2014 IL App (1st) 111125

SIXTH DIVISION
June 27, 2014

Nos. 1-11-1125 and 1-12-2395 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RHONDA SULLIVAN, Individually and As Mother and Next Friend of Beau Sullivan, a Minor, and JASON SULLIVAN, Plaintiffs-Petitioners-Appellees, v. OHIC, f/k/a Ohio Hospital Insurance Company, a Corporation, Defendant (Law Office of Kenneth C. Chessick, M.D., Respondent-Appellant). _____ RHONDA SULLIVAN, Individually, and As Mother and Next Friend of Beau Sullivan, a Minor, and JASON SULLIVAN, Plaintiffs-Petitioners-Appellants, v. OHIC, f/k/a Ohio Hospital Insurance Company, a Corporation, Defendant (Law Office of Kenneth C. Chessick, M.D., Respondent-Appellee).	Appeal from the Circuit Court of Cook County. No. 02 L 5040 Honorable Susan F. Zwick, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justice Reyes concurred in the judgment. Justice Lampkin dissented.

Held: After 30 days, the circuit court lacked subject-matter jurisdiction to vacate the dismissal with prejudice of a bad-faith action based on a settlement, and enter orders as

to the distribution of the settlement proceeds and attorney fees pursuant to a local rule relating to minors' settlements. Therefore, the circuit court's orders entered pursuant to a motion for review of the settlement pursuant to the local rule are void and vacated. The appeal based on efforts to enforce those void orders is dismissed as moot.

ORDER

¶ 1 Plaintiffs-petitioners-appellees/petitioners-appellants, Rhonda Sullivan, individually and as mother and next friend of Beau Sullivan, a minor, and Jason Sullivan (together, the Sullivans) brought suit in the circuit court of Cook County (circuit court) against OHIC, an insurance company, claiming bad faith relating to the Sullivans' medical-negligence claims against its insured (bad-faith action). The Law Office of Kenneth C. Chessick, M.D. (Chessick), represented the Sullivans in the medical-negligence action which was pursued in the circuit court of Ogle County. Chessick also represented the Sullivans in the bad-faith action. On November 12, 2009, after the bad-faith action was settled, the circuit court entered an order dismissing that suit with prejudice. The Sullivans later discharged Chessick. On March 12, 2010, the Sullivans, through their new attorneys, filed a motion seeking review of the bad-faith settlement pursuant to Cook County Circuit Court Rule 6.4 (Cook Co. Cir. Ct. R. 6.4 (eff. Jan. 2, 2001)) (Rule 6.4). The circuit court, pursuant to this motion, vacated the dismissal, found the settlement was reasonable, determined the distribution of the settlement proceeds, and awarded attorney fees to Chessick.

¶ 2 Chessick appeals (appellate case number 1-11-1125), from the various orders of the circuit court which were entered after the November 12, 2009, dismissal order. Chessick argues, *inter alia,* that these orders are void because the circuit court lacked subject-matter jurisdiction and personal jurisdiction over the parties. Chessick further argues the circuit court disregarded orders entered by the Ogle County probate court and Rule 6.4 was inapplicable and unconstitutional.

¶ 3 The Sullivans have appealed the circuit court's orders denying their motion for a money judgment and an award of interest against Chessick and declining to rule on their motion to reconsider that order (appellate case number 1-12-2395). The Sullivans filed those motions after Chessick had filed its notice of appeal.

¶ 4 We vacate the circuit court's orders entered after the dismissal of the bad-faith action which are the subject of Chessick's appeal, finding the circuit court lacked subject-matter jurisdiction pursuant to the motion for Rule 6.4 review. Additionally, we dismiss the Sullivans' appeal as moot.

¶ 5 Beau Sullivan (the minor) sustained injuries in connection with his premature birth at Rochelle Community Hospital (hospital) in October 1994. In 1996, the Sullivans pursued a medical-negligence action against the hospital and a doctor seeking recovery on behalf of the minor and his parents in the circuit court of Ogle County. Chessick represented the Sullivans pursuant to a contingency-fee agreement. In 1999, the Sullivans' claims against the doctor were settled for a present cash value of $950,000, an amount within the $1 million limits of the doctor's liability insurance. A guardianship estate for the minor was then opened in the probate division of the Ogle County court. According to the record, the same Ogle County circuit court judge oversaw the medical-negligence case (case number 96 L 23), and the minor's probate case (case number 99 P 33). The Ogle County court approved the Sullivans' settlement with the doctor, and awarded Chessick attorney fees (which were 33.33% of the settlement recovery) and litigation costs.

¶ 6 In 2001, the medical-negligence suit against the hospital proceeded to a jury trial. The jury awarded the Sullivans $10 million in damages, which exceeded the hospital's limits of coverage under its liability policy issued by OHIC. The Sullivans and the hospital reached a

compromise of the jury's verdict whereby the Sullivans received the $6 million policy limits and an assignment of the hospital's claims against OHIC for breach of the covenants of good faith and fair dealing. The Ogle County court approved the settlement, Chessick's attorney fees (37% of the recovered amount), and litigation costs. The Ogle County court also approved the withholding of $100,000 for future litigation costs as to the bad-faith action against OHIC. A guardian *ad litem* (GAL) was charged with effectuating the settlement.

¶ 7 In 2002, the Sullivans, as assignees of the hospital, filed the bad-faith action in the circuit court alleging claims of bad faith and breach of fiduciary duty against OHIC for its failure to settle the medical-negligence action. Chessick again represented the Sullivans pursuant to a contingency-fee agreement. After the case was assigned for trial in November 2009, the parties agreed to settle the matter for $2,750,000. On November 12, 2009, the circuit court entered an agreed order dismissing the bad-faith action with prejudice "pursuant to the settlement." The order stated the circuit court "retain[ed] jurisdiction of [the bad-faith action] to enforce the terms of the settlement" and directed OHIC to pay the settlement by December 11, 2009, "[i]f payment is not received by December 11, 2009, statutory interest shall accrue ***." Beau Sullivan was 15 years old at that time. Chessick did not present to the circuit court a petition to approve the settlement and distribution on behalf of a minor pursuant to Rule 6.4.

¶ 8 On November 30, 2009, Chessick filed a final litigation inventory for the bad-faith action in the Ogle County probate case, listing the distribution of proceeds from the $2,750,000 bad-faith action settlement as: $1,292,500 in attorney fees to Chessick (based on a 47% contingency-fee agreement); a $24,571 balance in the advanced litigation costs of $100,000, and $1,482,071 settlement proceeds due to the Sullivans.

¶ 9 On December 3, 2009, the Ogle County probate court entered an order that "received and approved" the final litigation inventory; ordered Chessick to hold the $1,482,071 settlement proceeds pending further court order as to allocation; appointed a new GAL; and set the cause for further status in February 2010. There is no indication in the record that the Ogle County probate court conducted a review to determine whether the settlement of the bad-faith action on behalf of the minor was fair and reasonable.

¶ 10 On January 5, 2010, the Sullivans, by letter, discharged Chessick. On January 11, 2010, the Ogle County probate court granted Chessick leave to withdraw as counsel and granted the Sullivans' new attorney leave to appear. The Ogle County probate court ordered Chessick to deliver to the Sullivans' new attorney a $700,000 check payable to Rhonda and Jason Sullivan as their share of the settlement proceeds and to transfer to the clerk of the Ogle County circuit court on behalf of the minor the balance of the settlement funds—$782,071.

¶ 11 On March 12, 2010, the Sullivans' new attorney filed in the circuit court a "Motion to Request Presentation of a Petition to Approve Settlement and Distribution on Behalf of Beau Sullivan, a Minor" (motion for Rule 6.4 review). The Sullivans alleged that although the bad-faith action had been dismissed with prejudice pursuant to a settlement, and the Ogle County probate court had entered an order allowing attorney fees and distribution of the settlement, there had been no compliance with the procedure set forth in Rule 6.4. Rule 6.4 provides as follows:

> "The procedure to be followed in cases involving claims of minors or disabled persons pending in divisions other than the Probate Division shall be as follows:
>
> (a) The judge hearing the case, upon the approval of a settlement as fair and reasonable or upon the entry of a judgment, shall adjudicate liens, determine the expenses, including attorneys' compensation, to be deducted from the

settlement or judgment and shall determine the net amount distributable to the *minor* or disabled person.

(b) Except as otherwise limited by rule or statute, attorneys' compensation shall not exceed one-third of the recovery if the case is disposed of in the trial court by settlement or trial. If an appeal is perfected, the compensation to be paid to the attorney shall not in any event exceed one half of the recovery.

(c) The order approving the settlement or the order entering the judgment shall provide that the amount distributable to the minor or disabled person shall be paid only to a representative of the minor or disabled person appointed by the Probate Division and upon presentation of an order entered in the Probate Division approving the bond or other security required in connection therewith, except that if the amount distributable to the minor or disabled person does not exceed $10,000, and no representative has been appointed in the Probate Division, the judge hearing the case may by order provide for the distribution to a parent or person standing *in loco parentis* to the minor or to the spouse or relative having the responsibility of the support of the disabled person in accordance with the provisions of 755 ILCS 5/25-2.

(d) The distributable amount received by a representative of a minor or disabled person pursuant to the provisions of this section shall be accounted for and administered in the Probate Division as in any other estate of a minor or disabled person." (Emphasis added.) Cook Co. Cir. Ct. R. 6.4 (eff. Jan. 2, 2001).

¶ 12 The Sullivans requested that the circuit court order Chessick to file a petition to approve the minor's settlement and distribution and set a date certain for a hearing on such a petition. The

service list showed the motion for Rule 6.4 review was served on Chessick by facsimile. The service list did not show service on OHIC.

¶ 13 In a written response, filed on March 29, 2010, Chessick argued, *inter alia*, that the motion for Rule 6.4 review should be denied because Chessick has been discharged and, thus, could not now file a petition under Rule 6.4 on behalf of the Sullivans; the circuit court lacked subject-matter jurisdiction because the bad-faith action was dismissed almost four months ago; the circuit court lacked personal jurisdiction over Chessick who was neither a party nor a representative of a party; and the settlement funds had already been distributed with the knowledge and consent of the Sullivans, the GAL appointed by the Ogle County probate court, and the Ogle County probate court. Chessick also maintained that the bad-faith action was based on an assignment of the hospital's rights against OHIC, and did not involve a minor's claim and, therefore, Rule 6.4 was inapplicable.

¶ 14 On March 31, 2010, the motion for Rule 6.4 review was presented to the circuit court. The circuit court, having noted the jurisdictional issues raised by Chessick in its response to the motion for Rule 6.4 review, set an additional briefing schedule for the jurisdictional issues to be further addressed by the Sullivans and Chessick. The Sullivans were to respond to Chessick's response by April 21, 2010, and Chessick was to reply by May 5, 2010. The order stated the circuit court would issue a written ruling on May 12, 2010.

¶ 15 On April 21, 2010, rather than file a response brief, the Sullivans filed a petition to vacate the November 12, 2009 dismissal order pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), and a motion seeking to stay the briefing schedule on its motion for Rule 6.4 review until the circuit court ruled on their section 2-1401 petition. The Sullivans argued that their section 2-1401 petition was timely filed, they acted with diligence, a

meritorious claim existed and, the dismissal of the bad-faith action without a Rule 6.4 review was not due to their inexcusable neglect.

¶ 16 In the alternative, the Sullivans argued that the circuit court had jurisdiction, aside from section 2-1401 of the Code, to review and vacate the 2009 dismissal order because section 5/19-8 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/19-8 (West 2010)), requires leave of court to compromise any claim of a minor and Rule 6.4 requires the trial court to determine the reasonableness of the settlement, expenses, attorney fees, and net amount distributable to the minor.

¶ 17 The certificate of service stated that the section 2-1401 petition and the motion for stay were served on Chessick by facsimile. The service list did not include proof of service on OHIC.

¶ 18 On April 23, 2010, the GAL filed in the Ogle County probate court a motion to reconsider the December 2009 order that had approved the final litigation inventory submitted by Chessick. The GAL specifically challenged the award of 47% of the settlement as attorney fees to Chessick. The Ogle County probate court granted the Sullivans and Chessick leave to respond to the GAL's motion and ordered the Sullivans to continue to hold the $700,000 proceeds from the bad-faith settlement which were previously allocated to the parents pending further order of the court.

¶ 19 On May 21, 2010, Chessick filed a surreply in opposition to the motion for Rule 6.4 review pursuant to the circuit court's briefing schedule. Chessick continued to argue the circuit court no longer had subject-matter jurisdiction and lacked personal jurisdiction over Chessick.

¶ 20 As part of the same surreply, Chessick also argued that the Sullivans' section 2-1401 petition was "improper" because the Sullivans had agreed to the settlement with OHIC, signed a release, and agreed to Chessick's costs and attorney fees; OHIC had paid the settlement proceeds; and the Ogle County probate court had already distributed those funds.

¶ 21 At a hearing on June 30, 2010, the circuit court acknowledged that the motion for Rule 6.4 review and the section 2-1401 petition were pending. The circuit court expressed its belief that Chessick had not filed a "complete and appropriate response" to the section 2-1401 petition.

¶ 22 The circuit court had concerns about whether the section 2-1401 petition had been served on OHIC. During the hearing, the Sullivans' attorney represented that the section 2-1401 petition had been sent to the registered agent of OHIC and the Sullivans had "heard nothing." The transcript of proceedings for the hearing does not reflect that the Sullivans presented any proof of service of the section 2-1401 petition on OHIC in accordance with the applicable rules.

¶ 23 During the hearing, the circuit court remarked that its order scheduling the hearing had informed the parties that the section 2-1401 petition would not be argued. The circuit court went on to say:

> "THE COURT: So the first thing that has to be done, the first thing I have to take a look at is jurisdiction from both sides. Do I have it? Because if I don't, then everything we've done so far is going to be either void or voidable.
>
> When I first look at this, or set this hearing, I specifically said in the order that the [section 2-1401] issue would not be argued. And the reason is the statute, as well as the requirements of [section 2-1401], are very clear. They're very clear. You follow the rules. You give me - - you give me the work, you give me the petition, I can rule on the paperwork. And that was what I intended to do if we got to the [section 2-1401] issue.
>
> We didn't get there because I wanted to hear from both sides whether or not they believe - - and I'm sure that the Chessick firm believes that I don't, and [the Sullivans' attorney's] position is that I do - - is that since the Court retained jurisdiction to effectuate the terms of the settlement under the court order, does that include requiring a [Rule 6.4] -

- does that include this situation? And under this situation, do the Circuit Court rules apply."

¶ 24 The circuit court asked Chessick and the Sullivans to address whether Rule 6.4 applied to the bad-faith action which was based on an assignment of the hospital's rights against OHIC, and whether the circuit court continued to have jurisdiction to consider the motion for Rule 6.4 review because it had retained jurisdiction to effectuate the terms of the settlement. Although the section 2-1401 petition was discussed, the hearing was not directed at determining whether the Sullivans had met the standards or requirements for the granting of their section 2-1401 petition. After the hearing, the circuit court entered an order which stated a written decision on both the section 2-1401 petition and the motion for Rule 6.4 review would be issued on July 8, 2010.

¶ 25 On July 8, 2010, the circuit court entered an order, pursuant to the Sullivans' "motions" for Rule 6.4 review. In its order, the circuit court vacated the November 12, 2009, dismissal order and reinstated the bad-faith cause. The circuit court found that, in the dismissal order, it had expressly retained jurisdiction to enforce the settlement; Rule 6.4 was applicable in this matter; the Ogle County probate court’s December 3, 2009 order did not satisfy the requirements of either Rule 6.4 or the provisions of the Probate Act as to settlements involving minors; and the Ogle County probate court's order allowing disbursement of funds was premature. The July 8, 2010 order did not refer to or address the merits of the Sullivans' section 2-1401 petition. The order directed the Sullivans to present a petition for the distribution of attorney fees. The Sullivans and Chessick filed separate petitions as to attorney fees.

¶ 26 At an August 20, 2010, status call, the circuit court discussed the remaining issues, including approval of the settlement. The circuit court, during those discussions, stated: "There is no [section 2-1401] issue at this juncture. Those issues are moot."

¶ 27 On August 27, 2010, the circuit court entered an order finding Chessick was entitled to attorney fees of $907,500, which represented 33% of the bad-faith action settlement recovery, and $73,173.28 in litigation costs, with $1,769,326.72 remaining for allocation to the Sullivans. The case was set for status on the allocation of the settlement proceeds.

¶ 28 Chessick filed a motion for reconsideration of the August 27, 2010, order arguing, *inter alia*, that Rule 6.4 violated the rights of parties to enter into contingency-fee contracts and, thus, was unconstitutional.

¶ 29 On December 20, 2010, the circuit court entered an order which granted Chessick's motion and vacated the August 27, 2010, order. The circuit court found Rule 6.4 was constitutional on its face but the rule had not been applied constitutionally where the circuit court had failed to consider whether Chessick was entitled to enhanced fees. The circuit court stated it would now consider Chessick's fee petition pursuant to the standards applicable for an award of enhanced fees.

¶ 30 On January 3, 2011, the circuit court entered an order denying Chessick an award of enhanced fees. The circuit court determined, however, that in its August 27, 2010, order, it had improperly calculated attorney fees based on 33% of the total bad-faith settlement rather than the correct multiplier of 33.33% under Rule 6.4. Accordingly, the January 3, 2011, order awarded Chessick attorney fees of $916,575 and litigation costs of $74,046.48 (based on further documentation of expenses). The case was again set for status on the allocation of the remaining settlement proceeds.

¶ 31 The circuit court, on January 13, 2011, entered an order which allocated the bad-faith settlement proceeds: 75% to the minor and 25% to his parents. Based on that allocation, Chessick moved to recalculate the award of attorney fees, contending it was entitled to an additional

$96,240, as to the parents' allocation, based on a 1996 contingency agreement setting attorney fees for the parents' recovery at 47%.

¶ 32 On March 28, 2011, the circuit court entered an order finding that the parties' 2002 contingency fee agreement, not the 1996 contingency-fee agreement, governed and provided for attorney fees at 37% of the parents' recovery. In its order, the circuit court "reaffirmed" the $2,750,000 settlement was fair and reasonable and distributed $2,062,500 to the minor, and $687,500 to his parents. The order awarded Chessick $941,796.25 in attorney fees, which was 33.33% of the minor's recovery (or $687,431.25) and 37% of his parents' recovery (or $254,365). The order did not expressly direct Chessick to pay the Sullivans the excess fees which he had received based on the order of the probate court of Ogle County. The circuit court's order did instruct Chessick to pay the minor $25,953.52—the remainder of the $100,000 advanced for the costs of the bad-faith action. Consequently, after the deduction of attorney fees and costs, the circuit court held that the net amount distributable to the minor was $1,401,022.27 and the amount to his parents was $433,135. The March 28, 2011 order provided that the approved settlement and disbursement amounts were to be paid only to a guardian appointed by the Ogle County probate court and "this order shall be effective only after the entry in the appropriate probate division of an order approving bond or other security required to administer the settlement and distribution provided for in this order."

¶ 33 On April 14, 2011, Chessick filed its notice of appeal from the circuit court's orders entered on July 8, 2010, August 27, 2010, December 20, 2010, January 3, 2011, and March 28, 2011.

¶ 34 In April 2011, the GAL filed in the Ogle County probate case an amended motion to reconsider the December 2009 order which had approved the final litigation inventory submitted by Chessick. On February 16, 2012, the Ogle County probate court vacated its earlier order

which approved Chessick's final litigation inventory based in part on a finding that the circuit court of Cook County had jurisdiction over the issue of attorney fees.

¶ 35 On March 28, 2012, the Sullivans filed in the circuit court a "Motion On Judgment," which stated that Chessick had failed to disgorge $350,703.75 in attorney fees as required by the March 28, 2011, order, and did not file an appellate bond or move to stay enforcement of the March 28, 2011, order in accordance with Illinois Supreme Court Rule 305. Ill. S. Ct. R 305 (eff. July 1, 2004). The Sullivans requested the entry of a judgment order against Chessick for $350,703.75 and interest.

¶ 36 Chessick opposed the motions, arguing, *inter alia*: (1) the March 28, 2011, order had not entered a money judgment against Chessick and, therefore, it was not required to file an appeal bond; (2) the circuit court lacked jurisdiction to make any non-collateral ruling concerning the orders which were the subject of Chessick's pending appeal; and (3) entering a judgment against Chessick would violate its due process rights based on the lack of *in personam* jurisdiction.

¶ 37 On May 23, 2012, the circuit court denied the Sullivans' motion for judgment and interest. The Sullivans then moved for reconsideration of this order.

¶ 38 At the hearing on the motion to reconsider, the circuit court stated that it had denied the initial motion for judgment because it had assumed that no money judgment had been entered against Chessick, and it lacked jurisdiction because of Chessick's appeal. The circuit court granted the Sullivans leave to amend their motion to reconsider to address these issues.

¶ 39 At the July 12, 2012, hearing on the amended motion to reconsider, the circuit court stated that Chessick's appeal had divested it of authority to enter an order declaring that the March 28, 2011, order was a money judgment and awarding interest. The circuit court's July 12, 2012,

written order stated that it "decline[d] to render an opinion on said motion based upon a lack of jurisdiction as case [was] pending on appeal."

¶ 40 On August 13, 2012, the Sullivans appealed these orders. The two appeals were consolidated. We will first consider Chessick's appeal (appellate case number 1-11-1125).

¶ 41 Chessick argues the circuit court's orders vacating the dismissal of the bad-faith action and determining Chessick's attorney fees and litigation costs, pursuant to the motion for Rule 6.4 review, were void because: (1) the circuit court had lost subject-matter jurisdiction, as the Sullivans' motion for Rule 6.4 review was filed more than 30 days after the dismissal entered in November of 2009; (2) the Sullivans' motion for Rule 6.4 review was not brought for the purpose of enforcing the terms of the settlement with OHIC; (3) the Cook County circuit court lacked jurisdiction over the *res* (settlement proceeds) and; (4) the circuit court lacked personal jurisdiction over Chessick.

¶ 42 While the parties have not questioned this court's appellate jurisdiction as to Chessick's appeal, we have an independent duty to determine whether we have jurisdiction to decide the issues presented. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006).

¶ 43 This court's jurisdiction extends only to appeals from final judgments, orders, or decrees, unless the appeal is within the scope of an exception established by our supreme court allowing appeals from interlocutory orders. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. Daimler Chrysler Corp.*,

356 Ill. App. 3d 760, 765 (2005). Where an action involves multiple parties or multiple claims, an order that disposes of fewer than all of the claims is not appealable unless the trial court makes "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 44 The Sullivans' section 2-1401 petition was never ruled upon and remains pending. Thus, the orders on appeal did not resolve the claims raised in the section 2-1401 petition and did not include Rule 304(a) findings. However, a section 2-1401 petition is considered a new and separate proceeding and, therefore, not a continuation of the original action. See *People v. Kane*, 2013 IL App (2d) 110594, ¶ 13. Accordingly, the Sullivans' section 2-1401 petition does not involve unresolved claims within the bad-faith action itself, and Rule 304(a) findings were not required for appellate review of the orders from which Chessick appeals. See generally, *People v. Walker*, 395 Ill. App. 3d 860, 867 (2009) (finding a postconviction petition and a section 2-1401 petition are actions separate from one another, and the pendency of an appeal in one does not affect the trial court's ability to consider the other). We therefore find we have jurisdiction to consider Chessick's appeal from the circuit court's orders entered pursuant to the motion for Rule 6.4 review.

¶ 45 Accordingly, we turn to consider the issue of whether the circuit court had subject-matter jurisdiction over the motion for Rule 6.4 review, as we find our decision on that issue is dispositive as to Chessick's appeal.

¶ 46 We review *de novo* the issue of a trial court's subject-matter jurisdiction. *In re Estate of Ahern*, 359 Ill. App. 3d 805, 809 (2005). Subject-matter jurisdiction refers to the court's power both to adjudicate the general issues involved and to grant the particular relief requested. *In re*

Estate of Gebis, 186 Ill. 2d 188, 192 (1999). If a court acts to resolve questions or provide relief beyond its jurisdiction, its orders are void. *Ahern*, 359 Ill. App. 3d at 809.

¶ 47 After 30 days have elapsed from the entry of a final judgment, a trial court lacks jurisdiction to amend or modify the judgment. *Director of Insurance ex rel. State v. A and A Midwest Rebuilders*, 383 Ill. App. 3d 721, 722 (2008); *Universal Outdoor, Inc. v. City of Des Plaines*, 236 Ill. App. 3d 75, 80 (1992). A trial court possesses the power to retain jurisdiction to enforce a settlement agreement. *Director of Insurance ex rel. State*, 383 Ill. App. 3d at 723. The intent of the trial court to retain jurisdiction may be found in an express statement of retained jurisdiction. *Id*. at 725. A court's retention of jurisdiction cannot be "construed as a retention of jurisdiction to reverse its ruling or to 'nonenforce' the agreement." *Universal Outdoor, Inc.*, 236 Ill. App. 3d at 83.

¶ 48 The circuit court found it had subject-matter jurisdiction, both to hear the motion for Rule 6.4 review and enter its subsequent orders, based on its statement in the order dismissing the bad-faith action with prejudice that it retained jurisdiction to enforce the settlement. Our holding in *Holwell v. Zenith v. Zenith Electronics Corp.*, 334 Ill. App. 3d 917 (2002), is instructive as to whether the circuit court had subject-matter jurisdiction on this basis.

¶ 49 In the *Holwell* case, the plaintiff agreed to settle her minor-son's suit against Zenith and filed a petition seeking approval of the settlement and distribution of attorney fees to both the plaintiff's current attorney and her discharged attorney, the Loggans firm. *Id*. at 919. The circuit court granted the petition and dismissed the action on December 14, 2000. *Id*. In its order, the circuit court allowed the distribution of fees to the Loggans firm as was requested in the petition. *Id*. at 919-20. On April 25, 2001, the Loggans firm filed a motion asserting that it had not received the full amount of the awarded fees and sought an order directing Zenith to pay the

remaining fees owed. *Id*. at 920. On May 14, 2001, John B. Petrulis, an attorney who had done work on the case before being suspended from the practice of law, sought a portion of the Loggans firm's fees. *Id*. The circuit court denied both motions and also ordered that the remainder of the fees, which had previously been awarded to the Loggans firm, be paid to the estate of the minor. *Id*. at 921.

¶ 50 On appeal we first addressed the question of whether the circuit court had jurisdiction over Mr. Petrulis' motion for fees. We set forth the applicable law as follows:

> "In the absence of a timely filed postjudgment motion, a trial court loses jurisdiction over a case pending before it 30 days after the entry of a final judgment terminating the litigation. [Citation.] After the expiration of that 30-day period, the trial court lacks the necessary jurisdiction to amend, modify, or vacate its judgment. [Citation.] These general propositions of law are not without exception, though. A court may at any time modify its judgment to correct a clerical error or a matter of form so that the record conforms to the judgment actually rendered. This power may not, however, be employed to correct judicial errors or supply omitted judicial action. [Citation.] Additionally, courts retain jurisdiction to enforce the terms of a judgment. [Citation.]" *Id*. at 922.

Based on these principles, we concluded that the circuit court lacked jurisdiction to consider Mr. Petrulis' motion as it sought an order awarding fees which could not "be deemed the correction of a clerical error or the enforcement of the court's December 14, 2000, order." *Id*. at 923.

¶ 51 We then considered whether the circuit court continued to have jurisdiction to order the Loggans firm to return fees which had been approved at the time of the dismissal to the estate of the minor. The minor's estate argued the circuit court had continuing jurisdiction to modify the

fee award under Rule 6.4 because the award to the Loggans firm, at the time of the dismissal, should have been made on a *quantum meriut* basis. We held:

> "The pertinent question, however, is not whether the trial court applied an incorrect standard when it awarded the Loggans Firm $500,000 in fees on December 14, 2000, but whether, on September 14, 2001, the trial court had jurisdiction to modify the terms of its earlier order. The [the minor's] Estate offers no authority to support a finding that the trial court had such jurisdiction. We conclude that it did not." *Id*. at 925.

¶ 52 In this case, the bad-faith action was dismissed with prejudice on November 12, 2009. The Sullivans filed their motion for Rule 6.4 review on March 12, 2010, four months after the dismissal. Thus, the circuit court had lost jurisdiction to grant any additional relief, or to amend, modify, or vacate the dismissal order. As set forth in *Holwell*, the circuit court did retain jurisdiction to correct a clerical error or matters of form in the dismissal order. It cannot be argued that the Sullivans' motion for Rule 6.4 review and the circuit court's orders dealt with such corrections.

¶ 53 The circuit court here expressly retained jurisdiction to *enforce* the settlement in the November 12, 2009, dismissal order. However, the only settlement terms included in that order required OHIC to pay the settlement amount by a certain date or face interest charges. By the time the motion for Rule 6.4 review was filed, OHIC had timely paid the settlement amount, the releases had been signed, and the Ogle County probate court had begun to distribute the proceeds. The circuit court's orders at issue here did not serve to enforce the settlement terms between the Sullivans and OHIC. Instead, the circuit court vacated the dismissal order and, pursuant to Rule 6.4, then determined how the settlement proceeds should be distributed and awarded attorney fees. Those orders of the circuit court were designed to correct perceived errors as to noncompliance

with Rule 6.4 and, thus, were beyond the circuit court's retained jurisdiction to enforce the settlement. The Rule 6.4 review may have been entirely proper before the case was dismissed, but the circuit court was divested of subject-matter jurisdiction after 30 days to enter the orders which are on appeal.

¶ 54 Finally, we respectfully decline to consider the Sullivans' section 2-1401 petition as a vehicle to review the circuit court's orders as urged by the dissent. We have several reasons for not proceeding in that manner.

¶ 55 Initially, we note the circuit court's orders at issue were not entered pursuant to the Sullivans' section 2-1401 petition. It is quite clear from the record that the circuit court did not base its orders on the section 2-1401 petition, and the parties on appeal do not even suggest such an idea. Neither the Sullivans nor Chessick were afforded an opportunity to fully address the section 2-1401 petition below. Furthermore, the issue of whether this court could find the circuit court had subject-matter jurisdiction as to the orders on appeal pursuant to an *unresolved* section 2-1401 petition was never raised nor addressed by the Sullivans and Chessick on appeal.

¶ 56 We find it significant that the record does not demonstrate OHIC was properly served with the section 2-1401 petition or even the motion for Rule 6.4 review. To proceed now on the Sullivans' section 2-1401 petition without proof of valid service on OHIC would be contrary to the notice provisions of section 2-1401(b). 735 ILCS 2-1401(b) (West 2008) ("All parties to the petition shall be notified as provided by rule.").

¶ 57 Furthermore, there is no argument that Chessick was served improperly with the section 2-1401 petition. We believe the circuit court should have an opportunity to initially determine whether Chessick has consented to jurisdiction as to the section 2-1401 petition, if appropriate. Our supreme court recently held that " 'a party who submits to the court's jurisdiction does so only

prospectively and the appearance does not retroactively validate orders entered prior to that date.' " *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 26 (citing *In re Marriage of Verdung*, 126 Ill.2d 542, 547 (1989)). A finding by this court on appeal that Chessick waived infirmities in the service of the section 2-1401 petition, even if proper, should operate prospectively and not retroactively. Retroactive operation is what we would accomplish, in essence, if we were to now review the circuit court's prior orders as if the orders were entered under section 2-1401.

¶ 58 The dissent finds review of the section 2-1401 petition may proceed now, in part, because the standard of review as to a section 2-1401 petition determination would be *de novo*, citing *People v. Vincent*, 226 Ill. 2d 1 (2007). It is true, as the dissent states, that under *Vincent*, when the circuit court dismisses a section 2-1401 petition, or enters judgment on the pleadings without an evidentiary hearing, the review would be *de novo*. *Id*. at 14. However, after *Vincent*, there has been some debate as to the applicable standard of review for section 2-1401 petitions under all circumstances. In *Cavalry Portfolio Services v. Rocha*, 2012 IL App (1st) 111690, ¶ 10, we explained:

> "However, many, more recent decisions of the appellate court have recognized that the *Vincent* decision dealt with a narrow issue under section 2-1401(f) in which a judgment was challenged for voidness. The *Vincent* decision did not involve the due diligence, meritorious defense, and two-year limitation requirements that apply to other actions brought under section 2-1401. *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill.App.3d 321, 326-27, 342 Ill.Dec. 691, 932 N.E.2d 1152, 1158 (2010); see also *Blazyk v. Daman Express, Inc.*, 406 Ill.App.3d 203, 206, 346 Ill.Dec. 427, 940 N.E.2d 796, 798-99 (2010). The *Borgetti* court found that the allegation of voidness in *Vincent* had nothing to do with

> equitable principles. *Borgetti*, 403 Ill.App.3d at 327, 342 Ill.Dec. 691, 932 N.E.2d at 1158. The court found that 'equitable principles and the exercise of discretion still apply in section 2-1401 proceedings not involving judgments alleged to be void.' *Id*. at 328, 342 Ill.Dec. 691, 932 N.E.2d at 1159. The *Borgetti* court reasoned that due diligence cannot be reviewed under the *de novo* standard because it is a mixed question of law and fact, and is a fact-intensive inquiry suited to balancing and not bright lines. *Id*. at 324, 342 Ill.Dec. 691, 932 N.E.2d at 1156. The court held that a typical section 2-1401 analysis is two-tiered: (1) the issue of a meritorious defense is a question of law and subject to *de novo* review; and (2) if a meritorious defense exists, then the issue of due diligence is subject to abuse of discretion review. *Id*. at 327, 342 Ill.Dec. 691, 932 N.E.2d at 1159. We agree with the holding and reasoning in *Borgetti* and *Blazyk*. Thus, we apply the *de novo* standard in reviewing whether Rocha presented a meritorious defense in his section 2-1401 petition, and apply the abuse of discretion standard in reviewing whether he complied with the due diligence requirements of section 2-1401." *Cavalry Portfolio Services*, 2012 IL App (1st) 111690, ¶ 10.

¶ 59 We do know that the circuit court found Rule 6.4 to be applicable to the bad-faith settlement, which is the central issue in the Sullivans' section 2-1401 petition. However, because the circuit court never resolved the section 2-1401 petition, did not determine whether Chessick had waived personal jurisdiction as to the petition, and did not decide whether the Sullivans acted diligently in light of all the relevant circumstances surrounding the dismissal and settlement, we cannot say for certain *how* the circuit court would have decided the section 2-1401 petition (on a motion to dismiss, judgment on the pleadings, or after a hearing), or *what* the circuit court would

have found as to all the relevant issues under section 2-1401. Thus, we cannot know whether *de novo* review would be the only applicable standard of review.

¶ 60 Any review of the section 2-1401 petition now would be of the orders entered by the circuit court on the motion for Rule 6.4 review. Our supreme court in *In re Haley D.*, 2011 IL 110886, ¶ 59, a case cited in the dissent as authority to do so, did exercise its supervisory authority to recast a section 2-1401 petition as a motion pursuant to section 2-1301 of the Code (735 ILCS 5/2-1301 (West 2008)). However, there was no issue in *Haley D.* as to the circuit court's jurisdiction to enter the order on review, as a final judgment had not been entered in the circuit court. *Id.*, ¶ 61. In this case, a final judgment had been entered four months prior to the circuit court actions that are now on appeal, at a time when the circuit court no longer had subject-matter jurisdiction. We do not believe *Haley D.* supports a recasting of the motion for Rule 6.4 review as a section 2-1401 petition by this court.

¶ 61 We fully agree with the dissent that the rights of Beau Sullivan, a minor, must be zealously guarded. We agree that it is unfortunate the issues cannot be decided on their merits in this appeal. Because a minor's interests are involved here, we wish to make sure any determination of his rights is made without jurisdictional challenge.

¶ 62 For the reasons stated, on Chessick's appeal number 1-11-1125, we find the circuit court lacked subject-matter jurisdiction to enter the orders at issue pursuant to the motion for Rule 6.4 review, and vacate as void the orders of the circuit court of Cook County entered on July 8, 2010, August 27, 2010, December 20, 2010, January 3, 2011, and March 28, 2011. In doing so, we do not express any opinion as to the substance of the circuit court's rulings.

¶ 63 Additionally, our decision to vacate the above-listed orders renders moot the Sullivans' appeal from the circuit court orders relating to their attempt to enforce those orders. Therefore, we dismiss the Sullivans' appeal (number 1-12-2395).

¶ 64 Appeal number 1-11-1125; orders vacated.

¶ 65 Appeal number 1-12-2395; appeal dismissed.

¶ 66 JUSTICE LAMPKIN, dissenting:

¶ 67 I disagree with the majority's conclusion and would find that the Circuit Court of Cook County had jurisdiction pursuant to the petition filed by the Sullivans under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). I would affirm the circuit court's judgment that approved the settlement on behalf of Beau as fair and reasonable and determined Chessick's attorney fees, costs, and the net amount distributable to Beau. I would reverse, however, the circuit court's denial of the Sullivans' motion for a judgment order and the assessment of pre- and postjudgment interest. I would hold that the circuit court had jurisdiction, in the absence of a stay, to enforce the judgment that was pending on appeal and to assess pre-and postjudgment statutory interest, which were collateral or incidental matters to the judgment. However, before addressing the merits of the issues raised by the parties in this consolidated appeal, I will briefly respond to the main arguments raised in the majority opinion concerning subject matter and personal jurisdiction.

¶ 68 First, the record does not support the majority's assertion that the parties were not afforded an opportunity to fully address the section 2-1401 petition before the circuit court. In their 2-1401 petition, the Sullivans argued that their petition was timely filed within two years of the court’s November 2009 dismissal order and Beau’s status as a minor extended his time to file such a petition. The Sullivans also argued that relief under section 2-1401 of the Code was proper

because they proved, by a preponderance of the evidence, that they had a meritorious claim, the adverse judgment was not entered due to their own inexcusable neglect, and they were diligent in presenting the section 2-1401 petition. Specifically, the Sullivans contended that (1) the Cook County court would not have entered the 2009 dismissal order if the judge had known Beau was a minor because Rule 6.4 would have triggered the protections accorded to minors and the court would have conducted an inquiry into Chessick's 47% attorney fee; (2) the Sullivans had trusted and relied upon Chessick, which had represented them since at least 2002, and reasonably expected Chessick to comply with all applicable court rules; and (3) the Sullivans filed their section 2-1401 petition only five months after entry of the November 2009 dismissal order and after they had consulted with another attorney in January 2010 and learned that Chessick did not comply with Rule 6.4. Jason Sullivan's affidavit was attached to the 2-1401 petition and averred that Beau Sullivan was born on October 30, 1994, and was 15 years old when the Cook County court entered the order dismissing the bad-faith action on November 19, 2009.

¶ 69 In the alternative, the Sullivans argued that the Cook County court had jurisdiction, aside from section 2-1401 of the Code, to review and vacate the 2009 dismissal order because the Probate Act of 1975 (Probate Act) (755 ILCS 5/1-1 *et seq*. (West 2010)) requires review and approval by the trial court of any compromise that involves the claims of a minor and Rule 6.4 requires the trial court to determine the expenses, attorney fees, and net amount distributable to the minor. The Sullivans moved the court to stay the briefing schedule on their motion for Rule 6.4 review until after the court ruled on their section 2-1401 petition.

¶ 70 Chessick filed a reply that opposed both the motion for Rule 6.4 review and the 2-1401 petition. Specifically, Chessick argued that the Sullivans' 2-1401 petition was "improper" because the Sullivans had agreed to the settlement with OHIC, signed a release, and agreed to

Chessick's costs and attorney fees; OHIC had already paid the settlement proceeds; and the Ogle County court had already distributed the settlement proceeds. Chessick argued that section 2-1401 of the Code was "not a vehicle to reinstate the [Cook County court] with jurisdiction without any meritorious claim or defense"; was "not a mechanism to appeal or review the orders of the [Ogle County court]"; and was not "a mechanism that serves as an alternative to a separate, new lawsuit for new claims and causes of action against discharged counsel."

¶ 71 The record establishes that Chessick had the opportunity to respond to the 2-1401 petition and did so in writing. If Chessick failed to fully avail itself of the opportunity by filing a better, more comprehensive response, then Chessick should suffer any consequence. See *People v. Vincent*, 226 Ill. 2d 1, 9 (2007) ("If the respondent does not answer [a 2-1401 petition], this constitutes an admission of all well-pleaded facts [citation], and the trial court may decide the case on the pleadings, affidavits, exhibits and supporting material before it, including the record of the prior proceedings.") Chessick is a law firm, and I see no reason to coddle it under the circumstances of this case. Moreover, the record establishes that the Sullivans asked the circuit court to rule on their 2-1401 petition before addressing the merits of their motion for Rule 6.4 review, but the circuit court did not do so. Under these circumstances, it makes no sense to punish the Sullivans for the circuit court's failure to recognize the correct basis for its jurisdiction.

¶ 72 Second, the Sullivans *did* argue on appeal, in their June 4, 2012 appellate brief at pages 18 to 21, that section 2-1401 of the Code is a basis of jurisdiction. Specifically, the Sullivans claim the circuit court's exercise of jurisdiction is supported by either the circuit court's retention of jurisdiction in its November 2009 dismissal order or section 2-1401 of the Code.

¶ 73 Third, the majority cites no authority to support the proposition that proper service of the 2-1401 petition on OHIC is dispositive of the issue of the circuit court's jurisdiction over Chessick.

According to the record, the Sullivans verbally informed the circuit court that they had served their 2-1401 petition on OHIC's registered agent, but the affidavit of service in the record does not prove that notice was served on OHIC either by summons, prepaid certified or registered mail, or by publication. I would not find, based on the appellate record before us, that the circuit court had personal jurisdiction over OHIC because OHIC, unlike Chessick, did not respond to the 2-1401 petition in any way and, thus, did not submit to the circuit court's jurisdiction. Nevertheless, I do not find that OHIC is an opposing party to the 2-1401 petition. The main issues in this dispute—*i.e.*, the applicability of Rule 6.4 to the bad-faith action settlement and its effect on Chessick's attorney fees and litigation costs—are irrelevant to OHIC, which paid the settlement amount in full years ago. The Sullivans were clear in their submissions and argument to this court and the circuit court that they were not challenging the reasonableness of the settlement amount reached with OHIC; rather, they were challenging only the reasonableness of Chessick's attorney fees and costs.

¶ 74 Fourth, the majority cites no authority to support the proposition that the circuit court "should have the opportunity to determine if Chessick consented to jurisdiction as to the 2-1401 petition." There is no factual dispute concerning Chessick's response to the petition and participation in the circuit court proceedings, so, as an issue of law, there is only one determination the circuit court could reach: *i.e.*, Chessick submitted to the circuit court's jurisdiction. Moreover, there is no issue here of the improper retroactive application of jurisdiction because jurisdiction is applied prospectively only from the time Chessick submitted to the circuit court's jurisdiction through its actions.

¶ 75 Fifth, the Illinois Supreme Court stated in *Vincent*, 226 Ill. 2d at 18, that a *de novo* standard of review applies when a 2-1401 petition is granted or denied on the pleadings alone. An Illinois

appellate court case, *Cavalry Portfolio Services v. Rocha*, 2012 IL App (1st) 111690, attempts to limit *Vincent* to the narrow issue of 2-1401(f) voidness challenges, which do not involve due diligence and meritorious defense issues and have nothing to do with equitable principles. I see no basis in *Vincent* for the limit *Cavalry* attempts to impose. It is well established that parties may challenge void orders at any time without even invoking section 2-1401 of the Code. 735 ILCS 5/2-1401(f) (West 2006) (nothing in paragraph (f) of section 2-1401 affects any existing right to relief from a void order or judgment); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002); *GMB Financial Group, Inc. v. Marzano*, 385 Ill. App. 3d 978, 994 (2008). In addition, *Vincent* explained that it was inaccurate to view 2-1401 relief in strictly equitable terms because it is a purely statutory remedy. *Vincent*, 226 Ill. 2d at 16 ("Because relief is no longer purely discretionary, it makes little sense to continue to apply an abuse of discretion standard on review."); see also *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321, 330, 332 (2010) (Jorgensen, J., concurring) (disagreeing with the majority's use of the abuse-of-discretion standard and explaining that the reviewing court applies *de novo* review to the trial court's effective grant of summary judgment and does not "perform a direct, 'naked' review of the due diligence issue").

¶ 76 Furthermore, here, where the circuit court—under the erroneous belief that the basis for its jurisdiction was its retained authority to enforce the terms of the settlement—vacated its November 2009 dismissal order without any misgivings concerning the merits of the Sullivans' motion for Rule 6.4 review, their diligence, or any unfairness to Chessick, then I see no reason to presume that a reassessment by the circuit court of section 2-1401 relief would result in a different outcome. A reversal or remand here does not comport with the efficient use of judicial resources. In general, courts should not find technical excuses to avoid deciding the merits of disputes when

no delay or harm was caused by the technical violation to any party. Here, where the error in claiming the correct basis for jurisdiction was the trial court's rather than the Sullivans', I see no basis to penalize the Sullivans.

¶ 77 Sixth, I disagree with the majority's assertion that "we cannot say for certain *how* the circuit court would have decided the section 2-1401 petition (on a motion to dismiss, judgment on the pleadings, or after a hearing)." According to the record, the circuit court informed the parties that it would rule on the section 2-1401 issue based on the submitted paperwork if the court did not think it had retained jurisdiction pursuant to the November 2009 dismissal order. Consequently, this court can safely infer the circuit deemed there were no legal or factual issues that necessitated any further hearing on the 2-1401 petition.

¶ 78 Seventh, the majority misconstrues my citation to *In re Haley D.*, 2011 IL 110886 (2011), which supports the proposition here that remand to the circuit court for its formal entry of a decision on the 2-1401 petition is not necessary. Consequently, the majority's attempt to distinguish *Haley D.*—on the basis that there was no issue as to the trial court's jurisdiction to enter the order because there was no final judgment—is not persuasive. See also, *Id.* ¶ 103 (Theis, J., concurring, joined by Garman, J.) ("Contrary to the majority opinion, orders terminating parental rights in Juvenile Court proceedings are typically final orders."). Moreover, I am not "recasting" the motion for Rule 6.4 review as a 2-1401 petition. There is no question that the Sullivans filed an actual 2-1401 petition here and asked the circuit court to rule on it before addressing the Rule 6.4 issue; the circuit court simply failed to claim jurisdiction on that correct basis. Jurisdiction to decide the Rule 6.4 issue was proper and timely under 2-1401, and that jurisdiction does not evaporate simply because the circuit court erroneously thought it retained jurisdiction pursuant to the terms of its November 2009 dismissal order.

¶ 79 Eighth, Beau is not a minor anymore, but even if he was, my position that the circuit court had jurisdiction to vacate the dismissal order would not be based on the litigant's status as a minor. Moreover, I do not overlook the jurisdiction requirements based on sympathy for his situation. I would simply exercise this appellate court's authority under Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) to make the order the circuit court should have made because:

(1) the Sullivans filed a timely 2-1401 petition and asked the circuit court to rule on it before ruling on the Rule 6.4 issue;

(2) there is no requirement that a circuit court must conduct a hearing on 2-1401 petitions in all instances. See *Vincent*, 226 Ill. 2d at 9 ("Where a material issue of fact exists, summary judgment is inappropriate and an evidentiary hearing—a trial in effect—is required in ruling on the petition."). Anyway, the record does not indicate that Chessick requested such a hearing, and Chessick has not identified a material issue of fact warranting an evidentiary hearing;

(3) at the June 30, 2010 hearing, the circuit court acknowledged that its order scheduling the hearing had informed the parties that the section 2-1401 issue would not be argued because the requirements of section 2-1401 of the Code were very clear and the court intended to rule on the submitted "paperwork" if it reached the section 2-1401 issue;

(4) the section 2-1401 meritorious defense issue is determined as a matter of law based on the court's analysis of the application of Rule 6.4 to the bad-faith action settlement; and

(5) the circuit court could have reached only one conclusion on the section 2-1401 due diligence issue: there was due diligence where:

(a) the Sullivans' April 2010 section 2-1401 petition was filed only about

five months after the Cook County court's November 2009 dismissal order pursuant to the bad-faith action settlement; four months after the Ogle County court in December 2009 gave Chessick legal fees that amounted to 47% of the settlement recovery; three months after the Sullivans fired their long-time, trusted attorney Chessick; and one month after the Sullivans' new attorney asked the Cook County court for Rule 6.4 review; and

(b) Beau—who was a minor when the November 2009 dismissal order was entered—was not legally bound by any action his parents took (or failed to take) to settle the cause of action on his behalf.

¶ 80 Turning to the merits of the parties' consolidated appeal, respondent Chessick appeals from the judgment of the circuit court of Cook County that approved the settlement as fair and reasonable on behalf of the minor and determined the amount of Chessick's attorney fees and litigation costs. Chessick argues the Cook County court's July 8, 2010 order and all subsequent memorandum orders are null and void because (1) the Cook County court lacked subject matter jurisdiction and personal jurisdiction over the parties; (2) the Cook County court cannot review or disregard the orders entered by the Ogle County court; (3) the Cook County court determined attorney fees and costs pursuant to Rule 6.4, which was inapplicable because the bad-faith action was the hospital's assigned claim against OHIC and, thus, did not involve the claim of a minor; and (4) Rule 6.4 is unconstitutional.

¶ 81 The Sullivans appeal the circuit court orders that denied their motion for a judgment order against Chessick and to assess pre-and postjudgment interest against Chessick. The Sullivans argue the circuit court erred by finding that it did not have jurisdiction to enter a judgment order against Chessick for the $350,703.75 in excess fees Chessick was withholding from the Sullivans

and to assess pre- and postjudgment interest against Chessick after it filed a notice of appeal without obtaining a bond or otherwise staying the proceedings pending its appeal.

¶ 82 Subject Matter Jurisdiction and Personal Jurisdiction

¶ 83 Chessick argues the Cook County judgment concerning Chessick's attorney fees and litigation costs is void because the Cook County court lacked subject matter jurisdiction and personal jurisdiction. Chessick contends the Cook County court did not have jurisdiction because (1) more than 30 days had elapsed from the entry of the November 2009 dismissal order to the filing of the Sullivans' motion for Rule 6.4 review; (2) the Sullivans' motion for Rule 6.4 review was not brought for the purpose of enforcing the terms of the settlement with OHIC; (3) assuming, *arguendo*, that the bad-faith action involved a minor's claim, only the probate court's approval was required; (4) the Cook County court lacked jurisdiction over the *res* (settlement proceeds); (5) the Cook County court lacked jurisdiction over Chessick; and (6) ordering Chessick to pay money previously distributed pursuant to the Ogle County order amounted to an unconstitutional taking without due process and without jurisdiction.

¶ 84 *De novo* review applies to the issue of whether a trial court has subject matter jurisdiction over certain proceedings. *In re Estate of Ahern*, 359 Ill. App. 3d 805, 809 (2005). *De novo* review also applies to the issue of personal jurisdiction when the trial court has heard no testimony and determined personal jurisdiction based only on documentary evidence. *Gaidar v. Tippecanoe Distribution Service, Inc.*, 299 Ill. App. 3d 1034, 1039-40 (1998). Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceeding in question belongs. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). Personal jurisdiction is derived from the actions of the person sought to be bound; a person may consent or submit to personal jurisdiction by his appearance or by filing

documents, or personal jurisdiction may be imposed upon him by effective service. *Meldoc Properties v. Prezell*, 158 Ill. App. 3d 212, 216 (1987).

¶ 85 I agree with the circuit court that it possessed the necessary jurisdiction to vacate its 2009 dismissal order and conduct a Rule 6.4 review of the settlement in the bad-faith action, but I do so for different reasons. *Burton v. Estrada*, 149 Ill. App. 3d 965, 975 (1986) (the reviewing court may affirm the vacation of a dismissal order on any ground supported by the record). The circuit court believed it had jurisdiction because it had retained jurisdiction to enforce the terms of the settlement in the bad-faith action and that settlement was not complete where it involved a minor and the court had not yet approved the settlement and determined attorney fees and costs in accordance with Rule 6.4 and the Probate Act. I would find, however, that, because the 2009 dismissal order was not void, the Sullivans properly and timely sought relief from the 2009 dismissal order under section 2-1401 of the Code, and the circuit court's failure to take jurisdiction on that basis did not deprive it of jurisdiction to review the settlement pursuant to Rule 6.4.

¶ 86 In *In re Marriage of Mitchell*, 181 Ill. 2d 169 (1998), the court addressed the issue of void and voidable orders. The court stated:

¶ 87 "The question of whether a judgment is void or voidable depends on whether the court entering the challenged order possessed jurisdiction over the parties and the subject matter. [Citation.] If jurisdiction is lacking, any subsequent judgment of the court is rendered void and may be attacked collaterally. [Citation.] 'Judgments entered in a civil proceeding may be collaterally attacked as void only where there is a total want of jurisdiction in the court which entered the judgment, either as to the subject matter or as to the parties.' [Citation.] A voidable judgment, however, is one entered erroneously by a court having jurisdiction and is not subject to collateral attack. [Citation.] Once a court

has acquired jurisdiction, an order will not be rendered void merely because of an error or impropriety in the issuing court's determination of the law. [Citations.]" *Id*. at 174.

¶ 88 In *In re Marriage of Mitchell*, the father challenged, based on lack of specificity, the child support provision of a settlement agreement incorporated into an earlier judgment dissolving the marriage. *Id*. at 172. The trial judge, *sua sponte*, determined that the child support provision was void because it was expressed in terms of a percentage of income and, thus, violated the statute that required orders for child support to be expressed as a specific dollar amount. *Id*. Our supreme court held that the order awarding support was voidable rather than void because the judge had jurisdiction over the parties and the subject matter, and, although the judgment was erroneous, the judge had authority to enter the child support order. *Id*. at 176. Here, the 2009 dismissal order was voidable rather than void because the Cook County court had jurisdiction over the bad-faith action and the parties therein, and, although it was error (see discussion in section III of this dissent) to fail to review the settlement on behalf of the minor assignee plaintiff in accordance with the procedure set forth in the local court rule, the judge had authority to enter an order dismissing an action pursuant to a settlement.

¶ 89 I agree with the majority that the contested actions of the circuit court at issue in Chessick's appeal were not authorized by the court's retention of jurisdiction to enforce the terms of the bad-faith action settlement. This court has explained that:

> "In the absence of a timely filed postjudgment motion, a trial court loses jurisdiction over a case pending before it 30 days after the entry of a final judgment terminating the litigation. [Citation.] After the expiration of that 30-day period, the trial court lacks the necessary jurisdiction to amend, modify, or vacate its judgment. [Citation.] These general propositions of law are not without

> exception, though. A court may at any time modify its judgment to correct a clerical error or a matter of form so that the record conforms to the judgment actually rendered. This power may not, however, be employed to correct judicial errors or supply omitted judicial action. [Citation.] Additionally, courts retain jurisdiction to enforce the terms of a judgment. [Citation.]" *Holwell v. Zenith Electronics Corp.*, 334 Ill. App. 3d 917, 922 (2002).

¶ 90 I agree with Chessick and the majority that the circuit court did more than merely enforce the terms of the settlement between the Sullivans and OHIC. Specifically, OHIC already had paid the settlement funds in full. Furthermore, the circuit court vacated its 2009 dismissal order, which was a final judgment terminating the litigation. At the time the Sullivans filed their motion for Rule 6.4 review, the circuit court of Cook County had lost jurisdiction to grant any additional relief or amend, modify, or vacate its November 2009 dismissal order. Moreover, the circuit court's adjudication of the Sullivans' motion for Rule 6.4 review cannot be deemed the correction of a clerical error or the enforcement of the terms of the bad-faith action settlement.

¶ 91 The Sullivans, however, also filed a timely 2-1401 petition to vacate the November 2009 dismissal order, and Chessick answered that petition on the merits in its reply in opposition to the motion for Rule 6.4 review. Section 2-1401 establishes a comprehensive, statutory procedure that allows for the vacatur of a final order or judgment older than 30 days. 735 ILCS 5/2-1401 (West 2010). Section 2-1401 requires that the petition be filed in the same proceeding in which the order or judgment was entered, but it is not a continuation of the original action. 735 ILCS 5/2-1401(b) (West 2010). Section 2-1401 also requires that the petition be supported by affidavit or other appropriate showing as to matters not of record, and must be filed not later than two years after the entry of the order or judgment, unless an exception for legal disability, duress, or

fraudulent concealment of the ground for relief applies. 735 ILCS 5/2-1401(b), (c) (West 2010). "Relief under section 2-1401 is predicated upon proof, by a preponderance of the evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007).

¶ 92 Proceedings under section 2-1401 are subject to the usual rules of civil practice. *Id*. at 8. Because section 2-1401 petitions are essentially complaints inviting responsive pleadings, when the respondent chooses to answer on the merits rather than attacking the sufficiency of the petition, the respondent is deemed to have waived any question as to the petition's sufficiency, and the petition will be treated as properly stating a cause of action. *Id*. Among other dispositions, the trial judge may dismiss the petition or may grant or deny it on the pleadings alone. *Id*. at 9. If, at the trial level, a petition is to be treated like a complaint, then the issue of whether the trial court correctly entered either a judgment on the pleadings or a dismissal for failure to state a cause of action is subject to *de novo* review. *Id*. at 14-15.

¶ 93 According to the record, the circuit court indicated that it would rule on the 2-1401 petition on the pleadings alone if the court reached the section 2-1401 issue. The circuit court believed it had retained jurisdiction to conduct a Rule 6.4 review on other grounds aside from section 2-1401, but, as discussed above, those other grounds were an erroneous basis for jurisdiction and the circuit court should have ruled on the Sullivans' 2-1401 petition. Although this court could reverse and remand to give the circuit court the opportunity to rule on the 2-1401 petition, this court has discretion to "make any order that ought to have been given or made" by the circuit court. Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994). Furthermore, no injustice would result to the parties from this court's determination that jurisdiction was properly acquired pursuant to the

Sullivans' timely filed 2-1401 petition. The 2-1401 petition was before the circuit court, was fully briefed, and sought the same relief as the motion for Rule 6.4 review.

¶ 94 In *In re Haley D.*, 2011 IL 110886, the State, upon a determination of neglect, filed a petition to terminate the parents' parental rights. The circuit court entered a default against the father, and he timely moved to set aside the default under section 2-1301(e) of the Code (735 ILCS 5/2-1301(e) (West 2010)), which provides that the court may in its discretion set aside any default upon any terms and conditions that shall be reasonable. *Id*. at ¶ 66. The State, however, incorrectly insisted, and the circuit court erroneously agreed, that the father was required to resort to relief under section 2-1401 of the Code, which imposes a substantially greater burden on the petitioner to show by a preponderance of the evidence the existence of a meritorious claim in the original action and due diligence in pursuing the claim and in presenting the 2-1401 petition. *Id*. The circuit court's failure to consider the father's request under the standards of section 2-1301 was reversible error, but our supreme court decided the request for 2-1301 relief on the merits instead of reversing and remanding to give the circuit court the opportunity to exercise its discretion and apply the correct standard. *Id*. at ¶¶ 66-68. Specifically, our supreme court found that the undisputed facts permitted only one conclusion in the case—that the father's request for relief should have been granted—and a remand would serve no purpose and merely would delay the ultimate resolution, which was contrary to the court's express policy to resolve as expeditiously as possible appeals involving questions of child custody, adoption, termination of parental rights or other matters affecting the best interests of a child. *Id*. at 68.

¶ 95 Like the court in *In re Haley D.*, I would proceed by evaluating the Sullivans' 2-1401 petition on the merits instead of reversing and remanding the matter to the circuit court. Unlike in *In re Haley D.*, the circuit court's exercise of discretion is not at issue here because, at the trial

level, the Sullivans' 2-1401 petition was to be treated like a complaint, so this court would review *de novo* the issue of whether the circuit court should have granted or denied the petition. See *Vincent*, 226 Ill. 2d at 14-15. Furthermore, as discussed below, the undisputed facts and the governing legal principles permit only one conclusion in this case: the Sullivans' 2-1401 petition should have been granted. Therefore, a remand under these particular circumstances would serve no purpose but merely would delay the ultimate resolution of this proceeding, which has already been protracted for too long.

¶ 96 It is clear from the record that the Sullivans had a meritorious section 2-1401 claim. It is undisputed that Beau Sullivan was a minor when the circuit court entered the 2009 dismissal order. Moreover, as discussed in section III of this dissent, I would conclude that Beau's status as a minor meant that Rule 6.4 applied and the trial court's approval of the settlement and determination of attorney fees and costs was required even though Beau was an assignee of the hospital's claim against OHIC. It is also undisputed that the circuit court of Cook County, where the bad-faith action was filed, litigated and settled, did not conduct a Rule 6.4 review before entering the 2009 dismissal order. Illinois courts have held that neither a next friend nor a court-appointed guardian can approve a settlement of a minor's claim without court approval. *Ott v. Little Co. of Mary Hospital*, 273 Ill. App. 3d 563, 571 (1995). "Similarly, a parent has no legal right, by virtue of the parental relationship, to settle a minor's cause of action; and court review and approval of a settlement reached by a parent also is mandatory." *Id.*; see also *Wreglesworth v. Arcto, Inc.*, 316 Ill. App. 3d 1023, 1028 (2000) ("any settlement of a minor's claim is unenforceable unless and until there has been approval by the probate court."); *Villalobos v. Cicero School District 99*, 362 Ill. App. 3d 704 (2005) (a release signed by a parent on behalf of a minor is unenforceable if it is not approved by the probate court in accordance with Illinois law). Furthermore, the Sullivans

were not guilty of inexcusable neglect where they trusted and relied upon Chessick, which had represented them since 1996, and reasonably expected Chessick to comply with all applicable court rules. Finally, the Sullivan's section 2-1401 petition was presented to the Cook County court only five months after entry of the November 2009 order and after the Sullivans had consulted another attorney in January 2010 and learned that Chessick did not comply with Rule 6.4.

¶ 97 Chessick's personal jurisdiction argument also lacks merit. As discussed above, a 2-1401 petition is not a continuation of the original action; it essentially is a complaint inviting a responsive pleading. *Vincent,* 226 Ill. 2d at 8. A party seeking relief under section 2-1401 must give notice to opposing parties according to the Illinois Supreme Court Rules. 735 ILCS 5/2-1401(b) (West 2010). Supreme Court Rule 106 (eff. Aug. 1, 1985) directs the moving party to provide notice *via* the methods set forth in Supreme Court Rule 105 (eff. Jan. 1, 1989). Supreme Court Rule 105 provides that notice be directed to the party and must be served either by summons, prepaid certified or registered mail, or by publication. If the notice is invalid, the trial court lacks jurisdiction and its subsequent orders are likewise invalid. *Welfelt v. Schultz Transit Co.*, 144 Ill. App. 3d 767, 772 (1986). One exception to this rule, however, is when an opposing party appears and argues the merits of a 2-1401 petition despite the failure of receipt of proper notice. *Id*. Under those circumstances, a court will deem the respondent to have waived the jurisdictional defect as to the section 2-1401 proceeding. *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 177 (2004).

¶ 98 Challenges to personal jurisdiction are governed by section 2-301 of the Code (735 ILCS 5/2-301(a), (a-5) (West 2010). Since its amendment in 2000, section 2-301 provides, in pertinent part:

> "(a) Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of the State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in Section 2-619.1. ***
>
> (a-5) If the objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301(a), (a-5) (West 2010).

¶ 99 The record indicates that Chessick received the 2-1401 petition by facsimile. Nevertheless, Chessick's appearance before the Cook County circuit court by filing a responsive pleading to the 2-1401 petition and other motions without ever filing a motion in compliance with subsection (a) of section 2-301 of the Code means Chessick has waived all objections to the court's personal jurisdiction over Chessick in this matter prospectively.

¶ 100 Finally, Chessick argues that the Cook County ruling ordering Chessick to pay money that was previously distributed pursuant to the December 2009 Ogle County order amounted to an unconstitutional taking without due process and without jurisdiction. Chessick, however, fails to provide adequate argument and cite relevant authority to support this argument and therefore has

forfeited it on review. See *Wilson v. Continental Body Corp.*, 93 Ill. App. 3d 966, 969 (1981). Such forfeiture notwithstanding, this argument is rendered moot by the February 2012 Ogle County court order that vacated the December 2009 order. See *In re Nancy A.*, 344 Ill. App. 3d 540, 548 (2003) ("A moot question is one that existed but because of the happening of certain events has ceased to exist and no longer presents an actual controversy over the interests or rights of the party."). Furthermore, because Chessick actively participated in the Rule 6.4 hearings before the Cook County court, which had personal and subject matter jurisdiction over the matter, Chessick's unconstitutional-taking-without-due-process argument merits no further consideration by this court.

¶ 101 II. The Ogle County Order

¶ 102 Chessick argues the judgment of the Cook County court is void because that court could not review or disregard the December 2009 order of the Ogle County court. Chessick argues Ogle County clearly had jurisdiction over the distribution of the bad-faith action settlement and properly exercised that jurisdiction. Chessick cites *People ex rel. Phillips Petroleum Co. v. Gitchoff*, 65 Ill. 2d 249, 257 (1976), which stated that "[o]ne circuit judge may not review or disregard the orders of another circuit judge in the judicial system of this State."

¶ 103 I disagree with Chessick's contention that the Cook County court improperly reviewed or disregarded the order of the Ogle County court. As discussed above, jurisdiction in Cook County was proper. Furthermore, Rule 6.4 provides that "[t]he judge hearing the case" must approve the settlement as fair and reasonable, determine the attorney fees and costs to be deducted from the settlement, and determine the net amount distributable to the minor. Cook Co. Cir. Ct. R. 6.4(a) (Jan. 2, 2001). Because this 6.4 review by the trial judge in the bad-faith action in Cook County was required, the matter should not have been filed and addressed in the probate case in Ogle

County before the Cook County court made the requisite findings. Moreover, after Chessick filed the final litigation inventory in the Ogle County probate case, the Ogle County court likewise failed to make the requisite findings under its own local rule (see 15th Judicial Cir. Ct. R. 10.1 (April 1, 2007)), which is similar to Rule 6.4.

¶ 104 In addition, in February 2012, after the submission of briefs and a hearing, the Ogle County court vacated its December 2009 order based on lack of jurisdiction. In so ruling, the Ogle County judge acknowledged that the bad-faith action involved a minor; that Rule 6.4 applied and the case was brought prematurely to the probate division of the Ogle County court; and that Ogle County had a local rule similar to Rule 6.4. The Ogle County judge stated that the Cook County court had jurisdiction over the attorney fee issue because it was the court where the bad-faith action was pending.

¶ 105 The record establishes that the Ogle County court did not inquire into or make any findings concerning the fairness and reasonableness of the bad-faith action settlement on behalf of the minor as required by the Probate Act and the local rules of both the Cook County and Ogle County courts. Judicial scrutiny of settlements and fees is mandated as necessary to protect fully the interests of minors and ensure the proceeds are distributed in accordance with the minors' best interests. The Cook County court properly complied with the law by requiring Chessick to submit a petition to approve the settlement and belatedly fulfill its obligations under Rule 6.4 and justify the 47% attorney fee taken in a case involving a minor.

¶ 106 III. Claim of a Minor

¶ 107 Chessick argues the judgment of the Cook County court is void because the court determined attorney fees and litigation costs pursuant to Rule 6.4, and, according to Chessick, Rule 6.4 is inapplicable because the bad-faith action was the hospital's assigned claim against

OHIC and, thus, did not involve the claim of a minor.

¶ 108 Rule 6.4 addresses the procedure to be followed in cases involving claims of minors pending in divisions other than the probate division. When a settlement occurs, Rule 6.4 requires the judge hearing the case, upon approval of the settlement as fair and reasonable, to determine attorney fees, costs, and the net amount distributable to the minor. Cook Co. Cir. Ct. R. 6.4 (Jan. 2, 2001).

¶ 109 Chessick argues Rule 6.4 was not applicable because the bad-faith action did not involve the claim of a minor but, rather, the hospital's potential claims against OHIC, which were assigned to the Sullivans. When the Sullivans filed the bad-faith action as assignees, they stood in the shoes of the hospital. Accordingly, the Sullivans' personal injuries were not being litigated but, rather, the contract and quasi-contract rights of the hospital *vis-a-vis* OHIC. Although Beau Sullivan had a potential interest in the outcome of the bad-faith action against OHIC, the assigned causes of action prosecuted were those of the hospital, not the Sullivans. Chessick argues the assignment did not change the nature of the claim and make it a minor's claim. Chessick asserts the mere fact that a recovery of proceeds in the bad-faith action will benefit Beau, a minor, does not transform the cause of action into the minor's personal injury claim or cause of action. Chessick argues that the typical concerns of a court in determining the reasonableness of a settlement of a minor's personal injury claim are simply not present in the bad-faith action.

¶ 110 To support this argument, Chessick cites a March 2007 memorandum to all Cook County judges from the presiding judges of the law, probate, and municipal divisions of Cook County (Joint Memorandum). According to Chessick, the Joint Memorandum indicates that the application of Rule 6.4 is limited to cases involving a minor's or disabled person's personal injury, wrongful death, or survival action because it is entitled "Final Procedures Concerning Settlement

of Minors' and Disabled Persons' Personal Injury and Wrongful Death Cases & Sample Orders." Furthermore, the Joint Memorandum, in discussing Rule 6.4 review procedures, mentions only the following actions involving minors and disabled persons: (1) personal injury cases, (2) actions brought under the Wrongful Death Act; and (3) actions that survive the plaintiff's death.

¶ 111 Chessick's arguments are not persuasive. The plain language of Rule 6.4, which states "the procedure to be followed in cases involving claims of minors," indicates that Rule 6.4 applies to all claims of minors, regardless of the particular cause of action. To find otherwise would eliminate judicial scrutiny and frustrate Illinois public policy concerning the court's role to protect minors involved in litigation. Specifically, public policy requires that the rights of minors are to be guarded carefully. *Ott*, 273 Ill. App. 3d at 570. This policy is reflected in the statutory requirement of the Probate Act that the courts approve or reject any settlement agreement proposed on a minor's behalf. See 755 ILCS 5/19-8 (West 2010) ("By leave of court without notice or upon such notice as the court directs, a representative may compound or compromise any claim or any interest of the ward or the decedent in any personal estate or exchange any claim or any interest in personal estate for other claims or personal estate upon such terms as the court directs."). "Every minor plaintiff is a ward of the court when involved in litigation, and the court has a duty and broad discretion to protect the minor's interests." *Ott*, 273 Ill. App. 3d at 570-71. Court approval of any settlement involving the claim of a minor is mandatory. *Burton v. Estrada*, 149 Ill. App. 3d 965, 976 (1986). The Probate Act requires that the terms and conditions of any proposed compromise must be submitted to, inquired into, and passed upon by the court having special jurisdiction of the estate of minors. *Mastroianni v. Curtis*, 78 Ill. App. 3d 97, 99-100 (1979).

¶ 112 I do not agree with Chessick's assertion that the narrower language of the Joint

Memorandum limits or takes precedence over the broad language of Rule 6.4. The stated objective of the procedures described in the Joint Memorandum "is to permit the total disposition by the Law Division or Municipal Department of any case in which appropriate Probate Division action is not necessary while, at the same time, ensuring that appropriate Probate Division involvement is not eliminated by reason of an overly broad Law Division or Municipal Department order." Cook Co. Cir. Ct. Joint Memorandum at 7. Although most claims involving minors commonly come before the circuit court as personal injury, wrongful death, and survival actions, the court's duty to protect minors involved in litigation is not limited to those three causes of action. Furthermore, the bad-faith claim at issue here was a tort claim (see *Schal Bovis, Inc. v. Casualty Insurance Co.*, 314 Ill. App. 3d 562, 574 (1999)), and arose from the settlement agreement concerning the unpaid portion of the Sullivans' $10 million jury verdict award in their medical negligence claim against the hospital, which primarily awarded damages for Beau's injuries. The bad-faith claim the hospital assigned to the Sullivans would not have existed but for the jury award against the hospital, and it was assigned to the Sullivans to permit them to be compensated and made whole. The petition Chessick presented to the Ogle County court on behalf of the Sullivans for approval of the settlement with the hospital stated that the Sullivans intended to pursue the hospital's claims against OHIC "for the benefit of Beau Sullivan." In addition, the $100,000 from the hospital settlement that was used to cover the litigation costs of the bad-faith action was taken from Beau Sullivan's probate estate, and not from his parents.

¶ 113 I agree with Chessick that an assignment of claims does not alter the nature of the assigned claims to be prosecuted or vest the assignee with greater rights than the assignor possessed. See *Reimers v. Honda Motor Co.*, 150 Ill. App. 3d 840, 843 (1986). I disagree, however, with Chessick's assertion that the application of Rule 6.4 here somehow alters the nature of the assigned

bad-faith claim or gives Beau greater rights with respect to the actual claim. Because Rule 6.4 is applied at the time the claim has been resolved by judgment or settlement, I reject Chessick's assertion that Rule 6.4 alters the claim substantively. I would hold that Rule 6.4 applied to the settlement of the bad-faith action at issue here because that case involved the claim of an assignee-plaintiff who was a minor.

¶ 114 IV. Constitutionality of Rule 6.4

¶ 115 Chessick argues that Rule 6.4 is unconstitutional on its face and as applied in this case because it: (1) conflicts with the right to contract and eliminates judicial determination of the reasonableness of contingency-fee agreements involving minors; (2) violates procedural due process; and (3) is unconstitutionally vague.

¶ 116 It is well settled that local rules adopted by the courts must be consistent with the rules of our supreme court and Illinois statutes, must be procedural in nature, and cannot modify or limit the substantive law. *Leonard C. Arnold, Ltd. v. Northern Trust Co.*, 116 Ill. 2d 157, 167 (1987). See also Illinois Supreme Court Rule 21(a) (eff. Dec. 1, 2008) ("A majority of the circuit judges in each circuit may adopt rules governing civil and criminal cases which are consistent with these rules and the statutes of the State, and which, so far as practicable, shall be uniform throughout the State."); 735 ILCS 5/1-104(b) (West 2010) ("Subject to the rules of the Supreme Court, the circuit and Appellate Courts may make rules regulating their dockets, calendars, and business."); 705 ILCS 35/28 (West 2010) ("[the circuit] courts may, from time to time, make all such rules for the orderly disposition of business before them as may be deemed expedient, consistent with law."). Furthermore, for guidance in addressing Chessick's constitutional challenges to Rule 6.4, this court may look to the same principles applicable to the construction of statutes. See *People v. Marker*, 233 Ill. 2d 158, 164-65 (2009) (the interpretation of supreme court rules is guided by the same

principles applicable to the construction of statutes); *Premier Electrical Construction Co. v. American National Bank of Chicago*, 276 Ill. App. 3d 816, 834 (1995) (a local court rule has the force of a statute and is binding on the trial court and the parties).

¶ 117 With rules, like statutes, the court's goal is to ascertain and give effect to the drafters' intentions, and the most reliable indicator of intent is the language used, which must be given its plain and ordinary meaning. *Marker*, 233 Ill. 2d at 165. Furthermore:

> "The constitutionality of a statute is a question of law subject to *de novo* review. [Citations.] Statutes are presumed to be constitutional, and the party challenging the validity of the statute has the burden to clearly establish the constitutional invalidity. [Citations.] A court must construe a statute so as to affirm its constitutionality, if the statute is reasonably capable of such a construction. [Citation.] Accordingly, if [a] statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity. [Citation.]" (Internal quotation marks omitted.) *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 290-91 (2003).

¶ 118 Chessick's challenges to the constitutionality of Rule 6.4 are framed as both facial and as-applied challenges.

> "A facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully [citation] because an enactment is facially invalid only if no set of circumstances exist under which it would be valid. The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity. [Citations.] In contrast, in an 'as-applied' challenge a plaintiff protests against how an enactment was applied

> in the particular context in which the plaintiff acted or proposed to act, and the facts surrounding the plaintiff's particular circumstances become relevant. [Citation.] If a plaintiff prevails in an as-applied claim, he may enjoin the objectionable enforcement of the enactment only against himself, while a successful facial attack voids the enactment in its entirety and in all applications. [Citation.]" *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008).

¶ 119 If Chessick's theories of unconstitutionality were to prevail, Rule 6.4 would be declared void completely, not just as applied to Chessick. See *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 498 (2008) (citing *Napleton*, 229 Ill. 2d at 306). Accordingly, although Chessick labels its challenge as both facial and as-applied, there is no discernible as-applied challenge in the theories presented by Chessick. Rather, Chessick challenges Rule 6.4 as unconstitutional on its face.

¶ 120 A. Right to Contract

¶ 121 First, Chessick contends that Rule 6.4 conflicts with the right to contract because the clear and unambiguous language of Rule 6.4 creates an absolute barrier to attorney fees in excess of one-third of the recovery. Chessick argues this absolute barrier is contrary to substantive Illinois law, which provides that "a contingent-fee agreement, entered into on behalf of a minor by his next friend, is enforceable unless the terms are unreasonable." *Leonard C. Arnold, Ltd. v. Northern Trust Co.*, 116 Ill. 2d 157, 166 (1987).

¶ 122 "The right of individuals to contract as they deem fit is grounded in the due process clause, which provides that no person "shall be deprived of life, liberty or property without due process of law." *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 167 (1998) (quoting Ill. Const. 1970, art. I, § 2, and citing U.S. Const., amend. V). Freedom to contract, however, "is a qualified right and is subject to the reasonable and legitimate exercise of the police power of the

State." *Illinois Housing Development Authority v. LaSalle National Bank*, 139 Ill. App. 3d 985, 990 (1985). Furthermore, the contracts implicated by Rule 6.4 are attorney fee agreements that involve clients who are minors or disabled persons and, thus, are not presumed to be mentally competent to enter into a contract. See 755 ILCS 5/11-1 (West 2010) (a person who has attained the age of 18 years is of legal age for all purposes except as otherwise provided by statute); *Terrace Co. v. Calhoun*, 37 Ill. App. 3d 757,761 (1976) (if a minor enters into a contract, that contract is voidable).

¶ 123 Whether Rule 6.4 unconstitutionally impinges upon an individual's freedom to contract is a due process question. Because Rule 6.4 does not affect fundamental rights, it satisfies the requirements of due process so long as it is rationally related to a legitimate governmental purpose. See *Alarm Detection Systems, Inc., v. The Village of Hinsdale*, 326 Ill. App. 3d 372, 381 (2001). I believe that Rule 6.4 furthers the public policy to protect minors and disabled persons involved in litigation by requiring, in cases pending outside the probate division, that the judge hearing the case approve the fairness and reasonableness of a settlement, determine attorney fees and costs, and determine the net amount distributable to the minor or disabled person. Thus, Rule 6.4 does not violate due process because it advances a legitimate governmental interest.

¶ 124 I also reject Chessick's assertion that Rule 6.4 changes the substantive law by creating an absolute barrier to attorney fees that exceed one-third of the recovery. Rule 6.4 is procedural and similar to a Nineteenth Judicial Circuit rule that was upheld in *Leonard C. Arnold, Ltd.*, 116 Ill. 2d 157. In *Arnold*, the plaintiffs, attorneys who represented a minor in a tort case and had a contingency fee agreement that would give them 33.33% of the total recovery, challenged the validity of a local court rule that placed restrictions on the enforcement of contingent-fee agreements involving minors. The rule required attorneys representing a minor or an

incompetent to submit sworn petitions when their contingent fees exceeded 25% of the amount collected in settlements of their client's personal injury cause of action. The rule provided that in such situations, the trial court shall fix the attorney fees at whatever amount it considers fair and reasonable without regard to the 25% limitation. *Id*. at 166. Our supreme court noted that significant public policy considerations supported the enforcement of reasonable contingent fee agreements because such agreements are the "poor man's key to the courthouse door," and contingent fees are "rooted in our commitment to equal justice for both those of moderate means and the wealthy." *Id*. at 164. The court looked at the purpose and effect of the challenged rule (to protect minors while avoiding mini-trials over fees and preventing the depletion of the minor's estate), found that it was based on the court's special duty to protect minors, and held that it did not improperly change the substantive law but only provided "a procedural mechanism for enforcing the restriction embodied in the substantive law." *Id*. at 167

¶ 125 Unlike the rule at issue in *Arnold*, Rule 6.4 does not expressly state that the court may set attorney fees at whatever amount it considers fair and reasonable without regard to the 33.33% limitation. Nevertheless, I would find that Rule 6.4 does not unconstitutionally create an absolute ceiling on attorney fees in cases involving minors but only establishes a benchmark for the reasonableness determination. In interpreting the meaning of Rule 6.4, this court presumes that absurd, inconvenient or unjust results were not intended. See generally, *Sandholm v. Knuecker*, 2012 IL 111443, ¶ 41. The 33.33% attorney fee limitation is qualified; it applies "[e]xcept as otherwise limited by rule or statute." Cook Co. Cir. Ct. R. 6.4(b) (Jan. 2, 2001). A law is facially invalid only if no set of circumstances exist under which it would be valid (*Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 228 (2010)), and the Cook County court has implemented procedures for Rule 6.4 that provide the court the flexibility to award enhanced fees which are

reasonable. Specifically, the procedures of the Cook County court provide that an attorney may move for approval of enhanced fees "[i]n special circumstances, where an attorney performs extraordinary services involving more than usual participation in time and effort." Cook Co. Cir. Ct. Joint Memorandum at 4 (Mar. 2007). The procedures also provide that the "court, in its discretion, may determine whether such additional fees are justified based on the criteria enumerated in Illinois Supreme Court Rule [of Professional Conduct of 2010 1.5 (eff. Jan. 1, 2010)] and other pertinent factors." Cook Co. Cir. Ct. Joint Memorandum at 4 (Mar. 2007). Consequently, Rule 6.4 is not unconstitutional where the court may consider fee petitions that exceed the 33.33% benchmark as petitions for enhanced fees pursuant to the procedures instituted by the circuit court.

¶ 126 B. Procedural Due Process

¶ 127 Second, Chessick contends Rule 6.4 violates procedural due process because it creates an absolute barrier to attorney fees in excess of 33.33% without expressly providing a mechanism for a fair opportunity to present evidence that a higher percentage of recovery is reasonable and warranted in a case.

¶ 128 I would conclude that there is no due process violation because, as discussed above, there is no absolute barrier to enhanced fees and the procedural safeguards that provide for a hearing protect the interests of both the attorney and the minor. Courts must consider three factors when determining whether an individual had received the process the constitution finds due: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would

entail. *In re Robert S.*, 213 Ill. 2d 30, 48-49 (2004). At issue here are the attorney's property interest in his fees, the policy of promoting access to the courts through reasonable contingency-fee agreements, and the court's duty to protect minors involved in litigation.

¶ 129 Cook County's oversight of minors' settlements is constitutional because the concurrent operation of Rule 6.4 and the Joint Memorandum provides procedural safeguards that protect the rights of attorneys without hindering the court's duty to protect the rights and property of minors. These procedural safeguards provide for a hearing in the trial court for the approval of the minor's settlement, attorney fees, and litigation costs. In special circumstances, the attorney may move for approval of additional compensation. When the court considers enhanced fees, it should determine the reasonableness of the fee based on the time and labor required; the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or circumstances; the nature and length of the professional relationship with the client; the experience, reputation and ability of the lawyer performing the services; and whether the fee is fixed or contingent. Ill. S. Ct. R. Prof. Conduct of 2010 1.5 (eff. Jan. 1, 2010).

¶ 130 C. Unconstitutionally Vague

¶ 131 Third, Chessick argues Rule 6.4 is unconstitutionally vague because it does not define what constitutes a minor's claim; interprets the phrase "if an appeal is perfected" inconsistently with the common meaning of that phrase; and fails to indicate whether the trial judge's decision pursuant to Rule 6.4 is merely advisory for the probate court.

¶ 132 In analyzing these challenges to the constitutionality of Rule 6.4, this court again

looks to the principles governing the analysis of the constitutionality of statutes.

> "A statute violates the due process clauses of the United Sates Constitution or the Illinois Constitution on the basis of vagueness only if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts. [Citation.] In order to succeed on a vagueness challenge to a statute that does not involve a first amendment right, a party must establish that the statute is vague as applied to the conduct for which the party is being prosecuted. [Citations.] A statute is not vague, and therefore does not violate due process, if the duty imposed by the statute is set forth in terms definite enough to serve as a guide to those who must comply with it. [Citation.] [T]he party must show that the statute did not provide clear notice that the party's conduct was prohibited. [Citations.] In other words, the provisions of a statute must be definite so that a person of ordinary intelligence [has] a reasonable opportunity to know what is prohibited, so that he may act accordingly. [Citation.] When the statute is examined in the light of the facts of the case and the statute clearly applies to the party's conduct, then a challenge to the statu[t]e's constitutionality based upon vagueness will be unsuccessful." (Internal quotation marks omitted.) *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 291-92 (2003).

¶ 133 Here, Chessick asserts that Rule 6.4 is unconstitutionally vague concerning the definition of a minor's claim and thereby fails to give attorneys notice concerning when Rule 6.4 is applicable. I disagree. Rule 6.4 states that it is "[t]he procedure to be followed in cases involving claims of minors or disabled persons pending in divisions other than the Probate

Division." Cook Co. Cir. Ct. R. 6.4 (Jan. 2, 2001). Black's Law Dictionary defines "claim," as, *inter alia*, the "aggregate of operative facts giving rise to a right enforceable by a court," and "[a]n interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; cause of action." Black's Law Dictionary 240 (7th ed. 1999). There is nothing in the plain language of Rule 6.4 that suggests it only encompasses a personal injury or wrongful death cause of action, or that it would be defined as anything other than its common meaning.

¶ 134 I also reject Chessick's argument that Rule 6.4 is unconstitutionally vague because it states "[i]f an appeal is perfected, the compensation to be paid to the attorney shall not in any event exceed one half of the recovery." Cook Co. Cir. Ct. R. 6.4(b) (Jan. 2, 2001). There is nothing vague about this directive; if a notice of appeal is filed, the trial court has discretion to award a higher fee but that higher fee is capped at one half of the recovery. The mere filing of a notice of appeal does not automatically trigger an attorney fee of one half of the recovery; the court must determine whether a higher fee is justified based upon the facts of the particular appeal.

¶ 135 I also reject Chessick's assertion that Rule 6.4 is unconstitutionally vague because it does not clarify whether the trial court's Rule 6.4 ruling would only be advisory for the probate court. "A local rule has the force of a statute and is binding on the trial court as well as the parties." *Premier Electrical Construction Co.*, 276 Ill. App. 3d at 834. Compliance with Rule 6.4 is mandatory. It requires the court hearing the case to approve any proposed settlement as fair and reasonable and to determine attorney fees and costs and the net amount distributable to the minor. The net amount distributable to the minor, as determined by the trial court, "shall be accounted for and administered in the Probate Division." Cook Co. Cir. Ct. R. 6.4(d) (Jan. 2, 2001). Nothing in the plain language of Rule 6.4 indicates that the trial courts' determinations on these matters are

merely advisory.

¶ 136 I would hold that the provisions of Rule 6.4 are set forth in terms definite enough to afford an individual of ordinary intelligence with clear notice as to what procedure is mandated in cases involving the claims of minors or disabled persons that are pending outside the probate division of the court. I would conclude that Chessick has not met its burden of rebutting the presumption of constitutionality and establishing that the provisions of Rule 6.4 are vague as applied to Chessick's conduct.

¶ 137 V. Circuit Court's Application of Rule 6.4

¶ 138 Chessick argues the Cook County court erroneously applied Rule 6.4 because (1) the court used the wrong standard from a medical negligence case to determine the reasonableness of attorney fees in this bad-faith action; (2) Chessick's attorney fees were reasonable, warranted and earned where the Sullivans freely signed the contingency-fee agreement and a 10% increase to the court-approved 37% attorney fees in the medical negligence case was reasonable for seven years of additional litigation in the bad-faith action; and (3) Chessick's litigation expenses were recoverable pursuant to the applicable contingency-fee agreement, reasonable, and well supported.

¶ 139 Chessick initially complains that the trial court used the wrong standard to determine the reasonableness of Chessick's attorney fees and should have used the standard articulated in *Leonard C. Arnold, Ltd.*, 116 Ill. 2d 157. That case, however, did not articulate any standard beyond the general proposition that a contingent-fee agreement entered into on behalf of a minor by his next friend is enforceable unless the terms are unreasonable. Chessick also summarily complains that the trial court should have awarded attorney fees based on Chessick's 1996 contingency-fee agreement with the Sullivans instead of the 2002 agreement, and that the 49% fee provision should apply because an appeal was perfected in the bad-faith action. Chessick,

however, provides no argument to support these assertions and has therefore forfeited them on review. *Wilson*, 93 Ill. App. 3d at 969. Such forfeiture notwithstanding, the plain language of the contracts between Chessick and the Sullivans establishes that the 2002 agreement controls the determination of fees in the settled bad-faith action and the 49% fee provision is inapplicable because it was not "necessary to engage in an appeal."

¶ 140 I now address whether the trial court abused its discretion in applying Rule 6.4. The party requesting attorney fees bears the burden of presenting sufficient evidence to support a trial court's decision as to their reasonableness. *Chicago Title & Trust Co. v. Chicago Title & Trust Co.*, 248 Ill. App. 3d 1065, 1072 (1993). In assessing the reasonableness of attorney fees, the trial court should consider, *inter alia*, the skill and standing of the attorneys employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation. *Id.* Furthermore, the criteria enumerated in Illinois Supreme Court Rule of Professional Conduct of 2010 1.5 is utilized to evaluate fee awards in accordance with Rule 6.4. See Cook Co. Cir. Ct. Joint Memorandum (Mar. 2007). A trial court's decision concerning the reasonableness of attorney fees is reviewed for an abuse of discretion. *Clay v. County of Cook*, 325 Ill. App. 3d 893, 898 (2001). " 'An abuse of discretion occurs where no reasonable person would agree with the position adopted by the trial court.' " *Id*. at 901 (quoting *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997)).

¶ 141 The trial court held a Rule 6.4 hearing and allowed Chessick to fully present evidence and brief and argue its position for enhanced fees above the percentage stated in the 2002 retainer agreement and the percentage allowed in Rule 6.4. The record establishes the trial court considered Chessick's request for enhanced fees in accordance with the factors enunciated in *Clay*,

325 Ill. App. 3d 893. In denying the request for enhanced fees above 33.33% for the minor's portion, the trial court noted that Chessick's overall risk concerning litigation costs was reduced because the minor's estate had advanced $100,000 to Chessick for costs. The trial court also stated that Chessick failed to support its arguments with affidavits or evidence, so there was no testimony to establish that a 47% recovery was an ordinary and customary fee in bad-faith actions. Furthermore, there were no affidavits from individuals outside of Chessick to indicate the novelty of the case and no facts to judge the attorneys' skills and expertise in prosecuting the bad-faith claim. The trial court's orders concerning Chessick's fee petition and motions to reconsider were carefully considered, thoughtfully written and logically persuasive. I would find no abuse of discretion in the trial court's application of Rule 6.4 to the bad-faith action settlement.

¶ 142 I also would find that the trial court properly disallowed expenses for computerized legal research (see *Guerrant v. Roth*, 334 Ill. App. 3d 259, 267-70 (2002) (computerized legal research expenses are part of the attorney's fees and are not separately recoverable pursuant to a contingency-fee agreement unless the agreement explicitly provides for reimbursement and there is a corresponding reduction in attorney fees)), and $73.55 in other unsubstantiated expenses.

¶ 143 VI. The Sullivans' Appeal

¶ 144 On appeal, the Sullivans argue that the circuit court erroneously ruled that it lacked jurisdiction to (1) enforce the March 28, 2011 order, despite the absence of an appeal bond by Chessick to stay enforcement of the final judgment, and (2) consider the Sullivans' claim for pre- and postjudgment interest. Before considering the merits of the Sullivans' appeal, I address this court's jurisdiction to consider the appeal.

¶ 145 The finality of an order is determined by an examination of the substance as opposed to the form of that order. *Gutenkauf v. Gutenkauf*, 69 Ill. App. 3d 871, 873 (1979). Appellate

jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception. *Pekin Insurance Co. v. Benson*, 306 Ill. App. 3d 367, 375 (1999). An order is said to be final if it "disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof." (Internal quotation marks omitted.) *In re Estate of French*, 166 Ill. 2d 95, 101 (1995).

¶ 146 Here, to determine the substance of the circuit court's postjudgment action, this court examines the May 23, 2012 and July 12, 2012 orders to determine the effect those orders had on the parties. As will be discussed below, I would conclude that, although the trial judge did not have jurisdiction to modify the March 28, 2011 order, she did have jurisdiction to enforce it and consider the Sullivans' claim for pre- and postjudgment interest. The orders in question disposed of the Sullivans' motion for judgment and for pre- and postjudgment interest and foreclosed them—based on the trial court's belief that it lacked jurisdiction—from commencing proceedings to enforce the judgment against Chessick and request interest during the pendency of Chessick's appeal despite the absence of any stay. The circuit court's jurisdictional ruling must be subject to appeal, for otherwise there would be no review of a court's jurisdiction. I would conclude that the circuit court's denial of the Sullivans' motion for judgment and for pre- and postjudgment interest was a final and appealable order under Illinois Supreme Court Rule 301 (eff. February 1, 1994).

¶ 147 Chessick argues that the Sullivans' appeal should be dismissed because the circuit court's July 12, 2012 order was not a final or appealable order. According to Chessick, the circuit court did not deny the Sullivans' motion to enforce the judgment and award pre- and postjudgment interest but, rather, declined to enter an opinion on the motion while Chessick's appeal of the case was pending. Chessick's characterization of the circuit court's ruling, however, is not accurate.

¶ 148 According to the record, on May 23, 2012, the circuit court denied the Sullivans' motion to

enforce the judgment and award pre- and postjudgment interest based on lack of jurisdiction. The Sullivans timely moved the court to reconsider its ruling. A hearing was held, and the Sullivans were given leave to amend their motion to reconsider. At the July 12, 2012 hearing on the amended motion to reconsider, the circuit court stated that it agreed with the Sullivans' argument that the March 28, 2011 order was a judgment because the court had required Chessick to pay a sum certain and there was no "wiggle room." Nevertheless, the court stated that it believed Chessick's appeal had divested the court of its authority to make a declaration that the March 28, 2011 order was a judgment and the Sullivans were entitled to interest. In its written July 12, 2012 order, the circuit court stated that it "decline[d] to render an opinion" on the amended motion to reconsider based upon a lack of jurisdiction.

¶ 149 Chessick's argument that the Sullivans have not appealed a final order erroneously focuses on the vague wording of the July 12, 2012 ruling on the amended motion to reconsider while ignoring the clear and final ruling in the May 23, 2012 order that denied the motion for judgment and pre-and postjudgment interest. A court order is not interpreted in a vacuum; it must be construed in a reasonable manner so as to give effect to the apparent intention of the trial court. *Dewan v. Ford Motor Co.*, 343 Ill. App. 3d 1062, 1069 (2003). If a trial court's oral pronouncement conflicts with its written order, the oral pronouncement controls. *Danada Square LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 608 (2009). The circuit court's use of the word "decline" in its July 12, 2012 written order was a poor word choice because the circuit court's oral pronouncement essentially denied the Sullivans' motion to reconsider based upon a lack of jurisdiction. It seems quite apparent that it was the intention of the court to dispose of the Sullivans' motion for judgment and interest because the court thought it lacked jurisdiction and intended that its order to that effect was an order of final disposition. Nevertheless, assuming,

arguendo, that the July 12, 2012 order did not constitute a denial of the motion to reconsider, it still disposed of the motion to reconsider and made the May 23, 2012 order, which denied the Sullivans' motion for judgment and for pre-and postjudgment interest, a final and appealable order.

¶ 150 In their appeal, the Sullivans argue the circuit court has jurisdiction to compel Chessick to disgorge the Sullivans' money and pay pre- and postjudgment statutory interest because Chessick did not stay, pursuant to Illinois Supreme Court Rule 305(a) (eff. July 1, 2004), the March 28, 2011order, which was a money judgment, and because these postjudgment matters were collateral or incidental to the judgment on appeal. I agree.

¶ 151 A judgment has a limited life; after seven years, it cannot be enforced unless and until revived. See 735 ILCS 5/12-108 (West 2010); *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 695 (1992). Here, the Sullivans' motion to enforce the judgment is well within the seven-year time limit. Until enforcement is stayed, the circuit court can enter orders enforcing the judgment or order under review. *Williamsburg Village Owners Association v. Lauder Associates*, 200 Ill. App. 3d 474, 480-82 (1990). A trial court is not required to specifically reserve jurisdiction to enforce a judgment after it becomes final. *Cities Service Oil Co. v. Village of Oak Brook*, 84 Ill. App. 3d 381, 384 (1980).

¶ 152 "[J]udicial power essentially involves the right to enforce the results of its own exertion. [Citation.] A court has inherent power to enforce its orders and decrees and should see to it that such judgments are enforced when called upon to do so. [Citation.]" *Id*.

¶ 153 I would conclude the circuit court erred when it ruled that Chessick's notice of appeal had divested the court of jurisdiction to consider the Sullivans' motion for judgment and interest.

¶ 154 Without citation to any relevant authority, Chessick argues that it was not required to file

an appeal bond to stay enforcement of the final judgment because the circuit court never entered a money judgment against Chessick. According to Chessick, the March 28, 2011 order did not constitute a money judgment against Chessick because the order anticipated and required further action by the Ogle County court. Chessick provides no argument to support this assertion and has therefore forfeited it on review. *Wilson*, 93 Ill. App. 3d at 969. Such forfeiture notwithstanding, I would reject Chessick's argument that the March 28, 2011 order determining Chessick's attorney fees and litigation costs and the amounts due to the Sullivans was not a money judgment. The terms of the March 28, 2011 order clearly required Chessick to pay the Sullivans a sum certain based on the difference between the amount of attorney fees and costs Chessick took from the bad-faith action settlement and the amount approved by the Cook County Circuit Court. The circuit court even stated on July 12, 2012, that the March 28, 2011 order was a judgment because the court had required Chessick to pay a sum certain without any "wiggle room."

¶ 155 When, on February 16, 2012, the probate division in Ogle County vacated its December 2009 order granting Chessick attorney fees and costs, Chessick lost its only remaining justification to continue to hold the fees and costs in excess of the amount approved by the Cook County Circuit Court. Moreover, it is well established Illinois law that when a judgment debtor has not obtained a stay in accordance with Supreme Court Rule 305(a), a judgment creditor can collect from the judgment debtor when the subject judgment is on appeal. *Long v. Duggan-Karasik Construction Co.*, 25 Ill. App. 3d 236, 238 (1974); *Colon v. Marzec*, 116 Ill. App. 2d 278, 281 (1969). In order to stay a money judgment pursuant to Rule 305(a), the judgment debtor filing an appeal must post an appeal bond that covers the money damages portion of the order. See *Bricks, Inc. v. C&F Developers, Inc.*, 361 Ill. App. 3d 157, 162 (2005). The bond requirement gives the judgment creditor security during the pendency of the appeal; it ensures that if the judgment is affirmed, the

judgment creditor will be paid that which is owed. *Id.* Here, a final judgment was issued and Chessick chose not to obtain a stay and post a bond. Because Chessick did not obtain a stay and post a bond, the circuit court has jurisdiction to execute its judgment.

¶ 156 A timely filed notice of appeal vests jurisdiction in the appellate court in order to permit review of the judgment so that it may be affirmed, reversed, or modified. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 527 n.4 (2001). Once the notice of appeal is filed, the appellate court's jurisdiction attaches *instanter*, and the cause of action is beyond the circuit court's jurisdiction. *Daley v. Laurie*, 106 Ill. 2d 33, 37-38 (1985). However, the circuit court retains jurisdiction after a notice of appeal is filed to determine matters collateral or incidental to the judgment. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173-74 (2011) (after a notice of appeal was filed, the circuit court maintained jurisdiction to award interest on tax refunds as provided by the Property Tax Code); *Moenning v. Union Pacific R.R. Co.*, 2012 IL App (1st) 101866, ¶ 29 (circuit court had jurisdiction to adjudicate an attorney's lien after the filing of a notice of appeal because it was collateral to the judgment on appeal).

¶ 157 "Collateral or supplemental matters include those lying outside the issues in the appeal or arising subsequent to delivery of the judgment appealed from." (Internal quotation marks omitted.) *Moenning*, 2012 IL App (1st) 101866, ¶ 22. Our supreme court has "specifically recognized that a stay of judgment is collateral to the judgment and does not affect or alter the issues on appeal." *General Motors Corp.*, 242 Ill. 2d at 174 (citing *Steinbrecher*, 197 Ill. 2d at 526). Because the issues involved in Chessick's appeal in the consolidated case are not affected or altered by the enforcement of the judgment or assessment of statutory pre- and postjudgment interest, the circuit court has jurisdiction to hear these matters. Accordingly, I would reverse the judgment of the circuit court, which found that it lacked jurisdiction to consider the Sullivans'

postjudgment motion, and remand this cause to the circuit court to consider the Sullivans' requests for judgment and for pre- and postjudgment interest.

¶ 158 In conclusion, I would affirm the judgment of the circuit court of Cook County concerning the determination of Chessick's attorney fees and litigation costs and of the amounts due to Beau Sullivan and his parents. However, I would reverse the circuit court's judgment that it lacked jurisdiction to rule on the Sullivans' motion to enforce the judgment in the absence of a stay and to assess pre- and postjudgment interest.