2012 IL App (2d) 110121-U
Nos. 2-11-0121, 2-11-0314, 2-11-0978 cons.
Order filed November 8, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF DONALD E. SUSMAN, Deceased	)	Appeal from the Circuit Court of Lake County.
	)	
	)	Nos. 08-P-725
	)	09-CH-3765
(Kathy A. Drennan, as Independent Executor of the Estate of Donald E. Susman, Deceased, Plaintiff-Appellee, v. Robert Susman and Susman Linoleum and Rug Company, Inc., Defendants-Appellants; North Star Trust Company, Defendant).	)	10-CH-1479
	)	
	)	
	)	Honorable
	)	Diane E. Winter,
	)	Judge, Presiding.

In re ESTATE OF DONALD E. SUSMAN, Deceased	)	Appeal from the Circuit Court of Lake County.
	)	
	)	Nos. 08-P-725
	)	09-CH-3765
(Kathy A. Drennan, as Independent Executor of the Estate of Donald E. Susman, Deceased, Petitioner-Appellee, v. Robert Susman, Contemnor-Appellant; Susman Linoleum and Rug Company, Inc. and North Star Trust Company, Defendants).	)	10-CH-1479
	)	
	)	
	)	Honorable
	)	Diane E. Winter,
	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: In appeal No. 2-11-0978 (*Susman III*), the trial court did not err in: (1) denying defendants' request to stay the circuit court proceedings during the pendency of *Susman I*, where the court's grant of partial summary judgment in the first appeal (No. 2-11-0121, *Susman I*) was a final order as to the particular claims ruled on and where the remaining claims were not so interrelated with the claims on appeal such that they were dependent on each other; or in (2) denying defendants' motion to vacate the parties' settlement agreement, where, assuming without deciding that an alleged IRPC Rule 8.4(g) violation can form the basis for invalidating a settlement agreement and that such alleged violation can be based in part upon one's own attorney's comments, the court's credibility determinations were not against the manifest weight of the evidence and where the court did not err in denying defendants' request to present a rebuttal witness. Given that we affirm the judgment in *Susman III* and that there are no remaining controversies, appeal Nos. 2-11-0121 (*Susman I*) and 2-11-0314 (*Susman II*) are dismissed as moot.

¶ 2 Following Donald E. Susman's death, disputes arose concerning the appropriate disposition of his ownership interest in the family business and of the real property (held in a land trust) upon which the business is located. These consolidated appeals followed. For the following reasons, we affirm the third appeal, No. 2-11-0978 (*Susman III*, concerning defendants' requests to stay the trial court proceedings and their motion to vacate the settlement agreement), and dismiss as moot appeal Nos. 2-11-0121 (*Susman I*, concerning the land trust) and 2-11-0314 (*Susman II*, concerning a contempt order).

¶ 3 I. BACKGROUND

¶ 4 A. Procedural History

¶ 5 Donald E. Susman died in 2008. At the time of his death, Donald and his brother, defendant Robert Susman, owned equal shares in the family business, Susman Linoleum and Rug Company, Inc. Susman Linoleum is located on real property in Gurnee that is held in a land trust and of which defendant North Star Trust Company is the successor land trustee. The land trust (No. 1570) was created by Matt and Angeline Susman, Donald's parents, in 1961. Matt and Angeline were the

initial beneficiaries under the trust. The trust provided that, upon their deaths, their beneficiary interests in the trust would pass to two of their children, Donald and Robert Susman. Matt passed away in 1996, and Angeline died in 2001.

¶ 6 Subsequent to Donald's death in 2008, plaintiff, Kathy A. Drennan, the executor of Donald's estate, requested that North Star distribute one-half of the trust property, but received no response. Thereafter, plaintiff sued North Star. After being served with process, North Star issued a trustee's deed that conveyed an undivided one-half interest in the trust property to plaintiff. That deed was recorded on March 20, 2009. North Star subsequently confessed error (because the conveyance was made without Robert's consent), and the transfer gave rise to two consolidated chancery proceedings (not relevant to these appeals), which were consolidated with the probate action (case No. 08-P-725) that is the subject of these consolidated appeals.[1]

¶ 7 As to the probate action, in an October 1, 2009, amended, six-count complaint, plaintiff raised claims for breach of contract, *i.e.*, a shareholder agreement, (count I, against Robert, individually), specific performance of a shareholder agreement that governed the Susman Linoleum shares owned by Donald and Robert (count II, against Robert, individually),[2] dissolution of the corporation (805 ILCS 5/12 (West 2008)) (count III), unjust enrichment for rent for use of the land on which Susman Linoleum is located (count IV, against Susman Linoleum), partition and sale of

[1]Specifically, in chancery case No. 09-CH-3765, Robert and Susman Linoleum sued North Star to quiet title and for damages for slander of title. In chancery case No. 10-CH-1479, North Star sued to quiet title.

[2]The shareholder agreement provided that, upon the death of either Donald or Robert, the surviving party would purchase the stock from the decedent's estate.

land (735 ILCS 5/17-101 (West 2008)) (count V), and (in the alternative to count V) dissolution of the land trust and a judicial sale (count VI). The parties' dispute focused on two issues: (1) the appropriate disposition of the real property held in the land trust and upon which Susman Linoleum is located; and (2) management of Susman Linoleum (equally owned by Donald and Robert) and the appropriate disposition of Donald's ownership interest in the business. The dispute over the disposition of Donald's shares in the business involved additional disputes over its assets (the business was estimated to be worth about $1 million, $800,000 of which consisted of cash and securities) and plaintiff's concern that Robert might attempt to take Susman Linoleum assets for his personal benefit (including payment of personal legal fees). The trial court entered an order on May 21, 2009, directing that Robert and Susman Linoleum refrain from making any payments from company assets absent court order and after proper notice other than payments in the ordinary course of business.

¶ 8 On March 26, 2010, plaintiff moved for partial summary judgment (as to count V or, in the alternative, count VI). As to count V, plaintiff argued that she possessed an undivided one-half interest in the trust property; that no joint consent existed to continue the trust; that Robert refused to purchase the estate's interest in the property or cooperate in selling the interest to a third party; and that plaintiff was entitled to a partition and sale of the trust property. In the alternative, plaintiff argued as to count VI that she and Robert did not share a common purpose for the trust property (where she was obligated to liquidate and distribute estate assets to Donald's legatees so as to close his estate, and where Robert sought to use the property for Susman Linoleum). The Susman defendants (Robert and Susman Linoleum) filed a cross-motion for partial summary judgment (as to counts V and VI).

¶ 9 On January 6, 2011, the trial court granted plaintiff summary judgment on count VI of her amended complaint and denied all other such motions. The court found that the land trust was created on May 20, 1961, specified a fixed duration of 20 years, and did not state that a purpose or objective was to maintain property for a particular use or business. The court further found that there were no amendments to the land trust agreement, that the trust expired, and that no purpose was identified within the trust that remained unfulfilled. The trial court ordered termination of the trust and a judicial sale, but it reserved a date for the judicial sale pending trial on the remaining causes of action.

¶ 10 On January 31, 2011, the Susman defendants appealed the January 6, 2011, order (appeal No. 2-11-0121, *Susman I*, involving the land trust). They also moved to suspend trial and discovery, pending resolution of the *Susman I* appeal. On February 7, 2011, the Susman defendants filed a postjudgment motion to vacate the January 6, 2011, order. On February 14, 2011, defendants filed a second motion in the trial court, asking the court to stay the proceedings as to the land trust, pending the *Susman I* appeal. On February 17, 2011, the Susman defendants filed an amended notice of appeal, specifying that appeal was taken pursuant to Illinois Supreme Court Rules 303 (eff. May 30, 2008) (appeals from final judgments in civil cases) and 304(b)(1) (eff. Feb. 26, 2010) (final judgments as to fewer than all parties or claims appealable without a special finding; judgment or order entered in the administration of an estate "which finally determines a right or status of a party"). Following a hearing, the trial court, on February 24, 2011, denied the Susman defendants' postjudgment motion and its motions seeking to stay the trial court proceedings. The court noted in its written order that, if plaintiff sought in this court to dismiss the appeal in *Susman I* and if this court denied plaintiff's motion, the Susman defendants "are granted leave to move to reconsider the

denial of a stay pending appeal." At the hearing, the court noted that its January 6, 2011, order was not a final order because it did not finally determine the right or status of any party and that there was in the order a reservation of a judicial sale. However, the court noted that it would reconsider its findings if this court denied the motion to dismiss the appeal: "you may certainly file the motion to reconsider and I'll reconsider this finding."

¶ 11 Also on February 24, 2011, the court adjudged Robert in indirect civil contempt and ordered him to segregate and freeze $73,000 of Susman Linoleum assets. Robert moved to vacate the order, and, on March 24, 2011, the trial court denied his motion. The court continued sentencing to April 7, 2011. On March 28, 2011, Robert filed a notice of appeal of the contempt finding (appeal No. 2-11-0314, *Susman II*).

¶ 12 On March 30, 2011, plaintiff filed in this court a motion to dismiss the appeal in *Susman I*, arguing that the trial court's January 6, 2011, order was not a final and appealable order under Rules 303 or 304(b)(1).

¶ 13 On April 12, 2011, defendants filed *instanter* a renewed motion to stay the proceedings as to the land trust, noting that a motion to dismiss the appeal had been filed in this court; however, they did not present any argument on the motion to the court that day. Also on this date, the parties convened for trial on the remaining counts of plaintiff's complaint. However, before trial commenced, the parties entered into a purported settlement agreement (discussed below).

¶ 14 On May 11, 2011, this court denied plaintiff's motion to dismiss the appeal in *Susman I*.

¶ 15 On May 12, 2011, the Susman defendants moved to vacate the settlement agreement order, arguing that: (1) the court lacked jurisdiction; (2) the attorneys involved coerced the purported settlement through violations of Rule 8.4(g) of the Illinois Rules of Professional Conduct (IRPC) (Ill.

Rs. Prof'l Conduct R. 8.4(g) (eff. Jan. 1, 2010) (presenting, participating in presenting, or threatening "to present criminal or professional disciplinary charges to obtain an advantage in a civil matter")); and (3) the purported agreement was obtained through fraudulent misrepresentation, duress, and coercion and was unconscionable. On May 17, 2011, the Susman defendants moved for reconsideration of the trial court's February 24, 2011, order that denied staying the proceedings, arguing that the trial court lacked jurisdiction to render rulings as to the trust property because this court had asserted jurisdiction over the appeal and, they asserted, (implicitly) found that the January 6, 2011, order was a final order.

¶ 16 In July and August 2011, the trial court heard testimony on the Susman defendants' motions to vacate and reconsider (and for which defendants filed a combined memorandum). Subsequent to plaintiff's case-in-chief, it denied the Susman defendants' request to continue the hearing to present a rebuttal witness. On July 19, 2011, the court denied defendants' motion to reconsider, finding that the remaining issues in the trial court were separate from those on appeal in *Susman I* and that it had jurisdiction over the remaining issues. On September 9, 2011, the trial court denied the motion to vacate the settlement agreement order. Defendants filed an emergency motion to reconsider and vacate the court's September 9, 2011, order and to re-open proofs, which the court denied on September 26, 2011.

¶ 17 On September 27, 2011, Robert filed a notice of appeal of the April 12, 2011, order as well as all other orders in the probate action (appeal No. 2-11-0978, *Susman III*).

¶ 18 B. Settlement Agreement

¶ 19 As noted above, on April 12, 2011, the parties convened for trial on the remaining counts (*i.e.*, counts I through IV) of plaintiff's complaint. However, rather than proceeding to trial, the

parties engaged in settlement negotiations and entered into a settlement agreement. The settlement agreement, incorporated into an agreed order, provided that: (1) the parties shall market the trust property for sale; (2) Robert purchase the estate's stock in Susman Linoleum for $650,000; (3) that the Susman defendants shall dismiss all appeals; (4) Susman Linoleum shall continue to occupy the premises until any sale and during that time pay, in lieu of any rent, the real estate taxes, insurance, maintenance, and utilities; and (5) no parties shall file any petitions for attorney fees against the Susman defendants. Further, in the agreed order, the trial court noted that it retained jurisdiction to enforce the agreement, that the findings of contempt against Robert were stricken, and that all trial dates were stricken.

¶ 20 On May 12, 2011, the Susman defendants moved to vacate the settlement agreement order, arguing, *inter alia*, that the attorneys involved coerced the purported settlement through violations of IRPC Rule 8.4(g); that the purported agreement was obtained through fraudulent misrepresentation, duress, and coercion and was unconscionable; and that the trial court lacked jurisdiction to enter the order because the appellate court had asserted jurisdiction over *Susman I*. Attached to the motion were affidavits from Robert, Derrick Noble (Susman Linoleum's store manager), and Dr. Joseph Olinger (Robert's physician). Specifically, defendants alleged that plaintiff's attorneys suggested during the settlement negotiations that Robert should settle the case because his daughter, attorney Barbara Susman, had violated the IRPC. They argued that the comments constituted violations of IRPC Rule 8.4(g). Defendants further alleged that an attorney or attorneys in this case has/had filed complaints against Barbara and that "the logical implication" of raising the attorney disciplinary issue as to Barbara was that, if defendants settled the case, plaintiff's counsel would "rescind their [disciplinary] grievances against" Barbara. Such threats,

according to defendants, were *per se* violations of IRPC Rule 8.4(g) and, accordingly, the settlement agreement is void.

¶ 21 On June 6, 2011, defendants filed a combined memorandum in support of their motions to vacate (the settlement order) and reconsider (the denial of their stay requests). As relevant to *Susman III*, defendants alleged attorney misconduct at the settlement conference. Defendants retained as an expert Mary Robinson, a former administrator of the Illinois Attorney Registration and Disciplinary Commission (ARDC). Robinson opined that Robert's and Noble's averments raised a concern about a violation of Rule 8.4(g). She further opined that a threat related to a pending grievance is potentially more abusive because of the implication behind the threat that the attorney may be able to influence the outcome (*i.e.*, a grievance cannot be withdrawn; therefore, any implication that an attorney can influence the process is patently false). Defendants further noted that Robinson opined that it was significant that the threat was made to a layperson, who may not have the experience and knowledge of an attorney as to disciplinary commission threats or understand whether charges may result in stringent disciplinary action. Robinson opined that the alleged charges were, according to defendants, "on the low end of the spectrum" and that disbarment was not an option if the charges were valid.

¶ 22 On July 19, and August 25, 2011, the court held an evidentiary hearing on defendant's motion to vacate. Defendants called Dr. Olinger, Noble, Robinson, and Robert.

¶ 23 Dr. Olinger, Robert's treating physician, testified that Robert suffers from hypertension and takes medications for the condition, as he did during the time in question. According to Dr. Olinger, he saw Robert and Barbara on May 12, 2011. The purpose of their office visit was to tell Dr. Olinger about a hypertensive episode on April 12, 2011, and to request an opinion letter. They reported that

Robert had, on April 12, 2011, a flushed face, mouth quiver and/or drool, and some anxiety-driven shortness of breath. Dr. Olinger testified that drooling, gasping for breath, and wheezing are not typical presentations for hypertensive episodes. However, Dr. Olinger opined that Robert's cognitive state was altered by stress and probable blood pressure elevation and medication.

¶ 24 Derrick Noble, Susman Linoleum's store manager, testified that he has worked at Susman Linoleum for six years and has known Robert for that long. He was present at most of the settlement discussions on April 12, 2011. Noble arrived at the courthouse on that date between 11:45 a.m. and noon. Mitchell Iseberg (one of Robert's attorneys) arrived at 12:10 p.m. Noble was at the courthouse for about 2 1/2 hours. He is aware that Robert suffers from high blood pressure and can note from Robert's appearance when he is suffering undue stress from his condition. Noble testified that he has observed Robert have three or four previous high-blood-pressure episodes. During the episodes, Robert's face turns red and he sweats, drools, and gasps for air. In the past, Noble has either taken Robert to the hospital or to the doctor.

¶ 25 Noble further testified that, during the negotiations, while in a conference room, attorney Iseberg told Robert and Noble that plaintiff wanted $650,000 (for the estate's interest in Susman Linoleum) to settle, stated that he believed it was a good offer, and then stated that there were "egregious charges against Barbara in this case and settling it [for $650,000] can assist with making, could assist with making the charges go away." Noble further testified that Iseberg stated that Barbara (who represented Susman Linoleum) could possibly lose her law license due to the charges. Noble could not recall if Barbara was present when Iseberg spoke to Robert. Immediately after Iseberg mentioned the charges, it appeared to Noble that Robert began having a high-blood-pressure episode. He gasped for air, his face turned red, he was sweating, and he pounded his fists on the

desk. When these episodes occur, Robert is not in the right state of mind. Noble removed Robert from the conference room and attempted to calm him down in the hallway. Two-to-three minutes later, attorney Santi, who represented Donald's children, approached them (Noble and Robert were alone, according to Noble) and stated that the $50,000 difference (defendants had offered $600,000) could be paid later. He also repeated that there were serious charges against Barbara. Noble testified that Robert began repeating "we got to help her, we got to help her;" however, Noble acknowledged that he did not mention this in his affidavit. Also, Noble did not mention to anyone else the conversation with Santi. That day, Noble did not call Robert's doctor or take Robert to the hospital. Noble told Robert that he should go to trial; he did not favor a settlement: "[w]hen I saw the settlement going through at the tail end I walked out." In his affidavit, Noble stated that he believed that the threats against Barbara prevented Robert from comprehending the consequences of agreeing to the terms of the settlement agreement.

¶ 26 Robinson testified as an expert that she served as the administrator of the ARDC from 1992 through 2007. In forming her opinions, Robinson relied on Robert's and Noble's affidavits, as well as Noble's testimony. Addressing first the hallway conversation where Santi allegedly approached Robert and Noble, Robinson opined that it violated Rule 8.4(g). Addressing second the conversation with Iseberg, she opined that, if his reference to the ARDC charges against Barbara were made in the context of where he was only repeating what someone else said, she is unsure if Iseberg violated the rule. She continued, "But I would say that what happened there is exactly what the rule is intended to prevent. That part I feel very strongly about. It's exactly what the rule is supposed to prevent." However, Robinson testified that, if Iseberg were trying to persuade Robert to settle, then he violated the rule. She explained that it is immaterial who (*i.e.*, which side in a dispute) brings up

disciplinary issues; there is still a violation. "It is impermissible to present, participate in presenting or threaten to present professional disciplinary charges period to obtain, in order to get leverage in a civil case." According to Robinson, the charges against Barbara were not severe and would not result in disbarment, censure, or suspension. Robinson further explained that, once a complaint is filed with the ARDC, only the commission can choose whether or not to proceed with it.

¶ 27 Robert testified that both Iseberg and Santi brought up the subject of Barbara and the ARDC. Robert stated that he entered into the settlement agreement only because he received the information about Barbara's ARDC charges, of which he was previously unaware, and that he would have done anything to save her from losing her law license. Robert initially intended to go to trial that day. Robert agreed with Noble's testimony concerning Iseberg's and Santi's comments. According to Robert, Iseberg told him at about 3 p.m. (negotiations did not conclude until 5:30 p.m.) that "they have something on Barbara and Barbara will lose her license." (He later testified that Iseberg stated that Barbara "may" lose her license.) Iseberg made this statement more than two times. Robert further testified that neither attorney Michael Danian (Robert's other attorney), nor Barbara were present when Iseberg discussed the settlement. In the hallway close to the same time as his conversation with Iseberg, Santi came over to Robert and Noble; he knelt and told Robert that Barbara had some issues (for lapsing on a payment to the ARDC) with the ARDC and that, if the case is not settled, she will lose her license. The conversation with Santi, who was once a judge, changed Robert's mind and convinced him to settle the case. Prior to entering into the settlement agreement, Robert did not discuss with his attorneys, including Barbara, the conversations with Iseberg and Santi. Barbara and Danian advised Robert against settling the case.

¶ 28 During her case-in-chief, plaintiff called Iseberg and Santi and testified on her own behalf. Plaintiff testified that the only time the ARDC came up in conversation that day was when, at about 1 p.m. while plaintiff, Fredric Lesser (Donald's wife's attorney), Santi, Thomas Pasquesi (plaintiff's attorney), and an associate of Pasquesi's named Corey Minnihan were in a conference room, Iseberg came in and mentioned the ARDC charges against Barbara. Lesser responded that the charges had nothing to do with plaintiff's case and "that we were not to bring that up for any reason, had nothing to do with the settlement or the Court case." Iseberg left the room. Plaintiff further testified that she was present at the courthouse from 1 to 5:30 p.m. on April 12, 2011. At no time that day did she observe Robert to have a flushed face, sweating, drooling, gasping for air, or pounding his fist on a table; nor did she observe any behavior that made her believe that Robert was ill. Robert initially objected to signing the settlement agreement, but, after the court advised him that trial would commence the next day if he did not sign it, Robert stated that "I want this over." He also stated that "if he had to[,] he would buy it [*i.e.*, the stock] out of his own money."

¶ 29 Iseberg testified that he raised the issue of the ARDC charges against Barbara during settlement negotiations; however, he denied telling Robert that, if he did not settle the case, Barbara would lose her law license or that the charges were "egregious." The charges, which were not severe and would not, in Iseberg's view, result in her losing her license to practice law, related to complaints alleging that Barbara had filed excessive motions for reconsideration. At about 1 p.m., Iseberg stated to Robert that he "was hoping that if we could get this case settled which I was pressing for that we could, hopefully everything would go away including the ARDC complaints against his daughter." He further testified that:

> "I initiated the call or the mention of the ARDC, not them. It was, in substance what I said before, that it would get this case resolved. I expect to report and there was a caveat before I mentioned that, we said and we all understand the rules of the ARDC and this can not be a part of this discussion but if we do get this case resolved I expect that, you know, we will report that we resolved all the matters to the ARDC and I would expect that they would not pursue it vigorously thereafter.
>
> And I initiated that conversation. And then everybody repeated, yes, we can't discuss it, and we will leave it alone."

According to Iseberg, while he was speaking with Robert and Noble in the hallway at about 3 or 4 p.m., he motioned for Santi to approach them to explain plaintiff's demand for an additional $50,000. Iseberg, Robert, and Noble were seated, and Barbara was not present. Santi's clients (*i.e.*, Donald's children) had requested an additional $50,000 to settle because of alleged unnecessary attorney fees. He motioned for Santi to approach because he wanted Santi to explain the request to Robert. According to Iseberg, the conversation lasted about 10 to 15 minutes. Santi, kneeling, did not mention the ARDC, but did mention Barbara, stating that she had caused delay in the case by filing frivolous motions that caused them to expend over $100,000 in needless attorney fees for which they wanted to be compensated and that Pasquesi had filed a complaint against Barbara, raising a fee claim under Supreme Court Rule 137 (eff. Feb. 1, 1994) for allegedly frivolous pleadings.

¶ 30 Iseberg conceded that he is aware that ARDC complaints are within the agency's control; however, he stated that lawyers can advise the agency that all matters between the parties have been resolved and settled. Addressing the significance of his conversation with Robert about the ARDC,

Iseberg testified that his focus was to do what was best for Robert, his client. "And I had always felt the best thing to do was to settle the case in the best terms we could." The ARDC issue was "[l]ess than minor," and a settlement would assist in the ARDC issue "going away or not being pursued more vigorously."

¶ 31 Santi, Donald's children's attorney, denied mentioning the ARDC that day to Robert. He testified that Barbara *was* present for his conversation with Robert and that it was *she* who waived him over. Barbara was next to Robert, and Iseberg "was in the vicinity." Robert initiated the conversation (about the settlement agreement), and Santi, kneeling, told him that it was improper for him to speak to him without his attorney being present. Barbara then interjected that, even though she did not represent Robert, she had spoken to her father and advised him to speak with Santi. (Iseberg was present, and, although it was unclear who represented whom, Santi believed that Iseberg represented Susman Linoleum.) Addressing the $50,000, Santi first testified that defendants' valuation of the land was $900,000 and that plaintiff's was $1.6 million and the $600,000-versus-$650,000 concerned negotiations about the divergent appraisals. After being asked if the numbers to which he was referring were instead related to potential Rule 137 fee claims, Santi then testified that the additional $50,000 actually represented a settlement concerning alleged Rule 137 violations and that the discussion lasted "just a few moments." "I felt it was a great deal for him to have negotiated a settlement where he was contributing only $50,000 where it [*i.e.*, the estate's attorney fees] could be in excess of $200,000." This was the only conversation Santi had with Robert that day. Santi further testified that he told Robert that "they" could be sanctioned by the court for filing frivolous pleadings; he did *not* specifically mentioned Barbara.

¶ 32 Michael Danian testified that he (along with Iseberg) represented Robert. He heard no mention of the ARDC that day, nor was he present when Iseberg spoke with Robert.

¶ 33 At the end of plaintiff's case-in-chief, defendants requested that the court continue the hearing so that they could call a rebuttal witness. They alleged that attorney Mary Bluma, a contract attorney for Barbara, was another witness to the hallway conversation between Robert and Santi. Lesser (Donald's wife's attorney) and Pasquesi (plaintiff's attorney) argued that these allegations were unsupported in the record, including Robert's and Noble's affidavits, defendants' motion to vacate, and Noble's, Iseberg's, and Santi's testimony. The trial court denied defendants' request, noting that Robert did not testify that Bluma was present for the conversation and that "plenty" of witnesses had testified as to the conversation.

¶ 34 On September 9, 2011, the trial court denied defendants' motion to vacate the settlement agreement order. The court found that no one violated Rule 8.4(g) on the day the settlement agreement was entered into. The court found Iseberg and Santi credible and Robert and Noble incredible. It noted that it gave little weight to Robinson's testimony because it was based on Robert's and Noble's affidavits, which were not credible. The court also gave little weight to Dr. Olinger's opinions because they were based upon unproven (unreported) facts and were unpersuasive. The court further determined that there was no competent evidence that Robert suffered a hypertensive episode that caused cognitive impairment such that he could not comprehend the settlement agreement. The court noted that Iseberg testified that he told Robert only that " 'no lawyer needs an ARDC complaint against them; it's not good for business; settlement would diminish the effect of the ARDC complaint and help it go away.' " It found that, during the negotiations that afternoon, Robert did not mention his concerns about Barbara's charges to either

Barbara or his other counsel, Danian. Further, the court found that Iseberg mentioned the ARDC proceedings briefly at 1 p.m. and that Robert signed the settlement agreement at 5 p.m. when the court advised him that trial court would begin the next day; therefore, "Iseberg's comments were not a factor in the decision to settle and do not represent a valid basis upon which to vacate the settlement agreement."

¶ 35 Defendants moved, in an emergency motion, to reconsider and vacate the court's order and to re-open proofs. In an attached affidavit, Bluma averred that she was present at the Lake County courthouse on April 12, 2011, and observed certain communications between the parties, including one in the hallway outside the courtroom. There, she observed Santi approach Robert, who was seated next to Noble. Bluma further stated that she overheard Santi say to Robert: " '[t]he charges against your daughter are egregious, and that if you don't settle this case, she could possibly lose her license.' " She also averred that she heard Santi speak of seeking " 'sanctions' " against Barbara. Robert, according to Bluma, appeared "glum" and physically upset. Iseberg, Danian, and Barbara were not present during Santi's conversation with Robert and Noble.

¶ 36 On September 26, 2011, the trial court denied defendants' emergency motion to reconsider and vacate and to re-open proofs. On September 27, 2011, Robert filed a notice of appeal of the April 12, 2011, order as well as all other orders in the case (appeal No. 2-11-0978, *Susman III*).

¶ 37 II. ANALYSIS

¶ 38 A. *Susman III* - Stay Requests

¶ 39 Initially, we address the Susman defendants' argument that the trial court erred in refusing to stay the circuit court proceedings during the pendency in this court of *Susman I* (involving the land trust). They request that we remand the cause with instructions to vacate all orders after February

24, 2011, including, as relevant to *Susman III*, the settlement agreement order. For the following reasons, we reject defendants' request.

¶ 40 Specifically, defendants argue that the January 6, 2011, order granting plaintiff partial summary judgment finally disposed of one of the issues in this case, namely, the disposition of interests in the property held in the land trust. The Susman defendants appealed this order (in a January 6, 2011, notice of appeal and a February 17, 2011, amended notice). Contemporaneous with these events, defendants requested that the trial court stay any further proceedings, which the trial court declined to do. Plaintiff subsequently filed a motion to dismiss the appeal in *Susman I*, which this court had not decided by the April 12, 2011, trial date, wherein defendants renewed their motion to stay the proceedings. This court denied plaintiff's motion to dismiss on May 11, 2011.

¶ 41 Defendants first argue that the January 6, 2011, judgment was a final adjudication establishing the respective rights of the parties and that the mere reservation of a sale date is of no effect. Thus, the judgment was appealable pursuant to Rule 304(b)(1). Second, they urge that the trial court erred as a matter of law (and therefore abused its discretion) in denying defendants' request to stay the circuit court proceedings. They note that the filing of a notice of appeal divests the trial court of jurisdiction and forbids it from modifying its judgment or ruling on matters of substance involved in the appeal. Here, defendants argue, the trial court proceeded with the case, the practical effect of which, they complain, was to prejudice them. They assert that the central issue in this case is the determination of the rightful owners of the land trust and that the proceedings should have been stayed to allow this court to determine whether the trial court was correct in its summary judgment ruling. According to defendants, if the trial court had stayed the proceedings, the parties could have proceeded to trial "on a level playing field" because they would have known

that the buyout of the business was the only issue and the case likely would have been "fairly settled without the need for a full-blown trial." They further assert that the value of the business (about $1 million) was not "hotly" contested, whereas the land's value was ($900,000 according to defendants, versus $1.6 million according to plaintiff).

¶ 42 Defendants alternatively argue that, even if the trial court retained jurisdiction over matters independent of the judgment on appeal, the matters that the court refused to stay were *not* independent of and unrelated to the counts on appeal. They note that plaintiff's motion for summary judgment sought a ruling on counts V and VI; however, the trial court did not rule on count IV. Defendants assert that count IV, which raised a claim for unjust enrichment for rent for the use of the land on which Susman Linoleum is located, necessarily depends on plaintiff's allegations in counts V and VI, *i.e.*, that the estate had a one-half interest in the land trust. It was not related to the valuation of the business. In defendants' view, the basis of count IV was the precise question appealed to this court and, therefore, the matters were neither independent of nor unrelated to the matters on appeal. Defendants further argue that the other counts also were not independent of and unrelated to the subject matter of *Susman I*. The claims arose as a result of Donald's death, and they were "intertwined." They note that, if this court affirms *Susman I* (*i.e.*, the court's finding that the estate had an interest in the land and the order allowing the sale of the land), it would have a direct, negative impact on the value of the business because a buyer could purchase the land and evict Susman Linoleum. If this court reverses the grant of summary judgment, the value of the business, according to defendants, would remain status quo and Robert would have title to all of the land and could assign a higher value to the business as he could sell it with the land. Thus, it would not have been possible to assess at trial what the business was worth.

¶ 43 Finally, defendants argue that the trial court also erred as a matter of law in failing to *reconsider* its February 24, 2011, order once this court denied plaintiff's request to dismiss *Susman I*. Defendants request that we find that the court erred in denying the stay and that we remand with instruction to vacate all orders after February 24, 2011.

¶ 44 Plaintiff argues that: (1) this court did not clearly establish (*i.e.*, because we did not explicitly state) that the trial court's partial summary judgment order was a final order; and (2) even if the trial court's initial findings were incorrect, the court reconsidered and reaffirmed its decision on a separate and independent basis during the hearing on defendants' motion to reconsider, where it found that the remaining trial court proceedings were separate and distinct. The trial court noted that the partial summary judgment order addressed only the land trust, but that the trial matters involved the "estate issues," such as the shareholder agreement and "the formation and conduct of the business. So I do not find there was any interference with the issues that were on appeal and that these were separate issues to be tried."

¶ 45 On appeal, we review a ruling on a motion to stay for an abuse of discretion. *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, at ¶29. A stay order seeks to preserve the status quo existing on the date of its entry and does not address in any way the merits of the underlying dispute. *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1994). A circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it. *Philips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill. App. 3d 895, 901 (1998). It may consider factors such as the orderly administration of justice and judicial economy in determining whether to stay proceedings. *Id.* at 901-02.

¶ 46 Defendants also moved to reconsider the court's denial of a stay. Under section 2-1203 of the Code of Civil Procedure, "[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment * * *, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203 (West 2010). The purpose of a motion to reconsider "is to bring to the trial court's attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand." *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009). Generally, a trial court's decision to grant or deny a motion to reconsider will not be reversed absent an abuse of discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007). "A trial court abuses its discretion where no reasonable person would take the view adopted by the trial court." *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 10. However, a reviewing court reviews *de novo* the trial court's decision to grant or deny a motion to reconsider, where the motion was based only on the trial court's application or purported misapplication of existing law, rather than on new facts or legal theories not presented at trial. *Bank of America, N.A. v. Ebro Foods, Inc.*, 409 Ill. App. 3d 704, 709 (2011).

¶ 47 Defendants appealed *Susman I* pursuant, in part, to Rule 304(b)(1), which provides:

> "(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> (1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party." Ill. S. Ct. Rule 304(b)(1) (eff. Feb. 26, 2010).

Orders within the scope of Rule 304(b)(1), even though entered before the final settlement of estate proceedings, must be appealed within 30 days of entry or be barred. *In re Estate of Devey*, 239 Ill. App. 3d 630, 633 (1996). "Only final orders fit within Rule 304(b)(1). It is not necessary that the order resolve all matters in the estate, but it must resolve all matters on the particular issue." *Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1051 (2005). In other words, the "ultimate right, not the theory upon which that right is premised[,] must be determined." *In re Liquidation of Medcare HMO, Inc.*, 294 Ill. App. 3d 42, 46 (1997). See also *Estate of Jackson*, 354 Ill. App. 3d 616, 619 (2004) (finding that the respondents had no right to property because deed was invalid and property belonged to estate was a final determination of the parties' rights to the real property); *Medcare HMO*, 294 Ill. App. 3d at 47 (assessing Rule 304(b)(2) and concluding that rights of parties to monies paid to attorneys was not finally determined when the court dismissed fraudulent conveyance count because right to recover the payment on the related but alternative, theory of voidable preference had yet to be determined).

¶ 48 Based on the foregoing authority, we agree with defendants that the trial court's partial summary judgment order was appealable pursuant to Rule 304(b)(1) and was a final order with respect to a particular issue. However, we disagree with their contention that the trial court erred as a matter of law (or abused its discretion) in denying their repeated requests to stay the proceedings during the pendency of *Susman I* and, thus, that the trial court lacked jurisdiction to enter any subsequent orders, including the settlement agreement order.

¶ 49 We are not persuaded by defendants' statement of the general proposition that a notice of appeal divests a trial court of jurisdiction and that the trial court may not rule on matters of substance involved in the appeal. See, *e.g.*, *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433 (1979).

Notwithstanding the general rule, Rule 304 nowhere states that trial court proceedings *must* be stayed pending appeal of a portion of the case. Where our supreme court has mandated such action, it has explicitly stated in the relevant rule. See, *e.g.*, Ill. S. Ct. R. 305(a) (eff. July 1, 2004) (enforcement of money judgment "shall be stayed" if an appeal is filed and a form of security is present to and approved by court); Ill. S. Ct. R. 305(e) (order terminating parental rights "shall be automatically stayed for 60 days" after termination order). Indeed, Illinois Supreme Court Rule 305(b) (eff. July 1, 2004), which addresses stays of enforcements of nonmoney judgments, provides that, upon notice and motion and an opportunity for opposing parties to be heard, a court "may" stay the enforcement of a nonmoney judgment or "appealable interlocutory orders or any other appealable judicial or administrative order."

¶ 50 We also reject defendants' argument that the matters the court refused to stay were interrelated to the counts on appeal. First, defendants argue that count IV, in which plaintiff pleaded unjust enrichment for rent for the use of the land in the land trust and on which Susman Linoleum is located, is related to and necessarily depends on plaintiff's allegations that Donald's estate had a one-half interest in the land trust. We disagree because the unjust enrichment count was directed against Susman Linoleum and sought from it rent for use of the land, whereas counts V and VI involved the land trust and possible partition and sale of the land. Counts V and VI require the construction of the trust document and are implicitly directed against Robert. Thus, count IV is not so intertwined with counts V and VI because the parties against which they are directed and the claims raised are not identical or so related such that they are dependent on each other. Although these appeals originated in disputes that arose after Donald's death and involve the family business and trust property, the trial court was not constrained by these general origins and did not act

unreasonably in proceeding on the counts that remained after it addressed the summary judgment motions involving counts V and VI.

¶ 51 None of defendants' remaining arguments in favor of staying the proceedings are persuasive. Defendants assert that the business's value would be impacted by whether or not the land could be sold with it. However, in the settlement agreement, the parties agreed to Robert's purchase of the estate's interest in Susman Lineoleum, the sale of the land, and that the business shall remain on the land until the property is sold. They did not agree to sell both the land and the business and, accordingly, their point is not well-taken. Defendants further argue that they did not proceed to trial on a level playing field. However, no trial was held on the remaining counts; the parties entered into a purported settlement. Finally, defendants claim that the trial court stated that, if this court denied plaintiff's motion to dismiss *Susman I*, it would grant their request for a stay. The court stated only that it would "reconsider" defendants' stay request. Its statement does not constitute any binding promise to grant their request.

¶ 52 In summary, the trial court did not abuse its discretion or err as a matter of law in denying defendant's motions to stay the trial court proceedings (or to reconsider its denial) pending resolution of *Susman I*.

¶ 53 B. *Susman III* - Defendants' Motion to Vacate the April 12, 2011, Order

¶ 54 The Susman defendants argue next that the trial court erred in denying their motion to vacate the April 12, 2011, settlement agreement order. See 735 ILCS 5/2-1301 (West 2010). We review a trial court's decision denying a motion to vacate for an abuse of discretion. *Larson v. Pedersen*, 349 Ill. App. 3d 203, 207 (2004). An abuse of discretion occurs only where no reasonable person would agree with the trial court's ruling. *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997). "The

primary concern in ruling on a motion to vacate is whether substantial justice is being done between the litigants and whether it is reasonable under the circumstances to proceed to trial on the merits." *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941 (1999). " 'What is just and proper must be determined by the facts of each case, not by a hard and fast rule applicable to all situations regardless of the outcome.' " *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 932 (1997) (*quoting Widucus v. Southwestern Electric Cooperative, Inc.*, 26 Ill. App. 2d 102, 108 (1960)).

¶ 55 Rule 8.4(g) provides that it is professional misconduct for a lawyer to "present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter." (Ill. Rs. Prof'l Conduct R. 8.4(g) (eff. Jan. 1, 2010)). Plaintiff argues that statements by Robert's own counsel (*i.e.*, Iseberg) did not violate the rule because it does not apply in that context. They note that the reference to disciplinary charges must be made to obtain an advantage in a civil matter and that one's own counsel, who is an agent of his or her client, cannot prejudice one's own client, or conversely, that a party cannot obtain an advantage over himself. Plaintiff also asks this court to determine whether the IRPC constitute grounds for vacating a settlement agreement. They contend that they do not and may not be used as rules of civil procedure. Further, they argue that if they do constitute grounds for vacating an agreement, any counsel could interject existing or hypothetical ARDC proceedings as a backstop measure during settlement negotiations. If a client later determines that he or she no longer wishes to honor an agreement, the client could simply assert that a Rule 8.4(g) violation occurred that improperly influenced his or her decision to settle. We decline to reach these issues. Instead, in addressing defendant's arguments, we assume, without deciding, first, that Rule 8.4(g) applies to comments made by one's own counsel and, second, that it is a ground for vacating a settlement agreement.

¶ 56 With these initial assumptions in mind, we note that the Susman defendants first challenge the trial court's credibility findings, arguing that they were against the manifest weight of the evidence because Iseberg and Santi, whom the court found credible, gave, defendants argue, conflicting versions of the events, including who was present for conversations and the bases for the conversations. Defendants note that Iseberg testified that he motioned for Santi to approach while he was speaking to Robert and Noble, that Robert, Derrick, and Iseberg were seated, and that Barbara was not present. They further note that Iseberg testified that Santi's clients wanted an additional $50,000 to settle because of alleged unnecessary attorney fees and that the conversation lasted between 10 to 15 minutes. Defendants contend that Santi's version was remarkably different, wherein he testified that Barbara was present (the first alleged inconsistency) and was the one who waived him over, that she was next to Robert and that Iseberg was in the vicinity. Santi further testified that Robert initiated the conversation and that Santi stated it was improper for him to speak without Robert's attorney's presence. They note that he also testified that Barbara interjected that Santi could speak to her father. Defendants contend that Iseberg's failure to mention Santi's testimony concerning his alleged IRPC Rule 4.2 (eff. Jan. 1, 2010) disclaimer (*i.e.*, obtaining, through Barbara, Robert's permission to speak to Robert, whom Santi apparently believed was represented by Barbara) is a second significant discrepancy. Next, they also point to Santi's testimony concerning the $50,000, noting that he first testified that it related to the different land valuations and later testified that it related to alleged Rule 137 violations. Defendants urge that, in contrast to the foregoing, Robert's and Noble's testimony was entirely consistent, in that they both testified that Santi approached them when Iseberg, Susman, and Danian were not present. Thus, they assert that no reasonable person would find credible Iseberg and Santi's testimony.

¶ 57 As a reviewing court, we give great deference to the trial court's factual findings because the trial court stands in the best position to weigh the credibility of the witnesses; reversal is warranted only if the trial court's decision is against the manifest weight of the evidence. *In re Lisa P.*, 381 Ill. App. 3d 1087, 1092 (2008). A ruling is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if it is unreasonable, arbitrary, or not based on the evidence presented. *Law Offices of Colleen M. McLaughlin*, 2011 IL App (1st) 101849, ¶ 43.

¶ 58 We conclude that the trial court did not err in finding both Iseberg and Santi credible. Contrary to defendants' assertions, the attorneys' versions of the events were not conflicting in any material respect. It is true that Iseberg and Santi differed in their recollection of who waived over Santi (Iseberg testified that he did, and Santi stated that Barbara waived him over) and whether Barbara was present (Iseberg stated she was not, and Santi stated that she was). However, both Iseberg and Santi testified that Santi did not mention the ARDC and that the $50,000 additional request for settlement related to alleged unnecessary attorney fees (although Santi did testify at first that the $50,000 related to divergent appraisals of the land). We reject defendants' contention that Iseberg's failure to mention Santi's testimony concerning his alleged Rule 4.2 disclaimer is a significant discrepancy, where they do not point to any question that was presented to him on the topic. Further, although Iseberg testified that he mentioned the ARDC proceedings against Barbara, he stated only that: (1) he expected or hoped that a settlement, when reported to the commission, would have the effect of the commission ceasing to further pursue the charges; and (2) the parties should not discuss the charges.

¶ 59 We further reject defendants' argument that Robert's and Noble's testimony should not have been discounted because it was entirely consistent. Noble, who could not recall if Barbara was

present when Iseberg spoke to him and Robert, testified that Robert had a high-blood-pressure episode and that he removed him from the conference room to attempt to calm him down. After Santi spoke to the men in the hallway, Robert, according to Noble and Robert himself, repeated several times that he had to help Barbara. However, Noble conceded during his testimony that he did not mention Robert's statements in his affidavit, nor did he mention the conversation with Santi to anyone that day. We further note that, notwithstanding Noble's and Robert's testimony concerning Robert's hypertension and attendant duress, which forms one of the primary bases upon which defendants desire to overturn the agreement, Noble testified that, on that day, he did not take Robert to the doctor or to a hospital and Robert himself did not mention the episode to Dr. Olinger until about one month after it occurred. In light of this testimony, the trial court reasonably could have discounted defendants' claims of duress and found Noble and Robert incredible.

¶ 60 Next, defendants argue that the trial court erred in discounting Robinson's testimony on the basis that it was based upon affidavits by Noble and Robert, whom the court found not credible. According to defendants, the court erred because Robinson's opinions, as provided in her opinion letter, were initially based on Robert's and Noble's affidavits; however, her testimony was based on her observations of Noble's in-court testimony and her knowledge that plaintiff had admitted that the subject matter of ARDC proceedings had been discussed at the settlement negotiations. Defendants contend that the trial court ignored the fact that plaintiff had admitted that the topic was discussed and, thus, there was no basis to ignore Robinson's opinion because the fact that the subject matter was raised was not in dispute.

¶ 61 Defendants' argument fails. First, we rejected above their argument that the trial court erred in finding Robert and Noble not credible. Second, even though Robinson was presented with

Iseberg's testimony that he did raise the topic of ARDC proceedings (but, again, denied telling Robert that, if he did not settle, then Barbara would lose her law license; rather, he testified that he stated he hoped the charges would go away and that the parties should not discuss them), she did not clearly opine whether he violated Rule 8.4(g). Robinson testified that: (1) if Iseberg's comments to Robert were merely recitations of others' statements, then she was uncertain if he violated the rule; (2) what occured in this case "is exactly what the rule is intended to prevent;" and (3) if Iseberg made the comments in an attempt to persuade Robert to settle, then he violated the rule. Given its credibility assessments of Robert and Noble, the trial court did not err in placing little weight on Robinson's testimony.

¶ 62 Defendants further argue that the trial court misapprehended Robinson's testimony. The trial court noted that Robinson did not offer an opinion as to whether the mention of ARDC issues by Iseberg (Robert's counsel) during settlement discussions invalidates the agreement. Defendants argue that Robinson *did* in fact render an opinion on the topic, testifying that it was *irrelevant* to the inquiry. The trial court's finding, they urge, implies that the court found it relevant that Robinson did not testify as to the ultimate legal question posed (testimony that would be impermissible from a witness). Defendants assert that Robinson's uncontested testimony was that the actor who brought up the ARDC proceedings in the context of the settlement negotiations is irrelevant to the consideration of whether the IRPC were violated. The focus here, they urge, is not to identify the wrongdoer. Rather, they issue is proof the subject matter was discussed (which plaintiff does not dispute) and that the discussion itself is sufficient to find the rule was violated.

¶ 63 We conclude that the trial court did not misapprehend Robinson's testimony and that defendants' argument is speculative. Robinson testified generally about Rule 8.4(g), opining that

it was immaterial which side in a dispute raises disciplinary charges, so long as the charges are raised in order to obtain an advantage in a civil matter. The trial court merely noted that Robinson did not offer an opinion whether Iseberg's (Robert's counsel's) statements invalidated the settlement agreement (because, she stated, she did not opine as to his intent at the time he made his statements); the court did not use this as a basis for discounting her testimony. Indeed, later in the court's written findings, the court explained its basis for discounting Robinson's opinions—it found that they were based upon affidavits that the court found incredible.

¶ 64 Defendants argue next that the trial court abused its discretion in denying their motion to vacate the settlement agreement order in light of discussions during settlement negotiations regarding ARDC proceedings. They note that Iseberg impermissibly injected the topic of ARDC proceedings into the negotiations and attempted to persuade Robert to settle the case in order to make the proceedings "go away." He also opined that the settlement could affect the outcome of the ARDC complaint against Barbara. This impression, they contend, was untrue and a rule violation. They note that Robinson testified unequivocally that what happened in this case is "what the rule is supposed to keep from happening."

¶ 65 Defendants further argue that the injection of ARDC proceedings against Barbara into the settlement negotiations was extremely prejudicial in that the nature of the allegations made to an elderly man was inherently coercive. They contend that no reasonable father would hesitate to attempt to protect his daughter from this threat and that this was exacerbated because the information came from his own attorney. Robert also acceded to the duress induced by the situation, they urge, and did the only thing he could do: settle the case. Defendants note that Robert is not an attorney and could not have known that the charges were *de minimus* and had no chance of affecting

Barbara's license to practice law. (However, they note that, even if that were not true, the same result is mandated.) The introduction of Barbara's ARDC proceedings into the negotiations, they argue, caused the entire tenor to become coercive and vitiated any voluntary consent on Robert's part. Accordingly, they contend, the trial court's ruling should be reversed.

¶ 66 Again, if we assume, *arguendo*, that an alleged Rule 8.4(g) violation can form the basis for invalidating a settlement agreement and, again, if we assume, *arguendo*, that such alleged violation can be based upon one's own attorney's comments, we conclude that the trial court did not abuse its discretion in denying the Susman defendants' motion to vacate. Based on the court's credibility findings, which, as we noted above, were not against the manifest weight of the evidence, the court did not err in denying defendant's motion. The court (again, having found Iseberg credible and Robert and Noble not credible) found that Iseberg briefly mentioned the ARDC proceedings at 1 p.m. on April 12, 2011, and that he told Robert only that a settlement would assist with making the ARDC complaint go away. He denied telling Robert that, if he did not settle, Barbara would lose her law license or that the charges were egregious. As to Santi, whom the court also found credible, he denied mentioning the ARDC and this testimony was corroborated by Iseberg. Further, as to Robert, whom, again, the court found not credible, the court determined that no competent evidence was presented that he suffered a hypertensive episode that caused cognitive impairment such that he could not comprehend the agreement into which he entered. Based on these findings, which were essentially that neither Iseberg nor Santi made comments to obtain an advantage in a civil matter and that Robert did not suffer any impairment in relation to executing the agreement, we cannot conclude that the court abused its discretion in denying the motion to vacate the settlement agreement.

¶ 67 Defendants' final argument is that the trial court abused its discretion in denying them an opportunity to present a rebuttal case. They argue that, given that the trial court based its findings almost entirely on credibility determinations, the court should have allowed defendants the opportunity to present testimony from an "uninterested" party, attorney Bluma. They note that Bluma's proposed testimony substantiates Robert's and Noble's testimony and undercuts the contradictory testimony of Iseberg and Santi. The testimony, they further urge, goes directly to the issue of impeaching the "dubious, self-serving" testimony of Iseberg and Santi.

¶ 68 The admission of testimony in rebuttal is within the sound discretion of the trial court. *People v. Daugherty*, 43 Ill. 2d 251, 255 (1969). The plaintiff may not present in rebuttal "witnesses who merely support the allegations of the complaint but rather is confined to testimony that is directed to explain, qualify, modify, discredit, destroy, or otherwise shed light upon the evidence of the defendant, unless the court in its discretion permits the plaintiff to depart from the regular order of proof." Michael H. Graham, Graham's Handbook of Illinois Evidence § 611.3, at 526 (10th ed. 2010); see also *Daugherty*, 43 Ill. 2d at 255. Similarly, the decision whether to re-open proofs is left to the trial court's discretion. Michael H. Graham, Graham's Handbook of Illinois Evidence § 611.4, at 528. The court should consider various factors, including any explanation for the failure to introduce the evidence at trial; whether the adverse party will be surprised or unfairly prejudiced by the evidence; whether the evidence is necessary to the movant's case; and whether there are convincing reasons to deny the request. *Id.* "[A]n abuse of discretion is likely to occur only when a party is prevented from impeaching witnesses, supporting the credibility of impeached witnesses, or responding to new points raised by the opponent." *Barth v. Massa*, 201 Ill. App. 3d 19, 33 (1990).

¶ 69 Here, the court did not abuse its discretion and no error resulted from the exclusion of Bluma's testimony. In denying defendants' request to present her testimony, the trial court noted that Robert did not testify that Bluma was present during the hallway conversation and that "plenty" of witnesses had testified as to that conversation. Indeed, although Robert testified that others were present in the hallway during his conversation with Santi, he did not specify that Bluma was present. Further, we note that defendants offered no explanation for their failure to present Bluma's testimony during their case-in-chief. For example, they did not argue that Bluma was unavailable to testify during their case-in-chief. Further, Bluma's proposed testimony contradicts Noble's testimony that it was Iseberg who described the charges against Barbara as "egregious." Bluma's proposed testimony was that *Santi* stated to Robert that the charges were egregious, and, thus, her testimony would not have bolstered Noble's and Robert's credibility. Finally, defendant's argument that Bluma was not to be called as an occurrence witness, but, instead, to impeach Santi's testimony is not well-taken because the subject of ARDC charges was not raised for the first time during Santi's testimony and there was no need for any rebuttal to impeach that testimony. See *Hoem v. Zia*, 239 Ill. App. 3d 601, 618 (1992) (court erroneously excluded the plaintiff's expert's rebuttal testimony, where testimony would have related to matters raised for the first time in the defendants' case-in-chief). The court did not abuse its discretion in denying defendants' request to present Bluma's rebuttal testimony.

¶ 70 In summary, we affirm the judgment of the trial court in *Susman III*.

¶ 71 C. Mootness of *Susman I* & *Susman II*

¶ 72 Next, we address an argument plaintiff raises in her briefs in all three appeals. Plaintiff contends that the issues in *Susman I* (involving the land trust) and *Susman II* (involving the contempt

finding against Robert) will be rendered moot if this court rejects the Susman defendants' arguments in *Susman III*. She requests that we dismiss and/or deny *Susman I* and *Susman II* as moot. For the following reasons, we agree and find the two appeals moot and dismiss them.

¶ 73 Generally, courts do not decide moot questions or render advisory opinions. *In re Val Q.*, 396 Ill. App. 3d 155, 159 (2009). Appellate jurisdiction is limited to actual controversies where a grant of relief is possible. *Midwest Central Education Ass'n v. Illinois Educational Labor Relations Board*, 277 Ill. App. 3d 440, 448 (1995). When no relief can be granted on the claimed controversy, the issue is considered moot. *Id.* "[W]here only moot questions are involved, this court will dismiss the appeal." *Id.* A case on appeal becomes moot where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief. *Goodman v. Ward*, 241 Ill. 2d 398, 404 (2011); *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 207-08 (2008). Exceptions to the mootness doctrine apply where: (1) the case presents a question of public import that will likely recur and the answer to that question will provide guidance to public officers in the performance of their duties; (2) the case involves events of short duration that are capable of repetition yet evading review; and (3) collateral consequences of the order could return to plague the respondent in some future proceeding or could affect other aspects of the respondent's life. *Val Q.*, 396 Ill. App. 3d at 159. Defendants do not argue that any exception applies; rather, they contend that there are remaining controversies that do not render moot *Susman I* and *Susman II*.

¶ 74 As noted, *Susman I* involves an order terminating the land trust and ordering a judicial sale. *Susman II* is an appeal from the contempt finding against Robert. The April 12, 2011, agreed order, signed by plaintiff, Robert (individually and on behalf of Susman Linoleum), and the trial judge

states that: (1) the parties' settlement agreement is incorporated therein; (2) the trial court shall retain jurisdiction to enforce the terms of the agreement; (3) the findings of contempt against Robert "are vacated as referenced in various orders of court;" and (4) all trial dates are stricken. The agreement (signed by plaintiff and Robert (individually and on behalf of the business)) provides that Robert shall purchase the estate's stock in the business for $650,000 (paid with $600,000 cash and $50,000 upon the sale of the real estate); the parties will market the land for sale (for 18 months at a price determined by plaintiff); the court shall retain jurisdiction to resolve any disputes concerning any offers or the terms of any sale; Susman Linoleum shall occupy the premises until any sale and pay during that period any real estate taxes, insurance, maintenance, and utilities as the sole rent; the parties shall dismiss all appeals without cost to any party; no party shall file against the Susman defendants any petitions for attorney fees; the findings of contempt against Robert are vacated; if a party breaches the agreement and litigation ensues, the litigation costs and fees of the non-breaching party shall be assessed against and paid by the breaching party; the court shall retain jurisdiction to enforce the agreed order; and the parties shall cooperate with each other and act reasonably in fulfilling the terms and their obligations under the agreement.

¶ 75 As to North Star, the Susman defendants argue that the trustee was not a party to any purported settlement and that its chancery complaint, which is currently pending and undetermined, seeks to have the trustee's deed declared null and void, cancel the recording of the deed, and seeks a declaration clearing the cloud on title and declaring that the trustee is the rightful holder of all title to and interest in the legal title to the real property, and an order declaring plaintiff to have not title or interest in the legal title to the property. In defendants' view, *Susman I* is not moot because North Star did not participate in the entry of the April 12, 2011, order or agreement.

¶ 76 We reject defendants' argument. North Star was not a party to the proceedings in *Susman I*, and there are no claims it ever raised that remain pending in that case. Further, North Star has not joined any briefs filed in any of the three present appeals. It appears that it is listed as a defendant in the present appeals only because the (chancery) cases in which it is participating were consolidated in the trial court with the probate action from which the current appeals arose.

¶ 77 As to defendants' argument that the $73,000 judgment (entered on April 7, 2011) against Robert was not vacated by the April 12, 2011, order and that a real controversy continues to exist, we disagree. On April 7, 2011, the trial court did not actually impose the $73,000 judgment, but stayed its enforcement to the trial date of April 12, 2011. On the trial date, the parties settled. In the April 12, 2011, agreed order entered by the trial judge, the court specifically determined that the findings of contempt against Robert "are vacated as referenced in various orders of court." Thus, there remains no controversy as to the contempt finding or the $73,000 judgment associated with it.

¶ 78 Accordingly, because we affirm the trial court's judgment in *Susman III*, we conclude for the reasons stated above that the appeals in *Susman I* and *Susman II* are thereby moot. Appellate courts do not have jurisdiction to consider moot issues, therefore, we dismiss those appeals. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523 (2001); *In re H.G.*, 197 Ill. 2d 317, 336 (2001).

¶ 79 III. CONCLUSION

¶ 80 For the foregoing reasons, the judgment of the circuit court of Lake County in appeal No. 2-11-0978 (*Susman III*) is affirmed. The appeals in cause Nos. 2-11-0121 (*Susman I*) and 2-11-0314 (*Susman II*) are dismissed.

¶ 81 No. 2-11-0121, Dismissed.

¶ 82 No. 2-11-0314, Dismissed.

¶ 83 No. 2-11-0978, Affirmed.