THIRD DIVISION
March 4, 2015

Nos. 1-13-2634 and 1-13-3144 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re THE MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
JOSEPH G. HOWARD,	)	Cook County
	)	
Petitioner-Appellee,	)	No. 11 D 03831
	)	
v.	)	Honorable
	)	Helaine Berger,
KATHLEEN N. HOWARD,	)	Judge Presiding.
	)	
Respondent-Appellant.	)	

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly acted within its discretion to grant, a month before trial, an attorney's motion to withdraw, which cited a breakdown of the attorney-client relationship. Trial court did not abuse its discretion in denying a request to continue the trial where the trial date had been set for four months and counsel did not affirmatively assert complexity of the case required additional time to prepare for trial. Settlement agreement was not unconscionable where party voluntarily entered into the agreement, understood case alternatively could proceed to trial and no clear and convincing evidence of duress existed. No evidentiary hearing on a motion to vacate the judgment required where the trial court was familiar with the party's claims and motion was not supported with affavidits. Rule 219(d) sanctions warranted where party improperly sought to open discovery postjudgment.

¶ 2 Respondent Kathleen Howard appeals various trial court rulings entered during her marriage dissolution proceedings. On appeal, Kathleen asserts the trial court abused its discretion when it: (1) granted her former attorney's request to withdraw one month before trial and (2) denied her motion to continue the trial to allow substitute counsel to adequately prepare for trial. Kathleen also asserts the settlement agreement incorporated into the marriage dissolution judgment was unconscionable and she was under duress when she acquiesced to its terms. Kathleen further asserts that the trial court should have entered a declaratory judgment because the written settlement agreement differed from the terms orally agreed to during the pretrial conference, the oral agreement was not valid and the trial court erred in denying her request to hold an evidentiary hearing where she could present evidence supporting her claim of unconscionability. Kathleen's last claim asserts that the trial court erroneously imposed discovery sanctions finding discovery she sought postjudgment was not propounded in good faith. Because Kathleen's claims lack merit, we affirm.

¶ 3 BACKGROUND

¶ 4 Kathleen and Joseph Howard were married on November 23, 1990, and four children were born during the marriage. On April 14, 2011, Joseph filed a petition for dissolution of marriage, and Kathleen filed her response and counter-petition. Joseph is a practicing attorney.

¶ 5 On September 14, 2011, Kathleen's retained counsel, who had represented her since April 29, 2011, filed a motion to withdraw *instanter* due to irreconcilable differences, which the trial court granted. On September 20, 2011, substitute counsel filed an appearance, but on June 4, 2012, substitute counsel filed a motion to withdraw *instanter* for professional reasons, which he declined to reveal. The trial court granted the motion on June 20, 2012. On July 26, 2012, Kathleen's third lawyer filed an appearance.

¶ 6 On January 8, 2013, the trial court entered an order: (1) setting the case for trial on April 9, 10 and 11, 2013; (2) closing discovery on March 9, 2013; and (3) requiring the parties to exchange updated discovery, exhibits, witness lists, motions *in limine* and updated pretrial motions by April 2, 2013. On February 22, 2013, Joseph served Kathleen with a notice to produce, notice of deposition and interrogatories. On February 25, 2013, Kathleen served Joseph with matrimonial interrogatories, witness interrogatories, a first request for production of documents and notice of deposition. Also on February 25, Kathleen's current counsel filed a motion to withdraw *instanter* citing a serious breakdown in the attorney-client relationship and stating continued representation was no longer practical or in Kathleen's best interests. The trial court granted the motion to withdraw on March 8, 2013. In that same order, the trial court granted Kathleen 21 days to obtain other counsel or file her *pro se* appearance. The order expressly stated that "the April 9, 10 and 11 trial dates shall stand."

¶ 7 On March 19, 2013, Kathleen retained her fourth lawyer, James Hanauer, who also represents her on appeal. On March 29, 2013, Hanauer filed an appearance on Kathleen's behalf and filed a motion to continue the trial date for 30 or 60 days asserting it would be difficult to prepare for trial within a few weeks based on the pending issues. On the same day, Hanauer filed a demand for production of all previously requested records and documents. On April 1, 2013, the trial court denied Hanauer's motion to continue the trial.

¶ 8 On April 9, 2013, the day trial was set to commence, the parties executed a pretrial conference stipulation, and the trial court conducted a pretrial conference. During the settlement negotiations, the trial court spent approximately four to five hours with the attorneys discussing the financial aspects involved in the case, and Joseph also tendered to Kathleen's counsel checks

from his law practice's operating account for review. After negotiating during the morning of April 9 and most of the afternoon, the parties reached a final settlement on all issues.

¶ 9 During the prove-up on the afternoon of April 9, Joseph testified that he made a complete disclosure of all his assets and income. The trial court asked both Kathleen and Joseph if they wished to enter into the settlement agreement, and if they understood they could not change their minds after agreeing to the settlement. After Kathleen expressed a lack of understanding and that she "did not always think it's fair," the following colloquy occurred:

> "THE COURT: Okay. If you don't want to enter into this agreement, that's fine, but we're going to have to start the trial tomorrow morning.
>
> So, you're either entering into it or you're not.
>
> If you don't think it's fair to you, if you don't understand it, you can't enter into it.
>
> THE WITNESS [Kathleen]: Okay. I don't–I think there are so many accounts that weren't accounted for, and I think that that hasn't really been fair. I don't.
>
> THE COURT: So, you don't wish to enter into it?
>
> THE WITNESS: I feel like I have to get it done here, and we're in a hurry.
>
> THE COURT: You don't have to enter into it whatsoever.
>
> We can try the case."

The trial court then inquired of Kathleen several times as to whether she wanted to consult with her lawyer. Kathleen ultimately responded, "[j]ust for a minute." The trial court allowed a brief interruption of the proceedings to permit Kathleen and Hanauer to confer. When the hearing resumed, Kathleen reiterated her dissatisfaction with the settlement and stated that she "didn't understand why there's no accounting for his accounts receivables or his business assets" but she wanted "to be done with this" and did not think she was "going to do any better, but do I think

it's fair or just[?;] no, but I'm willing to—I'll sign." The trial court expressly stated that it did not find the settlement agreement unconscionable, the agreement would be incorporated verbatim into the judgment for dissolution of marriage and, although Kathleen was not thrilled with the conclusion of the two-year litigation proceedings, "she is knowingly and voluntarily entering into the agreement."

¶ 10 On April 11, 2013, the parties appeared in court to present the judgment. Joseph's attorney informed the trial court that he had included several of Kathleen's requests in the written settlement agreement that were not part of the prove-up, but he considered sensible, although outstanding issues remained. The parties then went over the settlement agreement page by page as the outstanding issues were addressed, which mainly included payment responsibilities for prom expenses, outstanding medical bills, assisting Joseph in obtaining health insurance, a termination date for the children's college expenses, cooperation in filing any amended tax returns and payment of rent by Kathleen to continue residing in the marital home. With the assistance of the trial court, all outstanding matters were addressed and agreed to by the parties. The trial court then entered the judgment for dissolution of marriage.

¶ 11 During the hearing, Kathleen's counsel did not assert his client's belief that the agreement was unconscionable or the product of duress. Counsel also did not assert his belief that the additional terms the parties were discussing were either material or rendered the oral agreement reached two days earlier ineffective.

¶ 12 On May 13, 2013, Kathleen filed a motion to vacate and/or reconsider the judgment for dissolution of marriage asserting, in part, that the settlement agreement was unconscionable and the product of duress. Kathleen also requested a declaration that the parties had not reached an agreement because the settlement agreement included additional and varied terms that were not

discussed or agreed to during the negotiation on April 9. Kathleen requested an evidentiary hearing on the motion, which was not supported by affidavits or other evidence.

¶ 13 On June 10, 2013, Kathleen filed a notice to produce pursuant to Illinois Supreme Court Rule 214 (eff. Jan. 1, 1996) consisting of 24 requests including, in part, the following documents as of the judgment date: (1) Joseph's 2012 federal and state individual, partnership and corporate income tax returns; (2) stock certificates; (3); life insurance policies; (4) copies of trust agreements; (5) evidence of money and property received by inheritance; and (6) all evidence of indebtedness. Although Joseph's counsel offered to address the propriety of the requested discovery orally, Kathleen's counsel insisted on a written response. Joseph filed a motion to quash, which the trial court granted on June 26, 2013.

¶ 14 On June 27, 2013, Joseph filed a response to Kathleen's motion to vacate, and also requested as a sanction under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) reasonable attorney fees incurred in preparing his response to the motion to vacate. Joseph argued the motion was not well grounded in law or fact or any good faith argument in support of modifying existing law. On July 16, 2013, the trial court denied Kathleen's motion to vacate. The trial court also denied Joseph's motion for Rule 137 sanctions finding the motion to vacate was not brought in bad faith, vexatious or harassing. But the trial court did impose a sanction pursuant to Illinois Supreme Court Rule 219(d) (eff. July 1, 2002) finding there was no good faith basis for Kathleen's request to produce where Kathleen sought postsettlement and posttrial discovery, which was previously closed by court order. The trial court entered Rule 219(d) sanctions totaling $1,155 representing three hours of time counsel spent preparing the motion to quash.

Kathleen timely appealed the trial court's orders granting counsel's motion to withdraw, denying the motion to continue trial and denying the motion to vacate.[1]

¶ 15 ANALYSIS

¶ 16 Before addressing the merits of Kathleen's claims on appeal, we note that Kathleen states the applicable standard of review for her claims as abuse of discretion. We agree. See *In re J.D.*, 332 Ill. App. 3d 395, 404 (2002) (ruling on a motion to withdraw reviewed for abuse of discretion); *People v. Walker*, 232 Ill. 2d 113, 125 (2009) (ruling on a motion to continue trial reviewed for an abuse of discretion); *In re Marriage of King*, 336 Ill. App. 3d 83, 87 (2002) (ruling on a motion to vacate reviewed for abuse of discretion); *In re Marriage of Burch*, 205 Ill. App. 3d 1082, 1096 (1990) (ruling denying further discovery and evidentiary hearing relating to a postjudgment motion to vacate reviewed for an abuse of discretion); *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 64 (2008) (imposition of sanctions reviewed for an abuse of discretion). Accordingly, we will reverse the trial court's rulings only if they were arbitrary, fanciful or unreasonable, or ones that no reasonable person would make. *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

¶ 17 A. Motion to Withdraw

¶ 18 Kathleen first claims the trial court erred in granting her former attorney's motion to withdraw one month before trial. Kathleen also claims it was extremely unfair to grant the withdrawal only days after both parties served extensive discovery.

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[1] Kathleen separately appealed the trial court's order of August 27, 2013, awarding the children's guardian *ad litem* $2,770 for outstanding and unpaid fees. On November 14, 2013, this court granted Kathleen's motion to consolidate her appeals. Because Kathleen has raised no arguments regarding the trial court's August 27 order on appeal, the merits of that ruling are not addressed in this order and are forfeited.

¶ 19 Joseph responds that Kathleen forfeited review of this issue mainly because a party's voluntary compromise and settlement bars consideration of issues that could have been otherwise raised before the trial court. We agree. *People ex rel. Dept. of Public Health v. Wiley*, 348 Ill. App. 3d 809, 818 (2004). Despite being informed of the motion to withdraw and the respective hearing date, the record reveals that Kathleen raised no objection to her attorney's motion to withdraw or the trial court's decision to grant that motion. See *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 23 (finding party waived an issue for review by failing to object during the underlying proceedings and participation in a subsequent hearing on the motion at issue). By retaining another lawyer and continuing to litigate the case without raising any issue regarding the withdrawal of her former counsel, Kathleen has forfeited review of this issue.

¶ 20 B. Motion to Continue

¶ 21 Kathleen also claims that the trial court abused its discretion when it denied her recently retained attorney's motion to continue the trial. Kathleen requested a continuance because she retained new counsel on March 19, who filed an appearance on March 29, shortly before the April 9 trial date. Kathleen asserts that given the complexity of the case, her attorney needed additional time to adequately prepare for the scheduled trial date and the trial court's refusal to oblige was an abuse of discretion.

¶ 22 Requests for continuances are guided by section 2-1007 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1007 (West 2012)). No absolute right to a continuance exists. *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996). On good cause shown and at the trial court's discretion, the trial court may grant additional time to allow a party to do any act or take any step prior to judgment. 735 ILCS 5/2-1007 (West 2012). A party requesting a continuance must provide the trial court with especially grave reasons for a continuance once the case has

reached the trial stage given the potential inconvenience to the witnesses, the parties, and the court. Ill. S. Ct. R. 231(f) (eff. Jan. 1, 1970); *K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 23; *In re Marriage of Ward*, 282 Ill. App. 3d at 430-31. Moreover, a trial court possesses inherent authority to control its own docket and the proceedings before it. *People v. Swamynathan*, 236 Ill. 2d 103, 117 (2010).

¶ 23 Joseph again responds that Kathleen forfeited review of this issue, and we agree based on Kathleen's failure to contest the denial of the motion to continue in the trial court and her ensuing settlement. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 23, *Wiley*, 348 Ill. App. 3d at 818. In any event, we are not persuaded by Kathleen's claim that the trial court abused its discretion by failing to reschedule the trial to a later date. First, it is apparent that neither Kathleen nor her new lawyer acted with any sense of urgency given the pending trial date. After her third lawyer withdrew on March 8, Kathleen waited until March 19 to retain substitute counsel even though she was specifically aware that the April 9 trial date was set and would not be rescheduled. Further, substitute counsel waited another 10 days before filing his appearance and his motion to continue the trial. Having undertaken Kathleen's representation after a trial date was set and with knowledge that the court had already indicated it would not be reset, the additional factor of counsel's delay in presenting the motion weighs heavily against the relief sought.

¶ 24 Second, in his motion, counsel set forth no compelling reason to continue the trial. In the motion to continue, counsel merely identified the issues before the court as custody, visitation, child support, maintenance, property allocation, debt allocation and attorney fees. These are issues addressed in the vast majority of marriage dissolution cases. Nowhere in the motion did counsel articulate why the issues in this case were arguably *complex* or difficult to prepare, or

that preparation was frustrated by any unique or unforeseeable intervening circumstances. See *Martinez v. Scandroli*, 130 Ill. App. 3d 712, 715 (1985) (recognizing that once a cause is reached for hearing, a motion for continuance should not be heard without sufficient excuse shown for the delay in so moving or where there was no indication that the case was complex or difficult to prepare). Likewise, the motion to continue was not founded upon counsel's unavailability due to scheduling conflicts or illness, but a request for additional time to become familiar with the case. Based on the motion to continue, the reasonable inference was that time and not complexity or a conflict was the basis for the continuance. See *Id*. (recognizing that a continuance may be warranted where attorney indicates that her schedule would prohibit her from undertaking trial preparation tasks in a timely manner).

¶ 25 By the time Kathleen's fourth lawyer appeared in the case, the proceedings had been ongoing for nearly two years. The court had allowed the parties adequate time to conduct discovery and prepare for trial. The fact that the parties waited until less than two months before trial to propound discovery requests does not have any bearing on whether the trial court abused its discretion in refusing to continue the trial. Kathleen failed to provide any persuasive reason, significant excuse or establish prejudice warranting a continuance, especially given that the trial date had been set for months. Accordingly, the trial court did not abuse its discretion in denying the motion to continue the trial. See *Id.* (holding no abuse of discretion in denying a motion to continue requested by counsel to allow preparation for trial scheduled within weeks of his appearance).

¶ 26 C. Motion to Vacate

¶ 27 Kathleen contends the trial court erred in not granting her motion to vacate the judgment for dissolution asserting the settlement agreement incorporated in the judgment was

unconscionable because: (1) she hastily agreed to the settlement based on the trial judge's comment during negotiations that she had a commitment to attend; (2) she had to either settle "right now" or go to trial in the morning and (3) the disparity in the parties' economic circumstances rendered the settlement inequitable. Kathleen claims she was under extreme duress, repeatedly stated she did not understand the agreement and thought it was unfair, all while crying, distraught and confused. Kathleen also claims she did not discuss settlement with any of her prior attorneys and only discussed trial preparation with Hanauer. Kathleen reasserts her claim that it was unfair to allow her attorney to withdraw one month before trial, especially because Joseph did not provide discovery until the week of trial and her attorney had an insufficient amount of time to adequately prepare for trial.

¶ 28 In an effort to promote the amicable settlement of disputes, the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/502(a) (West 2010)) permits parties in a divorce action to enter into an agreement containing provisions for the disposition of their property, maintenance, child support, custody and visitation. Parties settling their property rights by mutual agreement are bound to the terms of their agreement. *In re Marriage of McLauchlan*, 2012 IL App (1st) 102114, ¶ 21. Settlement agreements incorporated into a divorce decree become merged with the decree, are regarded as contracts between the parties and will be enforced by courts if entered into fairly and in good faith. *Id*.; *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 17. When one party seeks to vacate a property settlement agreement incorporated into a judgment of dissolution of marriage, all presumptions are in favor of the validity of the agreement. *In re Marriage of Bielawski*, 328 Ill. App. 3d at 251.

¶ 29 As an initial matter, Kathleen filed her motion to vacate pursuant to section 2-1301 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2012) (providing for relief from

default judgments)), but the trial court recognized that section 2-1203 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1203) (West 2012)) was the proper section and reviewed the merits of the motion under that section, a point the parties do not contest. Section 2-1203 provides for relief after judgment in non-jury cases. 735 ILCS 5/2-1203 (West 2012). Accordingly, we will review the trial court's ruling finding that the settlement agreement was not unconscionable pursuant to section 2-1203. As the movant, Kathleen bears the burden of establishing sufficient grounds to vacate the judgment. *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 517 (1992).

¶ 30 A settlement agreement will be deemed unconscionable if one party lacked a meaningful choice or the contract terms are unreasonably favorable to the other party. *In re Marriage of Roepenack*, 2012 IL App (3d) 110198, ¶ 31; *In re Marriage of Gibson-Terry*, 325 Ill. App. 3d 317, 325 (2001). "The inquiry into unconscionability requires two distinct considerations: (1) the conditions under which the agreement was made; and (2) the economic circumstances of the parties resulting from the agreement." *In re Marriage of Richardson*, 237 Ill. App. 3d 1067, 1080 (1992). The former factor considers procedural unconscionability while the latter factor focuses on substantive unconscionability. *In re Gibson-Terry*, 325 Ill. App. 3d at 326. But an agreement merely favoring one party over another is not necessarily unconscionable. *Id*. at 325; *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 181 (1996). Moreover, a settlement agreement will not be disregarded because one party has second thoughts. *Id*. at 180; *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 251 (2002). Here, Kathleen's contentions relate to procedural unconscionability because she asserts unfairness surrounding the negotiation of the settlement and she fails to articulate how the agreement's terms were one-sided or overly harsh—apart from a conclusory claim of "unfairness."

¶ 31 The record rebuts Kathleen's assertion that the conditions under which she agreed to settle were procedurally unconscionable; rather, our review of the record leads us to conclude that Kathleen freely and voluntarily entered into the settlement agreement. The record reveals that during the prove-up, the trial court repeatedly instructed Kathleen that she did not have to enter into the settlement agreement if she did not think it was fair or did not understand it. The trial court also allowed Kathleen to consult with her attorney during the prove-up. Thereafter, Kathleen responded affirmatively to her counsel's question that although she was not thrilled with everything that happened in the case or the settlement agreement, she was going to accept it and be bound by it. The record is clear that Kathleen's counsel instructed her, and she understood that she could not change her mind if she had buyer's remorse. Similarly, the trial court reiterated to the parties that they had an absolute right to go to trial but they "could not go to bed and wake up tomorrow morning and say, 'You know, I told the judge this was my agreement, but it's not my agreement.' " Upon further questioning by the trial court, Kathleen indicated that she understood all of the terms of the settlement agreement and she wished to accept it "even though she did not think it was fair because she did not think she would do any better and wanted to be done with it."

¶ 32 The record demonstrates that the parties engaged in extensive negotiations, the trial court spent four to five hours with the attorneys hearing about the financial aspects of the case, negotiations were at arm's length and both parties were represented by counsel. See *In re Gibson-Terry*, 325 Ill. App. 3d at 326 (recognizing that when determining unconscionability, the time spent negotiating is not a "*per se* formulation of unconscionability;" rather, it is significant that the parties engaged in arm's length negotiations with the aid of counsel). Although Kathleen expressed her dissatisfaction with some of the settlement agreement's terms, she made many

statements demonstrating her desire to proceed with the settlement and indicated she was aware that she was entitled to go to trial if she chose not to settle. Moreover, the trial court expressly made a finding that the agreement was not unconscionable and was the end result of two years of litigation. Collectively, the facts in the record indisputably establish that Kathleen freely agreed to the settlement and the record shows no evidence of unconscionability. *In re Marriage of Steichen*, 163 Ill. App. 3d 1074, 1079 (1987).

¶ 33 *In re Marriage of Smith*, 164 Ill. App. 3d 1011 (1987), cited by Kathleen is inapposite. In *Smith*, the wife alleged that her ex-husband's purchase of a home immediately following the prove-up was relevant to his economic situation because he testified he bore substantial debt and earned a limited annual income. *Id.* at 1021. This court held that the wife should have been allowed to ascertain and demonstrate when the home was purchased and whether the funds used were the husband's or originated from another source. *Id*. It was on this basis, and not on any allegations amounting to procedural unconscionability, that this court reversed and remanded the matter for further proceedings. *Id.* at 1020. In fact, the *Smith* court found no duress and did not find the wife's testimony regarding why she ultimately agreed to the settlement credible. *Id*. at 1019, 1023. Moreover, Kathleen, unlike the spouse in *Smith*, has not identified any specific transaction that raises a suspicion of substantive unconscionability. Thus, *Smith* does not support Kathleen's position.

¶ 34 Kathleen also fails to establish that the settlement was the product of duress. Duress, if proved, can render a marital settlement agreement unconscionable. *Richardson*, 237 Ill. App. 3d at 1082. Duress encompasses "oppression, undue influence, or taking undue advantage of the stress of another to the point where another is deprived of the exercise of free will." *Id*. A court

may set aside a settlement agreement based on duress, but the evidence of duress must be clear and convincing. *Id*.

¶ 35 The cases Kathleen relies upon to establish duress are distinguishable. *Richardson* found duress where: (1) the wife executed the settlement agreement one week after her father died; (2) the husband knew she did not want a divorce and told her they would be a family again soon following her father's funeral; (3) the agreement included a provision that the husband would refrain from pursuing marital dissolution proceedings for two years, a provision intended to influence his wife's decision to enter into the agreement; and (4) the husband retained new counsel for her whom she first met when she executed the settlement agreement. 237 Ill. App. 3d at 1082. In *In re the Marriage of Moran*, 136 Ill. App. 3d 331, 333-34 (1985), the wife's attorney: (1) presented her with a settlement agreement for her execution even though he never discussed the terms of the settlement with her and she had no input regarding its terms; (2) disregarded her objections to the agreement's terms prior to the prove-up; (3) stated the proposed settlement was a good deal in response to the wife's claim that the settlement was unfair; (4) warned her that her husband "would freeze her out;" and (5) quoted a $25,000 fee (which was deemed excessive given the limited amount of work) that the husband was willing to pay if she signed the agreement. *Id*. at 334, 337. Also, the wife's attorney did not rebut her testimony that he threatened to terminate his representation on the eve of trial if she refused to sign the agreement. *Id*. Significantly, this court found that the trial court mislead the wife and coerced her into signing the settlement agreement by repeatedly warning her that the agreement was the best she could do and her attorney would lose if they went to trial despite the lack of evidence regarding the parties' assets. *Id*. at 339. Based on these facts, this court concluded that the trial

court and counsel exerted extreme coercion and that the wife was under duress, thus warranting setting aside the settlement agreement. *Id*. at 342.

¶ 36 None of the circumstance found to create duress in either *Richardson* or *Moran* exist here because, based on the record before us, Kathleen was not in the midst of negotiating the settlement agreement while facing other non-related personal difficulties, there was no indication her attorney threatened to terminate his representation on the eve of trial and she made no allegations that Joseph emotionally manipulated her into settling. Rather, Kathleen asserts that her attorney's withdrawal one month prior to trial is a factor supporting a finding that the settlement was the product of duress. We disagree.

¶ 37 As noted above, Kathleen failed to object to her lawyer's motion to withdraw and, in fact, she was able to retain new counsel to represent her. Throughout these proceedings, Kathleen always had counsel of her own choosing and was not faced with the prospect of representing herself. Significant in this analysis is that the attorney who represented Kathleen in the settlement negotiations is the same attorney who represents her in this appeal. Hanauer never once suggested to the trial court that he believed he was at a disadvantage or lacked sufficient information to enable him to negotiate effectively on Kathleen's behalf.

¶ 38 Kathleen's assertion that she was under duress because she either had to accept the agreement or go to trial falls significantly short of duress, especially where the litigation had been ongoing for two years, she knew about the trial date four months ahead of time, she prepared for trial with her attorney and she consulted with her attorney during the negotiations that lasted approximately four to five hours. Kathleen also failed to raise any issue regarding duress when the parties appeared before the trial judge two days later to incorporate the settlement into the judgment of dissolution. Moreover, Kathleen's claim that no discovery was

produced until shortly before trial, and the discovery provided by Joseph was insufficient, likewise fails to demonstrate duress where the trial court entered an order on January 8 closing discovery on March 9 and indicated that both parties would be confined to the evidence produced. Although Kathleen undoubtedly experienced stress during the proceedings, stress alone does not prove duress (*In re Marriage of Flynn*, 232 Ill. App. 3d 394, 401 (1992)) and the stress Kathleen claims to have experienced is not unlike the stress that every litigant faces at the prospect of a trial. The record contains no support for Kathleen's claim of duress where the trial court was a participant in and had the opportunity to observe the events Kathleen claims give rise to duress. Given the trial court's specific finding that the settlement was not unconscionable, the record lacks clear and convincing evidence of oppression or undue influence necessary to render the agreement subject to attack. Consequently, the settlement agreement remains binding on the parties.

¶ 39 D. Declaratory Judgment

¶ 40 Kathleen claims the trial court erred by not entering a declaratory judgment because the written settlement agreement failed to conform to the oral settlement reached during the pretrial conference and the agreement included additional terms. Because there was no meeting of the minds regarding the terms agreed to during the oral settlement and those included in the judgment presented to the trial court, Kathleen asserts no agreement to enter into the final judgment existed, and the additional terms rendered the agreement unconscionable.

¶ 41 A trial court may enter a declaratory judgment in dissolution of marriage cases. *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 29. A declaratory judgment action requires: "(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests." *Beahringer v. Page*, 204 Ill.

2d 363, 372 (2003). An actual controversy exists where a case "presents a concrete dispute admitting of an immediate and definite determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof." *Northern Trust Company v. County of Lake*, 353 Ill. App. 3d 268, 273 (2004) (citing *Howlett v. Scott*, 69 Ill. 2d 135, 141-42 (1977)).

¶ 42 We reject Kathleen's contention because she fails to present the essential element of an actual controversy required for the trial court to enter a declaratory judgment. Although Kathleen objected to some of the terms added to the settlement agreement that she asserts were not discussed during the prove-up, the disputed items were minor details and not material terms of the agreement. The record reflects that Kathleen herself raised additional issues to which Joseph acceded. Also, the trial court aided the parties in resolving the minor disagreements over the ancillary items—*i.e.*, responsibility for prom expenses, outstanding medical bills, termination of college expenses, payment of rent relating to the marital home–and, both parties ratified the modifications incorporated into the final settlement agreement. *In re Marriage of De Frates*, 91 Ill. App. 3d 607, 613 (1980). Objections or misgivings that Kathleen, or Joseph for that matter, raised regarding the final settlement agreement were amicably addressed and resolved by the parties, counsel and the court. *Id*. at 614. The trial court only rejected Kathleen's request to modify the termination date of the parties' responsibility to pay for their children's college expenses which was stated as four years or age 23 noting that provision was common in most, if not all, settlement agreements. Because Kathleen agreed to the essential elements of the settlement, her second thoughts about the agreement's terms were an insufficient basis to render the settlement invalid. *Id*. at 613. Moreover, the settlement agreement was sufficiently definite and certain permitting the trial court to determine the terms agreed to by the parties, and

Kathleen only makes vague references to additional terms without explicitly stating what terms were erroneously included in the agreement. Because the parties approved of the terms incorporated into the final settlement agreement, there was no actual controversy for declaratory judgment purposes. Consequently, the trial court did not err in denying declaratory relief.

¶ 43 E. Evidentiary Hearing

¶ 44 Kathleen claims the trial court abused its discretion in refusing to conduct an evidentiary hearing allowing her to present evidence supporting her motion to vacate and her claim that the settlement agreement was unconscionable. Kathleen also asserts that an evidentiary hearing was necessary to address the terms incorporated into the judgment, but that were not previously discussed during the prove-up hearing.

¶ 45 In light of the procedural history of this case, we agree with the trial court that an evidentiary hearing was not necessary. The dissolution proceedings were pending for two years, the trial court participated in the pretrial conference that lasted approximately four to five hours and the trial court made an explicit finding that the agreement was not unconscionable. Thus, the trial court was familiar with the case and the grounds on which Kathleen sought to vacate the judgment. Moreover, Kathleen made no specific allegations of newly discovered information supporting a claim of substantive unconscionability, and she did not attach an affidavit to her motion to vacate as further support for her unconscionability claims, which were nothing more than vague allegations. *In re Marriage of Chapman*, 162 Ill. App. 3d 308, 314-15 (1987).

¶ 46 The cases Kathleen relies on to establish that she was entitled to an evidentiary hearing are distinguishable because here Kathleen fails to identify transactions she claims support a finding of unconscionability. See *In re the Marriage of McNeil*, 367 Ill. App. 3d 676, 679-80 (2006) (new evidentiary hearing required because the trial court did not consider the party's

unconscionability claim even though spouse attached financial statements as exhibits to his motion to reject or modify asserting he could not financially meet his revised obligations); *In re Marriage of Burch*, 205 Ill. App. 3d 1082, 1096 (1990) (evidentiary hearing required to substantiate allegation that spouse concealed assets by using marital funds to purchase real estate that was transferred to their children via a trust after the prove-up); *Smith*, 164 Ill. App. 3d at 1021-22 (new evidentiary hearing required to determine whether spouse disclosed all assets prior to the prove-up because he purchased a home with a substantial down payment immediately after the prove-up hearing). The cases cited by Kathleen do not stand for the proposition that an evidentiary hearing is required every time a party simply asserts that a settlement agreement is unconscionable. Rather, the cases require an evidentiary hearing where the spouse makes substantiated claims of unconscionability in light of specific transactions. See *In re Marriage of Varco*, 158 Ill. App. 3d 578, 580 (1987) (finding an evidentiary hearing required in cases where a motion to vacate and its supporting affidavits raise allegations sufficient to create a material issue of fact). Kathleen made no such allegations and provided no affidavit or other evidence supporting her generalized claim of unconscionability, which would have warranted an evidentiary hearing. *Id*. Consequently, the trial court did not abuse its discretion in denying her motion to vacate without an evidentiary hearing.

¶ 47 F. Sanctions

¶ 48 Finally, Kathleen contends that the trial court erred in imposing Illinois Supreme Court Rule 219(d) (eff. July 1, 2002) sanctions—especially where a motion for sanctions was not pending—based on her pursuit of a postjudgment request for production of documents. Kathleen argues she brought the motion in good faith because economic circumstances immediately following the creation of a settlement agreement may indicate unconscionability. Kathleen

asserts she was only seeking Joseph's financial records after the judgment date, which were relevant to determine if the settlement agreement was unconscionable.

¶ 49 Rule 219(d) sanctions relate to an abuse of discovery procedures and the rule dictates that "[i]f a party willfully obtains or attempts to obtain information by an improper discovery method, willfully obtains or attempts to obtain information to which that party is not entitled, or otherwise abuses these discovery rules, the court may enter any order provided for in paragraph (c) of this rule." Ill. S. Ct. R. 219(d) (eff. July 1, 2002). The trial court under paragraph (c) may order the offending party to pay the other party's expenses incurred as a result of the misconduct, including a reasonable attorney fee and monetary penalty. Ill. S. Ct. R. 219(c) (eff. July 1, 2002); *In re Marriage of Baumgartner*, 384 Ill. App. 3d at 64. A trial court may *sua sponte* impose Rule 219 sanctions. Ill. S. Ct. R. 219(c) (eff. July 1, 2002); *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶¶ 15, 19, 25.

¶ 50 We agree with the trial court that Rule 219(d) sanctions were warranted. Kathleen's document request encompassed information that should have been sought in pretrial discovery, which, as Kathleen and her lawyer knew, was closed. There was nothing either in Kathleen's motion to vacate or in the production request itself to suggest that Kathleen or her lawyer had learned of facts or circumstances since the entry of the judgment that would support a claim that Joseph had actively concealed assets or sources of income. Thus, the trial court properly viewed the document request as an improper attempt to conduct belated pretrial discovery and the sanction it imposed was precisely tailored to ameliorate the burden imposed on Joseph to respond.

¶ 51 Kathleen's reliance on *Smith* is again misplaced. In *Smith*, this court held that the trial court erred in refusing an offer of proof that shortly after the prove-up hearing the husband made

a $21,000 down payment on a $210,000 home, finding the requested information was not relevant to his economic situation after the settlement. 164 Ill. App. 3d at 1020. This court reasoned the wife's allegation contrasted sharply with the husband's prior testimony that he lacked the assets necessary to increase his contributions under the settlement agreement. *Id*. Unlike the specific postjudgment transaction identified in *Smith*, Kathleen's request to produce merely sought to discover information that she should have undertaken to discover earlier if she did not already have it. Importantly, the record reveals that Joseph testified he fully disclosed all of his assets. Moreover, even though discovery was closed, Joseph during the settlement negotiations, obtained and produced copies of checks from his law practice's operating account, and he asserts Kathleen's counsel designated which checks to produce. Under these circumstances, the trial court did not abuse its discretion in finding the request to produce was not brought in good faith and amounted to an abuse of discovery procedures. Further, given that Kathleen's counsel insisted that Joseph's response to the document request be in writing, the amount of sanction—$1,155—representing three hours of work associated with counsel's preparation of the motion to quash, was not excessive.

¶ 52 CONCLUSION

¶ 53 For the reasons stated, we find no error in the trial court's rulings granting Kathleen's counsel's motion to withdraw, denying Kathleen's motion to continue the trial and denying Kathleen's motion to vacate—without an evidentiary hearing. We likewise affirm the trial court's refusal to grant Kathleen declaratory relief. Finally, we affirm the trial court's order imposing Rule 219(d) sanctions totaling $1,155.

¶ 54 Affirmed.