

SURVEY OF ILLINOIS LAW: CIVIL TRIAL AND APPELLATE PRACTICE AND PROCEDURE DEVELOPMENTS

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I. INTRODUCTION

There were no major decisions in 2006 that significantly affected Illinois civil practice and procedure at the trial and appellate levels. However, a few supreme court and appellate court decisions reiterated the need to follow the requisite rules of procedure in order to avoid adverse consequences at the trial and appellate levels. Several significant amendments to the Supreme Court Rules governing civil appeals were effective in 2006.

The intent of this survey is not to present an exhaustive analysis of the plethora of appellate and supreme court decisions involving civil trial and appellate practice and procedure. There was a dearth of Illinois Supreme Court decisions where the primary analysis involved a civil practice and procedure issue. However, several are worth mentioning, especially when practicing before the supreme court.

II. ILLINOIS SUPREME COURT DECISIONS

This section of the article will cover Illinois Supreme Court cases on two topics. First, section A will address supreme court cases involving the Illinois Code of Civil Procedure. Second, section B will address the supreme court decisions commenting on appellate practice and procedure.

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A. Illinois Supreme Court decisions commenting on the Illinois Code of Civil Procedure

1. *Motion to Vacate After 30 Days and the Different Standards of Review on Appeal.*

Paul v. Gearald Adelman and Associates Ltd., 223 Ill. 2d 85, 858 N.E.2d 1 (2006).
735 ILL. COMP. STAT. 5/2-1401.

The plaintiff, as a trustee for a joint pension plan, filed two petitions in the circuit court pursuant to section 2-1401³ to vacate two orders dismissing the trustee's causes of action for want of prosecution against certain defendants who provided miscellaneous services for the pension plan.⁴ The circuit court granted the petitions and reinstated the cases.⁵

On appeal the defendants argued that the dismissals for want of prosecution were warranted because the trustee failed to monitor her cases.⁶ In addition, the defendants argued that plaintiff failed to use due diligence in seeking her section 2-1401 relief because she waited six months after learning of the dismissals to file her petitions.⁷

The appellate court affirmed the circuit court's granting of the plaintiff's section 2-1401 petitions which reinstated the cases. The supreme court affirmed the appellate court's judgment but vacated a portion of the appellate court's decision addressing a federal preemption and damages argument.⁸

The supreme court's decision is instructive for several reasons. First, it reaffirms the requirements of a section 2-1401 petition for relief from judgments after 30 days. The court observed that section 2-1401 provided a comprehensive procedure for vacating or modifying a judgment more than 30 days after its entry.⁹ Although these petitions are generally used to bring to the attention of the trial court facts, which if known by the court at the time of entry of the judgment would have precluded its entry, they can also be used to

3. 735 ILL. COMP. STAT. 5/2-1401 (West 2002).

4. *Paul v. Gearald Adelman & Assoc. Ltd.*, 223 Ill. 2d 85, 88, 858 N.E.2d 1, 3 (2006).

5. *Id.*

6. *Id.* at 104, 858 N.E.2d at 12.

7. *Id.* at 99, 858 N.E.2d at 9.

8. *Id.* at 107, 858 N.E.2d at 14.

9. *Id.* at 94, 858 N.E.2d at 6.

challenge defective judgments.¹⁰ The court reiterated the basic three requirements for such petitions:

Generally, the petition must set forth allegations supporting the existence of a meritorious claim or defense; due diligence in presenting the claim or defense to the circuit court in the original action; and due diligence in filing the section 2–1401 petition.¹¹

The court also discussed the standard of review to be utilized in such cases: a decision will not be reversed absent an abuse of discretion.¹²

On appeal, the defendants argued that where the facts are not in dispute and there is no credibility determination issue, the standard of review should be *de novo* rather than an abuse of discretion.¹³ The plaintiff argued that the defendants were estopped from taking this position because they relied on an abuse of discretion standard at the appellate court level.¹⁴ In response, the defendants argued that they now relied on the supreme court's decision in *Ford Motor Credit Co. v. Sperry*,¹⁵ which was decided after the appellate court's decision. The *Sperry* decision applied a *de novo* standard of review. Although the supreme court agreed with the plaintiff concerning the "invited error doctrine," which would normally preclude defendants from arguing a new standard of review, the supreme court agreed to consider defendants' argument in light of its subsequent *Sperry* decision.¹⁶

The supreme court, however, observed:

Sperry thus stands for the proposition that where the success of a section 2–1401(f) petition is dependent entirely on the interpretation of one of this court's rules, that legal issue will be reviewed *de novo*. *Sperry* does not call into question or otherwise inject uncertainty into what is well-settled principle: a section 2–1401 ruling ordinarily will be reviewed for an abuse of discretion.¹⁷

In effect, the court recognized two separate standards of review regarding judgments involving Section 2–1401 petitions. The settled abuse of discretion standard will be followed unless the circuit court's judgment dealt with the

10. *Id.*

11. *Id.* at 94, 858 N.E.2d at 7.

12. *Id.* at 95, 858 N.E.2d at 7.

13. *Id.* at 96, 858 N.E.2d at 7.

14. *Id.* at 96, 858 N.E.2d at 8.

15. *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 827 N.E.2d 422 (2005).

16. *Paul*, 223 Ill. 2d at 97, 858 N.E.2d at 8.

17. *Id.* at 98–99, 858 N.E.2d at 9.

“legal effect” of a violation of one of supreme court’s own rules.¹⁸ In addition, the court noted that where relief is from a void judgment, the due diligence requirement under Section 2–1401 does not apply.¹⁹

The *Paul* decision is also important because it points out the need for counsel to closely follow the progress of his or her case. The court stated:

We agree with defendants that a party must follow the progress of her case, and that a Section 2–1401 petition will not relieve a party of the consequences of his or her attorney’s neglect of a matter. *Kaput*, 124 Ill. 2d at 383, 125 Ill.Dec. 202, 530 N.E.2d 230. We disagree, however, that plaintiff’s failure to check the status of her cases in Cook County, after they had been placed on the bankruptcy calendar, amounts to neglect of her cases and the lack of due diligence.²⁰

2. *Controlled Witness Requirements*

Thompson v. Gordon, 221 Ill. 2d. 414, 851 N.E.2d 1231 (2006).
Illinois Supreme Court Rule 213.

As the Illinois Supreme Court succinctly stated, “at issue in this case is whether a civil engineer must be licensed in Illinois pursuant to the Professional Engineering Practice Act of 1989²¹ in order to testify as an Illinois Supreme Court Rule 213 retained opinion witness in an Illinois civil action.”²²

The plaintiff brought a wrongful death action against the defendants on behalf of the estates of two decedents who died following a motor vehicle collision at an intersection. The plaintiff alleged, among other things, that the defendants were negligent in failing to provide a median barrier in their plans for the intersection where the collision occurred. The defendants filed a motion for summary judgment alleging that their design work did not require that median barriers be erected and the accident did not occur in the area of their design work. In response, the plaintiff filed an affidavit of her Rule 213 civil engineer controlled (retained) expert which stated that the defendant’s design analysis failed to meet the appropriate standard of care because it did not incorporate median barriers. The expert was licensed in the District of Columbia but not Illinois. The defendants filed a motion to strike the expert’s

18. *Id.*

19. *Id.*

20. *Id.* at 105, 858 N.E.2d at 13. *See, e.g., Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d. 143, 148, 623 N.E.2d. 1010 (1994) (30 day period in which to file notice of appeal will not be tolled until the parties have actual notice of the trial court’s final order – a party must be aware of when the final judgment or order is entered regardless of not receiving notice from the court until after the initial 30 day period).

21. The Engineering Act, 225 Ill. Comp. Stat. 325/1 *et seq.* (West 2002).

22. *Thompson v. Gordon*, 221 Ill. 2d. 414, 416, 851 N.E.2d 1231, 1233 (2006) (citations omitted).

affidavit on the basis that he should be barred from rendering opinions because he was not licensed in Illinois under The Engineering Act.²³

The supreme court held that licensure in Illinois pursuant to The Engineering Act was not a mandatory prerequisite to rendering an expert opinion.²⁴ In so holding, the court distinguished the case of *Van Breemen v. Department of Regulation*,²⁵ on the basis that the *Van Breemen* decision did not discuss whether the plaintiff in that case (a licensed professional engineer who was ordered by the Department to cease and desist from engaging in the practice of engineering until he became licensed in Illinois) was qualified to act as an expert witness in a civil case.²⁶ In the case at bar, the plaintiff's expert never sought review of the Department's cease and desist order. Accordingly, it was not subject to judicial review.²⁷

The supreme court also rejected the defendants' argument that the trial court's decision to strike plaintiff's expert's affidavit was proper pursuant to the decision of *People v. West*.²⁸ In *West*, the defendant moved to strike the testimony of the State's expert because the expert was not licensed to investigate the cause and origin of a fire as required by statute.²⁹ The appellate court held that the expert was not qualified to testify because to do so would permit a continuation of the commission of a crime, i.e., the witness was subject to criminal prosecution under the statute because an engineer who practices without a license was guilty of a class A misdemeanor for the first offense and a class 4 felony for second and subsequent offenses.³⁰

The supreme court overruled *West*, finding:

To the extent that *West* may be read as holding that licensing is a prerequisite to the admissibility of expert testimony rather than a factor to be weighed in considering expert qualifications, we overrule that portion of the *West* decision and reject defendant's argument that *West* controls the disposition of this case.³¹

In referring to Section 8–2501³² of the Illinois Code of Civil Procedure, Expert Witness Standards, the court noted that the legislature specifically provided for expert witness standards in medical malpractice cases.³³

23. *Id.* at 417–18, 851 N.E.2d at 1233–34.

24. *Id.* at 429, 851 N.E.2d at 1240.

25. *Van Breemen v. Dept. of Regulation*, 296 Ill. App. 3d 363, 694 N.E.2d 688 (1998).

26. *Thompson*, 221 Ill. 2d at 427–28, 851 N.E.2d at 1239.

27. *Id.* at 425, 851 N.E.2d at 1238.

28. *People v. West*, 264 Ill. App. 3d 176, 636 N.E.2d 1239 (1994).

29. *Thompson*, 221 Ill. 2d at 431, 851 N.E.2d at 1241.

30. *Id.* at 431–32, 851 N.E.2d at 1241–42. See 225 ILL. COMP. STAT. 325/39(b)(4) (West 2002).

31. *Thompson*, 211 Ill. 2d at 432–33, 851 N.E.2d at 1242.

32. 735 ILL. COMP. STAT. 5/8–2501 (West 2002).

33. *Thompson*, 211 Ill. 2d at 433, 851 N.E.2d at 1242.

However, the statute was silent as to whether a professional engineer had to hold a state license before he could testify:

Merely providing that an engineer engaging in forensic engineering must be licensed in Illinois is not sufficient to establish that a license is a prerequisite to qualifying as an expert witness in a civil case in Illinois.³⁴

B. Supreme Court Decisions Commenting on Appellate Practice and Procedure

1. *Requirements for a Proper Rule 315 Petition for Leave to Appeal*

People v. Robinson, 223 Ill. 2d 165, 860 N.E.2d 1101 (2006).

Although a criminal appeal, the supreme court's holding in this case applies equally to civil appeals. The defendant appealed from a conviction following a jury trial of driving with a blood alcohol concentration of 0.08 or more and of driving while under the influence of alcohol.³⁵ He was sentenced to supervision, fined, and required to undergo drug testing during his period of supervision. The conviction was affirmed by the appellate court, but the fine was vacated and the case was remanded to determine the appropriate amount of the fine.³⁶

In his petition for leave to appeal (PLA) to the supreme court, the defendant raised as the sole issue:

[W]hether the trial court erred by denying his request for a *Frye* hearing (*Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)) on the question of the admissibility of testimony regarding results of the horizontal gaze nystagmus (HGN) test.³⁷

In his PLA, the defendant argued that review by the supreme court would do two things: (1) it would resolve a question not addressed in the decision of *People v. Basler*,³⁸ i.e., whether an HGN test result was admissible in a DUI case, and (2) it would resolve a conflict among the various appellate districts

34. *Id.* at 434, 851 N.E.2d at 1242–43.

35. 625 ILL. COMP. STAT. 5/11–501(a)(1)–(2) (West 2002).

36. *People v. Robinson*, 223 Ill. 2d 165, 166, 860 N.E.2d 1101, 1102 (2006).

37. *Id.* at 166–67, 860 N.E.2d at 1102.

38. *People v. Basler*, 193 Ill. 2d. 545, 740 N.E.2d 1 (2000).

regarding whether a defendant is entitled to a *Frye* hearing regarding the admissibility of HGN tests.³⁹

The supreme court dismissed the appeal based on the record and “defendant’s failure to argue the issue upon which we granted leave to appeal”⁴⁰ The court observed that the defendant did not address in his supreme court brief the issue raised in his petition for leave to appeal. Additionally, the court noted that the argument raised in his supreme court brief was not raised in his post-trial motion.⁴¹

This case is significant for its cautionary directive to appellate practitioners—an issue not raised in a petition for leave to appeal will be considered waived when raised for the first time in the brief. Although the supreme court acknowledged that it could waive the “waiver rule” (issues not properly raised at the appellate level will be deemed waived or forfeited), it declined to do so based upon the unique procedural posture of the case as well as the record below.⁴²

Justice Freeman, in his dissent, had several interesting observations. First, he believed that the brief adequately provided enough information for the court to address the question upon which the leave to appeal was granted.⁴³ He also observed that there was nothing to prevent the court from resolving the question presented.⁴⁴ In a footnote, he stated that even if the defendant did not properly argue the issue in his brief, the court could have stricken the brief and simply relied on the petition for leave to appeal. Justice Freeman noted:

[O]ur appellate rules allow for a PLA to stand as an opening brief. See 177 Ill. 2d R. 315(g). Although defendant did not comply with this rule, this court could, in lieu of dismissal in light of the split of opinion in our appellate court, strike defendant’s brief and rely solely on his PLA and the arguments contained in it.⁴⁵

He did not mention Supreme Court Rule 366, Powers of Reviewing Court, particularly subsection (a)(5) which allows a reviewing court to “enter any judgment and make any order that ought to have been given or made, and

39. *Robinson*, 223 Ill. 2d at 168, 860 N.E.2d at 1103.

40. *Id.* at 175, 860 N.E.2d at 1106.

41. *Id.* at 173, 860 N.E.2d at 1106.

42. *See Demos v. Ferris-Shell Oil Co.*, 317 Ill. App. 3d 41, 740 N.E.2d 9 (2000) (although issues not raised in the trial court are waived on appeal, the waiver doctrine is viewed as an admonition to the parties and not a limitation of the reviewing court that can address any argument it desires).

43. *Robinson*, 223 Ill. 2d at 177, 860 N.E.2d at 1107.

44. *Id.* at 178, 860 N.E.2d at 1108.

45. *Id.* at 178, 860 N.E.2d at 1108 n.1.

make any other and further orders and grant any relief . . . that the case may require.”⁴⁶

Although the outcome of this case may have been limited to the unique facts presented, the supreme court’s holding reinforces the proposition that an issue raised in a brief will not be considered by the supreme court if it was not properly raised in the PLA. Accordingly, care must be taken in drafting and formulating the issues presented to the supreme court in a petition for leave to appeal.

2. Cross Petitions for Leave to Appeal By Both Parties Will Allow a Party to Raise an Issue in His Brief Not Raised in His PLA

Tri-G, Inc. v. Burke, Bosselman & Weaver, 222 Ill. 2d 218, 856 N.E.2d 389 (2006).

Tri-G brought a legal malpractice action against its law firm. Judgment was entered in favor of the plaintiff. The defendant firm appealed, and the plaintiff cross-appealed. The appellate court affirmed the award for lost punitive damages but remanded the case for further proceedings. Both parties filed petitions for leave to appeal in the supreme court, which were allowed and consolidated. The substantive issue before the court was “whether the appellate court erred in upholding the award of lost punitive damages to Tri-G.”⁴⁷ The supreme court held that it did.⁴⁸

The supreme court held that a client was not entitled to punitive damages that it could have recovered in the underlying action.⁴⁹ It also addressed an interesting appellate procedural issue. Defendant argued three points in its brief: 1) it was denied procedural due process; 2) compensatory damages were not supported by the record; and 3) the award of lost punitive damages was erroneous. However, only the last issue, the award of lost punitive damages, was raised in the defendant’s petition for leave to appeal. Accordingly, the plaintiff filed a motion to strike the first two issues from the defendant’s supreme court brief.⁵⁰

Although the supreme court observed that failure to raise an issue in one’s petition for leave to appeal may be deemed waiver as to that issue,⁵¹ since the

46. Ill. Sup. Ct. R. 366(a)(5). See, e.g., *Demos v. Ferris-Shell Oil Co.*, *supra* note 41.

47. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 225, 856 N.E.2d 389, 394 (2006).

48. *Id.*

49. *Id.* at 267–68, 856 N.E.2d at 417–18.

50. *Id.* at 241, 856 N.E.2d at 403.

51. *Id.*

plaintiff filed its own PLA which was granted, the defendant, as an appellee under Rule 318(a), could raise those issues because Rule 318 provides:

In all appeals, by whatever method, from the Appellate Court to the Supreme Court, any appellee, respondent, or coparty may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal.⁵²

The supreme court held:

In this case, however, Tri-G filed its own, separate petition for leave to appeal to contest a lower courts' denial of its claim for judgment interest (No. 99595) and that petition was allowed. Pursuant to Supreme Court Rule 318(a) . . . , Burke, as appellee in that cause, is entitled to "seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal." This authorization encompasses the two additional issues asserted by Burke.⁵³

Accordingly, unlike the result reached in *People v. Robinson*,⁵⁴ a party can raise additional issues in his brief which were not raised in his petition for leave to appeal where his opponent has filed a cross-PLA which is granted.⁵⁵ Nevertheless, both *Robinson* and *Tri-G* emphasize the care that is needed in presenting issues before the supreme court.

3. Issue Raised in Oral Argument But Not In Brief Is Deemed Waived

Harshman v. DePhillips, 218 Ill. 2d 482, 844 N.E.2d 941(2006).
Illinois Supreme Court Rule 341(e)(7).

In this case, the Petersons filed a personal injury action against Harshman who was driving a truck owned by Dahl Trucking. The suit was filed in Indiana. Mr. Peterson received medical treatment, including surgery, in Indiana. Harshman removed the case to federal court in Indiana. After deposing Dr. Skaletsky, the surgeon, Harshman moved to file a third party complaint against the physician for contribution on the basis that the surgery was unnecessary and exacerbated Peterson's injuries. The federal judge denied the motion on several grounds, e.g., it was made on the eve of trial and

52. Ill. Sup. Ct. R. 318(a).

53. *Tri-G*, 222 Ill. 2d at 242, 856 N.E.2d at 403.

54. *People v. Robinson*, 223 Ill. 2d 165, 860 N.E.2d 1101 (2006).

55. *Tri-G*, 222 Ill. 2d at 242, 856 N.E.2d at 403.

the court erroneously believed that the decision of *Laue v. Leifehit*,⁵⁶ was abrogated by the 1995 amendment to the Contribution Act.⁵⁷ Accordingly, the federal court believed that Mr. Peterson could bring a separate action at a later date.⁵⁸

Harshman and Dahl Trucking filed a separate contribution action against Peterson in Illinois. Peterson filed a motion to dismiss the contribution action. The circuit court certified the question as follows:

May a contribution claim be brought in accordance with Illinois law in a separate proceeding if the party first attempted to bring the claim in the original proceedings in a separate jurisdiction and was denied leave by that court to file said contribution claim?⁵⁹

The supreme court noted that the conclusion reached by the federal court was erroneous because the amended version of Section 5 of the Contribution Act upon which the federal court relied was declared unconstitutional in *Best v. Taylor Machine Works*.⁶⁰ Accordingly, the version of the statute in existence prior to the amendment remained in effect. Since *Laue* interpreted the original provision, it controlled. The supreme court reaffirmed the *Laue* holding that any contribution claim must be brought in the underlying action.⁶¹ Accordingly, Harshman and Dahl Trucking were barred from bringing the subsequent contribution claim in Illinois.

Harshman and Dahl Trucking argued that the “pending action” under Section 5 should have been interpreted to mean actions “pending in Illinois.” The supreme court noted that this argument was not raised until oral argument. Accordingly, it was deemed waived under Rule 341(e)(7).⁶²

Once again, this decision emphasizes the fact that the supreme court will deem arguments waived if not properly raised in a petition for leave to appeal or brief.

56. *Laue v. Leifehit*, 105 Ill. 2d 194, 473 N.E.2d 939 (1984) (a party who fails to bring a contribution claim in the original pending action is barred from filing a subsequent contribution claim in a separate action at a later date).

57. *See* 740 ILL. COMP. STAT. 100/5 (West 1996).

58. *Harshman v. DePhillips*, 218 Ill. 2d 482, 486, 844 N.E.2d 941, 944 (2006).

59. *Id.* at 487, 844 N.E.2d at 945.

60. *Id.* at 489, 502 N.E.2d at 954, (citing *Best v. Taylor Machine Works*, 179 Ill. 2d 364, 467, 688 N.E.2d 1179 (1997)).

61. *Id.* at 503, 844 N.E.2d at 954.

62. *Id.* at 493, 844 N.E.2d at 948. *People v. Thomas*, 164 Ill. 2d 410, 422, 647 N.E.2d 983, 990 (1995) (issue raised for first time at oral argument is deemed waived).

III. SUPREME COURT RULE AMENDMENTS AND ADMINISTRATIVE ORDERS

Effective 2006, many changes were made to the Illinois Supreme Court Rules governing civil appeals. The following is a brief synopsis of some of the more important amendments. For a complete listing of all amendments to the Illinois Supreme Court Rules, one should consult the supreme court website.⁶³ One cannot assume that following previous rules regarding practice and procedure in handling appeals will be sufficient. Each rule must be carefully examined to ensure it has not been amended.

A. Repeal of Administrative Order M.R.No. 10343

In addition to the numerous amendments, the supreme court entered an administrative order on December 18, 2006, which provided: "On the court's own motion, effective January 1, 2007, the administrative order entered in M.R.No.10343, on June 27, 1994, is hereby vacated."⁶⁴

The 1994 administrative order limited the number of opinions each of the appellate districts could file per year (1st–750; 2nd–250; 3rd–150; 4th–150; and 5th–150) and also limited each published opinion to 20 pages in length.⁶⁵ Removing the page limitations will eliminate those opinions which reflected that parts were not published but set forth in an accompanying unpublished Rule 23 Order so the court could meet the page limitations.⁶⁶

B. Amendments to the Supreme Court Rules Governing Civil Appeals

A few of the major amendments to the Supreme Court Rules governing civil appeals effective in 2006 were:

1. *Illinois Supreme Court Rule 303A*. Expedited and Confidential Proceedings under the Parental Notification of Abortion Act.⁶⁷

63. Illinois Courts, Documents, Illinois Supreme Court Rules. April 12, 2007 <http://www.state.il.us/court/SupremeCourt/Rules/default.asp> (last visited Apr. 12, 2007).

64. Ill. Sup. Ct. R. 23 Commentary, *In re* Administrative Order No. M.R. 10343, http://www.state.il.us/court/SupremeCourt/Rules/Art_I/ArtI.htm#10343 (last visited Apr. 12, 2007).

65. Helen W. Gunnarsson, *Law Pulse*, 91 Ill. B.J. 8, 10 (2003).

66. *See*, Puffer-Hefly Sch. Dist. No. 69 v. The DuPage Reg'l Bd. of Sch. Tr. of DuPage County, 339 Ill. App. 3d 194, 789 N.E.2d 800 (2003), *Oldendorf v. Gen. Motors Corp.*, 322 Ill. App. 3d 825, 751 N.E.2d 214 (2001).

67. Ill. Sup. Ct. R. 303A.

This rule sets forth special procedures involving situations where a minor or incompetent person appeals to the appellate court after a denial of her waiver of notice under the parental notification of abortion act.

2. *Illinois Supreme Court Rule 304(b)*. Appeals from Final Judgments That Do Not Dispose of an Entire Proceeding.⁶⁸

A final sentence was added to Supreme Court Rule 304(b) which provides “[t]he time in which a notice of appeal may be filed from a judgment order appealed under this Rule 304(b) shall be as provided in Rule 303.”⁶⁹ This follows the language contained in Rule 304(a) which also states that “[t]he time for filing a notice of appeal shall be as provided in Rule 303.”⁷⁰ As the committee comments to Rule 303(a) state, the amendment was to clarify that the time for filing an appeal was governed by the provisions of Rule 303 and that the date on which the court entered its written finding that there was no just reason for delaying enforcement or appeal would be treated as the date of entry of the final judgment for purposes of determining the due date for the notice of appeal.

3. *Illinois Supreme Court Rule 315 (b) and (c)*. Leave to Appeal from the Appellate Court to the Supreme Court.⁷¹

Rule 315(b) has been changed to provide that a petition for leave to appeal to the supreme court must be filed within 35 days after entry of the judgment or entry of the order denying a petition for rehearing. Rule 315(b)(2) provides that if a prevailing party in the appellate court files a motion to publish a Rule 23 Order pursuant to Rule 23(f) and the motion is granted, the non-moving party may file his PLA within 35 days after entry of the order granting the motion to publish.

In effect, the requirement that one file a “good faith” affidavit of intent to appeal to the supreme court within 21 days has been eliminated.

Rule 315(c)(3) now provides that the petition for leave to appeal shall contain a “statement of the points relied upon in asking the Supreme Court to review the judgment of the Appellate Court.”⁷² This amendment replaced

68. Ill. Sup. Ct. R. 304.

69. Ill. Sup. Ct. R. 304(b).

70. Ill. Sup. Ct. R. 304(a).

71. Ill. Sup. Ct. R. 315.

72. Ill. Sup. Ct. R. 315(c)(3).

prior Rule 315(b)(3) which stated that the PLA had to contain “a statement of the points relied upon for reversal of the judgment of the Appellate Court.”

4. *Illinois Supreme Court Rule 316*. Appeal from Appellate Court to Supreme Court on Certificate.⁷³

This provision was also amended to reflect a change from 21 to 35 days.

5. *Illinois Supreme Court Rule 317*. Appeals from the Appellate Court to the Supreme Court as of Right.⁷⁴

This Rule was amended to add that appeals from the appellate court to the supreme court as a matter of right would include those cases in which “a statute of the United States or this State has been held invalid.”⁷⁵

6. *Illinois Supreme Court Rule 341*. Briefs.⁷⁶

One of the more important amendments to the Supreme Court Rules governing civil appeals was Rule 341 concerning the briefs. Rule 341(a) sets forth in detail the form of the brief. It must be on 8 ½ x 11 inch paper and paginated. Only one side of the paper may be used. The text, including quotations, must be double-spaced, although headings can be single spaced. Margins must be at least 1 ½ inch on the left-side and 1 inch on the right-side. In continuing with its disfavor of footnotes (prior Rule 341(a) provided, “Footnotes, if any, shall be used sparingly”), the amended Rule 341(a) provides that “footnotes are discouraged.” A subsequent amendment, effective March 16, 2007, also provides that even footnotes are to be double spaced. Type-face must be 12-point or larger.

Rule 341(b) has reduced the length of the briefs. The briefs of the appellant and the appellee are not to exceed fifty pages, excluding any appendix, and the reply brief is not to exceed twenty pages. Cross-appellants and cross-appellees shall be allowed an additional thirty pages and the cross-appellants reply brief shall not exceed twenty pages. Rule 341(b)(2) specifically provides for motions to file a brief in excess of the page limitation but such motions “are not favored.”

73. Ill. Sup. Ct. R. 316.

74. Ill. Sup. Ct. R. 317.

75. *Id.*

76. Ill. Sup. Ct. R. 341.

Rule 341(c) adds a requirement that “[t]he attorney or unrepresented party shall submit with the brief his or her signed certification that the brief complies with the form and length requirements of paragraphs (a) and (b) of this rule.”⁷⁷ In short, the reviewing courts want a litigant’s representation that he or she has followed the rules.

Rule 341(d) adds the requirement that the name of the administrative agency from which the case was brought must be named.

Rule 341(f) provides that in those cases involving juveniles or mental health services, reference to the party shall be by first name and last initial only.

7. *Illinois Supreme Court Rule 343. Times for Filing and Serving Briefs.*⁷⁸

Rule 343(c) has been amended to provide that a motion for an extension of time can be supported either by an affidavit or a “verification by certification under section 1/109 of the Code of Civil Procedure.”⁷⁹

8. *Illinois Supreme Court Rule 367. Rehearing in Reviewing Court.*⁸⁰

Following the provisions of Rule 341 regarding the form of briefs, Rule 367 has been amended to provide that a petition for rehearing in the reviewing court shall be limited to 27 pages and supported by a certificate of compliance with Rule 341(c). Basically, it has eliminated the distinction between documents which were “printed” and “not printed.”

9. *Illinois Supreme Court Rule 368. Issuance, Stay and Recall of Mandate from Reviewing Court.*⁸¹

Rule 368(a) has been amended to provide that the mandate of the appellate court shall issue not earlier than 35 days (as opposed to the previous provision of 21 days). Rule 368(b) has also eliminated reference to the “good-faith” affidavit reflecting that a party intended to file a petition for leave to appeal in the supreme court.

77. Ill. Sup. Ct. R. 341(c).

78. Ill. Sup. Ct. R. 343.

79. *Id.*

80. Ill. Sup. Ct. R. 367.

81. Ill. Sup. Ct. R. 368.

IV. APPELLATE COURT OPINIONS REGARDING CIVIL TRIAL AND APPELLATE PRACTICE AND PROCEDURE

A. Post Trial Motions

1. Appellate Court's Jurisdiction Affected by the Distinction Between a Motion to Amend Complaint Following Entry of Summary Judgment Pursuant to Section 2-1005(g) as Opposed to a Post-Judgment Motion Pursuant to Section 2-1203

Shutkas Electric, Inc. v. Ford Motor Co., 366 Ill. App. 3d 76, 851 N.E.2d 66 (2006).

The plaintiff sued a cargo van manufacturer “for breach of express warranty, breach of implied warranty of merchantability, and revocation of acceptance” under the Magnuson-Moss Warranty Federal Trade Commission Improvement Act.⁸² Summary judgment was entered in favor of the defendant on the basis that the van was not a consumer product.⁸³ The plaintiff filed a “Motion to Modify” pursuant to Section 2-1203 of the Illinois Code of Civil Procedure.⁸⁴ However, the contents of the motion simply requested leave to file a second amended complaint. The court denied the post-judgment motion and the plaintiff appealed within 30 days from the denial.⁸⁵

The appellate court observed that pursuant to Supreme Court Rule 303, a party has 30 days within which to file a notice of appeal from the entry of a final judgment or, if a timely post-judgment motion is filed directed against the final judgment, “the notice of appeal must be filed within 30 days of the entry of the order disposing of the last post-judgment motion directed against the judgment.”⁸⁶ The court noted that to be a valid post-judgment motion, one must comply with the requirements of section 2-1203 regarding the form of relief sought.⁸⁷ The appellate court held that the “plaintiff’s motion to modify was not a [proper] post-judgment motion under section 2-1203 and did not toll

82. *Shutkas Elec., Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 78, 851 N.E.2d 66, 67 (2006). Magnuson-Moss Warranty Federal Trade Commission Improvement Act, U.S.C. §§ 2301-2312.

83. *Shutkas Elec., Inc.*, 366 Ill. App. 3d at 78, 851 N.E.2d at 67.

84. *Id.* at 78, 851 N.E.2d at 67-68. 735 ILL. COMP. STAT. 5/2-1203 (2002).

85. *Shutkas Elec. Inc.*, 366 Ill. App. 3d at 79, 851 N.E.2d at 68.

86. *Id.* at 80-81, 851 N.E.2d at 69.

87. *Id.* at 81, 851 N.E.2d at 69-70.

the time within which” to file the notice of appeal.⁸⁸ The court observed, “Illinois courts have held that a motion for leave to amend a complaint is not a motion directed at the final judgment within the meaning of Rule 303(a)(1) or encompassed within relief provided for by section 2–1203.”⁸⁹ Accordingly, the court found that it did not have jurisdiction to consider any issues relating to the summary judgment.⁹⁰

Although the appellate court found that it did not have jurisdiction to consider the issues relating to the summary judgment, it found that it did have jurisdiction to consider the denial of plaintiff’s motion for leave to file a second amended complaint pursuant to section 2–1005(g) of the Illinois Code of Civil Procedure.⁹¹ The court noted that section 2–1005(g) allows a trial court to permit pleadings to be amended upon just and reasonable terms, before or after the entry of a summary judgment. Accordingly, although the motion to amend was not a proper post-trial motion pursuant to section 2–1203, which would extend the time for filing the notice of appeal under Illinois Supreme Court Rule 303(a), it did extend the time for appeal from the denial of the motion to amend. In effect, the issue on appeal would be limited to the propriety of the court’s denial of the motion to amend the complaint and not the granting of the summary judgment.⁹²

2. *The Effect of Multiple Post-Judgment Motions on an Appeal*

Madigan v. Petco Petroleum Corporation, 363 Ill. App. 3d 613, 841 N.E.2d 1065 (2006).

Illinois Supreme Court Rules 274 and 303(a).

This case dealt with the application of new Supreme Court Rule 274 (“multiple final orders and post-judgment motions”), effective January 1, 2006, and amended Supreme Court Rule 303(a)(1) dealing with “a series of final orders that were modified pursuant to post-judgment motions.”⁹³

Simply stated, this case holds that where there are multiple post-judgment motions each resulting in amended judgments, the time to file a notice of appeal will be affected depending on the timing of the motions and judgments.

88. *Id.* at 81–82, 851 N.E.2d at 70.

89. *Id.* at 81, 851 N.E.2d at 70.

90. *Id.* at 82, 851 N.E.2d at 70.

91. *Id.* 735 ILL. COMP. STAT. 5/2–1005(g) (2002).

92. *See also* *Holtz v. Crown*, 357 Ill. App. 3d 994, 830 N.E.2d 703 (2005).

93. *Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 620, 841 N.E.2d 1065, 1070 (2006).

In *Madigan*, the State filed a complaint against the defendant for oil spills alleging violations of the Illinois Oil and Gas Act.⁹⁴ It sought injunctive relief and civil penalties. The following is a chronological sequence of the judgments, orders, and post-judgment motions that were filed:

1. February 2004 Judgment entered against the defendants.
2. March 2004 Defendant filed post-judgment motion to reconsider.
3. April 2004 State filed response.
4. May 26, 2004 Order entered modifying February 2004 judgment in favor of the State.
5. June 22, 2004 State's timely post-judgment motion to reconsider and strike court's May 26, 2004, order of modification.
6. June 25, 2004 One defendant files a notice of appeal from the May 26, 2004, order.
7. July 2004 Defendants file response to State's June 22, 2004, post-judgment motion.
8. September 8, 2004 Court denies State's post-judgment motion.
9. September 22, 2004 State files notice of appeal from September 8, 2004, order denying its post-judgment motion and files notice of cross-appeal from defendants' June 25, 2004, appeal.⁹⁵

The defendants moved to dismiss the State's appeal based upon the argument that the State's June 22, 2004, post-judgment motion to reconsider was a successive post-judgment motion that did not toll the time for filing its notice of appeal.⁹⁶ The appellate court found that the May 26, 2004 order

94. *Id.* at 617, 841 N.E.2d at 1068; 225 ILL. COMP. STAT. 725/1-28.1 (2002).

95. *Petco Petroleum Corp.*, 363 Ill. App. 3d at 618-19, 841 N.E.2d at 1069-70.

96. *Id.* at 621, 841 N.E.2d at 1071.

modified the February 2004 judgment pursuant to the defendants' request under Supreme Court Rule 274 and Supreme Court Rule 303(a)(1). Accordingly, the State was permitted to file a post-judgment motion to reconsider the new or amended order. This tolled the time to appeal and gave the State 30 days to appeal from the September 8, 2004, order denying its motion to reconsider. Therefore, its September 22, 2004, notice of appeal was timely filed and the appellate court had jurisdiction.⁹⁷

The State filed its own motion to dismiss defendants' appeal because the State's post-judgment motion to reconsider filed June 22, 2004, tolled the time to appeal and, therefore, Petco's June 25, 2004, "notice of appeal was premature and of 'no effect.'"⁹⁸ The appellate court agreed. Since Petco failed to file a new notice of appeal from the court's September 8, 2004, order denying the State's post-judgment motion, its appeal (and the State's cross-appeal) was dismissed.⁹⁹

This case reiterated the proposition that new Supreme Court Rule 274 and amended Supreme Court 303(a)(1) do not affect the prohibition against successive post-trial motions: a party can only make one post-judgment motion directed to a final judgment or order. However, where that post-judgment motion results in a modification of the judgment or order, any party affected by the modification may then file a post-judgment motion directed at the subsequent or superceding judgment or order. Until that subsequent motion has been ruled on, any notice of appeal will be premature.¹⁰⁰

3. *Extension of Time to File Post-Trial Motion Pursuant to Section 2-1202(c)*

Lowenthal v. McDonald, 367 Ill. App. 3d 919, 856 N.E.2d 1118 (2006).
735 ILL. COMP. STAT. 5/2-1202(c).

Following a jury trial, judgment was entered in favor of the defendant on August 5, 2004. On August 31, 2004, the plaintiff filed a motion for extension of time to file a post-trial motion. On September 3, 2004, the court granted the motion and extended the time to October 4, 2004. On October 1, 2004, the defendant agreed to additional time to file the post-trial motion. On October 4, 2004, (the first extended deadline) the plaintiff faxed a second motion for extension of time to the trial court. The following day, October 5, 2004, the court entered an "order" stating that the plaintiff had not filed a motion for the

97. *Id.* at 622, 841 N.E.2d at 1072.

98. *Id.*

99. *Id.* at 623, 841 N.E.2d at 1073.

100. *Id.* at 619-20, 841 N.E.2d at 1070-71.

court to act upon because, among other things, it was never filed with the clerk. Nevertheless, on October 13, 2004, the court “entered” plaintiff’s second motion for extension of time and on October 28, 2004, granted a second extension of time until November 25, 2004, within which to file plaintiff’s post-trial motion. The post-trial motion was filed on November 29, 2004. It was denied on January 20, 2005. The plaintiff filed a notice of appeal on February 16, 2005, from the January 20, 2005, order denying its post-trial motion.¹⁰¹

Section 2–1202 (735 ILCS 5/2–1202) provides that post-trial motions must be “filed within 30 days after entry of the judgment or . . . within any further time the court may allow within 30 days or extensions thereof.”¹⁰² In analyzing this section, the appellate court observed that failure to file a post-trial motion within 30 days of the judgment or within any further time allowed within the 30 days results in loss of jurisdiction by the trial court.¹⁰³ The appellate court found that since the plaintiff failed to file her post trial motion or obtain an order extending the filing before the first extended time of October 4, 2004 expired, the trial court lost jurisdiction to grant the second extension of time on October 28, 2004.¹⁰⁴ Accordingly, the time to file the notice of appeal was not tolled, and it was untimely. The appeal was dismissed.¹⁰⁵

This case is of note for several reasons. First, it emphasizes the proper procedure regarding the timely obtaining of extensions of time to file post-trial motions. Second, the court addressed the “consent exception” regarding the parties’ agreement to extend the time for filing a post-trial motion.¹⁰⁶ It recognized “that there is some support for the proposition that the time for filing a post-trial motion can be extended by agreement of the parties. The primary case espousing this principle is *Krotke v. Chicago, Rock Island, & Pacific R.R. Co.*”¹⁰⁷ However, the court noted that *Krotke*’s “consent exception” and the “revestment doctrine,”¹⁰⁸ which holds that parties can revest a trial court with personal and subject matter jurisdiction even after 30 days following a final judgment, seemed to be at odds with the supreme court’s decision in

101. *Lowenthal v. McDonald*, 367 Ill. App. 3d 919, 920–21, 856 N.E.2d 1118, 1120–21 (2006).

102. *Id.* at 921, 856 N.E.2d at 1121 (citing 735 ILL. COMP. STAT. 5/2–1202(c) (2004)).

103. *Id.* at 922, 856 N.E.2d at 1121.

104. *Id.* at 923, 856 N.E.2d at 1122.

105. *Id.* at 925, 856 N.E.2d at 1124.

106. *Id.* at 924, 856 N.E.2d at 1123.

107. *Id.* at 923, 856 N.E.2d at 1122 (citing *Krotke v. Chicago, Rock Island, & Pacific R.R. Co.*, 26 Ill. App. 3d 493 (1974)).

108. *People v. Kaeding*, 98 Ill. 2d 237, 240, 456 N.E.2d 11, 14 (1983).

People v. Flowers,¹⁰⁹ which held that lack of subject matter jurisdiction is not subject to waiver and cannot be cured through the parties' consent.¹¹⁰

The court resolved this apparent conflict by relying on *People v. Montiel*,¹¹¹ where it found that it is not the "consent" but rather the act of "participation" that revests jurisdiction.¹¹²

The appellate court disagreed with the *Krotke* reasoning and found that since the plaintiff failed to either file a post-trial motion within the first extended period of time or obtain a second extension of time, the trial court lost jurisdiction.¹¹³ Despite the fact that the defendant previously agreed not to object to a second extension of time, this agreement did not revest the trial court with jurisdiction because "defendant did not actively participate in the subsequent proceedings. Instead, at the first opportunity, he objected to the trial court's jurisdiction over the case, because plaintiff had failed to timely secure an extension."¹¹⁴

Simply stated, an agreement by opposing counsel not to object to an extension of time will not relieve the party from timely filing a proper post-trial motion and securing an order. This decision also observed that not only must the motion for an extension of time be filed within 30 days (or any extended time period) but the order itself must also be filed within this period.¹¹⁵

B. Dismissal for Lack of Diligence in Obtaining Service on Defendant Supreme Court Rule 103(b)

Due Diligence Found In Serving Defendant Even After One Year Based Upon Special Circumstances.

McRoberts v. Bridgestone Americas Holding, Inc., 365 Ill. App. 3d 1039,
851 N.E.2d 772 (2006).

The plaintiff was involved in an automobile accident after his tires blew out. Several months later, he sent a letter to the manufacturer regarding the accident. In response, he received a letter from an adjuster stating that he would be handling the claim on behalf of the manufacturer. The parties continued to correspond and when a settlement could not be reached, a lawsuit

109. *People v. Flowers*, 208 Ill. 2d 291, 303, 802 N.E.2d 1174, 1182 (2003).

110. *Lowenthal*, 367 Ill. App. 3d at 924, 856 N.E.2d at 1123.

111. *People v. Montiel*, 365 Ill. App. 3d 601, 605, 851 N.E.2d 725, 728 (2006).

112. *Lowenthal*, 367 Ill. App. 3d at 924–25, 856 N.E.2d at 1123.

113. *Id.* at 925, 856 N.E.2d at 1123.

114. *Id.* at 925, 856 N.E.2d at 1123–24.

115. *Id.* at 922, 856 N.E.2d at 1121.

was filed shortly before the statute of limitations expired. Negotiations continued after the suit was filed. Counsel for the plaintiff wrote the adjuster informing him of the filing of the lawsuit and indicated that he would not serve the defendant until they attempted resolution of the matter. The letter also provided that “if you feel that you cannot go forward, please advise and I will serve the parties.”¹¹⁶ The adjuster acknowledged receipt of the letter but did not respond to the inquiry regarding service of summons. Several months later, plaintiff was informed by the manufacturer’s legal department that it would be handling the case. In subsequent correspondence, the legal department informed plaintiff that it had not been properly served with summons. In response, the plaintiff served the manufacturer approximately one year after the suit was filed.¹¹⁷

In finding that the plaintiff exercised reasonable diligence under Rule 103(b) in serving the defendant approximately one year after the suit was filed, the court found that it was based on special circumstances.¹¹⁸ The plaintiff and defendant had engaged in settlement negotiations for close to two years. The plaintiff filed the lawsuit to ensure that the statute of limitations did not expire. He informed the adjuster that he would serve the defendant if necessary but received no response. Accordingly, under these circumstances, the court found that there was due diligence in serving the defendant. It noted that this was “not a case like *Womick* where the plaintiff filed suit and simply failed to serve the defendant because of inadvertence or neglect. McRoberts was in active contact with an adjuster whom Bridgestone/Firestone had directed to act on its behalf, and McRoberts was acting under a reasonable assumption that his decision to withhold service was acceptable to Bridgestone/Firestone.”¹¹⁹

The case emphasizes the fact that there must be prompt service pursuant to Supreme Court Rule 103(b). Failure to do so will subject a party to a possible dismissal for lack of due diligence in serving the defendant. Nevertheless, where active negotiations are pending, the court may very well find due diligence under the particular facts of the case.

C. One Bite of the Appellate Apple

116. *McRoberts v. Bridgestone Americas Holding, Inc.*, 365 Ill. App. 3d 1039, 1041, 851 N.E.2d 772, 774 (2006).

117. *Id.* at 1041, 851 N.E.2d at 774.

118. *Id.* at 1043, 851 N.E.2d at 775.

119. *Id.* at 1044, 851 N.E.2d at 776.

Emerald Casino, Inc. v. The Illinois Gaming Board, 366 Ill. App. 3d. 622, 852 N.E.2d 512 (2006).

The plaintiff, Emerald Casino, Inc., was granted a casino operators license pursuant to the Illinois Riverboat Gambling Act.¹²⁰ The board brought disciplinary proceedings against the Casino to revoke its license. The administrative law judge upheld the constitutionality of the board's administrative rules. The Casino filed both a complaint for declaratory judgment, which was dismissed with prejudice, and a motion for preliminary injunction, which was denied. The Casino appealed. While the civil appeal was pending, the board issued its final decision revoking the Casino's license, and the Casino appealed this under the Riverboat Gambling Act, which provides for appellate court review of the board's final order by filing a petition for judicial review in the Fourth District within 35 days.¹²¹

The appellate court found that there was "[n]o issue raised in this appeal that is not and could not be raised in the administrative review petition."¹²² The appellate court rejected the Casino's claim that it could attack the board's rules simultaneously under the administrative procedural provisions and the circuit court proceedings.¹²³

The court succinctly observed, "the law does not provide for more than one bite of the appellate apple."¹²⁴ Care must be taken when dealing with administrative proceedings and simultaneous civil proceedings. A simultaneous attack on an administrative procedure will not be allowed if the administrative review addresses the same issues. There are very few exceptions, e.g., the board lacks statutory authority to conduct a hearing.

D. Summary Judgment Procedure

1. A Circuit Court Has Authority to Enter an Summary Judgment Even If the Party Has Not Filed a Motion

West Suburban Bank v. City of West Chicago, 366 Ill. App. 3d. 1137, 853 N.E.2d 420 (2006).

120. 230 ILL. COMP. STAT. 10/1 *et seq.* (West 1992).

121. *Emerald Casino, Inc. v. Ill. Gaming Bd.*, 366 Ill. App. 3d. 622, 624, 852 N.E.2d 512, 513-14 (2006).
230 ILL. COMP. STAT. 10/17.1(A).

122. *Emerald Casino*, 366 Ill. App. 3d at 626, 852 N.E.2d at 515.

123. *Id.* at 626, 852 N.E.2d at 515-16.

124. *Id.* at 627, 852 N.E.2d at 516.

The bank contested the involuntary annexation of its land by the city. It filed a two count complaint against the city seeking to disconnect the annexed property and for quo warranto relief. It then filed a motion for summary judgment under count II to which the defendant filed a response.¹²⁵

The parties agreed that there was no question of fact and that the only issue was a question of law. They also agreed to treat the defendant's response to the plaintiff's motion for summary judgment as a cross-motion for summary judgment. The court then granted summary judgment in favor of the defendant.¹²⁶

On appeal the plaintiff contended that it was error to treat the defendant's response as a cross-motion for summary judgment. The court rejected this argument, finding that the parties had agreed to this procedure.¹²⁷ In addition, the court observed:

Furthermore, when a court denies one party's motion for summary judgment, it is authorized to enter summary judgment in favor of the other party, even though that party does not have a pending motion for summary judgment.¹²⁸

This case reinforces the proposition that where there is no genuine issue of material fact, but only an issue of law, the court can enter summary judgment for either party although only one party has actually filed a motion for summary judgment.

2. Although a Trial Court's Denial of a Summary Judgment Is Not Appealable, the Court Will Review the Denial Where the Court Has Ruled on an Opposing Motion for Summary Judgment on the Same Claim

Price v. Hickory Point Bank & Trust, 362 Ill. App. 3d. 1211, 841 N.E.2d 1084 (2006).

The plaintiffs brought a negligence cause of action alleging that they were tenants on defendant's property and were poisoned by exposure to lead-based paint. Each party filed a motion for summary judgment, and the court granted

125. *W. Suburban Bank v. City of W. Chi.*, 366 Ill. App. 3d. 1137, 1138–39, 853 N.E.2d 420, 421–22 (2006).

126. *Id.* at 1139–40, 853 N.E.2d at 422.

127. *Id.* at 1145–46, 853 N.E.2d at 427.

128. *Id.* at 1146, 853 N.E.2d at 427; *See Magnus v. Lutheran Gen. Health Care Sys.*, 235 Ill. App. 3d 173, 184–85, 601 N.E.2d 907, 915 (1992).

the defendant's summary judgment.¹²⁹ On appeal the plaintiffs claimed that the trial court erred in granting the defendant a summary judgment¹³⁰ and in denying their motion for partial summary judgment regarding the issue of liability.¹³¹ The appellate court reversed the summary judgment in favor of the defendant and remanded the cause for further proceedings.¹³²

The appellate court recognized a principle that denial of a summary judgment is generally not a final and appealable order unless the court has also ruled on the opponent's motion for summary judgment on the same claim. However, the court held:

In our view, reviewing the trial court's rulings on plaintiffs' partial-summary-judgment motions would serve little purpose in light of (1) our reversal of the court's grant of summary judgment in favor of the defendants and (2) the extensive direction our foregoing analysis provides to the parties and the court. Accordingly, we decline to address plaintiffs' argument that the trial court erred by denying their partial-summary-judgment motions.¹³³

The court found that it could review a denial of a summary judgment motion where the trial court has ruled on opposing motions for summary judgment on the same claim, but it would not do so if the case was remanded for further proceedings.

E. Bifurcated Standard of Review in Venue Appeals

1. The plaintiff brought a class action against the defendant pharmaceutical company under the Illinois Consumer Fraud and Deceptive Business Practices Act

Rensing v. Merck & Company, Inc., 367 Ill. App. 3d 1046, 857 N.E.2d 702 (2006).
815 ILL. COMP. STAT. 501/5 *et seq.* (West 2004).

129. *Price v. Hickory Point Bank & Trust*, 362 Ill. App. 3d 1211, 1213–15, 841 N.E.2d 1084, 1086–88 (2006).

130. *Id.* at 1215–16, 841 N.E.2d at 1088.

131. *Id.* at 1222, 841 N.E.2d at 1093.

132. *Id.*

133. *Id.*

The defendant filed a motion to transfer the cause of action from St. Clair County to Cook County.¹³⁴ Following a hearing, the motion was denied and defendants filed a petition for leave to appeal pursuant to Supreme Court Rule 306 which was granted by the appellate court.¹³⁵

Supreme Court Rule 341(e)(3) provides, in part, “the appellant must include a concise statement of the applicable standard of review for each issue. . . .”¹³⁶ There are a plethora of different standards of reviews utilized by the reviewing courts, each depending on the exact nature of the order or judgment appealed.¹³⁷

The *Rensing* decision is particularly instructive when dealing with motions to transfer venue involving mixed questions of fact and questions of law. The appellate court, in citing the supreme court decision of *Corral v. Mervis Industries, Inc.*, stated: “Questions of fact are reviewed for manifest error and questions of law are reviewed *de novo*. . . . When there is no dispute concerning the facts relied upon by the court, a *de novo* standard of review is proper.”¹³⁸

Based on the finding that there was no dispute regarding the facts when the trial court ruled on the motion to transfer venue, the appellate court found that it involved solely a question of law which would be reviewed *de novo*.¹³⁹ Applying this standard to the facts of the case, it reversed the trial court’s order, and pursuant to its authority under Supreme Court Rule 366(a)(5), it directed the trial court to enter an order transferring the cause of action to Cook County for further proceedings.¹⁴⁰

F. Request to Admit Facts, Supreme Court Rule 216

1. Under Rule 183, a Circuit Court Can Consider Facts Other than the Reason for the Delay When Extending the Time to File a Response to a Request to Admit Facts under Rule 216

Vision Point of Sale, Inc. v. Hass, 366 Ill. App. 3d 692, 852 N.E.2d 331 (2006).

134. *Rensing v. Merck & Co.*, 367 Ill. App. 3d 1046, 1047, 857 N.E.2d 702, 703 (2006).

135. *Id.* at 1047, 857 N.E.2d at 704.

136. Ill. Sup. Ct. R. 341(e)(3).

137. *See, e.g.*, Hugh C. Griffin & Hugh S. Balsam, *The Standard of Review in Civil Cases in Illinois: More Than Meets the Eye*, 8 APP. L. REV. 1 (Winter 2002 – 03).

138. *Rensing*, 367 Ill. App. 3d at 1048, 857 N.E.2d at 704–05 (citing *Corral v. Mervis Indus. Inc.*, 217 Ill. 2d 144, 153–54, 839 N.E.2d 524, 530 (2005)).

139. *Id.* at 1049, 857 N.E.2d at 705.

140. *Id.* at 1051, 857 N.E.2d at 707.

The plaintiff sued its former employee and his new employer for tortious interference with business relationships, breach of fiduciary duties, and violation of the Illinois Trade Secrets Act.¹⁴¹ The trial court granted the plaintiff a preliminary injunction and ordered the defendants to purge their computers with information obtained from the plaintiff by its former employee. It also ordered the defendants to purchase new computers and allow the plaintiff's expert to observe the transfer. The defendants were ordered to pay the plaintiff's expert's fees.¹⁴² Plaintiff filed a petition for a rule to show cause for sanctions because the defendant failed to pay the expert's fees. At the hearing on the rule to show cause, the court allowed the plaintiff, the former employee, to file a late response to defendants' previous request to admit facts and also allowed the defendants to challenge the trial court's prior order and the amount of the invoice submitted by the plaintiff concerning its expert's fees.¹⁴³

The defendants previously filed their request to admit facts to which the plaintiff responded, but the response was signed by its attorney and not a corporate officer. It was also not filed with the court. The court previously granted defendants' motion to have their request to admit facts deemed admitted, but the trial court subsequently, *sua sponte*, vacated the order and allowed the plaintiff to file a proper response late.¹⁴⁴

The question of law that was certified by the circuit court pursuant to Supreme Court Rule 308 was whether the term "good cause" as used in Supreme Court Rule 183 (extensions of time), which allows an extension of time for filing any pleading, permits a circuit court to consider facts beyond those regarding the specific cause for the delay.¹⁴⁵

The appellate court held that "[t]he court need not restrict its attention to the causes for the delay in the responses to the requests to admit."¹⁴⁶ A circuit court could consider the responding party's good faith, the conduct of the party filing the request to admit, the length of the delay, and "any other factors that bear on the balance the court must strike between the need for efficient litigation and the interest of achieving substantial justice between the parties."¹⁴⁷ Nevertheless, the appellate court vacated the circuit court's order and remanded the case in order for the plaintiff to file a proper written Rule 183 motion for extension of time

141. *Vision Point of Sale, Inc. v. Hass*, 366 Ill. App. 3d 692, 694, 852 N.E.2d 331, 333 (2006); 765 ILL. COMP. STAT. 1065/1 *et seq.* (West 2002).

142. *Vision Point*, 366 Ill. App. 3d at 694, 852 N.E.2d at 333.

143. *Id.* at 697, 852 N.E.2d at 335.

144. *Id.* at 694, 852 N.E.2d at 332.

145. *Id.* at 697, 852 N.E.2d at 335.

146. *Id.* at 700, 852 N.E.2d at 337.

147. *Id.* at 699, 852 N.E.2d at 337.

in order to give the defendants an opportunity to file an objection and have a hearing.¹⁴⁸

The appellate court observed that other jurisdictions have also considered the conduct of the party requesting the admission, the responding party's good faith efforts and the length of delay as factors supporting its holding that a trial court can consider matters beyond the exact causes for the delay.¹⁴⁹ Thus, factors which go beyond the cause for the delay will be considered, especially where the proponent of the request to admit facts may have been guilty of some wrong doing, e.g., failure to obey prior court orders.

V. CONCLUSION

Except for the supreme court in *Thompson* overruling the appellate court decision in *West*, which held licensure was a prerequisite to testify as an engineering expert in Illinois, there were no major developments in case law regarding civil trial and appellate practice and procedure. However, these decisions addressed many procedural issues which affected the outcome of civil and appellate cases. The moral? Failure to follow the Illinois Code of Civil Procedure or the Illinois Supreme Court Rules can, and mostly likely will, result in an adverse outcome to one's case. The major development in civil appeals was the Supreme Court Rule amendments which will change the way appeals are handled.

148. *Id.* at 700, 852 N.E.2d at 337.

149. *Id.* at 699, 852 N.E.2d at 337.