2014 IL App (1st) 131900-U

FIFTH DIVISION
SEPTEMBER 30, 2014

No. 1-13-1900

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JEFFREY D. WOODS, Plaintiff-Appellee and Cross-Appellant, v. ROCK FUSCO, L.L.C., JOHN L. ROCK and ANDREW M. HALE, Defendants-Appellants and Cross-Appellees.	)	Appeal from the Circuit Court of Cook County. Nos. 06 L 753, 06 L 1919, and 06 L 9470, cons. The Honorable John C. Griffin, Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Neville concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm: (1) the trial court's dismissal on summary judgment of plaintiff client's legal malpractice claim against his former attorneys; and (2) the trial court's award and judgment after a bench trial in favor of plaintiff on his claim of breach of fiduciary duty against the same attorneys.

¶ 2 Plaintiff Jeffrey Woods (plaintiff) brought a two-count complaint against his former attorneys, defendants Rock Fusco, L.L.C., John L. Rock and Andrew Hale, alleging breach of fiduciary duty and legal malpractice. On November 27, 2012, the trial court entered an order granting summary judgment in favor of defendants on the legal malpractice claim. On December 28, 2012, after a bench trial, the trial court found that defendants had breached their fiduciary duty as attorneys to their client and awarded plaintiff $1.1 million in damages on that claim. In determining damages, the trial court stated that it refused to consider evidence that plaintiff was gang-raped in jail.

¶ 3 On this appeal, defendants claim, with respect to the breach of fiduciary duty claim: (1) that the trial court's finding of proximate cause was against the manifest weight of the evidence; and (2) that the trial court erred by allegedly excluding evidence of the amount of Woods' bond, which defendants argue was unusually high, unforeseeable and the cause of Woods' incarceration.

¶ 4 On plaintiff's cross-appeal, plaintiff claims: (1) that the trial court erred in not considering plaintiff's gang-rape in jail when calculating damages for

defendants' breach of fiduciary duty; and (2) that the trial court erred in granting summary judgment on plaintiff's legal malpractice claim.

¶ 5 For the following reasons, we affirm.

¶ 6 BACKGROUND

¶ 7 I. Complaint

¶ 8 Plaintiff's second amended complaint, filed September 14, 2012, is the complaint at issue on this appeal, and we summarize its allegations below.

¶ 9 A. The Parties

¶ 10 Plaintiff Jeffrey D. Woods was a client of defendants John J. Rock and Andrew M. Hale, who are both Illinois attorneys employed by the law firm of Rock Fusco, L.L.C., which is also a defendant.

¶ 11 Plaintiff is the owner and president of both Tango Grill Inc. and The Helix Group, Inc., which are also named as plaintiffs in the complaint. Tango Grill is an Illinois corporation which operated two cabaret-style restaurants called "Voltaire" and "Felt" on Halsted Street in Chicago, and Helix is a Nevada corporation that provided healthcare consulting services, including practice management services to psychologists for a fixed fee.

¶ 12 Rock Fusco & Garvey, Ltd. (RFG) was a Chicago law firm that dissolved in 2004. After its dissolution, several of its partners formed defendant Rock Fusco, which then employed defendants Andrew M. Hale and John J. Rock as

of 2005. The complaint alleges that "[d]uring the relevant times," Hale was a partner at defendant RFG, and Rock was an associate there.

¶ 13 B. Alleged Facts

¶ 14 The second amended complaint alleged the following facts:

¶ 15 1. Lease and Eviction

¶ 16 As stated above, Tango Grill's primary business was the operation of two bars on Halsted Street, one of which was "Voltaire." On January 31, 2000, Tango Grill entered a five-year lease with Architrend Properties, L.L.C. for the commercial space in a building at 3441-43 North Halsted Street (the Building) and subsequently opened Voltaire there on May 4, 2000. Architrend was owned by Vincent Tan. Voltaire operated until mid-July 2003.

¶ 17 In August 2000, which was only a few months after Voltaire opened, plaintiff became concerned that other neighborhood bar owners were conspiring to take over Voltaire. The complaint alleges that he discussed his concerns at "regular meetings" with defendant Hale, who had previously represented plaintiff in a trademark case, but the complaint does not allege when these meetings began.

¶ 18 In January 2002, plaintiff made an allegedly consensual recording of a conversation he had with an acquaintance, because he believed it would provide

evidence for his conspiracy concerns, and he shared this recording with defendant Hale.

¶ 19 Plaintiff and Hale then discussed plaintiff's ability to record people without their consent. Hale showed plaintiff the Illinois eavesdropping statute, and explained that an exception to the statute permitted plaintiff to record someone without their consent and that it applied if a person reasonably suspects that another party to the conversation was committing, about to commit or had committed a criminal offense against the person or his immediate family.

¶ 20 Also in 2002, plaintiff learned that Architrend, the lessor, had two potential buyers for the Building, and he became concerned that Kevin Jackson, one of the potential buyers, wanted to " 'steal' " Voltaire. Plaintiff told defendant Hale that he wanted to withhold rent until Tan, the owner of Architrend, answered plaintiff's questions about the sale, and Hale told plaintiff he could do that. As a result, Woods told Tan that he was withholding the May 2002 rent until Tan answered his questions.

¶ 21 On June 18, 2003, Jackson, through his company Ravenswood Properties, Inc., closed on its purchase of the Building, and financed the purchase with a $1.28 million loan from Charter One bank, which was represented in this transaction by an attorney from defendant RFG.

¶ 22 In connection with the loan, defendant RFG prepared an "Assignment of Leases and Rents," which Jackson signed on June 12, 2003, and which stated that Jackson warranted to the bank that both the lessor, Architrend, and the lessee, Tango Grill, were in full compliance with the lease and no reason existed for termination by either one. On July 17, 2003, an RFG attorney sent an original executed copy of the assignment to a title insurance company.

¶ 23 Another loan document was a "Tenant Estoppel Letter," which stated that the tenant was current with all lease obligations through May 31, 2003. The complaint alleges that someone signed plaintiff's name to this letter without his knowledge and consent, and misspelled his name.

¶ 24 At the closing, Tan gave Jackson, the purchaser, an "Affidavit of Title," which Tan signed on June 17, 2003, and which states that the tenant had paid its rent "promptly and in full."

¶ 25 One month after the closing, Ravenswood, the new owner, filed four lawsuits against plaintiff and his business under the Illinois Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2004)), alleging that, for several months prior to the sale, they owed rent and other lease obligations, such as one-third of the real estate taxes. Defendants agreed to represent plaintiff in these cases, and plaintiff told defendant Hale that he did not owe the alleged amounts because of the "oral modifications" to the lease.

¶ 26 Helix, another company owned by plaintiff, was incorrectly named as a defendant in these cases, but plaintiff's current attorneys successfully moved to vacate the subsequent judgments against Helix, so there are no remaining issues with respect to Helix.

¶ 27 On August 5, 2003, Hale moved to dismiss on the ground that Ravenswood did not own the building, and he faxed a letter to Robert Griffin, Ravenswood's attorney, asking for a copy of the deed. On August 8, Griffin sent an email stating: "As for the deed and other documents, ask Jim Crowley. He has signed copies." Ravenswood then moved for sanctions because a RFG attorney had represented Charter One for the mortgage loan and Hale also worked for RFG.

¶ 28 On September 16, 2003, when defendants Hale and Rock appeared in eviction court, the trial judge admonished them for their handling of the case, which led Rock to conclude that the judge was now predisposed against plaintiff and that they needed a different judge. Rock then contacted an attorney named Koch who regularly did eviction work; and Koch, Hale and Rock devised the following strategy, which they then executed: (1) defendant RFG withdrew from the eviction cases; (2) Koch filed an appearance in those cases and tried to stall them; and (3) in the meantime, RFG filed an action in the

chancery division and then moved to consolidate the eviction cases with the chancery case.

¶ 29 However, plaintiff became dissatisfied with RFG and their relationship ended in January 2004. On January 8, 2004, defendants moved to withdraw from the chancery case, and that motion was later granted.

¶ 30 After defendants' relationship with plaintiff ended, Koch still represented plaintiff at a two-day hearing to determine what he should pay for use and occupancy. On February 2, 2004, the court ordered plaintiff and his companies to pay $53,263.82 by February 6, 2004, for use and occupancy, and that deadline was later extended to February 20, 2004. Before court on February 20, Koch advised plaintiff: (1) not to pay the use and occupancy; (2) to hide his money in offshore accounts; and (3) to leave the country.

¶ 31 In court on February 20, plaintiff did not pay the use and occupancy, and the trial court entered an order of possession to Ravenswood. Koch was also granted leave to withdraw as counsel. Plaintiff and his companies were then represented by attorney Thomas Patterson in the eviction cases.

¶ 32 On May 26, 2004, plaintiff secretly recorded a court proceeding which involved: the judge; Jackson, the new owner; and Griffin, Jackson's attorney. Plaintiff believed that his action was in compliance with the exception that his former attorney, Hale, had explained.

¶ 33 On September 15, 2004, after a bench trial, judgment was entered against plaintiff and his companies for $250,120.35, plus costs and postjudgment interest. On February 7, 2005, Jackson's company, Ravenswood, was also awarded $152,502.99 in attorney fees. As a result of Ravenswood's collection efforts, the sheriff padlocked Felt, which was Tango Grill's other restaurant and seized and sold assets from Felt, Voltaire and Helix.

¶ 34 2. Arrest and Jail

¶ 35 At the sheriff's sale, Ravenswood bought computer and other electronic equipment, which contained recordings made by plaintiff. Griffin, who was Ravenswood and Jackson's attorney, turned over these recordings to the Cook County State's Attorney. Assistant State's Attorney (ASA) Eric Leafblad was eventually assigned the matter by the Bureau Chief of the Special Prosecutions Bureau. At first, ASA Leafblad took no action.

¶ 36 On March 1, 2005, Rock, one of plaintiff's former attorneys, wrote a letter to Griffin asking for the recordings, particularly recordings of any conversations that plaintiff had with any Rock Fusco attorney. Since defendant law firm RFG had dissolved in 2004, and this was in 2005 when Rock Fusco was formed, Rock's letter was on Rock Fusco stationery. Rock's letter stated: "[plaintiff's] actions of secretly recording conversations violates the Illinois Eavesdropping Statute *** we will then endeavor to ensure that the Cook

County State's Attorney's Office prosecutes [plaintiff] to the full extent of the law." At that time, Ravenswood had a pending motion for sanctions against RFG and Koch seeking over $100,000 in the eviction cases.

¶ 37 On March 11, 2005, Griffin responded in a letter refusing to provide the recordings and stating that his client "is none too happy with [RFG] *** he believes you were acting in bad faith towards himself, Charter One, his lender and your client."

¶ 38 Shortly after Rock sent his letter, Woods was arrested and interviewed by ASA Shelley Keane. Woods told ASA Keane that he believed he acted legally when he recorded the May 26, 2004, court proceeding because he had discussed an exemption to the eavesdropping statute with his prior attorney, Hale, and had acted on Hale's advice. ASA Keane, who was in the Felony Review Unit, labeled the matter as a "continuing investigation."

¶ 39 The next day, ASA Thomas Simpson, who was also in the Felony Review Unit, interviewed Hale, who stated that he "never discussed the Eavesdropping Statute with Woods," and that he "was not aware of [plaintiff] recording any conversations." Simpson then approved eavesdropping charges against plaintiff in connection with the May 26, 2004, recording. Plaintiff then spent the next four months in the maximum security division of the Cook County jail, where he was physically beaten, sexually assaulted and in constant

fear. Plaintiff experienced severe emotional trauma and still has recurring nightmares and anxiety. The State's Attorney's Office later *nolle prossed* the charges.

¶ 40 As a result of his four-month incarceration, Helix, one of plaintiff's companies, went out of business. Helix had provided healthcare consulting services, including practice management services to psychologists. During the four months that plaintiff was in jail, he could not service Helix's clients. In the three years prior to plaintiff's arrest, Helix's average yearly gross income had been $335,600. After his release from jail, plaintiff could not restart the business because all his business records had been seized as a result of the eviction cases, he had no money as a result of the eviction judgment and his reputation was destroyed.

¶ 41 On the basis of the above alleged facts, the complaint asserted two counts: count I, for legal malpractice, in connection with plaintiff's loss in the eviction cases; and count II, for breach of fiduciary duty, in connection with plaintiff's arrest and incarceration for the eavesdropping charges.

¶ 42 Count I alleged that defendants "breached the standard of care applicable to attorneys" by failing "to develop and present a defense based on loan documents" that defendants had prepared for another client, namely, Charter One Bank. In addition, defendant Hale's investigation of whether Ravenswood

had actually purchased the property "should have led Hale to discover" these documents. If defendants had presented such a defense plaintiff would have prevailed in the eviction suits.

¶ 43 Count II alleged that defendant Hale breached his fiduciary duty to plaintiff by lying to an ASA that he had never provided plaintiff any advice about the Illinois eavesdropping statute, and that he had no knowledge of plaintiff's recordings.

¶ 44 II. Summary Judgment

¶ 45 Defendants moved for summary judgment on October 18, 2012; and on November 27, 2012, the trial court issued a detailed written order granting defendants' motion with respect to plaintiff's legal malpractice claim. The order states: "The Court finds that the Plaintiffs' retention of subsequent counsels on their still viable claims acted as a superseding cause thereby negating their ability to establish a legal malpractice claim ***."

¶ 46 The trial court found, "first" and most importantly, "that the Plaintiffs' argument that the Defendants were the only attorneys who were in a position to prove that the Plaintiffs did not owe rent" was simply "unpersuasive."

¶ 47 The trial court explained that "when the Defendants withdrew as counsel in the forcible action, the case was in its infancy in that an answer had not yet been filed nor had discovery commenced." The order stated: "In addition, the

Court notes that no questions of fact exist to show a causal connection between the Defendants' purported acts or omissions and the damages that the Plaintiffs allegedly suffered because two subsequent attorneys represented the Plaintiffs after the Defendants withdrew from the forcible action." The trial court found that "it is undisputed that Patterson[,the second subsequent attorney] had the ability to assert any and all defenses during his representation."

¶ 48 III. Evidence at Trial

¶ 49 We provide below only an overview of the evidence at trial. The litigation was complex, and only a small portion of those facts are necessary to decide the limited issues on appeal. Thus, we provide the few facts relevant to each issue later in our discussion of each issue.

¶ 50 Since the trial court had already granted summary judgment on plaintiff's legal malpractice claim, the trial concerned only the remaining count, which was for breach of fiduciary duty. In this count, plaintiff claimed that Hale lied to the ASAs and that his lies were the proximate cause of plaintiff's subsequent arrest and incarceration. On appeal, defendants do not contest the trial court's findings that Hale had a fiduciary duty to plaintiff and that Hale breached this duty by lying. Thus, the only issues on appeal, arising from the trial, concern the trial court's finding of proximate cause. As a result, the credibility dispute between plaintiff and Hale, about whether Hale's statements to the ASAs were,

in fact, lies and which occupied much of the trial, is simply not relevant to the issues on appeal.

¶ 51 At the bench trial, plaintiff, who is 46 years old, was the first witness and his testimony was substantially consistent with the allegations of the complaint, described above. The complaint referred to a sexual assault in jail, and plaintiff testified about a gang rape. Plaintiff also introduced the evidence deposition of Roosevelt Clay, plaintiff's cellmate in the maximum security unit of Cook County Jail, who corroborated plaintiff's testimony about the gang rape and plaintiff's emotional trauma in jail. Neither the gang rape nor plaintiff's emotional trauma are contested by defendants on appeal.

¶ 52 Defendant Hale testified that plaintiff told Hale that plaintiff had made consensual recordings of John Berry, plaintiff's mother, and one other person; that Hale knew "that you can't record someone without their consent," that plaintiff "never told me that he was non-consensually taping anybody," that Hale never read the eavesdropping statute during this time; and that he never told plaintiff that plaintiff could record someone without that person's consent.

¶ 53 Hale testified that the first time that he learned that plaintiff had made tapes of conversations which included Hale and others from Hale's law firm was "[w]hen two Chicago police detectives and two state's attorneys showed up at my house on a Saturday afternoon in March, 2005." Hale was interviewed at

his home by ASA Thomas Simpson, ASA Eric Leafblad and two police detectives. Hale testified: "the detectives told me that [plaintiff] had claimed I had discussed this statute with him and said he can make tapes. And I told him no, that was false." During the interview, Hale learned that plaintiff was in custody for allegedly making improper recordings. Hale told the interviewers that plaintiff had become "strange," stating: "when I mentioned that we had withdrawn from representation of [plaintiff] in January of 2004, and he accused me and my law partners of being drug runners and money launderers, it ended on a note where he became very strange."

¶ 54 Hale was called first in plaintiff's case. When he was recalled by his own attorney, he testified that, after the two ASAs and two detectives arrived unexpectedly at his door, he took them to a back family room, where they informed him that plaintiff had been arrested for tape recording a judge and that plaintiff had also recorded Hale. The interviewers asked Hale whether Hale told plaintiff that plaintiff could tape the judge, and Hale responded: "absolutely not." Hale had no idea that plaintiff was tape recording court proceedings.

¶ 55 Hale testified: "my recollection was that this was weeks after Judge Lefkow's husband had been killed, and hearing this made me very nervous and my wife ten times as nervous."

¶ 56 Two ASAs also testified at the bench trial: Thomas Simpson, and Eric Leafblad. Simpson testified that he had been an ASA for over 13 years, and that in March 2005, he was assigned to the Felony Review Unit, which evaluates investigations by law enforcement agencies to decide whether the State's Attorney's Office will bring charges. After plaintiff was arrested on March 25, 2014, at 12:15 p.m., ASA Shelley Keane conducted the initial interview and marked it as a continuing investigation, and then the matter was assigned to Simpson.

¶ 57 Simpson met with a police investigator, and later traveled with his supervisor, ASA Eric Leafblad, and a Chicago police detective to Hale's residence in Park Ridge, where they interviewed Hale. When they entered the residence, they informed Hale that they were going to ask him questions about plaintiff, and Hale confirmed that he had been plaintiff's attorney. During the interview, which lasted between a half-hour to an hour, Hale stated that he had no knowledge of plaintiff's committing the offense of eavesdropping and had no recollection of ever discussing the eavesdropping statute with plaintiff. Hale stated that he had no knowledge that plaintiff was making any recordings, even consensual ones.

¶ 58 After interviewing Hale, Simpson also attempted to interview plaintiff, before charging him. However, when Simpson read plaintiff his *Miranda*

warnings, plaintiff immediately asserted his right to counsel, so Simpson ended the interview.

¶ 59 Simpson agreed that it would be a defense to eavesdropping if the person believed he was the victim of a felony and he made the recording to establish that he was a victim. If Hale had told Simpson that Hale believed that plaintiff had been the victim of a crime and that Hale had provided plaintiff advice that it was appropriate to eavesdrop, then Simpson would have followed up with more questions. When asked whether it would have affected his decision to charge, Simpson responded: "You want me to speculate?"

¶ 60 On cross, Simpson testified that what made this case unusual was that plaintiff had recorded a judge and that, when a judge is the victim of a crime, it is a "great cause of concern." "[I]t was pretty clear that the investigation warranted felony charges" and, by interviewing Hale, "[w]e were just making sure" whether there were "other incidents out there that we needed to know about." At first, Simpson answered no, when asked whether it would have affected his decision to charge if Hale had told him that Hale had discussed the Illinois eavesdropping statute with plaintiff. However, when Simpson was asked this same question a second time, he elaborated: "Again I would be speculating on more things. I don't know how that would have been said, what

words would have been said. There were [*sic*] would have been a million other questions to follow it."

¶ 61 Next, ASA Eric Leafblad, Simpson's supervisor, testified that he had been an ASA since 1995, and that he had been with the gang crimes unit since August 2004. Although Leafblad was in the gang crimes unit, he received plaintiff's case "as a handout" from his bureau chief. This case was "unusual because there was no police involvement and we were to begin the investigation fresh."

¶ 62 When Leafblad received this case, he "did nothing with it initially." In February 2005, Leafblad spoke with Robert Griffin, who stated that he was in possession of recordings which Griffin believed were made in violation of the eavesdropping statute. After Griffin provided the recordings, Leafblad did not listen to them. Leafblad "put them in [his] filing cabinet" and "did nothing with them."

¶ 63 Griffin contacted Leafblad again, "[r]ight before Easter," and stated that he had uncovered documents which included personal information about a judge and also about Griffin. Leafblad testified:

> "Well, I was very concerned because this was after the Joan Lefkow horrible tragedy in which her family members were killed and we were concerned that this might be a copycat situation.

> And that this judge or his family members might be in danger. And also Mr. Griffin or his family members might be in danger. So I alerted my supervisors."

¶ 64 Leafblad's supervisors instructed him to contact the police, which he did, and then he began reviewing the recordings although it was "late in the day," because they "were really concerned that [they] might have a copycat situation." On one of the CDs, Leafblad heard a recording of a court proceeding which involved defendant, Griffin and Patterson, who was defendant's attorney. Leafblad was "looking for probable cause," so that they "could arrest [plaintiff] and then ask him about these, the collection of personal information." Then Leafblad and his supervisors asked the police to arrest plaintiff, which they did the next day. After plaintiff's arrest, Leafblad who was "the lead attorney on this case," asked ASA Shelley Keane "to interview [plaintiff] about his intentions."

¶ 65 Leafblad testified that, on Good Friday, he spoke on the telephone with ASA Keane, who had interviewed plaintiff about the eavesdropping conversations and his "justification for making these recordings." Plaintiff stated that his attorney, Andrew Hale, had advised him that he was "operating within the exception" to the eavesdropping statute because plaintiff believed he was about to be the imminent victim of a crime. The next morning, which was

Saturday, March 26, 2005, Leafblad met with members of the Chicago police department and ASA Simpson who, like ASA Keane, was "working on [Leafblad's] direction." Leafblad was "the one conducting the investigation."

¶ 66 Leafblad testified that they could hold a suspect generally for 48 hours before charging. On Saturday, March 26, 2005, ASA Leafblad traveled in the late afternoon with ASA Simpson and Detectives Hart and March to Hale's residence for an interview with Hale that lasted a half-hour to 45 minutes. When they arrived, Leafblad "informed him of the investigation regarding [plaintiff] and where [they] were sitting on the investigation. And that we wanted to ask him some questions about his advice that he had given to [plaintiff] in regard to the eavesdropping statute." Leafblad informed Hale that plaintiff had specifically said "talk to my lawyer."

¶ 67 About the interview, Leafblad testified:

> "I specifically asked Mr. Hale if he advised [plaintiff] that he was operating in the exception to the eavesdropping statute and he was allowed to record people because he viewed himself to be the victim of an imminent crime. And Mr. Hale told me that he did not advise [plaintiff] that."

¶ 68 Leafblad informed Hale that Leafblad had listened to a conversation that occurred in a meeting room of Hale's law firm, and that information "alarmed" Hale. Hale stated that he had no idea that he was being recorded.

¶ 69 Although the investigative team called attorney Patterson and interviewed him over the telephone, they did not "do a face to face interview" with Patterson. Leafblad testified that there was nothing about the interview with Hale that led to the charges against plaintiff.

¶ 70 On Easter morning, Leafblad informed the ASA who was going to conduct plaintiff's bond hearing that plaintiff had computer records about a judge and that there was an outstanding judgment in a landlord tenant case for half a million dollars.

¶ 71 On cross, Leafblad testified that it later "turn[ed] out that our investigation was [plaintiff] was telling us the truth, that he did not harbor ill will towards these people. *** However, I'm not going to take his word for it at the stage of the game that we were at where he told Ms. Keane that he had no ill will." Leafblad was aware that the court proceeding which plaintiff recorded was also being recorded by the court's transcription equipment.

¶ 72 Leafbald testified that one of the reasons that Leafblad traveled to interview Hale was to discover if Hale had, in fact, provided plaintiff with the advice that plaintiff said he had received. Leafblad was "shocked" to discover

the level of personal information that plaintiff had about the judge, "especially on the heels of this Lefkow situation." However, they later discovered there were no "evil intentions." Leafblad testified: "I wanted to make sure that [the judge] and the other people were safe in this case. That is the only thing that was driving me."

¶ 73 Plaintiff called defendant John Rock in plaintiff's case. Prior to working as an associate at RFG, Rock was an ASA and he knew Leafblad. After plaintiff was charged, Rock called Leafblad from time to time for updates about the case. Leafblad knew that plaintiff was a former client of Rock. In a letter dated March 1, 2005, to Griffin, Rock wrote: "we will *** endeavor to ensure that the Cook County State's Attorney's Office prosecutes [plaintiff] to the full extent of the law."

¶ 74 Rock referred the eviction cases to Koch, and then RFG filed a chancery action seeking to have the cases consolidated.

¶ 75 David Koch testified that he represented plaintiff in the eviction cases at the end of 2003 through February 20, 2004, and that he was referred by Rock.

¶ 76 Next, plaintiff called, as an expert witness, retired Judge Ronald Himel, who had also been a public defender, an ASA and an attorney in private practice. Himel testified that, in his opinion, Leafblad was not truthful when he testified that Hale's statements had no effect on Leafblad's decision to charge.

Himel testified: "If Hale told Leafblad that they had this conversation, [plaintiff] would never have been charged." Different answers by Hale "would have led to further investigation." On cross, Himel disclosed that he and the plaintiff's attorneys were friends and belonged to the same country club and that he was being paid $5,000 for his testimony.

¶ 77 III. Trial Court's Verdict

¶ 78 On December 28, 2012, the trial court read its detailed 10-page ruling into the record. The court stated that, after the close of evidence and argument, it had reviewed its notes, the transcripts and the exhibits. The court began with the observation that: "Most importantly, I need to judge the credibility of the witnesses."

¶ 79 A. Liability

¶ 80 The trial court stated that the "two critical issues in this case," with respect to liability, were both "credibility issues." The first issue was "whether the statements made by Mr. Hale were truthful"; and the second was, in light of the testimony by the two ASAs, Simpson and Leafblad, whether any breach of fiduciary duty by Hale was the proximate cause of Woods' subsequent incarceration.

¶ 81 With respect to the first question, the trial court observed:

> "Just generally Mr. Woods said that they had discussed the Eavesdropping Statute and tapes, listened to tapes; and the exception to the Eavesdropping Statute that dealt with necessity or potential crime being committed.
>
> Mr. Hale's testimony was the polar opposite of that."

Resolving this credibility dispute, the trial court stated: "I do find Mr. Woods' version credible." The trial court concluded that these conversations between Woods and Hale occurred, that Hale falsely denied them to the ASAs, and that Hale's denial was a breach of his fiduciary duty to Woods. Since defendants contest only causation on appeal, that is the only element of this claim before us.

¶ 82 The question is whether Hale's lies to the ASAs about his conversations with Woods are a proximate cause of the subsequent charges against Woods. In order to resolve this question, the trial court reviewed in detail the ASAs' testimony. The trial court observed that, before Woods was charged, ASAs Simpson and Leafblad went to Hale's house to interview him. Although ASA Simpson testified that Hale's statement had no effect on his decision to charge, Simpson also testified that he would be "speculating" to say whether the opposite statement by Hale would have affected his decision to charge Woods.

¶ 83 The trial court observed:

"Mr. Woods credibility in this circumstance became critical to the state's attorneys. Mr. Leafblad testified on page 553, 'It turns out that our investigation [showed that] Mr. Woods was telling the truth, that he did not harbor ill will toward these people. I commend him for that. However, I'm not going to take his word for it at the stage of the game that we were at where [*sic*] he told Ms. Keane that he had no ill will.'

In other words, at that point there was still a decision-making process going on. Credibility would be a huge issue. The fact that Mr. Woods said that he had these discussions with his attorney obviously caused the state's attorneys to go out and investigate further and interview Mr. Hale to see if he corroborated Mr. Woods' statement.

Mr. Hale did not corroborate it; denied it and added that Mr. Woods was acting strange. They admitted one of the reasons they went out to interview Mr. Hale was to see if he in fact had given the advice to Mr. Woods. And that was one of the reasons that they went out there. Therefore I find that proximate cause is clear in this case.

While the state's attorneys might in their mind have thought it wouldn't make any difference, their testimony is that it would cause a million more questions. It would add – it was needed to determine the

credibility of Mr. Woods. And therefore I do find that the breach of the fiduciary duty is a proximate cause for Mr. Woods' damages."

¶ 84 With this statement, the trial court concluded that Hale's breach of fiduciary duty was a proximate cause of Wood's damages.

¶ 85 B. Damages

¶ 86 With respect to damages, the trial court stated that it denied both punitive damages and attorneys fees; and neither of those rulings has been appealed.

¶ 87 The trial court also stated that, in determining damages, it refused to consider Woods' gang-rape in prison:

"With regard to the damages, this was a horrific experience. There's no question about that. There was a motion to bar the evidence of the physical or emotional harm to Mr. Woods, basically the testimony regarding the gang rape. I took that under advisement, I am not allowing that testimony and not considering it.

The reason I'm not considering it is I don't think there was any testimony as to the foreseeability. I think that the [*Abrams v. City of Chicago*, 211 Ill. 2d 251 (2004)] case controls. And the independent, intervening, intentional/criminal acts were not foreseeable. So I'm not taking that aspect of Mr. Woods' claim into consideration."

¶ 88 The trial court then fixed damages for the breach of fiduciary duty at $1.1 million:

> "So I'm going to enter judgment in favor of the plaintiff against all of the defendants. I fix the amount of one million one hundred thousand dollars to reasonably and fairly compensate the plaintiff for the damages proved by the plaintiff to have resulted from the defendant's breach of fiduciary duty. Thank you."

¶ 89 With that finding on damages, the trial court concluded its ruling.

¶ 90 ANALYSIS

¶ 91 On appeal, defendants claim, with respect to the breach of fiduciary duty claim: (1) that the trial court's finding of proximate cause was against the manifest weight of the evidence; and (2) that the trial court erred by allegedly excluding evidence of the amount of Woods' bond, which defendants argue was unusually high, unforeseeable and the cause of Woods' incarceration.

¶ 92 On plaintiff's cross-appeal, plaintiff claims: (1) that the trial court erred in not considering plaintiff's gang-rape in jail when calculating damages for defendants' breach of fiduciary duty; and (2) that the trial court erred in granting summary judgment on plaintiff's legal malpractice claim.

¶ 93 I. Breach of Fiduciary Duty

¶ 94 Defendants first claim is that the trial court erred in finding that plaintiff had proved the element of proximate cause, which is a necessary element in a breach of fiduciary duty claim.

¶ 95 A. Standard of Review

¶ 96 Defendants ask this court: (1) to reverse the verdict of the trial court and enter judgment in their favor; or (2) in the alternative, to reverse the verdict and remand for a new trial. These two different types of relief require two different standards of review.

¶ 97 1. Judgment *N.O.V.*

¶ 98 First, our supreme court has held that reversing and entering judgment for the previously losing party is, "in effect, entering a judgment *n.o.v.*," and that an appellate court errs by "effectively entering a judgment *n.o.v.* without applying the requisite standard" for judgment *n.o.v.* *Maple v. Gustafson*, 151 Ill. 2d 445, 454-55 (1992). The requisite standard for judgment *n.o.v.* is that it is properly entered in only those limited cases where all the evidence, viewed in the light most favorable to the opponent, so overwhelming favors the movant, that no contrary verdict based on that evidence could ever stand. *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006); *Maple*, 151 Ill. 2d at 453. "Most importantly, a judgment *n.o.v.* may not be granted

merely because a verdict is against the manifest weight of the evidence." *Maple*, 151 Ill. 2d at 453. A court has "no right" to enter a judgment *n.o.v.* if there is a substantial factual dispute, or if the verdict turns on the credibility of witnesses or requires the resolution of conflicting evidence. *Maple*, 151 Ill. 2d at 454.

¶ 99 Although the *Maple* case involved a jury verdict and our case involves a bench verdict, the parties do not cite a case indicating that this difference requires a different standard, nor can we find the logic for one. Whether the trial was before a jury or a court, the appellate court still owes deference to the factfinder because it heard the witnesses and viewed the witnesses first-hand, while we can read only a cold transcript. *Eyechaner v. Gross*, 202 Ill. 2d 228, 270 (2002) ("It must be remembered that it was the trial court who saw the witnesses and heard them testify" and thus a reviewing court owes deference to its findings of fact); *Salazar v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 612 n.1, 613 (1997) (in Illinois, any distinction between findings of fact made by a jury as opposed to by a court is "meaningless" because the same deferential standard of review applies). Thus, since defendant is, in effect, asking us to enter judgment *n.o.v.*, we will apply the same standard of review to this question that we would to a jury verdict.

¶ 100 2. New Trial

¶ 101 Second, defendants ask this court, in the alternative, to reverse and remand for a new trial. To this question, we apply a bifurcated standard of review.

¶ 102 To the extent that we are asked to review the trial court's conclusions of law, we apply a *de novo* standard of review. *Eyechaner*, 202 Ill. 2d at 252. *De novo* consideration means that we perform the same analysis that a trial judge would perform. *Tyrka v. Glenview Ridge Condominium Ass'n*, 2014 IL App (1st) 132762, ¶ 35 (citing *Khan v. BDO Seidman, L.L.P.*, 408 Ill. App. 3d 564, 578 (2011)).

¶ 103 However, we will defer to the trial court's findings of fact unless they are against the manifest weight of the evidence. *Eychaner*, 202 Ill. 2d at 251; *Bazydlo v. Volant*, 164 Ill. 2d 207, 214-15 (1995). A decision is against the manifest weight of the evidence only when the opposite conclusion is readily apparent, or when the factual findings are unreasonable, arbitrary or not based upon the evidence. *York*, 222 Ill. 2d at 179; *Eychaner*, 202 Ill. 2d at 252; *Maple*, 151 Ill. 2d at 454. Under this standard, a reviewing court will not simply substitute its judgment for that of the trier of fact. *Eychaner*, 202 Ill. 2d at 252; *Bazydlo*, 164 Ill. 2d at 214-15. In close cases that are tried to the bench, it is the trial court that must weigh the evidence and determine witness

credibility, not the reviewing court. *Eychaner*, 202 Ill. 2d at 251; *Bazydlo*, 164 Ill. 2d at 214-15.

¶ 104 In the case at bar, we will review the evidence first to determine whether the trial court's verdict is against the manifest weight of evidence. Only if this lower standard is met, will we then turn to the question of whether the higher standard for judgment *n.o.v.* has been met.

¶ 105 B. Elements of Breach of Fiduciary Duty

¶ 106 The subject of the bench trial was plaintiff's claim for breach of fiduciary duty.

¶ 107 "[I]n order to state a claim for breach of fiduciary duty, it must be alleged [1] that a fiduciary duty exists, [2] that the fiduciary duty was breached, and [3] that such breach proximately caused the injury of which the plaintiff complains." *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000); see also *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004). In the case at bar, defendants do not contest the first two elements: (1) that a fiduciary duty existed between plaintiff and defendants, and (2) that defendants breached that duty. The only element challenged by defendants on appeal is the third element, which is causation.

¶ 108 To determine this third element of proximate cause, we ordinarily ask: (1) was the defendant's conduct a substantial factor in bringing about the injury;

and (2) if so, was the injury of the type that a reasonable person would determine as a likely result of his or her conduct. *Lopez v. Clifford Law Offices, P.C.*, 362 Ill. App. 3d 969, 979 (2005). The first type of causation is called "cause in fact," and the second type is called "legal cause," and proof of both is required to prove proximate cause. *Gaylor v. Campion, Curran, Rausch, Gummerson & Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶62; *Union Planters Bank v. Thompson Coburn L.L.P.*, 402 Ill. App. 3d 317, 343 (2010) (citing *Thacker v. UNR Industries, Inc.*, 151 Ill. 2d 343, 354 (1992)); *Lopez*, 362 Ill. App. 3d at 982.

¶ 109 To determine "cause in fact," courts generally employ two tests: (1) the traditional "but for" test, and (2) the "substantial factor" test. *Gaylor*, 2012 IL App (2d) 110718, ¶ 62; *Union Planters*, 402 Ill. App. 3d at 343 (citing *Thacker*, 151 Ill. 2d at 354). Under the but-for test, a defendant's conduct is not a cause of an event if the event would have occurred even without the conduct. *Gaylor*, 2012 IL App (2d) 110718, ¶ 62; *Union Planters*, 402 Ill. App. 3d at 343 (citing *Thacker*, 151 Ill. 2d at 354). Under the substantial-factor test, the defendant's conduct is considered a cause of an event if the conduct was a material element and a substantial factor in bringing about the event. *Gaylor*, 2012 IL App (2d) 110718, ¶ 62; *Union Planters*, 402 Ill. App. 3d at 343 (citing *Thacker*, 151 Ill. 2d at 354-55). An Illinois plaintiff may seek to prove cause in fact through

either test. *Gaylor*, 2012 IL App (2d) 110718, ¶ 62 ("either of two tests" may be employed); *Union Planters*, 402 Ill. App. 3d at 343 (observing that the plaintiff chose to satisfy the but-for test rather than the substantial-factor test); *Thacker*, 151 Ill. 2d at 355 (observing that the plaintiff chose to satisfy the substantial-factor test rather than the but-for test).

¶ 110 In contrast to cause in fact, "legal cause" is essentially a question of foreseeability: was the injury of such a type that a reasonable person would view it as a likely result of his or her conduct. *Gaylor*, 2012 IL App (2d) 110718, ¶ 62; *Union Planters*, 402 Ill. App. 3d at 343; *Lopez*, 362 Ill. App. 3d at 982.

¶ 111 Proximate cause is ordinarily a question of fact that should be decided by the trier of fact. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004) ("Proximate cause is generally an issue of material fact"); *Thacker*, 151 Ill. 2d at 355 (proximate cause is "usually a question for the trier of fact"); *Lopez*, 362 Ill. App. 3d at 982. However, Illinois courts may rule on the question as a matter of law if it is such an extreme case as to warrant a directed verdict or judgment *n.o.v.* *Abrams*, 211 Ill. 2d at 257-58 (however, "it may be determined as a matter of law by the court where the facts as alleged show that the plaintiff would never be entitled to recover"); *Thacker*,151 Ill. 2d at 355. Thus, in *Thacker*, our supreme court held that such an approach is warranted only if

judgment *n.o.v* or a directed verdict is warranted. *Maple*, 151 Ill. 2d at 453, 453 n. 1 (motions for directed verdicts and judgments *n.o.v.* "are governed by the same rules of law"). The *Thacker* court explained, "[p]ut in a slightly different way," proximate cause becomes a legal question only when there is insufficient evidence "to allow a plaintiff to take the causation question to the jury." *Thacker*, 151 Ill. 2d at 355. Thus, in most cases, the question of proximate cause is a question of fact for the factfinder, rather than a legal issue.

¶ 112 C. Cause In Fact

¶ 113 With respect to proximate cause, defendants argue first that there was no evidence to support the trial court's factual finding that Hale's lies to ASA Simpson and Leafblad were a cause in fact of their decision to charge Woods.

¶ 114 1. Rock's Actions

¶ 115 In their reply brief, defendants also raise for the first time the argument that plaintiff failed to prove a causal connection specifically between defendant Rock's actions and Woods' injuries. The sole thrust of defendants' opening brief was that defendant Hale's conduct was not the cause of Wood's injuries. Defendants' attempt to bring a new contention in their reply brief is improper. *Ryan v. Glen Ellyn Raintree Condominium Ass'n*, 2014 IL App (2d) 130682, ¶ 20 ("Plaintiffs attempt to bring a new contention in her reply brief is improper," where the sole thrust of her opening brief was a different argument); *In re*

Rayshawn H., 2014 IL App (1st) 132178, ¶ 11; *Franciscan Communities, Inc. v. Hamer*, 2012 Il App (2d) 110431, ¶ 19 ("arguments may not be raised for the first time in reply briefs"); Ill. S.Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued [in the opening brief] are waived and shall not be raised in the reply brief"). Although some arguments are properly raised for the first time in a reply brief because they are simply a response to arguments raised in the appellee's brief, this was not a response but a new argument. *E.g., People v. Ramsey*, 239 Ill. 2d 342, 412 (2010) (once the State raises the issue of waiver in its brief, the subject of plain-error is properly raised by the defendant for the first time in his reply brief (citing *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000))). Thus, it is ultimately waived. However, we will address below defendants' cause-in-fact argument with respect to defendant Hale.

¶ 116 2. Hale's Lies

¶ 117 Defendants argue that there was no evidence to support the trial court's conclusion that Hale's lies affected the ASAs' decision to charge Woods, and thus the trial court's ruling about cause in fact was against the manifest weight of the evidence. In support of their argument, defendants rely primarily on the statements of the ASAs themselves that Hale's statement did not affect their decision to charge.

¶ 118 In the case at bar, the decision about cause in fact requires making a factual finding about the intent of the ASAs. As the trial court itself stated, it requires entering the "mind" of the ASAs. Certainly, a person's own statements are some evidence of his or own intent. However, circumstantial evidence can often be a more reliable indicator of intent than a person's own statements. A person may be reluctant to acknowledge that he or she was duped or motivated by another's lies, particularly if that person is in a position of authority and is entrusted with exercising discretion, which necessarily depends on his or her ability to evaluate others' credibility.

¶ 119 Defendants' argument is essentially that the trial court was required to accept the ASAs' statements of intent at face value and to disregard any circumstantial evidence to the contrary. That is simply not the law.

¶ 120 Circumstantial evidence is every bit as good evidence as direct evidence. *Parks v. Brinkman*, 2014 IL App (2d) 130633, ¶ 67 ("intent or motivation can be proved by circumstantial evidence as well as direct evidence"); *People v. Patterson*, 217 Ill. 2d 407 (2005) (a verdict " 'can be sustained upon circumstantial evidence as well as upon direct' " (quoting *People v. Williams*, 40 Ill. 2d 533, 526 (1968))). "Direct evidence has been defined as evidence which, if believed, proves the existence of the fact in issue without inference or presumption, whereas circumstantial evidence is evidence which, without going

directly to prove existence of a fact, gives rise to a logical inference that such fact does exist." *Parks*, 118 Ill. App. 3d at 56. Thus, for example, an accused bank robber testifying that he did not rob the bank is direct evidence of the fact that he did not rob the bank, but his fingerprint on the inside of the safe is circumstantial evidence that he did.

¶ 121 Courts routinely rely on circumstantial evidence to establish both proximate cause (*Westlake v. C. House Corp.*, 2011 IL App (1st) 100653, ¶ 18 ("proximate cause can be established by either direct evidence or inferentially by circumstantial evidence"); *Hahn v. Union Pacific Railroad Co.*, 352 Ill. App. 3d 922, 930 (2004) (a plaintiff "may prove proximate cause by either direct evidence or circumstantial evidence")) and mental states such as intent, motive and knowledge (*Brinkman*, 2014 IL App (2d) 130633, ¶ 67; *People v. Gonzalez*, 243 Ill. App. 3d 238, 241-42 (1993) ("issues such as motive, opportunity or knowledge can be inferred from the surrounding facts of each case")).

¶ 122 In the case at bar, there was ample circumstantial evidence to support the trial court's cause-in-fact ruling. First, the two ASAs in charge of the investigation went out to Hale's house to talk to him before charging Woods. The trial judge found it hard to believe that they would have taken this action if any statements made by Hale were going to have no effect. The judge stated in his ruling that he was relying in part on his "common sense gained from [his]

experience in life," which he was certainly entitled to do. It has long been the law in Illinois that: " ' "If as a matter of ordinary experience a particular act or omission might be expected, under the circumstances, to produce a particular result, and that result in fact has followed, the conclusion may be permissible that the causal relation exists." ' " *Westlake*, 2011 IL App (1st) 100653, ¶ 18 (quoting *Staikovich v. Monadnock Building*, 281 Ill. App. 3d 733, 739 (1996) (quoting W. Page Keeton *et al. eds,*, Prosser and Keeton on Torts § 41 at 270 (5th ed. 1984))). In the case at bar, it was "a matter of ordinary experience [that] a particular act," namely, the ASAs taking the time to visit Hale's home not only over the weekend but on the Saturday between Good Friday and Easter, and Hale's subsequent lies during that visit, "might be expected *** to produce a particular result," namely, the charging of Woods. When "that result in fact *** followed," then the conclusion is "permissible that the causal relation exists." (Internal quote marks omitted.) *Westlake*, 2011 IL App (1st) 100653, ¶ 18.

¶ 123 Second, the ASAs admitted that, if Hale had answered differently, it would have raised "a million other questions" and that it "would be speculating" to say how a different answer would have affected their decision to charge Woods. The trial judge stated specifically that he relied on these statements in making his ruling, and appellate courts must always remember that "[t]he trier

of fact has the exclusive province to assess the credibility of the witnesses, the weight to be given their testimony and the inferences to be drawn from the evidence." *Gonzalez*, 243 Ill. App. 3d at 241; *People v. Cerda*, 2014 IL App (1st) 120484, ¶ 156 ("the fact finder is in a superior position" to the appellate court "to determine and weigh the credibility of witnesses, observe witness' demeanor and resolve conflicts"). As a result, we cannot say that the trial court's conclusion about cause in fact was against the manifest weight of the evidence. *Suttle v. Central Trust Bank*, 315 Ill. App. 3d 96, 104 (2000) (the question of what a person "would have done" if properly informed is a question of fact for the factfinder, even when the person testifies that he would not have acted differently).

¶ 124 Defendants repeatedly argue in their appellate brief that the trial court "ignored" the ASAs' claims that they were unaffected by Hale's lies. *Bazydlo*, 164 Ill. 2d 215 (the factfinder cannot simply disregard testimony that is neither improbable nor contradicted by circumstance or other testimony). Far from ignoring it, the trial court acknowledged this testimony during its ruling and then explained why it found other evidence more persuasive. For example, the trial court explicitly stated during its ruling: "Mr. Simpson testified that the Hale statement had no effect." Thus, the trial court did not ignore this testimony, but rather did not assign it the weight that defendants had hoped for.

Bazydlo, 164 Ill. 2d at 214-15 ("The trial judge, as the trier of fact, is in a position superior to a reviewing court *** to determine the weight [that] testimony should receive"); *People v. Williams*, 2013 IL App (1st) 111116, ¶ 76 ("In a bench trial, it is the role of the trial judge, sitting as factfinder, to make determinations about witness credibility"). However, assigning the appropriate weight to different pieces of evidence is the role of the factfinder not the appellate court. *Bazydlo*, 164 Ill. 2d at 214-15 ("A reviewing court should not overturn a trial court's findings merely because it does not agree with the lower court or because it might have reached a different conclusion had it been the factfinder."); *Cerda*, 2014 IL App (1st) 120484, ¶ 156; *Gonzalez*, 243 Ill. App. 3d at 241. Even if we would have assigned different weight if we were sitting as trial judges, that is not a reason for reversal. *Cerda*, 2014 IL App (1st) 120484, ¶ 156 ("the fact finder's credibility determinations are entitled to great deference and will be disturbed rarely on appeal"). Thus, as stated above, we cannot find that the trial court's cause-in-fact determination was against the manifest weight of the evidence.

¶ 125 D. Legal Cause

¶ 126 Defendants do not contest on appeal the trial court's finding that Hale lied. Defendants argue that, even if Hale's lies were a cause in fact, they did not constitute a legal cause. Specifically, defendants argue that a reasonable person

in Hale's position would not have foreseen that his lies to the ASAs would lead to Woods being charged. As we stated above, "legal cause" is essentially a question of foreseeability: was the injury of such a type that a reasonable person would view it as a likely result of his or her conduct. *Gaylor*, 2012 IL App (2d) 110718, ¶ 62; *Union Planters*, 402 Ill. App. 3d at 343; *Lopez*, 362 Ill. App. 3d at 982. *See also Lopez*, 362 Ill. App. 3d at 981-82 (legal cause was alleged in a malpractice action where it was reasonably foreseeable that a plaintiff would wait to retain another attorney after the defendant attorney misinformed him about the length of the statute of limitations).

¶ 127 Defendants cite in support: *Abrams v. City of Chicago*, 211 Ill. 2d 251 (2004); and *City of Chicago v. Beretta USA Corp.*, 213 Ill. 2d 351 (2004). In both of these cases, our supreme court found there was no legal cause due to intervening criminal acts by third parties. *Beretta*, 213 Ill. 2d at 410 (in the absence of any reason to expect the contrary, a person may expect others to obey the criminal law). Unlike these cases, the third parties in our case were prosecutors, who acted in lawful, foreseeable ways.

¶ 128 In *Abrams*, 211 Ill. 2d at 259, which defendants cite, the supreme court discussed that "special subset of proximate cause cases involving injuries caused by the intervening acts of third persons." Our case falls into this subset because it involved "acts of third persons," namely, the ASAs who decided to

charge Woods. *Abrams*, 211 Ill. 2d at 259. For this special subset of proximate cause cases, our supreme court held that the relevant question is " ' whether the first wrongdoer reasonably might have anticipated the intervening efficient cause as a natural and probable result of [his or her] own negligence.' " *Abrams*, 211 Ill. 2d at 259 (quoting *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 257 (1999)). Thus, the question in the case at bar is: whether Hale "reasonably might have anticipated" that the ASAs would have charged Woods "as a natural and probable result" of his own lies, after the ASAs had taken the time to come to his home the day before Easter specifically to question him about his conversations with Woods. See *Abrams*, 211 Ill. 2d at 259; see also *Lopez*, 362 Ill App. 3d at 982 (when a plaintiff sues his attorney, the question is "whether the injuries were of the type that a reasonable attorney would see as a likely result of his or her conduct").

¶ 129 In *Abrams*, the supreme court found no proximate cause on the specific facts before it, explaining:

> "we conclude as a matter of law that the City could *not* have reasonably anticipated that a refusal to send an ambulance when labor pains are 10 minutes apart, would likely result in plaintiff's driver running a red light at the same time that a substance-impaired driver was speeding through the intersection on a suspended license. Millions of women in

> labor make it safely to the hospital each year by private transportation." (Emphasis in original.) *Abrams*, 211 Ill. 2d at 261-62.

By contrast, it cannot be said that millions of clients are safe and sound after their attorneys lie to prosecutors about the clients' conduct. The substance-impaired driver who sped through the intersection in *Abrams* literally came onto the scene out of nowhere. *Abrams*, 211 Ill. 2d at 261-62. By contrast, in the case at bar, the prosecutors did not suddenly spring out of nowhere at the moment when they filed charges against Woods. Hale knew that they were coming to his home for the purpose of verifying the truthfulness of Woods' statements before any charges were filed. The fact that his statements would have a strong impact on the investigation was completely foreseeable. This, after all, was not a social visit. Thus, we cannot say that it was against the manifest weight of the evidence for the trial court to find that a reasonable person in Hale's position would foresee the impact of his conduct.

¶ 130 Defendants also cite *City of Chicago v. Beretta USA Corp.*, 213 Ill. 2d 351, 349-50 (2004), in which the City of Chicago sued a number of gun manufacturers, distributors, and dealers in order to seek compensation for the costs of gun violence in Chicago, such as increased emergency medical care and law enforcement. The supreme court affirmed the dismissal of the action holding that it was "inadvisable as a matter of public policy" to hold that a

certain subset of gun manufacturers, distributors and dealers was "the legal cause" of the gun violence in Chicago. *Beretta*, 213 Ill. 2d at 414. The court explained that "it is not at all clear that the condition would cease to exist if these particular defendants entirely ceased selling firearms." *Beretta*, 213 Ill. 2d at 413. The court concluded that criminals "would still be able to obtain" firearms from the "thousands of dealers all across the country," and the "ultimat[e]" result would be only "a shift in the market share between these dealers and others." *Beretta*, 213 Ill. 2d at 413.

¶ 131 By contrast, in the case at bar, public policy considerations favor the trial court's verdict rather than undermine it. It is advisable as a matter of public policy to encourage individuals to make truthful statements to law enforcement and to encourage attorneys to be mindful of the "duty of care" owed to their clients. *Beretta*, 213 Ill. 2d at 410 (where a defendant has "a special responsibility for the protection of the plaintiff, perhaps arising by contract or founded upon a special relationship between the two," then ordinary concerns with foreseeability are lessened). Although defendants cite *Beretta*, they do not claim that public policy considerations favor their argument.

¶ 132 Instead, defendants cite *Beretta* for the proposition that the injury to Woods was too "remote" from Hale's lies to be the legal cause. *Beretta*, 213 Ill. 2d at 411. Concluding that the harm was too remote for liability, the *Beretta*

court found that the harm from guns was caused " 'principally by the criminal activity of intervening third parties' " who were then liable for their own actions, rather than by the actions of the law-abiding defendants. *Beretta*, 213 Ill. 2d at 410-11 (quoting *Spitzer v. Sturm Ruger & Co.*, 309 A.D. 2d 91, 103, 761 N.Y.S. 2d 192, 201 (2003)). In the case at bar, it is just the reverse, with defendant acting unethically by lying to prosecutors; and the third parties, who are prosecutors, acting lawfully. If we apply the logic of *Beretta* to the facts of our case, it is the reverse that should happen here, namely, that defendant should be liable for his actions.

¶ 133 In sum, we cannot say that the trial court's finding of legal cause was against the manifest weight of the evidence.

¶ 134 II. Woods' Bond

¶ 135 Defendants argue that the trial court erred by allegedly excluding evidence of both the amount of Woods' bond and the circumstances surrounding the setting of the bond's amount; and that this exclusion prejudiced them because it prevented them from arguing that the sole proximate cause of Woods' four-month incarceration was the setting of an unusually high bond, which Hale could not reasonably foresee. For the reasons explained below, defendants' claims are factually incorrect and thus we do not find them persuasive.

¶ 136 A. Standard of Review

¶ 137 On appeal, we will not reverse a trial verdict because of an erroneous evidentiary ruling, unless: (1) the trial court abused its discretion; and (2) the ruling prejudiced the appellant. *Knight v. Chicago Tribune Co.*, 385 Ill. App. 3d 347, 355 (2008) (citing *Taluzek v. Illinois Central R.R. Co.*, 255 Ill. App. 3d 72, 83 (1993)); *Kim v. Mercedes-Benz*, 353 Ill. App. 3d 444, 452 (2004). An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *Kim*, 353 Ill. App. 3d at 452. In addition, the appellant bears the burden of establishing prejudice. *Knight*, 385 Ill. App. 3d at 355-56 (citing *Smith v. Baker's Feed & Grain, Inc.*, 233 Ill. App. 3d 950, 952 (1991).

¶ 138 B. Not Persuasive

¶ 139 For the following reasons, we do not find defendant's argument persuasive.

¶ 140 First, even if we were to agree *arguendo* that the bond was unusually high, defendants do not argue that Hale's lies had no connection to the setting of a high bond.

¶ 141 Second, the trial court simply did not exclude the amount of the bond. That is factually incorrect. Woods testified on direct examination that a "$500,000 bond" was set. The following day, immediately before the objection

now at issue, the defense attorney stated: "The record will reflect [Woods] said it was set at five hundred thousand and the efforts he took to get the five hundred." The trial judge agreed he had "heard it" and that "we all know the amount of the bond." The court further stated about the amount: "That's in the record. That was testified to on a number of occasions." Thus, the record conclusively establishes that the amount of the bond was before the trial court.

¶ 142 In addition, contrary to defendants' argument on appeal, their attorney made precisely the argument in closing which they now claim they were barred from making. In closing, defense counsel argued that Hale could not have foreseen either (1) that a high bond would be set or (2) that Woods would not be able to post it:

> "And this is the final points [*sic*]: How was it that Mr. Hale could ever anticipate what would happen after the charge? Hale would have to anticipate or foresee *** that the bond would be set at [$]500,000, that he wouldn't be able to collect the bond ***."

¶ 143 Third, after the trial court sustained the objection which defendants now contest on appeal, the trial court also let defendants make an offer of proof about what evidence they would have offered if given the opportunity. Thus, it is only the exclusion of this proffered evidence that is now at issue on appeal.

¶ 144 A party claiming that he or she was not given the opportunity to prove his or her case must provide a reviewing court with an adequate offer of proof as to what the excluded evidence would have been. *Kim*, 353 Ill. App. 3d at 451 (citing *In re Estate of Romanowski*, 329 Ill. App. 3d 769, 773 (2002)). An adequate offer of proof alerts the trial court to both what the expected testimony would be and its purpose. *Kim*, 353 Ill. App. 3d at 451 (citing *Romanowski*, 329 Ill. App. 3d at 773). The reason behind an offer of proor is two-fold: first, to disclose to the trial court and the opposing counsel the nature of the proposed evidence; and second, to enable a reviewing court to determine whether the trial court's exclusion of the evidence was proper. *Kim*, 353 Ill. App. 3d at 451 (citing *Turgeon v. Commonwealth Edison Co.*, 258 Ill. App. 3d 234, 241 (1994)). The failure to make an adequate offer of proof results in a waiver of the issue on appeal. *Kim*, 353 Ill. App. 3d at 452.

¶ 145 Since this proffer has now become an issue on appeal, and to avoid the sense that parts are being quoted out of context, we quote the entire relevant portion of the transcript below. To support this particular argument, defendants cite pages 566 through 568 of the transcript. However, in order to provide the objection and the testimony that prompted it, we first provide pages 564-65 of ASA Leafblad's direct examination below:

"DEFENSE COUNSEL: In this instance with Mr. Woods, how was the bond amount set?

ASA LEAFBLAD: The bond was set. I spoke to -- this was Easter morning. I spoke to the assistant state's attorney that was going to conduct the bond hearing. I informed the state's attorney of the nature of the case and the nature of my investigation, the things that we had found on Mr. Woods in his property on the computer records regarding the judge and the attorneys. So that's what it was.

I also informed them that there was an outstanding judgment in the Circuit Court of Cook County regarding the landlord tenant dispute in the amount of a half million dollars. Since that was the –

PLAINTIFF'S COUNSEL: I object to any more testimony about this."

Since plaintiff's counsel's objection was limited to "any more" testimony, the testimony up to this point was not objected to, and the trial court did not strike it. Thus, ASA Leafblad's testimony about how the bond was set is in the record. Immediately after plaintiff's counsel objected, the following colloquy took place:

"DEFENSE COUNSEL: We haven't gotten to the part about the bond.

PLAINTIFF'S COUNSEL: We're right there at bond. We're exactly there.

THE COURT: What's the basis of the objection?

PLAINTIFF'S COUNSEL: The objection is that they are trying to develop evidence of an intervening cause to break the foreseeability and they never pled it.

DEFENSE COUNSEL: I don't need to.

PLAINTIFF'S COUNSEL: If they would have pled it, I would have taken evidence of various people to find out why what happened. But since that was not an issue in the case, I let it go.

And I object to them trying now through this witness to introduce testimony that tries to show some intervening cause, not Hale, that resulted in the bond being as large as it was."

¶ 146 Now we provide pages 566 through 568 cited by defendant, which contain the trial court's ruling and defendants' offer of proof:

"PLAINTIFF'S COUNSEL: I made my objection.

THE COURT: Yes, I'm thinking. I mean we know the amount of the bond. I heard it, right?

DEFENSE COUNSEL: Right.

THE COURT: We all know the amount of the bond.

PLAINTIFF'S COUNSEL: Right.

THE COURT: I'm not sure – I'm going to sustain the objection. However, and I am sustaining it, but if you want to make an offer of proof, go ahead.

DEFENSE COUNSEL: Sure.

THE COURT: And then let me know when you're done.

DEFENSE COUNSEL: Okay.

THE COURT: But I'm sustaining the objection because I think – we know the amount of the bond. I don't know that –

DEFENSE COUNSEL: That was my next question. So what was the amount.

THE COURT: We know that. That's in the record. That was testified to on a number of occasions. So I mean I don't think that's an issue, but at any rate, go ahead. You can make it as an offer of proof now. Thanks.

DEFENSE COUNSEL: So based on that[,] what was the amount of bond?

ASA LEAFBLAD: Half a million dollars.

DEFENSE COUNSEL: Did any member of the –well, did Jay Rock, before Mr. Woods was charged by you, ever contact you?

ASA LEAFBLAD: No.

THE COURT: Are we done with the offer of proof?

DEFENSE COUNSEL: Yes. Sorry.

THE COURT: No, that's okay. I just want to make sure we've got it. Okay."

¶ 147 Since the amount of the bond was already in the record and since no testimony was stricken, the only proffered evidence that the trial court excluded was the fact that, prior to Woods being charged, defendant Rock never contacted ASA Leafblad.

¶ 148 Defendants fail to explain how the exclusion of this one, very small fact was an abuse of discretion or how it had any effect at all on the outcome of the trial. As a result, we cannot find an abuse of discretion or any prejudice based on the exclusion of this one piece of evidence.

¶ 149 In sum, defendants claimed on appeal, with respect to the breach of fiduciary duty claim: (1) that the trial court's finding of proximate cause was against the manifest weight of the evidence; and (2) that the trial court erred by allegedly excluding evidence of the amount of Woods' bond. For the foregoing reasons, we do not find these claims persuasive, and we turn next to the issues raised on plaintiff's cross-appeal.

¶ 150 III. Cross Appeal: The Gang Rape

¶ 151 On plaintiff's cross-appeal, plaintiff claims: (1) that the trial court erred in not considering plaintiff's gang rape in jail when calculating damages for defendants' breach of fiduciary duty; and (2) that the trial court erred in granting summary judgment on plaintiff's legal malpractice claim. We discuss first the exclusion of the gang-rape evidence.

¶ 152 Defendants moved to bar the evidence of the physical and emotional harm to Woods from the gang rape; and the trial court took the motion under advisement, and did not rule on it until after the close of both evidence and argument. During the reading of its verdict and immediately before announcing damages, the trial court held that it was "not allowing that testimony," because plaintiff had failed to prove the foreseeability of the rape. The court stated that there was not "any testimony as to the foreseeability."

¶ 153 A. Standard of Review

¶ 154 As we stated before, the standard of review for the exclusion of evidence is whether the trial court abused its discretion. *Knight*, 385 Ill. App. 3d at 355 (citing *Taluzek*, 255 Ill. App. 3d at 83); *Kim*, 353 Ill. App. 3d at 452. An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *Kim*, 353 Ill. App. 3d at 452.

¶ 155 In addition, the standard of review for a trial court's decision in a bench trial is whether that decision was against the manifest weight of the evidence. *Eyechaner*, 202 Ill. 2d at 251-52. A decision is against the manifest weight of the evidence only when it is unreasonable, arbitrary or not based on the evidence. *Eyechaner*, 202 Ill. 2d at 252.

¶ 156 Plaintiff argues that our standard of review should be *de novo* because the trial court "effectively directed a finding against Woods on this issue." However, the trial court did not rule on the issue of the foreseeability of the gang rape, until it first heard all the evidence on the issue. Thus, *de novo* review is not appropriate.

¶ 157 B. Foreseeability Evidence

¶ 158 Defendants did not present any independent evidence to contradict the testimony about the gang rape by Woods or his cellmate, Clay. The only testimony remotely concerning foreseeability was offered by Clay, who testified by an evidence deposition.

¶ 159 Clay, who was Woods' cell mate for three or four months, testified that they were held in Division 11 of Cook County Jail, where life is "hard." According to Clay, Division 11 was "the super" maximum security section of the jail, where the inmates were all "murder[er]s, rapists and kidnappers." When asked "what it's like to live in Division 11," Clay answered: "It's

screaming all of the time. It's fights all of the time. There's stabbings all of the time. There's murders all of the time. I mean, you know, everybody got a knife." He testified that in Division 11 "the inmates run everything." The gangs were in charge of the prison decks in Division 11, with the gang with the most members on any particular deck in charge of that deck. Since Woods was not affiliated with a gang, he was a "neutron," who lacked the protection of fellow gang members. There were several other inmates in Division 11 at that time who, like Woods, were also "unaffiliated." The neutrons were "preyed upon," and were at risk of physical harm.

¶ 160 Although Clay responded "no" when asked whether it was "unusual" for someone like Woods to be gang raped "in jail," most of Clay's testimony concerned only Division 11, as opposed to Cook County Jail as a whole. Clay explained that "Division 11 is a separate division from the main penitentiary," and that inmates need to be "bussed" to Division 11 from the main part of the jail. Clay's testimony about the risk of physical harm to a "neutron" appeared to be limited to someone who had already been placed in Division 11. Clay found it "strange" for someone like Woods, who was arrested for "eavesdropping," to be placed in Division 11. Thus, Woods' placement in the particularly dangerous Division 11 was unforeseeable even to someone experienced in the penal system like Clay who testified that he had spent more than half of his 57 years

in the prison system. *Zakoff v. Chicago Transit Authority*, 336 Ill. App. 3d 415, 423 (2002) (an event that is highly extraordinary or tragically bizarre is not foreseeable (citing *Michalak v. County of LaSalle*, 121 Ill. App. 3d 574, 576 (1984))).

¶ 161 C. The Trial Court's Ruling

¶ 162 The trial court ruled: "The reason I'm not considering [the gang rape evidence] is I don't think there was any testimony as to the foreseeability."

¶ 163 As stated above, to recover for breach of fiduciary duty, plaintiff was required to prove legal cause, which is essentially a question of foreseeability: was the injury of such a type that a reasonable person would view it as a likely result of his or her conduct. *Gaylor*, 2012 IL App (2d) 110718, ¶ 62; *Union Planters*, 402 Ill. App. 3d at 343; *Lopez*, 362 Ill. App. 3d at 982. *See also Lopez*, 62 Ill. App. 3d at 981-82 (legal cause was alleged in a malpractice action where it was reasonably foreseeable that a plaintiff would wait to retain another attorney after the defendant attorney misinformed him about the length of the statute of limitations). Since plaintiff failed to present testimony concerning the foreseeability of rape or assault in Cook County Jail as a whole, and since plaintiff's own witness found it strange that Woods was placed in the particularly dangerous Division 11, the record supports the trial court's recollection that the plaintiff failed to provide "any testimony as to the

foreseeability" of Woods' rape. Without evidence to support the element of legal cause or foreseeability, we cannot find that the trial court abused its discretion by declining to consider the evidence of the gang rape when assessing damages or that this decision was against the manifest weight of the evidence.

¶ 164 On appeal, plaintiff cites the Seventh Circuit's 2005 opinion in *Holly v. Woolfolk*, 415 F.3d 678 (7th Cir. 2005), for the proposition that inmate-on-inmate violence in Cook County jails was well-known and well-publicized in 2005, and thus foreseeable when Hale lied to the ASAs. In *Holly*, Justice Posner concluded on the basis of a number of newspaper articles published between 1997 and 2005, which he listed at length, that Cook County Jail was "dangerous." *Holly*, 415 F.3d at 679. He affirmed the dismissal of a due process claim by an inmate who was placed in isolation, stating: "It is unclear what damages he could prove for being confined to a cell for two days rather than being free to roam the dangerous general-population area of the jail – and dangerous it is." *Holly*, 415 F.3d at 679.

¶ 165 In the case at bar, plaintiff seems to be asking us, in essence, to find that the trial court abused its discretion by failing to take judicial notice of the foreseeability of Woods' gang rape from being placed generally in Cook County Jail in 2005, without plaintiff's having offered testimony at trial to support this

fact. This we decline to do, especially when plaintiff does not claim that he was denied the opportunity to offer such evidence.

¶ 166 Thus, we affirm the trial court's exclusion of the gang rape evidence from its consideration of damages.

¶ 167 IV. Cross Appeal: Summary Judgment

¶ 168 On plaintiff's cross-appeal, plaintiff next claims that the trial court erred in granting summary judgment on plaintiff's legal malpractice claim. For the following reasons, we do not find this argument persuasive.

¶ 169 A. Standard of Review

¶ 170 Summary judgment is appropriate where the pleadings, depositions and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). A genuine issue of material fact exists either where the parties dispute a material fact or where reasonable persons might draw different inferences from the undisputed facts. *Adames v. Sheehan*, 233 Ill. 2d 276, 295-96 (2009). We review a trial court's decision on a motion for summary judgment *de novo*. *First Chicago Insurance Co. v. Molda*, 408 Ill. App. 3d 839, 845 (2011); *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). As we already observed above, *de*

novo consideration means that we perform the same analysis that a trial judge would perform. *Tyrka*, 2014 IL App (1st) 132762, ¶ 35 (citing *Khan*, 408 Ill. App. 3d at 578).

¶ 171 " 'Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt.' " *First Chicago*, 408 Ill. App. 3d at 845 (quoting *Outboard Marine*, 154 Ill. 2d at 102). " 'Mere speculation, conjecture, or guess is insufficient to withstand summary judgment.' " *First Chicago*, 408 Ill. App. 3d at 845 (quoting *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999)). A defendant moving for summary judgment bears the burden of proof. *First Chicago*, 408 Ill. App. 3d at 845; *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). The defendant may meet this burden of proof either by affirmatively showing that some element of the case must be resolved in his or her favor, or by establishing an absence of proof to support the plaintiff's case. *First Chicago*, 408 Ill. App. 3d at 845; *Nedzvekas*, 374 Ill. App. 3d at 624.

¶ 172 We may affirm on any basis appearing in the record, whether or not the trial court relied on that basis or whether or not its reasoning was correct. *First Chicago*, 408 Ill. App. 3d at 845; *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill. App. 3d 40, 50 (1992).

¶ 173 B. Elements of a Legal Malpractice Claim

¶ 174 In the case at bar, the trial court granted summary judgment solely on plaintiff's claim of legal malpractice.

¶ 175 The elements of a legal malpractice claim are well established. To prevail on a cause of action for legal malpractice, a plaintiff must plead and prove sufficient facts to establish: (1) that the defendant attorney owed the plaintiff client a duty of due care arising from an attorney-client relationship; (2) that the attorney breached that duty; (3) that the client suffered an injury in the form of actual damages; and (4) that the attorney's breach was the proximate cause of those actual damages. *Fox v. Seiden*, 382 Ill. App. 3d 288 (2008) (citing *Governmental Interinsurance Exchange v. Judge*, 221 Ill. 2d 195, 199 (2006)); *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169, 174 (2004); *Serafin v. Seith*, 284 Ill. App. 3d 577, 586-87 (1996)

¶ 176 The fact that an attorney owed a duty of care and breached it is not enough to sustain a cause of action. *Fox*, 382 Ill. App. 3d at 295 (citing *Northern Illinois Emergency Physicians v. Landau, Omahana & Kpka, Ltd.*, 216 Ill. 2d 294, 306-07 (2005)). Even if an attorney was negligent, a plaintiff cannot recover unless that negligence proximately caused damages. *Fox*, 382 Ill. App. 3d at 295 (citing *Northern Illinois*, 216 Ill. 2d at 306-07). Thus, both

proximate cause and actual damages are essential to a viable cause of action. *Fox*, 382 Ill. App. 3d at 295 (citing *Northern Illinois*, 216 Ill. 2d at 306-07).

¶ 177 To satisfy the element of proximate cause, the plaintiff must plead sufficient facts to establish that "but for" the negligence of the attorney, the client would have succeeded in the underlying suit. *Fox*, 382 Ill. App. 3d at 299; *Cedeno*, 347 Ill. App. 3d at 174; *Serafin*, 284 Ill. App. 3d at 587.

¶ 178 C. A Successor Attorney

¶ 179 In the case at bar, the trial court held "that the Plaintiffs' retention of subsequent counsels on their still viable claims acted as a superseding cause thereby negating their ability to establish a legal malpractice claim against the Defendants."

¶ 180 If a subsequent attorney fails to rectify a prior attorney's alleged negligence, then the second attorney's failure is an intervening cause which breaks the chain of proximate cause, so long as the second attorney had sufficient time and opportunity to act. *Mitchell v. Schwain, Fursel & Burney, Ltd.*, 332 Ill. App. 3d 618, 621 (2002) (Theis, J.); *c.f. Cedeno*, 347 Ill. App. 3d at 176 ("the circuit court's misapplication of the law served as an intervening cause," where the second attorney failed to pursue an appeal). However, "the first attorney could be held to be a proximate cause of plaintiff's damage where his [or her] acts omissions leave doubt about the subsequent viability of

plaintiff's claim after his [or her] representation ends, such as when a statute of limitations expires one day after an attorney ceases representation and a new attorney could not reasonably recognize that problem in the time allowed." *Mitchell*, 332 Ill. App. 3d at 621 (Theis, J.). In sum, if the underlying cause of action remained actionable upon the discharge of the defendant attorney and the retention of a new attorney, and there was time and opportunity for the second attorney to act, then the plaintiff cannot prove proximate cause between the defendant's conduct and any damages which the plaintiff sustained. *Cedeno*, 347 Ill. App. 3d at 174; *Mitchell.*, 332 Ill. App. 3d at 622 (there was no proximate cause where the second attorney had two years to refile plaintiff's suit and failed to do so). See also *Land v. Greenwood*, 133 Ill. App. 3d 537, 539-41 (1985) (there was no proximate cause, although the first attorney failed to serve several defendants with process, where the second attorney waited four to five months after being retained to serve the defendants and the trial court dismissed the case for lack of due diligence), *as discussed in Mitchell*, 332 Ill. App. 3d at 620-21.

¶ 181 D. The Trial Court's Ruling

¶ 182 In holding that the retention of a new attorney acted as an intervening cause, the trial court observed that, when defendant attorneys "withdrew as counsel in the forcible action, the case was in its infancy in that no answer had

yet been filed, nor had discovery commenced." Plaintiff does not dispute this observation. Instead, he contends that defendants "Hale and J. Rock were the only attorneys who were in a position to prove that Plaintiff did not owe rent" because they were the only ones who would "know" of and understand the "significance" of certain "critical" documents. However, this logic is completely undercut by the fact that plaintiff's present attorneys, who are also successive attorneys, seemed to have no problem both finding and understanding the significance of these same documents. Thus, we do not find plaintiff's argument persuasive.

¶ 183 CONCLUSION

¶ 184 On this appeal, defendants claimed, with respect to the breach of fiduciary duty claim: (1) that the trial court's finding of proximate cause was against the manifest weight of the evidence; and (2) that the trial court erred by allegedly excluding evidence of the amount of Woods' bond, which defendants argue was unusually high, unforeseeable and the cause of Woods' incarceration.

¶ 185 On plaintiff's cross-appeal, plaintiff claimed: (1) that the trial court erred in not considering plaintiff's gang-rape in jail when calculating damages for defendants' breach of fiduciary duty; and (2) that the trial court erred in granting

summary judgment on plaintiff's legal malpractice claim.

¶ 186 For the foregoing reasons, we do not find these arguments persuasive and we affirm.

¶ 187 Affirmed.