FOURTH DIVISION
OCTOBER 25, 2012

No. 1-11-3647

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF FRANK PAYTON, SR., Deceased	)	
	)	Appeal from the
	)	Circuit Court of
(ESTATE OF FRANK PAYTON, SR.,	)	Cook County.
	)	
Plaintiff-Appellee,	)	
	)	98 P 9909
v.	)	
	)	
BETTY BURNS PADEN,	)	The Honorable
	)	Mary Ellen Coghlan,
Defendant-Appellant.)	)	Judge Presiding.
	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: (1) The circuit court did not abuse its discretion in denying a former estate representative's motion for a continuance of a citation proceeding to obtain discovery and to obtain new counsel where the discovery sought was irrelevant to the issue of restitution of funds owed to the estate in a fraudulent sale of property of the estate, where the former

representative did not comply with Supreme Court Rules and could not show due diligence because the matter had already been pending for ten years, and where the former representative was given adequate time to obtain new counsel. (2) The estate established a *prima facie* case, which the former representative did not rebut with clear and convincing evidence, that the estate was defrauded from receiving the full amount of the actual sales price of the property in question, as the closing documents conclusively showed the sales price was $245,000, and not $77,500, as the former representative claimed. (3) The court did not abuse its discretion in denying the former estate representative's motion to reconsider, as she merely repeated the same arguments made previously.

¶ 1 BACKGROUND

¶ 2 The instant case arises out of Paden's representation of decedent Marjorie Payton as administrator of the estate of her late husband, Frank Payton, Sr. In connection with her duties, on behalf of Marjorie Payton, Paden represented her in a closing for the August 1, 2000 sale of property owned by her late husband located at 1710 Darrow Avenue, Evanston, Illinois. Marjorie Payton was handicapped and in ill health and could not attend the closing. Paden acted on behalf of Payton with a power of attorney, which Payton later disputed she ever signed. Paden maintains that the sale price of the property was actually $77,500 because the property was run down and dilapidated. Paden represented to Payton that the sale price of the property was $77,500, and executed the closing documents on her behalf. Paden claimed the estate received a check for $70,538.92, which she deposited, "less expenses," into a bank account for the estate.

¶ 3 However, the Housing and Urban Development settlement statement (HUD-1) for the sale indicates that the sale price for the property was actually $245,000. A contemporaneous appraisal of the property showed that the fair market value was $245,000. There was a $500 deposit. The HUD-1 indicated that a deduction was made from the proceeds due to the estate in the amount of $87,797.57, as payment to Carby-King Construction. An additional $61,000 was

deducted from the proceeds due to the estate as "excess deposit." A payment for a second mortgage in the amount of $12,250 was also deducted. Payton claimed there was no second mortgage on the property prior to the sale. The seller's closing statement, prepared by the buyer Leah Radcliffe and Paul King of Carby-King Construction, did not list any second mortgage. There was also a deduction for a payment of $3,000 to Paden for attorney fees. The HUD-1 indicated $1,362.50 in settlement charges to Payton. There were adjustments on the HUD-1 for items unpaid by Payton, which included the 1999 tax proration of $1,207.57, a seller credit of $6,431.25, and a credit for taxes for the year 2000 in the amount of $1,412.19. The closing left the estate with proceeds of only $70,538.92.

¶ 4 The record contains copies of the following checks: a check in the amount of $61,000, to the order of Carby-King Realty, a check in the amount of $81,497.57 to the order of Paul King, a check in the amount of $6,300, also to the order of Paul King, a check in the amount of $889.26, to the order of Leah Y. Radcliffe, a check in the amount of $9,398.75 to the order of Axiom Mortgage, and a check in the amount of only $70,538.92 to the order of Marjorie Payton as independent administrator of the estate of Frank Payton. Paden filed a motion to approve her attorney fees and to approve the first and last accounting and distribute the estate's assets. After the closing, Payton still had not received any money from the sale of the property.

¶ 5 In a letter dated July 13, 2001, Payton discharged Paden as the estate's attorney and asked Paden to turn over the funds in her possession and to give all documents to Robert Hutchison, her new attorney. On July 20, 2001, Robert Hutchison filed an appearance on behalf of Payton as the estate's new attorney. On August 16, 2001, the court entered an order terminating the

independent administration of Payton and later, on September 16, 2001, the court entered an order for supervised administration. Also on August 16, 2001, Paden filed a motion for approval of attorney fees and to approve the accounting and distribute the estate assets and close the estate, and in response Payton filed her objections on September 13, 2001. Paden did not turn over the estate assets. Also on August 16, 2001, through her attorney Robert Hutchison, Payton filed a motion to compel the turnover of estate assets and documents in the possession and control of Paden.

¶ 6 On July 25, 2001, Payton, as supervised administrator of the estate of Frank Payton, Sr., filed a citation to recover assets and an amended citation to recover assets, by order of court, on Paden. On September 18, 2001, the court entered an order to issue the citation and ordered that Paden produce all documents for examination and set a hearing on the citation for October 23, 2001. On September 28, 2001, Paden answered the motion to compel turnover of estate assets, largely claiming she had no knowledge of the allegations and that she "has no money of the Estate." Paden then evaded service of the citation. A court order issuing an alias citation was entered on November 27, 2001, returnable on January 8, 2002. On January 8, 2002, another court order was entered for an alias citation for Paden, returnable February 21, 2002, and appointing a special process server. The citation status date was set for March 22, 2002. On that date, Paden entered a special and limited appearance *pro se* and moved to quash service of the alias citation.

¶ 7 There were protracted pleadings and court appearances regarding solely the service of the citation. Ultimately, Paden was given 35 days to respond to the citation petition and was granted

leave to file an additional appearance for herself or counsel. Paden answered that Payton agreed to sell the property for $77,500, wanted to hide assets from her children, and agreed to a rehabilitation loan. Attached to her answer to the petition as "Exhibit B" was a copy of a sales contract for the property dated May 15, 2000, listing the sales price as $77,500. Payton denied all of Paden's allegations and stated that an appraisal of the property stated that it was worth $245,000 and that the sale price was $245,000. Payton stated in her response to Paden's answer to the citation petition that the payouts to Paden, King, Carby-King Construction Company, Prince Williams, Jr., and Axiom Mortgage Co. were unauthorized. Payton also filed a petition for discovery against respondent Carby-King Realty Group, Inc. On April 26, 2002, Payton filed an amended citation petition seeking recovery of the estate assets from Paden.

¶ 8 Marjorie Payton died on February 8, 2004. Frank Payton, Jr., through his attorney Brian E. Alexander of Alexander, Alexander & Associates, filed a petition for the appointment of De Bonis Non as the administrator of the estate of Frank Payton, Sr.. Letters of Office were issued on July 8, 2004, appointing De Bonis Non as administrator of the estate.

¶ 9 The case was continued several times for status of settlement and trial status. The court ordered a pretrial hearing for August 29, 2005, and on that date the case was again continued to October 3, 2005, for a final pretrial conference. On October 3, 2005, the new attorney for the estate, Brian Alexander, reported to the court that he was advised by the attorney holding power of attorney for the estate that there was "no chance for settlement." It was ordered, by agreement, that the assignment to Calendar 13 was canceled and the case was returned to the presiding judge for assignment. The probate judge took the case off the probate call, and the case remained

inactive in circuit court until 2011.

¶ 10 In the meantime, attorney Robert Hutchison brought Paden's conduct to the attention of the Attorney Registration and Disciplinary Commission (ARDC), and a hearing was held concerning Paden's conduct regarding the Payton estate and representation of Marjorie Payton, as well as her representation and conduct in other matters. At the ARDC hearing on March 15, 2006, former attorney for the estate Robert Hutchison testified that he was contacted by Payton's attorney in Michigan, John Verdonk, asking him to investigate why Payton had not received any of the sale proceeds. Hutchison tried unsuccessfully to contact Paden by telephone, certified mail, and a visit to her home. Hutchison then discovered in the county records that the sale price of the property was $245,000, and not $77,500. Hutchinson sent a copy of the power of attorney to Verdonk, who showed it to Payton, who disputed authorizing or signing it. Hutchison deposed Paul King, of Carby-King Construction, who testified that he did between $70,000 and $80,000 worth of work to the building. However, according to a home inspector Hutchison hired, almost no work had been done to the property and King's specification sheet had been fabricated. Paden was disbarred and ordered by the Illinois Supreme Court in a decision rendered on October 5, 2007, to turn over the funds belonging to the estate.

¶ 11 On April 5, 2011, attorney for the estate Brian Alexander filed a motion to dismiss Paden's fee petition, based on the fact that the fee petition had been pending for four years with no action taken, Paden had been disbarred, and the fee petition was the only matter responsible for the estate remaining open and causing the estate further expenses. On May 18, 2011, the court denied and dismissed Paden's petition for attorney fees. Upon motion by Paden, however,

the May 18, 2011 order was vacated by order of court on June 28, 2011, and the matter was continued until July 25, 2011. Also, in that same order of June 28, 2011, Paden's attorney, Lionel Jean-Baptiste, was granted leave to withdraw and Paden was given 21 days to obtain substitute counsel to file an appearance.

¶ 12 On July 25, 2011, the administrator was granted leave to file a petition for a turnover order, Paden was given 35 days to answer, and the administrator was given 28 days to reply. Paden was granted leave to file an additional appearance. Hearing on the petition for a turnover order was set for October 4, 2011, and Paden's petition for attorney fees was also continued until that date.

¶ 13 On August 25, 2011, Paden served subpoenas on attorney Robert Hutchison, seeking compliance by September 8, 2011, on Howard Kane and the legal department of First Bank and Trust in Evanston, seeking compliance by August 15, 2011, and on the City of Evanston Clerk and legal department, seeking compliance by August 15, 2011. These subpoenas all sought a copy of all documents relating to the property, including those concerning ownership, purchases and sales. Paden also served a subpoena on attorney Lester Barclay, seeking a copy of all documents pertaining to the dissolution of marriage of Angela Hammell, which was another matter that was a subject at Paden's ARDC disbarment hearing, seeking compliance by September 8, 2011.

¶ 14 On October 4, 2011, the hearing took place. Paden told the court she still had outstanding subpoenas, but the court informed her she had not filed anything regarding the subpoenas with the court. The hearing commenced.

¶ 15 At the hearing, the attorney for the estate, Brian Alexander, admitted into evidence the HUD-1 from the closing. Alexander also questioned Paden. Paden admitted she prepared the seller's closing statement (HUD-1) which listed the sales price as $245,000. Paden admitted that she also signed the HUD-1. However, Paden still maintained that the sales price was $77,500, and that the $245,000 figure included a "loan" to rehabilitate the property.

¶ 16 Paden attempted to have her husband testify as to the value of the property, but the attorney for the estate objected on grounds of relevance, stating "[t]he only issue which is really relevant to the Court is how much money was there and where did it go." The court agreed and sustained the objection. Paden persisted in asking questions about the value of the property, which drew consistent objections as to relevance, which the court sustained.

¶ 17 Paden next called Paul King, who owned Carby-King Construction. King testified that Paden called him that she had a property for sale and asked if he would be interested in buying it. After a line of questioning from Paden, the court clarified to Paden that she needed to "establish, if you can, what happened to the $61,000." King testified that he received a copy of the contract selling the property to Leah Radcliffe and that his role was to renovate the property. King further testified that he located the buyer, Leah Radcliffe, through a family member. He testified that he and Radcliffe "put the contract together" and gave it to Paden. King testified he was present at the closing. King testified that the $61,000 "was the buyer's contribution that was needed from the mortgage to be approved because she was not just getting money to buy the property but she was getting money to rehab it." Exhibit M-1 was stipulated to by the attorney for the estate, which was a copy of the real estate transfer tax declaration form, which shows that a transfer tax

was paid by Leah Radcliffe, "c/o Carby-King." King could not remember whether he was the person who actually paid the transfer tax or not. However, the form showed that the taxes paid were for the sale price of $245,000. Paden asked, "The [$]61,000 then was earnest money to you but not to the estate?" King replied, "It was money that was being held by my office, as I recall, as part of the construction that was to be done." King testified that the sale price "was the sale price plus the rehab." King admitted that the amount he was paid came out of the $245,000 sales price. King admitted that he did not pay any amount to the estate.

¶ 18 Upon questioning on cross-examination, King testified, "What was done in the closing statement I can't explain." When asked why the seller would pay Carby-King Construction $87,797.57, as the closing statement indicates, King testified, "I don't know what to tell you." King also testified he could not recall if he received the money. When asked if he had any documents reflecting any work performed on the building, King testified the paperwork was in a file he put in his basement and that his basement got flooded and he lost the documents.

¶ 19 Paden also called herself as a witness and recited the same facts she stated in her answer to the citation petition, that the $245,000 included the loan for rehabilitation. She also testified that she put the money due the estate in an account under the deceased's name. Paden wanted to continue the matter so that Prince Williams, the mortgage broker, could testify to the amount of the mortgage. However, the court stated on the record that Williams had been in the courtroom and that Paden had told him he could leave due to an appointment, without bringing the matter to the court's attention. Therefore, the court denied her oral request for a continuance. When Paden was questioned on cross-examination why the Carby-King amount was listed and charged as a

seller's charge, rather than a construction loan, Paden stated, "It probably should have been a construction loan."

¶ 20 The attorney for the estate sought to admit a copy of the October 5, 2007 ARDC decision and Paden objected. The court stated it was not admitting the ARDC decision into evidence, but overruled her objection to the extent that the ARDC decision directed the court to enter an order ordering the payment of the rest of the sales price to the estate.

¶ 21 At the close of all the evidence at the hearing and after hearing further argument from Paden, the court granted the petition for a turnover order. The attorney for the estate sought restitution of the $61,000 "excess deposit" and the $3,000 paid for Paden's attorney fees. The court questioned whether the estate was seeking restitution of the amount of money made out in a check to Carby-King Construction, but the attorney for the estate indicated there was no evidence where the money actually went. In allowing the turnover order, the court found and ordered as follows:

> "*** It is inconceivable to me that an attorney would sign her name to a HUD statement reflecting that a property contract sales price is [$]245,000 and then turn around and tell me that the actual sale price was only [$]77,5[00].
>
> What occurred here is a travesty. All of the witnesses called by Ms. Paden, including herself, are completely incredible. It's very sad that this would occur.
>
> Petition for turnover is allowed. I'm allowing pursuant to the Supreme Court's directive which has ordered that Betty Burns Paden be required to pay restitution to the Estate of Frank Payton, Sr. for the total amount distributed at the closing of the building

that should have been paid to the estate, plus interest as recommended by the review board.

I believe that that amount is an additional amount that the estate has not received of the $61,000 as well as the $3,000 that should not have been paid to her for attorney's fees."

¶ 22 Paden filed a motion to reconsider, which the court denied in an order dated November 8, 2011. Also, on November 3, 2011, Paden filed a motion for an order of contempt for the subpoenaed witnesses, documents and depositions and for costs. Although Paden states in her brief that the court "denied" her motion for contempt for the discovery subpoenas, in a separate order prepared by Paden and entered by the court on November 8, 2011, on Paden's motion for an order of contempt of court, the court ordered Robert Hutchison, First Bank and Trust, Lester Barclay, and Prince Williams to respond to the subpoenas by December 6, 2011, Paden to reply by December 23, 2011, and the matter was continued for a hearing on January 9, 2012.

¶ 23 A response to Paden's subpoena was filed by Lester Barclay on December 6, 2011, concerning the documents sought in Paden's involvement in a separate domestic action which was one of the cases in Paden's ARDC disbarment proceedings. Barclay alleged that although he objected on grounds of relevance, he informed Paden that the documents were available for photocopying by her, but that she never availed herself of the opportunity. The record contains no indication of what occurred on January 9, 2012. There is neither an order nor a transcript for that date in the record. Paden appealed.

¶ 24 ANALYSIS

¶ 25 Before we address Paden's arguments on appeal, we note that her brief on appeal violates the Illinois Supreme Court Rules. Notably, Paden does not cite to the record in her statement of facts, in violation of Supreme Court Rule 341. See Ill. S. Ct. R. 341(h)(7), (i) (eff. July 1, 2008). Further, we note that the majority of Paden's citations are to precedent from other jurisdictions. Nevertheless, in the interest of justice to the estate, we consider this appeal. See *Halpin v. Schultz*, 234 Ill. 2d 381, 390 (2009) (holding that "[r]eviewing courts may look beyond considerations of waiver in order to maintain a sound and uniform body of precedent or where the interests of justice so require") (citing *In re Estate of Funk*, 221 Ill. 2d 30, 97 (2006))).

¶ 26 Denial of Motion for Continuance to Obtain Discovery and Hire New Attorney

¶ 27 Paden argues that the court abused its discretion in denying her motion for a continuance to obtain discovery and hire a new attorney. However, Paden failed to show due diligence to the court. According to Illinois Supreme Court Rule 201(c)(f), titled "Diligence in Discovery," "[t]he trial of a case shall not be delayed to permit discovery unless due diligence is shown." Ill. S. Ct. R. 201(c)(f) (eff. July 1, 2002). Illinois Supreme Court Rule 231 further provides:

> "Rule 231. Motions for Continuance
>
> (a) Absence of Material Evidence. If either party applies for a continuance of a cause on account of the absence of material evidence, the motion shall be supported by the affidavit of the party so applying or his authorized agent. The affidavit shall show (1) that due diligence has been used to obtain the evidence, or the want of time to obtain it; (2) of what particular fact or facts the evidence consists; (3) if the evidence consists of the testimony of a witness, his place of residence, or if his place of residence is not known,

> that due diligence has been used to ascertain it; and (4) that if further time is given the evidence can be procured.
>
> (b) When Continuance Will Be Denied. If the court is satisfied that the evidence would not be material, or if the other party will admit the affidavit in evidence as proof only of what the absent witness would testify to if present, the continuance shall be denied unless the court, for the furtherance of justice, shall consider a continuance necessary." Ill. S. Ct. R. 231 (eff. Jan. 1, 1970).

"It is within the trial court's sound discretion to grant a request for a continuance, and its decision will not be disturbed absent a manifest abuse of that discretion." *State Farm Mut. Auto. Ins. Co. v. Haskins*, 215 Ill. App. 3d 242, 247 (1991) (citing *Feder v. Hiera*, 85 Ill. App. 3d 1001, 1002 (1980)).

¶ 28 Here, there was no abuse of discretion, as Paden did not comply with Supreme Court Rule 231 by moving for a continuance with a supporting affidavit. " 'A denial of a motion for continuance cannot be regarded as an abuse of discretion where the requirements of Supreme Court Rule 231(a) *** have not been met.' " *Haskins*, 215 Ill. App. 3d at 247 (quoting *Mikarovski v. Wesson*, 142 Ill. App. 3d 193, 195 (1986)).

¶ 29 Further, Paden failed to show due diligence. Paden knew of the pending citation for ten years. The citation was initially filed in 2001. She issued her subpoenas on August 25, 2011, and did not bring the third parties' failure to comply to the court's attention at any time prior to the hearing. Therefore, Paden could not show due diligence in attempting to obtain discovery.

¶ 30 Also, the discovery sought was irrelevant, and so denying the motion for a continuance

was not an abuse of discretion because the court had no discretion to order irrelevant discovery. Normally, " '[a] trial court's discovery order is usually reviewed for an abuse of discretion.' " *Dei v. Tumara Food Mart, Inc*., 406 Ill. App. 3d 856, 866 (2010) (quoting *Wisniewski v. Kownacki*, 221 Ill. 2d 453, 457 (2006). However, "[a] trial court does not have discretion to order discovery of information that does not meet the threshold requirement of relevance to matters actually at issue in the case." *Dei*, 406 Ill. App. 3d at 866. Relevant information for discovery includes evidence which is admissible at trial or that which leads to evidence admissible at trial. *Id*. (citing *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 557 (1998)).

¶ 31 Here, Paden served subpoenas on a bank in Evanston and the clerk of Evanston seeking all documents pertaining to all sales and transactions related to the property. However, only the sale of the property which was the subject of the citation proceedings in this case was relevant. The parties had all the documents relevant to the sale. Documents concerning other transactions, which Paden was not a part of, and which would relate to funds of other parties completely unrelated to the case or the issues below, simply were not discoverable. The discovery sought by Paden regarding all *other* transactions was not admissible in this case, as it was completely unrelated to Paden's conduct and the recovery of the funds in *this* case.

¶ 32 Also, another one of Paden's subpoenas sought documents relating to a completely separate domestic proceedings which were also a subject of her disbarment hearing. Discovery regarding other matters brought up at Paden's ARDC disbarment hearing was irrelevant to the instant probate proceedings.

¶ 33 The discovery Paden sought would not have disproved the fact that in *this* transaction the

HUD-1 settlement statement and all other evidence in this case conclusively established that Payton was defrauded from receiving the true purchase amount for the property. Thus, the court did not abuse its discretion in denying Paden additional time for more discovery and in denying her motion for contempt for the subpoenaed witnesses and documents, as it had no discretion to order discovery of irrelevant documents and information.

¶ 34 Further, even after Paden's belated assertion that she had outstanding subpoenas, the court entered her prepared order which ordered the subpoenaed individuals to comply by December 6, 2011. We note that Paden does not provide us with any information regarding the outcome of her motion for order of contempt, which was scheduled for a hearing on January 9, 2012. It is the burden of the appealing party to provide the reviewing court with a sufficiently complete record to allow for meaningful appellate review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). As a general rule, "[a]n issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.,* 217 Ill. 2d 144, 156 (2005). In the absence of a sufficiently complete record, a reviewing court will resolve all insufficiencies apparent therein against the appellant and will presume that the trial court's ruling had a sufficient legal and factual basis. *Foutch*, 99 Ill. 2d at 391-92. Thus, we presume the trial court ruled correctly regarding any lingering questions about the subpoenas.

¶ 35 Additionally, any argument regarding the failure of Prince William, Jr., to testify is defeated because the record reveals that William was in court on the day of the hearing, but Paden herself allowed the witness to leave. As the court stated on the record, Paden did not bring

the matter of William needing to leave for an appointment to the court's attention.

¶ 36 Paden's argument that she required a continuance to obtain counsel also has no merit. Where a party's counsel withdraws, Supreme Court Rule 13(c)(5) provides that "the party shall file in the case within 21 days after entry of the order of withdrawal a supplementary appearance." Ill. S. Ct. R. 13(c)(5) (eff. July 1, 1982). Thus, a party is given 21 days to find new counsel. Paden was given adequate time in accordance with Rule 13(c)(5). By order of June 28, 2011, Paden's attorney, Lionel Jean-Baptiste, was granted leave to withdraw and Paden was given 21 days to obtain substitute counsel. Hearing on the petition for a turnover order was set for several months later, on October 4, 2011. At no time during these months prior to the hearing did Paden move for a further extension of time to obtain counsel.

¶ 37 Therefore, we determine the court did not abuse its discretion in refusing to grant Paden a continuance either to obtain the irrelevant discovery she sought or to obtain counsel.

¶ 38 Evidence Supporting the Court's Finding

¶ 39 Paden argues that the court "abused its discretion" in ordering the restitution and turnover of the estate assets due from the full sales price for the property. The citation to discover assets seeking a turnover order was proper under Illinois Supreme Court Rule 277. See Ill. S. Ct. R. 277 (eff. July 1, 1982). The Probate Act of 1975 (755 ILCS 5/1-1 *et seq*. (West 2000)) specifically also authorizes citations on behalf of estates for any person the estate believes "to have concealed, converted or embezzled or to have in his possession or control any personal property, books of account, papers or evidences of debt or title to lands which belonged to a person whose estate is being administered in that court or which belongs to his estate or to his

representative." 755 ILCS 5/16-1(a) (West 2000). Under the Probate Act, it was Paden's duty to account for the proceeds of the sale of the property. Section 20-12 of the Probate Act provides as follows:

> "§ 20-12. Accounting for proceeds of sale or mortgage. It is the duty of the representative to account for the proceeds of every sale or mortgage under this Article in his next current or final account filed in the court where the estate is being administered." 755 ILCS 5/20-12 (West 2000).

¶ 40 Section 16(d) further provides, regarding hearings on citations, as follows:

> "(d) The court may examine the respondent on oath whether or not the petitioner has proved the matters alleged in the petition, may hear the evidence offered by any party, may determine all questions of title, claims of adverse title and the right of property and may enter such orders and judgment as the case requires." 755 ILCS 5/16-1(d) (West 2000).

¶ 41 "To recover property in a citation proceeding, an executor must initially establish a *prima facie* case that the property at issue belongs to the decedent's estate; the burden then shifts to the respondent to prove his or her right to possession by clear and convincing evidence." *In re Estate of Elias*, 408 Ill. App. 3d 301, 315 (2011) (citing *In re Estate of Casey*, 155 Ill. App. 3d 116, 121-22 (1987)).

¶ 42 Here, the estate established its *prima facie* case that it was entitled to the funds due under the full sales price amount from the sale of the property, and Paden failed to carry her burden of proving by clear and convincing evidence that she had any right to possession of the funds from

the closing. According to Paden, "the $245,000 was a loan for both the purchase and the rehabilitation of the said property." However, the HUD-1 unequivocally indicates that the $245,000 was the purchase price to the property, which was due to Marjorie Payton as administrator of the estate. Transfer stamps were paid for the full $245,000 sales price. King could not account for the funds. No one other than Paden testified that Payton agreed to the circumstances of this transaction. There simply was no evidence that either Marjorie Payton or the estate agreed to reduce the purchase price by any "rehabilitation loan" to Carby-King Construction to gift the buyer with about $150,000 for her rehabilitation of the property, nor any evidence that there was any second mortgage on the property.

¶ 43 Further, the court did err by admitting evidence of the ARDC's findings and decision to disbar Paden, as Paden contends. The Illinois Supreme Court also considered the circumstances of this case in her hearing before the ARDC which resulted in her disbarment and ordered that Paden pay restitution to the estate. As the court specifically stated, it was not admitting the ARDC decision into evidence but only noted it on the record because the Illinois Supreme Court ordered that Paden pay restitution and the court was bound to follow the dictate of the supreme court. There is no indication that the court relied on the ARDC decision in its findings before entering its order. Rather, the court relied on the facts and evidence in this case and determined Paden was incredible and the evidence of fraud was clear.

¶ 44 The evidence adduced at the hearing on the citation established that Paden misrepresented the sale price of the property to Payton and used her power of attorney over Paden to execute the documents for the sale of the property in which the estate was left with only $70,538.92, from a

sale price of $245,000. The manifest weight of the evidence amply supports the court's determination that Paden must pay the estate restitution. Therefore, we affirm the court's order.

¶ 45 Denial of Motion for Reconsideration

¶ 46 Finally, Paden argues that the circuit court abused its discretion in denying her motion for reconsideration. In cases tried without a jury, a post-judgment motion for rehearing brought within 30 days is within the purview of section 2-1203 of the Illinois Code of Civil Procedure. See 735 ILCS 5/2-1203(a) (West 2000). "A section 2-1203 motion invokes the sound discretion of the trial court." *Regas v. Associated Radiologists, Ltd.*, 230 Ill. App. 3d 959, 967 (1992) (citing *In re Marriage of Rosen*, 126 Ill. App. 3d 766 (1984), *Abbey Plumbing & Heating, Inc. v. Brown*, 47 Ill. App. 3d 719 (1977)), *cert. denied*, 146 Ill. 2d 651 (1992)).

¶ 47 Here, the court did not abuse its discretion in denying Paden's motion to reconsider. "The purpose of a motion to reconsider is to bring to the trial court's attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the trial court's previous application of existing law." *Hirsch v. Optima, Inc*., 397 Ill. App. 3d 102, 108 (2009) (citing *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140 (2004)).

¶ 48 However, Paden's motion for reconsideration merely regurgitated her same previous argument that the purchase price of $245,000 included an agreement for a $61,000 "deposit" for the "rehabilitation" loan. There was no new evidence and the court did not err in its application of the law. Again, Payton never agreed to deduct these amounts from the purchase price of the property and Paden misrepresented the entire transaction to Payton and breached her fiduciary duty. We find no abuse in the court's discretion in denying Paden's motion for reconsideration.

Therefore, we affirm the court's order denying the motion for reconsideration.

¶ 49 CONCLUSION

¶ 50 This case is an egregious example of a breach of fiduciary duty by an estate representative. Paden, in her role as a fiduciary as administrator of the estate of Payton's late husband, and in exercising her power of attorney for Payton, executed documents for the sale of Payton's late husband's property in which Payton was defrauded of most of the purchase proceeds. We first find that the circuit court did not abuse its discretion in denying Paden's motion for a continuance for further discovery and to obtain an attorney. Paden did not show due diligence where the matter was pending for ten years, and thus, Paden had ample time to conduct discovery, and Paden did not comply with Supreme Court Rules regarding obtaining a continuance. We also reject Paden's argument that she was entitled to further discovery prior to the hearing because the discovery sought was irrelevant, as Paden sought documents regarding all other sales and transactions concerning the property, as well as documents regarding Paden's representation in an entirely separate matter.

¶ 51 Second, we determine the court's determination that Paden must pay restitution to the estate was not against the manifest weight of the evidence where there was no evidence, other than Paden's incredible testimony, that Payton ever agreed to a transaction where she would forego most of the profit on the sale of the property to give the buyer a rehabilitation loan. The HUD-1 conclusively established that the sales price was $245,000, and not $77,500. We reject Paden's argument that the circuit court erred in considering her ARDC disbarment where the court did not admit the ARDC into evidence but merely considered it because the Illinois

Supreme Court ordered that Paden pay restitution to the estate, and the court was bound to follow the order of the supreme court.

¶ 52 We also determine that the circuit court did not abuse its discretion in denying Paden's motion for reconsideration. We affirm the orders of the circuit court.

¶ 53 Affirmed.