

No. 1-11-2055

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).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

TIBERIU KLEIN,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County
)
 v.) No. 09 L 10077
) cons. with Nos.
 GREYHOUND LINES, INC., *et. al.*,) 10 L 08992
) 03 P 8718
 Defendants-Appellees.) 07 P 7929
) 07 L 3391
) 09 L 6397
) 09 L 10417
)
)
)
) Honorable
) William Maddux,
) Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion in granting motion to consolidate cases and place on appellate court stay calendar in view of nature of, and plaintiff's involvement in, underlying protracted litigation.

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¶ 2 *Pro se* plaintiff, Tiberiu Klein filed this interlocutory appeal, pursuant to Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010). He contends that the trial court either had no authority or abused its discretion in ordering the consolidation of several cases and placing them on the appellate stay calendar. He requests this court vacate the order. For the reasons that follow, we affirm.

¶ 3 The details regarding the background of this litigation can be found in this court's prior opinions, *Cushing v. Greyhound*, 2012 IL App (1st) 100768, and *Cushing v. Greyhound*, 2013 IL App (1st) 103197 (the latter of which had not been released for publication in the permanent law reports at the time of this order). We include here those details we believe are necessary for an understanding of the issues raised in this interlocutory appeal. Those details involve Klein's role, and involvement, in the underlying cases.

¶ 4 In January 2002, Claudia Zvunca tragically died after being struck by a bus owned by defendant, Greyhound Lines, Inc. (Greyhound). At the time, Claudia was traveling to Illinois with her minor daughter, Cristina Zvunca, who was seven years old at the time. Claudia was struck by the Greyhound bus during a stop in Colorado. Cristina witnessed the accident. At the time of Claudia Zvunca's death, she was married to Klein, who lived in Illinois.

¶ 5 As Klein states in his brief, he “hired attorney James P. Nagle in about March 2002 *to represent only his interests* since he was not the biological father of Cristina Zvunca.” (Emphasis added.) In May 2002, Nagle filed a wrongful death and survival action in Cook County against Greyhound Lines, Inc. (Greyhound), and its driver, Wesley Jay Tatum (No. 02 L 5584). Motor Coach, the designer of the bus that struck Claudia, was not named as a defendant at this point.

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The complaint, although filed on behalf of Klein, “individually and as Executor of the Estate of Claudia Zvunca,” alleged that Klein was Cristina's guardian and sought wrongful death damages for *both* Klein and Cristina (paragraph 14 of the complaint alleged that both Klein and Cristina had “lost the companionship, love, [and] affection of their respective wife and mother”). The complaint did not contain a claim for damages for Cristina's personal emotional distress (as a result of witnessing the accident).¹

¶ 6 In Illinois, a wrongful death action must be filed by “a representative” of the decedent on behalf of the estate. See, *e.g.*, *Nagel v. Inman*, 402 Ill. App. 3d 766, 770 (2010). If the next of kin of a decedent sues in his or her individual capacity, or if the person named in the caption as the administrator of the decedent's estate was not properly appointed, there is no proper plaintiff. *Id.* In the instant case, the wrongful death complaint was filed on behalf of Klein “individually and as Executor of the Estate of Claudia Zvunca.” However, Claudia had died intestate and Klein had not been appointed representative of Claudia's estate. Neither had Klein been appointed special administrator. As we have explained:

“Ideally, the administrator should be appointed first and the wrongful-death action filed subsequently. [Citation.] However, a failure to follow this procedure is not necessarily fatal to a cause of action. [Citation.]

Numerous cases have found that where an administrator is appointed after the suit

¹ For reasons more thoroughly explained in our prior opinions, this case evolved into the existence of two wrongful death actions: one in Colorado federal court and one in Illinois state court. The Illinois action, and not the Colorado action, also contained counts for Cristina's personal claims for negligent infliction of emotional distress.

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is filed, the appointment will relate back to the time when the suit was filed.

[Citation.]” *Id.*

Thus, although the complaint was deficient because Klein had not been appointed administrator, the deficiency in the complaint was not fatal. However, the deficiency was never challenged by Greyhound and it was never addressed by an Illinois court. Instead, on May 31, 2002, Greyhound filed a notice of removal of the action to federal court based on diversity of citizenship. Greyhound then filed a *forum non conveniens* motion in the federal court for the Northern District of Illinois, which was granted, and the action was transferred to the District of Colorado. On November 12, 2002, Greyhound filed its answer to Klein's complaint. On December 6, 2002, Klein filed a motion for voluntary dismissal of the action without prejudice, which Greyhound opposed. The court denied Klein's motion because Greyhound had already answered the complaint and there was no stipulation to dismiss the case. The deadline for amending pleadings and adding parties was set for January 6, 2003.

¶ 7 On or about February 19, 2003, Klein retained the law firm of Cogan, McNabola & Dolan, LLC (the Cogan firm), as substitute counsel. *Cogan & McNabola P.C. v. Klein*, No. 1-09-0848 (2010) (unpublished order under Supreme Court Rule 23). In November 2003, Klein filed a petition in the probate division of the circuit court of Cook County to appoint Greg Marshall as the independent administrator of the decedent's estate (No. 03 P 8718). Marshall was a paralegal in the Cogan firm. The probate division granted Klein's petition.

¶ 8 On January 15, 2004, the Cogan firm filed a wrongful death and survival complaint in Cook County against Motor Coach (No. 04 L 497). The plaintiff was Greg Marshall, as

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administrator of the estate of Claudia Zvunca, deceased. The Cogan firm simultaneously attempted to add Motor Coach, the bus designer, as a defendant in the Colorado case but were unsuccessful after opposition from Greyhound. On April 6, 2004, the circuit court of Cook County granted leave to the Cogan firm to amend Marshall's complaint to add Greyhound and Tatum as defendants. On April 27, 2004, Klein signed a legal services agreement with the law firm of Clancy & Stevens. The firm substituted as counsel for Marshall. The Cogan firm withdrew after being discharged by Klein.

¶ 9 In May 2004, the defendants in case No. 04 L 497 filed motions to dismiss. The case was voluntarily dismissed in May 2004. On September 14, 2004, Clancy & Stevens filed a wrongful death action in the circuit court on behalf of Greg Marshall, as independent administrator of the estate of Claudia Zvunca, deceased, and Cristina Zvunca, a minor, by Paul Brent, as next friend, against Motor Coach, Greyhound, and Tatum (No. 04 L 10431). As noted earlier, unlike the Colorado case, the Illinois case contained claims on behalf of Cristina *individually* for emotional distress as a result of witnessing the accident involving her mother. Clancy & Stevens, on behalf of Klein, moved for reconsideration of the 2002 order transferring the case to Colorado, and requested that the Colorado case be transferred back to the Northern District of Illinois. Klein noted that the Illinois case had been filed in which Motor Coach, an Illinois corporation, was an additional defendant. Klein contended that, by transferring the Colorado action back to Illinois, all claims could ultimately be consolidated in a single forum before a single judge and tried to a single jury. In the alternative, Klein sought a determination that Cristina's claim for damages was not at issue in the Colorado action. Greyhound opposed

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Klein's motion. On November 15, 2004, the Colorado court denied Klein's motions.

¶ 10 At this point, there then existed two wrongful death actions. Greyhound then sought to stay the Illinois action as duplicative of the Colorado action.

¶ 11 On May 13, 2005, pursuant to Klein's verified petition, in probate case No. 03 P 8718, the probate division appointed Cushing as the independent administrator *de bonis non* of Claudia's estate, to replace Marshall, who had resigned on April 27, 2005. On September 27, 2005, however, Klein filed a motion to terminate Cushing's independent administration of Claudia's estate. The motion was granted and Cushing's administration became supervised. In his brief, Klein states that he filed the motion: “[f]ollowing a dissatisfaction that he was not named as beneficiary in the complaint against Greyhound in the Illinois case and because the administrator Cushing has not appealed the dismissal of the Survival action and instead he accepted Greyhound[s] demand not to seek damages for the benefit of Tiberiu Klein in the Illinois case.”

¶ 12 On September 30, 2005, another panel of this court affirmed the trial court's decision to deny Greyhound's section 2-619 (735 ILCS 5/2-619 (West 2004)) motion to stay the Illinois action (as duplicative of the Colorado action). *Marshall v. Motor Coach Industries International, Inc.*, No. 1-05-0701 (2005) (unpublished order under Supreme Court Rule 23). As the court explained, Klein and Cristina had “potentially divergent interests.” *Id.* at 3. The court stated as follows:

“Following the decedent's demise, Klein and [Cristina] are legally strangers.

Klein is not [Cristina's] natural father, and he has not been appointed to act as her guardian. Although they undoubtedly share an interest in obtaining as large a

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judgment as possible from defendant as the result of decedent's death, their interest may well diverge in other areas. For example, under Illinois law, [Cristina] may argue that she is entitled to a larger share of any wrongful death verdict because she has a greater 'percentage of dependency' than Klein. See 740 ILCS 180/2 (West 2004). At the very least, [Cristina] and Klein may disagree about whether Illinois or Colorado law should govern the proceeds of any wrongful death claim. Moreover, because [Cristina] claims damages individually as the result of negligent infliction of emotion [*sic*] distress, she and Klein may disagree about how a potential settlement with defendant should be attributed [*sic*] between the wrongful death and negligent infliction claims.”

¶ 13 On September 29, 2006, the same panel that decided appeal No. 1-05-0701 entered a summary order and affirmed the trial court's denial of Greyhound's *forum non conveniens* motion. *Cushing v. Greyhound Lines, Inc.*, No. 1-05-1463 (2006) (unpublished order under Supreme Court Rule 23).

¶ 14 On February 23, 2007, Klein, *pro se*, filed a legal malpractice suit, No. 07 L 2063, against various defendants including the administrators of Claudia's estate in the Illinois wrongful death action, Greyhound's counsel, and several attorneys including the law firm that filed his 2002 wrongful death action. The case was later voluntarily dismissed on August 22, 2008, and Klein's motion to reinstate the case was denied in April 2009.

¶ 15 During 2007 and 2008, Klein filed a number of petitions to remove the administrator of Claudia's estate and to intervene in the Illinois wrongful death action, all of which were denied.

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James Avery, the attorney then representing Klein in the Colorado wrongful death action attempted to intervene in the Illinois wrongful death action. Also in 2007, Klein and Greyhound attempted to obtain a settlement in the Colorado action which would be premised upon the Illinois action being dismissed. On January 24, 2008, the court denied attorney Avery's petition for admission *pro hac vice* and motion on behalf of Klein to intervene and to stay the proceedings.

¶ 16 Throughout the course of this litigation, various parties and attorneys purported to represent Cristina's interests in the litigation. Klein attempted to intervene in the Illinois action to represent Cristina's interests. Although the trial court had appointed *guardian ad litem* Marina Ammendola to represent Cristina's interests, Klein sought to have her removed. Klein sought to have himself appointed plenary guardian for Cristina (over the objections of GAL Ammendola). On November 8, 2007, Klein, *pro se*, filed a petition in the probate division for guardianship of Cristina (No. 07 P 7929). Klein continued his pursuit with the assistance of counsel. As we note below, Klein was successful.

¶ 17 Meanwhile, in the Illinois wrongful death action, Greyhound sought to depose Cristina. However, GAL Ammendola had concerns as to whether it was in Cristina's best interests to give a deposition. In a letter dated September 6, 2007, Dr. Bennett Leventhal, a pediatric psychiatrist who had reviewed copies of Cristina's prior treatment records and the police report of the accident that had killed Cristina's mother, concluded that he did not think it was appropriate for Cristina to give a deposition.

¶ 18 On September 11, 2007, and apparently again on January 31, 2008, the trial court

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requested a current evaluation before ruling on whether it was in Cristina's best interests to give a deposition. GAL Ammendola sought Klein's cooperation in having Cristina evaluated. Klein, who was Cristina's temporary guardian at the time, would not cooperate. On February 20, 2008, GAL Ammendola faxed a letter to him urging his cooperation. Klein, however, retained an Illinois attorney. On February 21, 2008, the day after GAL Ammendola's written request to Klein to cooperate, Klein's new Illinois attorney faxed a letter to GAL Ammendola informing her that he had been "retained by Klein to represent his interests in this matter." On April 7, 2008, Klein's Illinois attorney informed GAL Ammendola that he also represented Cristina's grandparents. One week later, on April 14, 2008, Klein's Illinois attorney filed a motion to intervene as a matter of right in the underlying action on behalf of "Tiberiu Klein, as Temporary Guardian of Christina [*sic*] Zvunca, a Minor, Maria Zvunca, the Mother by adoption of said Minor, and Vasile Zvunca, the Father by adoption of said Minor."

¶ 19 On June 3, 2008, the trial court denied Klein's motion to intervene in the Illinois wrongful death action. The court noted that the petition to intervene stated that Klein had been appointed as Cristina's temporary guardian even though the petition predicated Klein's interest in this litigation on his status as the decedent's husband and his claim that *his* interests would not be adequately represented by the attorneys representing the estate, with whom Klein had a conflict. The court concluded that the estate had been aggressively represented throughout the litigation. The court noted that, at the time the petition to intervene was filed, all discovery relating to liability had been concluded, including expert discovery. The court further noted that, with the exception of Cristina's testimony, the case was ready for trial. Also, the court concluded that the

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July 2007 negotiations to settle the Colorado action, described earlier, suggested that Klein's interests and Cristina's interests were in conflict, and that allowing Klein to intervene might prejudice the rights of the original parties, including Cristina. As to the Zvuncas (Cristina's grandparents/adoptive parents), the court noted that “[a] Guardian *ad Litem* was appointed to protect the rights of the minor, Cristina, and the Guardian [*ad Litem*] has served in this capacity since May 2005.” The court concluded that the Zvuncas were strangers to the lawsuit and had not contended that the guardian *ad litem* had not adequately represented the minor but instead complained only that she had taken steps that were against the wishes of the family.

¶ 20 Eventually, however, Klein became involved in the Illinois wrongful death action. On July 18, 2008, with the assistance of his attorney in the probate division, Klein was appointed plenary guardian of the “estate and person” of Cristina. Thus, the estate for the minor, Cristina Zvunca, was opened. On July 31, 2008, Klein's attorney filed a “Substitution Appearance on behalf of Cristina Zvunca.”

¶ 21 On August 8, 2008, Klein's attorney, on behalf of “Vasile Zvunca and Maria Zvunca, individually and as next friend of a minor, Cristina Zvunca” filed an action in federal court against various defendants including Greyhound, the administrator of Claudia's estate in the Illinois wrongful death case, the attorneys representing the estate, and GAL Ammendola. (No. 08 C 4507). (Klein would later contend that this case was filed without authority.) The complaint also contained allegations of fraud as well as physical and emotional abuse of Cristina.

¶ 22 On August 12, 2008, Klein's attorney, on behalf of Klein, individually and as guardian of the person and estate of Cristina Zvunca, and Maria and Vasile Zvunca, filed an emergency

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motion to remove GAL Ammendola. On the same day, Klein's attorney filed revised motions for substitution of judge in the wrongful death action.

¶ 23 On June 1, 2009, Klein's attorney filed a complaint in state court (No. 09 L 6397) containing allegations similar to those in the 2008 federal court case. (Klein would later contend that this case also was filed without authority.)

¶ 24 On August 6, 2009, during a hearing on Greyhound's motion for substitution of judge in the Illinois wrongful death action, Klein's attorney presented eight additional motions for substitution of judge. The record indicates that the hearing was held to determine whether Klein, Cristina, and Cristina's grandparents were “necessary parties” for the purpose of the Illinois wrongful death action. Klein's attorney argued that he represented Cristina and her estate, that they were necessary party plaintiffs, and they were not being represented in the proceedings. He also contended that Klein, a beneficiary of Claudia's estate, “should be getting money out of this case and he is not being represented.”

¶ 25 At some point, conflicts arose between Klein and his Illinois attorney. On August 26, 2009, Klein refiled case No. 07 L 2063. He now claims on appeal that it was “previously dismissed in secrecy” by his attorney. On September 2, 2009, a hearing was held in probate division in case No. 07 P 7929 on Klein's “*Pro Se* Emergency Motion for Authority, Guidance, Protection of Ward Interest,” which was “entered and continued generally.” Klein claims he informed the judge in the probate division that he had discharged his counsel.

¶ 26 On September 3, 2009, Klein's attorney filed another action on behalf of Cristina's estate alleging negligent infliction of emotional distress against defendants Motor Coach and

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Greyhound (No. 09 L 10417).

¶ 27 In the Illinois wrongful death action, the motion for substitution of judge was ultimately granted and the case was assigned to a new judge who soon thereafter removed GAL Ammendola in case number 07 L 3391 and appointed attorney David Gubbins as guardian *ad litem* for Cristina under case numbers 07 L 3391 and 09 L 10417. (Gubbins was discharged after Cristina reached the age of majority in 2012.)

¶ 28 On September 22, 2009, the new judge entered an order *sua sponte* appointing Klein's former counsel and another attorney as "the sole attorneys for the Estate of Cristina Zvunca, a minor, and for Cristina Zvunca, a minor, individually," and further ordered that "in the Estate of Claudia Zvunca, deceased" those same attorneys were "appointed to represent the interests of the minor, Cristina Zvunca, only."

¶ 29 On October 22, 2009, GAL Gubbins filed an "Emergency Motion for Court Relief to Protect Cristina Zvunca's Interests from Detrimental Conduct of [Tiberiu Klein,] the Plenary Guardian." GAL Gubbins argued that despite the probate court's appointment of Klein as the plenary guardian of the minor, Klein no longer had any authority "to proceed or act on behalf of the minor in this lawsuit." GAL Gubbins additionally stated that, despite Klein's lack of authority as a result of the GAL appointment, Klein had attempted to act on behalf of Cristina and consistently attempted to disrupt settlement negotiations, including attempting to stay any future pretrial conference. GAL Gubbins further asserted that since the GAL appointment, Klein had, via numerous telephone and email communications to Cristina, provided incomplete, knowingly false and misleading information. Klein had also allegedly offered advice to the

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minor regarding legal representation, settlement values and suggested certain courses of action be taken by Cristina in her litigation. GAL Gubbins also claimed that Klein had filed litigation related to Cristina's cause of action concerning the death of her mother that would potentially benefit Klein, but would be of no benefit to Cristina.

¶ 30 On October 27, 2009, the trial court held a hearing on GAL Gubbins emergency motion. GAL Gubbins expressed his position: "This case is about Cristina Zvunca." GAL Gubbins stated that once the court appointed him as the GAL, Klein, although Cristina's plenary guardian, had no authority to proceed on her behalf. GAL Gubbins further stated that Klein was in conflict with Cristina because he had a case and "depending on what he gets is going to affect Cristina Zvunca." GAL Gubbins requested an order barring Klein from participating in this case, and also requested that "a corporate fiduciary institution, such as Northern Trust, [be] appointed plenary guardian, [so that the parties could] proceed on with the pretrial and, if necessary, the trial." The trial court barred Klein from filing anything with respect to the Illinois wrongful death action.

¶ 31 On November 17, 2009, the trial court entered a written order, "on the Court's motion" appointing Northern Trust Company as guardian of Cristina's estate.

¶ 32 On December 17, 2009, in the Illinois wrongful death action, Klein, as Cristina's plenary guardian, filed a *pro se* motion to reconsider or vacate the November 17, 2009 order which had replaced Klein with another guardian, Northern Trust. Klein contended that he had intervened in the Illinois action by his former attorney. Klein argued that he and the Zvunca family had discharged the attorney yet the attorney was "refusing to withdraw his appearance on behalf of

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the plenary guardian.”

¶ 33 On December 17, 2009, the Illinois wrongful death action was reassigned to a new judge. On December 30, 2009, Klein's former counsel filed an emergency motion on behalf of “the Estate of Cristina Zvunca, a Minor, through its Court-Appointed Guardian, MB Financial Bank, N.A. and its counsel.” He requested that the court transfer the various pending lawsuits and all pending matters, in both the probate division and law division (No. 03 P 8718, No. 07 P 7929, and No. 09 L 6397), for consolidation with the wrongful death action (No. 07 L 3391).

¶ 34 On March 2, 2010, the trial judge sent several related cases that had been transferred to him back out for reassignment. He stated he would deal only with the underlying wrongful death action.

¶ 35 On March 3, 2010, Greyhound filed a supplemental brief in support of its motion to dismiss and, alternatively, motion to bar Cristina's testimony. Greyhound argued that it had been prejudiced by Cristina's refusal to cooperate with multiple court orders, including Cristina's “failure to attend numerous court-ordered psychological examinations just to determine her competency to testify.”

¶ 36 On March 12, 2010, Klein's former counsel filed a motion to voluntarily dismiss the complaint in case No. 09 L 6397 (this case number was included in the consolidation order that Klein is now appealing). Klein contends on appeal that his former counsel dismissed the suit “[i]n an attempt to avoid liability” after the administrator of Claudia's Estate filed a contribution claim against him “placing the entire fault on him for the destruction of the value of the [wrongful death] case 07 L 3391.”

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¶ 37 On March 30, 2010, the court held a hearing and discussed Cristina's deposition. Among those present was a new attorney on behalf of Klein. Klein's former counsel was present and informed the court as to the status of the related cases that had been transferred to the judge that he had transferred back for reassignment. Two of those cases – the suit filed on June 1, 2009 by Klein's attorney (09 L 6397) and a suit filed by Klein in his individual capacity – had been assigned to a new judge but Klein's former counsel had requested that the judge recuse himself. That judge, concerned that the parties should not be in front of multiple judges, sent the cases to Judge Maddux. Klein's former counsel stated that “Judge Maddux, reviewing the record and hearing from all the defense attorneys, said, fine, I'm going to put everything other than the [wrongful death case] on the stay calendar.” Judge Maddux had also stated that any future lawsuits that might be filed would also be put on the stay calendar.

¶ 38 On August 5, 2010, Klein filed his lawsuit, No. 10 L 08992, against several defendants including GAL Gubbins, various attorneys, and two judges. Count I alleged fraud; Count II alleged civil conspiracy; Count III alleged fraud; Count IV alleged defamation and “collateral personal damage by insult and offense of the memory of a deceased person being previously married with Tiberiu Klein; and Count V sought a declaratory judgment. In his brief on appeal, Klein describes this *pro se* lawsuit as:

“an individual case based mainly on the revealings from the emails provided from [his attorney] which emails [Klein] believed that [*sic*] revealed acts of corruption and/or fraud upon the Court performed by him and/or in conjunction with other individuals in that [*sic*] to defraud Tiberiu Klein in favor of Greyhound Lines,

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Inc.”

¶ 39 The Illinois wrongful death action subsequently settled and was dismissed with prejudice. On October 25, 2010, notices of appeal were filed in the trial court by GAL Ammendola, Clancy & Stevens, Cushing, and Klein. Klein's appeal, along with other appeals he filed, were subsequently dismissed. The other appeals were the subject of our recent opinion, *Cushing v. Greyhound*, 2013 IL App (1st) 103197 (which, as we earlier noted, at the time of this order had not been released for publication in the permanent law reports) and our recent order, *Cushing v. Greyhound*, 2013 IL App (1st) 103176-U ((unpublished order under Supreme Court Rule 23).

¶ 40 On February 22, 2011, the trial court entered an order in the wrongful death action (no. 07 L 3391) stating that “the Court finds that it is divested of jurisdiction” as a result of the filing of the October 25, 2010 notice of appeal.

¶ 41 The record contains a copy of Klein's own “Verified Amended and Supplemental Motion To Consolidate, Stay, For Injunction And For Injunctive Relief And Disqualification” which he filed *pro se* on May 20, 2011. Among other things, Klein requested consolidation of his personal fraud actions with the wrongful death action, and also sought a stay. Additionally, he sought an injunction against, and disqualification of, several attorneys, including his own former counsel. Klein also sought “injunctive relief for prohibition of [Judge] William Haddad and [Judge] William Maddux” in the cases where Klein and his former attorney were involved.

¶ 42 A hearing on a motion to consolidate was held in front of Judge Maddux on June 16, 2011, although the transcript of proceedings indicates it was a hearing on a separate motion to consolidate that had been filed by guardian *ad litem* Gubbins. Judge Maddux granted Gubbins's

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motion, stayed all cases, and placed them on the appellate stay calendar. On July 18, 2011, Klein filed his notice of interlocutory appeal.

¶ 43

ANALYSIS

¶ 44 On January 25, 2012, Greyhound filed a motion to dismiss this appeal, contending that Klein had no standing to appeal. As Greyhound correctly noted, Klein was a beneficiary of Claudia Zvunca's estate in a wrongful death action. Greyhound further noted that this court had stated in an order entered on November 29, 2011, in a related appeal, that Klein had no standing. On February 2, 2012, Klein filed a response in which he argued that he was “the sole party Plaintiff in the fraud case 10L08992 and the fraud-malpractice case 09L010077 which are *the sole cases* for which Klein filed this appeal.” (Emphasis added.) Klein also asserted that he was not filing the appeal as a beneficiary in the wrongful death case (no. 07 L 3391). Klein also argued:

“Contrary to Greyhound[']s argument, the appeal No. 11-2055 does not regard the wrongful death case but only the case 10L08992 and 09L10077 for fraud and malpractice in what concern the order to stay and the non-issuance of injunctions in these cases.”

On February 21, 2012, we entered an order taking Greyhound's motion with the case. Having now reviewed Klein's brief and the record in this matter, we conclude that Klein had standing to bring this appeal in his capacity as individual plaintiff in his fraud and malpractice cases. In case No. 09 L 10077, Klein alleged fraud and/or malpractice against Greyhound, and nineteen other parties, including several attorneys. In case No. 10 L 08992, filed approximately one year later,

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Klein again alleged fraud against several defendants including Gubbins, various attorneys, and two judges. We therefore deny Greyhound's motion to dismiss this appeal. We now address the merits of Klein's appeal.

¶ 45 On June 16, 2011, the trial court granted GAL Gubbins's motion to consolidate several cases and place them on the appellate stay calendar. These cases included two that had been filed by Klein, *pro se*: No. 09 L 10077 and No. 10 L 08992. The other cases included the following:

No. 07 L 3391, the wrongful death action referred to earlier that was the subject of our prior appeal;

No. 09 L 10417, the action filed by Klein's former counsel (later appointed by the court to represent Cristina's interests) on behalf of Cristina's estate alleging negligent infliction of emotional distress against defendants Motor Coach and Greyhound; the case had been dismissed without prejudice on July 14, 2010, on the oral motion of Gubbins;

No. 09 L 6397, the action filed by Klein's former counsel, on behalf of “Vasile Zvunca and Maria Zvunca, individually and as next friend of a minor, Cristina Zvunca” alleging fraud, as well as physical and emotional abuse of Cristina, against various defendants including Greyhound, Cushing, the attorneys representing the estate, and GAL Ammendola;

No. 03 P 8718, the probate division action appointing the administrator of the decedent's estate; and

No. 07 P 7929, the probate division action in which Klein was appointed

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Cristina's plenary guardian.

Two of the consolidated cases have since been dismissed (09 L 6397 and 09 L 10417). The probate action in which Klein was appointed Cristina's plenary guardian is no longer relevant now that Cristina is not a minor and Klein's concerns regarding his rights as a plenary guardian are now moot. Also, as we have noted, Klein himself sought consolidation of several of the cases.

¶ 46 We have jurisdiction over this matter pursuant to Illinois Supreme Court Rule 307(a)(1) which states: “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.” Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). It is well settled that “[a] stay is injunctive in nature, and thus an order granting or denying a stay fits squarely within Rule 307(a).” *Rogers v. Tyson Foods*, 385 Ill. App. 287, 288 (2008). We now turn to the merits of Klein's appeal.

¶ 47 Klein contends that the trial court either had no authority to enter its order consolidating and staying the various cases. He also contends that, if the court did have the authority, it abused its discretion. He asserts:

“On June 16, 2011, David Gubbins brought an unrecorded motion to stay all the cases including 10 L 08992 and 09 L 010077 and consolidate with the child abuse case 09 L 06397 (dismissed) and with the probate cases 03 P 8718 and 07 P 7929 but also with the dismissed cases 07 L 03391 and 09 L 010417 all of which have been pending in the Illinois Appellate Court.”

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However, as noted earlier, Klein had filed his own motion to consolidate and stay some of the actions and it appears from Klein's brief that his primary argument is not concerning the merits of the ruling but, rather, with the judge who made the ruling. Klein asserts:

“The Motion was heard by judge William Maddux, a defendant in the case 10 L 08992 who refused the several requests to recuse himself and entered an order in the same day granting the motion to stay without giving the statutory time requested by Klein to respond.”

¶ 48 On June 16, at the hearing on Gubbins's motion to consolidate, eleven attorneys representing various parties were present. Klein appeared *pro se* as the plaintiff in cases No. 10 L 08992 and 09 L 10077. Attorney John Xydakis appeared on behalf of “the person and the estate of Cristina Zvunca through her guardian Tiberiu Klein.” At the outset of the hearing, Mr. Xydakis requested that Judge Maddux assign the case back to another judge who had heard and denied a motion that had been brought by attorney Novoselsky, noting that Gubbins's motion was “pretty much exactly the same motion.” Attorney Xydakis also asked Judge Maddux to recuse himself because attorney Novoselsky was Judge Maddux's personal attorney. Attorney Novoselsky, who was Klein's former Illinois attorney was a defendant in Klein's case no 10 L 08992. Klein had also named Judge Maddux and Judge Haddad. An assistant attorney general appeared at the hearing on behalf of Judge Haddad and Judge Maddux. Attorney Xydakis also argued that Gubbins had no standing to bring a motion to consolidate because Judge Haddad had

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dismissed the wrongful death action with prejudice.²

¶ 49 Judge Maddux refused to recuse himself and stated he would not be making any substantive rulings. He stated at the outset: “These cases are going to be consolidated.” Noting how many cases had been filed arising from one episode, Judge Maddux maintained that he had authority to consider the motion and to control the docket. Some attorneys joined in Gubbins's motion and some objected.

¶ 50 Klein, appearing *pro se*, noted that his own motion to consolidate was currently pending before another judge and the briefing schedule had been set. However, Klein had not included the probate cases in his motion to consolidate, but Gubbins had included them in his motion. Klein requested time to respond. However, as noted earlier, Judge Maddux granted Gubbins's motion, stayed all cases, and placed them on the appellate stay calendar. He also noted that the responsibility for the consolidation or transfer of cases was that of the presiding judge. He therefore vacated any orders that had been entered to the contrary, and ordered stricken any dates on those judge's calendars.

¶ 51 Before we address the merits of Klein's appeal, we note that we recently issued our opinion in *Cushing v. Greyhound*, 2013 IL App (1st) 103197 in which we vacated the settlement of the wrongful death action and remanded the matter back to the circuit court. Our decision has rendered moot many of Klein's arguments, most notably, those concerning his rights as a plenary guardian in the probate division. Although various parties and attorneys, including Klein have

²Gubbins had been appointed as guardian *ad litem* only in the wrongful death action and was not a party in any of the remaining cases.

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purported to represent the interests of the minor beneficiary, Cristina, throughout this litigation, Cristina is no longer a minor. All guardians have been discharged.

¶ 52 Thus, it appears that Klein's primary complaint is that Judge Maddux should have recused himself. Klein contends that, pursuant to *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184 (1994) this court can review “the issue of the substitution of judge aspect.” In *Sarah Bush Lincoln*, an interlocutory appeal under Rule 307(a)(1), this court concluded that it could consider the question of whether the trial court erred in denying a defendant's motion for substitution of judge because it bears “ directly upon the question of whether the order on appeal was proper.” *Id.* at 187; accord *Bank of America, N.A. v. Freed*, 2012 IL App (1st) 110749, ¶¶14-15 (but concluding issue had been forfeited). There is a split of authority on this issue and other courts have held that only the order being appealed can be considered in an interlocutory appeal. See *U.S. Bank National Ass'n v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213; *Murges v. Bowman*, 254 Ill. App. 3d 1071 (1993), and *City of Chicago v. Airline Canteen Service, Inc.*, 64 Ill. App. 3d 417 (1978). We need not resolve this issue. Klein did not file a substitution of judge motion. During the hearing on Gubbins's motion to consolidate, Klein requested time to respond in writing, and stated he did not “want to say all of the objections right now.” However, he did not request that Judge Maddux recuse himself nor did he join in attorney Xydakis's request that Judge Maddux recuse himself.

¶ 53 Klein contends, however, without citation to any authority, that “[t]he request for recusal demanded by *most of the parties* involved at the hearing equate[s] with a request of substitution of judge and is in fact a request for substitution of judge.” We need not decide that issue because

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Klein himself did not “demand” that Judge Maddux recuse himself. We conclude that the issue of whether Judge Maddux should have recused himself is not properly before this court in this interlocutory appeal. Therefore, we shall consider only whether the order consolidating and staying the various cases was an abuse of discretion.

¶ 54 Section 2-1006 of the Code of Civil Procedure provides for the consolidation of actions pending in the same court “as an aid to convenience, whenever it can be done without prejudice to a substantial right.” 735 ILCS 5/2-1006 (West 2010). A trial court has broad discretion in determining the propriety of consolidation. *Horn v. Rincker*, 84 Ill.2d 139, 147 (1981); *Turner v. Williams*, 326 Ill. App. 3d 541, 546 (2001). “Its decision will not be overturned on review absent a finding of an abuse of discretion.” *Turner*, 326 Ill. App. 3d at 546.

¶ 55 As the *Turner* court further explained:

“Consolidation has three different applications: (1) where several actions are pending involving substantially the same subject matter, the court may stay proceedings in all but one and see whether the disposition of the one action may settle the others, thereby avoiding multiple trials on the same issue; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tried together, but with separate docket entries, verdicts, and judgments, the consolidation being limited to a joint trial; and (3) where several actions are pending that might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of in one suit.” *Id.* at 547.

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The Illinois Supreme Court has also explained that consolidation is not an abuse of discretion “where the separate causes of action are of the same nature, arise from the same act, event or transaction, involve the same or like issues and depend largely and substantially upon the same evidence, and when a joint trial will not give one party an undue advantage or prejudice the substantial rights of any party.” *Peck v. Peck*, 16 Ill. 2d 268, 275 (1959). This court has also held that a trial court's *sua sponte* consolidation was not an abuse of discretion. *Ad-Ex, Inc. v. City of Chicago*, 247 Ill. App. 3d 97, 103 (1993).

¶ 56 Citing *Lowe v. Norfolk & Western Ry. Co.*, 124 Ill. App. 3d 80 (1984), Klein argues that the court abused its discretion in consolidating the cases because they all “have different theories of liability unrelated which would put an undue burden and brought prejudice to Klein's substantial rights as a party in Colorado.” *Lowe* is inapposite. In that case, railroad employees brought 47 separate lawsuits against a railroad and others to recover damages for injuries arising out of a chemical spill. The trial court consolidated all 47 cases for a single trial. The appellate court reversed and noted that, although some consolidation might have been possible, the wholesale approach constituted an abuse of discretion. *Id.* at 99. As the *Lowe* court further explained, “there were three separate occasions upon which various plaintiffs may have suffered physical impairments by exposure to the chemical cargo.” *Id.* at 99-100. These included: (1) at the spill site; (2) during the clean-up operations; and (3) during the transportation and repair of the ruptured tanker and there was “no indication that one plaintiff, or even several, were present during all three occasions.” *Id.* at 100. Therefore, “the operative facts would be different as to most, if not all, of the plaintiffs.” *Id.* The circumstances of the instant case are markedly

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different. All of the lawsuits arose out of one unfortunate incident, the death of Claudia Zvunca.

¶ 57 Although the allegations of fraud and civil conspiracy in Klein's own individual suits relate to actions occurring after the accident, they arose from the actions involving the wrongful death lawsuit. As noted above, Klein's involvement in the wrongful death lawsuit and the actions of his attorneys are intertwined with the claims he makes in his own individual actions. More importantly, although Klein's "fraud" lawsuits contain separate allegations, he is *not* contending that the consolidation of *those* suits with the wrongful death action was an abuse of discretion and, as noted, moved for consolidation. He has not argued, nor shown, that the consolidation order caused any prejudice regarding his rights with respect to his "fraud" lawsuits. Although Klein alludes to prejudice to his substantial rights as a party in Colorado, Klein has offered no reasoned argument in support of this contention. In sum, Klein has failed to establish that the decision to consolidate and stay the various lawsuits caused prejudice to any substantial right he may have.

¶ 58 In view of the foregoing, we affirm the June 16, 2011 order of the circuit court of Cook County. However, consistent with our opinion in *Cushing v. Greyhound*, 2013 IL App (1st) 103197, upon remand, any further orders in these various related lawsuits, including those pertaining to reassignment or control of the docket, are to be made by a judge other than Judge Maddux, based on his prior acknowledgment of a conflict.

¶ 59 Motion denied; judgment affirmed.