SIXTH DIVISION
March 29, 2019

No. 1-17-3144

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HAREY ISRAEL, DAVID ISRAEL, ALAN ISRAEL, and SAMANTHA ISRAEL,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs,	)	
(Harey Israel,	)	
Plaintiff-Appellant,)	)	
v.	)	No. 12 L 3464
DIANE ISRAEL, AARON ISRAEL, and BRUCE BELL,	)	
Defendants,	)	
(Diane Israel,	)	Honorable Brigid Mary McGrath,
Defendant-Appellee.)	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Cunningham concurred in the judgment.
Presiding Justice Delort dissented.

ORDER

¶ 1 *Held*: We reverse the judgment below and remand for a new trial where the trial court's erroneous evidentiary rulings, which affected a key issue in a closely balanced case, prejudiced the plaintiff.

¶ 2 Plaintiff, Harey Israel, appeals the trial court's judgment entered on the jury's verdict finding in favor of defendant, Diane Israel, on Harey's claim of tortious interference with a testamentary expectancy. On appeal, Harey contends (1) he was denied a fair trial where the trial court, pursuant to Diane's motion *in limine*, barred him from presenting evidence relating to the August 2014 trust amendment, and from eliciting testimony regarding gifts from Aaron to Diane and her son made in August 2014, and (2) the trial court erred in dismissing count II of his fifth amended complaint. For the following reasons, we reverse and remand for a new trial.

¶ 3 JURISDICTION

¶ 4 Although the parties did not raise the issue of our jurisdiction in their briefs, reviewing courts may *sua sponte* inquire into jurisdiction and will dismiss an appeal if our jurisdiction is lacking. *Sutherland v. Norbran Leasing Co.*, 180 Ill. App. 3d 95, 96 (1988). "[A]n appellate court has no authority to address the substantive merits of a judgment entered by a trial court without jurisdiction." *People v. Bailey*, 2014 IL 115459, ¶ 28.

¶ 5 Here, the trial court dismissed Harey's fifth amended complaint with prejudice on February 11, 2015, and he filed a motion to reconsider which the trial court denied on March 19, 2015. On March 27, 2015, more than 30 days after the trial court dismissed his fifth amended complaint, Harey filed a "Further Motion for Reconsideration Based on Newly Discovered Evidence." Generally, "a trial court loses jurisdiction to hear a cause at the end of the 30-day window following entry of a judgment." *Id.* ¶ 8. Harey also filed his further motion to reconsider following the denial of his first motion to reconsider. "A second post-judgment motion (at least if filed more than 30 days after judgment) is not authorized by either the Civil Practice Act or the rules of this court ***." *Sears v. Sears*, 85 Ill. 2d 253, 258-59 (1981).

¶ 6 The revestment doctrine, however, provides an exception to "our otherwise strict jurisdictional standards ***." *Bailey*, 2014 Il 115459, ¶ 10. For revestment to apply, "*both* parties must: (1) actively participate in the proceedings; (2) fail to object to the untimeliness of the late filing; *and* (3) assert positions that make the proceedings inconsistent with the merits of the prior judgment and support the setting aside of at least part of that judgment." [Emphasis in the original.] *Id.* ¶ 25. All three elements must be met for the doctrine to apply. *Id.*

¶ 7 There is no question that the parties actively participated in the trial proceedings through the jury's verdict in Diane's favor. Furthermore, by participating in the trial of the case on the merits, the parties implied their consent to have the prior dismissal judgment set aside. *Sears*, 85 Ill. 2d at 260 (although the trial court held a hearing on the second post-judgment motion, revestment did not apply because "the participants did not ignore the judgment and start to retry the case, thereby implying by their conduct their consent to having the judgment set aside"). With the first and third elements of revestment satisfied, we look at whether both parties also failed to object on timeliness grounds.

¶ 8 After Harey filed his further motion to reconsider, Diane argued that Harey is precluded from filing successive post-judgment motions under *Sears*. At the June 4, 2015, hearing on Harey's further motion to reconsider, Diane pointed to Harey's pending appeal and argued that the case should proceed in the appellate court and should not be reopened in the trial court. While Diane may have objected to Harey's filing of his further motion, the record also shows that when the trial court granted the motion in part and Harey filed his sixth amended complaint, Diane did not challenge the filing on timeliness grounds. Instead, she filed a motion to reconsider arguing that Harey's further motion should have been denied because his "so-called 'newly discovered' evidence is anything but new" and "[i]n the absence of new information, there was

no basis to reconsider the Court's March 19 ruling " denying Harey's initial motion to reconsider.

¶ 9 Furthermore, after the trial court denied Diane's motion to reconsider, both parties began to try the complaint on the merits. Diane answered Harey's sixth amended complaint and participated in extensive pretrial proceedings. She filed motions *in limine* and engaged an expert witness to testify before the jury. The case proceeded to a trial on the merits, which lasted three weeks and ended in a jury verdict for Diane. During this time Diane made no objections based on untimeliness, nor did she challenge this court's jurisdiction to consider Harey's appeal from the jury's verdict against him in her appellee brief. Rather, Diane argued that this court lacks jurisdiction only over "that portion" of Harey's appeal seeking reversal of the February 11, 2015, dismissal order because Harey "abandoned [that] appeal and never filed a brief." Under these circumstances, we find that all of *Bailey*'s elements are satisfied and the trial court was therefore revested with jurisdiction over Harey's sixth amended complaint.

¶ 10 This determination is not contrary to our supreme court's holding in *Bailey*. In *Bailey*, the State agreed that it did not object to the timeliness of the defendant's late filing and as such, the supreme court did not elaborate on the failure to object element. *Bailey*, 2014 IL 115459, ¶ 17. Nothing in *Bailey* suggests that revestment does not apply in this case where Diane effectively abandoned her position to uphold the court's prior dismissal by participating, without objection, in a trial on the merits of Harey's sixth amended complaint. Importantly, *Bailey* cited approvingly to *Sears*, in which the supreme court similarly found that revestment occurs when the parties "start to retry the case, thereby implying by their conduct their consent to having the

judgment set aside." *Sears*, 85 Ill. 2d at 260. Since we find that the trial court was revested with jurisdiction, this court has jurisdiction to consider Harey's appeal.[1]

¶ 11 BACKGROUND

¶ 12 Harey and Diane's father, Aaron Israel, emigrated to the United States from Hungary. In 1942, he married Miriam and they had four children: Alan, Diane, David, and Harey. Aaron invested in real estate, and his business portfolio was valued at approximately $60 to $70 million upon his death in 2014.

¶ 13 Prior to the 1990's, David and Diane worked with Aaron in the real estate business, and the entire family shared Shabbat dinner every Friday night. In the 1980's, Diane worked with Aaron on a residential real estate project known as "Willow Ridge," and ownership interest in the subdivision was originally set as follows: 55% to Diane, and 15% each to Alan, David, and Harey. Upon completion of the project, however, Aaron gave Diane 100% of the ownership interest.

¶ 14 In the early 1990's, Aaron's bookkeeper was convicted of embezzling $2.5 million and Aaron hired an outside accountant for his company. The accountant informed him that David owed Aaron $3.7 million and on March 30, 1994, Aaron filed suit against David for an accounting and dissolution of all their Illinois partnerships, and to recover the $3.7 million that David allegedly misappropriated. Although that suit was eventually settled, the family engaged in continuous litigation with one another throughout the 1990's: in April 1994, David filed a suit

[1] Although the trial court was revested with jurisdiction over the sixth amended complaint, this court still lacks jurisdiction to consider Harey's contention that the trial court erred in dismissing count II of his fifth amended complaint for insufficient pleading. This court dismissed Harey's appeal challenging the trial court's February 11, 2015, dismissal order for want of prosecution. Since Harey did not file a petition for rehearing within 21 days of that order, the dismissal order became final and "the appellate court lost jurisdiction to consider additional arguments stemming from [that] order." *Woodson v. Chicago Board of Education*, 154 Ill. 2d 391, 397 (1993).

against Aaron to protect his ownership interests in the Sentry grocery food stores; in 1997, Harey filed suit against Aaron regarding Aaron's attempt to evict Harey from his Willow Ridge home, and David filed suit against Diane alleging conspiracy to commit fraud, tortious interference with prospective economic advantage, and defamation; in 1998, Aaron and Miriam sued Harey to recover a $275,000 loan; and in November 1998, David sued Miriam for defamation, alleging that she had spread rumors that he was a thief and could not be trusted.

¶ 15 In October 1991, Aaron's estate plan, if Miriam predeceased him, divided his assets equally between Alan, Diane, David, and Harey. In 1997, following David's suit against Aaron, Aaron and Miriam amended their estate plan so that David would receive nothing and the other three children would share the estate equally. After Harey filed his suit against Aaron, Aaron and Miriam again amended their plan so that neither Harey nor David would receive assets from the estate. In October 1999, Aaron and Miriam changed their estate documents to provide that Diane would receive the bulk of their estate, Alan would receive $500,000, and Harey and David would receive nothing.

¶ 16 In the early 2000s, Harey and David reconciled with their parents and reestablished their relationship with them. Miriam was diagnosed with Alzheimer's disease in 2003. Harey and his family would visit and share meals with Aaron and Miriam once or twice a week, and when David's wife passed away from cancer, Aaron and Miriam attended five days of her shiva. Harey, a trader at the Chicago Board of Trade, experienced financial difficulties when he transitioned from trading in the pit to computer trading. Aaron provided financial support to Harey during this period. In Aaron's amended declaration of trust executed on July 1, 2010, Harey would now receive the Sentry Plaza Shopping Center (Sentry Plaza) in Wisconsin. Also,

Alan would receive an apartment building in Iowa instead of $500,000, and Diane would receive the remainder of the estate. Aaron still excluded David from any inheritance.

¶ 17 Miriam died in 2010, when Aaron was 92 years old. At her shiva, Aaron met with Alan and David and told them that he wanted to give Harey title to Sentry Plaza. He stated that he wanted to give Harey the property now because Harey was struggling financially. Since Harey did not have experience in real estate, Aaron asked David to help Harey manage the property. Harey stated that David informed him of Aaron's plan in January 2011.

¶ 18 In July 2011, Harey's attorney, Neil Weinberg, began communications with Bruce Bell, Aaron's attorney, regarding the Sentry Plaza transaction. Bell was also Diane's personal attorney at the time. Weinberg and Bell determined that the most beneficial gift structure for both Aaron and Harey would be for Aaron to gift Sentry Plaza to a trust for the benefit of Harey during Aaron's lifetime, through which Harey would receive income from the property. Harey would then receive the title to Sentry Plaza upon Aaron's death. Bell prepared a trust agreement which he transmitted to Weinberg. In the agreement, David was named trustee with full discretion to distribute the principal and interest.

¶ 19 Meanwhile, Diane communicated with Bell about Sentry Plaza's 2011 and 2012 projected income. After her in-house accountant calculated the projected income and gave the results to Bell, Bell emailed Diane that "[e]ven if the worst case scenario arises, I will have to talk to Aaron and see how much money he is willing to give to Harey each year." He wrote that "Nancy's projections still show income of close to 400k."

¶ 20 On August 5, 2011, Aaron held a conference call with Diane, Harey, Bell, and Weinberg in which he expressed his desire to complete the Sentry Plaza transaction quickly. At some point prior to August 17, 2011, Bell spoke with Weinberg and discussed putting a release in favor of

Diane from Harey into the trust agreement. Bell clarified that he "was suggesting a release with respect to the estate" in case Harey filed a claim against it, but acknowledged that the release "may have encompassed Diane as well***." Bell did not recall that he spoke with Aaron about including such a release into the document. Harey did not agree to the release.

¶ 21 On August 17, 2011, Aaron told Bell that he was angry because Harey was not working and Harey had lied about working. Aaron refused to tell Bell who gave him that information. Aaron stated that he no longer wanted to make the Sentry Plaza gift to Harey and Bell informed Weinberg on August 18th of Aaron's decision. That evening, Diane allegedly sent a text to David telling him that if he or Harey wanted to speak with Aaron, they had to go through their lawyers. On August 23rd, Bell sent a letter to David and Harey indicating that Aaron did not want to see them. Aaron told Bell, "I just found out that Harey is not working. Harey has been lying to me. I'm not going ahead with this." He did not trust David or Harey. Aaron wanted to be left alone and get away from his sons. However, Aaron also said, "Okay with trust for the benefit of Harey, but effective on death."

¶ 22 Weinberg raised the subject of Diane's influence in a letter to Bell. He stated that "it appears as though Diane is continuing in her efforts to unduly influence Aaron such that Aaron is no longer making any independent decisions, including but not limited to, the sudden change in Aaron's donative intent regarding potential gifts by Aaron to Harey." Bell told Weinberg that he did not believe Diane could make Aaron do what he did not want to do. He further stated that "the only undue influence that I have observed is the conduct of Harey seeking to have Aaron make a gift to him" and "Aaron is the only one making decisions regarding who he wishes to see and who he does not want to see." Bell had a conversation with Diane in which she told him that:

> "Harey and David were in an electric golf [cart] outside of Aaron's apartment for an unduly long period of time. There were no golf bags in the cart. I have been informed that Harey has been seen on more than one occasion driving back and forth through the parking lot outside Aaron's apartment checking out the cars in the visitor parking lot. Most disturbing is the call I received from Aaron's bookkeeper who was distraught asking why David (although recognizing it might have been Harey using David's computer) was reading through her Linked In profile online."

¶ 23 Harey testified that his relationship with Diane became strained in the late 1980's and early 1990's after she and her husband, Meir Kehila, divorced, because Harey remained friendly with Kehila. Diane gave Harey and his wife an ultimatum—they could be friends with her or with Kehila. Aaron also asked Harey to stop socializing with Kehila. Although they remained friends, Harey began to see Kehila less frequently.

¶ 24 Before Miriam's death, Harey had a pass to go through the gates of his parents' condominium complex, and had keys to their unit. After Miriam's death, Harey's access privileges were revoked and the locks were changed. Cameras were also installed in the unit. When Harey asked Aaron why the locks had been changed, Aaron teared up and told Harey that he had given Diane too much control. He expressed concern that Diane held his power of attorney for his healthcare. David recalled that in August 2011, he and Harey went to Aaron's apartment because Harey had called Aaron earlier and no one answered the phone. When they knocked on the door, no one answered so they asked a security guard in the complex to retrieve a master key. At that time, Aaron's caregiver opened the door and they found him "on the living room couch stone cold out of it sleeping." Aaron would not wake up. The caregiver told them that Diane was on her way and Harey left because he did not want a confrontation with Diane.

When she arrived, Diane told David that Aaron had just started taking a new antidepressant medication. When David asked to attend Aaron's next doctor's appointment, Diane refused.

¶ 25 Diane notified David and Harey that they would have to go through their lawyers to speak with Aaron, and she also kept Aaron from seeing Harey and David's children. David and Harey next saw Aaron at the temple in late September 2011. Aaron was holding his prayer book upside down and David corrected it for him. David observed a bodyguard sitting behind Aaron. At Miriam's dedication in October, Harey and David saw Aaron with three bodyguards around him. Neither Harey nor David visited or communicated with Aaron again before Aaron's death in 2014. Diane's attorney informed Harey and David of their father's death by email, and Diane did not allow Harey and David to view their father's body.

¶ 26 On September 20, 2011, Harey and David filed a complaint against Diane alleging breach of fiduciary duties, undue influence, and tortious interference with Harey's reasonable expectation of receiving Sentry Plaza as an *inter vivos* gift from Aaron. The next day, Diane executed a power of attorney with the absolute right to deal with Aaron's property, and Aaron's trust was amended to name Diane as co-trustee. Through his attorney, Aaron denied the complaint's allegations that he was being unduly influenced or sequestered by Diane. On December 28, 2011, Aaron, through his attorney, sent a letter to the attorneys of Harey and David requesting that "Harey, David, and their children—refrain from calling [Aaron's] caregivers and from repeatedly calling him directly." He stated that neither Diane nor his caregivers were preventing him from speaking to Harey or David.

¶ 27 Harey and David voluntarily dismissed their case against Diane on February 14, 2012. On March 30, 2012, Harey and his daughter Samantha filed a complaint against Diane alleging tortious interference with Aaron's transfer of Sentry Plaza to Harey, and intentional interference

with Samantha's expectation of Aaron's continued payment of her law school tuition. The complaint alleged that Diane was unduly influencing her father.

¶ 28 On April 17, 2012, Diane informed Aaron's doctor that Aaron was becoming more forgetful and the doctor recommended that Aaron begin taking Aricept, an anti-dementia drug. The use of the medication was declined, although it is unclear whether Diane or Aaron refused the treatment.

¶ 29 In July 2012, Aaron again amended his estate plan. Under the amended trust, Harey no longer would receive the Sentry Plaza property but instead would receive $2 million in trust, payable in annual installments of up to $150,000. Alan still received the Iowa property and Diane received the remainder of the estate. The amended trust further provided that if Harey and/or Alan should file a claim against the trust, the estate, or any descendant or representative of the estate in Aaron's lifetime or after his death, the proceeds granted to them would terminate. Three witnesses to Aaron's signature testified that Aaron was alert and in control of his facilities. Dr. Berlin, who saw Aaron approximately 35 days prior to his execution of the July 2012 amendment, found Aaron in good condition.

¶ 30 Bell continued to have discussions with Aaron regarding additional amendments to his estate plan. In July 2013, 95-year-old Aaron executed a trust amendment providing that since Aaron "has incurred certain expenses in connection with pending litigation among [his] descendants," he would reduce his bequests to pay for attorney fees, bodyguard expenses and fines. Aaron reduced Alan's bequest "even though [Alan] did not institute such litigation." The amendment also provided that "[i]n no event shall the [bequest reductions] apply to [Diane] or any descendant of [Diane]."

¶ 31 Aaron was now living in Florida and in the fall of 2013, Diane sought an attorney to amend Aaron's estate planning documents to comport with Florida law. Diane met with Douglas Kniskern in October. Diane's son, David A., sent a letter to Kniskern stating: "I also want to confirm that you recognize my mom's authority and that her authority is broad enough for you to rely on certain instructions from her which are in the best interests of my grandfather and his estate planning." In November 2013, Kniskern presented Aaron with a durable power of attorney giving Diane control of all his assets, a designation of healthcare surrogate naming Diane, and a declaration of preneed guardian naming Diane. Aaron also had told his lawyer that "Diane is a good daughter" and "Harey and David are costing all this money."

¶ 32 In January 2014, Kniskern met with Aaron to review the proposed trust amendment. In an email, Kniskern stated that the proposed amendment "purports to penalize Alan and brother Harey, for the cost of the pending litigation by requiring Alan to pay Aaron's cost of litigation x2, and to have Harey pay the same via deduction from the funding of his trust at Aaron's death *** I'm concerned that a provision to punish two of the brothers so harshly for their bad deeds prior to Aaron's death will create more problems than it solves ***."

¶ 33 On February 3, 2014, Aaron executed the "Amendment to Aaron Israel Amended and Restated Trust." The declaration of trust named Aaron and Diane as co-trustees and Diane's son David A. was named successor trustee. The trust excluded Aaron's son David and his heirs as beneficiaries, and included the $2 million bequest to Harey and the Iowa property to Alan. Unlike the prior amended trust, however, the February 2014 amended trust stated that the gift to Harey's trust shall be reduced by "an amount equal to one-half of all litigation-related expenses incurred by me since September 1, 2011 ***." Also, Alan was required to "pay the trustees an amount equal to one-half of all litigation-related expenses" in this case within six months of

Aaron's death. Diane signed the amendment as co-trustee. The record is unclear whether Kniskern reviewed the amended trust with Aaron before it was executed.

¶ 34 The parties presented contrasting evidence as to Aaron's health and mental capabilities in 2013 to early 2014. Harey pointed out that in August 2013, Aaron's physical therapist noted that he had difficulty staying alert and could not walk and count at the same time. In September 2013 Aaron's internist noted that Aaron could not identify what city he was in or the present year. Aaron's physical therapist noted that he needed maximum assistance with daily life activities. Dr. Berlin, however, testified that in 2013 he conversed with Aaron and Aaron spoke in complete sentences and his judgment was intact. Kniskern noted that Aaron was 95 years old but "appeared to have a pretty solid mental grip on things." Aaron's friends and caregivers testified that they never saw him confused or disoriented, and he appeared lucid and "knew what was going on."

¶ 35 Nonetheless, the record indicates that Aaron's health declined rapidly in 2014. In March 2014 Aaron's cardiologist noted that the defibrillator implanted in Aaron's chest was nearing the end of its life. Aaron's internist noted his confusion and drowsiness. In August 2014, approximately two months before Aaron's death, Aaron's physical therapist noted that "max encouragement needed at all times to prevent patient from falling asleep."

¶ 36 Expert witnesses testified on both sides. Dr. Joshua Barras, Diane's expert, testified that when determining whether undue influence occurred, he looks for whether the patient has "neurocognitive impairment or mental health problems that might make them vulnerable to undue influence." Also, he must "evaluate their relationship with the person who is alleged to be attempting undue influence ***." Dr. Barras testified that the evidence indicated Aaron had testamentary capacity with each of the documents he executed between 2012 and 2014. He also

believed that Aaron had sufficient neurocognitive functioning to resist efforts to manipulate or coerce him through undue influence.

¶ 37 Harey's expert witness, Dr. Sanford Finkel, disagreed. He based his opinion according to Aaron's psychiatric, physical, and social conditions from 2011 to early 2014. Dr. Finkel noted that Aaron was seeing a psychiatrist in June 2011 after Miriam's death, showed confusion and cognitive decline, and became isolated from his social contacts. He became increasingly dependent on Diane. Dr. Finkel's opinion was that Aaron was subjected to undue influence by Diane.

¶ 38 After two days of deliberation, the jury returned a verdict in favor of Diane and Harey filed this appeal.

¶ 39 ANALYSIS

¶ 40 Harey seeks reversal of the judgment below, arguing that the trial court made erroneous evidentiary rulings pursuant to Diane's motion *in limine* #9. The trial court's evidentiary rulings, including rulings on motions *in limine*, will not be disturbed on appeal absent an abuse of discretion. *In re Leona W.*, 226 Ill. 2d 439, 460 (2008). Even if an abuse of discretion has occurred, a reversal is not warranted "unless the record indicates the existence of substantial prejudice affecting the outcome of the trial." *Id*.

¶ 41 Diane's motion *in limine* #9 sought "[t]o preclude testimony, opinions, or any other evidence of events occurring after February 3, 2014." Diane argued that testimony or evidence after that date would be irrelevant because any of Diane's or Aaron's actions after February 3, 2014, had no effect on Aaron's estate plan where Aaron did not execute further testamentary documents that changed Harey's bequest. She argued that such irrelevant evidence could confuse

the jury about Aaron's health and mental capacity around the relevant time period up to February 3, 2014.

¶ 42 Harey, however, wanted to present at trial evidence that in August 2, 2014, Aaron and Diane executed a second amendment to the February 3, 2014 amended trust. The August 2014 amendment included a new section providing that if a trustee "is a party to, or threatened to be made a party to, or otherwise involved in any suit, action or proceeding, either threatened, pending or completed, by reason of or in connection with acting as a Trustee, the Trustee shall be indemnified out of the principal of the trust estate for and against all judgments, fines, penalties and expenses incurred" with certain exceptions. Furthermore, "[a]ny Trustee who ceases to serve for any reason will be entitled to receive *** reasonable indemnification and security to protect and hold that Trustee harmless from any damage or liability of any nature that may be imposed upon it because of its actions or omissions while serving as Trustee."

¶ 43 Harey argued that this evidence was relevant "because Harey has alleged that Diane exercised undue influence over Aaron until his death on October 24, 2014. Diane's continuing domination and control over Aaron will be offered *** to demonstrate that Aaron never had an opportunity to complete his intended bequest of Sentry Plaza to Harey." He further argued that the August 2014 amendment "greatly expands upon the pre-existing trustee indemnification clause" where the current trustee now "is entitled to almost complete indemnification." The parties agree that Aaron's health "was at its worst in the weeks leading up to his passing," and the August 2014 amendment is relevant to show "that Diane received a significant benefit shortly before Aaron died."

¶ 44 The trial court granted the motion *in limine* as to the August 2014 amendment, finding the document irrelevant because it was executed six months after the February 2014 amendment,

the last amendment affecting Harey, and as a result, "it goes too far off field ***." The court did allow evidence of Diane's animus against Harey occurring after February 3, 2014.

¶ 45 Diane argues that the trial court properly excluded evidence of the August 2014 amendment because the issue at trial was whether she unduly influenced Aaron to execute the July 2012 amendment, and evidence of undue influence must bear on factors existing at or near the time the challenged testamentary document was executed. *Matter of Estate of Mooney*, 117 Ill. App. 3d 993, 999 (1983). However, evidence of mental condition at other times may also be relevant "if it fairly tends to show the condition of the testator at the time the will was actually executed ***." See *Id*. (finding that evidence showing a continuous relationship of dominance and dependency for many years prior to the execution of the will is relevant); see also *In re Estate of Elias*, 408 Ill. App. 3d 301, 317-18 (2011) (recognizing the "substantial discretion" the trial court has "to determine the time frame within which events concerning the testator are relevant to the capacity of the decedent in a will contest"). Harey argued that the excluded evidence would tend to show Diane's continuing domination and control over Aaron in order to receive a significant benefit, the same control she used to prevent Harey from receiving Sentry Plaza. To the extent that the trial court below found the August 2014 amendment irrelevant merely because it was executed six months after the last document that changed Harey's bequest, the court abused its discretion.

¶ 46 Also, although Diane's undue influence was an issue at trial, Harey's claim against her was for tortious interference with a testamentary gift. To prevail on this claim, Harey must establish not only tortious conduct such as undue influence, but also the existence of an expectancy, Diane's intentional interference therewith, a reasonable certainty that the expectancy would have been realized but for the interference, and damages. *DeHart v. DeHart*, 2013 IL

114137, ¶ 38. Evidence of Diane's continuing dominance and control over Aaron in August 2014, as indicated by the significant benefit she received in that document, would tend to support Harey's claim that she used such control to interfere with his expectancy and "to ensure that Aaron never had an opportunity to complete his intended bequest of Sentry Plaza to Harey" before his death. Since evidence of the August 2014 amendment would tend to make the existence of Diane's intentional interference more probable than it would be without the evidence, it was relevant. *In re Elias*, 114 Ill. 2d 321, 334 (1986).

¶ 47 While we find that the August 2014 amendment was relevant and the trial court abused its discretion in excluding it, a new trial is not warranted unless the erroneous evidentiary ruling substantially prejudiced Harey. *DiCosolo v. Janssen Pharmaceuticals, Inc.*, 2011 IL App (1st) 093562, ¶ 40. Both parties here presented a substantial amount of evidence to support their respective positions. Diane's evidence showed that Aaron had a difficult relationship with his sons from the 1990's to his death, due in part to various suits David and Harey filed against Aaron and Miriam, and suits that Aaron and Miriam filed against David and Harey. Harey faced financial difficulties due to his transition to computer trading, and after Harey reconciled with Aaron, Aaron provided Harey with financial support. Diane alleged that Harey continually harassed Aaron for monetary support and after he discovered that Harey was not working and lied to him about not working, Aaron changed his mind about gifting Sentry Plaza to Harey. According to Diane's witnesses, Aaron did not want to see or hear from Harey or his children, and that he "wanted to be left alone and get away from his sons." Her witnesses testified that Aaron was in control of his faculties when he executed the amendments, and that he always did what he wanted to do. Through his attorneys, Aaron denied he was being unduly influenced or sequestered by Diane. Aaron viewed Diane as a "good daughter" who knew how to run his

business. Diane's expert, Dr. Barras, testified that the evidence indicated Aaron had testamentary capacity with each of the documents he executed between 2012 and 2014. He also believed that Aaron had sufficient neurocognitive functioning to resist efforts to manipulate or coerce him through undue influence.

¶ 48 Harey, however, presented evidence that although his relationship with Aaron was tumultuous at times, overall it was a loving relationship. His evidence showed that after Miriam died, Aaron expressed a desire to give Harey title to Sentry Plaza because he was struggling financially. Aaron changed his mind about the gift in August 2011, and soon thereafter Diane told Harey that if he wanted to speak with Aaron he had to go through their attorneys. Diane executed a power of attorney with the absolute right to deal with Aaron's property, and his trust was amended to name Diane as co-trustee. Prior to his mother's death, Harey had unlimited access to his parents' condominium complex. After her death, the locks were changed and his privileges were revoked. When Harey asked Aaron about the change, Aaron teared up and said he had given Diane too much control. When Aaron had health issues and David wanted to accompany Aaron to doctors' appointments, Diane refused. Aaron experienced mental and physical health declines after 2010, and in 2011 David observed Aaron holding his prayer book upside down. Aaron experienced episodes of fatigue and confusion, sometimes not knowing what city he was in or the present year. Although Harey and David saw Aaron a few times in the fall of 2011, they did not visit or communicate with him before he died in October 2014. Their children were also not allowed to communicate with him. After Aaron died, Diane refused to let Harey or David view their father's body. Dr. Finkel noted that Aaron was seeing a psychiatrist in June 2011 after Miriam's death, became isolated from social contacts, and showed confusion and

cognitive decline. As a result, he believed Aaron became increasingly dependent on Diane and susceptible to her influence.

¶ 49 The key question at trial was whether Diane exerted undue influence in order to interfere with Aaron's gift of Sentry Plaza to Harey. Diane denied she exerted undue influence over her father and argued that she acted only as Aaron, who was lucid and independently-minded, wanted her to do. Harey, however, argued that Diane intentionally exerted her influence over Aaron, whose mental and physical health was declining, in order to harm Harey and receive benefits for herself. Evidence showing that Aaron executed the August 2014 amendment when he was at his most weak, and that the amendment provided Diane with a significant benefit, provides important support for Harey's position and tends to cast doubt on Diane. In a case where substantial evidence supported both parties, and where credibility was crucial, the exclusion of the August 2014 amendment prejudiced Harey. *Corrales v. American Cab Co.*, 170 Ill. App. 3d 907, 911-12 (1988). For the same reasons, exclusion of evidence that Diane and her son received substantial monetary gifts from Aaron shortly before he died also prejudiced Harey. See *Matter of Estate of Kieras*, 167 Ill. App. 3d 275, 280 (1988) (recognizing that an issue of undue influence arises when one having a fiduciary relationship with the donor receives a gift, even if the gift is from a parent to a child).

¶ 50 For the foregoing reasons, the judgment of the circuit court is reversed and the cause remanded for a new trial.

¶ 51 Reversed and remanded.

¶ 52 PRESIDING JUSTICE DELORT, dissenting.

¶ 53 Our supreme court has adopted an "intentionally narrow application" of the revestment doctrine which prevents revestment "whenever one party failed to object based on the finality of the prior judgment or untimeliness of the new proceeding." *People v. Bailey*, 2014 IL 115459, ¶ 25. A too "expansive view" of the revestment doctrine "would unduly undermine our jurisdictional rules as well as the need for finality in judgments." *Id*. Reviving jurisdiction in this case dangerously broadens the revestment doctrine beyond the limits set forth in *Bailey*.

¶ 54 The circuit court entered a final and appealable order first on February 11, 2015, when it dismissed Harey's fifth amended complaint, and then did so again on March 19, 2015, when it denied Harey's motion to reconsider. Despite the fact that *two* final and appealable orders were entered in this case, utterly divesting the circuit court of its jurisdiction, the circuit court and the parties nevertheless continued the litigation in direct contravention of the limitations embodied in the Illinois Code of Civil Procedure.

¶ 55 On October 30, 2018, this court ordered the parties to file memoranda in support of jurisdiction. This court questioned Harey's filing of the "further" motion to reconsider because it bore none of the characteristics of a petition under section 2-1401 (735 ILCS 5/2-1401 (West 2014)). Such a petition was the only appropriate vehicle to seek relief from the two final and appealable orders terminating the case. We specifically noted that "[w]hen the circuit court entered its March 19, 2015 order, the appeal in case number 1-15-0775 was reactivated" under Illinois Supreme Court Rule 303(a)(2), and that this court dismissed Harey's appeal number 1-15-0775 for want of prosecution on November 17, 2015. We asked the parties whether the circuit court had jurisdiction to enter the July 22, 2015 order granting Harey leave to file the sixth amended complaint in light of Harey's filing of the apparently improper "further" motion to reconsider.

¶ 56 On December 4, 2018, Harey filed a memorandum in support of jurisdiction, arguing that the circuit court had jurisdiction to enter the order granting leave to file the sixth amended complaint. Harey stated, "[a]lthough not mentioned in the title or in the text of the [further motion for reconsideration],[2] the motion was treated by the parties and the trial court as having been brought pursuant to Section 2-1401 of the Code of Civil Procedure." Harey claimed that the first mention of the "further" motion for reconsideration as being a section 2-1401 petition did not occur until the August 25, 2015 hearing on Diane's motion to reconsider – some time after the circuit court had already partially granted the "further" motion for reconsideration and allowed Harey to file the sixth amended complaint. Harey argued that, even apart from treating the further motion for reconsideration as a section 2-1401 petition, the circuit court was revested with jurisdiction based on the parties' conduct in continuing to actively prosecute and defend the lawsuit.

¶ 57 In Diane's brief on the merits, she did not raise the issue of jurisdiction which this court noted. However, in her response memorandum, she argued the circuit court lost jurisdiction on March 19, 2015 over all then-existing claims because at that point, Harey perfected his appeal (number 1-15-0775). Diane stated, "[w]hen the denial of Harey's First Motion for Reconsideration resulted in jurisdiction being passed to this Court, Harey was faced with two options: (a) prosecute his pending appeal; or (b) file a proper petition under Section 2-1401. Harey took neither course." Diane argued that either (1) this court should conclude when Harey abandoned his appeal from the February 11, 2015 final order, any effort to revive any of the claims adjudicated by that order is barred by *res judicata*, or (2) this court should affirm the jury verdict on the merits.

[2] In his memorandum in support of jurisdiction, Harey labels his further motion for reconsideration as a "Motion to Vacate," although that term had never been used before by the parties to describe the "further" motion for reconsideration filed on March 27, 2015.

¶ 58 Jurisdiction gives a court the power to interpret and apply the law. *In re M.W.*, 232 Ill. 2d 408, 414-16 (2009). Although the majority found that this court has jurisdiction over this case based on revestment, our jurisdiction is wanting because (1) the "further" motion to reconsider constituted an improper second attempt to reconsider a final appealable order, (2) Harey failed to file and serve a proper section 2-1401 petition in his attempt to overturn the February 11, 2015 order dismissing the fifth amended complaint with prejudice, and (3) the revestment doctrine does not apply. Therefore, the circuit court lacked jurisdiction to enter any orders in circuit court case number 2012 L 3464 after March 19, 2015, and any circuit court orders entered after that date are void. I explain each of these three reasons below.

¶ 59 Successive Postjudgment Motions

¶ 60 Circuit courts do not have authority to hear successive postjudgment motions. *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 34. "Permitting a losing litigant to return to the trial court indefinitely would tend to prolong the life of a lawsuit, would interfere with the efficient administration of justice, and would lend itself to harassment." *Id.* (citing *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981)). Indeed, the *Sears* court stated, "[t]here is no provision in the [Code] or the supreme court rules which permits a losing litigant to return to the trial court indefinitely, hoping for a change of heart or a more sympathetic judge." 85 Ill. 2d at 259. If this rule were otherwise, a party could delay the taking of an appeal indefinitely by filing successive and repetitive motions.

¶ 61 In this case, Harey filed a second motion to reconsider and repeatedly characterized the pleading as such during argument on the motion before the circuit court. The adjudication of Harey's "further" motion for reconsideration would interfere with the policy elucidated in *Sears* and justice is not served by permitting Harey to plead successive postjudgment motions after a final judgment was entered.

¶ 62 Failure to File A Proper Section 2-1401 Petition

¶ 63 In his memorandum in support of jurisdiction filed in this court, Harey argues that his "motion for further reconsideration" was a proper section 2-1401 petition establishing concurrent jurisdiction in this court for his first appeal of the dismissal of his fifth amended complaint and in the circuit court to proceed on the sixth amended complaint.

¶ 64 Section 2-1401 of the Code provides a comprehensive statutory procedure for vacating or modifying a final order or judgment more than 30 days after its entry. *Warren County Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶ 31; *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 22. If a postjudgment motion to vacate is filed after the 30-day time period for such motions, the court may treat the motion as a petition for relief under section 2-1401 if the moving party and the court comply with section 2-1401 procedure, which requires proper notice, the opportunity to respond, application of the proper standard for section 2-1401 petitions, and a hearing. See *Keener v. City of Herrin*, 235 Ill. 2d 338, 348-50 (2009).

¶ 65 In this case, the circuit court entered an order on February 11, 2015 dismissing Harey's fifth amended complaint with prejudice, noting therein that no other issues remained pending. That was a final and appealable order under Rule 303(a)(1) (eff. Jan. 1, 2015), so that a notice of appeal of the February 11, 2015 order was due by March 13, 2015. On March 11, 2015, Harey filed a motion for reconsideration and for leave to file a further amended complaint to add two counts claiming a constructive trust. Even though he had just moved to reconsider the circuit court's dismissal order, Harey also filed a notice of appeal on March 12, 2015. The motion to reconsider was briefed and resolved on March 19, 2015.

¶ 66 The order of March 19, 2015 also was a final and appealable order under Rule 303(a)(2), which terminated the case and, along with Harey's notice of appeal, divested the circuit court of its

jurisdiction. Nevertheless, Harey filed a "further motion for reconsideration based on newly discovered evidence" in the circuit court on March 27, 2015. The "further" motion to reconsider bears none of the characteristics of a section 2-1401 petition and cannot credibly be classified as such.

¶ 67 First, the motion does not fall within the statutory requirements of section 2-1401 because Harey filed it *within* 30 days of the circuit court's March 19, 2015 order denying his first motion to reconsider. Section 2-1401 "applies, by its terms, only in those instances when the 30-day postjudgment period *has expired*." (Emphasis added.) *In re Haley D.*, 2011 IL 110886, ¶ 66; see also *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 11.

¶ 68 In *Garrido*, the plaintiff filed a section 2-1401 petition less than 30 days after the judgment. Realizing his mistake, he sought leave to amend his motion to reflect the correct statute. Although the defendants attempted to argue the plaintiff's notice of appeal was untimely because he failed to file a proper postjudgment motion, the *Garrido* court found the new motion merely corrected the relevant statutory citation in the first postjudgment motion, which was filed within 30 days of the judgment and tolled the time for filing a notice of appeal. *Id.* ¶ 14. No such attempt to amend the "further" motion to reconsider to reflect the correct statute occurred here. Harey filed his "further" motion for reconsideration on March 27, 2015, which was too early for it to be considered a valid section 2-1401 petition because it sought to overturn an order entered on March 19, 2015. For this reason alone, Harey's argument that he filed a proper section 2-1401 petition fails.

¶ 69 Further, all parties to the section 2-1401 petition must be notified as provided by Illinois Supreme Court Rule 105. 735 ILCS 5/2-1401(b) (West 2014); Ill. S. Ct. R. 106 (eff. Aug. 1, 1985). Rule 105(a) states that the notice "shall be captioned and numbered in the case and directed to the party. It shall state that a pleading seeking new or additional relief against him has been filed and

that a judgment by default may be taken against him for the new or additional relief unless he files an answer or otherwise files an appearance in the office of the clerk of the court within 30 days after service, receipt by certified or registered mail, or the first publication of the notice, as the case may be, exclusive of the date of service, receipt or first publication." Ill. S. Ct. R. 105(a) (eff. Jan. 1, 1989). Under Rule 105(b) the notice of petition must be properly served by: (1) any method provided by law for service of summons, either within or without this State, (2) prepaid certified or registered mail addressed to the party, with return receipt requested, or (3) publication. Ill. S. Ct. R. 105(b) (eff. Jan. 1, 1989). If the notice is invalid, the circuit court lacks jurisdiction and its subsequent orders are likewise invalid. *OneWestBank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 18. The service must be on the party and not the party's attorney. *Id*. ¶ 19.

¶ 70 An exception to the formal service requirement exists if the attorney to whom the section 2-1401 petition was mailed is still actively representing the party in ancillary matters before the court in the same case, such as postjudgment collection proceedings. *Id*. In this case, Harey stated in his memorandum in support of jurisdiction that he served Diane with a notice of the "further" motion for reconsideration, but did not complete service with a summons as required under section 2-1401. He contends that Diane waived any jurisdictional defect on this point because she appeared and argued the merits of Harey's further motion for reconsideration. Although Diane did appear and argue the merits of Harey's further motion for reconsideration, and did not specifically challenge the circuit court's jurisdiction, she did challenge the filing of a successive postjudgment motion, citing *Sears*. In short, Diane sufficiently defended her position based on the finality of the circuit court's prior judgment and waiver is inapplicable here.

¶ 71 Next, a section 2-1401 proceeding is considered "independent and separate" from the original action. *Warren County*, 2015 IL 117783, ¶ 31. The petition, though filed in the same

proceeding, "is not a continuation thereof." 735 ILCS 5/2-1401(b) (West 2014). "Instead, the section 2-1401 petition is an initial pleading that commences a new and separate cause of action, subject to the usual rules of civil procedure." *Price*, 2015 IL 117687, ¶ 23. The petition must be supported by affidavit or other appropriate showing as to matters not of record, and all parties to the petition must be notified as provided by rule. 735 ILCS 5/2-1401(b) (West 2014). "Relief under section 2-1401 is predicated upon proof, by a preponderance of the evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007).

¶ 72 Here, the "further" motion to reconsider did not comply with Illinois pleading requirements. *Blazyk v. Daman Express, Inc.*, 406 Ill. App. 3d 203, 207 (2010). Harey did not set forth specific allegations supporting (1) the existence of a meritorious claim, (2) due diligence in presenting the claim to the circuit court in the original action, and (3) due diligence in filing the section 2-1401 petition. *Warren County*, 2015 IL 117783, ¶ 37. Moreover, the further motion to reconsider was not supported by affidavit as required by section 2-1401(b) (735 ILCS 5/2-1401(b) (West 2014)).

¶ 73 "An initial pleading must allege specific facts that support each element of the cause of action; conclusions of law or allegations unsupported by specific facts cannot be considered in deciding the pleading's sufficiency." *Blazyk*, 406 Ill. App. 3d at 208. Harey's "further" motion to reconsider argued that Diane should not be allowed to benefit from her wrongful conduct of deliberately withholding evidence that supports Harey's claims for constructive trust and tortious interference with inheritance. The prayer for relief requested that the circuit court "modify its February 11, 2015 order insofar as it dismissed this action with prejudice." The "further" motion to

reconsider bears none of the characteristics of an initial pleading and instead argues, as a motion would, and in conclusory fashion, that Diane deliberately withheld evidence that prevented him from filing claims for constructive trust and tortious interference with inheritance.

¶ 74 Additionally, "[i]t is only while a case is pending and the court has jurisdiction that a party can seek modification of a judgment through a motion." *Id*. at 206. Harey's "further" motion to reconsider requested a *modification* of the February 11, 2015 order, which could only be accomplished if the circuit court had retained its jurisdiction.

¶ 75 In any event, when the central facts for a section 2-1401 petition are controverted, an evidentiary hearing must be held. *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 286 (1982); *In re Marriage of Buck*, 318 Ill. App. 3d 489, 497 (2000). "Central facts" include facts sufficient to support an order vacating the judgment, not facts that must be proven to succeed in the underlying action on the merits. *Blutcher v. EHS Trinity Hospital*, 321 Ill. App. 3d 131, 141 (2001). In this case, the circuit court never conducted an evidentiary hearing and Harey never made a showing to demonstrate that the newly discovered evidence warranted vacating the court's decision to dismiss the fifth amended complaint. The "new" evidence concerned the revelation that Aaron bequeathed Sentry Plaza outright to Harey and did not involve income earned from the shopping center during Aaron's lifetime, as was plead in the fifth amended complaint. Harey never made a showing that the new evidence he received from Diane properly identified the property, which was the reason the circuit court dismissed the fifth amended complaint on February 11, 2015.

¶ 76 Most tellingly, however, throughout the proceedings, Harey characterized the "further" motion for reconsideration as simply a motion to reconsider and *never* as a section 2-1401 petition. The circuit court never mentioned a section 2-1401 petition and did not indicate that it was

proceeding under section 2-1401. See *Keener*, 235 Ill. 2d at 349. The motion was entitled "Further Motion for Reconsideration Based on Newly Discovered Evidence," but, in fact, no citation or reference to section 2-1401 appears anywhere in the "further" motion. During argument on this motion on June 4, 2015 and July 22, 2015, Harey consistently stated that the motion was a "renewed motion for reconsideration." During argument on July 22, 2015, the circuit court stated, "[t]his is before me for ruling on the motion to reconsider my ruling as to the previous complaint." The written order entered on July 22, 2015 states, "This cause coming to be heard for ruling on Plaintiff Harey Israel's Further Motion for Reconsideration," wherein the court granted in part and denied in part Harey's motion. The first time Harey characterized his "further" motion to reconsider as a section 2-1401 petition occurred on August 25, 2015, during argument on Diane's motion to reconsider.

¶ 77 In sum, Harey followed none of the statutory mandates required to file a proper section 2-1401 petition. His pleading bore none of the characteristics of a section 2-1401 petition. Furthermore, the parties and the circuit court never considered Harey's "further" motion to reconsider as a section 2-1401 petition until *after* the circuit court had already partially granted the motion. *Id*. The substance of the circuit court's ruling itself refutes the suggestion that the court granted a section 2-1401 petition, rather than a motion to reconsider, which it had no jurisdiction to grant. *Id*.

¶ 78 In this case, Harey's failure to file a proper petition under section 2-1401 renders the circuit court's judgment partially granting his "further" motion for reconsideration void and also renders void all the circuit court judgments entered thereafter. *Johnston v. City of Bloomington*, 77 Ill. 2d 108, 112 (1979) (a judgment is void if the court that entered it lacked subject matter jurisdiction); see also *Keener*, 235 Ill. 2d at 350-51.

¶ 79 Revestment Doctrine

¶ 80 Next, I would find that the revestment doctrine also does not apply in this case. The revestment doctrine allows parties to revest a circuit court with jurisdiction lost with the passage of time. Specifically, "litigants may revest a trial court with personal and subject matter jurisdiction, after the 30 day period following final judgment, if they actively participate in proceedings that are inconsistent with the merits of the prior judgment." *People v. Bannister*, 236 Ill. 2d 1, 10 (2009). Our supreme court more recently ruled, however, that *both* parties must support the modification of the prior judgment. *Bailey*, 2014 IL 115459, ¶ 25. In *Bailey*, the supreme court held that "for the revestment doctrine to apply, *both* parties must: (1) actively participate in the proceedings; (2) fail to object to the timeliness of the late filing; *and* (3) assert positions that make the proceedings inconsistent with the merits of the prior judgment and support the setting aside of at least part of that judgment." (Emphasis in original.) *Id*. "If any one of those requirements remains unmet, the doctrine does not revest the court with jurisdiction." *Id*. In short, revestment occurs when both parties seek modification of the prior judgment, not where a party merely fails to object to the untimeliness of a motion or assert the prior judgment's finality. *Id*.

¶ 81 In *Shatku v. Wal-Mart Stores, Inc.*, 2013 IL App (2d) 120412, the plaintiff filed a negligence action against the defendant, which was later dismissed under Code section 2-1009 (735 ILCS 5/2-1009 (West 2010)). Thereafter, the plaintiff filed a "Motion to Refile," citing sections 2-1301 and 2-1401 of the Code as the bases for relief. The defendant moved to dismiss the plaintiff's motion, which the circuit court granted. Then the plaintiff filed a motion to reconsider, to which the defendant responded, addressing the motion entirely on the merits. The court denied the motion to reconsider, also addressing it entirely on the merits, finding that the plaintiff's only option was to refile the case as a new case and that neither section 2-1301 nor section 2-1401 relief

was available.

¶ 82 On appeal, the appellate court considered whether the defendant's active contesting of the motion to reconsider revested jurisdiction in the circuit court, extending the time to appeal despite the motion's untimeliness. Following *Sears*, the court held it did not because the defendant actively opposed any reopening of the judgment, although without citing any jurisdictional defect. *Shatku*, 2013 IL App (2d) 120412, ¶ 12 (citing *Sears*, 85 Ill. 2d at 260).

¶ 83 Here, Diane did challenge the finality of the judgment in her opposition to Harey's further motion for reconsideration. The record shows she argued that the dismissal of the fifth amended complaint was a final judgment. Her opposition to Harey's further motion for reconsideration shows that she neither asserted a position inconsistent with the merits of the prior judgment nor supported a modification of that judgment. Having lost that battle, she had no choice but to proceed to defend her interests at a trial over which the circuit court utterly lacked jurisdiction to hold. The majority's conclusion that the parties' participation in the trial of the case implied their consent to have the prior dismissal judgment set aside does not conform to the supreme court's holding in *Bailey*. Furthermore, *Bailey specifically* precludes application of the revestment doctrine based on one party's failure "to object based on the finality of the prior judgment or untimeliness of the new proceeding." 2014 IL 115459, ¶ 26. Therefore, I would find that the revestment doctrine is inapplicable and that the circuit court did not reacquire jurisdiction. *Bailey*, 2014 IL 115459, ¶¶ 25-26.

¶ 84 As a result, the circuit court lacked jurisdiction to enter any orders after March 19, 2015, and any circuit court orders entered after that date are void. This appeal should be dismissed for lack of jurisdiction.