2018 IL App (2d) 170957-U
Nos. 2-17-0957 & 2-18-0189 cons.
Order filed December 17, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WASCO SANITARY DISTRICT, an Illinois Special District, Plaintiff-Appellant, v. RAUL BRIZUELA, et al., Defendant-Appellees. (Charles V. Muscarello, et al., Counter-Plaintiffs-Appellees v. Wasco Sanitary District, Counter-Defendant-Appellant).	)	Appeal from the Circuit Court of Kane County. No. 13-MR-422 Honorable David R. Akemann, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the trial court's contempt ruling in case number 2-17-0957, as the underlying order granted a proper form of relief that was not barred by the separation of powers doctrine. However, we vacated the trial court's ruling in case number 2-18-0189, as the court failed to apply the proper standard in considering whether to vacate the order underlying the contempt ruling. Affirmed in part, vacated in part, and remanded with directions for further proceedings.

¶ 2 This appeal concerns the attorney fees generated by ongoing litigation over the propriety of an annexation agreement entered into by plaintiff, the Wasco Sanitary District, a Special Illinois District (the District). The agreement called for the developers of the Fox Mill subdivision to fund the construction of the subdivision's water and sewer facilities. In return, the District assigned the connection permits that derived from the newly constructed water and sewer facilities to the developers. Accordingly, those seeking access to the newly constructed water and sewer facilities were instructed by the District to pay the developers for their connection permits. Since 2009, Fox Mill homeowner Ed Fiala has been litigating his claims that this arrangement is unlawful and in violation of the public trust doctrine.

¶ 3 Defendants, Raul Brizuela, Robert Skidmore, and Gary Sindelar, are former District trustees (the trustee defendants). Defendant, Charles V. Muscarello, formerly acted as legal counsel to the District. The District, the trustee defendants, and Muscarello were among the many defendants named in Fiala's lawsuits. The trustee defendants voted to have the District defend and indemnify themselves and Muscarello against Fiala's allegations. Thereafter, new members were elected to the District's board of trustees. The newly elected trustees changed course and requested a declaratory ruling that the trustee defendants' vote was improper. In February 2014, the trial court denied the request and ordered the District to pay the legal expenses incurred by the trustee defendants and Muscarello in the Fiala litigation.

¶ 4 In March 2017, the District's current board of trustees voted to stop defending and indemnifying the trustee defendants and Muscarello. As a result, the trial court found the District in indirect civil contempt for failing to comply with the February 2014 order. The District appealed the contempt ruling in case number 2-17-0957. When the trial court subsequently denied the District's motion to vacate the February 2014 order, the District

appealed in case number 2-18-0189. We granted the District's motion to consolidate the appeals, both of which involve the scope of the February 2014 order and the District's ability to stop defending and indemnifying the trustee defendants and Muscarello.

¶ 5 I. BACKGROUND

¶ 6 In November 2009, Fiala filed a complaint in the United States District Court for the Northern District of Illinois (*Fiala I*). Fiala alleged that the various defendants had violated the Racketeer Influenced and Corrupt Organizations Act (RICO) (14 U.S.C. § 1961 *et seq.*), as well as several state law provisions. On December 17, 2009, the District's board of trustees, comprised solely of the trustee defendants, voted to defend and indemnify themselves and Muscarello in *Fiala I*. In April 2010, Fiala voluntarily dismissed *Fiala I* and filed a complaint raising the same claims in the Circuit Court of Kane County (*Fiala II*). On May 4, 2010, the trustee defendants voted to defend and indemnify themselves and Muscarello in *Fiala II*.

¶ 7 Following the votes to defend and indemnify, the District entered into an agreement with Hinshaw Culbertson, LLP, whereby Hinshaw Culbertson agreed to represent the trustee defendants in *Fiala I* and *Fiala II*, and the District agreed to pay the attorney fees and costs incurred in such representation. The record reflects that Muscarello retained the services of Figliulo and Silverman, P.C., for his representation in *Fiala I* and *Fiala II*. Although the District agreed to indemnify Muscarello when it retained his law firm, Denker and Muscarello, LLC, as its general counsel, there is nothing in the record to show that the District entered into any agreements with Figliulo and Silverman pertaining to the Fiala litigation.

¶ 8 *Fiala II* was eventually removed to the United States District Court for the Northern District of Illinois. However, in March 2012, the federal court dismissed *Fiala II* based on a lack

of standing for the RICO claims and remanded Fiala's state law claims back to the Circuit Court of Kane County. Thereafter, Fiala filed his third amended complaint in *Fiala II*.

¶ 9 Fiala's third amended complaint included the same substantive allegations as the prior versions, but they were regrouped into three counts. Count I sought declaratory relief under the public trust doctrine, the Sanitary District Act of 1936 (70 ILCS 2805/1 *et seq*. (West 2012)), and the Public Officer Prohibited Activities Act (50 ILCS 105/1 *et seq*. (West 2012)). Fiala alleged that the disputed connection permits were public property and it was therefore unlawful for the District to assign them to the Fox Mill developers. Moreover, according to Fiala, the trustee defendants failed to disclose that they were benefitting from the sale of the permits through their personal and familial connections to the Fox Mill developers. Count II alleged common-law fraud and Count III alleged a civil conspiracy, as Fiala claimed that the trustee defendants and Muscarello helped perpetrate a unlawful scheme to defraud the District's taxpayers based on false statements regarding the legality of the agreement with the Fox Mill developers.

¶ 10 In August 2013, after newly elected trustees replaced Brizuela and Sindelar, the District filed a complaint for declaratory judgment against the trustee defendants and Muscarello. The District noted that, pursuant to section 12.1 of the Sanitary District Act of 1936, the board of trustees "shall have the power by majority vote" to:

> "use the general funds of the sanitary district to defend, indemnify and hold harmless, in whole or in part, the board of trustees, members of the board of trustees, officials and employees of the sanitary district from financial loss and expenses, including court costs, investigation costs, actuarial studies, attorneys' fees and actual and punitive damages, arising out of any civil proceedings (including but not limited to proceedings alleging antitrust violations or the deprivation of civil or constitutional rights), claims, demands or

> judgments instituted, made or entered against such board, trustee, official or employee by reason of its or his wrongful or negligent statements, acts or omissions, *provided that such statements, acts or omissions: (i) occur while the board, trustee, official or employee is acting in the discharge of its or his duties and within the scope of employment; and (ii) do not constitute willful and wanton misconduct.*" (Emphasis added.) 70 ILCS 2805/12.1(a) (West 2016).

The District argued that, because that the third amended complaint in *Fiala II* included allegations of willful and wanton misconduct outside the scope of their official duties, the District could not be bound to defend or indemnify the trustee defendants and Muscarello. Accordingly, the District sought a declaration that the votes taken by the trustee defendants, as well as the resulting legal services agreements, were "ultra vires and void."

¶ 11 In turn, the trustee defendants and Muscarello filed counter-complaints for declaratory judgments, each seeking a declaration that the District was indeed bound to defend and indemnify them in *Fiala I* and *Fiala II*. While there were no stated requests for injunctive relief, the trustee defendants asked that the District specifically be ordered to pay all of their outstanding *and future* invoices for legal services. In their motion for judgment on the pleadings, the trustee defendants noted that the crux of Fiala's lawsuits was his theory that the District's agreement with the Fox Mill developers violated the Sanitary District Act of 1936. Several of Fiala's allegations in that respect had nothing to do with willful or wanton misconduct. Furthermore, the trustee defendants argued, the duty to defend is broad enough to apply where there is a reasonable interpretation of the allegations that the agreement with the Fox Mill developers was entered based on the good-faith belief that it was in compliance with the Sanitary District Act of 1936. In his motion for summary judgment, Muscarello similarly argued that

Fiala's allegations, if proved, would not establish that he acted outside the scope of his official duties as the District's legal counsel.

¶ 12 On February 3, 2014, the trial court entered a written order finding in favor of the trustee defendants and Muscarello and against the District (the February 2014 order). The court noted the parties' acknowledgment of *City of Elmhurst ex rel. Mastrino v. City of Elmhurst*, 272 Ill. App. 3d 168 (1994), a libel case involving government officials that this court resolved through the general application of insurance law principles. The trial court reasoned that, "[i]f the facts alleged in the underlying complaint fall within or potentially within coverage, then there is a duty to defend in the underlying action." The court concluded that Fiala's allegations against the trustee defendants did not clearly constitute intentional misconduct outside the scope of their official duties, as the law regarding the legality of the District's agreement with the Fox Mill developers was "in flux." Likewise, the court agreed with Muscarello that Fiala's allegations against him involved conduct that could potentially fall within the scope of his official duties as the District's legal counsel. Accordingly, the court ordered that: (1) Muscarello's motion for summary judgment was granted; (2) the trustee defendant's motion for judgment on the pleadings was granted; and (3) the District's motion for judgment on the pleadings was denied. The fourth and final part of the order, which is at the heart of this appeal, provided as follows:

> "Plaintiff District is therefore ordered to pay the costs of this suit, all outstanding Hinshaw bills, all future Hinshaw invoices, and Muscarello's *** attorneys' fees and expenses in defending the *Fiala I* and *Fiala II* litigations, provided that said costs, bills and invoices are otherwise within the terms of engagement of the professional services."

¶ 13 The District neither moved to reconsider the February 2014 order nor did it appeal. Instead, the District complied with the order as the *Fiala II* litigation proceeded. In August

2015, the trial court dismissed Fiala's third amended complaint without prejudice as to the trustee defendants and Muscarello, citing a lack of specificity in Fiala's allegations of fraud and civil conspiracy. Thereafter, Fiala filed his fourth and fifth amended complaints.

¶ 14 On March 16, 2017, the District's current board of trustees voted to withdraw its defense and indemnification of the trustee defendants and Muscarello based on its conclusion that Fiala's fifth amend complaint represented a sufficient change in circumstances from his third amended complaint. In July 2017, the trustee defendants and Muscarello jointly petitioned for a rule to show cause why the District should not be held in indirect civil contempt for failing to comply with the February 2014 order. The trial court issued the rule to show cause.

¶ 15 On October 18, 2017, the District filed (1) its response to the rule to show cause and (2) a motion to vacate the February 2014 order. In both instances, the District argued that the February 2014 order did not constitute an injunction, as it was simply a declaration of the parties' rights as they existed at that time. The District argued that the board of trustees was authorized under the Sanitary District Act of 1936 to exercise its discretion in determining whether to defend and indemnify its officers, officials, and employees. Thus, according to the District, the board had the discretion to withdraw its defense and indemnification without violating the February 2014 order. The District argued that, if the February 2014 order was interpreted as an injunction that prevented the District from exercising its discretion, it would be rendered void for violating the separation of powers doctrine.

¶ 16 On October 20, 2017, after hearing arguments, the trial court entered a written order finding the District in indirect civil contempt. The court reasoned that a declaratory judgment "has the force of a final judgment with respect to the rights of the parties subject to the declaratory judgment." *Board of Trustees of Addison Fire Protection Dist. No. 1 Pension Fund*

v. Stamp, 241 Ill. App. 3d 873, 881 (1993). Thus, in the absence of a request to modify or vacate the February 2014 order, the District had no right—statutory or otherwise—to stop obeying it. Accordingly, the District was ordered to pay a sanction of $100 per day until the contempt order was purged, which would be accomplished when the District paid all outstanding invoices submitted by the attorneys for the trustee defendants and Muscarello, including the fees and costs associated with the prosecution of the rule to show cause.

¶ 17 The District filed a motion to reconsider the contempt order which the trial court denied on November 17, 2017. The District filed a timely notice of appeal that same day.

¶ 18 On February 21, 2018, after hearing arguments, the trial court entered a written order denying the District's motion to vacate the February 2014 order. The court concluded as follows:

> "There has been no relevant change in the controlling facts or applicable law since this Court ordered the District to pay the costs of defense and indemnify the Defendants, other than the District's vote, which did nothing to relieve it of the obligation to follow the Court's [February 2014] order and did nothing to change the reasoning behind this Court's order. Accordingly, the [District's] Motion is denied."

¶ 19 On March 9, 2018, the District filed a timely notice of appeal from the denial of its motion to vacate the February 2014 order. As noted above, we subsequently granted the District's motion to consolidate the two appeals.

¶ 20 II. ANALYSIS

¶ 21 We begin with the District's appeal from the contempt ruling in case number 2-17-0957. Whether a party is guilty of contempt is ordinarily considered a question of fact for the trial court, and a reviewing court will not disturb the finding unless it is against the manifest weight of

the evidence or the record reflects an abuse of discretion. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 (2008). However, when the facts underlying the contempt ruling are not in dispute, their legal effect may be a question of law, which is reviewed *de novo*. *Country Mutual Insurance Co. v. Hilltop View, LLC*, 2014 IL App (4th) 140007, ¶ 25.

¶ 22 Here, the facts underlying the trial court's contempt ruling are not in dispute. The District argues only that the February 2014 order should have been limited in scope to a determination of whether the votes to defend and indemnify the trustee defendants and Muscarello were valid. To the extent that it was compelled to take future action, the District argues that the order is void because it usurped the District's legislative and executive functions. On that basis, the District contends that it cannot be held in contempt for failing to comply with a void order. We will therefore review the contempt ruling *de novo*.

¶ 23 "Any finding of indirect civil contempt requires the existence of an order of the court and proof of willful disobedience of the order." *Country Mutual Insurance Co. v. Hilltop View, LLC*, 2014 IL App (4th) 140007, ¶ 25. "No matter how erroneous, a trial court's order made within the proper exercise of jurisdiction must be obeyed until the order is modified or set aside by the trial court or reversed on appeal." *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 970 (2004). "Further, the fact a party disagrees with a court's order does not mean the party can simply ignore the order." *Country Mutual*, 2014 IL App (4th) 140007, ¶ 26. "Noncompliance with a court order is *prima facie* evidence of contempt." *In re Marriage of Ray*, 2014 IL App (4th) 130326, ¶ 15.

¶ 24 Here, the District argues that the final portion of the February 2014 order was entered absent the proper jurisdiction. The District argues that the trial court was authorized only to enter a declaratory ruling as to whether the votes to defend and indemnify the trustee defendants

and Muscarello were valid, and that it was improper for the court to order the District pay for their future defense costs in the Fiala litigation. We disagree.

¶ 25 The Declaratory Judgment Act provides that "[t]he court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments *** including the determination, at the instance of anyone interested in the controversy, of the construction of any statute *** or of any *** other written instrument, and a declaration of the rights of the parties interested." 735 ILCS 5/2-701 (West 2014).

¶ 26 Here, the District sought a single declaration that the votes to defend and indemnify were "ultra vires and void" due to the substance of Fiala's allegations. However, in support of that request, the District alleged as follows: "[t]here exists an actual controversy as to the matters asserted herein, including the Defendants' rights to payment by the District for the indemnification and defense in the *Fiala I* and *Fiala II* litigation, *which compels an immediate and definite declaration of the parties' rights, the resolution of which will be dispositive of an actual dispute between the parties.*" (Emphasis added.) After making similar allegations in response, the trustee defendants and Muscarello requested (1) a declaratory ruling that the votes were valid and (2) an order directing the District to pay for all outstanding *and future* invoices related to the Fiala litigation. Hence, contrary to the District's assertions, the disputed portion of the February 2014 order was entered pursuant to proper requests from the parties, and the trial court was within its authority to make a binding declaration of the parties' rights with respect to votes to defend and indemnify in the Fiala litigation.

¶ 27 The District next argues that, because it has the discretion to defend and indemnify under section 12.1, it also has the implied discretion to repeal its decision. The District maintains, however, that by compelling it to pay for the future costs of the Fiala litigation, the trial court

erroneously preempted it from repealing its decision to defend and indemnify the trustee defendants and Muscarello. Therefore, the District argues, the trial court violated the separation of powers doctrine and the corresponding portion of the February 2014 order is void. The District relies on three cases to support its position.

¶ 28 In *Savaglio v. Board of Fire & Police Commissioners of Village of Oak Brook*, 125 Ill. App. 3d 391 (1984), the board ordered the plaintiff's immediate discharge from his employment as a police officer after finding him guilty in an administrative hearing of criminal trespass and official misconduct. On administrative review, the circuit court reversed the board's decision and remanded the matter with directions to reinstate the plaintiff with back pay. The board appealed, contending that the circuit court had improperly reweighed the evidence from the administrative hearing. *Id*. at 395. The board also subsequently appealed from an order which found it in contempt for failing to comply with the order of reinstatement. *Id*. at 393. This court affirmed the circuit court's decision on the merits, agreeing that the board's administrative findings were against the manifest weight of the evidence. However, we agreed with the board that the circuit court had exceeded its judicial authority in ordering the plaintiff's reinstatement and awarding back pay. *Id*. at 398. We therefore vacated the corresponding portion of the circuit court's order and held that the board could not have been found in contempt for failing to comply with it. *Id*. at 399.

¶ 29 In *People v. Sales*, 195 Ill. App. 3d 160 (1990), the defendant was convicted after he pleaded guilty to charges of aggravated criminal sexual abuse. Under the Illinois Vehicle Code, these convictions required the Secretary of State to revoke his driver's license. The controlling statute provided that, "[w]henever a person is convicted of any of the offenses enumerated in this Section, the court may recommend and the Secretary of State *in his discretion*, without regard to

whether such recommendation is made by the court, may, if application is made therefor, issue to such person a restricted driving permit * * *." (Emphasis added.) Ill. Rev. Stat. 1987, ch. 95 ½, par. 6-205(c). However, on the defendant's motion, and without an objection from the State, the circuit court ordered the Secretary to issue the defendant a restricted driving permit for the purpose of attending counseling and work. *Sales*, 195 Ill. App. 3d at 161. On appeal, we noted that "[t]he function of the trial court is to review the exercise of discretion by the Secretary, not to exercise that discretion. In substituting its discretion for that of the Secretary by ordering the issuance of a [restricted driving permit], the trial court violated the separation of powers doctrine." *Id*. at 162. Because the circuit court lacked the inherent power to order the issuance of a restricted driving permit, we held that the order was void. *Id*. at 162-163.

¶ 30 In *Board of Education of Dolton School Dist. 149 v. Miller*, 349 Ill. App. 3d 806 (2004), the school district sought to perform improvements on rights of way that bordered the neighboring township's property. The township granted the school district a permit for the construction but later refused to extend the permit absent a $25,000 payment. *Id*. at 807. The school district filed a complaint for declaratory and injunctive relief, arguing that the $25,000 demand was an arbitrary and illegal interference with a vested property right to complete the work authorized by the permit. In response, the township's highway commissioner asserted that the additional $25,000 was to be used toward funding necessary street improvements. The commissioner argued that, because the school district was building sidewalks on its own property, sidewalks were also needed on the adjacent township property for the safety of the students. *Id*. at 808-09. The trial court ordered the school district to build the sidewalks on the township's adjacent property and the school district appealed. *Id*. at 810-11. The appellate court reversed the trial court's order on the basis that it violated the separation of powers doctrine. In

so holding, the appellate court noted that our legislature delegated to school boards the exclusive power to appropriate school funds for the construction of sidewalks and other approaches leading to school grounds as necessary for the convenience and safety of the students. *Id*. at 812-13.

¶ 31 Here, the District argues that the trial court violated the separation of powers doctrine the same way that it was violated in *Savaglio*, *Sales*, and *Miller*. But in those cases, the legislative bodies were ordered to take actions that they had not yet chosen to take, thus depriving them of the opportunity to exercise their discretion. By contrast, in this case, the District was simply ordered to abide by the decisions that it had already made; there was no usurpation of the District's discretion. The cases relied upon by the District would be analogous to this case if the February 2014 order was entered absent any votes to defend or indemnify. However, on December 17, 2009, and May 4, 2010, the District's board of trustees, comprised solely of the trustee defendants, exercised the District's discretion under section 12.1 by voting to defend and indemnify themselves and Muscarello in *Fiala I* and *Fiala II*.

¶ 32 The trial court did not violate the separation of powers doctrine by ordering the board to do that which it had already decided to do, and the District has presented nothing to establish otherwise. Furthermore, the District is incorrect in its assertion that it was preempted from repealing the votes to defend and indemnify the trustee defendants and Muscarello. Assuming that section 12.1 authorized the District to repeal the votes, an issue discussed in more detail *supra*, nothing prevented the District from voting as such and bringing a motion to vacate the February 2014 order.

¶ 33 The District is also incorrect in its argument that, while the trustee defendants voted to defend and indemnify themselves, they voted only to *indemnify* Muscarello, meaning that the trial court exceeded its authority by ordering the District to also defend him. In support, the

District points to the minutes from the board meeting on May 4, 2010, which reflect that the board voted to "indemnify Charles Muscarello, as attorney for the Wasco Sanitary District, from all claims and expenses, including any court costs, investigation costs, actuarial studies, *attorney's fees*, and actual and punitive damages associated with the re-filed [*Fiala II*] lawsuit under section 12.1 of the Sanitary District Act of 1936." (Emphasis added.) This clearly shows that the board intended not only to indemnify Muscarello, but also to defend him. At any rate, the trial court's February 2014 order included a ruling that a valid vote had been taken to defend and indemnify Muscarello, and the District did not appeal. For all of these reasons, we affirm the trial court's contempt ruling.

¶ 34 Before moving on, we note that the District filed a supplemental brief addressing our latest ruling in *Fiala II*. In *Fiala v. Wasco Sanitary Dist.*, 2018 IL App (2d) 170556-U, *appeal denied*, No. 124067, 2018 WL 6252001 (Ill. Nov. 28, 2018), and *appeal denied*, No. 124068, 2018 WL 6252009 (Ill. Nov. 28, 2018), and *appeal denied*, No. 124071, 2018 WL 6264242 (Ill. Nov. 28, 2018), we affirmed the dismissal of several counts in Fiala's fifth amended complaint, including his counts for fraud and civil conspiracy. However, we reversed the dismissal of other counts in which Fiala seeks an accounting based on alleged violations of the public trust doctrine and statutorily barred conflicts of interest. In its supplemental brief, the District argues that our latest decision has somehow reshaped the legal landscape underlying the entire litigation. The District now attempts to renew its argument that it cannot be bound to defend and indemnify the trustee defendants, this time based on their alleged conflicts of interest. The District also argues that, notwithstanding its agreement to indemnify Muscarello when it retained his law firm as its general counsel, Muscarello is no longer eligible for indemnification under section 12.1 of the Sanitary District Act of 1936. We disagree with the District.

¶ 35 Nothing in *Fiala v. Wasco Sanitary Dist.*, 2018 IL App (2d) 170556-U, has affected the finality of the February 2014 order, wherein the trial court ruled that the initial votes to defend and indemnify the trustee defendants and Muscarello were valid. The District did not appeal that ruling, and it even acknowledged in its response to the rule to show cause that it was not seeking to re-litigate the validity of the votes. Because the District did not appeal, the February 2014 order is *res judicata* on the issue of whether the initial votes were valid, and the District has forfeited the arguments raised in its supplemental brief. See *Tully v. McLean*, 2013 IL App (1st) 113663, ¶ 23.

¶ 36 We now turn to the District's appeal from the denial of its motion to vacate the February 2014 order, in case number 2-18-0189. The District and the trustee defendants have asserted that we have jurisdiction under Supreme Court Rule 307(a)(1), which provides that an appeal may be taken from an interlocutory order granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction. Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017).

¶ 37 In determining whether a particular order constitutes an injunction, courts must look to the substance of the order rather than its form, and our policy is to broadly construe the meaning of the term "injunction." *Zitella v. Mike's Transportation, LLC*, 2018 IL App (2d) 160702, ¶ 14. "An injunction is a judicial process requiring a party to do a particular thing, or to refrain from doing a particular thing, but not every order with such a requirement is an injunction." *Id*. Traditional forms of injunctive relief include orders which affect the relationship of the parties in their everyday activities apart from the litigation itself. However, ministerial or administrative orders that regulate only the procedural details of litigation, such as subpoenas and discovery orders, cannot be the subject of an interlocutory appeal. *Id*.

¶ 38 Here, the February 2014 order went beyond merely regulating the procedural details of the Fiala litigation. By ordering the District to pay the future defense costs of the trustee defendants and Muscarello, the trial court affected the relationship of the parties in their everyday activities. We agree with the parties that the final portion of the February 2014 order granted injunctive relief, and we therefore have jurisdiction in this appeal pursuant to Supreme Court Rule 307(a)(1). Because the trial court denied the District's motion to vacate the February 2014 order without making any findings as to factual issues, and because the District contends only that the trial court misapplied the law, we agree with the District that the trial court's ruling is reviewed *de novo*. *Doe v. Illinois Department of Professional Regulation*, 341 Ill. App. 3d 1053, 1059-60, (2003).

¶ 39 At the outset, we note that the trustee defendants and Muscarello raised several arguments in their responses to the District's motion to vacate the February 2014 order that have not yet been ruled upon. The trustee defendants argued that, even if the District's current board of trustees had the authority to withdraw its defense and indemnification, the District was still bound to pay their defense costs under the doctrines of vested rights and laches. Similarly, Muscarello argued that the District was bound to continue defending him due to the legal services agreement with his law firm, which included an indemnification provision for the services that his law firm provided as the District's general counsel. However, the trial court did not address any of these arguments in its ruling, because it agreed the trustee defendants and Muscarello that the board's withdrawal vote on March 16, 2017, did not warrant vacating the February 2014 order.

¶ 40 With that in mind, we turn to the issue at hand. " 'Where the grounds and reasons for which the injunction was granted no longer exist, by reason of changed conditions, it may be

necessary to alter the decree to adapt it to such changed conditions, or to set it aside altogether, as where there is a change in the controlling facts on which the injunction rests, or where the applicable law, common or statutory, has in the meantime been changed, modified, or extended. On application to modify the decree, the inquiry is simply whether changes since its rendition are of sufficient importance to warrant such modification. However, the injunction, whether right or wrong, cannot on such a hearing be impeached in its application to the conditions that existed on its making.' " *Bank of Wheaton v. Village of Itasca*, 178 Ill. App. 3d 626, 632-33 (1989) (quoting *Field v. Field*, 79 Ill. App. 2d 355, 359 (1967)). As noted above, in denying the District's motion to vacate the February 2014 order, the trial court ruled as follows:

> "There has been no relevant change in the controlling facts or applicable law since this Court ordered the District to pay the costs of defense and indemnify the Defendants, other than the District's vote, which did nothing to relieve it of the obligation to follow the Court's [February 2014] order and did nothing to change the reasoning behind this Court's order. Accordingly, the [District's] Motion is denied."

¶ 41 The District contends that the trial court failed to apply the proper standard in ruling on its motion. According to the District, the February 2014 order should have been vacated as a result of the withdrawal vote, because the withdrawal vote did not violate any statute or constitutional provision. In support, the District relies on our decision in *Bigelow Group, Inc. v. Rickert*, 377 Ill. App. 3d 165 (2007).

¶ 42 In *Bigelow Group*, the plaintiffs sought an injunction against the Kane County Collector's practice of refusing to allow property tax payment by specification, a process by which taxpayers who own separate portions of larger property may specify their individual tax liability and pay accordingly. The plaintiffs also sought a declaration that the Collector's refusal

to accept payment by specification violated several constitutional provisions. *Id*. at 166. The trial court granted summary judgment in favor of the Collector and the plaintiffs appealed to this court. *Id*. at 168-69. We began our analysis by noting that the controlling statute provided that the Collector "may receive taxes on part of any property charged with taxes when a particular specification of the part is furnished." *Id*. at 169; 35 ILCS 200/20-210 (West 2004). Based on this plain language, we concluded that the Collector had the discretion to accept or deny payment by specification. *Id*. at 169. Guided by our supreme court's decision in *People ex rel. Woll v. Graber*, 394 Ill. 362 (1946), we noted that the power of the judiciary to review the Collector's discretionary decision turned on the separation of powers doctrine. *Bigelow Group*, 377 Ill. App. 3d at 173. Because the role of the judiciary is limited to construing the constitution and determining whether its provisions have been disregarded, we held that "a court should concern itself with discretionary acts of the other branches of government only where such acts may violate the law or where the empowering legislative act calls for such judicial review." *Id*. at 174. We interpreted this highly deferential standard as allowing for judicial review of an official act only when it is deemed "arbitrary or capricious," which requires a showing of "fraud, corruption, illegality, or gross injustice." *Id*. We concluded in relevant part:

> "When reviewing an act of official discretion for abuse, without direction from the legislature to examine the decision more closely, a court may overturn the decision only where it does not comport with the law because it contravenes a statute or constitution (or does not comport with the relevant enabling statute). Absent some evidence of illegality, a court will be satisfied that an executive decision was not arbitrary or capricious, and it will not inquire further into the propriety of the reasoning behind the

> decision (so long as the reasoning and decision are not, themselves, illegal)." [Parentheses in original.] *Id*. at 174.

Applying these principles, we affirmed the trial court's summary judgment ruling in favor of the Collector, reasoning that the plaintiff had failed to adequately allege an abuse of discretion in the Collector's decision to refuse payment by specification. "In short," we held, "in order to precipitate judicial review of [the Collector's] discretionary act, plaintiffs would have to assert more than that they disagree with defendant's decision; they must assert that it is unlawful and thus exceeds his discretion." *Id*. at 179.

¶ 43 Here, the District argues that the trial court failed to apply the proper standard set forth in *Bigelow Group*. Rather than focusing on whether the withdrawal vote on March 16, 2017, impacted the District's obligation to follow the February 2014 order, the District argues that the trial court should have instead answered the singular question of whether the withdrawal vote constituted an abuse of discretion. According to the District, by simply finding that the withdrawal vote "did nothing to relieve [the District] of the obligation to follow the Court's [February 2014] order," the trial court abdicated its duty to conduct the proper abuse-of-discretion analysis.

¶ 44 We agree with the District. In denying the District's motion to vacate the February 2014 order, the trial court incorrectly found that there had been "no relevant change in the controlling facts or applicable law." The withdrawal vote on March 16, 2017, was a relevant factual and legal change. Whether this change warrants vacating the February 2014 order turns on whether the withdrawal vote was an abuse of discretion. If the withdrawal vote was not an abuse of discretion on its face, meaning that it was authorized under section 12.1, then the arguments raised by the trustee defendants and Muscarello would become relevant for determining whether

the withdrawal vote was nevertheless an abuse of discretion. Because the trial court failed to apply the proper standard, and because the fact-specific arguments by the trustee defendants and Muscarello have not yet been addressed, the order denying the District's motion to vacate the February 2014 order is hereby vacated, and the matter is remanded to the trial court for a proper application the standards articulated in *Bigelow Group*.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the contempt ruling in case number 2-17-0957. However, we vacate the order entered on February 21, 2018, in case number 2-18-0189, in which the trial court denied the District's motion to vacate the February 2014 order. That matter is remanded to the trial court for further proceedings consistent with this disposition.

¶ 47 Affirmed in part, vacated in part, and remanded with directions for further proceedings.