

No. 1-11-3714

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JMB/URBAN 900 DEVELOPMENT PARTNERS, LTD.,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 05 L 13785
	)	
ELIZABETH HAZAN and WORLD OF CONCEPTS,	)	
LLC,	)	Honorable Raymond W.
	)	Mitchell,
Defendants-Appellants.	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Presiding Justice McBride and Justice Taylor concurred in the judgment.

### ORDER

¶ 1 Held: The trial court did not err by allowing defendants' former counsel to testify where defendants waived the attorney-client privilege. The court's determination that defendant failed to establish a lack of mental capacity to enter a settlement agreement was not against the manifest weight of the evidence. The court did not abuse its discretion by closing the evidentiary hearing where defendants failed to comply with the court's order to provide a physician's affidavit explaining why a witness could not appear to testify. The trial court's award of attorney fees to plaintiff was not an abuse of discretion.

¶ 2 This appeal arises from the alleged breach of a settlement agreement entered into by plaintiff, JMB/Urban 900 Development Partners, LTD, and defendants, Elizabeth Hazan (Hazan) and World of Concepts, LLC (collectively defendants). Plaintiff filed suit against defendants to enforce the terms of the settlement and defendants responded by raising the affirmative defense

that Hazan lacked capacity to execute the settlement. Following an evidentiary hearing, the trial court found that defendants had failed to meet their burden of establishing Hazan's lack of mental capacity and entered judgment in favor of plaintiffs for the full amount of the settlement agreement. The court also awarded plaintiff its attorney fees and costs. On appeal, defendants contend that: (1) the trial erred by allowing defendants' former counsel to testify at the evidentiary hearing; (2) the court's finding that defendants failed to establish a lack of mental capacity to enter the settlement was against the manifest weight of the evidence; (3) the court abused its discretion by closing the evidentiary hearing; and that (4) the attorney fees awarded to plaintiff were excessive. For the reasons that follow, we affirm.

¶ 3 Plaintiff is the developer and manager of the 900 North Michigan Avenue shopping center in Chicago, Illinois, and defendant Hazan is the owner of a consulting firm, defendant World of Concepts. Defendants entered into consulting agreements with plaintiff by which plaintiff agreed to pay consulting fees to World of Concepts in exchange for execution of leases to prospective tenants who would open retail stores in the shopping center. A prospective tenant never took possession of the retail space, and as a result plaintiff filed a lawsuit against the defendants to recover the fees paid with regard to that tenant.

¶ 4 The parties commenced settlement negotiations and subsequently agreed to dismiss the lawsuit subject to the execution of a settlement agreement.<sup>1</sup> Defendants executed the settlement agreement on March 20, 2008. The agreement provided for installment payments of \$50,000 and

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<sup>1</sup>The trial court dismissed the action without prejudice and retained jurisdiction to assure execution of the settlement and enforce its terms.

\$100,000, and a payment of \$150,000 if defendants failed to make the prior payments. The agreement also provided that upon default of the payment schedule, defendants consented to the reinstatement of litigation and entry of judgment against them for the unpaid amount of the full settlement of \$300,000. In the event of any dispute or litigation concerning the terms of the settlement, the prevailing party was entitled to recover its attorney fees and costs.

¶ 5 On July 25, 2008, plaintiff filed a motion to reinstate the litigation and to enter judgment in its favor (motion to reinstate). Plaintiff alleged that defendants had failed to make the initial settlement payment that was due on July 1, 2008, and sought the full unpaid amount of the settlement.

¶ 6 On September 17, 2008, Stuart Rappaport withdrew as counsel for defendants. New counsel appeared on defendants' behalf and filed a response to plaintiff's motion to reinstate. Defendants alleged that the settlement was not "entered into properly" because defendants' former counsel, Rappaport, failed to explain all of its material terms to Hazan. Defendants further alleged that Hazan "did not get an opportunity to read [the settlement agreement] and that [Hazan] felt pressured to sign by her attorney." Finally, defendants alleged that Rappaport failed to carry out defendants' directives and that Hazan was unable to competently sign the settlement agreement because she was suffering from "extreme emotional distress"

¶ 7 Hazan subsequently submitted an affidavit in opposition to plaintiff's motion to reinstate.<sup>2</sup> In the affidavit, Hazan stated that Rappaport had pressured her to sign the agreement, that she

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<sup>2</sup>It is unclear from the record when the affidavit was filed because it is not file-stamped by the clerk of the circuit court. The affidavit was notarized and signed on January 9, 2009.

was suffering from psychological and emotional issues that made her severely "out of it" and that she did not understand the settlement that she had signed. Hazan referenced a note from a alleged psychiatric resident working at a "Jewish General Hospital" located in Montreal, Canada, to support her claim that she was mentally incapacitated at the time she signed the agreement. That note was dated October 28, 2008, and stated that Hazan was a patient at the psychiatric specialty clinic of the hospital who was undergoing treatment requiring that "she remain in Montreal Canada for the time being, and for the foreseeable future until her treatment is completed."

¶ 8 On April 9, 2009, plaintiff issued a subpoena for Rappaport to appear for a deposition. On May 19, 2009, defendants filed a motion seeking, among other things, to file an amended response to plaintiff's motion to reinstate. In that motion, defendants asked to withdraw Hazan's affidavit and to file an amended response reflecting an abandonment of their previously raised defense that she was pressured by her attorney, who also failed to adequately explain the settlement. There is nothing in the record indicating whether the court ruled on the motion.

¶ 9 On June 1, 2010, the trial court set an evidentiary hearing on plaintiff's motion to reinstate for October 12, 2010. On June 21, 2010, defense counsel filed a motion to change the date of the evidentiary hearing on the ground that counsel had important personal business. Plaintiff consented to the delay and the court set the evidentiary hearing for November 8, 2010. The court also set Hazan's deposition for September 15, 2010.

¶ 10 Hazan did not appear for her scheduled deposition. On September 16, 2010, Hazan filed a motion for a protective order and to change the date of her deposition. She alleged that on

September 11, 2010, she suffered from a medical emergency and went to the emergency room of the Montreal General Hospital. A note allegedly written by Renee Wolanski, MD, was attached to the motion and stated that Hazan was seen at the clinic on September 12, 2010 and was unavailable to leave Montreal until she underwent a medical evaluation which was scheduled for September 14, 2010. The court granted the motion and rescheduled Hazan's deposition for October 21, 2010.

¶ 11 On October 18, 2010, Hazan filed another motion seeking to reschedule her deposition and the evidentiary hearing. She claimed that her continued medical treatment after a health emergency made her unavailable for the deposition and the evidentiary hearing until after December 31, 2010. Attached to the motion was a note allegedly written by Spiro Dischiev, M.D., stating that Hazan "has to be followed and treated in Montreal and cannot leave until 31/12/10." The trial court granted the motion and rescheduled her deposition for April 8, 2011. In its written order, the court stated that the deposition "would not be continued without a letter from a physician treating defendant Hazan indicating that she cannot so appear." The court subsequently entered an order rescheduling the evidentiary hearing for May 16, 2011.<sup>3</sup>

¶ 12 Hazan subsequently filed another motion seeking to reschedule the evidentiary hearing due to her alleged medical complications.<sup>4</sup> On May 13, 2011, the court denied Hazan's motion to reschedule the evidentiary hearing. The court's written order states that the evidentiary hearing

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<sup>3</sup>At some point between February and April 2011, a new judge began to preside over the case.

<sup>4</sup>It is unclear from the record when the motion was filed.

would proceed as scheduled on May 16, 2011, but that Hazan's presence was not required on that date. The order also states that "the court shall determine how to take any testimony from defendant Hazan at a status conference to be scheduled at the time of the May 16 hearing."

¶ 13 The evidentiary hearing began on May 16. The parties initially argued whether Hazan's former attorney, Rappaport, should be allowed to testify at the hearing. Defense counsel argued that Rappaport should not be allowed to testify because his communications were covered by the attorney-client privilege. Plaintiff's counsel responded that defendants had waived the privilege by voluntarily putting at issue her mental state, her comprehension of the settlement and Rappaport's alleged failure to explain the settlement agreement to Hazan. Plaintiff's counsel further argued that the majority of Rappaport's testimony would consist of verifying email exchanges that he had with opposing counsel during the course of drafting the settlement agreement and would not be covered by the privilege. Defense counsel responded that defendants were no longer pursuing the issue of Rappaport's representation, that Hazan's affidavit had been withdrawn and that the judge who had been previously presided over the case had "ruled on this." Plaintiff's counsel responded that there was never an order allowing the affidavit to be withdrawn and that this was simply "[defense counsel's] wish." Plaintiff's counsel stated that the affidavit was already evidence in the case and moved that the affidavit be admitted into evidence at the evidentiary hearing. Defense counsel stated that he agreed that the affidavit should be allowed for the limited purpose of impeaching Hazan after she testified, but argued that it should not be allowed in order prove the truth of the statements made therein. The court noted that Hazan had signed and notarized the affidavit and admitted it into evidence over

defense counsel's objection.

¶ 14 The trial court also ruled that the attorney-client privilege had been waived and that Rappaport could testify at the hearing. The court emphasized that its ruling was "interlocutory" and could be reconsidered during the course of Rappaport's testimony.

¶ 15 Rappaport testified that while representing defendants, he engaged in settlement negotiations with plaintiff's counsel. Hazan authorized him to enter into those negotiations and Rappaport would not have done anything regarding an "offer, a demand, a proposal, whatever, to JMB" without first satisfying himself that his client had authorized him to do so. Rappaport verified numerous email and letter correspondences that he had made with plaintiff's counsel regarding settlement negotiations. Rappaport testified that he extended several offers and counteroffers to defense counsel and that in each instance Hazan had authorized him to make those offers. Rappaport further testified that Hazan seemed "perfectly sane, competent and in possession of her faculties all the time that [Rappaport] dealt with her." Rappaport had no personal knowledge of Hazan seeking medical attention at any time after she signed the settlement agreement on March 20, 2008, but he did recall Hazan calling him at some point after the settlement agreement and stating that she went into a mental hospital "for a while."

¶ 16 Plaintiff also called Julia Burnham as a witness. She testified regarding the settlement agreement and the alleged damages incurred by plaintiff.<sup>5</sup> Defendants did not present any witnesses during the May 16, 2011, evidentiary hearing. At the conclusion of that day's hearing,

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<sup>5</sup> Burnham's testimony is not relevant to the issues raised on appeal and therefore is not set forth in this order.

the court set the status conference for June 17, 2011, by agreement of the parties. The court told defense counsel that on that date it wanted an affidavit from a physician treating Hazan if she was "continuing to assert an inability to be here due to a medical reason."

¶ 17 On May 24, 2011, defense counsel filed a motion to withdraw. The status conference was held on June 17, 2011.<sup>6</sup> The court issued a written order following the conference denying defense counsel's motion to withdraw and closing the evidentiary hearing. On August 9, 2011, another attorney filed a substitute appearance as Hazan's counsel. Defendants filed a motion to vacate the June 17, 2011, order and to reopen the hearing. The trial court denied the motion.

¶ 18 The trial court entered its final judgment on October 14, 2011. The court made the following findings of fact. During the evidentiary hearing on May 16, 2011, defense counsel indicated that none of his witnesses were available but the parties agreed to move forward with plaintiff presenting its evidence on that date. The court found Rappaport's testimony at the hearing to be credible. Defense counsel did not present any witnesses at the evidentiary hearing and told the court that he had not personally contacted any of the potential witnesses as of May 16, 2011, but that the witnesses were essential to address the issue of Hazan's health. The court also found that as of the hearing date, defendant had not properly disclosed opinion witnesses and could not make an offer of proof as to what the witnesses would testify to at the hearing. The trial court closed the evidentiary hearing on June 17, 2011, because defendants failed to supply an affidavit from a physician regarding Hazan's inability to be present due to medical

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<sup>6</sup>There is no transcript of the status conference in the record on appeal.



reasons and failed to present any other witnesses.

¶ 19 The trial court also found, as a matter of law, that defendants failed to meet their burden to establish a meritorious defense based on incapacity. The court found that defendants failed to show that Hazan was unable to comprehend the nature of the settlement or that she was unable to protect her interests or those of World of Concepts. To the contrary, the evidence showed that Hazan was "actively involved in both the original negotiations as well as subsequent efforts to renegotiate the settlement after the default." Rappaport's testimony supported the court's finding that defendants failed to prove a lack of capacity to enter a contract by showing that Hazan took "affirmative steps to protect her interests" and showing Hazan's "fitness and good mental health." The court further found that Rappaport had apparent and express authority to make settlement offers on defendants' behalf, that Hazan acquiesced to Rappaport's actions and that Hazan's actions ratified the settlement agreement. Finally, the court noted that a motion for a continuance based upon the illness of a party must be supported by competent medical testimony stating the nature of the illness and the reasons why that party is unable to participate in the trial and that a decisive factor is whether the party seeking the continuance has shown a lack of diligence in proceeding with the cause. The court found that defendants had not shown diligence in following the court's orders and that Hazan had not "provided a sufficient reason for waiting until shortly before the hearing to assert an inability to be present." Moreover, defendants did not provide "any affidavits from competent medical authorities to support an inability to appear despite repeated requests from the Court."

¶ 20 Based upon the above, the court entered judgment on behalf of plaintiff in the amount of

\$300,000, plus attorney fees and costs. The court ordered plaintiff to submit a fee petition and supporting affidavits. Plaintiff submitted a fee petition setting forth its attorney fees and costs totaling \$132,245.60. Attached to the petition was a declaration from one of plaintiff's attorneys in support of the fee petition. That attorney set forth the attorneys who worked on plaintiff's case and the billing rates for those attorneys. Attached to the declaration was an itemization of the time spent by plaintiff's counsel on the case, a description of the work performed on each date and the specific attorney who performed that work. The itemization showed that plaintiff's counsel spent a total of 364 hours on the case and that it billed 333 hours. The itemization also showed that the total fees of plaintiff's counsel was \$140,398, and that counsel billed fees in the amount of \$126,835. Finally, the itemization listed the costs incurred by plaintiff's counsel, \$7,293, and the costs billed to plaintiff, \$5,410. The trial court granted plaintiff's fee petition and awarded it the full amount sought therein, \$132,245.60. This appeal followed.

¶ 21 Defendants first contend that the trial court erred when it allowed defendant's former attorney Rappaport to testify at the evidentiary hearing because his testimony was covered by the attorney-client privilege. Defendants claim that the attorney-client privilege was not waived and that Hazan's affidavit had been withdrawn and cannot support a finding of waiver.

¶ 22 The attorney-client privilege protects confidential communications made by a client to a professional legal advisor where legal advice is sought from that advisor. *Lama v. Preskill*, 353 Ill. App. 3d 300, 305 (2004). The party claiming the attorney-client privilege bears the burden of presenting factual evidence that establishes the privilege. *Pietro v. Marriot Senior Living Services.*, 348 Ill. App. 3d 541, 551 (2004). The privilege is not without conditions and should

be "strictly confined within the narrowest possible limits." *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill. 2d 178, 190 (1991). The protections afforded by the privilege can be waived by the client. *Lama*, 353 Ill. App. 3d at 305. This waiver can be either express or implied. *Id.* The privilege is impliedly waived when the client asserts claims or defenses in the litigation that put his or her communications with the legal advisor at issue. *Lama*, 353 Ill. App. 3d at 305 (citing *Shapo v. Tires 'N Tracks, Inc.*, 336 Ill. App. 3d 387, 394 (2002)). The applicability of the attorney-client privilege is reviewed *de novo*. *Illinois Emcasco Insurance Co. v. Nationwide Mutual Insurance Co.*, 393 Ill. App. 3d 782, 785 (2009).

¶ 23 We initially find that defendants have forfeited their challenge to Rappaport's testimony. Although defendants objected to Rappaport being allowed to testify prior to the evidentiary hearing, the trial court told defense counsel that its decision to allow Rappaport to testify was "interlocutory" and was subject to the court's "obligation as Mr. Rappaport testifies to reconsider any rulings with respect to this." Despite this statement by the court, defendants did not object to any specific testimony that Rappaport gave at the evidentiary hearing. By failing to do so, defendants deprived the trial court of the opportunity to make a ruling as to whether any specific communication was covered by the attorney-client privilege before Rappaport testified to that communication and deprived the court of the chance to make specific findings that this court could review on appeal. We also note that on appeal, defendants do not identify a single communication that Rappaport disclosed during his testimony that was covered by the attorney-client privilege. Instead, defendants raise only the broad contention that Rappaport should not have been allowed to testify. We find that this contention is insufficient to raise the issue and

that defendants have forfeited any challenge to Rappaport's specific testimony on the basis of privilege. See *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988) (to preserve an issue for review, defendant must object to the alleged error at trial and include the issue in a post-trial motion); 210 Ill. 2d 341(h)(7) (A point raised but unsupported by argument or citation to authority is waived).

¶ 24 In light of the above, the only issue before us is the propriety of the trial court's general ruling to allow Rappaport to testify on the ground that the attorney-client privilege had been waived. We find no error in this determination. We initially note that defendants have advanced the use of three tests to determine whether the attorney-client privilege has been waived: the subjective analysis test, the objective analysis test, and the balancing test. Defendants rely on *Dalen v. Ozite*, 230 Ill. App. 3d 18 (1992), as support for applying the aforementioned tests to determine whether the privilege has been waived. However, *Dalen* was issued in 1992 by the Second District of this court and dealt primarily with the work-product doctrine. See *Dalen*, 230 Ill. App. 3d at 27-28. *Dalen* also relied on a federal decision for its use of the three tests because at the time "Illinois courts [had] been silent on the issue." See *Dalen*, 230 Ill. App. 3d at 27. Illinois courts, including the Second District, have more recently applied the express/implied test of waiver instead of the three aforementioned tests when ruling on cases involving attorney-client privilege. See *Lama*, 353 Ill. App. 3d at 305 (citing *Shapo*, 336 Ill. App.3d at 394 (Second District court citing a 2002 First District decision regarding the conditions under which the attorney-client privilege may be impliedly waived). Therefore, we will apply the express/implied waiver test in this case.

¶ 25 Applying the implied waiver test, we find that Hazan's affidavit waived the attorney-client privilege. In the affidavit, Hazan claimed that Rappaport had pressured her to sign the settlement agreement and that he did not explain to her of the terms of the settlement. These claims clearly put defendants' communications with Rappaport during settlement negotiations at issue and thereby waived the privilege. See *Lama*, 353 Ill. App. 3d at 305.

¶ 26 Defendants nevertheless claim that they withdrew the affidavit and that it cannot be considered as a basis for finding the privilege waived. We disagree. First, regardless of whether the affidavit had previously been withdrawn, the trial court admitted the affidavit into evidence at the evidentiary hearing. Second, the record does not support defendants' claim that the affidavit had previously been withdrawn. Although the record does contain the motion to withdraw the affidavit, the record does not contain a written court order allowing the affidavit to be withdrawn, nor does it contain a transcript of proceedings in which the trial court orally allowed the affidavit to be withdrawn. It is the appellant's burden to provide a sufficiently complete record to support a claim of error and, absent such a record, we will resolve any doubts arising from the incompleteness of the record against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Therefore, in this case, we must presume that the trial court did not grant defendant's request to withdraw the affidavit. For both of these reasons, we find that the affidavit can be considered as a basis for concluding that the attorney-client privilege was waived.

¶ 27 Moreover, regardless of the affidavit, the defenses asserted in defendants' response to plaintiff's motion to reinstate raised issues that required an examination of the communications between Hazan and Rappaport. An implied waiver occurs "where a party voluntarily injects

either a factual or legal issue into the case, the truthful resolution of which requires an examination of the confidential communications." *Lama*, 353 Ill. App. 3d at 305. In their response to plaintiff's motion to reinstate, defendants asserted that Hazan had never signed the settlement agreement and that she was mentally incapacitated during the settlement negotiations. Rappaport served as Hazan's counsel during the settlement negotiations and had exclusive knowledge regarding the agreements that his client signed as well as knowledge of her mental state during settlement negotiations. The communications between Rappaport and Hazan were essential to the truthful resolution of defendants' asserted defenses. Therefore, by raising those defenses, defendants waived the attorney-client privilege.

¶ 28 We finally conclude that allowing Rappaport to testify did not change the result of the evidentiary hearing. Rappaport's testimony went to the issue of whether Hazan lacked capacity to execute the settlement. As will be fully explained below, defendants had the burden of establishing a lack of capacity and they offered no evidence to sustain their burden. This alone justifies finding that the trial court's conclusion that defendants failed to establish a lack of capacity was not against the manifest weight of the evidence. Therefore, the admission of Rappaport's testimony in order to rebut defendants' allegation of incapacity was harmless because the result of the hearing would have been the same even if Rappaport had not testified.

¶ 29 Defendants next contend that they met their burden of proving that Hazan lacked the capacity to enter into the settlement agreement. Defendants claim that Hazan's affidavit and a doctor's note written on October 2008 were sufficient evidence to meet this burden and that the trial court's finding to the contrary was against the manifest weight of the evidence.

¶ 30 The burden of proving mental incapacity lies upon the party who seeks to set aside the transaction. *Boswell Memorial Hospital v. Bongiorno*, 314 Ill. App. 3d 620, 622. Persons of mature age are presumed to be competent. *In re Estate of Gruske*, 179 Ill. App. 3d 675, 678 (1989). To substantiate an incapacity defense based upon an alleged mental disorder, defendants in this case had the burden of proving that the mental disorder rendered Hazan incapable of comprehending the nature of the settlement and of protecting defendants' interests. See *Estate of Gruske*, 179 Ill. App. 3d at 678; *Matter of Estate of Rohrer*, 269 Ill. App. 3d 531, 538 (1995). A trial court's findings on this issue should not be disturbed unless they are against the manifest weight of the evidence. See *Estate of Gruske*, 179 Ill. App. 3d at 678. A trial court's finding is against the manifest weight of the evidence "only if the opposite conclusion is clearly evident." *Gambino v. Boulevard. Mortgage. Corp.*, 398 Ill. App. 3d 21, 53 (2009).

¶ 31 We find that defendants did not meet their burden of proving that Hazan lacked capacity to execute the settlement. Hazan did not testify at the evidentiary hearing and defendants did not present any other witnesses at the hearing.

¶ 32 Defendants claim that Hazan's affidavit and a 2008 doctor's note were sufficient to meet their burden of proof. In her affidavit, Hazan made claims that she had been having psychological problems since early 2008. However, the trial court clearly did not find that affidavit to be credible or competent evidence and instead wanted Hazan to testify at the evidentiary hearing and be subject to cross-examination. We find no error in the court's determination given that Hazan never submitted a physician's affidavit to support her claim that she was unable to testify at the evidentiary hearing, that the affidavit was hearsay and that

Rappaport's testimony contradicted Hazan's allegations. See 3 Am. Jur. 2d, Affidavits §19 ("An affidavit is ordinarily not admissible to prove facts in issue at an evidentiary hearing, because it is not subject to cross examination and would improperly shift the burden of proof to the adverse party"); IL Rule of Evidence 801(c) (defining hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). Accordingly, Hazan's affidavit was insufficient to sustain defendants' burden of establishing a lack of capacity.

¶ 33 Hazan's affidavit referenced a note allegedly written by a doctor in October 2008, which defendants argue is evidence that supports their claim of mental incapacity. That note stated that "Ms. Hazan is currently a patient at the Jewish General Hospital and psychiatric specialty clinic. She is currently undergoing treatment and as a result requires that she remain in Montreal, Canada for the time being." The note was vague and did not identify any particular psychological problems that would constitute incapacity. More importantly, the alleged physician who wrote that note did not submit an affidavit, submit to a deposition or testify at the evidentiary hearing to support Hazan's claims and authenticate the note. Lack of authentication aside, and most importantly, the note is a hearsay document and not admissible to prove the truth of the matters asserted therein. See IL Rule of Evidence 801(c). Additionally, the note was written on October 28, 2008, and Hazan signed the settlement agreement on March 20, 2008. The note was therefore written over seven months after the end of settlement negotiations and was too remote in time to establish Hazan's mental state at the time that she signed the agreement. See C.J.S., Contracts § 141 (the mental incapacity, or unsoundness of mind, that affects the validity



of a contract must be of the time at which the transaction occurs, regardless of previous or subsequent insanity).

¶ 34 In light of the above, we conclude that defendants did not submit any competent evidence to meet their burden of establishing Hazan's lack of capacity to contract. Accordingly, the trial court's finding that defendants failed to establish a meritorious defense based on incapacity was not against the manifest weight of the evidence.

¶ 35 Defendants next contend that the trial court abused its discretion by not continuing the evidentiary hearing after defendants failed to produce a physician's affidavit at the June 17, 2011, status conference.

¶ 36 A continuance based upon the illness of a party "must be supported by competent medical testimony stating the nature of the illness and the reasons why the party is unable to attend or participate in the trial." *In re Marriage of Gallagher*, 256 Ill. App.3d 439, 442 (1993). The granting or denial of a continuance rests "within the sound discretion of the trial court, and a reviewing court should not interfere with the exercise of that discretion unless there has been a manifest abuse of such discretion " *Lipke v. Celotex Corp.*, 153 Ill. App. 3d 498, 510 (1987). An abuse of discretion occurs when the court's ruling is arbitrary, fanciful or unreasonable or where no reasonable person would adopt the court's view. *TruServ Corp. v. Ernst & Young LLP*, 376 Ill. App. 3d 218, 227 (2007).

¶ 37 We find that the trial court did not abuse its discretion when it closed the evidentiary hearing. The court gave defendants numerous opportunities to submit a proper medical affidavit in order to excuse Hazan's absence from the proceedings but defendants never produced such an

affidavit. Throughout the course of the proceedings, defendants filed numerous motions to continue Hazan's deposition as well as the evidentiary hearing. The broad range of alleged reasons for the continuances included defense counsel's "planned family trip," witnesses at Hazan's deposition that made her feel uncomfortable and physical and mental health emergencies. The trial court granted all but one of these motions and repeatedly continued Hazan's deposition, which was never completed, and the evidentiary hearing. The evidentiary hearing had finally been set for May 16, 2011, and on the last business day before the hearing was to begin defendants presented an emergency motion to continue the hearing on the basis that Hazan was allegedly in Canada receiving treatment for a gastrointestinal problem. The court denied the motion and stated that there had been a lot of "malingering in this case, situations where people don't show up, situations where people storm out of depositions." The court observed that it had been "difficult to get a deposition of [Hazan] in the case for a variety of reasons, not gastro-related, but supposedly psychological, supposedly claustrophobic, supposedly this, supposedly that." The court continued that it had "serious questions about the veracity of this based on the history of the case and the conduct of [Hazan] in the case."

¶ 38 Despite the trial court's doubts as to the veracity of Hazan's various medical conditions, the court nevertheless allowed the evidentiary hearing to go forward on May 16 without Hazan's attendance and continued the issue of how to obtain Hazan's testimony for another time. At the end of the evidentiary hearing on May 16, the court set a status date of June 17, 2011, to determine possible methods of obtaining Hazan's testimony. The court then explicitly told defense counsel that it wanted an affidavit "from a physician if [Hazan was] continuing to assert

an inability to be here due to a medical condition." Nevertheless, when the parties appeared in court on June 17, defense counsel did not provide the required affidavit and the court therefore closed the evidentiary hearing. Even two months later, when defendant's new counsel filed an emergency motion to reopen the evidentiary hearing, that motion was not supported by an affidavit from a physician. The court denied that motion but granted additional time for Hazan to file a post-trial brief. That brief was filed but was also unsupported by an affidavit from a physician.

¶ 39 This record shows that the trial court made every effort to accommodate Hazan's alleged medical conditions and to obtain her testimony in order to resolve the case on the merits. Despite the court's efforts and repeated orders to provide an affidavit from a physician, defendants never provided the court with the required affidavit in order to substantiate Hazan's reasons for being unable to complete a deposition or testify at the evidentiary hearing. In addition to having the discretion as to whether to grant a continuance, the court also has the inherent authority to control its docket in order to prevent undue delays in the disposition of cases caused by abuses of the litigation process. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 65. In its order entering judgment in favor of plaintiff, the trial court specifically found that defendants had not shown diligence in following the court's orders. In light of defendants' failure to provide the required affidavit and the court's inherent authority, we find that the trial court did not abuse its discretion by closing the evidentiary hearing.

¶ 40 Defendants nevertheless argue that defense counsel's motion to withdraw as Hazan's attorney was an indication of a breakdown in communications between the two that might

explain why Hazan failed to produce a physician's affidavit at the June 17, 2011 status conference. Defendants essentially suggest that counsel never told Hazan about the required affidavit and that she therefore did not have notice of its necessity. We find no merit in this argument. At the conclusion of the evidentiary hearing on May 16, the court told defense counsel that it was wanted an affidavit from a physician when the parties appeared for the status hearing on June 17. Notice to an attorney "constitutes notice to the client and knowledge of an attorney is knowledge of, or imputed to the client, notwithstanding whether the attorney has actually communicated such knowledge to the client" *Segal v. Department of Insurance*, 404 Ill. App. 3d 998, 1002 (2010). We further note that defense counsel's motion to withdraw was filed after the May 16 evidentiary hearing and that motion was denied on June 17, 2011. Therefore, that attorney was counsel from the date that the court ordered the affidavit to be supplied through the date of the status conference. We therefore find that Hazan had notice of the need to supply a physician's affidavit.

¶ 41 Defendants further claim that the trial court abused its discretion by closing the evidence because it did not explicitly warn defense counsel that it would do so if defendants did not provide a physician's affidavit at the June 17, 2011 status conference. This claim is not supported by the record. The only reason the evidentiary hearing was not closed on May 16 was that the trial court wanted Hazan to testify. The court therefore ordered that the issue of how Hazan would testify would be resolved at the status conference on June 17. The court also ordered defense counsel to bring a physician's affidavit to the status conference if Hazan was going to continue to assert that she could not appear and provide testimony. We find that the trial court's

statements and orders gave clear notice to defendants that the court would close the evidentiary hearing if an affidavit was not produced at the status conference.

¶ 42 Defendants final contention is that the attorney fees that the trial court awarded to plaintiff were excessive.

¶ 43 A trial court has broad discretionary powers in awarding attorney fees sought in fee petition cases because "the trial judge's familiarity with the underlying litigation allows him to independently assess the necessity and reasonableness of the legal services rendered." *Wildman, Harrold, Allen and Dixon v. Gaylord*, 317 Ill. App. 3d 590, 595 (2000). A party seeking to recover attorney fees from another party bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness. *Mars v. Priester*, 205 Ill. App. 3d 1060, 1064 (1990). A petition for fees must be supported by detailed records containing facts and computations upon which the charges are predicted, specifying the services performed, by whom they were performed, the time expended and the hourly rate charged. *Harris Trust and Savings Bank v. American National Bank and Trust Co. of Chicago*, 230 Ill. App. 3d 591, 596 (1992). Once presented with this information, the trial court should consider a variety of other factors, including the skill 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 similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation. *Id.* The trial court's determination as to the reasonableness of attorney fees and related costs will not be disturbed absent an abuse of discretion. *Id.*

¶ 44 In this case, plaintiffs submitted a fee petition that was accompanied by a declaration from one of plaintiff's attorneys that set forth the attorneys who worked on plaintiff's case and the billing rates for those attorneys. Attached to the declaration was a detailed itemization of the time spent by each attorney on plaintiff's case and a description of the work performed. The trial court considered all of this information as well as the arguments made by defendants in opposition to the fee petition and ultimately found that the attorney fees sought were reasonable. The trial court was in the best position to make this determination and we find no basis in the record to reverse the court's judgment. See *In re Marriage of Norris*, 252 Ill. App. 3d 230, 238 (1992) ("the trial court reviewed the material submitted by petitioner's attorney and was in the best position to determine the reasonableness of a fee award"). Accordingly, the court's award of attorney fees and costs was not an abuse of discretion.

¶ 45 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 46 Affirmed.