

she gave the residue of her estate, including all her real estate, to her two children. Her will left nothing to respondent.

¶ 6 On March 22, 2012, petitioner filed a petition to admit the will to probate and to be appointed independent executor. She also filed an affidavit of heirship asserting that, under a premarital agreement, respondent had no interest in the estate.

¶ 7 On March 26, 2012, the trial court entered an "Order Declaring Heirship," in which the court found that respondent, as the surviving spouse, was an heir of the decedent.

¶ 8 That same day, the trial court entered an order admitting the will to probate and appointing petitioner as the independent executor.

¶ 9 After the trial court admitted the will to probate, respondent filed three documents: (1) a petition to terminate independent administration, (2) a renunciation of the will, and (3) a petition for a surviving spouse's award.

¶ 10 On May 17, 2012, in Douglas County case No. 12-LM-16, petitioner filed a forcible-entry action, in which she sought to obtain possession of 804 Eastline Road, which respondent still was occupying as his residence.

¶ 11 On July 10, 2012, the trial court held a trial in the forcible-entry action. Respondent appeared *pro se* in the trial.

¶ 12 He testified he had been living at 804 Eastline Road for approximately seven years. He admitted that, shortly before the decedent died, the two of them discussed entering into a premarital agreement. They spoke of this proposed premarital agreement as a means by which he would prove his unconditional love for her. But he denied that, ultimately, he ever signed a premarital agreement. According to him, the draft of a premarital agreement, 3 1/2 pages long, was left at the house, unsigned by him. He admitted signing a document, but he

insisted this document was not a premarital agreement but an agreement that the decedent's will would be changed—an agreement which, he noted, was never performed.

¶ 13 No agreement to change the will was presented as documentary evidence in the trial.

¶ 14 Respondent offered in evidence, however, a report that Curtis Baggett had written. According to this report, Baggett, an expert document examiner, had examined the premarital agreement and had compared the signatures on it to the known signatures of respondent and the decedent on other documents. In his report, Baggett opined that the decedent's signature on the premarital agreement was forged.

¶ 15 Petitioner objected to Baggett's report as hearsay. The trial court sustained the objection and excluded the report from evidence.

¶ 16 Respondent then moved for a continuance of the trial so that Baggett could travel from Texas and testify. The trial court denied the motion for a continuance.

¶ 17 Petitioner called Marta Slaughter, who testified as follows. She was the secretary of the decedent's attorney, James D. Lee, and she was the notary public who had notarized the signatures on the premarital agreement. She remembered the decedent's coming into Lee's office on February 21, 2012, and signing the premarital agreement in her presence. She also remembered respondent's coming into Lee's office a day later, accompanied by the decedent's son, and signing the premarital agreement in her presence. At that time, she offered to give respondent a copy of the premarital agreement, but he never took his copy with him.

¶ 18 At the conclusion of the evidence in the forcible-entry trial, the trial court found that respondent and the decedent had indeed signed the premarital agreement. The court stated it had compared the signatures on the premarital agreement with other signatures of the parties and

it was convinced the signatures were genuine, as Slaughter had testified. "[I]f this is a forgery," the court remarked, "[it was perpetrated by] a master forger[,] [u]nbelievably highly skilled in copying signatures." The court held that because respondent, in the premarital agreement, had waived any interest in the decedent's estate, he had to vacate the house at 804 Eastline Road by a certain date.

¶ 19 After pronouncing that judgment, the trial court told respondent:
"Forcible Entry and Detainer is one action, and maybe you didn't have Mr. Baggett here today for that, but that doesn't mean you still may not win in the estate [case] and wind up with a third of the estate. So you still have the opportunity with Mr. Baggett on that. If you win on that, you get to renounce the Will and get a third of the estate, doesn't mean you get the house. Do you understand?"

¶ 20 On September 27, 2012, in the probate case, petitioner filed a motion for judgment on the pleadings as well as an affirmative defense. The affirmative defense was that respondent was "collaterally estopped from relitigating the existence and validity of the [premarital agreement]." In her motion for judgment on the pleadings, petitioner likewise argued that because the trial court had found, in the forcible-entry case, that the premarital agreement was genuine and valid, respondent was collaterally estopped, in the probate case, from challenging the authenticity and validity of the premarital agreement, which, by its terms, barred him from taking any share of the decedent's estate.

¶ 21 On November 7, 2012, the trial court granted petitioner's motion for judgment on the pleadings in the probate case, finding that respondent was collaterally estopped by the judgment in the forcible-entry case.

¶ 22 Respondent appealed from the judgments in the forcible-entry case and the probate case. On the one hand, we affirmed the judgment in the forcible-entry case, finding it was not against the manifest weight of the evidence. *In re Estate of Batts O'Brien*, 2013 IL App (4th) 121122-U, ¶ 5. On the other hand, we reversed the judgment in the probate case because the judgment in the forcible-entry case had issue-preclusive effect only if that judgment were final, and it was not final. *Id.* ¶ 41. The potential for appellate review in the forcible-entry case was not yet exhausted when the trial court found respondent to be collaterally estopped. *Id.* ¶ 42. Under the supreme court's decision in *Ballweg v. City of Springfield*, 114 Ill. 2d 107, 113 (1986), a judgment was not final, for purposes of collateral estoppel, until the potential for appellate review was exhausted. *Id.*

¶ 23 On remand—after the potential for appellate review in the forcible-entry case was exhausted—petitioner filed a motion for summary judgment in the probate case. She sought a summary judgment in her favor on three of respondent's pleadings: his petition to terminate independent administration, his renunciation of the will, and his petition for a surviving spouse's award. Again, she invoked the doctrine of collateral estoppel: she argued that the final judgment in the forcible-entry case barred these three pleadings. The trial court granted her motion for summary judgment, holding that the judgment in the forcible-entry case collaterally estopped respondent from claiming any interest in the decedent's estate.

¶ 24 This appeal (in the probate case) followed.

¶ 25 II. ANALYSIS

¶ 26

A. An Identical Issue

¶ 27 Three conditions must coincide for a court to find that a party is collaterally estopped: (1) the issue decided in the prior case is identical to the issue in the present case, (2) there was a final judgment on the merits in the prior case, and (3) the party to be estopped was a party in the prior case or was in privity with a party in the prior case. *American Family Mutual Insurance Co. v. Westfield Insurance Co.*, 2011 IL App (4th) 110088, ¶ 17. We decide *de novo* whether a party is collaterally estopped (*id.*), just as we decide *de novo* whether a party is entitled to summary judgment (see *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill. 2d 342, 349 (1998)).

¶ 28 Respondent agrees that the second and third conditions of collateral estoppel are satisfied. He disputes, however, that the first condition is satisfied. He cites *Kessinger v. Grefco, Inc.*, 173 Ill. 2d 447, 462 (1996), in which the supreme court held:

"To operate as an estoppel by verdict it is absolutely necessary that there shall have been a finding of a specific fact in the former judgment or record that is material and controlling in that case and also material and controlling in the pending case. It must also conclusively appear that the matter of fact was so in issue that it was necessarily determined by the court rendering the judgment interposed as a bar by reason of such estoppel. If there is any uncertainty on the point that more than one distinct issue of fact is presented to the court the estoppel will not be applied, for the reason that the court may have decided upon one of the other issues of fact." (Internal quotation marks omitted.)

¶ 29 According to respondent, the only issue necessarily litigated and determined in the forcible-entry case was whether he and the decedent had signed the premarital agreement. He argues that because the trial court determined, in the forcible-entry case, only that the signatures on the premarital agreement were genuine and because no other factual issue relating to the premarital agreement was actually litigated in the forcible-entry case, he is not collaterally estopped from arguing, in the probate case, that the premarital agreement—though authentic—is nevertheless unenforceable under section 7 of the Illinois Uniform Premarital Agreement Act (750 ILCS 10/7 (West 2012)), either because he "did not execute the agreement voluntarily" (750 ILCS 10/7(a)(1) (West 2012)) or because the agreement is unconscionable (750 ILCS 10/7(a)(2) (West 2012)).

¶ 30 This argument by respondent might have validity if collateral estoppel applied only to earlier determinations of fact. Some five years after *Kessinger*, however, the supreme court decided that collateral estoppel applied also to earlier determinations of law. *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 79 (2001). One of the questions of law in the forcible-entry case was whether the premarital agreement was enforceable against respondent. If it was enforceable, it excluded him from having any interest in the decedent's estate, including a possessory interest in her house. As we held in *Estate of Batts O'Brien*, 2013 IL App (4th) 121122-U, ¶ 33, section 20-1(b) of the Probate Act of 1975 (755 ILCS 5/20-1(b) (West 2012)) allowed respondent to continue occupying the house only if he had an interest in the estate. The trial court made a legal determination in the forcible-entry case that he had no right to continue occupying the house, because under the premarital agreement, he had no interest in the estate. The premarital agreement could not have excluded him from having an interest in the estate unless the premarital agreement were enforceable

against him. Necessarily, there was a determination of law in the forcible-entry case that, under the premarital agreement, he had no interest in the estate (and hence no right to continue occupying the house). Therefore, in the probate case, he is collaterally estopped from asserting any interest in the estate. See *Du Page Forklift*, 195 Ill. 2d at 79.

¶ 31 B. The Fairness of Collateral Estoppel in This Case

¶ 32 Again citing *Kessinger*, respondent observes that, even if the conditions of collateral estoppel are otherwise satisfied, a court should refrain from applying the doctrine if unfairness would result to the party being estopped. See *Kessinger*, 173 Ill. 2d at 467-68.

¶ 33 For essentially two reasons, respondent contends that collaterally estopping him is unfair. First, he points out that he was unrepresented in the forcible-entry case. It is well established, however, that a *pro se* litigant is held to the same standard as an attorney. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009); *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983). Regardless of their backgrounds, litigants are expected to know the law.

¶ 34 Second, respondent argues that, unaware of the potential for collateral estoppel in the probate case, he lacked "a full and fair opportunity as well as an incentive to litigate the issue in the prior proceeding." Apropos of incentive, he notes that, in its concluding remarks in the forcible-entry case, even the trial court was unaware of the preclusive consequences for the probate case.

¶ 35 In the forcible entry case, respondent did indeed have a full and fair opportunity to litigate the enforceability of the premarital agreement. Clearly, petitioner was invoking the premarital agreement. She was claiming that, because of the premarital agreement, respondent had no interest in the estate and therefore he was obliged to move out of the house. As far as we can see, no procedural or jurisdictional obstacle hindered respondent from raising and proving

any defense to the premarital agreement. See Restatement (Second) of Judgments § 28(3) (1982).

¶ 36 It might be that—disregarding the potential of collateral estoppel—not as much was at stake in the forcible-entry case as in the probate case. In the forcible-entry case, his right to live in the house was at stake, whereas in the probate case, one-third of the estate was at stake. Nevertheless, we are aware of no authority holding that the incentive in the two cases must be *equal*. All that is necessary is that, in the prior case, the party to be estopped had an incentive to seriously litigate the issue. *Talarico v. Dunlap*, 177 Ill. 2d 185, 196 (1997). In the forcible-entry case, respondent was threatened with the loss of his home, where he had been living for the past seven years. He took the threat seriously enough that he hired an expert, and upon learning of the inadmissibility of the expert's report as hearsay, he was prepared to pay the expert to travel from Texas to Illinois. Apparently, respondent did not regard the forcible-entry case as a "side show." (Internal quotation marks omitted.) *Id.* We conclude that, in the forcible-entry case, he had an adequate incentive to litigate the question of whether the premarital agreement was enforceable against him.

¶ 37 III. CONCLUSION

¶ 38 For the foregoing reasons, we find no material issue of fact, and we hold that petitioner was entitled to judgment as a matter of law. See 735 ILCS 5/2-1005(c) (West 2012). Therefore, we affirm the trial court's judgment.

¶ 39 Affirmed.