

deposition testimony as a judicial admission, and (3) the trial court's findings were against the manifest weight of the evidence. We affirm.

The land at issue in this appeal consists of 71 acres of farmland in Jefferson County, Illinois. The land previously belonged to Hilda Frazier, the mother of Brett and Randy Frazier. She deeded the farm to her sons shortly before her death in 2005. There are three tracts of land involved. Brett and Randy each had a one-half interest in two of the tracts, while Brett owned the third tract outright. At the time Hilda deeded the land to her sons, neither lived in Illinois. Randy lived in New Hampshire, and Brett lived in Louisiana. In September 2005, however, Brett retired and moved with his wife, Barbara, into the farmhouse, which Hilda had lived in at the time of her death.

In 2006, Brett learned that the cancer he had been treated for five years earlier had recurred and spread to his bones. He informed his children of this in June. As Brett's health deteriorated, Randy, Missy, and Kevin took turns visiting Illinois to help Barbara care for Brett.

In November 2006, Brett was admitted to the hospital for approximately one week. During this stay, a conversation took place in his hospital room. Missy, Kevin, Randy, and Barbara were all present. Although at the trial there were some minor differences in the accounts of this conversation, all the witnesses testified that Brett told Missy and Kevin that he was going to leave his interest in the farm to Randy and that Randy would take care of the farm. Missy and Randy both testified that Brett told them that Randy would then leave the farm to Missy and Kevin when he died. Both further testified that Randy interjected and told them that it was possible that he might sell the farm during his lifetime due to financial constraints.

On December 2, 2006, Brett executed a quitclaim deed transferring his interest in the farm to Randy. Brett passed away on February 13, 2007. The following day, Missy asked

Randy whether she and Kevin had any sort of protection for their expected inheritance of the farm. He told her no, but he said not to worry about it because they would inherit it. Sometime after that, Randy indicated that he was planning to leave the land to a charitable organization and not to Missy and Kevin. Missy and Kevin then initiated the instant suit seeking the imposition of a constructive trust on various theories.

The plaintiffs filed two amended complaints and a pleading styled an amendment to their second amended complaint. At the opening of the bench trial in this matter, the plaintiffs moved to voluntarily dismiss the first two of the four counts then pending, both of which alleged a breach of fiduciary duty under alternative theories. The plaintiffs also moved for leave to file count V. The court granted both motions, and the matter proceeded to a trial on the following three counts. Count III alleged that the defendant breached an agreement to leave the farm to the plaintiffs. Count IV alleged that the defendant breached a fiduciary duty that arose by virtue of an agency relationship between the defendant and Brett. Count V alleged promissory estoppel. Counts III and V each relied on the theory that the defendant, by his conduct, made a promise to Brett to leave the farm to the plaintiffs after his death unless financial difficulty forced him to sell it during his lifetime. In essence, the plaintiffs argued that he made that promise by accepting the deed and saying nothing when Brett told Kevin and Missy that they would inherit the farm unless their uncle sold it during his lifetime due to financial need. Count IV alleged that Randy became Brett's agent by the same conduct.

Missy Frazier first testified about the conversation in Brett's hospital room during which Brett told her and Kevin that he was going to leave the land to Randy. She testified that he then told them: "[Y]ou kids are going to end up getting it. He's going to leave it to you when he dies." She stated that both Brett's wife, Barbara, and Randy's wife, Lora, had been told "that Frazier things will stay with the Fraziers and that it will stay in our family."

Asked whether Randy said anything, Missy replied, "[H]e interjected, you know, [']in case I have to sell it or something when I get old, you know, if I am struggling financially or something, there may be a time when I have to sell it[,] but otherwise you kids are going to end up with it.[']" She stated that Randy also told them that he would take care of the farm "so you kids don't have to worry about it."

Missy testified that she had one other conversation with her father about his estate planning. This occurred in December 2006. Missy testified that they discussed an insurance policy but did not discuss Brett's interest in the farm.

She then testified about a conversation she had with Randy the day after Brett's death. She testified that she asked Randy how her and Kevin's interest in inheriting the farm was protected. According to Missy, Randy told her that they had no protection but that they would eventually inherit the farm anyway. She testified that she asked him to put this in writing but that he refused.

Randy Frazier's testimony was mainly consistent with Missy's regarding what Brett had said during the conversation in his hospital room. Unlike Missy, however, Randy testified that selling the land in case of financial difficulty was only one example of a reason that the kids would not inherit the farm. He acknowledged, however, that this was the only example ever given. He also testified that he did not remember whether Brett told Missy and Kevin that he would definitely leave them the farm or whether he told them only that he would "most likely" leave it to them. He acknowledged, however, that Brett's "intent was that they would most likely get it for sure" after Randy's death.

Randy further testified that he never made any promises to Brett about the property and did not tell Brett that he would make any specific provisions for it after his death. He testified that Brett asked him to allow Barbara to continue to live in the farmhouse as long as she wanted to stay but that Brett did not ask him to do anything else.

Over the plaintiffs' objection, Randy testified about a conversation he had with Brett a few weeks before the conversation that took place in Brett's hospital room. Randy explained that Brett asked him what he intended to do with his own interest in the farm. Randy stated that he told Brett he and his wife, Lora, needed to revise their 25-year-old will and that he was thinking of leaving his share of the farm to Brett's two children. However, he testified that he did not promise Brett that he would do so. Asked whether he made any promises to Brett, Randy further testified that not only did he make no promises but he told Brett that if his intent was to leave his interest in the farm to his children, he should do so directly.

Norman Conrad is the attorney who drafted the quitclaim deed and aided Brett in other estate-planning matters. He testified that he met with Brett "at least three times" to help him transfer various assets, including his interest in the farm. Conrad testified that Brett's interest in the farm was his "single largest asset." However, he did have other major assets that he left to his wife and children. Conrad testified that he helped Brett transfer his half-interest in a New Orleans condominium to Kevin and Missy, the half-interest in the farm to Randy, and titles to various vehicles he owned to different people. He also had a life insurance policy naming Kevin and Missy as beneficiaries, and his will left the remainder of his estate to Barbara. Conrad further testified that Brett told him that he wanted Barbara to be able to continue to live in the farmhouse and that he wanted the farm to remain intact and in the family; he did not want creditors of Missy and Kevin to be able to reach the property. Conrad testified that Brett did not tell him that he wanted Randy to leave the farm to the children.

Finally, Barbara Frazier testified. She stated that Randy often visited Brett in Illinois, even before Brett became ill. She testified that Brett told Missy and Kevin that Randy would take care of the property so that they would not have to do so; however, this was all she could

remember of the conversation in Brett's hospital room. Asked whether Brett had asked Randy to do anything specific with the property after his death, Barbara replied as follows: "No. I think he left it up to Randy's discretion."

The court took the matter under advisement and allowed the parties to submit arguments in writing. The plaintiffs also filed a motion to reconsider a ruling the court made at the trial. Specifically, they asked the court to revisit a ruling denying their request to treat portions of the defendant's discovery deposition as judicial admissions. In its written order, the court reaffirmed this decision, explaining that the testimony was not clear and unequivocal. The court also noted that Randy testified to many of the same facts at the trial, and the court considered these statements. The court stated that granting the plaintiffs' request to treat these statements as a judicial admission would not have changed the result. The court expressly found the defendant to be a "very credible witness." The court further found that the evidence did not establish (1) that Brett and Randy had entered into a binding agreement, (2) that Randy had unambiguously promised Brett to leave the farm to his children, or (3) that a fiduciary relationship arose between Brett and Randy. Thus, the court entered a judgment for the defendant on all three counts. This appeal followed.

The plaintiffs first argue that the court abused its discretion by admitting hearsay testimony of the defendant. The admissibility of evidence is a decision left to the sound discretion of the trial court. We will not reverse a court's evidentiary rulings absent a clear abuse of this discretion. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 92, 658 N.E.2d 450, 454-55 (1995).

As noted previously, Randy testified over the plaintiffs' objection to a conversation he had with Brett shortly before the conversation in his hospital room. The plaintiffs objected to the entire line of questioning on the grounds that it would call for hearsay testimony about what Randy had said to Brett. The defendant argued that the testimony was

relevant to show why certain things were said during the conversation that took place in Brett's hospital room a few weeks later. The court overruled the objection, finding the testimony relevant for the limited purpose of providing a context for the testimony related to the conversation in the hospital. On appeal, the plaintiffs challenge only one statement Randy made during this questioning, which occurred during the following exchange between Randy and his attorney:

"Q. Did you ever tell Brett Frazier that if he gave you his half interest in the property, that when you died you would give it to the kids?

A. On the contrary. I told him if he wanted to do that, leave it to his children, he should do it directly and not involve me."

The plaintiffs argue that this was inadmissible hearsay. The plaintiffs further argue that this was a "self-serving statement" that was unduly prejudicial because Brett Frazier was not alive and could not contradict it. The defendant argues that the statement was not hearsay because it was not offered to prove any factual matter asserted in the statement.

Hearsay is an out-of-court statement offered for the truth of the matter asserted. *Leonardi*, 168 Ill. 2d at 99, 658 N.E.2d at 458. We note that the matter asserted in the defendant's out-of-court statement here—that if Brett wanted to leave the land to his children, he should have done so directly—is an opinion; no factual matter was asserted. The hearsay rule is inapplicable when an out-of-court statement is offered as evidence of anything other than the truth of a factual matter asserted in the statement. *Leonardi*, 168 Ill. 2d at 99, 658 N.E.2d at 458. Here, as previously mentioned, the court allowed the line of questioning for the limited purpose of providing some context for a conversation that took place later. We note, however, that the court might have considered the specific statement for the purpose of showing whether the defendant ever promised his brother to leave the farm to Missy and Kevin in his will. Thus, the statement was relevant to show whether something was said, not

whether the substance of the statement is true. See *Lundberg v. Church Farm, Inc.*, 151 Ill. App. 3d 452, 459, 502 N.E.2d 806, 811 (1986) (explaining that statements are admissible to show that they were made and what effect they had on the intent of the parties).

We also emphasize that the purpose of the hearsay rule is to exclude statements by declarants whose credibility cannot be tested in court. See *Lundberg*, 151 Ill. App. 3d at 458, 502 N.E.2d at 811 (explaining that when a statement is offered for a nonhearsay purpose, "its value does not rest on the credibility of the declarant"); *Country Casualty Insurance Co. v. Wilson*, 144 Ill. App. 3d 28, 31, 494 N.E.2d 152, 153-54 (1986) (the statements of an out-of-court declarant "whose credibility could not be tested" that corroborate the testimony of an in-court witness were prejudicial). Here, Randy testified to his own statement. Although Brett obviously could not contradict him, Randy was subject to cross-examination and the court was able to assess his credibility as a witness. We find nothing improper about allowing him to testify to the fact that he made this statement.

The plaintiffs next contend that the court abused its discretion in refusing their request to treat portions of the defendant's discovery deposition testimony as judicial admissions. Discovery deposition testimony is admissible as a judicial admission under the same circumstances as any other admission by a party. *In re Estate of Rennick*, 181 Ill. 2d 395, 404, 692 N.E.2d 1150, 1155 (1998); Ill. S. Ct. R. 212(a)(2) (eff. Jan. 1, 2011). A statement must be "deliberate, clear, [and] unequivocal" to be treated as a judicial admission. *In re Estate of Rennick*, 181 Ill. 2d at 406, 692 N.E.2d at 1156. It must also relate to a "concrete fact within [the] party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d at 406, 692 N.E.2d at 1156. We do not believe that the deposition testimony the plaintiffs sought to treat as judicial admissions meets this standard.

We will set out portions of the relevant deposition testimony in some detail. The defendant was asked about the conversation in Brett's hospital room. After he testified that

Brett said he would leave the farm to him, the plaintiffs' attorney asked if Brett then told Missy and Kevin that when the defendant died, they would "get the whole thing." The defendant replied: "Probably, yeah, because of our conversation before. It was my intention to leave my half, as well, to them. I can't say that's true now."

Later, the defendant was asked to admit that what Brett had told Missy and Kevin would happen with the farm was "not quite what was done." The defendant replied, "Pretty close." Asked to explain this answer, he testified as follows:

"Well, I got the property. That was what was said before. I had the discretion of how it was to be disposed of ***. *** My example that was interjected at the time was that if I needed to sell it for my financial needs, that it would not be there."

The defendant then admitted that this was the only interjection that he made and that Brett likely believed that this was the only reason he would not subsequently leave the farm to Missy and Kevin.

The following colloquy then occurred:

"Q. So just because you're pissed off at them now, that's not one of the conditions that you told him. ***

A. We didn't have any conditions. *** There were no conditions. We didn't make an agreement.

Q. But when you accepted title to the deed, the only discussion that you had about the only way that these kids wouldn't inherit it is if you had to resort to selling it for your old age?

A. But that wasn't in the agreement.

Q. But that's what you said to him, right?

A. That's what I said."

At the trial, the plaintiffs argued that this testimony, taken as a whole, showed that the

defendant made a promise to his brother to leave the farm to the plaintiffs. On appeal, they argue that this was a clear, unequivocal, and deliberate statement of both the terms of Brett's estate plan and the "defendant's acquiescence therein." We disagree. The testimony may be a clear, unequivocal statement that the defendant told Brett he was thinking of leaving his own half-interest in the farm to Missy and Kevin. It may also be a clear and unequivocal statement that the defendant believed that Brett believed he would leave the entire farm to them if he did not sell it during his lifetime. While it is possible to draw an inference from the testimony that Brett's decision to convey his interest in the property to his brother was a part of an estate plan, it does not amount to a clear and unequivocal statement of that fact. In addition, Brett's intent was not a concrete matter within the defendant's knowledge.

Moreover, as the court explained in its order, the substance of this testimony was all before the court. Much of it was elicited during the defendant's direct testimony. In addition, to the extent that there were inconsistencies between his trial testimony and his deposition testimony, the plaintiffs cross-examined him with the precise wording of his deposition testimony. Thus, the testimony was before the court. Even assuming that it was error to refuse to treat this testimony as a judicial admission, it did not prejudice the plaintiffs. However, we find that the court properly denied the request.

Finally, the plaintiffs argue that the court's findings were against the manifest weight of the evidence. A finding is only against the manifest weight of the evidence if the opposite conclusion is clearly apparent. *In re Estate of Wilson*, 238 Ill. 2d 519, 570, 939 N.E.2d 426, 456 (2010). We do not believe that this standard is met.

The plaintiffs do not challenge the court's findings with respect to count III of their complaint, which alleged that the defendant breached an agreement with his brother. They do, however, challenge the court's findings with respect to counts IV and V. Count IV alleged that the defendant breached a fiduciary duty to Brett that arose from an agent-

principal relationship between them. The plaintiffs cite two cases in support of the proposition that a person can become an agent by his conduct in accepting the property of another to manage it for the benefit of that person. While this proposition is correct (see *In re Estate of Morys*, 17 Ill. App. 3d 6, 8, 307 N.E.2d 669, 671 (1973)), we find both cases distinguishable and do not believe that the facts of the instant case warrant the same conclusion here.

In *In re Estate of Morys*, the decedent owned an apartment building. The title to the building was held in a land trust, with the decedent owning a beneficial interest. She lived in one of the apartments and rented the others to tenants. *In re Estate of Morys*, 17 Ill. App. 3d at 7, 307 N.E.2d at 670. When she became sick, she asked the defendant to collect rent and manage the building. She gave her the keys to the building. *In re Estate of Morys*, 17 Ill. App. 3d at 8, 307 N.E.2d at 670. A few weeks later, the decedent transferred her beneficial interest in the building to the defendant. *In re Estate of Morys*, 17 Ill. App. 3d at 8, 307 N.E.2d at 670-71. Eleven days later, she executed a power of attorney allowing the defendant to manage her affairs. From that point until the end of the decedent's life (approximately one month later), the defendant collected rents from the building, deposited them in the decedent's account, managed the building, and managed the decedent's personal affairs. *In re Estate of Morys*, 17 Ill. App. 3d at 8, 307 N.E.2d at 671.

The appellate court found that the transfer of the decedent's beneficial interest in the building was intended to allow the defendant to act as the decedent's agent, and that it was not intended as a gift. In reaching this conclusion, the court emphasized that both the decedent and the defendant "continued to treat the real estate" as if it belonged to the decedent. *In re Estate of Morys*, 17 Ill. App. 3d at 10, 307 N.E.2d at 672. The defendant continued to deposit the rent in the decedent's account and used her power of attorney to pay the real estate taxes on behalf of the decedent. It was because the conduct of both women

was consistent with an agency relationship that the court found that the beneficial interest in the building was held by the defendant solely for the purpose of allowing her to act as the decedent's agent. *In re Estate of Morys*, 17 Ill. App. 3d at 10, 307 N.E.2d at 672.

In *Ray v. Winter*, 67 Ill. 2d 296, 367 N.E.2d 678 (1977), the plaintiff entered into an oral agreement to purchase a 60-acre piece of property. However, because he had insufficient funds at the time, the seller agreed to hold the land for him until he sold some cattle later in the year. *Ray*, 67 Ill. 2d at 300, 367 N.E.2d at 680. The plaintiff subsequently agreed to sell 20 acres of the land to the defendants after he purchased it. After a third party asked the seller about buying the same property, both the plaintiff and the defendants became concerned that the land could be sold before the plaintiff had the funds to make the purchase. *Ray*, 67 Ill. 2d at 300, 367 N.E.2d at 680. They decided that the defendants would purchase the entire 60-acre tract from the seller and convey 40 acres to the plaintiff once he sold his cattle. *Ray*, 67 Ill. 2d at 300-01, 367 N.E.2d at 680-81. The plaintiff informed the seller of this plan and gave the seller permission to sell the land to the defendants. The defendants then decided that they wanted to keep the entire tract. *Ray*, 67 Ill. 2d at 301, 367 N.E.2d at 681.

In finding that the defendants had acted as the plaintiff's agents in purchasing the 40 acres, the court noted that the plaintiff had a valid option to purchase the land, as evidenced by the fact that the seller refused to sell to the third party who expressed interest. *Ray*, 67 Ill. 2d at 305, 367 N.E.2d at 683. This gave him an interest in the land before the defendants became aware of it. For these reasons, the court found that the defendants had purchased those 40 acres acting as agents for the plaintiff. *Ray*, 67 Ill. 2d at 305-06, 367 N.E.2d at 683.

Here, there were no similar facts indicating any intent for the defendant to act as Brett's agent. We note that Brett could have chosen to convey only a life estate in his half-interest to Randy with the remainder going to Missy and Kevin. He also could have chosen

to convey the half-interest to them directly. Under either scenario, Randy would have continued to own a half-interest in the farm. Thus, Randy could have continued to manage the farm without the conveyance. There was no evidence whatsoever of any express conditions placed on the conveyance, and we do not believe that the evidence presented leads inescapably to the inference that Brett conveyed the farm to Randy only so that he could manage it for the benefit of Missy and Kevin. We find that the evidence supports the court's determination that the plaintiffs failed to prove an agent-principal relationship.

Count V set forth a claim for promissory estoppel. The court found that the plaintiffs failed to demonstrate the elements of this claim, and the plaintiffs contend that this finding, too, was against the manifest weight of the evidence. We disagree.

In order to support a claim of promissory estoppel, a plaintiff must demonstrate that (1) the defendant made an unambiguous promise to do something, (2) the plaintiff relied on this promise, (3) the plaintiff's reliance was foreseeable to the defendant, and (4) the plaintiff relied on the promise to his detriment. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51, 906 N.E.2d 520, 523-24 (2009). The plaintiffs argue that the evidence here showed that the "defendant unambiguously promised [the] decedent that he would take care of the premises during his life" and then convey the entire farm to the plaintiffs upon his death unless he needed to sell it. They then argue that the only reasonable inference from this evidence is that Brett relied on this promise in conveying the farm to Randy.

We do not agree that the evidence shows an unambiguous promise. Randy told Brett that he was probably going to leave his own half-interest in the farm to Kevin and Missy if he did not sell it during his lifetime. When Randy then told Kevin and Missy that they would inherit the farm, he did not say anything to indicate that he might not leave it to them in his will if he did not sell it earlier. He testified that his intent at the time was to leave it to Kevin and Missy. This evidence simply does not amount to an unambiguous promise. Without an

unambiguous promise, there can be no promissory estoppel. We thus reject the plaintiffs' argument that the court's findings with respect to count V were against the manifest weight of the evidence.

For the reasons stated, we conclude that the court did not abuse its discretion in allowing the defendant to testify to his own out-of-court statement or in refusing to treat his deposition testimony as a judicial admission. We further conclude that the court's findings were supported by the evidence. We therefore affirm the judgment.

Affirmed.