FOURTH DIVISION
May 30, 2013

No. 1-10-3176 and No. 1-10-3196, Consolidated

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

F. JOHN CUSHING, Administrator *de bonis non* of the Estate of Claudia Zvunca, Deceased, Plaintiff; and CRISTINA ZVUNCA, Plaintiff,	)	Appeal from the Circuit Court of Cook County
v.	)	No. 07 L 3391 No. 09 L 10417
GREYHOUND LINES, INC.; MOTOR COACH INDUSTRIES, INC.; and MOTOR COACH INDUSTRIES INTERNATIONAL, INC., Defendants-Appellees;	)	Honorable William H. Haddad Daniel M. Locallo (retired) Judges Presiding.
(Marina E. Ammendola, former guardian *ad litem* for Cristina Zvunca, a minor, Appellant; Clancy & Stevens, Appellant; Jeanine L. Stevens, Appellant; Cristina Zvunca, Plaintiff; David J. Gubbins, Former Guardian *ad litem* for Cristina Zvunca, a Minor, Plaintiff; and David A. Novoselsky, Appellee).	)	

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

¶ 1 **ORDER**

¶ 2 *Held*: Issue regarding trial court's allocation of attorney fees and costs was moot, where final order had been vacated in prior appeal. However, trial court should have scrutinized fees, and any allocation of fees after remand should be done pursuant to proper

procedures. Former guardian *ad litem* failed to show that the trial court erred in denying her request for substitution of judge as of right. Trial court's order awarding sanctions against plaintiff's former counsel for refusal to turn over client file to new counsel must be vacated and remanded for hearing. Attorney-appellee's motion to supplement the record of oral of argument and conduct a further oral argument denied.

¶ 3 This consolidated appeal is related to our recent opinions involving the actions that arose from the death of Claudia Zvunca in 2002 after she was struck and run over by a Greyhound bus in Colorado.[1] See *Cushing v. Greyhound Lines, Inc*., 2013 IL App (1st) 103197 (*Cushing II*) and *Cushing v. Greyhound Lines, Inc*., 2012 IL App (1st) 100768) (*Cushing I*). A more detailed factual and procedural background can be found in *Cushing I* and *Cushing II.* The instant appeal involves issues of attorney fees and sanctions.

---

[1]Approximately 25 appeals have been filed related to the underlying matter. Also, the two individual appeals in this consolidated appeal have been the subject of prior consolidations, deconsolidations, and reconsolidations. Most recently they were part of a consolidated appeal that included three separate appeals: No. 10-3176, No. 10-3196, and No. 10-3197. The first two appeals, which comprise the instant consolidated appeal, involve the allocation of attorney fees and costs ordered after settlement of the underlying action. Appeal No. 10-3197, however, sought to overturn the settlement which had generated the funds for those fees and costs. The validity of the settlement was a threshold consideration. Therefore, this court first heard oral argument on Appeal No. 10-3197 only. Only counsel for the parties (plaintiffs and defendants) were allowed to participate in oral argument and no fee issues were addressed. Before issuing our opinion in No. 10-3197, we deconsolidated the appeals. No. 10-3197 remained a separate individual appeal. The other two appeals were reconsolidated into the instant appeal.

¶ 4 Appeal No. 1-10-3176 was filed by Attorney Marina Ammendola, the former guardian *ad litem* for the decedent's minor daughter, Cristina Zvunca. Ammendola seeks to vacate the October 1, 2010 circuit order awarding fees and costs where the court (1) denied her request for an automatic substitution of judge pursuant to Section 5/2-1001(a)(2) (West 2010), and (2) awarded fees and costs without an evidentiary hearing and without requiring or considering fee and cost petitions from other attorneys who received fee awards.

¶ 5 Appeal No. 1-10-3196 was filed by the law firm of Clancy & Stevens and Attorney Jeanine Stevens (collectively, Clancy & Stevens), the former counsel for plaintiff, F. John Cushing, administrator *de bonis non* of the estate of Claudia Zvunca, deceased. Clancy & Stevens also seeks to vacate the October 1, 2010 circuit order awarding fees and costs where the court (1) denied requests for an evidentiary hearing, (2) failed to make certain fee petitions part of the record, (3) based its calculations on fee requests amounts that are not in the record, and (4) abused its discretion in allocating fees and costs. Clancy and Stevens also appeal the September 28, 2010 circuit court order granting defendant, Greyhound Lines, Inc.'s motion for sanctions against them pursuant to Illinois Supreme Court Rule 219(c). Ill. S. Ct. R. 219 (eff. July 1, 2002).

¶ 6 Attorney David Novoselsky filed an appellee brief,[2] arguing that appellants: (1) are

[2]Novoselsky filed his appellee brief in the prior consolidated appeal. Although the record indicates that Novoselsky represented various individuals and entities in this matter including decedent's spouse (Tiberiu Klein), decedent's parents (Maria and Vasile Zvunca), decedent's minor daughter (Cristina Zvunca), the guardian of the estate of the minor daughter (MB Financial

attacking the integrity of the judges of the circuit court; (2) are incorrectly asserting that Novoselsky, former guardian *ad litem* David J. Gubbins, and others had, through purported "unauthorized" proceedings, "hijacked" the underlying wrongful death action and "damaged" the minor's emotional distress claims; (3) are not entitled to relief because their briefs violated Supreme Court Rule 341; and (4) are not entitled to relief against him regarding his fees absent a remand to the circuit court for an evidentiary hearing.[3]

¶ 7 We first address Novoselsky's motion to supplement the record of oral argument and conduct a further oral argument. Novoselsky's motion is arguably moot because we have vacated the orders approving the settlements in the underlying case (thus eliminating the source of the attorney fees) and we have also vacated the order approving the allocation of attorney fees. See *Cushing v. Greyhound*, 2013 IL App (1st) 103197. However, we believe it is important to address Novoselsky's claim that "[t]his was the second oral argument before this Court [in the *Zvunca* litigation] in which the Court chose not to permit Mr. Novoselsky to participate." This claim is inaccurate.

Bank, NA), and the "special administrator" in the wrongful death action (MB Financial Bank, NA), and that Novoselsky was also appointed by the trial court to represent "the minor's interests," Novoselsky's standing in this appeal is for his fees only. Novoselsky filed his brief on his own behalf only, and not on behalf of any party whom he formerly represented or claimed to represent.

[3]Novoselsky also asserted that this court lacked jurisdiction, an argument we rejected in *Cushing II*.

¶ 8 To date, this court has held two oral arguments in this matter. The first oral argument was held on December 6, 2011, in the interlocutory appeal filed by Cushing, which was the subject of our first opinion issued in this matter. See *Cushing v. Greyhound*, 2012 IL App (1st) 100768. The next oral argument was held in appeal No. 10-3197, which was previously consolidated with the instant appeal, and which we shall first discuss.

¶ 9 Before we begin our discussion, we believe it is helpful to clarify some of the procedural background concerning this court's decision to allow oral argument in appeal No. 10-3197. Although the instant consolidated appeal consists of the two individual appeals described above, it was previously a consolidation of three appeals that included appeal No. 10-3197. This court scheduled oral argument in the previously consolidated appeal. Upon further analysis of the briefs, it became clear that, although appellants Ammendola, Jeanine Stevens, and Clancy & Stevens, and appellee Novoselsky, had represented parties during this litigation, at the time of oral argument, none was representing any "party's" interest. Ammendola, Jeanine Stevens, and Clancy & Stevens had been disqualified by Judge Locallo. Novoselsky had previously represented the "minor's" interests and also MB Financial Bank, N.A., but had filed a brief on his own behalf. Thus, their only interests in the appeal related to the award of fees and costs (Stevens also appealed a sanctions order against her). Therefore, this court decided to allow oral argument in the individual appeal No. 10-3197 only (filed by Cushing) and also allowed only the attorneys for the *parties*, *i.e.* plaintiffs and defendants, to participate in oral argument.

¶ 10 We further note that there are two plaintiffs in this matter, Cushing and Cristina Zvunca (not as a beneficiary, but as plaintiff for her emotional distress claims). By our order, as to

plaintiffs, only Cushing's attorney was allowed to participate. However, we had previously granted plaintiff Cristina Zvunca's motion to adopt Cushing's briefs. Moreover, Cristina reached the age of majority during the pendency of this appeal and, prior to oral argument, we granted her motion to substitute for all guardians which would have included Ammendola, former plenary guardian Tiberiu Klein, former guardian *ad litem* David Gubbins, former guardian *ad litem* Ellen Douglass, and former guardian of the estate of Cristina Zvunca, MB Financial Bank, N.A.

¶ 11 On February 28, 2013, we heard oral argument in appeal No. 10-3197. Prior to its commencement, we expressly stated that the court was "not discussing any fees today." This court subsequently determined that oral argument was not needed in the two "fee" appeals (10-3176 and 10-3196). On March 15, 2013, on the court's own motion, we deconsolidated the appeal into three separate, individual appeals and then reconsolidated the two "fee" appeals. However, on March 15, 2013, attorney Novoselsky filed his motion to supplement the record of oral argument and conduct a further oral argument, which we took with this case.

¶ 12 In the instant appeal, this court did not "bar" the attorneys from arguing on behalf of their interests in their fees. Rather, we did not grant oral argument on the "fee" appeals because, as we have explained, the fee issues are now moot in light of our disposition of appeal No. 10-3197. Novoselsky contends that this court's inquiries raised during oral argument made it clear that "his conduct and his interests were at issue in this matter" and "the Court had questions on a number of issues that could and should have been addressed by Mr. Novoselsky." We disagree. *At issue* here are the interests of the parties in this case. This court's decision in appeal No. 10-3197 was not based on oral argument alone but, rather, on a thorough analysis of the issues raised in the

briefs and our painstaking and detailed review of the record in this matter which consisted of 105 volumes. Moreover, as Cushing has noted in his objection to Novoselsky's motion, Novoselsky's response brief addressed none of the points Novoselsky now wishes to address. In fact, Novoselsky has argued that appellants are not entitled to relief against him regarding his fees absent a remand to the circuit court for an evidentiary hearing. This argument is moot as we have not awarded any relief against Novoselsky regarding his fees. Moreover, we have further addressed the need for a hearing on fees in this order.

¶ 13 We next address Novoselsky's contention that we barred him from participation in the first oral argument held in this matter, which was held on December 6, 2011, in the interlocutory appeal filed by Cushing, and which was the subject of our first opinion issued in this matter. See *Cushing v. Greyhound*, 2012 IL App (1st) 100768. That appeal involved a single issue: whether the trial court erred in appointing MB Financial Bank, N.A., as special administrator of the estate of Claudia Zvunca where Cushing had already been appointed as the supervised administrator of the estate. During the pendency of Cushing's interlocutory appeal, however, this court had faced a barrage of motions (64 as of the date of oral argument). Most of the motions were filed by Klein purporting to represent Cristina's interests as her "plenary guardian." Several responses and additional motions had been brought by Novoselsky, who filed his appearance on behalf of "MB Financial Bank, N.A. as Guardian of the Estate of Cristina Zvunca, a Minor, as to all Law Division matters" and also filed his motions as the "court appointed" attorney for the estate of Cristina. Several motions and emergency motions were filed seeking to bar certain attorneys from presenting oral argument. Throughout the course of this litigation, various parties

and counsel have represented, or purported to represent, Cristina's interests. Therefore, prior to oral argument, this court entered the following order:

> "IT IS HEREBY ORDERED that, in view of *Will v. Northwestern University*, 378 Ill. App. 3d 280 (2007) (which explained that estate beneficiaries of a wrongful death action are not 'parties' to the suit, have no right of action or control over the suit, and have no standing to appeal the suit), neither Tiberiu Klein or Cristina Zvunca, as beneficiaries to the wrongful death action, have any standing in this appeal, and, therefore, counsel for Tiberiu Klein may not participate in oral argument and counsel for the minor, Cristina Zvunca may not participate in oral argument;
>
> IT IS FURTHER ORDERED that, pursuant to Supreme Court Rule 352, which provides, in part, that '[n]o party may argue unless that party has filed a brief as required by the rules and paid any fee required by law,' only the following parties, through their attorneys, may present arguments on December 6, 2011: APPELLANT, F. JOHN CUSHING; and APPELLEES, GREYHOUND LINES, INC., MOTOR COACH INDUSTRIES, INC., MOTOR COACH INDUSTRIES INTERNATIONAL, INC., and MB FINANCIAL BANK, NA;
>
> IT IS FURTHER ORDERED THAT pursuant to Will v. Northwestern University, 378 Ill. App. 3d 280 (2007), Attorney John Xydakis is barred from arguing; Attorney David Novoselsky is barred from arguing on behalf of any beneficiary and may argue only on behalf of party, MB Financial Bank, NA; and

Attorney David Gubbins is barred from arguing;

IT IS FURTHER ORDERED that the "Motion to Dismiss Appeal and For Other Relief" filed by Attorney David Novoselsky on behalf of 'the Estates of Zvunca' as 'the attorney appointed by the Law Division to represent the interests of the Estates' *** is DENIED;

IT IS FURTHER ORDERED that the Brief in Support of Tiberiu Klein's standing, filed by Attorney John Xydakis, on behalf of 'Tiberiu Klein as plenary guardian of the person and the estate of Cristina Zvunca, a minor,' is stricken."

¶ 14 On December 6, 2011, prior to the commencement of oral argument, this court asked: "Will the lawyers who are going to, or seeking to, participate please step up and identify yourselves for the record." Novoselsky stood and stated he was representing MB Financial Bank, N.A. MB Financial Bank, N.A., had not filed a responsive brief but we had allowed its motion to adopt the brief of defendant, Greyhound Lines, Inc. (Greyhound). However, MB Financial Bank, N.A. had two roles in the trial court: (1) it had been appointed guardian of the estate of Cristina Zvunca, a minor; and (2) it had been subsequently appointed "special administrator" of the estate of Claudia Zvunca, deceased. Therefore, this court asked Novoselsky to clarify "what" role of MB Financial Bank, N.A. he was representing. Novoselsky clarified that he was representing MB Financial Bank, N.A. as both "the court-appointed guardian of the estate of Cristina Zvunca and as the court-appointed special administrator under the *Will* case." Apart from the dispute between Klein and Novoselsky regarding the representation of Cristina's interests, this court had its own concerns as to Novoselsky's representation of Cristina's interests in light of the fact that

five months earlier, on July 5, 2011, a federal district court had awarded sanctions against Novoselsky in favor of Cristina, finding him "personally liable" to her for $10,155.[4]

¶ 15 This court continued to try to clarify which party (or parties) Novoselsky was representing in the appeal. Novoselsky informed the court that he "was appointed" and had "tried to get out several times," had "been refused" [and] "would love to get out" of this case. He also indicated that he represented the decedent's estate and that Cushing represented the decedent's estate "in probate." Most importantly, however, Novoselsky informed the court that he did not intend to argue but was there to answer questions. After answering the court's question regarding the sanctions entered against him, he was asked to take a seat since he would not be arguing. MB Financial Bank, N.A. did not file any objection to its attorney's lack of participation. In fact, on January 19, 2012, Novoselsky filed a motion to withdraw as counsel for MB Financial Bank, N.A. On February 21, 2012, we granted Novoselsky's motion to withdraw because he "represented to this court that attorney James Dahl [had] represented MB Financial Bank, N.A., in this matter" and "further represented that notice of [his motion to withdraw had] been given to Mr. Dahl." Additionally, after this court filed its opinion in Cushing's interlocutory appeal, MB Financial Bank, N.A. did not file a petition for rehearing. Therefore, we deny Novoselsky's motion to supplement the record of oral argument and conduct a further oral argument.

¶ 16 In *Cushing II*, this court vacated several circuit court orders and remanded the matter to the trial court for further proceedings. The primary reason for our decision was that the settlement was invalid because the estate of Claudia Zvunca had not been represented during

[4]*MB Financial, N.A. v. Stevens*, No. 11 C 798, slip op. at 4.

settlement negotiations. Notably, we vacated the October 1, 2010 order that is the subject of this consolidated appeal. We also vacated the trial court orders that found defendants' settlement offers to have been made in good faith, fair and reasonable, and in the best interest of the minor,[5] Cristina. Since we have vacated the settlement, there are no longer any funds from which to allocate fees. Therefore, to the extent appellants contend that the trial court abused its discretion in the allocation of fees, the issue is moot. However, we shall address it since the distribution of attorney fees may arise at some point after remand.

¶ 17 This court faced a similar situation involving the vacatur of settlement of a class action. See *Waters v. City of Chicago*, 95 Ill. App. 3d 919 (1981). There, the court noted that an award of attorney fees in a class action is contingent upon success, and upon the existence of a fund from which the fees can be paid, yet both the "success" and the "fund" had perished as a result of the court's holding that the order approving the settlement must be vacated. *Id*. at 926. The court nonetheless addressed the issue of whether the trial court's award of attorney fees (and trustee fees) was proper. As the court explained: "Since the question of attorney's fees will again be presented to the trial court *** we are obliged to note that the lower court erred in its order for payment of attorneys' fees where it failed to make, or include in the record, the requisite specific findings." *Id*. Similarly here, we are obliged to note the trial court erred in its allocation of attorney fees.

¶ 18 On July 14, 2010, the trial court ordered that all claims for fees, costs and liens were to be sent to David Gubbins, the former guardian *ad litem* who had conducted the settlement

[5]We note that Cristina is no longer a minor.

negotiations, for his review and recommendations to the court. Counsel for plaintiff, F. John Cushing (the administrator *de bonis non* of the estate of Claudia Zvunca, deceased), which included the law firms of Leahy and Hoste and Clancy & Stevens, and attorney Scott Golinkin, submitted detailed fee and cost petitions to GAL Gubbins, filed them with the court, and served them on the parties. According to Clancy & Stevens, Novoselsky and Attorney Louis Cairo apparently made requests to GAL Gubbins but did not file any fee petitions with the court or serve them on the parties. GAL Gubbins also did not file his fee petition or serve it on the parties. The law firm of Cogan and McNabola (which had represented plaintiffs in the past and were awarded fees) did not serve its fee petition on the parties. GAL Gubbins submitted a 30-page report on August 31, 2010 and made an oral presentation to the court on September 22, 2010.

¶ 19 On October 1, 2010, the trial court issued its "Order of Distribution of Fees and Costs." The total settlement amount was $2,090,000. The total amount of requested attorney fees was $2,141,139; the request for costs amounted to an additional $772, 806.61. The trial court allocated twenty-five percent of the total settlement to fees, and twenty-two percent to costs. However, because the total fees and costs requested exceeded the forty-seven percent allotment, the trial court stated it would "simply assume that the hours and rates and costs were generally reasonable to well qualify within the [forty-seven percent] cap." As Clancy & Stevens note, the trial court thus "took all the requests for fees and costs at face value." The court then lowered the requested amounts by the percentage necessary to reduce their totals to those caps, purportedly reducing all claimed fees by 75% and all claimed costs by 40.5%. According to Clancy &

Stevens, before applying the calculations, the trial court made several adjustments to the claimed amounts without explaining the reason or providing the source. As one example, the fee order showed Clancy & Stevens's claimed fees as $348,330, but Clancy & Stevens contend that this amount was less than one-third of what it actually submitted. As another example, the fee order showed Novoselsky's claimed fees as $738,033, which Clancy & Stevens contend was nearly double the $400,000 that Novoselsky had requested from GAL Gubbins.

¶ 20 In *Cushing II*, we acknowledged that the trial judge who conducted the settlement negotiations "was confronted with the immense task of trying to evaluate all of the proceedings, compounded by the actions of some of the attorneys who obfuscated the issues in this case." Later, the trial judge was confronted with an unusual situation in which the total attorney fees and costs being requested exceeded the entire settlement amount that the court had approved. However, that did not negate the need to follow the proper procedure for allocating fees.

¶ 21 It is well-settled that "[t]he burden of proof is on the attorney to establish the value of his services." *In re Estate of Callahan,* 144 Ill. 2d 32, 43 (1991). Generally,"[a] trial court has broad discretionary powers in awarding attorney fees and its decision will not be reversed on appeal unless the court abused its discretion." *Id*. at 43-44. "This is because a court must determine whether the party seeking attorney fees has met its burden of presenting sufficient evidence from which the court can render a decision as to the amount of reasonable attorney fees." *Pietrzyk v. Oak Lawn Pavilion, Inc.*, 329 Ill. App. 3d 1043, 1046 (2002).

¶ 22 As our supreme court has explained:

> "To properly determine the reasonable value of an attorney's services, the

following factors should be considered:

> "the skill and standing of the attorney employed, the nature of the case and the difficulty of the questions at issue, the amount and importance of the subject matter, the degree of responsibility involved in the management of the case, the time and labor required, the usual and customary fee in the community, and the benefit resulting to the client." [Citation.]" *In re Estate of Callahan,* 144 Ill. 2d at 44.

See also *In re Estate of Laas*, 171 Ill. App. 3d 916, 920 (1988) ("The circuit court has broad discretionary powers in awarding executor and attorney fees [citations]; nonetheless, interested parties to a probate proceeding must be given a 'meaningful opportunity' to challenge the validity of fees requested for services to decedent's estate, including examination of and an ability to test the reasonableness of the fees.")

¶ 23 "[W]here a party on appeal is challenging the adequacy of attorney fees, that party is actually challenging the trial court's discretion in determining what is reasonable." *Pietrzyk.*, 329 Ill. App. 3d at 1046 (2002). Although appellants challenge the fees awarded to Novoselsky,[6] it is unclear whether the court awarded those fees in the context of a wrongful death action or an action for the minor's individual emotional distress claims or both. See, *e.g.*, *Szymakowski v. Szymakowski*, 185 Ill. App. 3d 746, 750-51 (1989) ("fail[ing] to find any merit to [the] novel

[6]Appellants also challenge the fee awards of others, but only Novoselsky has filed a response brief.

argument advanced without any citation to authority" of the "intervening-plaintiffs, or rather their attorneys" that they were "entitled to attorney fees from the wrongful death recovery because they [were] the ones who really represented the interest of the beneficiaries"). The trial judge denied requests to hold an evidentiary hearing on fees, and appellants now argue that it was error. See, *e.g.*, *Trossman v. Philipsborni,* 373 Ill. App. 3d 1020, 1058 (2007) (remanding for evidentiary hearing and noting that "generally, in protracted litigation involving multiple complex issues, an evidentiary hearing should be conducted upon the request of the losing party, especially if the prevailing party was represented by multiple attorneys—which may have resulted in duplicative charges—and where the prevailing party was entitled to fees and costs with respect to some claims, but not others"). Although we express no opinion on whether an "evidentiary" hearing was required, we believe that a higher degree of scrutiny of attorney fees was required, given the conflicts between and among the attorneys, the highly unusual circumstances of this case, the fact that the case had proceeded for almost a decade at the time of settlement, and the fact that numerous lawsuits had been filed. The circuit court erred when it awarded fees and costs without requiring, or considering, fee and cost petitions from those attorneys to whom it made awards. Since we have vacated the trial court's award of attorney fees and costs, we need not address Ammendola's argument that "an evidentiary hearing would likely have produced an entirely different" fee and cost distribution. We also need not address Clancy & Stevens's various arguments that certain fee awards were improper or excessive. Nevertheless, "[s]ince the question of attorney's fees will again be presented to the trial court" (*Waters*, 95 Ill. App. 3d at 926), any future allocation should be done pursuant to proper procedures.

¶ 24 Ammendola has additionally argued that the trial court erred in denying her motion for automatic substitution of judge from Judge Haddad pursuant to section 2-1001(a)(2) of the Code of Civil Procedure. 735 ILCS 5/2-1001(a)(2)(2010). Our review of the denial of a motion for substitution of judge as of right is *de novo*. *In re Estate of Gay*, 353 Ill. App. 3d App. 341, 43 (2004).

¶ 25 Section 2–1001(a)(2)(i) of the Code of Civil Procedure states that "in any civil action *** [e]ach party shall be entitled to one substitution of judge without cause as a matter of right." 735 ILCS 5/2–1001(a)(2)(i) (West 2002). In denying Ammendola's motion, the trial court concluded that Ammendola lacked standing to bring her motion because she was a lienholder, and not a party. In concluding she was not a party, the court relied on the following language in *Aussieker v. City of Bloomington*, 355 Ill. App. 3d 498, 501 (2005):

> "Because the statute does not define the word 'party,' it must be given its plain and ordinary meaning. The word 'party' is defined as '[o]ne by or against whom a lawsuit is brought.' " *Id*. (quoting Black's Law Dictionary 1154 (8th ed.2004)).

Ammendola now argues that this definition of a party was expanded by the Illinois Supreme Court in *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514 (2001). The *Steinbrecher* court explained that the term "party" included "a person who has a stake or standing in the lawsuit and one who is entitled to enforce rights from the final outcome of the litigation." *Id.*

¶ 26 Neither *Aussieker* nor *Steinbrecher* construed section 2-1001 of the Code and Ammendola has not cited, nor have we found, a case on point.[7] Ammendola now argues that she

[7]We note that, in the trial court, Ammendola cited *In re Estate of Gagliardo*, in support of

has a "stake or standing" in the lawsuit because she was the guardian *ad litem* for the minor "with extensive authority because the court also made her the child's attorney, and was thus essentially acting as a party suing." However, Ammendola brought her motion on her own behalf with regard to her fees. At that point, she was no longer representing the minor. We therefore agree with the trial court's conclusion that she was a lienholder and not a party at the time she filed her motion. Thus, Ammendola has failed to show that the trial court erred in denying her request for substitution of judge as of right.

¶ 27 Clancy & Stevens has additionally argued that the trial court erroneously granted defendant, Greyhound Lines, Inc.'s motion for sanctions against them pursuant to Rule 219(c) Ill. S. Ct. R. 219 (eff. July 1, 2002). We believe that a full understanding of this issue requires a review of the procedural background of the order.

¶ 28 In September 2009, Judge Daniel M. Locallo disqualified Clancy & Stevens without notice or hearing. He instructed Stevens to turn over her case file to attorneys Cairo and Novoselsky. Stevens stated she would not do so and would have to be held in contempt. She

---

her position that she was an interested party entitled to a substitution of judge as of right. In *Gagliardo*, the trial court designated a law firm as an "interested party" as defined in section 1-2.11 of the Probate Act of 1975 (755 ILCS 5/1-2.11 (West 2002)) and granted the law firm's motion for a substitution of judge as of right with respect to the hearing on the determination of attorney fees. However, no issue was raised on appeal as to the correctness of the order and the case involved the administration of an estate in probate, and not in the context of a settlement of a wrongful death action. Moreover, Ammendola does not rely on *Gagliardo* on appeal.

informed the court that a motion was pending before the chief judge based on the conflicts that had arisen in the case.

¶ 29 As the detailed factual background provided in *Cushing II* illustrates, the question of "who represented whom" was an issue, particularly due to the existence of two wrongful death actions, the instant case and the case in Colorado. In 2005, another panel of this court had acknowledged the potentially divergent interests of the two beneficiaries, Klein and Cristina, and had affirmed the circuit court's decision to deny Greyhound's motion to stay the Illinois action. *Greg Marshall, Independent Administrator of the Estate of Claudia Zvunca, deceased, and Cristina Zvunca, a minor by Paul Brent, as next friend v. Greyhound Lines, Inc.*, No. 1-05-0701 (2005) (unpublished order under Supreme Court Rule 23). In 2007, Klein filed a *pro se* lawsuit alleging fraud and/or legal malpractice against twenty-one defendants, including Clancy & Stevens, Cushing, and his original attorney, James P. Nagle. In one of his numerous *pro se* appeals before this court, Klein has stated that he hired Nagle "in about March 2002 to represent *only his interests* since he was not the biological father of Cristina Zvunca." (Emphasis added.) Klein further contends he hired Novoselsky in May 2008 to represent his interests in this malpractice suit, as well as a probate case where Klein sought appointment as Cristina's guardian.

¶ 30 At some point, as he had done with numerous other attorneys, Klein fired Novoselsky. As we noted in *Cushing II*, "although it is unclear when Klein fired Novoselsky, Judge Locallo did not address Novoselsky's simultaneous representation (or former representation) of Klein and Cristina." *Cushing II*, 2013 IL App (1st) 103197, ¶ 332. "Although Judge Locallo was made aware of Klein's interests in 'his' Colorado suit, he did not explore or even consider Klein's

possible motive in becoming plenary guardian as part of his (prior ongoing) attempt to remove GAL Ammendola and Stevens." *Id.* Thus, in September 2009, when Judge Locallo ordered Stevens to turn over her file, Novoselsky apparently represented (or formerly represented) Klein, Cristina, and Cristina's grandparents, and had so for over a year. On February 21, 2008, Novoselsky had faxed a letter to Ammendola informing her that he had been "retained by Klein to represent his interests in this matter." On March 27, 2008, Novoselsky filed his appearance in the probate case involving Claudia's estate (No. 03 P 8718), "on behalf of Mr. Tiberiu Klein." On April 7, 2008, Novoselsky sent a letter to Ammendola informing her that he had been retained by, not only Klein, but Cristina's grandparents and would be moving to remove Stevens. On May 6, 2008, Novoselsky filed, on behalf of Klein and the Zvuncas, two motions for substitution of judge directed at Judge Zwick. On May 29, 2008, in the probate division, Novoselsky appeared, on behalf of Klein, on Klein's petition for appointment as plenary guardian for Cristina. On July 18, 2008, after Novoselsky's assistance, Klein was appointed plenary guardian of the "estate and person" of Cristina. Also, on July 18, 2008, Novoselsky filed an emergency request to intervene in the instant case, as a matter of right, before Judge Richard Elrod. Novoselsky told Judge Elrod that he was "the attorney for both Cristina Zvunca as well as Tiberiu Klein, who [was] the guardian according to the Order of the Probate Court Friday, [and] also counsel for the adoptive parents[.]" On July 31, 2008, less than two weeks after he had helped Klein get appointed as Cristina's plenary guardian in the probate division, Novoselsky filed a "Substitution Appearance on behalf of Cristina Zvunca" in the instant case. On August 6, 2008, less than three weeks after Klein was appointed her plenary guardian, Cristina returned to

Romania with her grandparents. On August 8, 2008, Novoselsky, on behalf of "Vasile Zvunca and Maria Zvunca, individually and as next friend of a minor, Cristina Zvunca" filed an action in federal court against Cushing, Clancy & Stevens, attorney Stevens, Ammendola, and defendants Motor Coach, Greyhound, and its bus driver Wesley Tatum. On August 12, 2008, Novoselsky filed an emergency motion to remove Ammendola, on behalf of Klein, individually and as guardian of the person and estate of Cristina Zvunca, and Maria and Vasile Zvunca. On the same day, he filed revised motions for substitution of judge directed at Judge Zwick, which were denied by Judge Deborah Dooling on August 13, 2008. Between May 6, 2008 and August 6, 2009, Novoselsky filed 20 substitution of judge motions directed at Judge Zwick, in the name of the Zvuncas, Klein (both individually and as Cristina's guardian on behalf of the "estate" of Cristina), or both Klein and the Zvuncas. All were denied. On June 1, 2009, Novoselsky filed a complaint in state court containing allegations similar to those contained in the federal suit he had filed on August 8, 2008. On July 16, 2009, Judge Daniel M. Locallo was assigned to hear Greyhound's motion for substitution of Judge Zwick for cause. On July 17, 2009, Novoselsky filed an emergency motion to join Greyhound's motion arguing that his conduct and that of his clients had been placed into issue. Judge Locallo allowed Novoselsky's motion to join. On August 6, 2009, Novoselsky filed eight of the twenty motions for substitution of judge directed at Judge Zwick and referred to earlier. These eight motions, some of which were motions to join Greyhound's motion, were presented to Judge Locallo during an August 6, 2009 hearing. The record indicates that the hearing was held to determine whether the clients being represented by Novoselsky – Klein, Cristina, and Cristina's grandparents – were "necessary parties" for the

purpose of this litigation. Novoselsky argued that he represented Cristina and her estate, that they were necessary party plaintiffs, and they were not being represented in the proceedings. He also contended that Klein, a beneficiary of Claudia's estate, "should be getting money out of this case and he is not being represented." Judge Locallo expressed his concerns that Cristina was not being represented and decided that Novoselsky "should have an opportunity to address the court to address those issues." Judge Locallo stated that he was going to allow Novoselsky to come in and argue after he resolved the motion for substitution of judge. On August 13, 2009, Novoselsky filed, on behalf of "Plaintiff, Cristina Zvunca, and the Estate of Cristina Zvunca, a minor, through its plenary guardian [Klein]," an emergency motion to "bar any further contact between attorneys Tom Leahy, Peter Hoste, Jeanine Stevens, Thomas Clancy and Marina Ammendola, either in her role as attorney or as purported Guardian ad Litem, and their agents and/or employees pursuant to a request made by the minor, her law parents and guardians, as well as her Plenary Guardian." On August 14, 2009, at a hearing before Judge Locallo, Novoselsky stated that the motion was based on a privileged communication from his clients, purportedly stating that they did not want contact with the named attorneys. Novoselsky stated that he was "the only lawyer representing Cristina" and also indicated that he and Attorney Louis Cairo had contracts to represent the family. On August 27, 2009, Judge Locallo granted Greyhound's motion for substitution of judge from Judge Zwick. The case was sent to Judge Maddux for reassignment.

¶ 31 On September 3, 2009, Judge Maddux acknowledged he had a conflict because Novoselsky was his personal counsel and proceeded to issue an order transferring the underlying

case (as well as another case that had been filed that same day by Novoselsky) to Judge Locallo for "all pending matters except for trial," which included determining "whom [*sic*] represents whom" and "enter[ing] appropriate orders." Judge Maddux refused Stevens's request that the case be transferred to Judge Elrod.

¶ 32 On September 8, 2009, Judge Locallo, concluding that a conflict existed between Cristina and Stevens, and that a conflict existed between Cristina and Ammendola, entered an order removing Ammendola, Stevens, Thomas Clancy, Clancy & Stevens, Thomas Leahy, Peter Hoste, and the Leahy & Hoste law firm from any representation of Cristina, in any capacity, in the underlying case, or the case that Novoselsky had filed on September 3, 2009. Judge Locallo also appointed attorney David Gubbins as guardian *ad litem* for Cristina in the underlying case and the case that Novoselsky had filed on September 3, 2009.

¶ 33 On September 16, 2009, Novoselsky informed Judge Locallo during a hearing that he wanted to move the case ahead for Cristina and that he had spoken to Greyhound which was interested in having a pretrial with Judge Locallo and attempting to settle the case. However, Cristina's guardian *ad litem* from the probate division, Ellen Douglass expressed her concerns to the court regarding Novoselsky's settlement discussions with Greyhound and noted there was "a pending motion with respect to Cristina's desire not to have Novoselsky represent her." GAL Douglass further noted that Novoselsky was aware of the pending motion filed by Cristina, Klein and the Zvuncas. Judge Locallo asked Klein to approach the bench. Klein expressed his concerns that Claudia's estate was not being represented. Klein clarified that it was his understanding that Novoselsky was not representing Claudia's estate and Klein apparently wanted

a particular attorney to represent the estate.

¶ 34 During a September 17, 2009 hearing, Judge Locallo addressed the issue of Stevens turning over her file. Stevens expressed her concerns regarding Cristina's representation and noted that she had discussed the issue with GAL Gubbins who agreed with her that there was no contract with any attorney on behalf of Cristina. Stevens noted GAL Douglass's grave concerns about whether Cristina was being adequately represented. Also during this hearing, GAL Douglass reiterated the concerns she had expressed the day earlier about Novoselsky representing Cristina while the motion in probate remained unresolved. Judge Locallo, however, had informed GAL Douglass that he was "not concerned about the motion in probate court" because he had a guardian *ad litem*, Gubbins, who had made a recommendation. Judge Locallo directed Stevens to turn over her file for the copying service by September 24, 2009, and to direct the copies to GAL Gubbins and GAL Douglass. Judge Locallo further directed her to send copies to Cairo's office. The court stated that if Stevens did not comply, he would deal with a rule to show cause.

¶ 35 On September 22, 2009, Judge Locallo *sua sponte* appointed Novoselsky and Cairo as "the sole attorneys for the Estate of Cristina Zvunca, a minor, and for Cristina Zvunca, a minor, individually," and further ordered that "in the Estate of Claudia Zvunca, deceased, Attorneys Novoselsky and Cairo are appointed to represent the interests of the minor, Cristina Zvunca, only." Judge Locallo ordered Stevens to turn over her files for copying at the expense of the court-appointed attorneys.

¶ 36 On September 25, 2009, U.S. Legal Services picked up the file (consisting of 44 or more

banker boxes plus oversized exhibits) from Clancy & Stevens. The file remained there for six weeks, until November 5, 2009, when U.S. Legal returned it to Clancy & Stevens. U.S. Legal had apparently wanted to charge between $18,000 and $21,000 for copying but Judge Locallo would not authorize such a high charge to the minor's estate. According to Clancy & Stevens, during the six-week period that the file remained at U.S. Legal, GAL Gubbins spent less than two hours on one visit reviewing the file and did not order copies of any portion of the file. Clancy & Stevens further note that Novoselsky and Cairo never reviewed or copied any portion of the file.

¶ 37 After Judge Locallo retired, the case was assigned to Judge William J. Haddad. Greyhound contends that "[p]roblems with obtaining the file continued." Greyhound states that "[i]n the spirit of cooperation, Greyhound offered to provide portions of its file to Cristina's court-appointed attorneys." Greyhound notes that it again volunteered to do so ("Shortly thereafter, Greyhound's attorneys repeated the offer.") On January 21, 2010, Attorney Paul Bozych, counsel for defendant, Greyhound Lines, Inc. (Greyhound) offered to provide a copy of its file (scrubbed for privileged documents) to Cristina's court-appointed attorneys:

> "[BOZYCH]: Your Honor, we have an entire file. And when Mr. Gubbins came on board, in order to expedite matters, Dave [Novoselsky] came over one afternoon and we gave him an agreed upon set of certain things that Dave thought would be useful in him getting up to speed to pretry the case. So I can tell you that Mr. Gubbins got at best a very small portion of our file, some critical depositions and things of that nature, 213 Answers, those types of things. But we have a large conference room with a file that is as big or bigger than Clancy &

Stevens.

[NOVOSELSKY]: And, Judge, just to bring you a little more up to speed, Mr. Bozych and I have discussed this over the last couple of years we have been working on this, and I believe Mr. O'Malley [an attorney from Cairo's office] did some review of documents over at Clausen. One of the reasons, and I've talked briefly to Mr. Gubbins about this, some of the materials generated in this case we believe really I don't want to spend the money to copy them because they deal with expert witnesses that we would not proceed with.

* * *

We believe at this point since Greyhound has offered to make copies of the same depositions and reports available to us for our review, the cheapest way, and I don't want to say cheap in the nasty sense, I want to represent this child at the minimum expense to this child, because I think that's my fiduciary obligation.

What I would like to do, if Greyhound is still willing to do so, have myself, somebody from Mr. Cairo and Mr. O'Malley's firm, review the documents, make copies at our expense because I'm not asking Greyhound to copy them for us, if there are materials that are needed and in the hands of prior counsel, they have a right to assert a lien ... This is cheaper.

[BOZYCH] We would be happy to.

[THE COURT]: Do you have the same information that would be in possession of prior counsel in this matter?

[BOZYCH]: Yeah. I mean I wouldn't venture to guess the sorts of things that Miss Stevens has gathered.

* * *

In other words, Judge, if I was replaced as defense counsel tomorrow, I would feel confident that Greyhound successor lawyers would have everything they need if they got my file. Having said that, in order to accommodate Mr. Novoselsky and that team, it would take us a little bit to cleanse our attorney-client materials out of the conference room.

* * *

[NOVOSELSKY]: I think that would be faster and we don't end up – at one point Miss Stevens appealed an order to turn stuff over. That's an expense we don't need.

* * *

[THE COURT]: Plaintiff's counsel could proceed several ways. One way you can proceed and we're not talking about discovery in this case yet, but *** you can *** ask predecessor counsel to produce the file and apply a lien

* * *

the other is get a Court order [and] if a Court issues an order requesting predecessor counsel to cooperate by producing files and information to allow the expeditious trial in this and they don't, then that's an issue I'm sure lawyers can make later on in this case, if and when *** there is any kind of recovery as to

whether or not they indeed stand in good faith to receive any such funds."

¶ 38 On January 28, 2010, a hearing was held before Judge Haddad. Clancy & Stevens, Cushing, and his new counsel, Scott Golinkin were not present. Attorney Colin O'Malley (from Cairo's office), Novoselsky, GAL Gubbins, and attorneys for both defendants were present. O'Malley declined Greyhound's offer to provide its file and stated he preferred the opportunity to examine the plaintiff's file. Judge Haddad, after acceding to all of Judge Locallo's prior orders, with no notice to Clancy & Stevens, again ordered it to deliver its file to Cairo to inventory and select those files needed for trial which was scheduled for September 7, 2010.

¶ 39 On February 3, 2010, Novoselsky filed an emergency motion for issuance of a rule to show cause as to why Clancy & Stevens should not be held in contempt for not producing the file. On February 16, 2010, Attorney Warren Lupel filed Clancy & Stevens's response arguing that the January 28, 2010 order was void where (1) it was issued without prior notice to Clancy & Stevens, (2) the court lacked personal jurisdiction over Clancy & Stevens, and (3) Clancy & Stevens was entitled to retain possession of its file until its retaining lien was satisfied.

¶ 40 Meanwhile, on February 24, 2010, Judge Haddad entered an order denying three of Cushing's prior filed motions to reconsider that had been directed at the trial court's appointment of MB Financial Bank, NA as guardian of the estate of Cristina Zvunca, and special administrator of the estate of Claudia Zvunca.

¶ 41 On February 25, 2010, during a hearing before Judge Haddad, Attorney David A. Eide, represented Clancy & Stevens. Eide explained to the court that his clients wished to assert their lien right. Judge Haddad stated that he had acceded to Judge Locallo's appointment of the

attorneys, Novoselsky and Cairo, and had set the case on "a very expeditious case management schedule," which if not met, would have consequences. He stated that "the question is not whether they have standing or whoever else has standing. Right now, they're the plaintiff and I'm ordering that the file be entered." He then discussed the issue of turning over the file and the attorney lien.

¶ 42 Stevens expressed her concerns to the court regarding turning over the file in a situation where, not her client, but a judge had "fired her." As she noted: "I was fired by a judge who, in his estimation, thought I had some sort of conflict." Stevens further told the court that "The client *** does not want her file turned over." Stevens informed the court that Cristina had written a letter to several people indicating that "she and her grandparents did not want the file turned over." The letter was titled "Open Letter to Judge Haddad." Stevens expressed concern over her predicament where "the people who retained me to act on their behalf do not want the file turned over." Stevens further noted that the court was asking her to turn over her file "against [her] client's wishes to an attorney who does, in fact, have a conflict because there are ARDC charges against him as well as what's communicated in the ["Open Letter to Judge Haddad"].

¶ 43 Despite Stevens's concerns, Judge Haddad stated that the case was not going to be delayed and he was "ready, willing, and able to allow [the GAL and attorneys appointed by Judge Locallo] to proceed with the case." He further stated:

> "I am not familiar with the conflicts and I don't want to go into them other than to know that there were conflicts in this case. And I'm not so much

> interested in whether it's true, but what the perception is and the appearances are. And Judge Locallo heard this fully and made his decision. *Your opportunity to be heard existed back then*. It's now being exercised at this point and I'm simply responding to what you have to say from my view from the bench, that I have to follow the law in this case, and the law is that this case has to go to trial, that theses are the lawyers that have been put in place, this is the hand that was dealt to this Court. And I agree with everything that has preceded me both in Probate and in here." (Emphasis added.)

Stevens refused to turn over her file and the judge issued a rule to show cause and set a hearing date.

¶ 44 On March 2, 2010, the trial court struck the petition for a rule to show cause and granted leave to amend granted to allow a properly "verified" petition to be filed. A briefing schedule was ordered and a hearing date was scheduled for April 6, 2010. As the court further stated:

> "While this [briefing and hearing on the petition for rule to show cause] is going on pursuant to the case management that we had earlier today,[8] these lawyers are going to reconstruct the file and they believe they can and not in any way impede the trial date in this case. They will do this separate and apart from the cooperation or lack of cooperation or whatever as to the respondent as to the

[8]The court had earlier held a case management pretrial conference in chambers, outside the presence of counsel for Clancy & Stevens. Apparently, the reconstruction of the file was discussed.

rule to show cause.

They will give me an accounting monthly as to the legal services expended and as to the cost of reconstructing the file, and that will be kept by the Court and published, of course, to all parties here so that we have a running number as to what it is that it will cost and what cost will be associated with reconstructing the file while we proceed with the contempt proceedings as to Ms. Stevens.

* * *

Both sides, whatever work is involved, legal services and actual cost, copy cost, whatever it costs to reproduce these files. And I'm interested – you know, one purpose of this hearing is to determine the accuracy of Ms. Stevens' representation of cost, expenditures exceeded $200,000. Of course, she can amend that. But we're working off that number."

¶ 45 On or about March 4, 2010, Greyhound commenced working on its file. The record contains an affidavit of Greyhound's counsel, Brian E. DeVilling, in which he states: "[o]n March 4, 2010, O'Malley went to Greyhound's counsel's offices to begin identifying non-privileged portions of Greyhound's file for copying. Greyhound contends it "spent over 22 hours of attorney and paralegal time analyzing documents in its massive file for privilege." According to Greyhound, it commenced working on its file based on Stevens's assertion during the February 25, 2010 hearing that she would not turn over her file.

¶ 46 On March 8, 2010, pursuant to the court hearing of February 25, 2010, Judge Haddad ordered: (1) Clancy & Stevens and attorney Stevens to tender the full and complete case file to a

record copy service; (2) Cairo to inspect and copy all necessary documents contained in the file; (3) Cairo to pay for copying of all documents it wanted to retain; and (4) Cairo to return the original file to Clancy & Stevens at Cairo's expense.

¶ 47 On March 9, 2010, Cairo filed a new "Motion for Rule to Show Cause." Cairo requested that Clancy & Stevens be ordered to produce the file and that they be found to be in civil contempt for the failure to produce the file pursuant to the court orders of February 25, 2010, and March 8, 2010. Shortly thereafter, Clancy & Stevens, through counsel, reached an agreement with Cairo, Novoselsky and GAL Gubbins that Novoselsky and Cairo would pay the copying costs and Clancy & Stevens would withdraw its retaining lien.

¶ 48 On March 16, 2010, pursuant to stipulation of plaintiffs and Clancy & Stevens, the court entered an order modifying the March 8, 2010 order to reflect the parties' agreement. Clancy & Stevens produced its file for the second time. According to Clancy & Stevens, O'Malley subsequently reviewed the file for a few hours and ordered copies of only a small portion of the file. Pursuant to the agreement, Cairo moved to withdraw its motion for a rule to show cause. On March 30, 2010, Judge Haddad stayed Cairo's motion to withdraw its motion for a rule to show cause against Clancy & Stevens "pending Clausen & Miller filing a motion for fees and costs related to duplicating the file."

¶ 49 On July 14, 2010, Greyhound filed a "Verified Petition for Fees and Costs." In its petition, Greyhound outlined what it believed to be "plaintiffs improper and obstructionist conduct" that had caused Greyhound to expend substantial legal fees. Greyhound did "not direct this motion at the conduct of the guardian *ad litem* David Gubbins or attorneys Lois Cairo, Colin

O'Malley, or David Novoselsky." Rather, the motion sought recovery from Cristina Zvunca, Tiberiu Klein, and Clancy & Stevens. In addition to the issue of Clancy & Stevens's refusal to turn over its file to the court-appointed attorneys for Cristina, Greyhound incorporated its prior motions that had sought recovery of its expenses related to various "categories of misconduct" which included: (1) Klein's continued filing of unauthorized *pro se* and frivolous pleadings; (2) Klein's refusal to produce the decedent's purse; (3) Cristina's refusal to follow multiple court Cristina's refusal to attend court hearings, exams, and depositions; and (6) Klein's combative and obstructionist conduct during his testimony.

¶ 50 On July 15, 2010, Greyhound filed its "Verified Petition for Issuance of Rule to Show Cause Against Tiberiu Klein, Estate of Claudia Zvunca, Cristina Zvunca, Jeanine Stevens, and Clancy & Stevens." The document was identical to the July 14, 2010 verified petition for fees and costs. According to the record, on August 5, 2010, Clancy & Stevens, through its counsel, Lupel, filed a verified response arguing that Greyhound could not be personally compensated in a contempt proceeding. On August 20, 2010, Greyhound filed a motion to: (1) eliminate the request for a rule to show cause from the title of its petition, (2) restyle its petition as "Greyhound's Verified Petition for Fees and Costs Under Illinois Supreme Court Rules 219 and 137," and (3) supplement the petition with a further recital of facts relating to Klein. On August 25, 2010, the court granted Greyhound's motion. Greyhound contended that the March 8, 2010 order directing Clancy & Stevens to turn over its file was a "case management" order within the scope of Supreme Court Rule 218.

¶ 51 On September 1, 2010, Clancy & Stevens filed its response contending that there was no

basis under Rule 219(c) for shifting Greyhound's fees and costs to Clancy & Stevens because it was not a "party" to the lawsuit or a participant in discovery, had no relationship with Greyhound, and owed Greyhound no duties. Clancy & Stevens argued that Rule 219(c) is "concerned with violations of discovery rules or orders" and that "[a]n attorney's failure to comply with an order directing the attorney to turn over his or her files to a former client does not fall into any of these categories." Greyhound filed its reply on September 13, 2010.

¶ 52 On September 28, 2010, after a hearing, Judge Haddad entered an order granting "Greyhound's Motion for Rule 219 Sanctions as to Clancy & Stevens." The court ordered Clancy & Stevens to pay $3,222.00; Clancy & Stevens paid the sanction.

¶ 53 Clancy & Stevens now argue that it was error to order sanctions against Clancy & Stevens and Attorney Jeanine Stevens under Rule 219, and to then award the sanction amount to a party to whom they had no obligation. Rule 219, entitled "Consequences of Refusal to Comply with Rules or Order Relating to Discovery or Pretrial Conferences," states in pertinent part:

> (a) Refusal to Answer or Comply with Request for Production. *** If the court finds that the refusal or failure was without substantial justification, the court shall require the offending party or deponent, or the party whose attorney advised the conduct complained of, or either of them, to pay to the aggrieved party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and the court finds that the motion was made without substantial justification, the court shall require the moving party to pay to the refusing party the amount of the reasonable expenses incurred in

> opposing the motion, including reasonable attorney's fees.
>
> * * *
>
> (c) Failure to Comply with Order or Rules. If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just[.]" Ill. S. Ct. R. 219 (eff. July 1, 2002).

¶ 54 Although the parties discuss this issue under the abuse of discretion standard, they disagree as to whether Rule 219 applies in the first instance. The resolution of this threshold issue turns on an interpretation of Rule 219, and is a question of law that is reviewed *de novo*. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 42. "Interpretation of supreme court rules requires application of the same principles used to construe statutes enacted by the legislature." *Scattered Corp. v. Midwest Clearing Corp.*, 299 Ill. App. 3d 653, 657 (1998), citing *In re Estate of Rennick*, 181 Ill. 2d 395, 404-5 (1998). "Thus, the court should first look to the plain language of the rule and consider the rule in *its logical context.*" *Id.* (citing *Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund*, 155 Ill. 2d 103, 111 (1993)).

¶ 55 Neither party has cited a case applying Rule 219 to the situation present here. However, this court has noted that Rule 219 is not a basis for sanctioning conduct that occurs at trial. See *Cronin v. Kottke Associates, LLC*, 2012 IL App (1st) 111632, ¶ 37 (citing G*onzalez v. Nissan*

North America, Inc., 369 Ill. App. 3d 460, 469 (2006). In *Cronin*, however, this court decided that Rule 219 was applicable to "plaintiffs' claimed disregard of the trial court's scheduling order and its standing order for trial preparation." *Id.* ¶ 38. We do not believe that Rule 219 is applicable to Clancy & Stevens's refusal to tender the case file to Novoselsky and Cairo.

¶ 56 Greyhound contends, however, that it is entitled to reimbursement for the 22 hours of time it spent analyzing documents in its file for privilege during the reconstruction of the file for plaintiff's new counsel. Greyhound argued in its petition that "[w]hile the Rule to Show Cause was pending, the Court *instructed* Greyhound's attorneys, the law firm of Clausen, Miller, to cooperate with Goldberg Weisman & Cairo in attempting to reproduce the case file." (Emphasis added.) According to Clancy & Stevens, however, the trial court never instructed, requested, or ordered Greyhound to prepare its file for copying, nor did the trial court order Clancy & Stevens to do or produce anything in response to any discovery request from Greyhound. As Clancy & Stevens note, the affidavit of Greyhound's counsel, Brian E. DeVilling states that, "[i]n early March 2010, Judge Haddad *requested* Greyhound cooperate with new plaintiff's counsel, Goldberg, Weisman & Cairo in sharing non-privileged portions of Greyhound's case file." (Emphasis added.)

¶ 57 As noted, on March 2, 2010, in a settlement conference that was outside of the presence of Clancy & Stevens, Cushing and his new counsel, the court apparently "instructed" Greyhound to produce its file to the "court-appointed" attorneys for Cristina. The exclusion of Cushing and his attorneys was error. As we explained in our earlier opinion, Judge Locallo's decision to remove counsel for the estate of Claudia Zvunca without a hearing was error. Cristina was a

beneficiary in the wrongful death action and had her own counts for emotional distress (although the viability of these may have been adversely affected by Klein's earlier interference with Cristina's medical evaluation and/or deposition, as well as the lawsuits that were filed claiming Cristina was abused). Nonetheless, Cristina was not the "only" plaintiff. Despite the unusual procedural posture of this case, Klein was a beneficiary in the Illinois action and had a claim against one of the defendants, Motorcoach. Most importantly, as our earlier opinions held, Cushing was the proper (and only) plaintiff who could represent the estate of Claudia Zvunca in the wrongful death action. In any event, the subsequent accession to Judge Locallo's order by Judge Haddad, again without a hearing, resulted in the situation where the court-appointed attorneys for the minor beneficiary, along with the guardian *ad litem*, were controlling the litigation and the settlement discussions, even though they apparently needed Clancy & Stevens's file, understandably so, since the "court-appointed" attorneys were not familiar with the contents of the file. In sum, although Stevens violated a court order, no "discovery violation" occurred.

¶ 58 As Clancy & Stevens notes, Greyhound had never asked Clancy & Stevens to produce its file and had never sent a subpoena for its production. Clancy & Stevens also notes that there was no Supreme Court Rule 201(k) conference; Clancy & Stevens and Greyhound were not "opposing parties." Had there been an "opposing party" to Clancy & Stevens, we agree it would have been Novoslesky, Cairo or Gubbins. Here, the court ordered Clancy & Stevens to produce its file to Cairo, which it did shortly after Cairo withdrew the motion for a rule to show cause and both stipulated that Cairo would pay the copying costs. As Clancy & Stevens further notes, Cairo expended no money and received the entire file. Regardless of whether Greyhound

reconstructed its file voluntarily, at the direction of the court, or a combination of both, nothing in Rule 219(c) permits fee shifting absent an actual "violation" of the rule. Neither party disputes that Greyhound's work on its file occurred while the motion for the rule to show cause was still "pending."

¶ 59 Nonetheless, even though we do not believe the refusal to turn over the file was a discovery violation, it is undisputed that it was a violation of a court order. As this court has explained, even where Rule 219 is inapplicable, "apart from and independent of any authority granted by Rule 219(c), a trial court has the inherent authority to control its docket and impose sanctions for the failure to comply with court orders." *Cronin v. Kottke Associates, LLC*, 2012 IL App (1st) 111632, ¶ 39 (citing *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 65 (1995)). " 'The recognition of the court's inherent authority is necessary to prevent undue delays in the disposition of cases caused by abuses of procedural rules, and also to empower courts to control their dockets.' " *Id.*, see also *J.S.A. v. M.H.*, 224 Ill. 2d 182, 196 (2007) (inherent authority allows a court to "prevent undue delays in the disposition of cases caused by abuses of the litigation process").

¶ 60 Our review of the record shows that the basis for the sanction order was Stevens's refusal to turn over her file to Novoselsky and Cairo, even after being ordered to do so by the court. Clancy & Stevens contended that they had a right to assert their retaining lien. There is no claim that the refusal to produce was malicious or designed to impede the progress of the trial. However, there is no way for this court to ascertain or judge the propriety of the underlying order to produce the file because once Clancy & Stevens and Cairo entered into the agreement

regarding the file, the motion for a rule to show cause was withdrawn; thus, there was no evidentiary hearing.

¶ 61 Clancy & Stevens has further argued that the order granting Greyhound's motion for sanctions was for "an alleged past violation of a court order " and was, in effect, a finding of indirect criminal contempt for which Clancy & Stevens was afforded "none of the procedural guarantees" or "constitutional protections" provided to a person charged with indirect criminal contempt." We agree and conclude that the order must be vacated and the cause remanded to allow the trial court to determine, if it chooses to do so, whether Clancy & Stevens's refusal to turn over its file was sanctionable under the circumstances of this case. Before any finding can be made, however, the procedural guarantees must be afforded.

¶ 62 In conclusion, where we have vacated the final order being appealed here in *Cushing II*, the issue regarding the trial court's allocation of attorney fees and costs is moot. However, the trial court should have scrutinized fees, and any allocation of fees after remand should be done pursuant to proper procedures. In view of our resolution of this matter, we need not address the issue of whether the enlisting of the guardian *ad litem* to review the propriety of legal fees and charging him with making recommendations to the court was an appropriate procedure. Ammendola has failed to show that the trial court erred in denying her request for substitution of judge as of right. The trial court's order awarding sanctions to Greyhound must be vacated and the cause remanded for further proceedings consistent with this order. Novoselsky's motion to supplement the record of oral argument and conduct a further oral argument is denied.

¶ 63 Appeal No. 1-10-3176: Dismissed in part, affirmed in part, and remanded.

¶ 64 Appeal No. 1-10-3196: Dismissed in part, vacated in part, and remanded.

¶ 65 Motion taken with case is denied.