberg, she opined that, if his reference to the ARDC charges against Barbara were made in the context of where he was only repeating what someone else said, she is unsure if Iseberg violated the rule. She continued, "But I would say that what happened there is exactly what the rule is intended to prevent. That part I feel very strongly about. It's exactly what the rule is supposed to prevent." However, Robinson testified that, if Iseberg were trying to persuade Robert to settle, then he violated the rule. She explained that it is immaterial who (*i.e.*, which side in a dispute) brings up disciplinary issues; there is still a violation. "It is impermissible to present, participate in presenting **[**19]** or threaten to present professional disciplinary charges period to obtain, in order to get leverage in a civil case." According to Robinson, the charges against Barbara were not severe and would not result in disbarment, censure, or suspension. Robinson further explained that, once a complaint is filed with the ARDC, only the commission can choose whether or not to proceed with it.

[*P27] Robert testified that both Iseberg and Santi brought up the subject of Barbara and the ARDC. Robert stated that he entered into the settlement agreement only because he received the information about Barbara's ARDC charges, of which he was previously unaware, and that he would have done anything to save her from losing her law license. Robert initially intended to go to trial that day. Robert agreed with Noble's testimony concerning Iseberg's and Santi's comments. According to Robert, Iseberg told him at about 3 p.m. (negotiations did not conclude until 5:30 p.m.) that "they have something on Barbara and Barbara will lose her license." (He later testified that Iseberg stated that Barbara "may" lose her license.) Iseberg made this statement more than two times. Robert further testified that neither attorney **[**20]** Michael Danian (Robert's other attorney), nor Barbara were present when Iseberg discussed the settlement. In the hallway close to the same time as his conversation with Iseberg, Santi came over to Robert and Noble; he knelt and told Robert that Barbara had some issues (for lapsing on a payment to the ARDC) with the ARDC and that, if the case is not settled, she will lose her license. The conversation with Santi, who was once a judge, changed Robert's mind and convinced him to settle the case. Prior to entering into the settlement agreement, Robert did not discuss with his attorneys, including Barbara, the conversations with Iseberg and Santi. Barbara and Danian advised Robert against settling the case.

[*P28] During her case-in-chief, plaintiff called Iseberg and Santi and testified on her own behalf. Plaintiff testified that the only time the ARDC came up in conversation that day was when, at about 1 p.m. while plaintiff, Fredric Lesser (Donald's wife's attorney), Santi, Thomas Pasquesi (plaintiff's attorney), and an associate of Pasquesi's named Corey Minnihan were in a conference room, Iseberg came in and mentioned the ARDC charges against Barbara. Lesser responded that the charges had **[**21]** nothing to do with plaintiff's case and "that we were not to bring that up for any reason, had nothing to do with the settlement or the Court case." Iseberg left the room. Plaintiff further testified that she was present at the courthouse from 1 to 5:30 p.m. on April 12, 2011. At no time that day did she observe Robert to have a flushed face, sweating, drooling, gasping for air, or pounding his fist on a table; nor did she observe any behavior that made her believe that Robert was ill. Robert initially objected to signing the settlement agreement, but, after the court advised him that trial would commence the next day if he did not sign it, Robert stated that "I want this over." He also stated that "if he had to[,] he would buy it [*i.e.*, the stock] out of his own money."

[*P29] Iseberg testified that he raised the issue of the ARDC charges against Barbara during settlement negotiations; however, he denied telling Robert that, if he did not settle the case, Barbara would lose her law license or that the charges were "egregious." The charges, which were not severe and would not, in Iseberg's view, result in her losing her license to practice law, related to complaints alleging that Barbara **[**22]** had filed excessive motions for reconsideration. At about 1 p.m., Iseberg stated to Robert that he "was hoping that if we could get this case settled which I was pressing for that we could, hopefully everything would go away including the ARDC complaints against his daughter." He further testified that:

> "I initiated the call or the mention of the ARDC, not them. It was, in substance what I said before, that it would get this case resolved. I expect to report and there was a caveat before I mentioned that, we said and we all understand the rules of the ARDC and this can not be a part of this discussion but if we do get this case resolved I expect that, you know, we will report that we resolved all the matters to the ARDC and I would expect that they would not pursue it vigorously thereafter.

> And I initiated that conversation. And then everybody repeated, yes, we can't discuss it, and we will leave it alone."

According to Iseberg, while he was speaking with Robert and Noble in the hallway at about 3 or 4 p.m., he motioned for Santi to approach them to explain plaintiff's demand for an additional $50,000. Iseberg, Robert, and Noble were seated, and Barbara was not present. Santi's clients **[**23]** (*i.e.*, Donald's children) had requested an additional $50,000 to settle because of alleged unnecessary attorney fees. He motioned for Santi to approach because he wanted Santi to explain the request to Robert. According to Iseberg, the conversation lasted about 10 to 15 minutes. Santi, kneeling, did not mention the ARDC, but did mention Barbara, stating that she had caused delay in the case by filing frivolous motions that caused them to expend over $100,000 in needless attorney fees for which they wanted to be compensated and that Pasquesi had filed a complaint against Barbara, raising a fee claim under *Supreme Court Rule 137* (eff. Feb. 1, 1994) for allegedly frivolous pleadings.

[*P30] Iseberg conceded that he is aware that ARDC complaints are within the agency's control; however, he stated that lawyers can advise the agency that all matters between the parties have been resolved and settled. Addressing the significance of his conversation with Robert about the ARDC, Iseberg testified that his focus was to do what was best for Robert, his client. "And I had always felt the best thing to do was to settle the case in the best terms we could." The ARDC issue was "[l]ess than minor," and a **[**24]** settlement would assist in the ARDC issue "going away or not being pursued more vigorously."

[*P31] Santi, Donald's children's attorney, denied mentioning the ARDC that day to Robert. He testified that Barbara *was* present for his conversation with Robert and that it was *she* who waived him over. Barbara was next to Robert, and Iseberg "was in the vicinity." Robert initiated the conversation (about the settlement agreement), and Santi, kneeling, told him that it was improper for him to speak to him without his attorney being present. Barbara then interjected that, even though she did not represent Robert, she had spoken to her father and advised him to speak with Santi. (Iseberg was present, and, although it was unclear who represented whom, Santi believed that Iseberg represented Susman Linoleum.) Addressing the $50,000, Santi first testified that defendants' valuation of the land was $900,000 and that plaintiff's was $1.6 million and the $600,000-versus-$650,000 concerned negotiations about the divergent appraisals. After being asked if the numbers to which he was referring were instead related to potential *Rule 137* fee claims, Santi then testified that the additional $50,000 actually represented **[**25]** a settlement concerning alleged *Rule 137* violations and that the discussion lasted "just a few moments." "I felt it was a great deal for him to have negotiated a settlement where he was contributing only $50,000 where it [*i.e.*, the estate's attorney fees] could be in excess of $200,000." This was the only conversation Santi had with Robert that day. Santi further testified that he told Robert that "they" could be sanctioned by the court for filing frivolous pleadings; he did *not* specifically mentioned Barbara.

[*P32] Michael Danian testified that he (along with Iseberg) represented Robert. He heard no mention of the ARDC that day, nor was he present when Iseberg spoke with Robert.

[*P33] At the end of plaintiff's case-in-chief, defendants requested that the court continue the hearing so that they could call a rebuttal witness. They alleged that attorney Mary Bluma, a contract attorney for Barbara, was another witness to the hallway conversation between Robert and Santi. Lesser (Donald's wife's attorney) and Pasquesi (plaintiff's attorney) argued that these allegations were unsupported in the record, including Robert's and Noble's affidavits, defendants' motion to vacate, and Noble's, Iseberg's, **[**26]** and Santi's testimony. The trial court denied defendants' request, noting that Robert did not testify that Bluma was present for the conversation and that "plenty" of witnesses had testified as to the conversation.

[*P34] On September 9, 2011, the trial court denied defendants' motion to vacate the settlement agreement order. The court found that no one violated *Rule 8.4(g)* on the day the settlement agreement was entered into. The court found Iseberg and Santi credible and Robert and Noble incredible. It noted that it gave little weight to Robinson's testimony because it was based on Robert's and Noble's affidavits, which were not credible. The court also gave little weight to Dr. Olinger's opinions because they were based upon unproven (unreported) facts and were unpersuasive. The court further determined that there was no competent evidence that Robert suffered a hypertensive episode that caused cognitive impairment such that he could not comprehend the settlement

agreement. The court noted that Iseberg testified that he told Robert only that "'no lawyer needs an ARDC complaint against them; it's not good for business; settlement would diminish the effect of the ARDC complaint and help **[**27]** it go away.'" It found that, during the negotiations that afternoon, Robert did not mention his concerns about Barbara's charges to either Barbara or his other counsel, Danian. Further, the court found that Iseberg mentioned the ARDC proceedings briefly at 1 p.m. and that Robert signed the settlement agreement at 5 p.m. when the court advised him that trial court would begin the next day; therefore, "Iseberg's comments were not a factor in the decision to settle and do not represent a valid basis upon which to vacate the settlement agreement."

[*P35] Defendants moved, in an emergency motion, to reconsider and vacate the court's order and to re-open proofs. In an attached affidavit, Bluma averred that she was present at the Lake County courthouse on April 12, 2011, and observed certain communications between the parties, including one in the hallway outside the courtroom. There, she observed Santi approach Robert, who was seated next to Noble. Bluma further stated that she overheard Santi say to Robert: "'[t]he charges against your daughter are egregious, and that if you don't settle this case, she could possibly lose her license.'" She also averred that she heard Santi speak of seeking "'sanctions'" **[**28]** against Barbara. Robert, according to Bluma, appeared "glum" and physically upset. Iseberg, Danian, and Barbara were not present during Santi's conversation with Robert and Noble.

[*P36] On September 26, 2011, the trial court denied defendants' emergency motion to reconsider and vacate and to re-open proofs. On September 27, 2011, Robert filed a notice of appeal of the April 12, 2011, order as well as all other orders in the case (appeal No. 2-11-0978, *Susman III*).

[*P37] II. ANALYSIS

[*P38] A. *Susman III* - Stay Requests

[*P39] Initially, we address the Susman defendants' argument that the trial court erred in refusing to stay the circuit court proceedings during the pendency in this court of *Susman I* (involving the land trust). They request that we remand the cause with instructions to vacate all orders after February 24, 2011, including, as relevant to *Susman III*, the settlement agreement order. For the following reasons, we reject defendants' request.

[*P40] Specifically, defendants argue that the January 6, 2011, order granting plaintiff partial summary judgment finally disposed of one of the issues in this case, namely, the disposition of interests in the property held in the land trust. The Susman defendants appealed **[**29]** this order (in a January 6, 2011, notice of appeal and a February 17, 2011, amended notice). Contemporaneous with these events, defendants requested that the trial court stay any further proceedings, which the trial court declined to do. Plaintiff subsequently filed a motion to dismiss the appeal in *Susman I,* which this court had not decided by the April 12, 2011, trial date, wherein defendants renewed their motion to stay the proceedings. This court denied plaintiff's motion to dismiss on May 11, 2011.

[*P41] Defendants first argue that the January 6, 2011, judgment was a final adjudication establishing the respective rights of the parties and that the mere reservation of a sale date is of no effect. Thus, the judgment was appealable pursuant to *Rule 304(b)(1)*. Second, they urge that the trial court erred as a matter of law (and therefore abused its discretion) in denying defendants' request to stay the circuit court proceedings. They note that the filing of a notice of appeal divests the trial court of jurisdiction and forbids it from modifying its judgment or ruling on matters of substance involved in the appeal. Here, defendants argue, the trial court proceeded with the case, the practical **[**30]** effect of which, they complain, was to prejudice them. They assert that the central issue in this case is the determination of the rightful owners of the land trust and that the proceedings should have been stayed to allow this court to determine whether the trial court was correct in its summary judgment ruling. According to defendants, if the trial court had stayed the proceedings, the parties could have proceeded to trial "on a level playing field" because they would have known that the buyout of the business was the only issue and the case likely would have been "fairly settled without the need for a full-blown trial." They further assert that the value of the business (about $1 million) was not "hotly" contested, whereas the land's value was ($900,000 according to defendants, versus $1.6 million according to plaintiff).

[*P42] Defendants alternatively argue that, even if the trial court retained jurisdiction over matters independent of the judgment on appeal, the matters that the court refused to stay were *not* independent of and unrelated to the counts on appeal. They note that plaintiff's motion for summary judgment sought a ruling on counts V and VI; however, the trial court did not **[**31]** rule on count IV. Defendants assert that count IV, which raised a claim for unjust enrichment for rent for the use of the land on which Susman Linoleum is located, necessarily depends on plaintiff's allegations in counts V and VI, *i.e.,* that the estate had a one-half interest in the land trust. It was not related to the valuation of the business. In defendants' view, the basis of count IV was the precise question appealed to this court and, therefore, the matters were neither independent of nor unrelated to the matters on appeal. Defendants further argue that the other counts also were not independent of and unrelated to the subject matter of *Susman I.* The claims arose as a result of Donald's death, and they were "intertwined." They note that, if this court affirms *Susman I* (*i.e.,* the court's finding that the estate had an interest in the land and the order allowing the sale of the land), it would have a direct, negative impact on the value of the business because a buyer could purchase the land and evict Susman Linoleum. If this court reverses the grant of summary judgment, the value of the business, according to defendants, would remain status quo and Robert would have title to all **[**32]** of the land and could assign a higher value to the business as he could sell it with the land. Thus, it would not have been possible to assess at trial what the business was worth.

[*P43] Finally, defendants argue that the trial court also erred as a matter of law in failing to *reconsider* its February 24, 2011, order once this court denied plaintiff's request to dismiss *Susman I.* Defendants request that we find that the court erred in denying the stay and that we remand with instruction to vacate all orders after February 24, 2011.

[*P44] Plaintiff argues that: (1) this court did not clearly establish (*i.e.,* because we did not explicitly state) that the trial court's partial summary judgment order was a final order; and (2) even if the trial court's initial findings were incorrect, the court reconsidered and reaffirmed its decision on a separate and independent basis during the hearing on defendants' motion to reconsider, where it found that the remaining trial court proceedings were separate and distinct. The trial court noted that the partial summary judgment order addressed only the land trust, but that the trial matters involved the "estate issues," such as the shareholder agreement and "the **[**33]** formation and conduct of the business. So I do not find there was any interference with the issues that were on appeal and that these were separate issues to be tried."

[*P45] On appeal, we review a ruling on a motion to stay for an abuse of discretion. *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC, 2012 IL App (1st) 101751, at ¶29, 965 N.E.2d 656, 358 Ill. Dec. 585*. A stay order seeks to preserve the status quo existing on the date of its entry and does not address in any way the merits of the underlying dispute. *Kaden v. Pucinski, 263 Ill. App. 3d 611, 615, 635 N.E.2d 468, 200 Ill. Dec. 129 (1994)*. A circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it. *Philips Electronics, N.V. v. New Hampshire Insurance Co., 295 Ill. App. 3d 895, 901, 692 N.E.2d 1268, 230 Ill. Dec. 102 (1998)*. It may consider factors such as the orderly administration of justice and judicial economy in determining whether to stay proceedings. *Id. at 901-02*.

[*P46] Defendants also moved to reconsider the court's denial of a stay. Under *section 2-1203* of the Code of Civil Procedure, "[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment * * *, file a motion for a rehearing, or a retrial, or modification of the judgment **[**34]** or to vacate the judgment or for other relief." *735 ILCS 5/2-1203* (West 2010). The purpose of a motion to reconsider "is to bring to the trial court's attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand." *River Village I, LLC v. Central Insurance Cos., 396 Ill. App. 3d 480, 492, 919 N.E.2d 426, 335 Ill. Dec. 426 (2009)*. Generally, a trial court's decision to grant or deny a motion to reconsider will not be reversed absent an abuse of discretion. *General Motors Acceptance Corp. v. Stoval, 374 Ill. App. 3d 1064, 1078, 872 N.E.2d 91, 313 Ill. Dec. 331 (2007)*. "A trial court abuses its discretion where no reasonable person would take the view adopted by the trial court." *In re Marriage of Tutor, 2011 IL App (2d) 100187, ¶ 10, 956 N.E.2d 588, 353 Ill. Dec. 726*. However, a reviewing court reviews *de novo* the trial court's decision to grant or deny a motion to reconsider, where the motion was based only on the trial court's application or

purported misapplication of existing law, rather than on new facts or legal theories not presented at trial. *Bank of America, N.A. v. Ebro Foods, Inc., 409 Ill. App. 3d 704, 709, 948 N.E.2d 685, 350 Ill. Dec. 405 (2011)*.

[*P47] Defendants appealed *Susman I* pursuant, in part, **[**35]** to *Rule 304(b)(1)*, which provides:

> "(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> (1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party." *Ill. S. Ct. Rule 304(b)(1)* (eff. Feb. 26, 2010).

Orders within the scope of *Rule 304(b)(1)*, even though entered before the final settlement of estate proceedings, must be appealed within 30 days of entry or be barred. *In re Estate of Devey, 239 Ill. App. 3d 630, 633, 607 N.E.2d 685, 180 Ill. Dec. 616 (1996)*. "Only final orders fit within *Rule 304(b)(1)*. It is not necessary that the order resolve all matters in the estate, but it must resolve all matters on the particular issue." *Stephen v. Huckaba, 361 Ill. App. 3d 1047, 1051, 838 N.E.2d 347, 297 Ill. Dec. 860 (2005)*. In other words, the "ultimate right, not the theory upon which that right is premised[,] must be determined." *In re Liquidation of Medcare HMO, Inc., 294 Ill. App. 3d 42, 46, 689 N.E.2d 374, 228 Ill. Dec. 502 (1997)*. See also *Estate of Jackson, 354 Ill. App. 3d 616, 619, 821 N.E.2d 1199, 290 Ill. Dec. 625 (2004)* (finding that the respondents had no right to property because deed was invalid **[**36]** and property belonged to estate was a final determination of the parties' rights to the real property); *Medcare HMO, 294 Ill. App. 3d at 47* (assessing *Rule 304(b)(2)* and concluding that rights of parties to monies paid to attorneys was not finally determined when the court dismissed fraudulent conveyance count because right to recover the payment on the related but alternative, theory of voidable preference had yet to be determined).

[*P48] Based on the foregoing authority, we agree with defendants that the trial court's partial summary judgment order was appealable pursuant to *Rule 304(b)(1)* and was a final order with respect to a particular issue. However, we disagree with their contention that the trial court erred as a matter of law (or abused its discretion) in denying their repeated requests to stay the proceedings during the pendency of *Susman I* and, thus, that the trial court lacked jurisdiction to enter any subsequent orders, including the settlement agreement order.

[*P49] We are not persuaded by defendants' statement of the general proposition that a notice of appeal divests a trial court of jurisdiction and that the trial court may not rule on matters of substance involved in the appeal. **[**37]** See, *e.g.*, *Burtell v. First Charter Service Corp., 76 Ill. 2d 427, 433, 394 N.E.2d 380, 31 Ill. Dec. 178 (1979)*. Notwithstanding the general rule, *Rule 304* nowhere states that trial court proceedings *must* be stayed pending appeal of a portion of the case. Where our supreme court has mandated such action, it has explicitly stated in the relevant rule. See, *e.g.*, *Ill. S. Ct. R. 305(a)* (eff. July 1, 2004) (enforcement of money judgment "shall be stayed" if an appeal is filed and a form of security is present to and approved by court); *Ill. S. Ct. R. 305(e)* (order terminating parental rights "shall be automatically stayed for 60 days" after termination order). Indeed, *Illinois Supreme Court Rule 305(b)* (eff. July 1, 2004), which addresses stays of enforcements of nonmoney judgments, provides that, upon notice and motion and an opportunity for opposing parties to be heard, a court "may" stay the enforcement of a nonmoney judgment or "appealable interlocutory orders or any other appealable judicial or administrative order."

[*P50] We also reject defendants' argument that the matters the court refused to stay were interrelated to the counts on appeal. First, defendants argue that count IV, in which plaintiff pleaded unjust enrichment **[**38]** for rent for the use of the land in the land trust and on which Susman Linoleum is located, is related to and necessarily depends on plaintiff's allegations that Donald's estate had a one-half interest in the land trust. We disagree because the unjust enrichment count was directed against Susman Linoleum and sought from it rent for use of the land, whereas counts V and VI involved the land trust and possible partition and sale of the land. Counts V and VI require the construction of the trust document and are implicitly directed against Robert. Thus, count IV is not so intertwined with counts V and VI because the parties against which they are directed and the claims raised are not identical or so related such that they are dependent on each other. Although these appeals originated in disputes that arose after Donald's death and involve the family business and trust property, the trial court was not constrained by these general origins and did not act unreasonably in proceeding on the counts that remained after it addressed the summary judgment motions involving counts V and VI.

[*P51] None of defendants' remaining arguments in favor of staying the proceedings are persuasive. Defendants assert **[**39]** that the business's value would be impacted by whether or not the land could be sold with it. However, in the settlement agreement, the parties agreed to Robert's purchase of the estate's interest in Susman Lineoleum, the sale of the land, and that the business shall remain on the land until the property is sold. They did not agree to sell both the land and the business and, accordingly, their point is not well-taken. Defendants further argue that they did not proceed to trial on a level playing field. However, no trial was held on the remaining counts; the parties entered into a purported settlement. Finally, defendants claim that the trial court stated that, if this court denied plaintiff's motion to dismiss *Susman I,* it would grant their request for a stay. The court stated only that it would "reconsider" defendants' stay request. Its statement does not constitute any binding promise to grant their request.

[*P52] In summary, the trial court did not abuse its discretion or err as a matter of law in denying defendant's motions to stay the trial court proceedings (or to reconsider its denial) pending resolution of *Susman I.*

[*P53] B. *Susman III* - Defendants' Motion to Vacate the April 12, 2011, **[**40]** Order

[*P54] The Susman defendants argue next that the trial court erred in denying their motion to vacate the April 12, 2011, settlement agreement order. See *735 ILCS 5/2-1301* (West 2010). We review a trial court's decision denying a motion to vacate for an abuse of discretion. *Larson v. Pedersen, 349 Ill. App. 3d 203, 207, 811 N.E.2d 1204, 285 Ill. Dec. 325 (2004)*. An abuse of discretion occurs only where no reasonable person would agree with the trial court's ruling. *Schwartz v. Cortelloni, 177 Ill. 2d 166, 176, 685 N.E.2d 871, 226 Ill. Dec. 416 (1997)*. "The primary concern in ruling on a motion to vacate is whether substantial justice is being done between the litigants and whether it is reasonable under the circumstances to proceed to trial on the merits." *Marren Builders, Inc. v. Lampert, 307 Ill. App. 3d 937, 941, 719 N.E.2d 117, 241 Ill. Dec. 256 (1999)*. "'What is just and proper must be determined by the facts of each case, not by a hard and fast rule applicable to all situations regardless of the outcome.'" *Merchants Bank v. Roberts, 292 Ill. App. 3d 925, 932, 686 N.E.2d 1202, 227 Ill. Dec. 46 (1997)* (*quoting Widucus v. Southwestern Electric Cooperative, Inc., 26 Ill. App. 2d 102, 108, 167 N.E.2d 799 (1960)*).

[*P55] *Rule 8.4(g)* provides that it is professional misconduct for a lawyer to "present, participate in presenting, or threaten to present **[**41]** criminal or professional disciplinary charges to obtain an advantage in a civil matter." (*Ill. Rs. Prof'l Conduct R. 8.4(g)* (eff. Jan. 1, 2010)). Plaintiff argues that statements by Robert's own counsel (*i.e.,* Iseberg) did not violate the rule because it does not apply in that context. They note that the reference to disciplinary charges must be made to obtain an advantage in a civil matter and that one's own counsel, who is an agent of his or her client, cannot prejudice one's own client, or conversely, that a party cannot obtain an advantage over himself. Plaintiff also asks this court to determine whether the IRPC constitute grounds for vacating a settlement agreement. They contend that they do not and may not be used as rules of civil procedure. Further, they argue that if they do constitute grounds for vacating an agreement, any counsel could interject existing or hypothetical ARDC proceedings as a backstop measure during settlement negotiations. If a client later determines that he or she no longer wishes to honor an agreement, the client could simply assert that a Rule 8.4(g) violation occurred that improperly influenced his or her decision to settle. We decline to reach these **[**42]** issues. Instead, in addressing defendant's arguments, we assume, without deciding, first, that *Rule 8.4(g)* applies to comments made by one's own counsel and, second, that it is a ground for vacating a settlement agreement.

[*P56] With these initial assumptions in mind, we note that the Susman defendants first challenge the trial court's credibility findings, arguing that they were against the manifest weight of the evidence because Iseberg and Santi, whom the court found credible, gave, defendants argue, conflicting versions of the events, including who was present for conversations and the bases for the conversations. Defendants note that Iseberg testified that he motioned for Santi to approach while he was speaking to Robert and Noble, that Robert, Derrick, and Iseberg were seated, and that Barbara was not present. They further note that Iseberg testified that Santi's clients wanted an additional $50,000 to settle because of alleged unnecessary attorney fees and that the conversation lasted between 10 to 15 minutes. Defendants contend that Santi's version was remarkably different, wherein he testified that Barbara was present (the first alleged inconsistency) and was the one who waived **[**43]** him over, that she was

next to Robert and that Iseberg was in the vicinity. Santi further testified that Robert initiated the conversation and that Santi stated it was improper for him to speak without Robert's attorney's presence. They note that he also testified that Barbara interjected that Santi could speak to her father. Defendants contend that Iseberg's failure to mention Santi's testimony concerning his alleged *IRPC Rule 4.2* (eff. Jan. 1, 2010) disclaimer (*i.e.*, obtaining, through Barbara, Robert's permission to speak to Robert, whom Santi apparently believed was represented by Barbara) is a second significant discrepancy. Next, they also point to Santi's testimony concerning the $50,000, noting that he first testified that it related to the different land valuations and later testified that it related to alleged *Rule 137* violations. Defendants urge that, in contrast to the foregoing, Robert's and Noble's testimony was entirely consistent, in that they both testified that Santi approached them when Iseberg, Susman, and Danian were not present. Thus, they assert that no reasonable person would find credible Iseberg and Santi's testimony.

[*P57] As a reviewing court, we give great deference **[**44]** to the trial court's factual findings because the trial court stands in the best position to weigh the credibility of the witnesses; reversal is warranted only if the trial court's decision is against the manifest weight of the evidence. *In re Lisa P., 381 Ill. App. 3d 1087, 1092, 887 N.E.2d 696, 320 Ill. Dec. 552 (2008)*. A ruling is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if it is unreasonable, arbitrary, or not based on the evidence presented. *Law Offices of Colleen M. McLaughlin, 2011 IL App (1st) 101849, ¶ 43, 963 N.E.2d 968, 357 Ill. Dec. 570*.

[*P58] We conclude that the trial court did not err in finding both Iseberg and Santi credible. Contrary to defendants' assertions, the attorneys' versions of the events were not conflicting in any material respect. It is true that Iseberg and Santi differed in their recollection of who waived over Santi (Iseberg testified that he did, and Santi stated that Barbara waived him over) and whether Barbara was present (Iseberg stated she was not, and Santi stated that she was). However, both Iseberg and Santi testified that Santi did not mention the ARDC and that the $50,000 additional request for settlement related to alleged unnecessary attorney fees (although Santi **[**45]** did testify at first that the $50,000 related to divergent appraisals of the land). We reject defendants' contention that Iseberg's failure to mention Santi's testimony concerning his alleged Rule 4.2 disclaimer is a significant discrepancy, where they do not point to any question that was presented to him on the topic. Further, although Iseberg testified that he mentioned the ARDC proceedings against Barbara, he stated only that: (1) he expected or hoped that a settlement, when reported to the commission, would have the effect of the commission ceasing to further pursue the charges; and (2) the parties should not discuss the charges.

[*P59] We further reject defendants' argument that Robert's and Noble's testimony should not have been discounted because it was entirely consistent. Noble, who could not recall if Barbara was present when Iseberg spoke to him and Robert, testified that Robert had a high-blood-pressure episode and that he removed him from the conference room to attempt to calm him down. After Santi spoke to the men in the hallway, Robert, according to Noble and Robert himself, repeated several times that he had to help Barbara. However, Noble conceded during his testimony that **[**46]** he did not mention Robert's statements in his affidavit, nor did he mention the conversation with Santi to anyone that day. We further note that, notwithstanding Noble's and Robert's testimony concerning Robert's hypertension and attendant duress, which forms one of the primary bases upon which defendants desire to overturn the agreement, Noble testified that, on that day, he did not take Robert to the doctor or to a hospital and Robert himself did not mention the episode to Dr. Olinger until about one month after it occurred. In light of this testimony, the trial court reasonably could have discounted defendants' claims of duress and found Noble and Robert incredible.

[*P60] Next, defendants argue that the trial court erred in discounting Robinson's testimony on the basis that it was based upon affidavits by Noble and Robert, whom the court found not credible. According to defendants, the court erred because Robinson's opinions, as provided in her opinion letter, were initially based on Robert's and Noble's affidavits; however, her testimony was based on her observations of Noble's in-court testimony and her knowledge that plaintiff had admitted that the subject matter of ARDC proceedings **[**47]** had been discussed at the settlement negotiations. Defendants contend that the trial court ignored the fact that plaintiff had admitted that the topic was discussed and, thus, there was no basis to ignore Robinson's opinion because the fact that the subject matter was raised was not in dispute.

[*P61] Defendants' argument fails. First, we rejected above their argument that the trial court erred in finding Robert and Noble not credible. Second, even though Robinson was presented with Iseberg's testimony that he did raise the topic of ARDC proceedings (but, again, denied telling Robert that, if he did not settle, then Barbara would lose her law license; rather, he testified that he stated he hoped the charges would go away and that the parties should not discuss them), she did not clearly opine whether he violated Rule 8.4(g). Robinson testified that: (1) if Iseberg's comments to Robert were merely recitations of others' statements, then she was uncertain if he violated the rule; (2) what occured in this case "is exactly what the rule is intended to prevent;" and (3) if Iseberg made the comments in an attempt to persuade Robert to settle, then he violated the rule. Given its credibility assessments **[**48]** of Robert and Noble, the trial court did not err in placing little weight on Robinson's testimony.

[*P62] Defendants further argue that the trial court misapprehended Robinson's testimony. The trial court noted that Robinson did not offer an opinion as to whether the mention of ARDC issues by Iseberg (Robert's counsel) during settlement discussions invalidates the agreement. Defendants argue that Robinson *did* in fact render an opinion on the topic, testifying that it was *irrelevant* to the inquiry. The trial court's finding, they urge, implies that the court found it relevant that Robinson did not testify as to the ultimate legal question posed (testimony that would be impermissible from a witness). Defendants assert that Robinson's uncontested testimony was that the actor who brought up the ARDC proceedings in the context of the settlement negotiations is irrelevant to the consideration of whether the IRPC were violated. The focus here, they urge, is not to identify the wrongdoer. Rather, they issue is proof the subject matter was discussed (which plaintiff does not dispute) and that the discussion itself is sufficient to find the rule was violated.

[*P63] We conclude that the trial court did not **[**49]** misapprehend Robinson's testimony and that defendants' argument is speculative. Robinson testified generally about Rule 8.4(g), opining that it was immaterial which side in a dispute raises disciplinary charges, so long as the charges are raised in order to obtain an advantage in a civil matter. The trial court merely noted that Robinson did not offer an opinion whether Iseberg's (Robert's counsel's) statements invalidated the settlement agreement (because, she stated, she did not opine as to his intent at the time he made his statements); the court did not use this as a basis for discounting her testimony. Indeed, later in the court's written findings, the court explained its basis for discounting Robinson's opinions—it found that they were based upon affidavits that the court found incredible.

[*P64] Defendants argue next that the trial court abused its discretion in denying their motion to vacate the settlement agreement order in light of discussions during settlement negotiations regarding ARDC proceedings. They note that Iseberg impermissibly injected the topic of ARDC proceedings into the negotiations and attempted to persuade Robert to settle the case in order to make the proceedings **[**50]** "go away." He also opined that the settlement could affect the outcome of the ARDC complaint against Barbara. This impression, they contend, was untrue and a rule violation. They note that Robinson testified unequivocally that what happened in this case is "what the rule is supposed to keep from happening."

[*P65] Defendants further argue that the injection of ARDC proceedings against Barbara into the settlement negotiations was extremely prejudicial in that the nature of the allegations made to an elderly man was inherently coercive. They contend that no reasonable father would hesitate to attempt to protect his daughter from this threat and that this was exacerbated because the information came from his own attorney. Robert also acceded to the duress induced by the situation, they urge, and did the only thing he could do: settle the case. Defendants note that Robert is not an attorney and could not have known that the charges were *de minimis* and had no chance of affecting Barbara's license to practice law. (However, they note that, even if that were not true, the same result is mandated.) The introduction of Barbara's ARDC proceedings into the negotiations, they argue, caused the entire **[**51]** tenor to become coercive and vitiated any voluntary consent on Robert's part. Accordingly, they contend, the trial court's ruling should be reversed.

[*P66] Again, if we assume, *arguendo,* that an alleged Rule 8.4(g) violation can form the basis for invalidating a settlement agreement and, again, if we assume, *arguendo,* that such alleged violation can be based upon one's own attorney's comments, we conclude that the trial court did not abuse its discretion in denying the Susman defendants' motion to vacate. Based on the court's credibility findings, which, as we noted above, were not against the manifest weight of the evidence, the court did not err in denying defendant's motion. The court (again, having

found Iseberg credible and Robert and Noble not credible) found that Iseberg briefly mentioned the ARDC proceedings at 1 p.m. on April 12, 2011, and that he told Robert only that a settlement would assist with making the ARDC complaint go away. He denied telling Robert that, if he did not settle, Barbara would lose her law license or that the charges were egregious. As to Santi, whom the court also found credible, he denied mentioning the ARDC and this testimony was corroborated by Iseberg. **[**52]** Further, as to Robert, whom, again, the court found not credible, the court determined that no competent evidence was presented that he suffered a hypertensive episode that caused cognitive impairment such that he could not comprehend the agreement into which he entered. Based on these findings, which were essentially that neither Iseberg nor Santi made comments to obtain an advantage in a civil matter and that Robert did not suffer any impairment in relation to executing the agreement, we cannot conclude that the court abused its discretion in denying the motion to vacate the settlement agreement.

[*P67] Defendants' final argument is that the trial court abused its discretion in denying them an opportunity to present a rebuttal case. They argue that, given that the trial court based its findings almost entirely on credibility determinations, the court should have allowed defendants the opportunity to present testimony from an "uninterested" party, attorney Bluma. They note that Bluma's proposed testimony substantiates Robert's and Noble's testimony and undercuts the contradictory testimony of Iseberg and Santi. The testimony, they further urge, goes directly to the issue of impeaching the **[**53]** "dubious, self-serving" testimony of Iseberg and Santi.

[*P68] The admission of testimony in rebuttal is within the sound discretion of the trial court. *People v. Daugherty, 43 Ill. 2d 251, 255, 253 N.E.2d 389 (1969)*. The plaintiff may not present in rebuttal "witnesses who merely support the allegations of the complaint but rather is confined to testimony that is directed to explain, qualify, modify, discredit, destroy, or otherwise shed light upon the evidence of the defendant, unless the court in its discretion permits the plaintiff to depart from the regular order of proof." Michael H. Graham, Graham's Handbook of Illinois Evidence § 611.3, at 526 (10th ed. 2010); see also *Daugherty, 43 Ill. 2d at 255*. Similarly, the decision whether to re-open proofs is left to the trial court's discretion. Michael H. Graham, Graham's Handbook of Illinois Evidence § 611.4, at 528. The court should consider various factors, including any explanation for the failure to introduce the evidence at trial; whether the adverse party will be surprised or unfairly prejudiced by the evidence; whether the evidence is necessary to the movant's case; and whether there are convincing reasons to deny the request. *Id.* "[A]n abuse of **[**54]** discretion is likely to occur only when a party is prevented from impeaching witnesses, supporting the credibility of impeached witnesses, or responding to new points raised by the opponent." *Barth v. Massa, 201 Ill. App. 3d 19, 33, 558 N.E.2d 528, 146 Ill. Dec. 565 (1990)*.

[*P69] Here, the court did not abuse its discretion and no error resulted from the exclusion of Bluma's testimony. In denying defendants' request to present her testimony, the trial court noted that Robert did not testify that Bluma was present during the hallway conversation and that "plenty" of witnesses had testified as to that conversation. Indeed, although Robert testified that others were present in the hallway during his conversation with Santi, he did not specify that Bluma was present. Further, we note that defendants offered no explanation for their failure to present Bluma's testimony during their case-in-chief. For example, they did not argue that Bluma was unavailable to testify during their case-in-chief. Further, Bluma's proposed testimony contradicts Noble's testimony that it was Iseberg who described the charges against Barbara as "egregious." Bluma's proposed testimony was that *Santi* stated to Robert that the charges were egregious, and, **[**55]** thus, her testimony would not have bolstered Noble's and Robert's credibility. Finally, defendant's argument that Bluma was not to be called as an occurrence witness, but, instead, to impeach Santi's testimony is not well-taken because the subject of ARDC charges was not raised for the first time during Santi's testimony and there was no need for any rebuttal to impeach that testimony. See *Hoem v. Zia, 239 Ill. App. 3d 601, 618, 606 N.E.2d 818, 179 Ill. Dec. 986 (1992)* (court erroneously excluded the plaintiff's expert's rebuttal testimony, where testimony would have related to matters raised for the first time in the defendants' case-in-chief). The court did not abuse its discretion in denying defendants' request to present Bluma's rebuttal testimony.

[*P70] In summary, we affirm the judgment of the trial court in *Susman III*.

[*P71] C. Mootness of *Susman I* & *Susman II*

[*P72] Next, we address an argument plaintiff raises in her briefs in all three appeals. Plaintiff contends that the issues in *Susman I* (involving the land trust) and *Susman II* (involving the contempt finding against Robert) will be rendered moot if this court rejects the Susman defendants' arguments in *Susman III*. She requests that we dismiss and/or deny *Susman I* and *Susman* ***[**56]*** *II* as moot. For the following reasons, we agree and find the two appeals moot and dismiss them.

[*P73] Generally, courts do not decide moot questions or render advisory opinions. *In re Val Q., 396 Ill. App. 3d 155, 159, 919 N.E.2d 976, 336 Ill. Dec. 51 (2009)*. Appellate jurisdiction is limited to actual controversies where a grant of relief is possible. *Midwest Central Education Ass'n v. Illinois Educational Labor Relations Board, 277 Ill. App. 3d 440, 448, 660 N.E.2d 151, 213 Ill. Dec. 894 (1995)*. When no relief can be granted on the claimed controversy, the issue is considered moot. *Id.* "[W]here only moot questions are involved, this court will dismiss the appeal." *Id.* A case on appeal becomes moot where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief. *Goodman v. Ward, 241 Ill. 2d 398, 404, 948 N.E.2d 580, 350 Ill. Dec. 300 (2011)*; *Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill. 2d 200, 207-08, 886 N.E.2d 1011, 319 Ill. Dec. 887 (2008)*. Exceptions to the mootness doctrine apply where: (1) the case presents a question of public import that will likely recur and the answer to that question will provide guidance to public officers in the performance **[**57]** of their duties; (2) the case involves events of short duration that are capable of repetition yet evading review; and (3) collateral consequences of the order could return to plague the respondent in some future proceeding or could affect other aspects of the respondent's life. *Val Q., 396 Ill. App. 3d at 159*. Defendants do not argue that any exception applies; rather, they contend that there are remaining controversies that do not render moot *Susman I* and *Susman II*.

[*P74] As noted, *Susman I* involves an order terminating the land trust and ordering a judicial sale. *Susman II* is an appeal from the contempt finding against Robert. The April 12, 2011, agreed order, signed by plaintiff, Robert (individually and on behalf of Susman Linoleum), and the trial judge states that: (1) the parties' settlement agreement is incorporated therein; (2) the trial court shall retain jurisdiction to enforce the terms of the agreement; (3) the findings of contempt against Robert "are vacated as referenced in various orders of court;" and (4) all trial dates are stricken. The agreement (signed by plaintiff and Robert (individually and on behalf of the business)) provides that Robert shall purchase the estate's **[**58]** stock in the business for $650,000 (paid with $600,000 cash and $50,000 upon the sale of the real estate); the parties will market the land for sale (for 18 months at a price determined by plaintiff); the court shall retain jurisdiction to resolve any disputes concerning any offers or the terms of any sale; Susman Linoleum shall occupy the premises until any sale and pay during that period any real estate taxes, insurance, maintenance, and utilities as the sole rent; the parties shall dismiss all appeals without cost to any party; no party shall file against the Susman defendants any petitions for attorney fees; the findings of contempt against Robert are vacated; if a party breaches the agreement and litigation ensues, the litigation costs and fees of the non-breaching party shall be assessed against and paid by the breaching party; the court shall retain jurisdiction to enforce the agreed order; and the parties shall cooperate with each other and act reasonably in fulfilling the terms and their obligations under the agreement.

[*P75] As to North Star, the Susman defendants argue that the trustee was not a party to any purported settlement and that its chancery complaint, which is currently **[**59]** pending and undetermined, seeks to have the trustee's deed declared null and void, cancel the recording of the deed, and seeks a declaration clearing the cloud on title and declaring that the trustee is the rightful holder of all title to and interest in the legal title to the real property, and an order declaring plaintiff to have not title or interest in the legal title to the property. In defendants' view, *Susman I* is not moot because North Star did not participate in the entry of the April 12, 2011, order or agreement.

[*P76] We reject defendants' argument. North Star was not a party to the proceedings in *Susman I*, and there are no claims it ever raised that remain pending in that case. Further, North Star has not joined any briefs filed in any of the three present appeals. It appears that it is listed as a defendant in the present appeals only because the (chancery) cases in which it is participating were consolidated in the trial court with the probate action from which the current appeals arose.

[*P77] As to defendants' argument that the $73,000 judgment (entered on April 7, 2011) against Robert was not vacated by the April 12, 2011, order and that a real controversy continues to exist, we **[**60]** disagree. On April 7, 2011, the trial court did not actually impose the $73,000 judgment, but stayed its enforcement to the trial date of April 12, 2011. On the trial date, the parties settled. In the April 12, 2011, agreed order entered by the trial judge, the court specifically determined that the findings of contempt against Robert "are vacated as referenced in various orders of court." Thus, there remains no controversy as to the contempt finding or the $73,000 judgment associated with it.

[*P78] Accordingly, because we affirm the trial court's judgment in *Susman III,* we conclude for the reasons stated above that the appeals in *Susman I* and *Susman II* are thereby moot. Appellate courts do not have jurisdiction to consider moot issues, therefore, we dismiss those appeals. *Steinbrecher v. Steinbrecher, 197 Ill. 2d 514, 523, 759 N.E.2d 509, 259 Ill. Dec. 729 (2001)*; *In re H.G., 197 Ill. 2d 317, 336, 757 N.E.2d 864, 259 Ill. Dec. 1 (2001)*.

[*P79] III. CONCLUSION

[*P80] For the foregoing reasons, the judgment of the circuit court of Lake County in appeal No. 2-11-0978 (*Susman III*) is affirmed. The appeals in cause Nos. 2-11-0121 (*Susman I*) and 2-11-0314 (*Susman II*) are dismissed.

[*P81] No. 2-11-0121, Dismissed.

[*P82] No. 2-11-0314, Dismissed.

[*P83] No. 2-11-0978, Affirmed.

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