2026 IL App (1st) 251954-U
No. 1-25-1954
Order filed November 24, 2026

**NOTICE:** This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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JEFFREY HIERA and KIRSTEN HIERA, Plaintiffs-Appellants,

v.

GREGORY TURZA, Individually and as Trustee, Defendant-Appellee,

(Gregory Turza, Individually and as Trustee, Cross-Appellant

v.

Kirsten Hiera, Cross-Appellee).

Appeal from the Circuit Court of Cook County.
Honorable David B. Atkins, Judge, Presiding.
No. 2018 CH 06330

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JUSTICE D.B. WALKER delivered the judgment of the court.
Justices McBride and Van Tine concurred in the judgment.

**ORDER**

¶ 1 *Held*: We reverse the trial court's grant of summary judgment in favor of defendant and reverse summary judgment in favor of plaintiff on defendant's counterclaim.

¶ 2 Plaintiffs Jeffrey and Kirsten Hiera appeal the order of the trial court granting summary judgment in favor of defendant, Gregory Turza. On appeal, they contend that summary judgment was improper where a question of material fact exists regarding whether defendant charged excessive fees as a trustee. In his cross-appeal, defendant contends that the trial court erred in

granting summary judgment in favor of Kirsten on his counterclaim alleging defamation *per se*, where a question of material fact exists regarding whether a privilege applies. For the following reasons, we reverse both judgments and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On December 18, 2012, Josephine DesParte executed the First Restatement of the Josephine L. DesParte Living Trust (Revocable Trust) and the Josephine L. DesParte Irrevocable Living Trust (Irrevocable Trust). Defendant served as her estate planning attorney, and he was designated the trustee of the Irrevocable Trust. Ms. DesParte died on February 14, 2013. Upon her death, defendant also became the trustee of the Revocable Trust. For purposes of this appeal, we will refer to the trusts collectively as the Trusts.

¶ 5 At Ms. DesParte's death, the Trusts had a combined value of approximately $10 million in marketable securities and real estate. Pursuant to the terms of the Trusts, defendant as sole trustee created and funded sub-trusts for each of Ms. DesParte's 10 beneficiaries. Plaintiffs, who are brother and sister, were beneficiaries of the Trusts.

¶ 6 Pursuant to the terms of the Trusts, the trustee "is entitled to fair and reasonable compensation for the services provided as a fiduciary." For administering Ms. DesParte's estate and creating the sub-trusts, defendant charged a total of $253,310. This amount was split among the 10 beneficiaries according to the percentage of their beneficial interests in the Trusts. Thus, the fee assessed for plaintiffs' 12 percent interest totaled $30,397. Defendant, who served as trustee of the sub-trusts, also charged fees for the ongoing administration of the sub-trusts.

¶ 7 On December 1, 2017, plaintiffs' attorney sent a letter to defendant requesting documents including copies of tax returns and financial statements for plaintiffs' sub-trusts. The letter also stated that Kirsten wished to terminate the sub-trust for her benefit because it did not "make

economic sense." Moreover, if they could not agree to terminate her sub-trust, the letter advised that Kirsten would seek the appointment of a Trust Protector pursuant to section 4.02 of the Trusts. Section 4.02 provides that "[a]ny Trust Protector authorized or required to act with respect to this instrument must be appointed by a court of competent jurisdiction on petition of a Trustee or beneficiary."

¶ 8 Jeffrey was the beneficiary of two sub-trusts. Regarding Jeffrey's sub-trusts, plaintiffs' attorney wanted to discuss the possibility of naming a new trustee who would have the experience and knowledge to administer the sub-trusts to best fit Jeffrey's medical and personal needs. The record does not contain a response to this letter.

¶ 9 A. Complaint, Counterclaim and Summary Judgment

¶ 10 Plaintiffs filed their initial complaint against defendant on May 16, 2018. On April 9, 2019, they filed their first-amended complaint. Therein, plaintiffs alleged that defendant breached his fiduciary duty as trustee by making "overly aggressive investments" and "charging excessive administration fees" for their sub-trusts. They further alleged that defendant refused to provide annual accountings and financial documents to plaintiffs as beneficiaries.

¶ 11 The amended complaint contained six counts. Counts I and II sought an accounting and inventory of the Trusts, as well as documentation to support the inventory and accounting. Count III alleged professional negligence against defendant. Plaintiffs later voluntarily dismissed count III.

¶ 12 Count IV alleged that defendant breached his fiduciary duty as trustee of the Revocable Trust when he charged an excessive fee for administering the trust and creating sub-trusts for Ms. DesParte's beneficiaries after her death. Plaintiffs alleged that defendant charged $120,000 in 2013 and $133,310 in 2014 for a total of $253,310. They also alleged that defendant had not provided

time sheets documenting the time spent on tasks or the services he provided. As damages, plaintiffs sought "an amount to be determined at trial but not less than $30,397," which represented the portion of the total fee assessed to them.

¶ 13 Count V alleged a breach of fiduciary duty where defendant charged excessive fees to administer plaintiffs' sub-trusts. Plaintiffs alleged that because defendant had not provided a proper accounting, "it is unclear exactly how much he charged for his services as trustee" of plaintiffs' sub-trusts from May 2014 to September 2018. They alleged that, upon information and belief, defendant charged Kirsten's sub-trust $14,726.58, and charged Jeffrey's $27,513.73, during this time period. They further alleged that defendant "has been unwilling or unable to provide records showing fees" incurred for investment advice. Upon information and belief, plaintiffs alleged that the fees paid to investment professionals were excessive as well. Plaintiffs sought no less than $42,277 in damages.

¶ 14 In count VI, plaintiffs sought the appointment of a Trust Protector for their sub-trusts pursuant to section 4.02 of the Trusts. They alleged that as beneficiaries of the Trusts, they had "a right to petition this court to appoint their nominated trust protector."

¶ 15 On May 3, 2019, defendant answered the complaint and filed a two-count counterclaim against Kirsten. Defendant's counterclaim referenced a letter Kirsten had sent to the Internal Revenue Service (IRS). In that letter, Kirsten requested various income and gift tax returns filed by Ms. DesParte before her death. Kirsten stated, "I believe that the executor of Ms. DesParte's estate has been stealing from the estate, and had possibly stolen from Ms. DesParte while she was still alive (she had dementia). This theft would have diminished the value of the Irrevocable trust (of which I am a beneficiary)." Defendant alleged that these statements in the letter falsely accused him of criminal behavior and constituted defamation *per se*.

¶ 16 On May 30, 2023, plaintiffs filed their motion for summary judgment. On July 12, 2023, defendant filed his response and his cross-motion for summary judgment. The trial court held a hearing on the motions. In a written order, the trial court granted judgment in favor of defendant on counts I and II of plaintiffs' complaint because there was no dispute that he provided "a full and complete accounting" after the complaint was filed.

¶ 17 The court, however, denied summary judgment on counts IV and V, finding that "[p]laintiffs simply do not provide enough evidence for the court to rule on their claims." The trial court explained that although plaintiffs alleged that defendant's fees were unreasonable, they did not "include any evidence of how, such as what fees *would* be reasonable under similar circumstances by similarly skilled trustees, whether the percentage-based payment structure used here is common, and if so what sorts are considered reasonable in the field." The court granted judgment for defendant on count VI, finding that "[p]laintiffs do not allege any current or threatened harm to the trusts such that a trust protector would be warranted."

¶ 18 The trial court denied summary judgment on defendant's counterclaim of defamation against Kirsten. It reasoned that whether Kirsten's statement was false "may turn on the remaining factual issues in the case, *i.e.* whether there was any impropriety in Defendant's payments to himself as trustee." The court's order further stated that "[i]n the interests of judicial economy, rather than proceed directly to trial on the sole issue of reasonableness of fees the parties shall each retain an expert on the subject." After doing so, the parties may "renew their motions for summary judgment, supported by that additional evidence."

¶ 19 A. Renewed Motions for Summary Judgment

¶ 20 On May 12, 2025, plaintiffs filed their renewed motion for summary judgment. They attached the opinion of their expert, attorney Jeffrey Zaluda. Relevant to this appeal, Zaluda opined

that defendant did not fulfill a trustee's responsibility to keep complete accounts of the administrative tasks he performed for the benefit of the trusts. Without detailed time sheets, Zaluda could not ascertain the amount of time defendant spent on administrative tasks or the exact work he performed. Zaluda opined that, given that defendant hired investment advisors, accountants, and local property appraisers, "the administrative functions of the simple trust assets were largely farmed out to others."

¶ 21 Zaluda further opined that the amount of fees defendant charged exceeded a reasonable amount for administering trusts holding "straightforward securities and real property." He stated that the administration of such assets was "not complex." In calculating the fees charged as a percentage of the trusts' assets, Zaluda added fees paid to other professionals such as accountants, financial advisors, and property appraisers to the fees defendant charged as trustee. The combined fees amounted to 4.37% of the Trusts' assets. Using the same formula, he determined that from 2014 – 2022, Jeffrey's sub-trusts were charged fees on average from 2.15% to 2.75% of the assets, and Kirsten's sub-trust was charged an average of 2.37%. Zaluda concluded that "[f]ees totaling upwards of $250,000 for hiring various advisers and dividing simplistic assets stretch beyond reasonable given the administrative work itself was not complex."

¶ 22 Plaintiffs requested summary judgment in their favor on counts IV and V of their complaint in the amount of $373,258.82, punitive damages, attorney fees and costs, and the removal of defendant as trustee of the sub-trusts.

¶ 23 That same day, defendant filed a memorandum in support of his cross-motion for summary judgment. Although he had retained an expert, attorney Linda Crane, he did not attach her opinion to his memorandum. He did, however, attach other exhibits, including a schedule of trustee fees assessed to Jeffrey's and Kirsten's sub-trusts from 2014 through 2018, a list of 36 tasks he

performed in administering Ms. DesParte's estate, and fee schedules for Devon Bank and Northern Trust.

¶ 24 Defendant's exhibits showed that from 2014 to 2018, Kirsten's sub-trust was assessed a trustee fee ranging from .56% to 1.1% of the value of the assets. For that same time period, Jeffrey's sub-trusts were assessed fees ranging from .64% to 1% of their value.

¶ 25 The "Trustee Fee Schedule" for Devon Bank listed a fee of 1.25% for the first $1 million, decreasing to .5% for amounts over $2 million. The document did not specify what services were included in the fee.

¶ 26 For Northern Trust, the fees shown pertained to its "Estate Settlement Services." Such services included "gathering and valuing all assets; determining the estate's liabilities; analyzing the tax elections available to the estate, trust, and beneficiaries; selling assets as necessary and distributing assets to the beneficiaries." Northern Trust also "will prepare federal and state estate tax returns or will gather the information required, working with the estate's tax professionals. There is no discount for returns prepared by outside preparers if Northern Trust serves in a fiduciary capacity." Furthermore, "attorney fees, as well as charges by outside professionals including appraisers, accountants, and other advisors, are an expense of the estate and are in addition to fees of Northern Trust." The minimum fee for Northern Trust's services was $30,000. For an account valued at $10 million, its fee would be $230,000.

¶ 27 Defendant argued that courts have approved the use of percentage-based schedules for determining fees, citing *In re Estate of Parlier*, 40 Ill. App. 3d 840 (1976), and *In re Estate of Brown*, 58 Ill. App. 3d 697 (1978). He also argued that as trustee, he need not detail the number of hours spent on each activity. He stated that the sub-trusts have grown in value since he became trustee, and plaintiffs have not alleged any current or threatened harm to their sub-trusts.

¶ 28 Regarding his counterclaim for defamation, defendant attached Kirsten's letter and excerpts from her deposition. When asked whether she believed defendant stole from her aunt's estate, Kirsten answered, "I think steal is, you know, a figure of speech." She explained,

> "I think the fees were excessively high that they rose to the level of stealing in the colloquial sense. That, you know, he took without right. He took without anybody agreeing. Nobody agreed to the fees. My aunt didn't agree to the fees, nobody agreed to the fees. And so a lot of people would deem that as stealing because there's no meeting of the minds, there's no agreement. I mean, he just took an amount because he felt he was entitled to it."

¶ 29 In response to defendant's memorandum, plaintiffs argued that the fee schedules from Devon Bank and Northern Trust constituted inadmissible hearsay. They also distinguished the cases cited by defendant, arguing that in *Brown*, the trustee presented testimony of an expert witness regarding fees, and in *Parlier*, the fee schedule used by the attorney was published by the local bar association. Plaintiffs reiterated their concern that the tasks performed by defendant as trustee did not merit the fee charged.

¶ 30 On defendant's counterclaim for defamation, Kirsten argued that she was entitled to judgment because her statements were protected expressions of opinion, capable of innocent construction, or a qualified privilege applied.

¶ 31 After full briefing by the parties, the trial court found that defendant carried his burden to show that his fees were reasonable. The court reasoned that "[i]t has never been disputed that Defendant charged 2.5% of the value of the estate, and he now provides fee schedules of other trustees advertising rates from 1.25% to 3% of estates of similar value." The trial court noted that defendant's fee was "well within this range," and the estate's assets have grown in value. The court further found that "[p]laintiffs have identified no law requiring hourly billing, nor rebuttal to

Defendant's evidence that billing as a percentage of estate value is common." It agreed with defendant that "larger funds necessarily comes [*sic*] with larger responsibility and risk of liability."

¶ 32 The trial court found that under the circumstances, defendant's fees were reasonable. In a footnote, the court acknowledged the opinion of plaintiffs' expert that "the fees charged were excessive compared to the services rendered." It found, however, that Zaluda's opinion was "not dispositive," and the court was "free to analyze the reasonableness of the fees independently." The court granted summary judgment in favor of defendant on counts IV and V of plaintiffs' complaint.

¶ 33 On defendant's counterclaim alleging defamation, the trial court granted summary judgment in favor of Kirsten. Having determined that defendant's fees were reasonable, Kirsten's statements that she believed defendant had been stealing from the estate were not "substantially true." The court found, however, that Kirsten was entitled to judgment because the record showed that "she genuinely believed [the statement] to be true," either literally or as an opinion. "In either case, [her statements] are not actionable as defamation."

¶ 34 Plaintiffs appealed the trial court's grant of summary judgment on counts IV, V and VI of their amended complaint. Defendant filed a cross-appeal challenging the trial court's grant of summary judgment on his counterclaim of defamation.

¶ 35 II. ANALYSIS

¶ 36 Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Seymour v. Collins*, 2015 IL 118432, ¶ 42. "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Lewis v. Lead Industries Association*, 2020 IL 124107, ¶ 15. Where, as here, the parties file cross-motions for summary judgment, they agree that only a question of law

is involved and the court may decide the issues based on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. However, the mere fact that they filed cross-motions does not mean no issue of material fact exists, nor does it obligate the court to enter summary judgment. *Id.* Summary judgment is a drastic measure that should be granted only if the movant's right to judgment is clear and free from doubt. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007). We review the trial court's grant of summary judgment *de novo*. *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 15.

¶ 37 A. Summary Judgment on Plaintiffs' Complaint

¶ 38 Plaintiffs first contend that the trial court improperly granted summary judgment in favor of defendant on counts IV and V of their complaint. Count IV alleged that defendant, as trustee, charged an unreasonable fee of $253,310 to administer the Revocable Trust after Ms. DesParte's death. Count V alleged that defendant charged excessive trustee fees for administering plaintiffs' sub-trusts from May 2014 to September 2018. In granting summary judgment, the trial court found that defendant "carried his burden of showing the fees are reasonable."

¶ 39 The trial court noted that defendant indisputably charged 2.5% of the value of DesParte's estate, and he provided the court with "fee schedules of other trustees advertising rates from 1.25% to 3% of estates of similar value." It found that "Defendant's rate is well within this range." Although defendant did not keep time logs, the court found that no law required hourly billing. It agreed with defendant that "management of larger funds necessarily comes with larger responsibility and risk of liability," and as a result, defendant's fees were not excessive for the amount of work done. While plaintiffs' expert disagreed, the trial court did not find his opinion "dispositive" on the issue of reasonableness.

¶ 40 However, on a motion for summary judgment, it is irrelevant whether or not a factfinder accepts the expert's opinion; rather, the pertinent issue is whether the expert's statements created a genuine issue of material fact. *Harris v. Bethlehem Steel Corp.*, 124 Ill. App. 3d 449, 453 (1984). There is no clear-cut rule when ascertaining a reasonable fee; rather, the determination is "based on the facts and circumstances of the particular case being considered." *Estate of Brown*, 58 Ill. App. 3d 697, 706 (1978). Factors to consider include the size of the estate, the complexity of administering the estate, the work involved and the skills used, the time expended, and the "good faith and reasonable prudence of the one requesting the fee." *Matter of Kottrasch's Estate*, 63 Ill. App. 3d 370, 373 (1978).

¶ 41 Plaintiffs' expert Zaluda opined that defendant's fees were excessive for the services he rendered as trustee. Neither defendant nor the trial court challenged Zaluda's competency to testify as an expert, and defendant did not offer a contradictory opinion. According to Zaluda, administration of the Trusts was "not complex" because the assets held were "straightforward securities and real property." He concluded that defendant "largely farmed out" the administrative functions of simple trust assets when he hired investment advisors, accountants, and property appraisers.

¶ 42 Although defendant provided a list of tasks he performed as trustee, Zaluda noted defendant's failure to keep detailed time sheets of the administrative tasks he performed for the benefit of the trusts. Without that information, Zaluda stated that he could not ascertain the amount of time defendant spent on administrative tasks or the work he actually performed.

¶ 43 Defendant argues that the trial court need not consider the amount of hours expended as the determinative factor when ruling on the reasonableness of fees. See *Brown*, 58 Ill. App. 3d at 708. While that may be true, the simple fact that the number of hours is not *determinative* does not

mean it is altogether irrelevant. We note that the amount of time expended is an important factor when considering the reasonableness of a party's fees. See *Kottrasch*, 63 Ill. App. 3d at 375; *In re Estate of Coleman*, 262 Ill. App. 3d 297, 299 (1994). As such, the time defendant expended on tasks as a trustee, while not dispositive, remains relevant to the issue. See *Brown*, 58 Ill. App. 3d at 708 (although the executor and attorneys used a pre-existing fee schedule based on a set percentage of the estate's assets, the main point of contention on the issue of reasonable fees concerned the number of hours the petitioners expended on the estate).

¶ 44 Zaluda opined that the number of hours defendant worked was a crucial component of calculating his fees that defendant did not provide. Defendant, however, disagreed that the number of hours worked should be given considerable weight when determining the reasonableness of fees. Where reasonable persons could differ on the weight to be given relevant factors, summary judgment is inappropriate. *Seymour*, 2015 IL 118432, ¶ 42.

¶ 45 We find that a genuine issue of material fact exists precluding summary judgment on counts IV and V of plaintiffs' amended complaint, and the cause is remanded for further proceedings. At this time, we express no opinion on whether defendant's use of fee schedules from Devon Bank and Northern Trust was appropriate for ascertaining his fees in this case.

¶ 46 Plaintiffs also argue on appeal that the trial court should have removed defendant as trustee pursuant to count VI of their amended complaint. Count VI, however, only requested the appointment of a trust protector. Pursuant to the terms of Ms. DesParte's Trusts, the purpose of a trust protector "is to direct my Trustee in matters concerning the trust, and to assist in achieving my objectives as expressed by the other provisions of my estate plan if needed." The terms also provide that "[i]f the office of Trustee of a trust created under this agreement is vacant and no designated Trustee is able and willing to act, the Trust Protector (if any) may appoint an individual

or corporate fiduciary to serve as my successor Trustee." Plaintiffs have identified no provision authorizing a trust protector to remove an existing trustee who is able and willing to act.

¶ 47 In their motion for summary judgment, plaintiffs actually requested defendant's removal as *relief* if the trial court granted summary judgment in their favor. The court, however, granted summary judgment for defendant. In any event, we have found that a question of material fact exists precluding summary judgment in favor of either party. Thus, the issue of whether defendant should be removed as trustee is not properly before us at this time.

¶ 48 B. Summary Judgment on Defendant's Counterclaim

¶ 49 Defendant contends that the trial court erred in granting summary judgment for plaintiffs on his counterclaim alleging defamation *per se*.

¶ 50 A defamatory statement "harms a person's reputation to the extent it lowers the person in the eyes of the community or deters the community from associating with her or him." *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). If the harm is obvious on its face, the statement is defamatory *per se*. *Id*. Illinois recognizes five categories of statements considered defamatory *per se*: (1) words imputing a person has committed a crime; (2) words imputing a person is infected with a loathsome communicable disease; (3) words imputing a person is unable to perform his or her employment duties; (4) words that prejudice a person in his or her profession; and (5) words imputing a person has engaged in adultery or fornication. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 88-89 (1996).

¶ 51 Even if a statement is defamatory *per se*, it is not actionable if it is reasonably capable of an innocent construction. *Hadley v. Doe*, 2015 IL 118000, ¶ 31. To determine whether the statement is reasonably susceptible to an innocent interpretation, the trial court must consider the statement

"in context, giving the words and implications therefrom their natural and obvious meaning." *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 11 (1992).

¶ 52 Additionally, a statement is not actionable as defamation if it is a constitutionally protected expression of opinion. *Hadley*, 2015 IL 118000, ¶ 33. However, a false assertion of fact, couched within an apparent opinion, can be actionable. *Solaia*, 221 Ill. 2d at 581. "The test is restrictive: a defamatory statement is constitutionally protected only if it cannot be reasonably interpreted as stating actual fact." *Id.* Factors to consider include (1) whether the statement is verifiable; (2) whether it has a precise and readily understood meaning, and (3) whether the statement's context indicates it has factual content. *Id.* "If a statement is factual, and it is false, it is actionable." *Id.*

¶ 53 In her letter to the IRS, Kirsten stated, "I believe that the executor of Ms. DesParte's estate has been stealing from the estate, and had possibly stolen from Ms. DesParte while she was still alive (she had dementia). This theft would have diminished the value of the Irrevocable trust (of which I am a beneficiary)." Defendant argues that her statements constituted defamation *per se* because "[t]heft is a crime, and accusing [defendant] of stealing imputes that [he] has committed a crime."

¶ 54 Given the trial court's finding that Kirsten's statements were not *actionable* as defamation, we presume that it found Kirsten's statements to be defamatory. The trial court further found that Kirsten's statements to the IRS were false, but she "genuinely believed [the statement] to be true," either literally or as an opinion. "In either case, [her statements] are not actionable as defamation." As support, the court cited *Troman v. Wood*, 62 Ill. 2d 184, 198 (1975). Although the court cited *Troman*, our supreme court in *Troman* explained that even if the declarant believed the statement to be true, it could be actionable as defamation if he or she "lacked reasonable grounds for that belief." *Id.*

¶ 55 Accordingly, the test for deciding whether her statements are actionable is not whether Kirsten believed them to be true. Rather, the trial court must determine whether her statements are reasonably capable of an innocent interpretation or cannot be reasonably construed as stating an actual fact. *Hadley*, 2015 IL 118000, ¶¶ 31, 33. In making this determination, "the court considers the statement from the perspective of an ordinary reader of the statement." *Brennan v. Kadner*, 351 Ill. App. 3d 963, 969 (2004).

¶ 56 Moreover, it is clear from the record that a question of material fact exists regarding this issue. Defendant argues it is undisputed that theft is a crime, and accusing him of stealing from Ms. DesParte imputes that he has committed a crime. Kirsten, however, argues that the word "theft" in the context of the letter was "a figure of speech" which she used "in the colloquial sense" to describe defendant's charge of excessive fees. Where conflicting inferences can be drawn from the evidence, summary judgment is an inappropriate disposition. *Banco Popular v. Beneficial Systems, Inc.*, 335 Ill. App. 3d 196, 213 (2002).

¶ 57 III. CONCLUSION

¶ 58 For the foregoing reasons, we reverse the judgment of the circuit court granting summary judgment in favor of defendant on counts IV and V of plaintiffs' complaint, and we reverse the grant of summary judgment in favor of Kirsten on defendant's counterclaim. The cause is remanded for further proceedings.

¶ 59 Reversed and remanded.