2017 IL App (1st) 153617-U

Nos. 1-15-3617, 1-16-0545 cons.

Third Division
June 28, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TIBERIU KLEIN, individually and as Special Co-Administrator for the Estate of Claudia Zvunca,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	No. 14 L 8478
v.	)	Honorable John P. Callahan, Jr., Judge, presiding.
MOTOR COACH INDUSTRIES, INC., a Delaware Corporation, GREYHOUND LINES, INC., individually and as *respondeat superior* of its agent Wesley Tatum, and as wholly owned and controlled subsidiary of LAIDLAW, INC., FIRSTGROUP PLC as *respondeat superior*, WESLEY JAY TATUM, JOHN DOE, individually and as agent of Greyhound Lines and Laidlaw, Inc., CRAIG LENTCZ, individually and in capacity as CEO of Greyhound Lines and Laidlaw, Inc., FLOYD HOLLAND, individually and as vice-president of Greyhound Lines, and MOTOR COACH INDUSTRIES INTERNATIONAL, INC.,	)	
Defendants.	)	
(Motor Coach Industries, Inc., Motor Coach	)	

Industries International, Inc., Greyhound Lines, Inc., Laidlaw, Inc., and First Group PLC, Defendants-Appellees.)

JUSTICE COBBS delivered the judgment of the court.

Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Dismissal of plaintiff's wrongful death and loss of consortium claims was proper where an action by the decedent's personal representative precluded plaintiff's action. Trial court did not err in denying his motion to substitute judge as a matter of right where plaintiff "tested the waters" for eight months and did not move for substitution until after several rulings. The court also did not err in denying motions to consolidate or substitute in as administrator where such actions would not have saved plaintiff's claims.

¶ 2 This consolidated appeal stems from a complicated web of related actions which this court has previously described as an example of an "appalling abuse of the judicial system." *Klein v. McNabola*, 2016 IL App (1st) 141615-U. Plaintiff Tiberiu Klein appeals from the trial court's dismissal of his wrongful death and loss of consortium claims against defendants Greyhound Lines, Inc., Laidlaw, Inc., First Group PLC, Motor Coach Industries, Inc., and Motor Coach Industries International, Inc.,[1] which concern the death of his wife Claudia Zvunca. Klein contends that the trial court erred in (1) denying his motion to substitute judge as of right, (2) dismissing his wrongful death claims, (3) dismissing his loss of consortium claims, (4) denying his motion to consolidate with the estate's administrator's wrongful death case, (5) denying his motion to substitute into his case as administrator of the estate, and (6) failing to first decide which state's laws applied to his claims. We affirm.

[1] Several other defendants named in Klein's amended complaint were never served and are not parties to the current appeal.

¶ 3 I. BACKGROUND

¶ 4 Initially, we provide a brief history of the progression of matters related to this case to provide the context necessary to understand the issues raised in the current proceedings. A more thorough recounting of this "convoluted attorney created labyrinth" (*MB Financial, N.A. v. Stevens*, No 11 C 798 (N.D. Ill. July 5, 2011) spanning more than a decade of litigation across multiple states can be found in this court's numerous prior orders and opinions related to this case, of which we take judicial notice[2]: *Cushing v. Greyhound Lines, Inc.* 2012 IL App (1st) 100768 (*Cushing I*),; *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197 (*Cushing II*); *Cushing v. Greyhound Lines, Inc*., 2013 IL App (1st) 103176-U (*Cushing III*); *Klein v. Greyhound Lines, Inc.,* 2013 IL App (1st) 112055-U; *Klein v. McNabola*, 2016 IL App (1st) 141615-U; and *In re Estate of Claudia Zvunca*, 2017 IL App (1st) 152493-U. Our discussion here is narrowly confined to the law division case at bar, No. 14 L 8478, and those details of the other law division and probate cases that are germane to the issues before us. The abundant procedural tangles of those other cases as well as the tangential cases alleging misconduct, awarding sanctions, and other matters that have arisen from the numerous attorneys, judges, and parties that have all been involved in this case are not relevant to the current appeal.

¶ 5 A. The Colorado Action

¶ 6 Claudia Zvunca, the wife of Klein and mother of Cristina Zvunca, was killed in January 2002 after being struck by a Greyhound bus in Colorado. Cristina, at the time eight years old, witnessed the accident. Klein filed the first wrongful death and survival action against Greyhound and the bus driver, Wesley Jay Tatum, on May 3, 2002, in Cook County. The

[2] Courts are entitled to take judicial notice of a plaintiff's underlying cause of action. *O'Callaghan v. Sartherlie*, 2016 IL App (1st) 142152, ¶ 20.

complaint set forth a single count citing the Wrongful Death Act (740 ILCS 180/1 *et seq.* (West 2002)). Klein attempted to bring the claim both "individually and as Executor of the Estate of Claudia Zvunca," however, Claudia had died intestate and plaintiff had not been appointed representative of her estate or appointed the special administrator. Although Klein was neither Cristina's father nor her legal guardian, he also sought to claim damages on her behalf.

¶ 7 Greyhound removed the case to federal court on May 31, 2002, and it was subsequently transferred to Colorado under the *forum non conveniens* doctrine. On March 3, 2003, the federal court issued a written order finding that Illinois law would apply to the lawsuit. The court noted Klein's contention that "Illinois law must be applied." On January 13, 2004, Klein sought to amend his complaint to add Motor Coach as a defendant, but the federal court denied that motion as untimely. After 12 years of litigation, including an appeal to the Tenth Circuit of the United States Court of Appeals (see *Zvunca ex rel. Klein v. Greyhound Lines, Inc.*, 530 Fed. Appx. 672, 673 (10th Cir. 2013)), the Colorado proceeding was ultimately dismissed on May 30, 2014, based upon the federal court's finding that Klein had no legal authority to bring the claims.

¶ 8 B. The Estate's Illinois Action

¶ 9 In November 2003, while the Colorado action was pending, Klein filed a petition in the probate division of the circuit court of Cook County to appoint Greg Marshall, a paralegal in the law firm representing Klein at the time, as the independent administrator of Claudia's estate. Marshall then filed a wrongful death action in the circuit court of Cook County that originally named Motor Coach as a defendant, but later amended the complaint to add Greyhound and Tatum as defendants. That complaint was later voluntarily dismissed. In

September 2004, another wrongful death and survival action was filed in Cook County, on behalf of Claudia's estate and Cristina, seeking damages from Greyhound, the driver, and Motor Coach.

¶ 10 In late 2004, Greyhound filed several motions in that action including: a motion to dismiss the complaint as duplicative of the Colorado action; a motion to dismiss the wrongful death and survival claims as time barred; a motion to sever the claims against Greyhound so that they could be transferred to Colorado; and a motion to stay, as an alternative to dismissing the action. The circuit court dismissed the survival count against Greyhound as time barred, but it denied all of the other motions. Greyhound appealed the denial of its motion to stay. A panel of this court later affirmed the denial, stating:

> "[W]e cannot find the sort of privity between the parties that would imply the substantial similarity necessary to justify a stay under section [2-] 619(a)(3). Following the decedent's demise, Klein and [Cristina] are legally strangers. *** Moreover, because [Cristina] claims damages individually as the result of negligent infliction of emotion [sic] distress, she and Klein may disagree about how a potential settlement with defendant should be attributed [sic] between the wrongful death and negligent infliction claims. We cannot conclude that two parties with potentially divergent interests are substantially the same party within the meaning of section [2-]619(a)(3)." *Marshall v. Motor Coach Industries International, Inc.*, No. 1-05-0701, (2005) (unpublished order under Supreme Court Rule 23).

¶ 11 During the course of the Illinois action, Greyhound and Motor Coach also filed a motion to dismiss the complaint under the doctrine of *forum non conveniens*. The trial court denied

the motion, and a panel of this court affirmed in an unpublished order. In that order, the appellate court stated:

> "We must point out that the plaintiffs in this litigation[, Cristina and the estate of Claudia,] are not the same plaintiffs in the Colorado action[, Klein]. Thus we cannot say that the plaintiffs here have attempted to 'split' their claim between two jurisdictions. *** This action has properly been brought in the name of the personal representative of the deceased. The Colorado action was brought by the surviving spouse and the plaintiffs here have no connection to that case." *Cushing v. Greyhound Lines, Inc.*, No. 1-05-1463 (2006) (unpublished order under Supreme Court Rule 23).

¶ 12 On April 27, 2005, Marshall resigned as administrator of the estate and the probate court appointed F. John Cushing as the independent administrator on May 13, 2005. Later, the probate division changed Cushing's appointment from independent administrator to supervised administrator at Klein's request. In the following years, Klein made numerous attempts to remove Cushing as administrator and intervene in the underlying Illinois wrongful death suit, but he was ultimately unsuccessful. See, *i.e.*, *Cushing I*, 2012 IL App (1st) 100768.

¶ 13 In 2010, the Illinois wrongful death case was settled without Cushing's involvement. This court subsequently invalidated that settlement, holding that Cushing, as the administrator, had the sole authority to settle the claims of Claudia's estate. *Cushing II*, 2013 IL App (1st) 103197, ¶ 355.

¶ 14 In November 2013, Cushing voluntarily withdrew as administrator due to illness. The probate court appointed Klein independent administrator of Claudia's estate on November 18,

2013. On March 17, 2014, the probate court entered an order prepared by John Xydakis[3], an attorney who purported to represent both Klein and Cristina. The order appointed Cristina as co-administrator to the estate of Claudia. Noting the existence of the Colorado lawsuit and the Illinois lawsuit, the order limited Klein's administrative authority to litigation of the Colorado action and provided that Cristina would have sole authority in litigating the Illinois action. On May 15, 2014, Cristina filed, through Xydakis, a petition to remove Klein as administrator *nunc pro tunc* and appoint her as sole supervised administrator. The court granted the petition, vacating its March 17 order and appointing Cristina sole supervised administrator.

¶ 15 On July 24, 2015, Klein filed a *pro se* petition to be reappointed co-administrator that the probate court denied. Klein then filed a petition to remove Cristina as administrator, remove her attorney, and appoint himself administrator. The probate court denied the motion and its judgment was affirmed. *In re Estate of Claudia Zvunca*, 2017 IL App (1st) 152493-U.

¶ 16 The Illinois action brought by the estate ultimately settled.

¶ 17 C. Klein’s Illinois Action

¶ 18 Following the 2014 dismissal of Klein’s Colorado action, he filed a *pro se* complaint in the Cook County circuit court on August 12, 2014. The case was assigned to Judge John P. Callahan, Jr. Unlike the complaint in the Colorado action, the new complaint alleged that it was brought “pursuant to the Colorado Wrongful Death Act” and added Motor Coach, Laidlaw, and First Group as defendants. Klein also alleged that he “retained his original right of re-filing this action within one year as warranted under the law,” apparently referring to section 13-217 of the Code of Civil Procedure (Code) (735 ILCS 5/13-217 (West 2014)),

[3] Xydakis also represents Klein in the current appeal.

although the section was not cited. Greyhound moved to dismiss the complaint on September 15, 2014.

¶ 19 Klein did not respond to Greyhound's motion; instead, he filed two amended complaints. In both complaints, Klein alleged that he and Claudia were residents of Illinois. Greyhound, Laidlaw, and First Group moved to dismiss each amended complaint.

¶ 20 The parties appeared before a different judge on Klein's *pro se* emergency motion on June 1, 2015. Klein sought leave to file *pro se* a third amended complaint, despite the fact that he was represented by counsel at the time. Klein's attorney moved to withdraw after indicating that he would not sign the proposed amended complaint. Neither Klein nor appellees objected to the motion to withdraw. The judge denied counsel's motion to withdraw, but granted Klein leave to file his *pro se* amended complaint.

¶ 21 The third amended complaint, which is currently at issue, listed Motor Coach, Greyhound, Laidlaw, and First Group as defendants. It also named Cristina; Tatum; an unidentified bus driver; Craig Letcz, the chief operating officer of Greyhound and Laidlaw; and Floyd Holland, the vice president of Greyhound, as defendants. It newly alleged that Claudia resided in Nevada at the time of her death and requested that the court apply Colorado law to determine liability questions, Illinois law to determine damages, and Nevada or Texas[4] law to determine Klein's capacity to sue. The complaint also included a claim against the parties for loss of consortium as an alternative to the wrongful death claims.

¶ 22 Three days after Klein filed his amended complaint, a hearing was held before Judge Callahan. The judge granted Klein's attorney's motion to withdraw *nunc pro tunc* and granted appellees' motion to revise their motions to dismiss in response to the new

[4] It is unclear from the complaint why Klein believed Texas law is applicable to the current case.

complaint. Greyhound also argued that the amended complaint was "irresponsible litigation" and "harassing" to the newly named defendants. It asked the court to enjoin Klein from serving Tatum, Letcz, and Holland until the motions to dismiss had been ruled upon. Noting that Klein had hired numerous attorneys, involved numerous parties, and filed numerous motions over the long duration of the case, Judge Callahan enjoined Klein from serving the newly named parties and stated that no further amendments would be permitted to the complaint.

¶ 23 Greyhound and Motor Coach filed separate motions to dismiss the third amended complaint on July 10, 2015, but oral arguments on the motions were not heard for several months.

¶ 24 On July 15, 2015, eleven months after the filing of his complaint, Klein filed a motion for substitution of judge as a matter of right. After a hearing on the motion, Judge Callahan denied it on July 29, 2015. In explaining his decision, the judge noted that he had considered the merits and rights of the parties in motions to amend pleadings, to allow the withdrawal of attorneys, and to compel discovery. The judge also found that Klein's motion was "in effect a motion to delay the proceedings."

¶ 25 On July 28, 2015, Klein filed a motion to consolidate his case with the litigation being brought by Claudia's estate. The trial court denied the motion on August 13, 2015.

¶ 26 Klein opened an estate for Claudia in Nevada on November 2, 2015, and was appointed its administrator. On the next day, he filed a motion to be substituted into his Illinois action as the administrator of Claudia's estate. There is no indication in the record that the trial court ever explicitly ruled on that motion.

¶ 27 Oral arguments were heard on Greyhound's and Motor Coach's motions to dismiss in October 2015. On November 19, 2015, the trial court issued and order stating that it would be granting the motions in a forthcoming written order and that the order would "dispose of all pending matters as well." On January 22, 2016, the trial court issued a written order granting both motions to dismiss pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619 (West 2014)). The court reasoned that the Wrongful Death Act (740 ILCS 180/1 (West 2014)) permitted only a single action brought by the personal representative of the decedent, and thus Klein's action was precluded by Cristina's lawsuit as the administrator. It alternatively found that the claims against Motor Coach were time barred.

¶ 28 II. ANALYSIS

¶ 29 A. Appellate Motions

¶ 30 On December 9, 2016, Klein filed a motion in this court seeking to dismiss his own appeal for lack of jurisdiction. After fully considering the merits of Klein's arguments as well as appellees' responses, we denied the motion. On March 22, 2017, Klein filed a motion to strike Greyhound's supplemental response brief. We denied that motion as well. Klein has attempted to revive those already decided issues by repeating the same arguments in his supplemental and reply briefs. The matters raised have been decided on their merits and we did not request further arguments from the parties. Thus, we decline to address Klein's improper attempts to reargue previously resolved issues.

¶ 31 B. Substitution of Judge

¶ 32 Klein contends that Judge Callahan erroneously denied his motion for substitution of judge as a matter of right and consequently all of the judge's subsequent orders, including the dismissal of the complaint, were void. He argues that the judge had not ruled on any

substantive matters concerning the merits of his complaint. Appellees respond that Klein's motion was an impermissible attempt to delay matters and judge shop.

¶ 33 We review the denial of a motion for substitution of judge as a matter of right under the *de novo* standard. *In re Marriage of Crecos*, 2015 IL App (1st) 132756, ¶ 21. Such motions are governed by section 2-1001 of the Code, which states that a substitution of judge may be had in any civil action:

> "[w]hen a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).
>
> (i) Each party shall be entitled to one substitution of judge without cause as a matter of right.
>
> (ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties." 735 ILCS 5/2-1001(a)(2) (West 2014).

¶ 34 A party has an "absolute" right to the substitution of a judge where the request for the substitution is filed before the judge has made a "substantial ruling." *Scroggins v. Scroggins*, 327 Ill. App. 3d 333, 336 (2002). A judge's ruling is considered substantial if it is directly related to the merits of the case, which depends on the facts of the specific case. *In re Austin D.*, 358 Ill. App. 3d 277, 281 (2005). Examples of a ruling on a substantial issue range from an ultimate ruling on a motion to dismiss to the parties' participation in a discussion concerning the merits of the case during which the trial court indicated a position on at least one issue. *Rodisch v. Commacho-Esparza*, 309 Ill. App. 3d 346, 351 (1999).

¶ 35 A trial court has no discretion to deny a proper motion for substitution of judge as a matter of right (*Niemerg v. Bonelli*, 344 Ill. App. 3d 459, 464 (2003)); however, the motion "must be filed at the earliest practical moment" in order to discourage a party from seeking a substitution only after the party has formed an opinion that the judge may be unfavorably disposed toward the merits of their case (*In re Estate of Hoellen*, 367 Ill. App. 3d 240, 245-46 (2006)).Thus in order to prevent "judge shopping," a motion for substitution of judge as a matter of right may still be denied if the moving party waited to "test the waters and form an opinion as to the court's disposition toward his claim," even if the trial court has not ruled on a substantial issue. *In re Estate of Hoellen*, 367 Ill. App. 3d at 246; see also *Colagrossi v. Royal Bank of Scotland*, 2016 IL App (1st) 142216, ¶ 36 (acknowledging a district split over the "testing the waters" doctrine, but holding the doctrine "remains a viable objection to substitution of judge motions as of right in the First District.")

¶ 36 Here, Klein waited to file his motion for substitution of judge until nearly a year after the refiling of his complaint. In that time, the trial court granted motions for withdrawal by multiple attorneys representing Klein, ruled against him on discovery issues, and barred him from serving additional defendants until the merits of the dismissal motions were considered. Prior to the motion, Klein also filed three amended complaints before Judge Callahan stated that no further amendments would be permitted. Moreover, the voluminous record is filled with examples of Klein making motions and arguments giving the appearance of a desire to complicate and delay the proceedings. See, *e.g.*, *Klein v. McNabola*, 2016 IL App (1st) 141615-U, ¶ 39 (presuming in related case that Klein's motion to substitute judge "was a delay tactic and plaintiff was judge shopping.") Given the circumstances, we agree with Judge Callahan's finding that Klein's motion was only a delay tactic and an impermissible

attempt to test the waters. Accordingly, the judge did not err in denying Klein's motion for substitution judge as a matter of right.

¶ 37 C. Dismissal of the Wrongful Death Claim

¶ 38 Klein contends that the trial court erroneously dismissed his complaint because contrary to the trial court's holding, more than one wrongful death action can exist under Illinois law. He argues that multiple cases have allowed the existence of two wrongful death actions and that several orders in related cases explicitly granted him the right to proceed separately from the estate's wrongful death action.

¶ 39 Klein's complaint was dismissed pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)). A motion to dismiss under section 2-619 admits the legal sufficiency of the complaint, but asserts certain defects, defenses or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002). The purpose of a section 2-619 dismissal motion is to dispose of a case on the basis of issues of law or easily proved issues of fact. *Hertel v. Sullivan*, 261 Ill. App. 3d 156, 160 (1994). In ruling on a section 2-619 motion, all pleadings and supporting documents must be construed in a light most favorable to the nonmoving party, and the motion should be granted only where no material facts are in dispute and the defendant is entitled to dismissal as a matter of law. *Kheirkhahvash v. Baniassadi*, 407 Ill. App. 3d 171, 176 (2011); *Mayfield v. ACME Barrel Company*, 258 Ill. App. 3d 32, 34 (1994). We review a section 2-619 dismissal under the *de novo* standard. *Phelps v. Land of Lincoln Legal Assistance Foundation, Inc.*, 2016 IL App (5th) 150380, ¶ 11.

¶ 40 1. Multiple Wrongful Death Actions

¶ 41 Section 1 of the Wrongful Death Act (740 ILCS 180/1 (West 2014)) provides a cause of action for the death of an individual caused by the wrongful act, neglect, or default of another. See also *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 360 (1995). A wrongful death action is intended to compensate a surviving spouse and any next of kin for the pecuniary losses resulting from the death. *Pasquale*, 166 Ill. 2d at 360. However, although a wrongful death action's purpose is to compensate the estate's beneficiaries, it must be brought by the personal representative of the decedent in order to avoid the proliferation of multiple lawsuits arising out of a single death. See *id.* at 361; see also 740 ILCS 180/2 (West 2014) ("Every such action shall be brought by and in the names of the personal representatives of such deceased person.") Thus, neither the surviving spouse nor the next of kin may file a wrongful death action. See *Glenn v. Johnson*, 198 Ill. 2d 575, 584 (2002); *In re Estate of Savio*, 388 Ill. App. 3d 242, 248 (2009); *Bender v. Eiring*, 378 Ill. App. 3d 811, 815 (2008).

¶ 42 Klein cites *Pasquale* and *Wilbon v. Bast*, 73 Ill. 2d 58 (1978), for the proposition that multiple wrongful death actions may proceed at the same time. In *Wilbon*, a father of six children died and his four older children settled their wrongful death claims with the defendants. *Wilbon*, 73 Ill. 2d at 60. The decedent's wife, who was also the administrator of his estate, brought a wrongful death claim on behalf of the two younger children against the defendants more than two years after his death. *Id.* The trial court dismissed the claim as untimely. *Id.* Our supreme court held that the minors' claims could proceed as their minority status tolled the statute of limitations. *Id.* at 73.

¶ 43 In *Pasquale*, the decedent was killed in an accident during a professional drag race. *Pasquale*, 166 Ill. 2d at 341-42. The decedent's husband, acting as the administrator of her

estate, brought a wrongful death claim against the car's manufacturer on behalf of himself and the decedent's surviving next of kin, a minor. *Id.* at 339-40. Because a portion of the husband's claim was time barred, a separate count of wrongful death was alleged for the benefit of the minor beneficiary. *Id.* at 355-56. In determining the offsetting of damages, our supreme court considered whether the husband's count and the minor's count should be treated as one judgment. *Id.* at 356. The court explained that although the right of action accrues to the decedent's personal representative, complementary rights of recovery accrue to the beneficiaries. *Id.* at 366. It held "where the limitations period precludes an adult beneficiary's claim against a particular defendant," a minor beneficiary's non-barred claim against that same defendant is substantively separate. *Id.* at 367.

¶ 44 Both cases cited by Klein involved wrongful death claims brought by estate representatives on behalf of minor beneficiaries. Although both *Wilbon* and *Pasquale* indicate that a minor beneficiary's right to recover in a wrongful death action may be separated from a time-barred adult beneficiary's claim, neither case indicates that such an action can be brought by someone other than the decedent's personal representative. As Klein is not a minor and his action was not brought by a properly appointed representative of Claudia's estate, we find both *Wilbon* and *Pasquale* to be inapposite.

¶ 45 Because Klein was not the properly appointed administrator of Claudia's estate and filed his complaint solely as an individual, he had no authority to file a wrongful death action in Illinois. Only the estate's administrator possessed that ability, and Klein may not split his claims from the administrator's lawsuit.

¶ 46 Klein asserts that the trial court improperly relied on facts outside the case because its written dismissal order stated, "the interests of KLEIN, as the surviving spouse, will be

considered as part of the matter before the Honorable Judge Kirby [in Cristina's administrator-filed wrongful death action] when he determines dependency." It is unclear whether the trial court's statement referred to facts found outside the record. The court could just as easily have come to the stated conclusion through its legal research on the question at issue, whether Klein as a beneficiary had authority to bring a wrongful death action. Regardless, it is axiomatic that we review the judgment, not the reasoning, of the trial court, and may affirm on any grounds evident from the record. *Vantage Hosp. Group, Inc. v. Q Ill Dev., LLC*, 2016 IL App (4th) 160271, ¶ 54. As such, any reliance by the trial court on matters beyond the record does not affect our determination that the dismissal was proper.

¶ 47 2. Law of the Case

¶ 48 Klein additionally argues that the trial court erred in dismissing his wrongful death claims because two previous orders by panels of this court and an order by the probate court authorized multiple wrongful deaths actions and those orders operate as the law of the case.

¶ 49 The law of the case doctrine ensures uniformity of decisions, protects the parties' settled expectations, maintains consistency throughout a single case, and helps bring recurring litigation to an end. *Petre v. Kucich*, 356 Ill. App. 3d 57, 63 (2005). Thus, the doctrine bars relitigation of an issue previously decided in the same case, whether the issue is a matter of law or fact. *Alwin v. Village of Wheeling*, 371 Ill. App. 3d 898, 910 (2007). Decided issues in "a previous appeal are binding on the trial court on remand as well as on the appellate court in subsequent appeals." *Long v. Elborno*, 397 Ill. App. 3d 982, 989 (2010).

¶ 50 Klein cites two appellate court orders in the administrator and Cristina's wrongful death action. The first is the 2005 order in which a panel of this court affirmed the denial of Greyhound's motion to stay the proceeding as duplicative of Klein's Colorado action. The

order noted that Klein and Cristina were legal strangers and thus the parties in the Colorado and Illinois actions were not the same. *Marshall v. Motor Coach Industries International, Inc.*, No. 1-05-0701, (2005) (unpublished order under Supreme Court Rule 23). The second order Klein cites is the 2006 order affirming the denial of Greyhound and Motor Coach's motion to dismiss for *forum non conveniens*, which stated that Cristina and the administrator's complaint had properly been brought in the name of Claudia's personal representative and thus had not attempted to split their claims. *Cushing v. Greyhound Lines, Inc.*, No. 1-05-1463 (2006) (unpublished order under Supreme Court Rule 23).

¶ 51 We first note that Klein was not a party in the proceedings that led to the two cited orders. Even though those orders are part of the dozens of interconnected cases that stem from the 2002 bus accident, they have no direct, procedural connection to the matter currently at issue. However, we need not consider whether the law of the case doctrine would encompass separate parties in a factually-linked action because the orders do not support Klein's argument. The orders in question merely indicate that Klein, Cristina, and the administrator of the estate at the time were separate parties and that Klein's case was separate from Cristina and the administrator's case. The orders indicate that the administrator and Cristina properly brought their case in the name of Claudia's personal representative, but they make no finding as to the propriety of Klein's suit. Indeed, the court had no reason to consider the merits of Klein's suit, as that case was not before it. Accordingly, we disagree with Klein's contention that the trial court "overruled" previous appellate court orders in dismissing his complaint.

¶ 52 Klein further argues that the trial court "overruled" a May 15, 2004, order by the probate court that he argues explicitly authorized separate suits. The order at issue enjoined Cristina

from "pursu[ing] any claims for Tiberiu Klein in the Illinois Case or Colorado Case" and stated, "[T]he Illinois courts have found that these two separate cases can be maintained and have especially reserved *** Klein's right to pursue the Colorado Case regardless of the Illinois Case." In a recent appeal, in which Klein challenged as void the very order he now cites as support, a panel of this court found that the order, which was written by Klein's attorney, was "the result of his own actions presumably undertaken to benefit his personal case pending in Colorado." The unusual nature of the order's origin aside, a review of the record indicates that the probate court had not conducted a serious consideration of the legal question of whether Klein's personal wrongful death action was authorized by the Wrongful Death Act. Its statement regarding what other Illinois courts had found was not an independent pronouncement of the issue and did not bind the law division in Klein's refiled action. Moreover, the trial court's bar against both Cristina and Klein not from pursuing the other's personal claims does not foreclose the wrongful death claim brought by Cristina as administrator. As we have already discussed, Klein has no personal right of action for such a claim, only a right of recovery once the claim has been litigated. Accordingly, the trial court did not err in dismissing his complaint.

¶ 53 3. Judicial Estoppel and Waiver

¶ 54 Klein contends that Greyhound should be judicially estopped from asserting claim splitting because it previously argued contradictory positions in the Colorado action. Judicial estoppel is an extraordinary equitable doctrine invoked by the court at its discretion that "should be applied with caution." *Construction Systems, Inc. v. FagelHaber, LLC*, 2015 IL App (1st) 141700, ¶ 38; see also *Seymour v. Collins*, 2015 IL 118432, ¶ 39. "The uniformly recognized purpose of the doctrine is to protect the integrity of the judicial process by

prohibiting parties from 'deliberately changing positions' according to the exigencies of the moment." *Seymour*, 2015 IL 118432, ¶ 36 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001)). A party seeking judicial estoppel generally must prove five factors with clear and convincing evidence: that the party to be estopped has "(1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) ha[s] succeeded in the first proceeding and received some benefit from it." *Seymour,* 2015 IL 118432, ¶ 37.

¶ 55 Klein's estoppel argument consists of six short statements made by Greyhound during the Colorado action without any context. He then argues that Greyhound should be estopped without any mention of the five factors and only a brief assertion that the company should be estopped from taking inconsistent positions. We cannot find, based on this conclusory argument, that Klein has shown by clear and convincing evidence that judicial estoppel is necessary "to protect the integrity of the courts." See *Dailey v. Smith*, 292 Ill. App. 22, 27 (1997).

¶ 56 He also argues that Greyhound has waived any claim-splitting defense by failing to raise it. A thorough review of the record reveals that Greyhound has maintained substantially similar arguments to those it now raises on appeal since the filing of its first motion to dismiss one month after Klein first filed the complaint in issue on August 12, 2014. Accordingly, the argument has not been waived.

¶ 57 4. Laidlaw and First Group

¶ 58 Klein asserts that the trial court erred in dismissing his third amended complaint with reference to appellees Laidlaw and First Group because although they joined Greyhound's

second and third motions to dismiss, they did not explicitly join the final motion to dismiss. He also argues that the trial court's written order only states that it is dismissing the motions of Greyhound and Motor Coach. His argument is unpersuasive. Laidlaw and First Group were made parties as the owners of Greyhound and shared the same counsel. They explicitly joined in Greyhound's other motions to dismiss, and the final motion to dismiss incorporated the earlier motions. The trial court, prior to issuing its written order, made clear that the order would resolve all outstanding matters. As such, it is clear that Laidlaw and First Group's connection to Greyhound and sharing of its earlier motions to dismiss continued into the final motion, and the claims against them were properly dismissed by the trial court although it did not explicitly distinguish them from Greyhound.

¶ 59 4. Refiling Under Section 13-217 of the Code

¶ 60 Appellees argue that Klein's complaint was properly dismissed because it was procedurally inadequate under section 13-217 of the Code (735 ILCS 5/13-217 (West 2014). They argue that Klein added substantially different claims, allegations, and parties to the action that were not present in the Colorado action and that the filing was untimely. Klein asserts that such amendments are permissible under section 13-217 and that his complaint was filed with notice to both parties within the statute of limitations. However, as we have found that the trial court properly dismissed Klein's complaint because he had no authority to file a wrongful death action separately from the personal representative of the estate, we need not address the arguments for alternative bases for dismissal. Similarly, we need not address the trial court's alternative finding that Klein's claims against Motor Coach were barred by the statute of limitations.

¶ 61 D. Loss of Consortium Claim

¶ 62 Klein argues alternatively that his claims for loss of consortium should not have been dismissed. He cites *Kubian v. Alexian Brothers Medical Center*, 272 Ill. App. 3d 246 (1995), for the proposition that his common law claim of loss of consortium was not foreclosed by the wrongful death claim filed by the administrator of Claudia's estate.

¶ 63 A common-law cause of action for loss of consortium was long recognized in Illinois. See, *e.g.*, *Dini v. Naiditch*, 20 Ill. 2d 406, 421-30 (1960). However, opinions by our supreme court have cast doubt on the action's continued existence in light of the Wrongful Death Act. See generally *Knierim v. Izzo*, 22 Ill. 2d 73 (1961); *Elliott v. Willia*, 92 Ill. 2d 530 (1982). Wary of the potential for double recovery, the supreme court in *Knierim* held that a widow was precluded from bringing her loss of consortium count as an additional remedy when she also filed a count arising from the Wrongful Death Act. *Knierim*, 22 Ill. 2d at 82-83. In *Elliott*, the supreme court stated that the Wrongful Death Act was "preemptive" of a loss of consortium claim. *Elliott*, 92 Ill. 2d at 536.

¶ 64 In *Kubian*, a panel of the Second District of the appellate court reasoned that the supreme court's assertion in *Elliott* was *obiter dicta*. *Kubian*, 272 Ill. App. 3d at 254. In that case, a plaintiff brought wrongful death claims and loss of consortium claims against the medical center where her husband died. *Id.* at 248. Prior to the plaintiff's lawsuit, the decedent's daughter had opened his estate as executor, but refused to bring a wrongful death action. *Id.* at 249. The reviewing court held that the trial court correctly dismissed the plaintiff's wrongful death claim because she had no authority to bring the claim, but reversed the dismissal of the loss of consortium claims. *Id.* at 256. The appellate court reasoned that the supreme court's concerns regarding wrongful death claims and loss of consortium claims were primarily concerned with the potential for double recovery. *Id.* at 253. Thus the

Wrongful Death Act did not preempt a loss of consortium claim, it merely rendered it superfluous. *Id.* at 255. The appellate court concluded that the plaintiff's loss of consortium claims should proceed because it posed no risk of double recovery where the estate's personal representative had refused to file a wrongful death claim and the plaintiff's own wrongful death claim had been dismissed. *Id.*

¶ 65 Klein's citation to *Kubian* is unpersuasive. Even if we agree with the Second District's finding that the language regarding preemption in *Elliott* is dicta, the court's reasoning does not support Klein's argument. In *Kubian*, an individual became the personal representative of the estate and declined to pursue a wrongful death action. Here, Klein petitioned the probate court to open an estate and nominated an administrator. That administrator then brought a wrongful death action. Clearly, *Kubian* is inapposite. Accordingly Klein's loss of consortium claims were precluded by the administrator's wrongful death action and the trial court properly dismissed them.

¶ 66 E. Motion to Consolidate

¶ 67 Klein contends that the trial court erroneously denied his motion to consolidate his case with the wrongful death action brought by the administrator of Claudia's estate. He argues, without legal citation, that consolidation would save his claims from dismissal.

¶ 68 The denial of a motion to consolidate is within the sound discretion of the trial court, and we will not reverse its decision absent an abuse of discretion. *Turner v. Williams*, 326 Ill. App. 3d 541, 546 (2001). Consolidation may be proper when multiple cases are the same in nature, arise from the same event, involve the same or similar issues, and depend mostly upon the same evidence. *LaSalle National Bank v. Helry Corporation*, 136 Ill. App. 3d 897,

905 (1985). However, a failure to consolidate cases is harmless where the parties are not prejudiced. *Id.*

¶ 69 Klein's argument that consolidating the two cases would cure the problems with his claims is unpersuasive. Although it would decrease the number of cases, a singular case would still not grant him the authority to bring his claims. As we have already discussed, Klein has no right of action under the Wrongful Death Act and thus his claims would still fail if consolidated. Accordingly any error in failing to consolidate the cases was harmless.

¶ 70 F. Motion to Substitute in as Administrator

¶ 71 Klein asserts that the dismissal of his complaint could have been avoided if the trial court had granted his motion to substitute into the lawsuit as administrator, following his opening of an estate in Nevada. He argues that a decedent may have multiple estates that are not bound by the actions of other estates.

¶ 72 The Wrongful Death Act allows only the personal representative of a decedent to bring an action in order to ensure a single lawsuit is filed. *Pasquale*, 166 Ill. 2d at 360. A decedent may have multiple estates throughout separate jurisdictions that hold his or her property. *Wisemantle v. Hull Enterprises, Inc.*, 103 Ill. App. 3d 878, 882 (1981). Yet the administration of the estate in each jurisdiction is separate and complete, and does not extend to other jurisdictions. See *id.* It would completely destroy the purpose of the Wrongful Death Act's single action limitation if parties were allowed to avoid the provision by opening numerous estates in other states.

¶ 73 Klein asserted in dozens of legal proceedings over more than a decade that Claudia was a resident of Illinois. He established an estate in Illinois and nominated its original administrator. Over the ensuing decade of litigation he attempted numerous times to

participate in the administrator's wrongful death action and to be appointed as administrator of the Illinois estate. Only after many of those attempts had failed did Klein assert that Claudia actually resided in Nevada and seek to have himself appointed a representative of the newly-created Nevada estate. He may not now circumvent the numerous orders and opinions of Illinois courts by establishing a new estate in a different state and begin proceedings in Illinois anew.

¶ 74 G. Choice of Law

¶ 75 Klein also briefly contends that the trial court erred in not deciding which state's laws applied before dismissing his complaint. He argues that if Nevada law applies, he would have authority to bring a wrongful death action. Appellees respond that Klein waived this argument by failing to raise the argument before the trial court.

¶ 76 It is well established that an appellant's failure to raise an issue in the circuit court results in waiver of that issue. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 93. Klein does not contest appellees' assertion that he did not raise his choice of law argument before the trial court. Our review of the record reveals no such argument. As such, the issue is waived.

¶ 77 H. Remaining Arguments

¶ 78 Finally, throughout his opening appellate brief, two supplemental briefs, and reply brief, Klein alludes to numerous other perceived errors by the trial court, challenges previous decisions by other courts that have handled portions of related proceedings, and lists several other inequities he believes have harmed him. Few of these assertions contain citation to legal authority, and those that do are brief and conclusory in nature. As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. Klein's failure to

provide organized, supported, and developed arguments on these remaining issues results in their waiver. *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613 (1999) (Appellate court "is not a depository into which the burden of research may be dumped and failure to cite legal authority in the argument section of a party's brief waives the issue for review.")

¶ 79 III. CONCLUSION

¶ 80 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 81 Affirmed.