2019 IL App (1st) 180598-U

FIFTH DIVISION
Order filed: May 24, 2019

No. 1-18-0598

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

HORACE FOX, JR., Trustee in bankruptcy for MIRIAM DRAIMAN,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 17 L 2968
GLENN SEIDEN, GLENN SEIDEN & ASSOCIATES, P.C., an Illinois professional corporation, and AZULAY, HORN, & SEIDEN, LLC, an Illinois professional corporation,	)	
Defendants,	)	Honorable Thomas R. Mulroy,
(Glenn Seiden, Defendant-Appellee).	)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the orders of the circuit court denying the plaintiff's motions for judgment notwithstanding the verdict or a new trial where the evidence established that the defendant's representation was not, as a matter of law, the proximate cause of the plaintiff's loss.

¶ 2 The plaintiff, Horace Fox, Jr., as trustee in bankruptcy for Miriam Draiman, appeals from an order of the circuit court of Cook County denying its motion for judgment notwithstanding the verdict (judgment *n.o.v.*) in favor of the defendant, Glenn Seiden, on the plaintiff's complaint for legal malpractice. The plaintiff also appeals from the denial of the alternative relief he sought in the form of a new trial. For the reasons that follow, we affirm.

¶ 3 The following facts and procedural history, relevant to our disposition of this appeal, were adduced from the parties' stipulated facts, exhibits of record, and the evidence introduced at trial.

¶ 4 This case has a lengthy history with its origins dating back nearly 18 years. It begins in 2001, when Draiman, her husband, Yehuda Draiman, and five corporations that they owned or controlled were named as defendants in a lawsuit brought by Multiut Corporation (Multiut) (the underlying litigation). Multiut filed a 10-count complaint against the various defendants in the underlying litigation. Relevant to this appeal, count V alleged that Yehuda and the corporate entities violated the Uniform Deceptive Trade Practices Act (the Act) (815 ILCS 510/1 *et seq.* (West 2012)) and sought injunctive relief and monetary damages. Pursuant to the Act, Multiut also sought payment of attorneys' fees and costs in count V. Count VII, the sole count in which Draiman was individually named, alleged that Yehuda, Draiman, and several of the corporate entities conspired to divert business from Multiut.

¶ 5 Initially, Seiden and his firm, Glenn Seiden & Associates, P.C. (GSA), represented all of the defendants in the underlying litigation. However, before trial, another firm, Altheimer and Gray, was substituted in their stead. Following a bench trial, the circuit court entered a written order on January 17, 2003. In its written order, the circuit court found Draiman liable for

engaging in a civil conspiracy and assessed $250,000 in compensatory damages against her. With regard to count V, the circuit court found that Yehuda "purposely engaged in deceptive practices" and awarded attorneys' fees and costs against "defendants" pursuant to the Act. The circuit court ordered Multiut to submit an accounting of fees and costs within 30 days.

¶ 6 On February 10, 2003, Multiut filed its petition for attorneys' fees and costs. On February 20, 2003, the circuit court entered an order stating that "there is no just cause for delay in enforcement or appeal from the court's opinion and order of January 17, 2003" and "[t]he award of attorneys fees in the January 17, 2003 Order is severed from the balance of that Order for further proceedings." On March 11, 2003, Seiden and GSA filed a second appearance on behalf of "Yehuda Draiman, et al," for the limited "purpose of any post-trial motions prior to appeal and Altheimer & Grey fees and costs." On March 18, 2003, Seiden and GSA filed a notice of appeal on behalf of all of the defendants in the underlying action, appealing the January 17, 2003 order "as to the Judgments entered in favor of [Multiut] ***, rendered final and appealable in the [February 20, 2003 Order] pursuant to Illinois Supreme Court Rule 304(2) [*sic*]."

¶ 7 On June 24, 2003, Seiden and GSA filed an answer to Multiut's petition for fees and costs and a memorandum in opposition to Multiut's petition for fees and costs. Seiden did not raise the argument in either document that Draiman could not be liable for attorneys' fees because she was not found liable for violating the Act, which is the only count that awarded attorneys' fees. On August 26, 2003, Seiden appeared at an evidentiary hearing on Multiut's petition for fees, during which he again failed to raise that argument on Draiman's behalf. The circuit court issued a written order, drafted by Multiut's counsel, awarding attorneys' fees. The order stated that "judgment is entered on behalf of plaintiff and against defendants in the amount

of $1,002,046." On September 2, 2003, GSA filed a notice of firm name change indicating that it now operated under the name Azulay, Horn, & Seiden, LLC (AHS).

¶ 8 On September 19, 2003, Seiden and AHS filed a motion to clarify the January 17, 2003 order and the August 26, 2003 order. Therein, Seiden again did not argue that Draiman could not be liable for attorneys' fees because she was not found liable for violating the Act. On September 22, 2003, Seiden and AHS filed a notice of appeal on behalf of all defendants, appealing the circuit court's August 26, 2003 order. On October 9, 2003, Seiden and AHS moved to withdraw from the case, which the circuit court granted. Subsequently, the circuit court declined to rule on the defendants' motion to clarify, determining it was divested of jurisdiction following the filing of the September 22, 2003 notice of appeal.

¶ 9 Following the withdrawal of Seiden and AHS, Draiman once again retained her trial counsel to represent her on the appeal of the underlying litigation. On January 30, 2004, before briefing was complete, a justice of this court issued an order *sua sponte* modifying the bond that Draiman was required to post during the pendency of the appeal. The January 30, 2004 order also stated that Draiman was "not liable as to [the attorney fee] portion of the judgment" because she "was not named as a defendant below in the count that resulted in" the fee award. Thereafter, Draiman's appellate counsel withdrew from the case and Draiman filed a *pro se* appellate brief. Draiman failed to argue in her appellate brief that the court should reverse the award of attorneys' fees against her because she was not found liable under the Act. Instead, she wrote in her conclusion that "[t]his Court reversed the assessment of the attorney fees" and asked the court to reverse the remainder of the judgments against her. During the pendency of Draiman's appeal, she filed for bankruptcy.

¶ 10 This court affirmed the circuit court's judgment in the underlying action on June 24, 2005. *Multiut Corp. v. Draiman*, 359 Ill. App. 3d 527, 540 (2005). With regard to Draiman's liability for attorney fees, the court found that she had waived any right to contest the fees by failing to argue the issue in her brief. *Id.* at 540.

¶ 11 This legal malpractice case followed. On March 27, 2006, the plaintiff alleged in a single-count complaint that Seiden, Sara Collins, GSA, and AHS (the defendants) committed legal malpractice when they failed to: (1) argue that Draiman could not be liable for attorney fees because the fees were assessed for a violation of a statute that she was never found to have violated; (2) catch the error contained in the August 26, 2003 order; and (3) preserve the issue for appeal. The plaintiff claims that the defendants' negligent omission resulted in the attorneys' fees judgment being entered against Draiman.

¶ 12 The defendants filed a motion to dismiss the plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), which the circuit court granted. We reversed that dismissal and remanded the case for further proceedings. *Fox v. Seiden*, 382 Ill. App. 3d 288, 301 (2008).

¶ 13 On remand, the defendants filed an answer and raised eight affirmative defenses. On August 25, 2010, the circuit court granted the plaintiff's motion to strike all but one of the defendants' affirmative defenses. The sole affirmative defense the circuit court did not strike was that Draiman's comparative negligence should reduce the plaintiff's recovery.

¶ 14 Thereafter, the circuit court entered summary judgment for the plaintiff and entered a judgment for $1,920,942.63 plus interest against the defendants, excluding Collins, and in favor of the plaintiff. The defendants appealed, arguing, *inter alia*, that the circuit court erred by

entering summary judgment without any expert testimony and their affirmative defense of comparative negligence raised a question of fact precluding summary judgment. *Fox v. Seiden*, 2016 IL App (1st) 141984, ¶ 10.

¶ 15 This court first determined that "[the circuit court's] ruling shows its evident intention that Draiman not be held accountable for her husband's violation of the [Act]." *Fox v. Seiden*, 2016 IL App (1st) 141984, ¶ 17. We concluded that "[i]f the specific argument proffered by Draiman was made at the time, and with everything else in the case being equal, the underlying trial court should have ruled in her favor," and, therefore, "there was an omission in representation ***." *Fox v. Seiden*, 2016 IL App (1st) 141984, ¶ 20, 22. However, we reversed the circuit court's grant of summary judgment in favor of the plaintiff, concluding that the plaintiff failed to demonstrate with expert testimony the standard of care against which the defendants' conduct must be measured and also that the defendants' representation fell below that standard. We further found that a question of fact existed concerning Draiman's comparative negligence. The cause was again remanded to the circuit court.[1]

¶ 16 On September 26, 2017, Seiden filed a motion for summary judgment, arguing, *inter alia*, that the March 18, 2003 notice of appeal, filed on behalf of all the defendants in the underlying litigation, divested the circuit court of jurisdiction and, as a result, Seiden was not, as a matter of law, the proximate cause of Draiman's damages.

¶ 17 On September 28, 2017, the plaintiff filed a motion in opposition to Seiden's motion for summary judgment, arguing that Seiden incorrectly stated the facts regarding what was included in the circuit court's orders and misunderstood the law of jurisdiction. According to the plaintiff,

[1] At some point during this time, Sara Collins was removed as a named defendant.

the circuit court's orders, when properly read, show that it retained jurisdiction over who was liable under the Act, not just over how much to award in attorney fees. The plaintiff further argued that the Rule 304(a) language in the circuit court's February 20, 2003 order did not divest the circuit court of jurisdiction because a finding for liability for fees, without fixing the amount of those fees, is not a final and appealable order. That same day, the plaintiff filed a motion *in limine*, arguing that Seiden should be barred from presenting evidence or argument that the circuit court was divested of jurisdiction.

¶ 18 On October 2, 2017, the parties argued the jurisdictional issue before the circuit court. Both parties agreed that the jurisdictional issue was a matter of law and should, therefore, be determined by the circuit court. The circuit court disagreed with the parties, stating that "argument about jurisdiction would go to whether or not malpractice was committed, and *** [is] something you should present to the jury." The circuit court thus denied plaintiff's motion *in limine* and Seiden's motion for summary judgment.

¶ 19 The plaintiff filed a motion to reconsider, arguing that the issue of whether the circuit court in the underlying litigation was divested of jurisdiction to enter the fees against Draiman was a matter of law as there was no genuine issue of material fact. The plaintiff went on to argue that the issue was potentially outcome determinative because, if jurisdiction had been divested from the circuit court in the underlying litigation, then summary judgment in favor of Seiden is appropriate. If, on the other hand, the circuit court retained jurisdiction, then Seiden should be

barred from presenting any evidence to the jury on that topic. The circuit court denied the plaintiff's motion to reconsider.[2]

¶ 20 Prior to trial, the plaintiff objected to a demonstrative exhibit Seiden intended to use on the basis that the exhibit presented an issue of law to the jury. The exhibit was a poster that presented a chronology of the underlying litigation. The purported chronology included an entry for March 18, 2003, with the words "Trial Court Divested of Jurisdiction." The circuit court denied the plaintiff's objection, stating that he would have the opportunity to impeach on that issue at trial. On October 11, 2017, the case proceeded to a jury trial.

¶ 21 At trial, Seiden testified regarding his representation in the underlying litigation.[3] He confirmed that he filed two appearances on behalf of the defendants in that matter. Initially, he represented Draiman, Yehuda, and the corporate entities until he withdrew prior to trial. He filed his second appearance at the conclusion of the trial after Draiman, Yehuda, and the corporate entities were found liable. With regard to his second appearance, Seiden maintained that he was retained by Yehuda to challenge the fees imposed on him and the corporate defendants and that Draiman retained him only for the purposes of filing a notice of appeal. Seiden testified that, after he filed the notice of appeal, only those parties found to have violated the Act—Yehuda and the corporate entities—remained in the circuit court. He acknowledged, however, that despite his limited representation of Draiman, he still filed motions on her behalf in the circuit court after he filed the March 18, 2003 notice of appeal.

[2] The record does not contain a written order to this effect. Additionally, there is no transcript for these proceedings. However, the plaintiff states in his brief that this was due to the late arrival of the court reporter and the transcripts that are available in the record make clear that his motion to reconsider was denied.

[3] Seiden testified both during the plaintiff's case-in-chief and on his own behalf. For the sake of clarity, we condensed his testimony rather than split it into two parts.

¶ 22 Counsel for the plaintiff attempted to impeach Seiden with prior inconsistent statements made in his answer regarding the nature of his representation of Draiman after he filed his second appearance. When presented with a copy of the answer filed in this case, Seiden acknowledged that the answer admitted that GSA agreed to represent the defendants in the underlying litigation and entered a second appearance on March 11, 2003. He also acknowledged that the answer admitted that "at certain separate but relevant times [AHS] and [GSA] entered into attorney-client relationships with Draiman."

¶ 23 Seiden further testified that, when he re-entered the case, Multiut had already filed its petition for attorneys' fees pursuant to the Act. He admitted that an associate at GSA informed him of the argument that Draiman could not be liable for attorneys' fees because she was not named in the count alleging a violation of the Act. Seiden rejected the argument as he believed that the circuit court had already determined that all of the defendants, including Draiman, were liable for attorneys' fees. Seiden admitted that he filed a motion contesting Multiut's fee petition without arguing that Draiman could not be liable for attorneys' fees since she was not found liable under the Act. He also admitted that he filed a motion to clarify in the circuit court, which again did not raise the argument that Draiman could not be found liable for attorneys' fees. He testified that, after he filed the motion to clarify, Yehuda directed him to file a notice of appeal and withdraw from the case. He testified that he informed Yehuda that filing a notice of appeal would cease all proceedings in the circuit court, but he was instructed to proceed.

¶ 24 James Shapiro testified as an expert witness on behalf of the plaintiff regarding the standard of care and the issue of proximate cause. Shapiro testified that the standard of care for an attorney is whether the attorney acted with the skill and care ordinarily used by a reasonably

well-qualified attorney under similar circumstances. According to Shapiro, Seiden's representation fell below that standard of care when he failed to argue that Draiman could not be liable for attorneys' fees because she was not found to have violated the Act. With regard to proximate cause, Shaprio opined that, had Seiden raised this argument, the circuit court should have held that Draiman was not liable for attorneys' fees. Shapiro also testified that by failing to raise the argument in the trial court, Seiden failed to preserve the issue for appeal. Shapiro further opined that Seiden's representation caused the attorneys' fee judgment to be entered against Draiman.

¶ 25 Next, Shapiro testified regarding Draiman's conduct on appeal where she acted as her own counsel. He explained that, for non-attorneys representing themselves in legal proceedings, the standard of care is what a reasonable person would do under the circumstances. Shapiro noted that this standard is a lesser burden than that of attorneys. He opined that Draiman acted as a reasonable person would have when she omitted the issue of attorneys' fees from her appellate brief because she was relying on the *sua sponte* order of an appellate justice stating that she could not be held liable for those fees.

¶ 26 Lastly, Shapiro opined that the circuit court's order of February 20, 2003, and the March 18, 2003 notice of appeal filed by Seiden did not divest the circuit court of jurisdiction. Shapiro testified that an appellate court case, *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501 (2009), was dispositive of this issue. According to Shapiro, *Lamar* stands for the proposition that a finding that a party is liable for attorneys' fees is not a final and appealable order until the amount of attorneys' fees has been determined. Shapiro further opined that, regardless of the Rule 304(a) language included in the February 20, 2003 order, the circuit court

had the power to assess attorneys' fees against Draiman even if to do so was improper. Shapiro testified that, if Seiden failed to argue that Draiman could not be held liable for attorneys' fees because he believed the circuit court did not have jurisdiction to enter an award of those fees against Draiman, his representation fell below the standard of care.

¶ 27 On cross-examination, Shapiro acknowledged that large portions of his written opinion addressing the jurisdictional issue were copied nearly verbatim from the plaintiff's brief in opposition to Seiden's motion for summary judgment. Shapiro stated that the section nevertheless represented his "independent opinion."

¶ 28 The plaintiff, as trustee in bankruptcy for Draiman, testified regarding the amount of damages Draiman suffered as a result of Seiden's alleged malpractice. According to the plaintiff, the judgment for attorneys' fees entered against Draiman has accrued interest at an annual rate of 9% for 14 years for a total of $1,975,986.96. The plaintiff testified that Draiman is still under an obligation to pay that amount and that interest continues to accrue daily.

¶ 29 Kenneth Ashman, the plaintiff's counsel in the instant case, testified on behalf of the defense. Ashman testified that he represented Draiman during the appeal of the underlying litigation. As part of that representation, Ashman filed motions on Draiman's behalf in the appellate court. Ashman testified that a justice of the appellate court issued an order *sua sponte* that lowered Draiman's appellate bond and also determined that Draiman could not be liable for attorneys' fees because she was not found to have violated the Act. Upon receiving this order, Ashman sent a fax to Draiman stating, "We have achieved total victory on our various motions before the Appellate Court." The fax goes on to say that the court found "[Draiman] is not liable for the $1 million-plus attorney fee judgment ***." Ashman testified that he did not know if, at

the time he sent the fax, he was familiar with Illinois Supreme Court Rule 22(c), which states that three justices of the appellate court must participate in the decision of every case and two justices must concur to reach a decision.

¶ 30 During closing arguments, the plaintiff's counsel maintained that sufficient evidence was presented to prove all elements of legal malpractice. With regard to the attorney-client relationship between Seiden and Draiman, counsel cited to the language used in the March 11, 2003 appearance filed by GSA and Seiden's prior inconsistent statements. Counsel next highlighted Shapiro's testimony that Seiden's failure to argue against the fees awarded against Draiman fell below the standard of care required of attorneys and was the proximate cause of Draiman's loss. Lastly, counsel stated that the evidence showed that Draiman suffered damages totaling $1,975.896.96.

¶ 31 Seiden's counsel argued that the February 20, 2003 order severed the count that found Yehuda and the corporate entities liable for violating the Act from the rest of the case. Thus, when Seiden filed the March 18, 2003 notice of appeal, the circuit court was divested of jurisdiction over Draiman as she was now before the appellate court. Seiden's counsel further argued that the negligent conduct of Ashman and Draiman on appeal were the true proximate cause of Draiman's loss, not Seiden.

¶ 32 The jury returned a verdict in favor of Seiden. Thereafter, the plaintiff filed a post-trial motion, seeking entry of judgment *n.o.v.* or, in the alternative, a new trial. In support of its prayer for the entry of judgment *n.o.v.*, the plaintiff argued that the circuit erred by allowing the jury to determine whether the circuit court in the underlying litigation had been divested of jurisdiction and, when that evidence is properly excluded, the remaining evidence overwhelmingly

established that Seiden committed legal malpractice such that no contrary verdict could ever stand. In support of its alternative request for a new trial, the plaintiff argued that he did not receive a fair trial because of the circuit court's error allowing the jury to determine a matter of law and a new trial should be granted. The circuit court denied the plaintiff's post-trial motion, and this appeal followed.

¶ 33 Before turning to the merits, we must address two preliminary matters. First, the plaintiff argues in a motion that we have taken with the case that we should strike Seiden's brief and award a monetary sanction against Seiden pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). We deny the plaintiff's motion for sanctions.

¶ 34 Second, we must admonish both parties for their failure to comply with Illinois Supreme Court rules with respect to their briefs on appeal. The plaintiff cites to multiple Rule 23 opinions throughout his brief. Rule 23 provides that orders entered under subparts (b) or (c) are "not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case." Ill. S. Ct. R. 23(e)(1) (eff. Apr. 1, 2018). As the plaintiff does not cite to these cases for any of those enumerated purposes, we refuse to consider any Rule 23 case cited in the plaintiff's brief. Additionally, both parties' briefs include a fact section that is fraught with argument in violation of Illinois Supreme Court Rule 341(h)(6) (eff. May 25, 2018). Accordingly, any facts that are argumentative will be disregarded.

¶ 35 The plaintiff's first argument on appeal is that the circuit court erred in denying his motion for judgment *n.o.v.* because he proved all four elements of a legal malpractice claim.

¶ 36 "A motion for judgment *n.o.v.* should be granted only when 'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [a] movant that

no contrary verdict based on that evidence could ever stand.' " *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 37 (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). "[A] motion for judgment *n.o.v.* presents a 'question of law as to whether, when all of the evidence is considered, together with all reasonable inferences from it in its aspect most favorable to the plaintiffs, there is a total failure or lack of evidence to prove any necessary element of the [plaintiff's] case.' " *Id.* (quoting *Merlo v. Public Service Co. of Northern Illinois*, 381 Ill. 300, 311 (1942)). The denial of a motion for judgment *n.o.v.* turns on a question of law, and our standard of review is *de novo*. *Taylor v. Board of Education of City of Chicago*, 2014 IL App (1st) 123744, ¶ 33.

¶ 37 To prove that Seiden committed legal malpractice, the plaintiff was required to establish that Seiden owed Draiman a duty of care arising from the attorney-client relationship, Seiden breached that duty, and Draiman suffered damages as a proximate result of that breach. *Logan v. U.S. Bank*, 2016 IL App (1st) 152549, ¶ 8.

¶ 38 The plaintiff contends that the evidence overwhelmingly established that Seiden committed legal malpractice. He maintains that for the jury to have found otherwise it must have accepted Seiden's argument that his negligence was not the proximate cause of Draiman's injury because the circuit court in the underlying litigation was divested of jurisdiction after Seiden filed the March 18, 2003 notice of appeal. According to the plaintiff, Seiden's argument presented a pure question of law that should have been decided by the circuit court, not the jury. Compounding the circuit court's error, the plaintiff argues that the jury decided this issue incorrectly. He urges us to conclude that the circuit court in the underlying litigation was not

divested of jurisdiction, set aside the erroneously admitted evidence, and find that the remaining evidence so overwhelmingly favors him such that no contrary verdict could stand.

¶ 39 In response, Seiden argues the circuit court correctly denied the plaintiff's motion for judgment *n.o.v.* because even if the circuit court did err in allowing the jury to decide the jurisdictional issue, it was not reversible error as the jury correctly decided the issue.

¶ 40 We begin by acknowledging our agreement with the parties that whether the circuit court in the underlying litigation had jurisdiction to enter an award of attorneys' fees against Draiman is a question of law and, as such, should not have been submitted to the jury. *JPMorgan Chase Bank, N.A. v. East-West Logistics, L.L.C.*, 2014 IL App (1st) 121111, ¶ 21 ("A challenge to [a court's] jurisdiction is a question of law."); *People v. Cunitz*, 45 Ill. App. 3d 165, 171 (1977) ("By the common law jurors in both criminal and civil cases are to determine only questions of fact; it is for the court alone to determine questions of law."). The relevant facts are undisputed and the resolution of this issue requires only the application of the law. *Governmental Interinsurance Exchange v. Judge*, 221 Ill. 2d 195, 211 (2006) ("The application of principles of law is inherently a judicial function."). Moreover, resolution of this issue is potentially dispositive, as the parties argued below, because if Seiden is correct that the circuit court in the underlying litigation lacked jurisdiction, then, as a matter of law, he could not have been the proximate cause of Draiman's adverse ruling and the plaintiff is not entitled to judgment *n.o.v.*

¶ 41 The proximate cause element of a legal malpractice claim requires that the plaintiff present facts sufficient to show that, but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 351 (2000). "Where a claim or defense is alleged to have

been compromised by a negligent act or omission by an attorney, but the claim or defense is still viable when the attorney is discharged, the attorney is not the proximate cause of any resulting loss." *Fox v. Seiden*, 2016 IL App (1st) 141984, ¶ 33 (citing *Mitchell v. Schain, Fursel & Burney Ltd.*, 332 Ill. App. 3d 618, 620-21 (2002).

¶ 42 Seiden maintains that Draiman's defense to the award of attorneys' fees was still viable when he withdrew from the case because the circuit court awarded the fees against her after it was deprived of jurisdiction via his filing a notice of appeal on her behalf and, therefore, the judgment is void. See *In re Marriage of Stefiniw*, 253 Ill. App. 3d 196, 201 (1993) ("A judgment is characterized as void and may be collaterally attacked at any time where the record itself furnished the facts which establish that the court acted without jurisdiction."). The plaintiff responds that the trial court retained jurisdiction to award attorneys' fees against Draiman because the March 18, 2003 notice of appeal did not, as a matter of law, include the attorneys' fees issue. In support, the plaintiff cites to *Lamar Whiteco Outdoor Corp. v. City of W. Chicago*, 395 Ill. App. 3d 501 (2009), which he contends is dispositive.

¶ 43 As mentioned, the facts related to this issue are not in dispute. In the January 17, 2003 order in the underlying litigation, the circuit court found Draiman liable only as to the civil conspiracy count, not for violating the Act, and entered judgment against her for $250,000 in compensatory damages. That same order found that Yehuda and several corporate entities were liable for violations of the Act and, pursuant to the Act, awarded attorneys' fees against those defendants. Lastly, that order instructed Multiut to file an accounting of such fees within 30 days, which Multiut did. On February 20, 2003, the circuit court entered an order stating "[t]his court expressly finds that there is no just cause for delay in enforcement or appeal from the court's

opinion and order of January 17, 2003" and "[t]he award of attorneys fees in the January 17, 2003 order is severed from the balance of that order for further proceedings." On March 11, 2003, Seiden enters his appearance on behalf of "Yehuda Draiman, et al" for the purpose of "any post-trial motions prior to appeal and Altheimer & Gray fees and costs." Subsequently, on March 18, 2003, Seiden filed a notice of appeal on behalf of Draiman and the other defendants in the underlying litigation "as to the Judgments entered in favor of [Multiut] ***, rendered final and appealable in the Circuit Court's Order of February 20, 2003, pursuant to Illinois Supreme Court Rule 304(2) [*sic*]." On August 26, 2003, following an evidentiary hearing on Multiut's petition for attorneys' fees and costs, the circuit court entered an order stating "judgment is entered on behalf of plaintiff and against defendants in the amount of $1,002,046." On October 9, 2003, Seiden moved to withdraw from the case.

¶ 44 To resolve whether the circuit court had jurisdiction to enter the attorneys' fees award against Draiman, we turn first to the language of Illinois Supreme Court Rule 304(a) (eff. Feb. 1, 1994), which provides:

> "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. *** In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties."

¶ 45 Here, the underlying litigation involved both multiple parties and multiple claims. Additionally, the circuit court's February 20, 2003 order made the required finding pursuant to Rule 304(a) that "there is no just cause for delay in enforcement or appeal from the court's opinion and order of January 17, 2003." That order also "severed" the award of attorneys' fees from the January 17, 2003 order for further proceedings. On March 18, 2003, Seiden filed a notice of appeal on behalf of all defendants in the underlying litigation, including Draiman. The party's dispute is thus limited to what effect the filing of the notice of appeal had on the circuit court's jurisdiction to enter an attorneys' fee award against Draiman.

¶ 46 The general rule is that "upon filing a notice of appeal, the circuit court is divested of jurisdiction to enter any order involving a matter of substance, and the jurisdiction of the appellate court attaches instanter." *City of Chicago v. Scandia Books, Inc.*, 102 Ill. App. 3d 292, 298 (1981). Once a notice of appeal has been duly filed, the circuit court is restrained from entering any order that would change or modify the judgment or its scope and from entering any order that would have the effect of interfering with the review of the judgment. *Bachewicz v. American National Bank & Trust Co. of Chicago*, 135 Ill. App. 3d 294, 297-98 (1985).

¶ 47 Here, Seiden filed a notice of appeal on Draiman's behalf after the only count for which Draiman was found liable, civil conspiracy, was made a final and appealable judgment and severed from the further proceedings. *Lamar*, 395 Ill. App. 3d at 506 ("Rule 304(a) language applies only to cases involving multiple claims, multiple parties, or both; and in those cases, it can be used to sever a final order as to one claim or party from other claims or parties."). At that point, the only matter remaining before the circuit court was Multiut's petitions for attorneys' fees on the judgment entered in its favor against Yehuda and the corporate entities. Thus, to the

extent that the circuit court's award of attorneys' fees in the amount of $1,002,046 against "defendants" included Draiman, such an order was void as the circuit court no longer had the jurisdiction to enter such an award against her. And because a void judgment may be attacked collaterally at any time, the defense was still viable when Seiden withdrew from the case. See *Stefiniw*, 253 Ill. App. 3d at 201 ("A judgment is characterized as void and may be collaterally attacked at any time where the record itself furnished the facts which establish that the court acted without jurisdiction."). Accordingly, Seiden cannot, as a matter of law, have been the proximate cause of Draiman's loss and, therefore, the plaintiff was not entitled to judgment *n.o.v.*

¶ 48 The plaintiff nevertheless argues that *Lamar Whiteco Outdoor Corp. v. City of W. Chicago*, 395 Ill. App. 3d 501 (2009) compels a different outcome. In *Lamar*, the circuit court found the defendant liable for attorneys' fees but did not set an amount for the award. 395 Ill. App. 3d at 504. The circuit court subsequently found that there was no just reason for delaying either enforcement or appeal and the defendant filed a notice of appeal. *Id.* A panel of this court concluded that it did not have jurisdiction to hear the appeal because the order was not final and appealable. *Id.* at 506. In so holding, we stated that "the finding that plaintiff is entitled to a not-yet-determined amount of attorney fees and costs is a nonfinal order similar to a finding of liability without a determination of damages." *Id.* at 505. According to the plaintiff, *Lamar* stands for the proposition that the circuit court retained jurisdiction over the entirety of count V, including the ability to determine liability for the attorneys' fees, not just the amount. Simply put, we conclude that *Lamar* is inapposite to the issue at hand because Draiman was not named as a defendant in count V, nor was she ever found liable under that count. As such, when the circuit court severed count V from the rest of the case and the notice of appeal was subsequently

filed, the circuit court's authority to enter orders of substance on that count was limited to those parties before it, namely those parties named as defendants and found liable on that count. Draiman was not one of those parties.

¶ 49 In sum, we conclude that, although the circuit court erred by allowing the jury to decide a matter of law, the circuit court correctly denied the plaintiff's judgment *n.o.v.* because the evidence established that Seiden was not, as a matter of law, the proximate cause of Draiman's loss.

¶ 50 In support of its argument that the circuit court erred in denying his alternative prayer for relief seeking a new trial, the plaintiff contends that allowing the jury to hear an issue of law was unfair and resulted in a verdict in favor of Seiden that is against the manifest weight of the evidence.

¶ 51 "[O]n a motion for a new trial, the trial court will weigh the evidence and order a new trial if the verdict is contrary to the manifest weight of the evidence." *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992). "A verdict is against the manifest weight of the evidence only where the opposite result is clearly evident or where the jury's findings are unreasonable, arbitrary and not based upon any of the evidence." *Lawlor*, 2012 IL 112530, ¶ 38.

¶ 52 The standard to obtain a new trial is less demanding than that to obtain a judgment *n.o.v.* Nonetheless, our prior rejection of the plaintiff's argument that the circuit court in the underlying litigation retained jurisdiction to enter an award of attorneys' fees against Draiman, in connection with his request for a judgment *n.o.v.*, also defeats his right to a new trial on that ground. As previously mentioned, we conclude that the evidence established that Seiden was not, as a matter of law, the proximate cause of Draiman's loss. Accordingly, the circuit court did not err in

denying the plaintiff's request for a new trial because the jury's findings are not unreasonable or arbitrary.

¶ 53 For the foregoing reasons, we affirm the judgment of the circuit court in favor of the defendant.

¶ 54 Affirmed.