2017 IL App (2d) 151276-U
No. 2-15-1276
Order filed March 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CINDY ANDREWS, Petitioner-Appellee, and ROBERT ANDREWS, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 09-D-2463 Honorable Timothy McJoynt, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

¶ 1 *Held*: The trial court did not abuse its discretion in granting petitioner's section 2-1401 petition; subsequently, the judgment reevaluating the shares of stock procured via the exercise of stock options was not against the manifest weight of the evidence.

¶ 2 Petitioner, Cindy Andrews, filed a motion pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), seeking to vacate the judgment of dissolution of marriage that ended her marriage to respondent, Robert Andrews. Cindy sought to revalue stock options that had been awarded to Robert and to redistribute the proceeds of the exercised options. The trial court granted the motion, ordering a new, higher value of the options and ordering that

53 percent of the proceeds from the exercise of the options be awarded to Cindy. Robert now appeals that order. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Cindy first instituted dissolution proceedings in Cook County in 2006. During the course of those proceedings, Cindy learned that Robert held 300,000 non-transferable stock options in his employer, Smart Signal. After further investigation, Cindy was advised by counsel that the options had a value of $36,000. Ultimately, Cindy and Robert reconciled, and the case was dismissed.

¶ 5 Cindy again filed for dissolution in 2009, this time in Du Page County, and the marriage of Cindy and Robert was dissolved on August 4, 2010. As part of the marital settlement agreement that was incorporated into the judgment of dissolution, marital property was to be distributed 54 per cent to Cindy and 47 percent to Robert. Robert was awarded as sole and separate property the 300,000 non-transferable stock options in Smart Signal, which he had been granted during the marriage. The exercise price of the options was $0.12 per share, for a total value of $36,000.

¶ 6 On August 3, 2012, Cindy filed a petition to vacate the dissolution judgment pursuant to section 2-1401 of the Code. After portions of her petition were dismissed pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), Cindy filed an amended petition to vacate, alleging that she had agreed to the $36,000 value of Robert's stock options based on representations made by Robert and his attorney. However, five months after the judgment of dissolution was entered, Smart Signal was acquired by GE Intelligent Platforms (GE) and that negotiations for the acquisition, of which Robert was aware, were ongoing during the dissolution proceedings. Robert exercised his options, and the 300,000 shares that he obtained were then

sold to GE Intelligent Platforms at $5.52 a share, resulting in profit to Robert of $1,620,000 after the exercise price of $36,000.

¶ 7 Cindy also alleged that Robert was aware of potential sales of Smart Signal as far back as 2008, when the company was offered $1.00 per share. Smart Signal also had several suitors interested in purchasing the company in 2010. Not only did Robert fail to disclose this information, he advised Cindy that there was no market available for the Smart Signal options. He also failed to advise that Smart Signal's sales had improved between 2008 and 2010 and that its bottom line was improving. Cindy raised four grounds upon which the judgment should be vacated: mutual mistake of fact, unilateral mistake of fact, fraud, and unconscionability. She sought 53 per cent of the total funds received from Robert's exercise of the stock options and subsequent sale of common stock at $5.52 per share. Cindy did not attack any other portion of the judgment.

¶ 8 Cindy attached several exhibits to her complaint. Robert's comprehensive financial statement, filed in the dissolution proceedings pursuant to local rule 15.01.3, disclosed the 300,000 stock options as valued at 12 cents each for a total of $36,000. Robert's pretrial memorandum similarly listed the Smart Signal options at $36,000. Cindy attached a printed version of a May 2010 email from John Kay, Robert's attorney, to her, which stated in relevant part: "With regard to the Smart Signal options, Bob will provide you with a copy of the original option grant. He was granted 300,000 options at $.12. Smart Signal, as you know, is a privately held company. The options are restricted and there is presently no market to either buy or sell the options."

¶ 9 Trial on Cindy's petition was held over nine days. Edward Tomczuk, comptroller at Smart Signal, testified that the sale to GE closed in early January 2011; at that time, Robert was

vice president of sales at Smart Signal. The value of the options was 12 cents when Robert was hired. Robert may have had access to information regarding attempts to sell Smart Signal and had told new Smart Signal hires in 2009 and 2010 that company stock options were available to them at a price higher than 12 cents. In 2006, the stock option price was 53 cents; in 2009 the option value ranged between 59 cents and 79 cents.

¶ 10 In 2008, Smart Signal hired a firm to market and sell the company. Robert was involved in these activities. Between two and five interested parties looked into purchasing Smart Signal in 2008. Two possible sales involved prices of $1.00 per share and $2.00 per share; Robert was aware of these offers. If the $2.00 per share sale had been consummated, Robert could have paid $36,000 (12 cents per option) to purchase 300,000 shares of stock and then sold the stock for $600,00 ($2.00 per share). The only way to realize value on the stock options was for the company to be sold or to go public.

¶ 11 In August and September 2010, three companies, including GE, sought to buy Smart Signal. Tomczuk was involved in making presentations to the potential buyers. Although he spoke to Robert about sales forecasts, he did not tell Robert that the forecasts were for potential sale of the company. Robert became involved with the sale to GE on October, 14, 2010.

¶ 12 James Gagnard, former president and CEO of Smart Signal, testified that senior management, including Robert, were notified when the Smart Signal board rejected the 2008 offer to buy the company at $2.00 per share because the bid was insufficient. Robert may have also been involved in meetings with IBM and other potential suitors. However, Robert was not added to the working group on the sale to GE until October 2010.

¶ 13 Robert testified that he had had experience with stock options from prior employments. He exercised some of the options but allowed others to expire, as the share price never exceeded

the strike price of the options. He also put into evidence emails from Cindy. In a July 15, 2010 email, Cindy complained that Robert "lied to us all" and "defrauded me." She complained that Robert's attorney continued to force her to help Robert and did not care that Robert continued to harass her and hid "tens or hundreds of thousands" of dollars in marital assets. Lawyers needed "to stop muddling and prolonging" the divorce, which "has been FIVE years in the making." (Emphasis in the original.) Cindy also stated that she planned to seek her 53 percent share of the stock options at trial, as "[t]hat stock is/will be worth much more." She was "sick of being caught in the middle of lawyer dirty tactics and ineptitude."

¶ 14 John Kay testified that he represented Robert in both the Cook County and Du Page County dissolution proceedings. Kay testified that he took Robert's word that the value of the options was the strike price of 12 cents for 300,000 options, or $36,000. He also did not know why information about the potential sale in 2008 was not disclosed to Cindy's attorney, although he said that he was never asked about it. Prior to the entry of the judgment of dissolution, Cindy had been given the choice of taking 53 percent of the Smart Signal options or the cash value of 53 percent of the options, and that Robert had no preference as to which way Cindy wanted to handle it.

¶ 15 Karen Conti testified that she represented Cindy in the Du Page proceedings. She had obtained all of the documents that Cindy's Cook County attorney had obtained, but she could not recall whether she had reviewed them. Although she had sent two requests for production of documents, two sets of interrogatories, and a subpoena to Smart Signal in 2010; however, she did not have all of the documents, including Smart Signal's valuation of the options, by the time of the dissolution prove-up. She never filed any motions to compel or in respect to discovery.

¶ 16 Patrick McNally testified as Robert's expert on stock options and valuations. McNally

testified that later option grants at 79 cents and 59 cents had no bearing on the value of Robert's stock options. Smart Signal was a privately-held company; as such, there was no ready liquid market for its shares. Based on his review of Robert's option agreement, McNally opined that Robert did not have the ability to liquidate his options prior to the divorce in 2010. The only way that Robert could realize money from the options was upon sale of the company. At the time of the divorce, the options were still valid for about five years; had the options expired without Smart Signal being sold, the options would have been worthless. The Black Scholes method of valuation could have been utilized in August 2010 to fix a value of the stock options, and the same method could have been used at the time of the section 2-1401 hearing to determine the value back in 2010. McNally stated that he did not consider an offer to buy company stock to be indicative of value; he would look for a completed transaction, "not an offer that did not transact."

¶ 17 Cindy testified that she did not know anything about stock options; she thought that options and stock were the same thing. Based on her review of Robert's filings, she thought that the value of the options was $36,000. This was bolstered by Kay's email, which further led her to believe that there was no market to buy or sell the company or the stock. She trusted that, as an attorney, Kay would give her correct information. She also believed that Robert knew the value, as he was a vice president of sales at Smart Signal and received company financial statements and valuations. He also put that value on his court-filed financial statement under oath. She had been interested in taking the cash value of her portion of the options instead of taking them in kind because she had "no reason to believe that the stock value was changing. It had remained static for five years, according to what [Robert] and John Kay had represented." If she had known then that the stock would be worth over a million dollars, her "decision-making

process would have been completely different," and she would have retained the options.

¶ 18 Cindy agreed that her attorney in the Cook County divorce proceedings, Joshua Jackson, had engaged in extensive document production in order to determine the value of the options. Jackson concluded that the 300,000 options were valued at 12 cents apiece, or $36,000. Jackson told her that Robert wanted to buy her out of the options. Jackson noted that options are a risk and that she should request more than 55 percent of the value of the options (the percentage that the trial judge therein had recommended) if Robert wanted to buy her out.

¶ 19 The trial court directed out the mistake theories and found no evidence of procedural unconscionability. The court then found that Robert had wrongfully withheld information regarding potential sales of the company and values of company stock before the prove-up in the dissolution proceedings and that "this caused an unfair and unacceptable result." While the court did not find sufficient evidence that Robert knew of the eventual sale price of $5.52 per share, it found that Robert was aware at the time of judgment that the options could have been used to buy stock to be sold at a value of at least $2.00 per share. Thus, the court ordered the parties "to calculate the new value of the options at the value f $2.00 per share and the wife to be paid 53% of this value after the reduction of $36,000.00." This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Robert now contends that the trial court erred in granting Cindy's section 2-1401 petition. Section 2–1401 of the Civil Practice Law provides for relief from final orders and judgments after 30 days but before 2 years from entry. See 735 ILCS 5/2–1401 (West 2006); *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321, 323 (2010). The purpose of such a petition is to bring before the court factual matters that were unknown at the time the judgment was entered, and if known, would have affected or altered the judgment. *In re Marriage of*

Lindjord, 234 Ill. App. 3d 319, 325 (1992). "In general, to be entitled to relief under section 2–1401, a petitioner must affirmatively set forth specific factual allegations supporting (1) the existence of a meritorious defense or claim; (2) due diligence in presenting that defense or claim to the trial court in the original action; and (3) due diligence in filing the section 2–1401 petition for relief." *Rockford Financial Systems, Inc.*, 403 Ill. App. 3d at 323. To set aside a judgment based on newly discovered evidence, a petitioner must show that the new evidence was not known to her at the time of the proceeding and could not have been discovered with the exercise of reasonable diligence. *In re Marriage of Buck*, 318 Ill. App. 3d 489, 493 (2000). If a reviewing court finds that the petitioner has failed to exercise due diligence, it need not address whether the petitioner alleged sufficient facts to establish a meritorious defense. *Willis Capital LLC v. Belevedere Trading LLC*, 2015 IL App (1st) 132183, ¶ 18. However, the requirement of due diligence need not be rigidly enforced when fraud or unconscionable behavior is shown. *Lindjord*, 234 Ill. App. 3d at 325. After a hearing where factual disputes are resolved, the decision to grant or deny relief under section 2–1401 is a matter within the sound discretion of the trial court. *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448 ¶ 16. A trial court abuses its discretion only where no reasonable person would take the view adopted by the court. *Janis v. Graham*, 408 Ill. App. 3d 898, 905 (2011).

¶ 22 Robert argues that the trial court abused its discretion in relaxing the due diligence requirement. Specifically, Robert argues that the trial court, in finding against Cindy on the counts alleging mutual mistake of fact, unilateral mistake of fact, and procedural unconscionability, specifically found that Cindy failed to demonstrate due diligence in presenting her claim to the trial court in the original action; thus, according to Robert, the finding of a lack

of diligence must be applied "globally" to the section 2-1401 petition, as "section 2-1401 does not distinguish the diligence requirements based on the grounds."

¶ 23 Robert cites no authority for this proposition, and we find this argument procedurally defaulted. See Supreme Court Rule 341 (h)(7) (eff. Jan. 1, 2016); *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303 ¶ 5. In any event, as we have said, the requirement of due diligence need not be rigidly enforced when fraud or unconscionable behavior is shown. *Lindjord*, 234 Ill. App. 3d at 325. These are the grounds upon which the trial court granted relief to Cindy. The trial court should view the issue of diligence in the context of the grounds raised; the level of diligence required to prevent one's own mistake is not necessarily the same level that is required when the opposite party intentionally hides information or misleads. We find no abuse of discretion here.

¶ 24 Robert next contends that the trial court erred in finding that Robert committed fraud against Cindy in valuing the stock options. "To state a cause of action for misrepresentation and fraud, a party must plead and prove the following elements: (1) the existence of a false statement of material fact, (2) made by a party who knows or believes it to be false, (3) with the intent to induce another to act, (4) which causes action by another in reasonable reliance on the statement's truth, and (5) causes an injury to the other resulting from the reliance." *Krilich v. American National Bank and Trust Co. of Chicago*, 334 Ill. App. 3d 563, 570 (2002). However, courts have long held that fraud may also consist of an intentional concealment or omission of a material fact in circumstances that create an opportunity and a duty to speak. See *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 345 (2011).

¶ 25 Robert argues that the only way that Cindy can show that Robert's statements regarding value of the options were false is to prove by competent evidence that the options had some

value other than 12 cents per option prior to or on August 4, 2010. John Kay, Robert's attorney, advised Cindy in a May 2010 email that the "options are restricted and there is presently no market to either buy or sell the options." This statement was made at a time when, since at least 2008, Smart Signal had been attempting to create such a market by marketing itself for sale and attempting to establish a concrete value of its stock for the holders of the options. Smart Signal had received offers of up to $2.00 per share for a sale of the company; apparently, Smart Signal believed its shares were worth more than $2.00, as it turned down the offer because it was insufficient. While the sales were not consummated, these proposed sales were attempts at creating a market for the company and creating a value of the stock that would, in turn, give value to the options. To say that there was no market for the options when the company, with Robert's knowledge and participation, was creating such a market with an eye towards making the exercise of the options more financially rewarding is clearly misleading. Robert conceded at oral argument that he was in possession of this information well before the May 2010 email. He intentionally concealed a material fact in circumstances in which he had both an opportunity and a duty to speak.

¶ 26 Robert argues that Cindy has failed to show how he induced her to act in reliance on his statements. Robert testified that, prior to the entry of the judgment of dissolution, he had no preference as to whether Cindy chose to receive options or cash in lieu of options in the marital settlement. However, his statements that there was no market for the options created the impression of a static situation in which the value of the options had no present possibility of greater value than 12 cents per option. As Cindy testified, she had "no reason to believe that the stock value was changing. It had remained static for five years, according to what [Robert] and John Kay had represented." In actuality, Smart Signal was working to create its market such that

a suitor made an offer that would have increased the value of the options to $1.88 per option (the rejected $2.00 offer less the strike price of 12 cents). Creating the impression of a financial instrument that currently has no way of increasing in value (and could be worth nothing if never exercised) at a time when attempts at increasing the value of the instrument were being made with Robert's knowledge certainly emphasizes the advisability of taking the cash instead of the options. We find no error here.

¶ 27 Robert next contends that the trial court erred in finding in favor of Cindy on the claim of substantive unconscionability where it had already found no procedural unconscionability and where Cindy adduced no evidence of a different value for the stock options as of a time before or up to the date of the dissolution judgment. According to Robert, the trial court relied on an option value that did not exist until after the dissolution judgment. We disagree.

¶ 28 First, we note that Robert never cites to case law defining or distinguishing substantive and procedural unconscionability, let alone a case that stands for the proposition that a finding that one type of unconscionability was unproven precludes a finding that the other was proven. In the absence of any citation to authority, we find this argument forfeited. See Supreme Court Rule 341 (h)(7) (eff. Jan. 1, 2016).

¶ 29 Most of Robert's argument on this issue applies to his contention that Cindy adduced no evidence of a different value for the stock options as of a time before the date of the dissolution judgment. According to Robert, the only evidence that Cindy submitted was the value that Robert received after the actual sale of the company, five months after the dissolution judgment. Robert discounts any of the evidence that Cindy produced: evidence that the strike price for new grants of options were 79 cents and 59 cents in 2008 and 2009, respectively, and the evidence of the rejected $2.00 per share offer in 2008. Robert never addresses, in this context, the email

from his attorney to Cindy advising her, in May 2010, that the "options are restricted and there is presently no market to either buy or sell the options." He also fails address the testimony of Tomczuk and Gagnard that Robert was aware of unaccepted offers of up to $2.00 per share that were made prior to dissolution judgment. Instead, he focuses on their testimony regarding Robert's lack of knowledge of sale to GE until after the entry of the judgment of dissolution.

¶ 30 Clearly, Robert is incorrect in saying that Cindy adduced no evidence of a different pre-decree value for the options. While no one specific value was demonstrated, Cindy demonstrated that a market for the company and its stock and, thus, for its stock options, was being created in the give and take of potential sales of the company. One suitor had offered $2.00 per share for Smart Signal stock; had this deal been consummated, the value of the options would have been $1.88 a piece after payment of the strike price. According to the trial court, "$2.00 versus twelve cents is substantial."

¶ 31 Robert asserts that a failed offer to purchase is not competent evidence of value of the options. See *1472 Milwaukee, LTD v. Feinerman*, 2013 IL App (1st) 121191 ¶ 19 ("Fair market value of real property is based on actual sales, where a closing has occurred, not on pending sales."). *1472 Milwaukee* involved the determination of the value of real estate to determine damages after the defendant breached his contract to purchase the property. The appellate court affirmed the trial court's use of the actual selling price of the property some eight months after the defendant's breach instead of two higher-priced contracts that failed (for reasons involving insurance indemnification and closing date), as the defendant proposed. See *1472 Milwaukee, LTD*, 2013 IL App (1st) 121191 ¶ ¶ 16-19. The court noted that resale price, if within a reasonable time and at the highest price obtainable after a breach, is evidence of market value on the day of a breach, citing to cases that involved subsequent sales eight months and almost one

year after the breaches. See *1472 Milwaukee, LTD*, 2013 IL App (1st) 121191 ¶ 16. If *1472 Milwaukee, LTD* is directly on point, it would seem logical that, instead of valuing the options at $2.00 apiece as of the judgment date, the trial court could have valued them at $5.52, the actual selling price only five months later. However, the case is not directly on point, and we do not find any such restriction on the trial court's consideration of evidence as it relates to the exercise of discretion in this case.

¶ 32 The trial court found that Robert wrongfully withheld information regarding the creation of the market and value of the options from Cindy before the prove-up and that this caused an unfair and unacceptable result. We cannot conclude that the trial court's valuation of the options at $2.00 each was an abuse of discretion.

¶ 33 Robert also argues that Cindy demonstrated an "utter lack of diligence" in attempting to find this information prior to the judgment of dissolution. Again, the requirement of due diligence need not be rigidly enforced when fraud or unconscionable behavior is shown. *Lindjord*, 234 Ill. App. 3d at 325. Robert argues that, based on her July 2010 email, Cindy was already of the opinion that he was a liar and had defrauded her; therefore, any reliance on Robert's statements regarding the value of the options was not reasonable. Cindy should have followed the rules of discovery the due course of continued litigation instead of relying on any statement of Robert.

¶ 34 "Discovery is not a tactical game but is intended to be a mechanism for the ascertainment of truth for the purpose of promoting either a fair settlement or a fair trial." *Schuler v. Mid–Central Cardiology*, 313 Ill. App. 3d 326, 331, (2000). The goal of Illinois's discovery process is full disclosure. *Payne v. Hall*, 2013 IL App (1st) 113519 ¶ 13. Robert listed the value of the options as 12 cents apiece on his comprehensive financial statement and his pretrial

memorandum, both filed in the dissolution proceedings pursuant to local rules. If one cannot expect to place any reliance on the veracity of such court-mandated filings, we must wonder what reliance can be placed on the veracity of answers to interrogatories or answers to depositions. It is this type of gamesmanship that discovery is meant to avoid so that litigation is neither unnecessarily costly nor drawn out.

¶ 35 Cindy was told that there was no market for the options and was not told anything about the offers to purchase Smart Signal. It is unclear what information Cindy could have requested about events that have been concealed from her. The trial court found that this concealment led to a "substantial" difference between the actual value of the options and the value that had been given to Cindy such that the resulting distribution in the judgment of dissolution was unfair and unacceptable. Therefore, the trial court did not abuse its discretion in relaxing the diligence requirement.

¶ 36 Robert next argues that he had no affirmative duty to disclose information regarding the failed 2008 bid to purchase Smart Signal. Robert cites to cases that held that "a spouse has an affirmative obligation to disclose information in a divorce, even if that information was not specifically sought in discovery." See *In re Marriage of Gurin*, 212 Ill. App. 3d 806 (1991); *In re Marriage of Burch*, 205 Ill. App. 3d 1082 (1990); *In re Marriage of Sassano*, 337 Ill. App. 3d 186 (2003); *Garmisa v. Garmisa*, 4 Ill. App. 3d 442 (1972). He then finds those cases distinguishable from the instant case "because Robert had no knowledge of the potential sale at the time he entered into the agreement." Robert conflates this argument with what the trial court actually based its decision upon. The trial court referenced the unsuccessful bid of $2.00 and the knowledge of the attempts to sell the company as the nexus of the deceit. Further, the relief that the trial court granted to Cindy was based upon the unsuccessful $2.00 offer and not the

subsequent sale. Robert received the benefit of an apportionment of value of over twice what Cindy did and fails to see the fairness and equity meted out by the trial court. Robert reverts to arguing about the 2008 non-sale, saying that information about that offer was not sought in discovery and that to "hold Robert responsible for formally disclosing information that **might** have affected Cindy's decision-making process would turn Section 2-1401 on its head." (Emphasis in original.) This contention is confused, contains no cogent argument, and is unsupported by any case law. Therefore, we find it forfeited pursuant to supreme court rule 341 (h)(7), in addition to lack of merit.

¶ 37 Robert finally argues that the trial court erred by failing to distinguish this case from *In re Marriage of Palacios*, 275 Ill. App. 3d 561 (1995). In *Palacios*, the husband failed to disclose the existence of a winning lottery ticket during dissolution proceedings and claimed his winnings after the entry of judgment. Robert quotes a spirited exchange between his counsel and the trial court regarding differing interpretations of the case as it pertains to concepts of cost and value as they apply to a lottery ticket and Robert's stock options. Robert critiques the trial court's interpretation and argues that the court's failure to distinguish the concepts as they arose in *Palacios* was against the manifest weight of the evidence and contributed to an erroneous decision.

¶ 38 First, we are aware of no authority that requires a trial court to distinguish each and every case that may be different from the case before it. We also note that, in its 16 page opinion and order, the trial court allotted exactly two sentences to a discussion of *Palacios*, saying, "The case law in this opinion speaks for itself and the court will not repeat same but this case is the essence of the Petitioner's 1401 Petition. The agreement was made 'in contravention of both fair dealing and good faith.' " This, at the end of a section of analysis that cited to and analyzed 14 other

cases. Even if *Palacios* was not directly on point with the facts in this case, this does not mean that it has no relevance and cannot be relied on to any extent. Again, the trial court cited and analyzed many other cases in its analysis of this issue. We cannot conclude that the trial court's mere citation to *Palacios* in support of its conclusion that Robert did not deal fairly with Cindy contributed to an erroneous decision.

¶ 39 Again, the decision to grant or deny relief under section 2–1401 is a matter within the sound discretion of the trial court. *Goldsmith*, 2011 IL App (1st) 093448 ¶ 16. We cannot conclude that no reasonable person would take the view adopted by the court in this case that Robert misled Cindy as to the value of the options as of the date of the dissolution judgment and that the options were more equitably valued at $2.00 each. See *Graham*, 408 Ill. App. 3d at 905. Thus, we affirm the trial court's judgment.

¶ 40 III. CONCLUSION

¶ 41 For these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 42 Affirmed.