

No. 1-13-1334

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IN THE APPELLATE  
COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE CARLTON AT THE LAKE, INC., an Illinois Corporation,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 L 10364
	)	
ROBERT BARBER and JEAN BARBER, Individuals,	)	The Honorable
	)	Raymond Mitchell,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concurred in the judgment.

**ORDER**

*HELD:* Based on the particular circumstances of the instant cause, it was proper to reconsider the dismissal of the plaintiff's previously dismissed breach of contract claim and accompanying claim pursuant to the Illinois Rights of Married Persons Act. Accordingly, upon review, and in consideration of new law issued by the Illinois Supreme Court, relief under these claims should be made available to the plaintiff. In addition, summary judgment on the plaintiff's *quantum meruit* claim was entered erroneously, since a material question of fact exists. Ultimately, both avenues of relief—breach of contract and *quantum meruit*—should be made available to the plaintiff.

¶ 1 Following a partial remand ordered by our court, plaintiff-appellant The Carlton at the Lake, Inc., an Illinois corporation (Carlton), brought a third amended complaint against defendant-appellee Jean Barber, individually (defendant or as named), seeking recovery for monies it claimed Jean and her husband, defendant-appellee Robert Barber, individually (defendant or as named), owed with respect to Robert's stay at Carlton. In response, Jean filed a motion for summary judgment and the trial court granted her motion. Carlton appeals, contending, first, that, despite our court's prior holding, it should be allowed to again pursue its original contractual claim against Jean pursuant to new law and, alternatively, that the trial erred in granting summary judgment where a genuine issue of material fact, namely, whether Jean benefitted from Carlton's services within the context of *quantum meruit*, exists in this cause. Carlton asks that we allow it to proceed under a breach of contract theory against Jean or, alternatively, that we reverse the trial court's order granting summary judgment, remanding the cause in either instance. For the following reasons, we reverse and remand to the trial court for further proceedings under both breach of contract and *quantum meruit*.

¶ 2 BACKGROUND

¶ 3 Carlton is a licensed long-term care facility in accord with the Nursing Home Care Act. See 210 ILCS 45/1-101 *et seq.* (West 2006). On October 13, 2005, Robert entered into and became a resident, pursuant to section 1-122 of the Act (210 ILCS 45/1-122 (West 2006)), of Carlton's facility located on Montrose Avenue in Chicago. At that time, Carlton gave Jane Barber, Robert's daughter and attorney-in-fact, a document entitled "Contract Between Resident and Facility" (contract) for her review and execution on behalf of Robert. The contract set forth

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the terms and conditions for Robert's stay, including the services Carlton would provide him, such as nursing care, room and board and rehabilitative care, and the rates Carlton would charge. The start date of the contract was listed as October 13, 2005, the day Robert was admitted to Carlton. Carlton also gave Jane several other documents required for Robert's admission. These included, for example, a copy of Carlton's Residents Rights and Facility Responsibilities disclosure, an Assignment of Insurance Benefits and Release of Medical Records form, and medical authorization forms for eye and dental care. In addition to the contract, Carlton gave Jane 13 admission forms. Also, Carlton gave Jane four other documents that were labeled "Addendum" or "Appendix," which further described Carlton's services and rates. Jane accepted these documents from Carlton and signed and returned each and every one of the 13 admission forms. However, neither she, nor Robert or Jean, ever signed the contract. Robert remained at Carlton for over two years, finally vacating the facility on December 3, 2007, with an outstanding balance for services in the amount of \$134,075.90.

¶ 4 Following an involuntary discharge proceeding initiated by Carlton with the Illinois Department of Public Health in order to remove Robert from its facility, Carlton filed a two-count complaint against defendants sounding in breach of contract. Count I alleged that Robert failed to fully pay Carlton for its services, and count II sought recovery from Jean pursuant to the Illinois Rights of Married Persons Act, also known as the Family Expense Act, which states that spouses "may be sued jointly or separately" "in relation [to]" "the expenses of the family," including medical expenses. See 750 ILCS 65/15 (West 2006). Defendants filed a motion to dismiss Carlton's complaint, and the trial court granted their motion pursuant to section 2-615 of

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the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2006)), with leave to replead.

¶ 5 Carlton then filed a three-count first amended complaint against defendants. While otherwise amending its counts in accordance with the trial court's prior order, as before, count I alleged breach of contract against Robert and count II alleged liability against Jean pursuant to the Illinois Rights of Married Persons Act. In count III, Carlton asserted a claim against both defendants in the alternative under a theory of *quantum meruit*. Defendants filed a motion to dismiss Carlton's first amended complaint. The trial court granted defendants' motion pursuant to section 2-615 of the Code, but again gave Carlton leave to replead.

¶ 6 Carlton filed a three-count second amended complaint. Just as before, and having amended it pursuant to the trial court's order, count I alleged breach of contract against Robert, count II alleged liability against Jean pursuant to the Illinois Rights of Married Persons Act, and count III alternatively sought recovery from both defendants in *quantum meruit*. Defendants again filed a motion to dismiss. This time, the trial court granted defendants' motion in part with respect to counts I and II with prejudice, but denied their motion in part with respect to count III. Carlton immediately appealed the trial court's decision dismissing counts I and II with prejudice.

¶ 7 Meanwhile, defendants filed a motion in the trial court asking it to reconsider its denial of their motion to dismiss count III. After considering their motion, the trial court changed its decision and dismissed count III of Carlton's second amended complaint with prejudice. Carlton then appealed this decision as well, and its two appeals were consolidated and presented before our court. See *Carlton At The Lake, Inc. v. Barber*, 401 Ill. App. 3d 528, 529, 530 (2010)

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(*Carlton I*) (consolidating both of Carlton's appeals).

¶ 8 During this time, Robert died. His death was suggested of record in the trial court on February 6, 2009, and recognized by our court on appeal. See *Carlton I*, 401 Ill. App. 3d at 530.

¶ 9 Upon our review of the cause, we first considered Carlton's breach of contract claim against Robert, finding that it had been properly dismissed. See *Carlton I*, 401 Ill. App. 3d at 531. Carlton argued that its tender of the contract to Robert's daughter, along with her acceptance by admitting him and signing the other admission forms, created a valid binding contract despite the fact that the contract itself was never signed. See *Carlton I*, 401 Ill. App. 3d at 531. However, our court noted that several provisions of the Nursing Home Care Act expressly require that a written contract be "executed" between a facility and each of its residents (or their agents). See *Carlton I*, 401 Ill. App. 3d at 531-32. Accordingly, because the statute requires that a contract between a nursing home and a resident contain specific items, be in writing and be signed by both parties, and because the contract in the instant cause was never signed by Robert (or a representative of Carlton, for that matter), we held that the unsigned contract was unenforceable and, thus, that Carlton's breach of contract claim against Robert could not stand. See *Carlton I*, 401 Ill. App. 3d at 533.

¶ 10 Next, our court turned to count II against Jean which Carlton raised pursuant to the Illinois Rights of Married Persons Act. See *Carlton I*, 401 Ill. App. 3d at 533. We noted that this statute charges family expenses, including medical expenses, upon the property of both a husband and wife, or either of them, in favor of creditors, and prescribes that a husband and wife may be sued jointly or separately in pursuit of their recovery. See *Carlton I*, 401 Ill. App. 3d at

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533, quoting *Boswell Memorial Hospital v. Bongiorno*, 314 Ill. App. 3d 620, 622 (2000) (“ ‘[t]he law is well settled that \*\*\* a husband and wife are each liable for the medical expenses of the other’ ”). Thus, we concluded that “[i]n the abstract, therefore, Carlton would have a clear right to pursue recovery from Jean for the ‘family expenses’ incurred by Robert while he was a resident of Carlton’s facility.” *Carlton I*, 401 Ill. App. 3d at 533. However, just as with count I, our court was forced to find that this portion of Carlton’s complaint could not stand. See *Carlton I*, 401 Ill. App. 3d at 533. This was because the count against Jean, just as the count against Robert, clearly depended and relied upon Robert’s underlying liability to Carlton under a written contract; this second count merely realleged breach of contract and that Jean was responsible for these contract damages pursuant to the Illinois Rights of Married Persons Act. See *Carlton I*, 401 Ill. App. 3d at 533. But, as we held earlier, because the contract was never signed and there could be no breach of contract claim against Robert, consequently, there also could be no claim for contract damages against Jean. See *Carlton I*, 401 Ill. App. 3d at 533. Accordingly, we held that count II had also properly been dismissed. See *Carlton I*, 401 Ill. App. 3d at 533.

¶ 11 This left our court with count III, Carlton’s claim against both Robert and Jean for *quantum meruit*. After discussing this equitable theory founded on the implied promise that a recipient of services pay for the value of these lest he be unjustly enriched, we examined its legal elements and noted that recovery thereunder is prohibited where an underlying contract violates public policy. See *Carlton I*, 401 Ill. App. 3d at 534. Pursuant to the facts presented, the issue before our court, then, became what impact, if any, a violation of the provisions of the Nursing Home Care Act had on the rights of a nursing home to recover under *quantum meruit*. See

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*Carlton I*, 401 Ill. App. 3d at 534. For its part, and citing *K. Miller Construction Co. v. McGinnis*, 394 Ill. App. 3d 248 (2009), *appeal allowed*, 234 Ill. 2d 523 (*K. Miller I*), *Carlton* raised a distinction between the availability of *quantum meruit* recovery where the subject matter of an underlying contract makes it unenforceable (*i.e.*, public policy violations) versus a situation where, as here, only some problem with the formation or execution of the underlying contract makes it unenforceable (*i.e.*, the failure to sign). See *Carlton I*, 401 Ill. App. 3d at 534. Examining *Carlton*'s argument, we agreed with its distinction, finding nothing in the Nursing Home Care Act that demonstrated any intent to limit *Carlton*'s recovery under a theory of equitable relief. See *Carlton I*, 401 Ill. App. 3d at 535. Instead, we held that, here, because only an issue of execution caused the contract to be unenforceable, there was no reason that *quantum meruit* should not remain as an available avenue for *Carlton* to pursue. See *Carlton I*, 401 Ill. App. 3d at 535. In further support of our decision, we noted that allowing *Carlton* to seek equitable relief pursuant to *quantum meruit* would not defeat the purposes of the Nursing Home Care Act, nor would it raise any concern that *Carlton*'s failure to comply with that statute's contract provisions would lead the defendants to be subjected to unnecessarily harsh contract terms since only the reasonable value of the services provided would be considered. See *Carlton I*, 401 Ill. App. 3d at 535-36.

¶ 12 Accordingly, our final holding in *Carlton I* was this. We affirmed the trial court's dismissal of count I (breach of contract against Robert) and count II (recovery against Jean under the Illinois Rights of Married Persons Act) of *Carlton*'s second amended complaint since they were based on an unenforceable contract. See *Carlton I*, 401 Ill. App. 3d at 536. However, we

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reversed and remanded for further proceedings as to count III against both Robert and Jean in *quantum meruit*. See *Carlton I*, 401 Ill. App. 3d at 536. We concluded our decision by stating that, on remand, Carlton would have the burden of demonstrating both the services it provided and the reasonable amount it sought to recover for them, while defendants would have the right to challenge its assertions. See *Carlton I*, 401 Ill. App. 3d at 536.

¶ 13 Following our decision, the Illinois Supreme Court reviewed *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284 (2010) (*K. Miller II*), and issued a decision affirming in part and reversing in part. The Court, finding that statutory violations do not automatically render oral contracts unenforceable or relief in *quantum meruit* unavailable, concluded that recovery under both theories was available to the plaintiff, who had been refused payment by the defendants for services rendered. See *K. Miller II*, 238 Ill. 2d at 287. Based on this decision, Carlton filed a motion to reconsider in the trial court, arguing that it should reconsider its dismissals of counts I and II of its second amended complaint alleging breach of contract because *K. Miller II* constituted new law applicable to the instant cause. The trial court denied Carlton's motion, finding that, while Carlton's "argument is compelling," the court was "bound by the law of the case," since the appellate court had already determined that the contract at issue was unenforceable. Therefore, the trial court concluded that it was "prohibited from reconsidering whether the unsigned contract [at issue] is enforceable despite the statutory violation" of the Nursing Home Care Act.

¶ 14 With its motion to reconsider its second amended complaint denied, and based on our court's prior holding, Carlton filed a third amended complaint, this time against Jean only, with

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count I seeking recovery pursuant to the Illinois Rights of Married Persons Act and, in the alternative, with count II seeking recovery in *quantum meruit*. In response, Jean moved for summary judgment, and the trial court granted her motion. After discussing the principles of *quantum meruit*, the trial court noted Carlton's argument that Jean benefitted from Carlton's relationship with Robert in that she did not have to incur costs she otherwise would have in caring for her husband and that she was relieved of undertaking that work on her own. However, the court stated that "Jean was not the actual recipient of any services," but was only an incidental beneficiary of Carlton's arrangement with Robert and, as she was "too far removed," she could not be held liable "under such attenuated circumstances" which would then pave the way to hold liable "her children, her grandchildren, the government or anyone else who might have cared for Robert if he were not admitted at Carlton." Essentially, the trial court found that, while Jean did receive some benefit here, she did so "as the term is used in common parlance, but not as the term is used for the purposes of *quantum meruit*." In addition, the trial court commented that allowing Carlton to recover in *quantum meruit* would also "thwart[]" the purpose and writing requirements of the Nursing Home Care Act. Therefore, the court granted summary judgment in Jean's favor.

¶ 15

#### ANALYSIS

¶ 16 On appeal, Carlton makes alternative arguments. First, it contends we should reconsider the viability of its breach of contract claim. Alternatively, Carlton contends that, should we choose not to revisit that issue, the trial court erred in granting summary judgment in this matter with respect to its *quantum meruit* claim.

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¶ 17 We turn first to Carlton's breach of contract claim, which takes into consideration counts I and II of its second amended complaint (breach of contract and liability pursuant to the Illinois Rights of Married Persons Act). Carlton asserts that the Illinois Supreme Court's decision in *K. Miller II*, which was issued after our court's prior decision in this cause on appeal, constitutes new law that markedly affects the decision in the instant cause and merits our reconsideration of its claims. Jean counters that any reconsideration of Carlton's breach of contract claim is "not available" because any such reconsideration would be inappropriate jurisdictionally and because *K. Miller II* is irrelevant to the instant cause. We disagree, finding that Carlton's argument has merit here.

¶ 18 When Carlton appealed the dismissal of counts I and II of its second amended complaint to our court, and later added its appeal of the dismissal of count III, we clearly and explicitly adopted the reasoning set forth in *K. Miller I* in reaching our decision. As we will discuss in more detail below, *K. Miller I* held that while a statutory violation renders a contract unenforceable, a party may still be able to recover in *quantum meruit*. Following that holding, we affirmed the dismissal of Carlton's breach of contract claim finding that, since the provision of the Nursing Home Care Act requiring an executed contract between Carlton and Robert had been violated, there was no enforceable contract and, thus, there could be no contract damages. However, we reversed and remanded the cause with respect to Carlton's *quantum meruit* claim holding, just as *K. Miller I*, that regardless of the enforceability of the contract, Carlton could potentially still be able to recover under this legal theory.

¶ 19 Accordingly, the instant cause returned to the trial court. While it was pending, the

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Illinois Supreme Court reviewed *K. Miller I* and issued its decision in *K. Miller II*, affirming its prior decision in part but reversing it in part. The Court reaffirmed that legal proposition that *quantum meruit* is a potential avenue for recovery even if a contract is unenforceable due to a statutory violation. See *K. Miller II*, 238 Ill. 2d at 301. But, it reversed its prior holding dismissing the availability of a breach of contract action in the same situation, declaring that its prior conclusion of automatic unenforceability "was error." *K. Miller II*, 238 Ill. 2d at 297. Instead, and again as we will discuss in more detail below, the Court directed that a balancing test was required to be considered in determining whether a contractual term is unenforceable because of a statutory violation. See *K. Miller II*, 238 Ill. 2d at 293-94.

¶ 20 In light of this, and with its *quantum meruit* count still pending in the trial court pursuant to our directive in *Carlton I*, Carlton filed a motion for reconsideration asking that court to reconsider the dismissal of its breach of contract claim. At this point, the trial court had two options. It could deny Carlton's motion and thereby remain bound by our prior decision in *Carlton I* which, with the advent of *K. Miller II*, was now essentially incorrect law. Or, because Carlton had presented it with new case law directly affecting the issue at hand, the trial court could have granted its motion to reconsider with Illinois Supreme Court Rule 304(a) language so that portion of the cause could become appealable to our court for review. See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). The trial court chose the first option, denying Carlton's motion for reconsideration and failing to include any language making this a final and appealable order. In doing so, the trial court admitted that Carlton's argument asserting that *K. Miller II* comprised new law meriting revision of its cause was "compelling," but stated that its hands were

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effectively tied by our decision in *Carlton I*, which had declared the contract at issue unenforceable based on a statutory violation. This left Carlton with no recourse other than to proceed on its pending *quantum meruit* claim, as per our decision in *Carlton I*. Accordingly, Carlton filed its third amended complaint asserting *quantum meruit*, which the trial court disposed of by granting Jean's motion for summary judgment. Then, Carlton instituted the instant appeal.

¶ 21 Contrary to Jean's jurisdictional arguments here, we believe that we are not prohibited from reviewing and reconsidering Carlton's claim, for several reasons. First, with respect to her terse argument regarding the timing of Carlton's request to review its breach of contract claim, it is our view that, based on the procedural facts of the instant cause, Carlton proceeded in the only manner it could to properly preserve its claim. That is, Jean notes that a motion for reconsideration is to be brought within 30 days from the entry of the order for which reconsideration is sought. See *Keener v. The City of Herrin*, 235 Ill. 2d 338, 350 (2009). She is generally correct. However, the purpose of a motion for reconsideration can be manifold; it is used to bring to the court's attention either newly discovered evidence that was not available at the time of the original hearing, or a change in the law, or an error in the court's previous application of existing law. See *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 71; accord *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140 (2004). As Carlton notes, when a motion to reconsider is based on the assertion that there has been a change in the law, there seems to be no express time limit, not even the general 30 day limit for filing a motion for reconsideration, that applies. We have found no such time limit in

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our research here and, despite Jean’s vague assertions to the contrary, she provides no case law to rebut this conclusion. Indeed, such a conclusion would seem inconsistent with our legal principles. New law arises at the behest of our higher courts and its issuance does not usually follow 30-day rules and time lines; however, it is still new law and, if it is directly on point to an issue at hand, it merits reconsideration—for the sake of the interested parties as well as for our body of legal precedent and jurisprudence. Accordingly, we view a motion to reconsider based on new law to be similar to one based on newly discovered evidence. Our courts have made clear that, in those instances, because “[n]ewly discovered evidence is evidence that was not previously available,” a party may raise a new issue based on that evidence for the first time in a motion for reconsideration as long as the party “has a reasonable explanation for why it did not raise the issue earlier in the proceedings.” *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 41 (emphasis omitted); accord *Kopley Group V., L.P. v. Sheridan Edgewater Properties, Ltd.*, 376 Ill. App. 3d 1006, 1022 (2007); see also *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007).

¶ 22 Here, while Carlton may not have filed its motion for reconsideration within 30 days from the dismissal of counts I and II of its second amended complaint, it did file it within 30 days from the decision issued in *K. Miller II*. Significantly, Carlton moved for reconsideration in the forum where, and at the time when, its cause was still pending: the trial court, which had yet to evaluate the viability of its *quantum meruit* claim pursuant to the appellate court’s partial remand. And, clearly, Carlton had a reasonable explanation for why it did not raise the issue at hand earlier. The basis of its motion for reconsideration—new law as declared by the Illinois Supreme Court in

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*K. Miller II*—was not previously available to it, since it was issued only after our decision in *Carlton I*. Because of all this, any consideration regarding the timeliness of Carlton’s motion is of no moment in light of the particular facts of this cause.

¶ 23 Further support for our reasoning here also lies in the fact that the trial court did not include any final and appealable language in its order denying Carlton’s motion for reconsideration. Pursuant to Rule 304(a), in the absence of final and appealable language, any judgment that adjudicates fewer than all the claims of the parties is not appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims of the parties. See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Moreover, a subsequent appeal from a final judgment permits review of all preceding nonfinal and interlocutory orders that produced that final judgment. See, e.g., *Farmers Automobile Insurance Ass’n v. Wroblewski*, 382 Ill. App. 3d 688, 695 (2008); *Pekin Insurance Co. v. Pulte Home Corp.*, 344 Ill. App. 3d 64, 67-68 (2003); see also *In re Alicia Z.*, 336 Ill. App. 3d 476, 494 (2002) (“an appeal from a final judgment draws into issue all prior nonfinal orders that produced the final judgment”).

¶ 24 Here, the trial court’s denial of Carlton’s motion for reconsideration was based on its conclusion that it was bound by the appellate court in *Carlton I*, which had already determined that the breach of contract claim was unenforceable. Interestingly, even the trial court itself admitted that Carlton’s request to reconsider based on new law was “compelling.” However, at this point, without any final and appealable language, the trial court’s denial of Carlton’s motion to reconsider left Carlton with no recourse, since there was no final and appealable order. Instead, Carlton’s only legal avenue was to proceed with its pending *quantum meruit* claim, as

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the appellate court had instructed. When Carlton appealed the trial court's grant of summary judgment with respect to its *quantum meruit* claim, it permitted our review of any and all nonfinal orders leading to that judgment, including the dismissal of its contract claim and the denial of its motion for reconsideration. Accordingly, the principles of Rule 304(a) and our ability to review all preceding nonfinal orders on appeal from a final judgment gives us further support for our conclusion that we are justified in reviewing the viability of Carlton's contract claim.

¶ 25 Lastly with respect to Jean's insistence that reconsideration of its contract claim is "not available" to Carlton, it is well established that a court has the inherent authority to reconsider and correct its rulings, and this power extends to interlocutory decisions (like the trial court's denial of Carlton's motion to reconsider here) as well as final judgments. See *Stevens v. Village of Oak Brook*, 2013 IL App. (2d) 120456, ¶ 37 (citing *People v. Mink*, 141 Ill. 2d 163, 171 (1990)). In addition, while an issue of law decided on a previous appeal is binding on the trial court on remand as well as on the appellate court on a subsequent appeal, it is not binding when a higher reviewing court, subsequent to a lower reviewing court's decision, makes a contrary ruling on the same issue. See *W.C. Richards Co., Inc. v. Hartford Accident and Indemnity Co.*, 311 Ill. App. 3d 218, 222 (1999) (this is an exception to the law of the case doctrine). In other words, where, during the pendency of a cause, a supreme court decides the precise question in a manner contrary to the rule announced by an appellate court, the law of the case must be considered modified by the decision of the higher court handed down thereafter. See *W.C. Richards*, 311 Ill. App. 3d at 222 (where supreme court specifically addressed the precise issue considered in the

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previous appellate decision and decided the exact legal question in a manner contrary to the holding in that previous appellate decision, the supreme court's decision controls); accord *In re Application of Kane County Collector*, 135 Ill. App. 3d 796, 800 (1985); *Proesel v. Myers Publishing Co.*, 48 Ill. App. 2d 402, 404 (1964). Ultimately, a decision of the Illinois Supreme Court is binding on all lower courts. See *In re Clifton R.*, 368 Ill. App. 3d 438, 440 (2006); accord *Northern Trust Co. v. Knox*, 373 Ill. App. 3d 479, 487 (2007). The instant cause provides a perfect illustration of the operation of these principles.

¶ 26 It is for all these reasons, then, that we find no merit in Jean's assertions regarding any lack of jurisdiction or untimeliness with respect to Carlton's request to review the viability of its breach of contract claim pursuant to the supreme court's issuance of *K. Miller II*.

¶ 27 This brings us now to an examination of *K. Miller I* and *II*. Jean repeatedly insists that, regardless of any jurisdictional concern, *K. Miller II* is irrelevant to the instant cause and in no way comprises new case law that has any bearing on the issues herein. However, Jean's view here is myopic to say the least, and her claim is, likewise, wholly incorrect.

¶ 28 The underlying facts of the *K. Miller* decisions are very similar to those of the instant cause. There, the plaintiff remodeling contractor agreed to perform major work at the defendant homeowners' new apartment. The Home Repair and Remodeling Act (815 ILCS 513/15 (West 2006)), the statute governing their relationship, stated that before initiating home repairs in an amount over \$1,000, a contractor must furnish to the customer a written contract or work order for signature. The plaintiff undertook the work, which amounted to approximately \$500,000, but neither party ever signed a written contract. As the work was being performed, the defendants

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refused to pay the plaintiff, leaving a balance of \$300,000 on the project. The plaintiff filed a three-count complaint, pleading breach of contract, foreclosure of a mechanic's lien (based on contract) and, in the alternative, *quantum meruit*. See *K. Miller I*, 394 Ill. App. 3d at 252. The defendants filed a motion to dismiss, citing both the written requirement of the Home Repair and Remodeling Act, as well as another section stating that it is "unlawful" to engage in home remodeling for work over \$1,000 without first obtaining a written contract. See *K. Miller I*, 394 Ill. App. 3d at 252. The trial court dismissed the plaintiff's complaint. On appeal, the *K. Miller I* court affirmed in part and reversed in part. After reviewing the statute, it agreed that the plaintiff's breach of contract and accompanying lien foreclosure claims could not stand, since the statute imposed a writing requirement which otherwise barred the enforcement of an oral contract. See *K. Miller I*, 394 Ill. App. 3d at 254. However, the *K. Miller I* court concluded that the plaintiff could proceed on his *quantum meruit* claim. Again reviewing the applicable statute, it noted that there was nothing therein prohibiting recovery under this legal theory of equitable relief. See *K. Miller I*, 394 Ill. App. 3d at 258.

¶ 29 It was at this time that *Carlton I* reached our appellate court. As noted earlier, upon its review, the court found that, even though *K. Miller I* dealt with a different statute, the facts and reasoning of that cause were directly on point with the instant cause and merited the same result. See *Carlton I*, 401 Ill. App. 3d at 535 ("[w]e agree with its reasoning and apply it to the [Nursing Home Care] Act"). Therefore, the court in *Carlton I*, just as *K. Miller I*, found that Carlton's breach of contract claim and its claim under the Illinois Rights of Married Persons Act based on contract were precluded, since the fact that Carlton and Robert never signed a contract violated

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the writing requirements of the Nursing Home Care Act. See *Carlton I*, 401 Ill. App. 3d at 532-33. And, the *Carlton I* court further held, again just as *K. Miller I*, that Carlton's *quantum meruit* claim could proceed, since, like the Home Repair and Remodeling Act, there was nothing in the Nursing Home Care Act that prohibited recovery under this equitable avenue of relief. See *Carlton I*, 401 Ill. App. 3d at 535.

¶ 30 The holding in *Carlton I* returned that cause to the trial court. While it was pending, the *K. Miller* defendants' petition for leave to appeal with the Illinois Supreme Court was granted, the cause was heard again, and the Court issued *K. Miller II*. That decision affirmed the availability of the plaintiff's claim in *quantum meruit*, just as the *K. Miller I* court had found. However, the supreme court completely reversed the determination regarding the unenforceability of the plaintiff's breach of contract (and accompanying lien foreclosure) claim, finding that it should not have been dismissed. Turning to the Restatement (Second) of Contracts (1981), the Court noted that, "in considering whether a contractual term is unenforceable as against public policy because of a statutory violation, the first step is to examine the relevant statute itself." *K. Miller II*, 238 Ill. 2d at 293. It then set forth the following test:

"If the statute explicitly provides that a contractual term which violates the statute is unenforceable then \*\*\* the term is unenforceable. Conversely, if it is clear that the legislature did not intend for a violation of the statute to render the contractual term unenforceable, and that the penalty for a violation of the statute lies elsewhere, then the contract may be enforced. But where the statute is silent, then the court must balance the public policy expressed in the statute against the countervailing policy in enforcing

contractual agreements.”

*K. Miller II*, 238 Ill. 2d at 293-94. This balancing process weighs several factors, including the particular circumstances involved, as well as the consideration of factors against enforcement of the contract, those favoring the protection of the parties’ expectations, those abhorring any unjust enrichment, and any public interest in the enforcement of the term. See *K. Miller II*, 238 Ill. 2d at 294. Accordingly, with the imposition of this test, the Court explicitly reversed the prior decision, stating that the appellate court’s conclusion that a statutory violation automatically renders a contract unenforceable “was error.” *K. Miller II*, 238 Ill. 2d at 297.

¶ 31 Applying its new holding to the facts, the supreme court examined the Home Repair and Remodeling Act, noting that, while it made oral contracts for home remodeling over \$1,000 a statutory violation, it did not explicitly provide that such a violation rendered that oral contract unenforceable. See *K. Miller II*, 238 Ill. 2d at 297. Rather, the act left this as an “open question” which, pursuant to its new holding, required a balancing analysis to consider the relevant facts and public policies before concluding that the plaintiff could not pursue relief for breach of contract. *K. Miller II*, 238 Ill. 2d at 297. In this particular instance, the supreme court noted that it did not need to remand the cause to the appellate court to conduct this balancing test. See *K. Miller II*, 238 Ill. 2d at 298. This was because the legislature had already amended the Home Repair and Remodeling Act after *K. Miller I* to clarify that violation of the writing requirement under that act did not render an oral contract unenforceable. See *K. Miller II*, 238 Ill. 2d at 298. Accordingly, the Illinois Supreme Court in *K. Miller II* concluded by holding that recovery was available to the plaintiff under both breach of contract and *quantum meruit*. See *K. Miller II*, 238

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Ill. 2d at 301.

¶ 32 Based on all this, we find that Jean’s insistence that *K. Miller II* does not constitute new law and is irrelevant to the instant cause because it involves a different statute to be completely incredible. To the contrary, as much as our appellate court found *K. Miller I* to be applicable to the case at bar when it was on appeal, all the more so do we find *K. Miller II* now, as decided by our state supreme court, to be directly on point and meriting the same result.

¶ 33 First, the underlying facts of these two cases could not be more similar, if only they involved the same statute. As in *K. Miller*, there was, at the very least in the instant cause, an oral contract whereby Carlton offered and performed nursing care services to Robert who stayed at its facility for over two years. As we have noted, the Nursing Home Care Act requires that a contract for such services be in writing, but neither party here signed a written contract, resulting in a violation of the statute. Whereas before *K. Miller II* such a violation would have automatically rendered the contract unenforceable, the application of the new holding of *K. Miller II* requires us to first examine the Nursing Home Care Act itself to see if it explicitly provides for unenforceability or if it is silent on the issue. As Carlton notes, and as the trial court here confirmed, there is nothing in the statute with respect to this; thus, the statute is silent. As such, we must now conduct a balancing test, weighing the public policy expressed in the Nursing Home Care Act against the countervailing policy of enforcing contractual agreements. In so doing, we cannot help but find that, in light of the particular circumstances presented herein, the latter of these concerns ultimately prevails.

¶ 34 The Nursing Home Care Act was enacted “ ‘amid concern over reports of “inadequate,

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improper and degrading treatment of patients in nursing homes.” ’ ’ ’ *Carlton I*, 401 Ill. App. 3d at 535, quoting *Harris v. Manor Healthcare Corp.*, 111 Ill. 2d 350, 357-58 (1986), quoting 81st Ill. Gen. Assem., Senate Proceedings, May 14, 1979, at 184 (statement of Senator Berning). Its primary purpose is to protect nursing home patients, and it was established for the treatment and care of residents and to expand the powers of the Illinois Department of Public Health to enforce its provisions. See *Carlton I*, 401 Ill. App. 3d at 531 (citing *Harris*, 111 Ill. 2d at 358). The main portions of the statute were to create a residents’ “bill of rights” and to require the establishment and enforcement of certain responsibilities of nursing home facilities. See *Carlton I*, 401 Ill. App. 3d at 531-32 (citing *Eads v. Heritage Enterprises, Inc.*, 204 Ill. 2d 92, 97 (2003), and *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 461 (1999)). Clearly, the essence of the act is pro-resident and nursing home facility-compliant. This resulted in many administrative rules, among them the requirement of a written contract so as to clearly and specifically inform residents of the care they would be receiving and their rights thereunder. See *Carlton I*, 401 Ill. App. 3d at 532-33.

¶ 35 The key in the instant cause is that never, at any point in the sum of this litigation, has Robert or Jean, or any one for that matter, ever, in even the slightest way, insinuated, mentioned or alleged that Carlton provided unsatisfactory care to Robert at any time he was at its facility. Therefore, the purpose and policy of the Nursing Home Care Act—the very reason for its enactment—is not at all involved in this cause. Rather, the only problem between the parties here is payment; it is money, and not the services provided, the patient’s rights or the facility’s compliance with administrative rules, that is at issue. And, even then, there is no debate

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regarding the cost or value of these services; it is wholly that nothing was paid for their receipt. Accordingly, we balance the fact that the Nursing Home Care Act's public policy is not involved here with the more prominent facts that support the traditional interest surrounding the formation of contracts: Robert's attorney accepted a copy of the contract which Carlton handed to her when Robert was admitted (as per the act), his attorney signed and returned all 13 of the admission forms required, Robert stayed at the facility and received care for over two years, and it was only upon Carlton's institution of an involuntary discharge proceeding with the Illinois Department of Public Health that Robert left Carlton. It is hard to imagine that, in this scenario, only Carlton had the expectation that payment would be made. Correspondingly, that Robert and his family had no expectation that it owed Carlton payment, which totaled over \$134,000, simply because no one signed a written contract is simply incredulous.

¶ 36 Clearly, there was an expectation of the enforcement of a contract here between both parties. To find anything less is a prime example of the abhorrence of unjust enrichment. Thus, where there is no public policy interest involved here surrounding the main legal tenets of the Nursing Home Care Act, the balance of factors prominently weighs in favor of enforcing the contract despite the violation of the writing requirement of the statute.

¶ 37 Moreover, we would resoundingly rebut Jean's inference here that *K. Miller II* is inapplicable to the instant cause because, in her words, it was meant to apply only to the Home Repair and Remodeling Act. First, our supreme court never made any indication in its decision in *K. Miller II* that its holding, and the new test it established to consider whether a statutory violation of a contractual term renders it unenforceable, were to be so narrowly construed.

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Rather, as we read that decision, the Court consistently referenced contracts and statutes in general; it just so happened that the underlying facts involved the Home Repair and Remodeling Act, as opposed to other statutes, and it was ultimately this act that the Court was called to finally apply its new holding. Thus, the Court reformed a prior general proposition of law and applied it to the facts before it to create new law to be applied to future fact scenarios, which is, essentially, its job. Jean provides us with no reason, and we find none, to even speculate that the Court's holding in *K. Miller II* was reserved only for that cause.

¶ 38 Second, we have already discussed that, at the time of *Carlton I*, the appellate court found *K. Miller I* to be directly on point and precedential, even though it involved the Home Repair and Remodeling Act and not the Nursing Home Care Act. Jean had no complaint about the similarity of the two cases and the applicability of their law to each other at that time, when she prevailed. We would be hard-pressed to find a reason to conclude that now, somehow, even though the facts have not changed, *K. Miller II* is inapplicable to *Carlton II*.

¶ 39 And, finally, we would be remiss if we did not call attention to the undeniable fact that the Illinois Supreme Court's holding in *K. Miller II* has, since its pronouncement, been adopted and applied by our appellate courts to causes involving several different statutes, and not just the Home Repair and Remodeling Act. See *Ricatta v. Girardi*, 2013 IL App (1st) 113511, ¶ 34 (involving the Illinois Medical Practice Act of 1987 and holding that, because it is no longer the rule that if any part of a contract is illegal the whole contract is unenforceable, courts must conduct, specifically as per *K. Miller II*, a balancing test weighing the public policy expressed in the statute against the policy in enforcing contractual agreements); *LVNV Funding, LLC v. Trice*,

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2011 IL App (1st) 092773, ¶ 17 (involving the Illinois Collection Agency Act and noting that the supreme court in *K. Miller II* held a statutory violation does not automatically render a contract unenforceable, thereby first requiring an examination of the statute at issue to see if it is silent with respect to the consequences of a statutory violation before rendering a decision); see, e.g., *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371 (2005) (cited by *LVNV Funding* and involving the Corporation Practice of Law Prohibition Act and the Professional Service Corporation Act); *Pascal P. Paddock, Inc. v. Glennon*, 32 Ill. 2d 51 (1965) (cited by *Ricatta* and involving the Illinois Plumbers License Law). From all this, we fail to find any merit in Jean's assertion that *K. Miller II* is inapplicable and irrelevant to the instant cause.

¶ 40 Accordingly, based on the Illinois Supreme Court's declaration of new law in *K. Miller II*, which is binding on our court, we reverse that portion of *Carlton I* that found Carlton's breach of contract claim, and its accompanying claim pursuant to the Illinois Rights of Married Persons Act based on contract, automatically unenforceable because of a violation of the writing requirement of the Nursing Home Care Act. Instead, after performing the required balancing test due to the statute's silence on the issue, and in light of the particular facts of the instant cause balanced against the expectations of the parties, the abhorrence of unjust enrichment and public interest and policy, we hold that recovery under these claims is, indeed, available to Carlton.

¶ 41 Our decision does not end here. As noted early on, Carlton pled in the alternative on appeal before our court, contending that, should we not allow it to proceed under a contract theory against Jean, we should reverse and remand the trial court's holding of summary judgment in her favor to allow it to continue under its *quantum meruit* theory. However, again relying on

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*K. Miller II*, we find no reason that these arguments must be pled in the alternative. Rather, just as the Illinois Supreme Court held in that cause, we hold, for the reasons that follow, that recovery is available to Carlton under both theories.

¶ 42 Having already held that its contract claims may stand, we turn to Carlton’s *quantum meruit* challenge. Following the appellate court’s holding in *Carlton I*, the cause was remanded to the trial court for further proceedings consistent with our finding that it had a claim in *quantum meruit*. Carlton, therefore, filed a third amended complaint alleging this theory, and Jean moved for summary judgment. The trial court granted her motion, finding that any benefit Jean received from the relationship between Carlton and Robert was “incidental” and, thus, she was “too far removed” and the circumstances too “attenuated” for her to be considered liable under *quantum meruit*.

¶ 43 At the summary judgment stage, a plaintiff is not required to prove its case. See *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 423 (1998). That is, the purpose of summary judgment is not to try a question of fact, but only to determine whether one exists. See *Jackson*, 185 Ill. 2d at 423. Thus, summary judgment should be granted only when the pleadings, affidavits, depositions and admissions of record, demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Jackson*, 185 Ill. 2d at 423. Moreover, because summary judgment comprises a drastic and terse means of disposing of litigation, the trial court hearing the motion has the duty to construe the record strictly against the moving party and liberally in favor of the nonmoving party. See *Jackson*, 185 Ill. 2d at 423-24; accord *Waters v. City of Chicago*, 2012 IL App (1st) 100759, ¶ 8. Summary

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judgment should not be allowed unless " 'the right of the moving party is clear and free from doubt.' " *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001), quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Thus, where reasonable minds could draw divergent inferences from the undisputed material facts, or where there is a dispute with regard to a material fact, or where reasonable persons could differ with respect to the weight to be given relevant factors of a legal standard, summary judgment should be denied and the issue should be submitted to the trier of fact. See *Waters*, 2012 IL App (1st) 100759, ¶ 8 (citing *Jackson*, 185 Ill. 2d at 424, and *Calles v. Scripto-Tokai Corp.*, 224 Ill. 2d 247, 269 (2007)). Appellate review of a trial court's grant of summary judgment is *de novo*. See *Jackson*, 185 Ill. 2d at 424; accord *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 370 (2007).

¶ 44 As we described earlier, in both the instant decision and in *Carlton I*, *quantum meruit* means “ “as much as he deserves,” ’ ” and is based on the implied promise of a recipient of services to pay for the value of these services, as otherwise the recipient would be unjustly enriched. *Carlton I*, 401 Ill. App. 3d at 533-34, quoting *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 365 (1997), quoting *Romanek-Golub and Co. v. Anvan Hotel Corp.*, 168 Ill. App. 3d 1031, 1041 (1988). To recover under *quantum meruit*, the plaintiff must demonstrate it performed a service to benefit the defendant, it did not perform this service gratuitously, the defendant accepted this service, and no contract existed to prescribe payment for this service, all resulting in the unjustness of the defendant’s retention of the benefit in the absence of any compensation. See *Bernstein and Grazian, P.C. v. Grazian and Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010); *Carlton I*, 401 Ill. App. 3d at 534 (citing *First National*,

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179 Ill. 2d at 365). There is no privity requirement for bringing a *quantum meruit* claim. See *Sobel v. Franks*, 261 Ill. App. 3d 670, 683 (1994). However, "[t]he mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor." *Bernstein and Grazian*, 402 Ill. App. 3d at 979, quoting *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 9 (2004), quoting *Rutledge v. Housing Authority of the City of East St. Louis*, 88 Ill. App. 3d 1064, 1069, quoting Restatement of Restitution § 1, Comment c (1937). Instead, the burden is on the provider, who "must show that valuable services" were furnished by him, that they were received by the defendant, and that the circumstances are such that it would be unjust for the defendant to retain these without paying for them. See *Bernstein and Grazian*, 402 Ill. App. 3d at 979. Accordingly, "the measure of recovery is the reasonable value of work," and, in order to recover under this doctrine, the provider must prove that the services performed were "of some measurable benefit to the defendant." *Bernstein and Grazian*, 402 Ill. App. 3d at 979, quoting *Hayes Mechanical*, 351 Ill. App. 3d at 9, and *Van C. Argiris and Co. v. FMC Corp.*, 144 Ill. App. 3d 750, 753 (1986). At its core, the law abhors unjust enrichment. See *K. Miller II*, 238 Ill. 2d at 294 (citing Restatement (Second) of Contracts § 178, Comment b, at 8 (1981)); accord *Ricatta*, 2013 IL App (1st) 113511, ¶¶ 36, 40; see also *Hayes Mechanical*, 351 Ill. App. 3d at 9 (*quantum meruit* implies a duty imposed to prevent injustice); *M. J. McCarthy Motor Sales Co. v. Van C. Argiris and Co.*, 78 Ill. App. 3d 725, 730 (1979) ("action for unjust enrichment is maintainable in all cases where one person has received money under such circumstances that in equity and good conscience, he ought not retain it").

¶ 45 In the instant cause, it is clear to us that there exists a genuine issue of material fact as to

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whether Jean was a beneficiary for the purposes of a *quantum meruit* claim. Upon Jean's motion for summary judgment, Carlton argued that, due to the special legal relationship between a husband and wife, Jean may be liable for the care it tendered to Robert and, thus, that Jean may well have received a benefit from the uncompensated relationship between the two because Robert's stay at Carlton relieved her of the necessity, responsibility and costs of feeding, housing, cleaning, medicating and caring for him for that period of time. Whether, as the trial court concluded, any benefit Jean received was only incidental and "too far removed" to hold Jean liable in *quantum meruit*, or whether the opposite, as Carlton argued, is true, is, ultimately, a question of fact and not one of law. This is especially true since, as we discussed, privity to the relationship at issue is not required to prevail, or to be held liable, in *quantum meruit*. See *Sobel*, 261 Ill. App. 3d at 683.

¶ 46 The question here becomes, then, whether the services Carlton performed for Robert were of some measurable benefit to Jean, such that they amounted to more than simply an incidental benefit she happened to receive at Carlton's cost. See *Bernstein and Grazian*, 402 Ill. App. 3d at 979, accord *Hayes Mechanical*, 351 Ill. App. 3d at 9; *Van C. Argiris*, 144 Ill. App. 3d at 753. Clearly, factors to consider here would be not only Robert and Jean's marital status, but also the particular facts of this cause: the family's receipt of the contract, their signing of all the admission forms, Robert's lengthy stay without payment, their failure to ever criticize the services received, etcetera. Add to this the public policy disfavoring unjust enrichment and the requirement that the record must be construed strictly against the moving party and liberally in favor of the nonmoving party in considering summary judgment, it becomes obvious that there is

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a question of fact here—one that the trial court improperly chose to answer on its own instead of properly submitting to a trier of fact. Thus, we find that the trial court’s grant of Jean’s motion for summary judgment was in error.

¶ 47

#### CONCLUSION

¶ 48 Accordingly, and in the vein of the Illinois Supreme Court’s decision in *K. Miller II*, we reverse the instant cause and remand for further proceedings. For all the reasons set forth herein, these are to include both Carlton’s breach of contract claim (and its claim under the Illinois Rights of Married Persons Acts based on contract), and its *quantum meruit* claim. See *K. Miller II*, 238 Ill. 2d at 287 (stating that “recovery is available under both theories”).

¶ 49 Reversed and remanded.