FOURTH DIVISION
November 6, 2014
No. 1-13-1656 & 1-13-3051 (cons.)

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JOHN J. PAPPAS, SR., individually, and d/b/a SHAMROCK FARMS and SARAH SCOTT GRUBNER,	)	Appeal from the Circuit Court of Cook County, Illinois, Law Division.
Plaintiffs-Appellees	)	
v.	)	No. 2012L0414
PATRICK HURST and CHRIS DICKERSON,	)	
Defendants-Appellants,	)	The Honorable Brigid Mary McGrath, Judge Presiding.
v.	)	
YVONNE OCRANT, RICHARD KOLODZIEJ And HINSHAW & CULBERTSON, LLP,	)	
Defendants.	)	

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Taylor concurred in the judgment.

ORDER

Held: In consolidated appeal, trial court properly found the elements of *res judicata* such that subsequent suit is barred and parties' motion to dismiss was properly granted; other

appeal asking this court to review the denial of a motion to dismiss is dismissed. Affirmed in part and dismissed in part.

¶ 1 In this consolidated appeal, plaintiffs-appellants John J. Pappas, Sr., individually and d/b/a Shamrock Farms, and Sarah Scott Grubner (Pappas) appeal the granting of defendants-appellees, two lawyers and their law firm, Yvonne Ocrant, Richard Kolodziej, and Hinshaw & Culbertson, LLP's (the Hinshaw defendants) motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)), dismissing with prejudice Count C and Count J of plaintiffs' complaint to recover compensatory and punitive damages stemming from a disagreement about a horse. On appeal, Pappas contends that the trial court erred in finding the Pappas claims were barred by *res judicata*.

¶ 2 Defendants-appellants Patrick Hurst and Chris Dickerson (Hurst and Dickerson or the Hurst defendants)[1] also appeal, contending the circuit court erred when, although it dismissed all other claims against them, it did not dismiss the count alleging slander *per se* (Count A). Pappas also appears in this case as the plaintiffs-appellees regarding the circuit court's treatment of Count A.

¶ 3 I. BACKGROUND

¶ 4 Due to the complex nature of this cause, we offer here a brief summation of the underlying facts. This tort action involves a dispute concerning the ownership of a horse and whether the parties and their agents, including their lawyers, committed torts in a tug-of-war over the horse. A previous suit was filed and adjudicated in Lake County regarding the same

[1] Nancy Hurst was originally a defendant in this case, as well, but was dismissed in the trial court. She is not a party to this appeal.

horse and the same owners. In the Cook County action, the individuals and the entity who ultimately won ownership of the horse in the Lake County action sued the individuals against whom they litigated in Lake County, as well as their lawyers. Plaintiffs also sued an individual who was a third party potential buyer of the horse.

¶ 5 The Hinshaw defendants moved to dismiss the case pursuant to section 2-619 of the Code based on *res judicata*. The Hinshaw defendants also moved, in the alternative, for dismissal of the plaintiffs' claims for trespass and conspiracy based on section 2-615 of the Code (725 ILCS 5/2-615 (West 2012)). After briefing and hearings, the circuit court found all elements of the defense of *res judicata* present on the record. It granted the Hinshaw defendants' motion and dismissed the case with prejudice.

¶ 6 The Hurst defendants also filed a motion to dismiss the Cook County action pursuant to section 2-619, arguing that plaintiffs' claims were barred by *res judicata*. The circuit court granted the Hurst defendants' motion to dismiss as to all counts except Count A, alleging slander *per se*.

¶ 7 II. FACTS

¶ 8 In January 2012, the Pappas plaintiffs filed a complaint in Cook County against the Hurst defendants and the Hinshaw defendants. The following facts are taken from the pleadings in the record.

¶ 9 John Pappas, Sr. owns and lives at a property in Lake County, Illinois, where he does business as Shamrock Farms. Since 1983, Shamrock Farms has been a boarding and training facility for horses owned by John and by third party customers of Shamrock Farms. Sarah Scott Grubner is the farm manager and a professional horsewoman who trains, cares for, markets, and sells horses owned by third parties.

¶ 10 In June 2009, Nancy Hurst hired Sarah and John to board, care for, have custody of, and train their horse, Orion. She also hired Sarah to teach Lauren, her daughter, how to ride Orion. Over time, Sarah and Shamrock Farms took Lauren and Orion to several horse competitions.

¶ 11 In the late summer of 2009, Patrick Hurst met with Sarah and John to discuss the possibility of entering into joint ventures together. Specifically, Patrick wanted to, along with Sarah and John, purchase investment horses, have them trained and exhibited at competitions, and then sell them for profit. According to the Pappas claim, it was agreed that Patrick would advance the funds to purchase a horse, and Sarah and John, as part of the joint venture, would contribute money, tack, equipment, professional training and medication; charge reduced fees for boarding; would not charge the joint venture or Patrick for Shamrock Farms shipping the horse to horse shows or for day fees at horse shows or professional rides at horse shows. As part of the joint venture, Patrick would pay veterinary bills, blacksmith bills, and "expenses charged by the entities that conducted horse competitions." At the same meeting where these things were discussed, it was also agreed that Sarah and Shamrock Farms would be responsible for the care, custody, control, and training of all joint venture investment horses.

¶ 12 In the winter of 2010, Dr. Rachel Kane, a veterinarian horsewoman, contacted Sarah and asked her to accept two of Dr. Kane's horses and to try to market them. One of these horses was the horse in question here, Altair. Sarah accepted, and began training Altair.

¶ 13 Sarah discovered that Altair had such raw talent that he could be improved and, eventually, marketed for a profit. Sarah had Lauren Hurst ride Altair and opined that Lauren could successfully show the horse.

¶ 14 John and Sarah approached Patrick and Nancy about creating a joint venture in the ownership of Altair, providing that Altair could be acquired from Dr. Kane at a reasonable price. Sarah contacted Dr. Kane, who offered Altair at $25,000. Sarah thought this price was reasonable. Neither Patrick nor Nancy communicated with Dr. Kane regarding Altair. According to the complaint, Sarah, acting as a member of the joint venture, tendered a contract and a check for $25,000 to Dr. Kane, d/b/a Entropy Farm LLC, to purchase Altair. Further according to the complaint, on May 8, 2010, Nancy signed the contract to purchase Altair on behalf of the joint venture and gave Sarah a check in the amount of $25,000 drawn on the Hurst account to present to Dr. Kane for the purchase of Altair on behalf of the joint venture.

¶ 15 Also on May 8, 2010, Nancy, Sarah, and John signed the joint venture agreement. Patrick, however, did not sign the joint venture agreement. Nonetheless, according to the complaint, the check written and signed by Nancy was drawn on an account in the name of Patrick and Nancy and funded by Patrick. The agreement the complaint refers to as the joint venture agreement is included in the record, titled "Akaya[2] Agreement May 2010." In its entirety, it reads:

> "Hurst's Investment will be:
>
> Initial expenses:
>
> Pre-purchase exam
>
> Purchase price of $25,000 payable to Rachel Kane
>
> Insurance—minimum to provide major medical

[2] According to plaintiff, Altair's name was changed to Altair from Akaya. We refer to the horse herein as Altair.

Ongoing expenses:

Shoeing

Veterinary services

Board of $600 per month

Horse show entry fees, stall fees, etc.

Braiding

Shamrock Farms investment will be:

Reduced Board

Daily supplements

All professional schooling

All lesson charges

Shipping fees

Horse show expenses (day fees, ride fees, shared expenses)

Tack and equipment

Vaccines and worming costs

Routing medication and supplies (bute, medroxy, salves, etc.)

Marketing charges (DVD production, showings, ads)

Upon Final Sale:

Hursts receive original $25,000 purchase price

Hursts and Shamrock Farms split equally all funds remaining"

This document is signed by Sarah, Nancy, and John.

¶ 16 According to the complaint, the joint venture agreement gave John and Sarah the following rights and obligations regarding Altair: sole care, custody and control of Altair including boarding her at Shamrock Farms, feeding, medicating, managing, caring for and training her at Shamrock, and managing, caring for and training Altair at all the horse competitions; the right to arrange for emergency veterinary care, ordinary veterinary care, horse shoeing by blacksmiths chosen by John and Sarah, and medications and supplements that were to be administered to the horse to make it healthy and sound; and the right and obligation to market and sell the horse.

¶ 17 During the 2010 horse show season, Altair proved to be a successful show horse, competing as a hunter and equitation horse, which includes jumping fences at several heights. The parties agreed that Sarah and Lauren would show Altair through the end of the 2010 show season and, thereafter, Sarah and John would actively market the horse for sale.

¶ 18 The parties agreed that Altair would be placed for sale at $75,000 and active marketing would not take place until Lauren finished her show session at a fall show. Subsequent to the completion of Lauren's show season, Sarah began actively marketing Altair for sale to third persons. This ended when Altair was injured while being ridden by Lauren on January 5, 2011.

¶ 19 On January 5, 2011, Lauren was taking a lesson on Altair from Sarah. During the lesson, the horse injured her foot. Altair could no longer be presented for sale until the wound had substantially healed.

¶ 20 During February and early March 2011, Lauren continued to take weekly lessons from Sarah on various other horses. In March, Lauren informed Nancy and Sarah that she wanted to move another of her horses, Aramis, to a different farm, McCarthy Farms, in Elgin,

Illinois, where she would train in a new discipline, dressage, which does not involve the jumping of horses. Lauren suggested she would take Altair to the other farm, as well. However, Sarah and Nancy agreed that Altair had been well cared for and, in the best interest of the joint venture, Altair should be kept at Shamrock for training with Sarah and marketing by John and Sarah to sell the horse. Nancy and Sarah agreed that it would not be in the best interest of the joint venture nor of Altair to take Altair out of training as a hunter and equitation horse and move her to a facility housing a dressage program, as Altair had never been trained as or competed as a dressage horse.

¶ 21 Lauren did not ride Altair at Shamrock from March 8, 2011, to April 10, 2011. On April 10, 2011, Lauren took a final lesson from Sarah on Altair at Shamrock.

¶ 22 In late April 2011, Patrick called Sarah and then participated in a conference call with John and Sarah. During this call, he informed them he wanted to move Altair to McCarthy Farms for a couple of weeks so that Lauren could enjoy the company of Altair while she was visiting her other horse there. John and Sarah disagreed, arguing that it would not be in the best interest of either the joint venture or Altair to move the horse to a dressage facility; that John and Sarah had been invested with the right and responsibility for the sole care, control, training and medical oversight of Altair; and moving Altair to a different facility not owned and controlled by John and Sarah was too much risk.

¶ 23 At some point, Patrick became interested in buying John and Sarah out of their interest in Altair.

¶ 24 In an email on April 26, 2011, Patrick claimed a person was interested in purchasing Altair. Patrick did not provide John or Sarah with the identity or contact information of this

potential buyer. Nor did Patrick or Nancy make an offer to John or Sarah to buy out John and Sarah's interest in Altair so that the joint venture would be terminated.

¶ 25 According to the complaint, Patrick and Nancy hired attorney Yvonne Ocrant with the law firm Hinshaw & Culbertson to represent their interest in Altair. Ocrant contacted the Barrington Hills Police Department to obtain police assistance on May 5, 2011, at Shamrock Farms for the removal of Altair.

¶ 26 At noon on May 5, 2011, John saw a large truck and unmarked trailer near one of the Shamrock Farms barns. John approached and asked the driver for his name and purpose for being on the property. The driver, Michael Hunter, informed John that he was picking up Altair on behalf of Nancy and had instructions to call Nancy after leaving Shamrock with Altair in order to get specific instructions as to where he was to take Altair. According to the complaint, Ocrant provided Nancy with Hunter's contact information.

¶ 27 Sarah approached while John was talking with Hunter, and asked Hunter if he had IDOT certification, motor carrier certification, proof of insurance, or the bill of lading required before a horse can be transferred and moved. Hunter did not.

¶ 28 During this time, Barrington Hills Police Department Lieutenant Colditz arrived. John told him that Hunter was trespassing on his property and should not be allowed to take Altair with him. Lt. Colditz told John that Ocrant and Nancy had contacted him the day before, but that he informed him the Barrington Hills Police Department could not get involved in this matter. Lt. Colditz informed John he was at Shamrock Farms only to ensure no fights would ensue, and to protect John's property from trespass. Hunter left the property.

¶ 29 The following day, Ocrant sent a letter to John, informing him that she represented Patrick and Nancy in order to facilitate possession of their horse, and that John and Sarah

must relinquish possession of Altair by May 11, 2011, or her clients would proceed with legal remedies.

¶ 30 On May 9, 2011, John, who is also an attorney, sent a letter to Ocrant, advising her that anyone who entered Shamrock Farms to remove Altair from the property would be trespassing, that John would have the individual arrested, and would pursue prosecution.

¶ 31 On May 27, 2011, John and Sarah were at a horse competition about 60 miles from Shamrock Farms. Patrick telephoned Sarah and asked permission to have somebody look at Altair at 1:30 that afternoon. Sarah agreed and contacted Katie Dickerson, the daughter of defendant Chris Dickerson, who was to come and look at Altair with her trainer, Lauren Lechtanski. Lechtanski does business as Chestnut Hill Farm in Sleepy Hollow, Illinois. When Sarah contacted Katie, she learned that Katie and Lechtanski were already at Shamrock Farms at 10:30 a.m. Asked why she was looking at the horse, Katie told Sarah she did not know why, that it was something between her father and Patrick. Katie and Lechtanski left Shamrock Farms without either having ridden Altair and without seeing anyone else ride Altair.

¶ 32 On the morning of May 28, 2011, the lone Shamrock Farms employee on duty called John to tell him five people had come to the farm, loaded Altair onto a trailer, and were preparing to leave with her. The employee recognized one of these individuals as Lauren Hurst. The employee had attempted to stop the people from moving Altair, but they put a halter and lead rope on Altair, opened her stall door, walked her through the barn, and loaded her onto the trailer.

¶ 33 John instructed the employee to block the Shamrock Farms Lake Cook exit with his vehicle so that the truck and trailer could not pass, and to telephone another employee who

was not working that day to come and help. John instructed the employee not to block the Ridge Road exit to Shamrock Farms, so that Patrick, Lauren, and Katie could leave the premises.

¶ 34 John instructed the employee to inform all of the individuals that they were trespassing and should leave the property without taking Altair. The individuals did not leave. John called the Barrington Hills Police Department for help.

¶ 35 According to the complaint, John did not know Chris and did not give Chris permission to enter Shamrock Farms. Also according to the complaint, Ocrant provided Chris, Patrick, and/or Nancy with the name of Jack Jones, who was a shipper of horses. On May 27, Chris contacted Jones and made arrangements for him to go to Shamrock Farms on May 28, 2011, to pick up Altair. He instructed Jones not to enter the property until Chris telephoned him that the time was right to enter onto Shamrock Farms.

¶ 36 The complaint alleges that, on May 28, 2011, Lauren entered Shamrock Farms alone, asking where Altair was located and if anyone else was working that day other than the lone employee. The employee advised Lauren that he was alone at the farm, and showed her Altair's stall. Lauren then communicated with Chris, who arranged for Jones to come with his truck and trailer, along with Chris and Patrick, each in his individual vehicle, to participate in the removal of Altair. After the horse was loaded onto the trailer, Chris told Jones to drive the horse to McCarthy Farms in Elgin, where the Hursts' other horse, Aramis, was located. The complaint alleges that Ocrant, Patrick, Nancy, and Chris had knowledge of and instructed, facilitated, and supported the trespass to Shamrock by Jack Jones, Chris, Patrick, Lauren, and Katie, and are therefore joint tortfeasors for the trespass to the property of Shamrock Farms.

¶ 37 Additionally, the complaint alleges that, prior to the arrival of Chris, Patrick, and their daughters to Shamrock Farms, Patrick and Nancy allegedly sold Altair to Chris "in what was a sham transaction." According to the complaint, this was a sham transaction "which was a result of a civil conspiracy between the defendants to acquire the horse temporarily for Chris and then to be transferred to Patrick and Nancy for their teenage daughter, Lauren." Pappas believes Ocrant and/or Kolodziej, also an attorney at Hinshaw, "participated in the sham transaction" by providing the purchase agreement and bill of sale to be executed by Chris, Patrick, and Nancy just prior to the arrival of Patrick and Chris at Shamrock Farms to remove Altair from plaintiffs' property.

¶ 38 According to the complaint, Patrick and Nancy entered into a contract for the sale of Altair to Chris for $30,000, with a provision that John and Sarah would be paid $2,500 of the purchase price for "full and final satisfaction of their interest" in the sale of Altair. Nancy, Patrick, and Chris signed the purchase agreement and bill of sale.

¶ 39 According to the complaint, when Barrington Hills Police Department Sergeant Kann arrived at Shamrock Farms on May 28, 2011,Chris and Patrick informed him that the horse was dehydrated, abused, neglected, mistreated, injured, lame, an had been given illegal drugs and medications by John and Sarah. Sergeant Kann contacted Donna Ewing, a Humane Animal Investigator, to examine the horse and determine if the allegations were true. Ewing arrived quickly and examined Altair. Her inspection revealed that Altair was healthy, not mistreated, not abused or neglected, not dehydrated, and not otherwise in any danger. Ewing also inspected Altair's stall and found it was equipped with water, and determined that Altair was not subject to being dehydrated. Chris, Patrick, and their daughters told Ewing that Altair was abused and neglected. Altair was put back into his stall.

¶ 40 Chris arranged for a veterinarian from Merritt and Associates veterinary clinic to come to Shamrock to examine Altair. John and Sarah arranged for Dr. Nicole Wessel, a veterinarian who had treated Altair and was familiar with her physical condition, to attend and participate in the examination and inspection of Altair. Dr. Kristin Baumgartner of Merritt and Associates examined Altair at Shamrock on May 28, 2011, and drew blood for a complete blood count, serum chemistry, and drug screen. Chris, Patrick, and their daughters informed Dr. Baumgartner that Altair was abused, neglected, mistreated, dehydrated, lame, and given illegal medications and drugs. Dr. Baumgartner's inspection of Altair showed that Altair was physically fit, sound, not lame, not dehydrated, and not abused, neglected or mistreated. She informed Chris, Patrick, and their daughters of these findings. After receiving the results of Altair's blood tests, she also informed Chris that Altair's fluids were normal and Altair had not been given any illegal drugs or medication.

¶ 41 Dr. Wessel also examined Altair on May 28, 2011, in the presence of defendants, their daughters, Sergeant Kann, and Dr. Baumgartner. Chris, Patrick, and their daughters told Dr. Wessel that Altair was abused, neglected, dehydrated, and had been given illegal drugs. Dr. Wessel determined that Altair was sound and fit, was not mistreated, not abused or neglected, was not dehydrated or lame, and was not in danger. She advised defendants and their daughters of her findings.

¶ 42 Chris then told Sergeant Kann that Altair should be moved, because he, as the owner, was concerned about the care Altair would receive at Shamrock Farms.

¶ 43 On June 11, 2011, Nancy and Patrick, represented by Ocrant and Kolodziej, on behalf of the law firm Hinshaw & Culbertson, presented a verified complaint and emergency motion entry of a temporary restraining order against John and Sarah in Lake County Circuit Court.

The Lake County circuit court entered a temporary restraining order against John and Sarah, finding a possibility of irreparable harm and damage with no adequate remedy at law if Altair was injured or dehydrated, and allowing the Hursts full access to Altair to ensure proper care, feeding, water, shelter, veterinary care, and blacksmith care. John and Sarah were ordered by the Lake County court not to sell Altair to a third party without the Hursts' prior written authority. According to the complaint later filed in Cook County Court, via their complaint in Lake County, Patrick and Nancy alleged, in part:

> "a. That the horse was dehydrated, mistreated, mismanaged, that they would suffer irreparable harm if Altair was further damaged or died due to the continuing mismanagement by the defendant when, in fact, defendants and their attorneys were made aware of the fact that he horse was not dehydrated, mistreated, mismanaged or exposed to damage, or death by two veterinarians, a licensed State of Illinois humane animal investigator; and the blacksmith who cared for the horse's feet throughout the existence of the joint venture."

¶ 44 In sum, the Cook County complaint alleges: (1) slander *per se* against Chris Dickerson and Patrick Hurst for Chris' and Patrick's "knowingly false" statements to Sergeant Kann, Donna Ewing, Nicole Wessel, and Kristin Baumgartner, and others, that plaintiffs mistreated, mismanaged, injured, and caused Altair to be dehydrated, lame, unsound, which statements alleged criminal activity in that they alleged plaintiffs inhumanely treated an animal; that these statements cast plaintiffs as incompetent in their business and profession and defamed plaintiffs in their profession; (2) civil trespass against Patrick and Chris for their entry onto Shamrock Farms on May 28, 2011; (3) trespass against Nancy, Ocrant, and Kolodziej, alleging that, when Michael Hunter trespassed at Shamrock Farms, he did so under the

direction of Nancy, Ocrant, and Kolodziej; (4) trespass against Nancy, Patrick, and Chris for aiding, abetting, directing, controlling and causing Jack Jones to trespass upon Shamrock Farms on May 28, 2011; (5) tortious interference with the joint venture relationship by Chris; (6) civil conspiracy against Chris to cause Patrick and Nancy to breach their fiduciary duties which they owed to John and Sarah, and wrongfully obtained ownership of the joint venture horse, Altair; (7) breach of fiduciary duty against Patrick and Nancy; (8) civil conspiracy against Patrick and Nancy for conspiring with Chris, Ocrant, Kolodziej, and Hinshaw; (9) breach of contract against Patrick and Nancy for failing to pay entry and braiding fees for showing Altair at a horse show in August 2011; and (10) civil conspiracy against Ocrant, Kolodziej, and Hinshaw where Ocrant and Kolodziej knew that the contract entered into between Patrick, Nancy, and Chris was a sham.

¶ 45 Plaintiffs seek punitive damages against Patrick for his alleged slanderous *per se* statements in the amount of $5 million, and in excess of $50,000 for compensatory damages; punitive damages against Chris for his slanderous per se statements in the amount of $5 million, and in excess of $50,000 for compensatory damages; punitive damages against Patrick for civil trespass in the amount of $5 million, and in excess of $50,000 in consequential damages; punitive damages against Chris for civil trespass in the amount of $50 million, and in excess of $50,000 in consequential damages; punitive damages against Nancy, Ocrant, Kolodziej, and Hinshaw for the trespass by Hunter in the amount of $5 million each, plus attorney fees, and compensatory damages in excess of $50,000; punitive damages against Chris, Nancy, Patrick, Ocrant, Kolodziej, and Hinshaw, each in the amount of $5 million, plus attorney fees, and compensatory damages in excess of $50,000; punitive damages against Chris for tortious interference with the joint venture relationship in the

amount of $5 million, plus attorney fees, and an award of compensatory damages in excess of $50,000; punitive damages against Chris for civil conspiracy in the amount of $5 million, plus attorney fees, and compensatory damages in excess of $50,000; punitive damages against Patrick and Nancy for breach of fiduciary duty in the amount of $5 million, plus attorney fees, and compensatory damages in excess of $50,000; punitive damages against Patrick and Nancy for civil conspiracy in the amount of $5 million; attorney fees, and compensatory damages in excess of $50,000; damages against Patrick and Nancy for breach of contract in the amount of $504; and punitive damages against Ocrant, Kolodziej, and Hinshaw for civil conspiracy in the amount of $5 million each, plus attorney fees, and compensatory damages in excess of $50,000.

¶ 46 Ocrant, Kolodziej, and Hinshaw filed a motion to dismiss plaintiffs' complaint pursuant to sections 2-619 and 2-615 of the Code. By that motion, Ocrant, Kolodziej, and Hinshaw argued that: the complaint should be dismissed pursuant to section 2-619 based on the doctrine of *res judicata* because a similar complaint was previously filed in Lake County Circuit Court; and the complaint should be dismissed pursuant to section 2-615 because the counts are insufficient at law. Ocrant, Koldziej, and Hinshaw attached a copy of the Lake County complaint filed by the Hursts against Pappas, Shamrock Farms, and Grubner to its motion.

¶ 47 The Hursts also filed a motion to dismiss pursuant to section 2-619 of the Code, arguing that the Cook County complaint is barred by the doctrine of *res judicata* because: (1) the suit involves the same parties and their privies as the Lake County suit; (2) the plaintiffs' causes of action could have been brought by way of a counterclaim in the suit that Patrick and Nancy filed against Pappas, Grubner, and Shamrock Farms in Lake County; and

a final judgment was entered in Lake County. A copy of the Lake County complaint filed by the Hursts against Pappas, Shamrock Farms, and Grubner was attached to the motion.

¶ 48 In the Lake County two-count complaint for conversion and unjust enrichment, the Hursts alleged: The Hursts purchased Altair for $25,000 on May 8, 2010. The Hursts entered into an agreement with Shamrock Farms on May 8, 2010, pursuant to which the Hursts were obligated to pay $600 per month in boarding fees. Furthermore, the agreement stated that, in the event Altair was sold, the Hursts would receive their original $25,000 from the sale proceeds, with the Hursts and Shamrock Farms equally splitting the remaining sale proceeds. The agreement did not set a minimum sale price required for the sale of Altair to a third party; did not provide an exclusive right to either party to sell Altair to a third party; and did not provide exclusive possession of Altair to either party. The Hursts alleged that, after Altair injured her hoof, she was not suitable for her intended purposes as a horse for riding, training, or competition. However, according to the Hursts, Pappas, Grubner, and Shamrock Farms were using her to generate revenue as a lesson horse for students without the Hursts' permission. In April 2011, the Hursts requested temporary possession of Altair while she recovered from her injury, but were denied possession of Altair. On May 5, 2011, the Hursts again requested temporary possession of Altair and arranged for Altair's transportation from Shamrock Farms to a local facility. That same day, Pappas, Grubner, and Shamrock Farms denied the Hursts access to or possession of Altair, and directed the Barrington Hills Police Department to remove the Hursts' transporter from the property. On May 6, 2011, the Hursts' attorney, Ocrant, requested that Pappas, Grubner, and Shamrock Farms provide the Hursts with possession of the horse. Pappas and Grubner refused. On May 28, 2011, after the Hursts were denied possession of Altair by Pappas, Grubner, and Shamrock Farms, Altair

was sold to a third party, Chris Dickerson. When Chris attempted to pick up Altair on May 28, 2011, Pappas, Grubner, and Shamrock Farms again denied access to Altair, and blocked him from leaving. The Hursts alleged their veterinarian had inspected Altair and found him to be dehydrated.

¶ 49 On June 1, 2011, the Lake County Circuit Court granted the Hursts' motion for a temporary restraining order, allowing Pappas, Grubner, and Shamrock Farms to remain in possession of Altair, but setting particular conditions with respect to the horse's care and potential sale. Specifically, the Lake County court order regarding the emergency motion for a temporary restraining order and preliminary injunctive relief provides:

> "It is hereby ordered:
>
> 1) The Court finds an ascertainable claim for relief;
>
> 2) The Courts finds plaintiffs have a likelihood of success on the merits;
>
> 3) The Court finds that, to the extent the horse, Altair, is injured and dehydrated, the Court finds a possibility of irreparable harm and damage and no adequate remedy at law.
>
> 4) The Court finds that the status quo is that the Defendants remain in possession of Altair; however:
>
> 5) The Court is granting the TRO ordering Defendants to allow Plaintiffs and Plaintiffs' agents full access to Altair to ensure proper care, feeding, water, shelter, veterinary care and blacksmith care effective immediately and continuing through June 22, 2011.
>
> 6) Plaintiffs and Plaintiffs' agents shall be allowed full and unrestricted access to Altair and at no time shall Altair's stall or barn door(s) be padlocked

thereby preventing Plaintiffs and Plaintiffs' agents access to Altair effective immediately and through June 22, 2011.

7) Defendants are prohibited from selling Altair to a third party without Plaintiffs' prior written authority and Defendants are prohibited from transferring possession of Altair to any person other than plaintiffs or Chris Dickerson."

¶ 50 Pappas then filed a response brief opposing injunctive relief, alleging that attorney Ocrant contacted the Barrington Hills Police Department on May 4, 2011, and asked police officers to replevin the horse. It contends that on May 5, 2011, Michael Hunter, a transporter, arrived at Shamrock Farms, informed Pappas that he had been instructed by Nancy Hurst to pick Altair up, and to contact Nancy after pickup to determine where to take the horse. According to this response brief, Pappas told Hunter he was trespassing on Shamrock Farms property. Moreover, Pappas, through the response brief filed in Lake County, contends that the sale of Altair to Chris in May 2011 was a "sham" and a "fabrication" and alleges that Chris conspired with the Hursts in breaching duties owed to Pappas, Grubner, and Shamrock Farms.

¶ 51 On June 30, 2011, a settlement conference was held with the trial court in Lake County. At that time, a settlement was reached, and the court set forth conditions in an agreed order for the marketing and sale of the horse. It specifically stayed the case so that the horse could be sold by Pappas, Grubner, and Shamrock Farms within 60 days.

¶ 52 On September 6, 2011, the Lake County court was informed by the parties that the horse had not been sold to a third party pursuant to the June 30 order. The parties submitted sealed bids to the court. Pappas, Grubner, and Shamrock Farms tendered the highest bid at

$47,500, and the court ordered that, after delivery of payment, title to Altair be transferred from the Hursts to Pappas, Grubner, and Shamrock Farms. The court also ordered:

> "This matter is continued for status to enter a dismissal order if the above payment is made in accordance with this order on September 13, 2011."

¶ 53 Then, an agreed order was entered in September 14, 2011, in Lake County Circuit Court, providing:

> "AGREED ORDER
>
> This matter coming on to be heard upon the Stipulation to Dismiss Complaint by Plaintiffs Patrick Hurst and Nancy Hurst, and Defendants John J. Pappas, Sr., Shamrock Farms, and Sarah Grubner, by and through their respective Attorneys, to dismiss with prejudice the Complaint in the above captioned action against John J. Pappas, Sr., Shamrock Farms, and Sarah Grubner, and the Court being fully advised in the premises;
>
> IT IS ORDERED that this action against Defendants John J. Pappas, Sr., Shamrock Farms, and Sarah Grubner be, and the same hereby are, dismissed with prejudice pursuant to agreement of the parties hereto.
>
> The Court finds and holds that there is no just reason to delay enforcement or appeal of this order."

¶ 54 After substantial briefing, including special briefing as to the issue of *res judicata*, the court made its determination. As to the Hursts' motion, it: (1) granted the motion to dismiss as to Nancy Hurst; (2) granted the motion to dismiss as to Patrick Hurst and Chris Dickerson as to counts B, D, E, F, G, H, and I; (3) denied the motion to dismiss as to Patrick Hurst and Chris Dickerson as to Count A, finding no identity of causes of action with regard to the

Lake County action and the cause of action for slander in Count A, and also noting that it denied the motion regarding Count A based on the "policy underlying the doctrine of *res judicata*." As to the Hinshaw motion, it granted the section 2-619 motion to dismiss as to Hinshaw, Ocrant, and Kolodziej, and found that the section 2-615 motion was rendered moot by the dismissal pursuant to section 2-619.

¶ 55 Pappas appealed the grant of the section 2-619 motion to dismiss as to the Hinshaw defendants. Patrick and Chris appealed the court's denial of their section 2-619 motion to dismiss as to Count A. These causes were consolidated on appeal.

¶ 56 III. ANALYSIS

¶ 57 A. Appeal No. 1-13-1656

¶ 58 We first address appeal 1-13-1656. In this appeal, plaintiffs contend the trial court erred when it granted the Hinshaw defendant's motion to dismiss counts C and J, conspiracy and trespass, of plaintiff's complaint pursuant to section 2-619 of the Code. Specifically, plaintiffs argue that the trial court's finding that plaintiffs' causes of action were barred by the doctrine of *res judicata* was error.[3] We disagree.

¶ 59 A section 2-619 motion to dismiss admits the sufficiency of the complaint, but asserts an affirmative matter that acts to defeat the claim. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31; *King v. First Capital Financial Services Corp*., 215 Ill. 2d 1, 11-12 (2005); *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002); see 735 ILCS 5/2-619(a) (9)

[3] To be clear, in this section regarding appeal No. 1-13-1656, when we discuss the claim and the appeal, we are not discussing the remaining Count A, slander *per se* against Chris Dickerson and Patrick Hurst, which issue is taken up in a later section herein.

(West 2012) (allowing dismissal when "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim"). The question on review is whether a genuine issue of material fact precludes dismissal or whether dismissal is proper as a matter of law. *Fuller Family Holdings, LLC. v. Northern Trust Co.*, 371 Ill. App. 3d 605, 613 (2007). When ruling on a motion to dismiss, a reviewing court must construe the pleadings and supporting documents in the light most favorable to the nonmoving party and accept as true all well-pleaded facts in the complaint and all inferences that may reasonably be drawn in the plaintiff's favor. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. Disputed issues of fact are reserved for trial proceedings. *Advocate Health and Hospital Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004). "Under section 2-619, the defendant admits to all well-pled facts in the complaint, as well as any reasonable inferences which may be drawn from those facts [Citation.], but asks the court to conclude that there is no set of facts which would entitle the plaintiff to recover. As long as there is no genuine issue of material fact and the defendant is entitled to judgment as a matter of law, the complaint may be properly dismissed." *Advocate Health and Hospital Corp*., 348 Ill. App. 3d at 759. The circuit court's decision to grant such a motion will be reviewed *de novo*. *Sandholm*, 2012 IL 111443, ¶ 55.

¶ 60 *Res judicata* is an equitable doctrine designed to encourage judicial economy by preventing a multiplicity of lawsuits between the same parties where the facts and issues are the same. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004). The doctrine also "protects the parties from being forced to bear the unjust burden of relitigating essentially the same case." *Arvia v. Madigan*, 209 Ill. 2d at 533.

¶ 61 "The doctrine of *res judicata* provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action." *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). The essential elements of *res judicata* are: (1) a final judgment on the merits; (2) an identity of parties or their privies; and (3) an identity of causes of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008); *Northeast Illinois Regional Commuter R.R. Corp. v. Chicago Union Station Co.*, 358 Ill. App. 3d 985, 1000 (2005). "Moreover, the doctrine of *res judicata* applies not only to claims that have been fully litigated in an earlier proceeding, but also those that could have been raised or decided ,but were not, thus barring such claims from relitigation at a later date." *Northeast Illinois Regional Commuter R.R. Corp.*, 358 Ill. App. 3d at 1000; *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996) (*Res judicata* "extends not only to what was actually decided in the original action, but also to matters which could have been decided in that suit."). In addition, the issue of whether a claim is barred by *res judicata* is an issue of law which mandates *de novo* review by this court. *Northeast Illinois Regional Commuter R.R. Corp. v. Chicago Union Station Co.*, 358 Ill. App. 3d at 1000.

¶ 62 Under the "transactional analysis" adopted by our supreme court in *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290 (1998), separate claims are considered the same cause of action and are barred by the doctrine of *res judicata* where they arise from a single group of operative facts, regardless of whether they assert different theories of relief. *River Park*, 184 Ill. 2d at 311. Claims may be considered part of the same cause of action "even if there is not a substantial overlap of evidence, so long as they arise from the same transaction."

River Park, 184 Ill. 2d at 311. The *River Park* court explained that, in the transactional analysis, the claim is viewed in "factual terms" and considered " 'coterminous with the transaction, regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; * * * and regardless of the variations in the evidence needed to support the theories or rights.' " *River Park*, 184 Ill. 2d at 309, quoting Restatement (Second) of Judgments § 24, *Comment a*, at 197 (1982). Additionally, a "final judgment bars a plaintiff's claim to all or any part of a transaction or series of connected transactions from which the action arose." *Doe v. Gleicher*, 393 Ill. App. 3d 31, 37-8 (2009) (relying on *River Park*, 184 Ill. 2d at 309).

¶ 63 i. Identity of Action

¶ 64 Plaintiffs urge us to determine that *res judicata* does not apply here because there is no identity of action, in part because the Lake County action focused on the rights to the horse, while the Cook County action focused on alleged intentional torts committed by the owners of the horse. Our analysis here is driven by the principles described in *River Park*, that is, we consider herein whether the claims in the Cook County case and the Lake County case "arise from the same transaction." See *River Park*, 184 Ill. 2d at 311. A comparison of the complaints, both of which are found in the record on appeal, show that they do, in fact, arise from the same group of operative facts. Both cases[4] are based upon the parties' right to possession and ownership of Altair. Specifically, the Lake County action centered on the parties' rights to possess and sell the horse, as well as their conduct surrounding the implementation of the joint venture agreement. In that case, the Hursts contended that Pappas and Grubner were guilty of conversion when they denied the Hursts access to Altair,

[4] Again, in this section, when we refer to the "case" and the "complaint," we do not include count A.

intentionally took control of Altair, and denied the Hursts the right to sell Altair to Chris Dickerson; and also guilty of unjust enrichment by using Altair for personal gain via, among other things, providing horseriding lessons to paying students. The Hursts also filed an emergency motion for a temporary restraining order and preliminary injunctive relief. Pappas and Grubner responded, contending that the sale of the horse to Dickerson was a sham arising from a conspiracy. Pappas and Grubner alleged that attorney Ocrant directed and Hunter's trespass upon Shamrock Farms in order to transport the horse. In the subsequent Cook County action, plaintiffs asserted the same allegations, describing the joint venture agreement, the parties' actions surrounding the implementation of the joint venture agreement, the alleged conspiracy between Chris Dickerson, Ocrant, Patrick, and Nancy regarding the sale of Altair, and the alleged trespass onto Shamrock Farms by defendants.

¶ 65 We recognize that, under the law as it existed prior to *River Park*, plaintiff may have been able to successfully argue that this cause should not be barred by the doctrine of *res judicata* because, although both cases arise from the same set of facts, different evidence would need to be provided in support of each case. That is no longer the case. Prior to *River Park*, some Illinois courts also used the same evidence test, which bars a second suit if the evidence needed to sustain the second action would have sustained the first action, or if the same facts were essential to maintain both actions, to determine if there was an identity of causes of action. *River Park*, 184 Ill. 2d at 307-08. Therefore, under the same evidence test, different claims arising out of one set of facts could have been considered independent causes of action because the evidence needed to support each claim differs. *River Park*, 184 Ill. 2d at 309. Under the broader transactional test, which was adopted by our supreme court in *River Park*, however, the inquiry is whether the first and subsequent suit arise from the same

operative facts. *Lane v. Kalcheim*, 394 Ill. App. 3d 324, 332 (2009). If they arise from the same operative facts, the second suit is, then, barred by the doctrine of *res judicata*. *Lane*, 394 Ill. App. 3d at 332.

¶ 66 Both the Lake County case and the Cook County case relate to the ownership and sale of Altair. In Lake County, the Hursts' pleadings focused on possession and ownership of the horse, as well as the parties' rights under the joint venture agreement. Pappas and Grubner's responsive pleading in Lake County addressed the horse's ownership, arguing that the Hursts, represented by the Hinshaw defendants, conspired to orchestrate a sham sale of Altair to Chris Dickerson; that Hinshaw defendants provided false information to the police department regarding the health and circumstances of the horse; and that the Hinshaw defendants and the Hursts conspired to sell the horse to Chris Dickerson, that Ocrant aided the Hursts and Dickerson in a trespass on Shamrock Farms in order to illegally take possession of Altair. In similar fashion, plaintiffs filed their claim in Cook County, alleging that Ocrant aided the Hursts and Dickerson in a trespass on Shamrock Farms in order to illegally take possession of Altair. The fact that these two lawsuits present differing issues is not material to the question of whether they stem from the same group of operative facts; the operative facts, that is, the possession and ownership of the horse, Altair, and the parties' acts surrounding the joint venture agreement, are the same.

¶ 67 Plaintiffs also contend on appeal that there is no identity of action because the Cook County case "has absolutely nothing to do with the ownership and possession of the horse," but rather "pertain to the numerous intentional torts committed by the various defendants including trespass, civil conspiracy, slander per se, breach of fiduciary duty" which were "never filed, pursued, or adjudicated in the Lake County action." As discussed above,

however, plaintiffs' failure to assert all of their theories in the Lake County action does not change our *res judicata* determination, where the doctrine of *res judicata* extends not only to what was actually decided in the original action, but also to matters which could have been decided in the prior suit. *Rein*, 172 Ill. 2d at 334-35 (*Res judicata* "extends not only to what was actually decided in the original action, but also to matters which could have been decided in that suit."); *Northeast Illinois Regional Commuter R.R. Corp.*, 358 Ill. App. 3d at 1000 ("[T]he doctrine of *res judicata* applies not only to claims that have been fully litigated in an earlier proceeding, but also those that could have been raised or decided, but were not, thus barring such claims from relitigation at a later date."). Plaintiffs' conspiracy and trespass allegations, raised in Lake County and again in Cook County, arise out of the same set of operative facts.

¶ 68 ii. Final Judgment on the Merits

¶ 69 Plaintiffs also contend the trial court erred in dismissing this cause pursuant to the principle of *res judicata* where the Lake County lawsuit did not result in a final judgment on the merits. The Cook County trial court found that the agreed order dismissing the complaint in Lake County was not made pursuant to a settlement agreement or negotiated settlement of any kind. The parties do not argue differently. Rather, plaintiffs allege that *res judicata* does not apply here because: (1) the Lake County ruling was not final where it was only a ruling on a motion for a temporary restraining order and preliminary injunction, wherein the Lake County court did not hold a hearing on the merits and merely stayed the action; and (2) the Lake County case was dismissed by agreement of the parties rather than by an involuntary dismissal based on a ruling on the merits. For the following reasons, we disagree.

¶ 70 First, we note that plaintiffs are misdirected insofar as their argument focuses on the temporary restraining order and preliminary injunction. Plaintiffs argue that a motion for temporary restraining order and preliminary injunction cannot support the application of *res judicata* because they are "merely provisional in nature and conclude no rights; they merely preserve the status quo pending resolution of the case." The problem with plaintiffs' position, however, is that, along with the orders for a temporary restraining order and preliminary injunction, the Hursts also filed a complaint against Pappas alleging conversion and unjust enrichment. This complaint centered around the possession and sale of Altair. The Lake County court determined the ownership of the horse, had the parties submit bids for its review, and the plaintiffs then obtained title to Altair through the bidding process. The Lake County court reached the merits of the issue, that is, the possession and sale of Altair, decided the merits, and awarded the horse to the plaintiffs. The adjudication was not limited solely to the TRO and preliminary injunction.

¶ 71 An order is final for purposes of *res judicata* if it disposes of the rights of the parties. *Doe v. Gleicher*, 393 Ill. App. 3d 31, 36 (2009). Here, the order dismissing the Lake County case dismisses the case in its entirety, specifies that it is dismissed with prejudice, and includes the statement: "there is no just reason to delay enforcement or appeal of this order." Plaintiffs argue that, pursuant to *DeLuna v. Triester*, 185 Ill. 2d 565 (1999), an order dismissing a case is not dispositive of whether the dismissal was an adjudication on the merits for purposes of applying the doctrine of *res judicata*. We find that, in considering the record as a whole, the dismissal was a final order. See *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 494 (2009) ("The orders of the trial court must be interpreted from the entire context in which they were entered, with reference to other parts of the record including the

pleadings, motions and issues before the court and the arguments of counsel. Orders must be construed in a reasonable manner so as to give effect to the apparent intention of the trial court. The effect of a dismissal order is determined by its substance and not by the incantation of any particular magic words, and therefore, a trial court's description of a final judgment as being 'without prejudice' or 'with prejudice' is not determinative." (Internal quotation marks and internal citations omitted)). Here, a review of the Lake County pleadings as contained in the record and as described in this order, which include the Hursts' verified complaint, their motions for injunctive relief, and Pappas' brief in opposition, establishes that the Lake County court did, in fact, intend to dismiss the case with prejudice in a final order. The court defined the merits of the parties' dispute, that is, who had what rights to Altair. The trial court interpreted the May 8 joint venture agreement, which established rights to Altair. Eventually, the trial court ordered bidding on the horse and Pappas submitted the winning bid. Once the determination of the parties' rights, including actual possession of the horse, occurred, there was no further dispute between the parties, and the court properly dismissed the case with prejudice.

¶ 72 Additionally, plaintiffs raised these issues and had opportunity to litigate trespass and conspiracy claims in Lake County. They failed to do so. They argue that they should not have been required to file a counterclaim in Lake County, and speculate, "[o]bviously if plaintiffs would have presented a motion for leave to file a counterclaim and/or received a court order permitting the filing of a counterclaim after first appearing in the case on June 9, 2011, then that motion to file a counterclaim or an order allowing a counterclaim, and any counterclaim that had been filed would have been stayed by [the Lake County court's] June 30, 2011 order staying the entire proceeding." Unlike plaintiffs, we are unwilling to

speculate as to what would have happened had plaintiffs filed a counterclaim in Lake County regarding trespass and conspiracy. We are left here with the facts and the law, which provides that whether a counterclaim is compulsory is irrelevant to whether the doctrine of *res judicata* applies, but rather, the proper inquiry is " 'whether the claim should have been considered during the prior action.' " *Cabrera v. First Nat. Bank of Wheaton*, 324 Ill. App. 3d 85, 94 (2001), quoting *Sanders Confectionary Products, Inc. v. Heller Financial, Inc.*, 973 F. 2d 474, 484 (1992). The proper place for the claim was in the prior Lake County case.

¶ 73 iii. Same Parties or their Privies

¶ 74 Plaintiffs, without citation to authority or to the record, also claim that the trial court erred in finding an identity of the parties or their privies in the Lake County and Cook County actions. A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authorities cited and a cohesive legal argument presented. *Thrall Car Mfg. Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Illinois Supreme Court Rule 341(h) (7) (eff. Feb. 6, 2013) requires that the appellant provide an argument section which includes "the contentions of the appellant and the reasons therefore, with citation of the authorities and pages of the record relied on.* * * Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." "An issue not clearly defined and sufficiently presented fails to satisfy the requirements of [Illinois] Supreme court Rule 341(h)(7) and is, therefore, waived." *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007). Plaintiffs here offer no citation to case law, no citation to the record, and virtually no argument or analysis other than to essentially state that neither Dickerson nor Ocrant were named parties in the Lake County action and, accordingly, they are not in privity

with the Hursts for purposes of *res judicata*.[5] In light of plaintiffs' failure to define and present this issue on appeal, we determine that the issue is waived.

¶ 75 Waiver aside, we find no error in the trial court's determination that the Hinshaw defendants were in privity with the Hursts for purposes of *res judicata* where their interests were intertwined and deeply aligned in the Lake County suit. "In order to be bound by a prior judgment in an action where it was not a party, the party in the subsequent lawsuit must have been in privity with one of the parties in the prior lawsuit. *Agolf v. Village of Arlington Heights*, 409 Ill. App. 3d 211, 220 (2011). In general, privity exists between parties who adequately represent the same legal interests. *People ex rel Burris v. Progressive Land*

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[5] We note that plaintiffs devoted more attention to this issue in their reply brief, arguing (again without citation to authority) that "[t]he only way that defendant, Chris could be in privity with defendants Ocrant, Kolodziej and Hinshaw is through the contract that he entered into on May 28, 2011. However, on June 8, 2011 Chris wrote to Patrick that his agreement to purchase Altair was terminated * * * and that revocation negated any claim that there was an identity of the parties or their privies in the Lake County and Cook County cases." Additionally, in their reply brief, plaintiffs argue that the attorneys, Ocrant, Kolodziej, and Hinshaw were not parties to the Lake County action and were not in privity with the Hursts because "these attorneys did not share a mutual or successive relationship in property rights that were the subject of the Lake County action." They disagree they waived this issue, stating, "Defendants' claim that plaintiffs waived this issue in their first brief is wide of the mark. Plaintiffs' counsel would like to think that they made a reasoned argument in their initial brief regarding this point. In fact, the privity issue was supported by argument by plaintiffs' counsel." Again, plaintiffs do not offer citation to the record on this point.

Developers, Inc., 151 Ill. 2d 285 (1992). "In determining whether privity exists, the identity of the interest controls, not the nominal identity of the parties." *State Farm Fire & Cas. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 559 (2009). The Restatement explains that " 'privity' refers to a cluster of relationships, under which the preclusive effects of a judgment extend beyond a party to the original action and apply to persons having specified relationships to that party." *State Farm Fire & Cas.*, 394 Ill. App. 3d at 559. The existence of privity is determined on a case-by-case basis. *Agolf*, 409 Ill. App. 3d at 220. This court has explained:

> " 'Privity expresses the idea that as to certain matters and in certain circumstances persons who are not parties to an action but who are connected with it in their interests are affected by the judgment with reference to interests involved in the action, as if they were parties.' (Internal quotation marks omitted). *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 513 (2010), quoting *Purmal* [*v. Robert N. Wadington and Associates*], 354 Ill. App. 3d [715,] 722-23 [(2004)], quoting Restatement of Judgments § 83, cmt. a (1942). Simply put, privity exists between a party to the prior suit and a nonparty when the party to the prior suit 'adequately represent[ed] the same legal interests' of the nonparty. (Internal quotation marks omitted.) *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 296 (1992). And, more specific to the instant cause, privity clearly exists between parties who share a mutual or successive relationship in property rights that were the subject of an earlier action. See *Board of Education of Sunset Ridge School District No. 29 v. Village of Northbrook*, 295 Ill. App. 3d 909, 919 (1998); see also *St John's*, 404

> Ill. App. 3d at 513. Ultimately, a nonparty to a prior suit may be bound pursuant to privity if its interests 'are so closely aligned to those of a party' in that prior suit that the party was, essentially, a virtual representative of the nonparty. *Purmal*, 354 Ill. App. 3d at 723; accord *St. John's*, 404 Ill. App. 3d at 513; see also *City of Rockford v. Unit Six of the Policemen's Benevolent & Protective Ass'n*, 362 Ill. App. 3d 556, 563 (2005)." *Agolf*, 409 Ill. App. 3d at 220.

¶ 76 Here, plaintiffs' argument that Ocrant, a party in the Cook County action, was not a party in privity with any party in the Lake County action is unpersuasive. By plaintiffs' allegations in the Lake County action, Ocrant, acting on behalf of her law firm, Hinshaw & Culbertson, directed and assisted in the alleged trespass on Shamrock Farms:

> "7. On May 6, 2011 [Ocrant] sent a letter by messenger and fax which is attached hereto as Exhibit '10'. In this correspondence Ms. Ocrant announced that she had been engaged by Patrick and Nancy to facilitate possession of 'their horse'. Interestingly, Ocrant wrote that the prior week Patrick Hurst requested possession of Altair for a couple of weeks so that his daughter could enjoy Altair at a facility closer to their other horse in Elgin, Illinois. In this correspondence, [Ocrant] further wrote that Nancy Hurst directed a transporter to pick up Altair from Shamrock and that John had called the Barrington Hills Police which is another fabrication on the part of Ms. Ocrant. As demonstrated by the May 5, 2010 Barrington Hills Police Department Incident Report, Exhibit '2', it was [Ocrant] and Nancy Hurst who had called the Barrington Hills Police Department for police assistance regarding Altair."

¶ 77 Plaintiffs also alleged:

> "16. *** Ms. Ocrant, Patrick, Nancy and Chris, who is an attorney, should understand that civil disputes are not resolved by trespass, self-help, or police interference into a civil matter."

Then, in the Cook County case, plaintiffs expounded upon their allegations against Ocrant, Kolodziej, and Hinshaw. Specifically, plaintiffs alleged that Ocrant, Patrick, Nancy, and Chris had knowledge of and instructed, facilitated, and supported the trespass to Shamrock by Jack Jones, Chris, Patrick, Lauren, and Katie, and were therefore joint tortfeasors for the trespass to the property of Shamrock Farms. Plaintiffs also alleged that Ocrant and/or Kolodziej, also an attorney at Hinshaw, "participated in the sham transaction" of the sale of Altair by providing the purchase agreement and bill of sale to be executed by Chris, Patrick, and Nancy just prior to the arrival of Patrick and Chris at Shamrock Farms to remove Altair from plaintiffs' property. Plaintiffs alleged in the Lake County action that the Hinshaw defendants were guilty of many of the same things as their clients. By plaintiffs' own allegations, the Hinshaw defendants represented the same legal interests as their clients. See *Agolf*, 409 Ill. App. 3d at 220 ("Ultimately, a nonparty to a prior suit may be bound pursuant to privity if its interests 'are so closely aligned to those of a party' in that prior suit that the party was, essentially, a virtual representative of the nonparty. *Purmal*, 354 Ill. App. 3d at 723"). Plaintiffs' response to the motion for temporary restraining order in the Lake County case makes it clear that the very specific conduct at issue here, that is, conspiracy and trespass, was contemplated in the Lake County case. Based on the unique circumstances in this case, we find that privity existed between the Hinshaw defendants and the Hursts in the Lake County action for purposes of *res judicata*. *Agolf*, 409 Ill. App. 3d at 220 (the existence of privity is determined on a case-by-case basis).

¶ 78 We find it worth noting here that this is not a situation where a case was dismissed and then, sometime after the dismissal, a party discovered the attorney in the prior action had been involved in malfeasance and conspiracy with her clients. Rather here, as shown from the record, plaintiffs believed Ocrant conspired with Dickerson and the Hursts before the Lake County case was dismissed. Nonetheless, with full knowledge of the alleged conspiracy, plaintiffs agreed to adismissal of the cause.

¶ 79 Plaintiffs also contend that Dickerson was not in privity with the Hursts for purposes of *res judicata*. Again, we disagree. In plaintiffs' allegations in the Lake County action, plaintiffs specifically asserted, in part:

> "3. Although not currently a party to this litigation, Christopher Dickerson, hereinafter 'Chris' is a co-conspirator with Patrick and Nancy and he has made false assertions in this controversy to various person, including the Barrington Hills Police Department during an official investigation conducted on May 28, 2011.
>
> ***
>
> 5. Defendants will show herein at any hearing the following evidentiary facts:
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> ***
>
> 2. That Chris does not have a claim and ascertainable right to the ownership and/or possession of Altair as the alleged sale of the horse on May 28, 2011 is fraudulent in that it was not consented to John and Saran [*sic*]; that the alleged price was well below the fair market value of this horse; that Chris is acting as a strawman purchaser and had arranged for the horse not to be taken to

> the facility where his daughter's horse was located, but to the facility where the other Hurst horse, Aramis was located; further evidence of the fraudulent sham transaction by Chris will be demonstrated that at no time did he have a pre-purchase examination conducted to determine to health [*sic*] of the horse; that neither Chris, nor his daughter or any agent acting on or behalf [*sic*] ever saw the horse being ridden, nor did they ride the horse to determine its suitable [*sic*] for Chris's daughter or its market value.
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> 6. That Chris has conspired with Patrick and Nancy to have them breach their fiduciary duty to John and Sarah with respect to the Altair joint venture/partnership;
>
> 7. That Chris's misconduct is and has been and will continue to be a tortious interference with John and Sarah's contractual relationship with Patrick and Nancy with respect to Altair;
>
> 8. That Chris's conduct has been, is and will be[an] interference in the business relationship between John, Sarah, Patrick, Nancy in the Altair partnership/joint venture"

¶ 80 Pursuant to our previous discussion regarding Illinois law and privity, we find no error in the trial court's determination that Chris Dickerson was in privity with the Hursts for purposes of *res judicata* where his rights were so closely aligned with the Hursts that the

Hursts were, essentially, a virtual representative of Dickerson. See *Agolf*, 409 Ill. App. 3d at 220 ("Ultimately, a nonparty to a prior suit may be bound pursuant to privity if its interests 'are so closely aligned to those of a party' in that prior suit that the party was, essentially, a virtual representative of the nonparty. *Purmal*, 354 Ill. App. 3d at 723").

¶ 81 For all of these reasons, we find that dismissal based on *res judicata* was proper.

¶ 82 B. Appeal No. 1-13-3051

¶ 83 In this appeal, defendants-appellants Patrick Hurst and Chris Dickerson contend the trial court erred in denying their motion to dismiss Count A of plaintiffs' complaint pursuant to the doctrine of *res judicata* pursuant to section 2-619 of the Code and in denying their motion to reconsider that ruling. Specifically, Hurst and Dickerson contend that, where the Lake County Court dismissed the Hurst claim with prejudice and the Cook County court dismissed all but Count A of the subsequent claim with prejudice pursuant to the doctrine of *res judicata*, it also should have dismissed Count A, which alleged slander against Hurst and Dickerson, pursuant to the doctrine of *res judicata*. Hurst and Dickerson argue that the trial court erred in finding that the origin of the dispute in Count A is the same group of operative facts as the remainder of the now-dismissed claim.

¶ 84 At the outset, we note that, after the Cook County court dismissed all but Count A, Hurst and Dickerson filed a motion to reconsider or, alternatively, for a finding pursuant to Illinois Supreme Court Rule 304(a) that there was no just reason to delay the enforcement or appeal of that portion of the order. The trial court denied the motion to reconsider, but granted the motion for a Rule 304(a) finding. Hurst and Dickerson then filed their notice of appeal. In this court, plaintiffs filed a motion to strike the Hurst and Dickerson appeal on the

grounds that the Cook County court's denial of Hurst and Dickerson's motion to dismiss Count A of the complaint was not a final order and could not be appealed. We took the motion with the case and address it here.

¶ 85 In their opening brief, Hurst and Dickerson cite Illinois Supreme Court Rule 304(a) as the basis of our jurisdiction. Plaintiffs challenge our jurisdiction over the denial of Hurst and Dickerson's motion to dismiss. Except as provided by the Illinois Supreme Court Rules, we have jurisdiction to review only final judgments, orders, or decrees. Ill S. Ct. R. 304. "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005). Plaintiffs contend that the trial court's denial of Hurst and Dickerson's motion to dismiss is not the type of ruling that is appealable pursuant to Rule 304. We agree.

¶ 86 Rule 304 provides, in part:

> "Rule 304. Appeals from Final Judgments That Do Not Dispose of an Entire Proceeding
>
> (a) Judgments As To Fewer Than All Parties or Claims—Necessity for Special Finding. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a *final judgment* as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's

> own motion or on motion of any party. ***In the absence of such a finding, any judgment that adjudicates fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." (Emphasis added.) Ill. S. Ct. R. 304.

¶ 87 Rule 304 exists to discourage piecemeal appeals in the absence of a good reason to proceed in such a fashion and also to remove any uncertainty about the proper course when a judgment is entered regarding fewer than all matters in controversy. *Mares v. Metzler*, 87 Ill. App. 3d 881, 884 (1980).

¶ 88 The denial of a motion to dismiss is not a final judgment. *Walker v. Carnival Cruise Lines, Inc.*, 383 Ill. App. 3d 129, 132 (2008) (a trial court's denial of a motion to dismiss is an interlocutory order that is not final and appealable); *Saddle Signs, Inc. v. Adrian*, 272 Ill. App. 3d 132, 135 (1995) (the denial of a motion to dismiss does not fall within the scope of any of the Illinois Supreme Court Rules regarding interlocutory appeals). The denial of a motion to dismiss is not a final order, as it does not finally "dispose[] of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Brentine*, 356 Ill. App. 3d at 765.

¶ 89 The order in question here is not a finding regarding liability with regards to plaintiffs' claim and it does not affect Hurst and Dickerson's ability to defend against the merits of the claim. Instead, the trial court retains jurisdiction to consider the issues arising out of the parties' dispute regarding Count A for slander. The ruling does not end the controversy between the parties and, thus, we have no jurisdiction to review the ruling. See *Chicago*

Housing Authority, 409 Ill. at 230 (order denying motion to dismiss petition left pleading viable and subject to further hearing and was not a final and appealable order).

¶ 90 In addition, while Rule 304(a) permits appeals from orders which do not dispose of an entire proceeding, the mere inclusion of Rule 304(a) language cannot make a nonfinal order final and appealable. *In re Estate of Rosinksi*, 2012 IL App (3d) 110942, ¶ 22; *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009) (the denial of a motion to dismiss is merely an interlocutory order, which does not confer jurisdiction on the appellate court); *Hicks v. Weaver*, 255 Ill. App. 3d 650, 652 (1994); *Coryell v. Village of La Grange*, 245 Ill. App. 3d 1, 5 (1993) ("case law is replete with instances where this [appellate] court has determined an order to be nonfinal and nonappealable despite the trial court's statement to the contrary"). Clearly, the inclusion of the 304(a) language does not make the order denying the motion to dismiss a final and appealable order.

¶ 91 Hurst and Dickerson seek to convince this court that the non-final portion of the April 23, 2013, order can be appealed because there were other final orders entered between parties other than plaintiffs and defendants Hurst and Dickerson. Pursuant to Illinois law, however, the only way this court would have jurisdiction here is if there were a final order entered that disposed of the litigation between plaintiffs and defendants Hurst and Dickerson or some separate part of the controversy. See *Brentine*, 356 Ill. App. 3d at 765 (the denial of a motion to dismiss is not a final order, as it does not finally "dispose[] of the rights of the parties, either on the entire case or on some definite and separate part of the controversy"). That is not what happened here. The ruling here granted the Hinshaw defendants' motion to dismiss based on *res judicata*; granted defendant Nancy Hurst's motion to dismiss; granted defendants Hurst and Dickerson's motion to dismiss counts B, D, E, F, G, H, and I; and

denied defendants Hurst and Dickerson's motion to dismiss Count A. Accordingly, Count A is still a viable count. Contrary to defendants Hurst and Dickerson's assertions, therefore, because the court's order does not end the controversy between the parties, we have no jurisdiction to review the ruling. See *Chicago Housing Authority*, 409 Ill. at 230 (order denying motion to dismiss petition left pleading viable and subject to further hearing and was not a final and appealable order).

¶ 92 Plaintiffs as well as Hurst and Dickerson rely on *Handley v. Unarco Industries, Inc.*, 124 Ill. App. 3d 56 (1984), in their argument. According to Hurst and Dickerson, *Handley* shows that, when a court makes a final determination affecting substantive issues in a case, it is then appropriate to appeal the denial of a motion to dismiss. According to plaintiffs, *Handley* shows that a court must make a final determination as to the particular parties involved before it is proper to appeal the denial of a motion to dismiss. Our review of *Handley* leads us to believe that the answer lies somewhere in between. In *Handley*, a tort action was brought to recover compensatory and punitive damages for injuries plaintiffs or their decedents suffered as a result of exposure to asbestos. The circuit court entered summary judgment in favor of certain defendants who had been joined but voluntarily dismissed in a separate action, and denied the defendant employer's motion to dismiss the action brought against it by two of the plaintiffs. Plaintiffs appealed, and the defendant employer cross-appealed. The issue on appeal was "whether a default judgment against one group of tort-feasors in one action bars a separate action against another group of tort-feasors who were originally joined in the first action but later were dismissed without prejudice where all of the tort-feasors are alleged to be jointly liable for plaintiffs' injuries caused by exposure to asbestos." *Handley*, 124 Ill. App. 3d at 56-8. The portion of the *Handley*

opinion that concerns us here is the employer cross-appeal. The issue in the cross-appeal was "whether suits alleging intentional torts against employers, whose business involves the use of asbestos material, are barred by the exclusive remedy provisions of the Workers' Occupational Diseases Act." *Handley*, 124 Ill. App. 3d at 58. In its cross-appeal, the employer argued that a "denial of a motion to dismiss is not a final order which can be reviewed." *Handley*, 124 Ill. App. 3d at 67. The *Handley* court determined:

> "As plaintiffs note, it is a general rule that a denial of a motion to dismiss a complaint is not a final and appealable order, but here a final order was entered dismissing plaintiffs' suit against Owens-Corning, and once the final order was entered, all of the preliminary orders in the suit were also reviewable. (*People ex rel. Scott v. Silverstein* (1981), 87 Ill. 2d 167, 57 Ill. Dec. 585, 429 N.E. 2d 483.) Plaintiffs principal authority *People v. American National Bank & Trust Co.* (1965), 32 Ill. 2d 115, 203 N.E. 2d 897, supports our denial of the motion to dismiss, for while the court there noted the general rule that orders denying motions to dismiss are not appealable, the court allowed an appeal from a denial of a motion to dismiss since other portions of the order in question made final determinations affecting substantive issues in the case. The granting of Owens-Corning's motion for summary judgment dismissed all of plaintiffs' claims against Owens and the preliminary order denying Owens-Corning's motion to dismiss is now properly before us." *Handley*, 124 Ill. App. 3d at 67.

¶ 93 It is true that the *Handley* court addressed the denial of a motion to dismiss because "final determinations had been made affecting substantive issues in the case". *Handley*, 124 Ill. App. 3d at 67. Specifically, the *Handley* court addressed the denial of the motion to

dismiss because it involved a cross-appeal to a cause that no longer existed, that is, a cause against which the circuit court had granted summary judgment.

¶ 94 In the case at bar, the substantive issues that were resolved by the granting of the motion to dismiss were trespass, conspiracy, tortious interference with the joint venture, breach of fiduciary duty, and breach of contract. These were all alleged torts surrounding the possession and ownership of the horse. The issue remaining in Count A, on the other hand, revolves around statements Hurst and Dickerson allegedly made regarding the health of the animal and its treatment by plaintiffs. Whether or not Hurst and Dickerson made these statements, and whether or not these statements are slanderous, is not resolved by the motion to dismiss that was granted. Rather, as the trial court properly found, it is an entirely separate issue that stands alone and remains viable even upon the dismissal of the other claims.

¶ 95 For the above reasons, we grant plaintiffs' motion, taken with the case, to dismiss appeal 1-13-3051 for want of jurisdiction.

¶ 96 IV. CONCLUSION

¶ 97 For all of the foregoing reasons, we affirm the decision of the circuit court of Cook County with regards to appeal 1-13-1656, and dismiss appeal 1-13-3051.

¶ 98 Affirmed in part and dismissed in part.