

An Overview of Standards of Appellate Review in Illinois Civil Cases¹

by Timothy J. Storm



Introduction

The standard of review is one of the most significant and most often misunderstood aspects of appellate practice. Simply stated, the standard of review reflects the degree of deference the appellate court will give to the lower courts' decisions²—ranging from none (under the *de novo* standard) to very high (when the abuse of discretion standard is applied). The appropriate standard of review depends upon the particular issue or issues on appeal.³

Illinois Supreme Court Rule 341 requires "a concise statement

of the applicable standard of review for each issue, with citation to authority" in the appellant's brief.⁴ Notwithstanding the mandatory language of the rule, the appellate courts generally have not imposed negative consequences for an appellant's failure to state the standard, as long as the omission does not hinder the court's review.⁵

Although courts may be lenient when parties fail to state the standard of review, the proper standard for a particular issue is important⁶ and counsel should be well aware of the standard or

standards applicable to the issues of each case long before drafting the brief. The standard may be essentially outcome determinative in some cases.⁷ Less drastically, the standard will have a substantial impact on the best approach to crafting arguments on appeal. Even more basically, knowing which standard or standards of review will apply may play a significant role in deciding whether to appeal the trial court's ruling.

This article explains the meaning of the standards of review used in appeals of Illinois

1. This article is adapted from *Standards Of Appellate Review In Illinois Civil Cases: A Summary Reference For Practitioners* (2004-2005), a practice guide compiled by the author.
2. *In re D.T.*, 212 Ill.2d 347, 355, 818 N.E.2d 1214, 1222 (2004).
3. *LAS, Inc. v. Mini-Tankers, USA, Inc.*, 342 Ill.App.3d 997, 1001, 796 N.E.2d 633, 636 (5th Dist. 2003).
4. Ill. Sup. Ct R. 341(h)(3).
5. See, e.g., *Moomaw v. Mentor H/S, Inc.*, 313 Ill.App.3d 1031, 1035, 731 N.E.2d 816, 820 (4th Dist. 2000), *appeal denied*, 192 Ill.2d 692, 742 N.E.2d 329 (2000).
6. *Franz v. Calaco Dev. Corp.*, 352 Ill.App.3d 1129, 1139, 818 N.E.2d 357, 368 (2nd Dist. 2004).
7. See, e.g., *People v. Miller*, 173 Ill.2d 167, 207, 670 N.E.2d 721, 740 (1996) (J. McMorrow, specially concurring), *cert. denied*, 520 U.S. 1157 (1997).

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civil cases and provides examples of common issues to which each standard applies.

The Meaning of the Standards of Review

Four general standards of review are articulated in case law for appeals of Illinois civil cases, although there are some variations found in various courts' terminology. The four major standards of review are usually denominated as: (A) *de novo*; (B) clear error; (C) manifest weight of the evidence; and (D) abuse of discretion. The four standards

are listed above in order from that which gives the least deference to the trial court's ruling (*de novo*) to the greatest deference (abuse of discretion). Set forth below is a brief description of the meaning of each standard:

De Novo. Under the *de novo* standard, the appellate court will consider the issue anew, giving no deference to the circuit court's decision.⁸ When the *de novo* standard of review is applied, the appellate court uses the same rule of law and standard of decision as the circuit court is required to use in the first instance.⁹

Clear Error. This standard lies between the *de novo* and manifest weight of the evidence standards and gives "some deference" to the lower court's experience and expertise.¹⁰ A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is "left with the definite and firm conviction that a mistake has been committed."¹¹

Manifest Weight of the Evidence. A decision is against the manifest weight of the evidence when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary,

8. See *People ex rel. Waller v. Harrison*, 348 Ill.App.3d 976, 979-80, 810 N.E.2d 589, 592 (2nd Dist. 2004), *appeal denied*, 211 Ill.2d 614, 823 N.E.2d 978 (2004).

9. *Dep't of Trans. v. Drury Displays, Inc.*, 327 Ill.App.3d 881, 886, 764 N.E.2d 166, 171 (5th Dist. 2002), *appeal denied*, 201 Ill.2d 564, 786 N.E.2d 182 (2002).

10. *City of Belvedere v. Illinois State Labor Rel. Bd.*, 181 Ill.2d 191, 205, 692 N.E.2d 295, 302 (1998).

11. *AFM Messenger Serv., Inc. v. Dep't of Emp. Sec.*, 198 Ill.2d 380, 395, 763 N.E.2d 272, 282 (2001), *citing United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

trary, or not based upon any of the evidence.¹² A finding may also be considered to be against the manifest weight of the evidence if the outcome either is palpably erroneous and wholly unwarranted or appears to be a product of passion or prejudice.¹³ A reviewing court will consider any improperly excluded evidence in assessing whether the trial court's ruling is against the manifest weight of the evidence.¹⁴

Abuse of Discretion. Abuse of discretion "is a legal term of art; it is not a wooden term but

one of flexibility, dependent on the type of case in which it is to be applied and posture of the case when it arises."¹⁵ This is the most commonly applied standard and provides the greatest deference to the trial court's decision, representing "next to no review at all[.]"¹⁶

Abuse of discretion "means clearly against logic; the question is not whether the appellate court agrees with the circuit court, but whether the circuit court acted arbitrarily, without employing conscientious judgment, or

whether, in view of all the circumstances, the court exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted."¹⁷ A court abuses its discretion only where no reasonable person would take the view adopted by the court.¹⁸ However, the circuit court must exercise its discretion within the bounds of the law, so that commission of a legal error is a sufficient ground for reversal under the abuse of discretion standard.¹⁹ When the question on appeal involves the

12. *Rhodes v. Illinois Cent. Gulf R.R.*, 172 Ill.2d 213, 242, 665 N.E.2d 1260, 1274 (1996).

13. *Jarke v. Jackson Prods., Inc.*, 282 Ill.App.3d 292, 299, 668 N.E.2d 46, 50 (1st Dist. 1996), *appeal denied*, 168 Ill.2d 593, 671 N.E.2d 732 (1996).

14. *In re Marriage of Gordon*, 233 Ill.App.3d 617, 651, 599 N.E.2d 1151, 1174 (1st Dist. 1992), *appeal denied*, 147 Ill.2d 626, 606 N.E.2d 1226 (1992).

15. *O'Brien v. Meyer*, 281 Ill.App.3d 832, 834, 666 N.E.2d 726, 728 (1st Dist. 1996), *quoting* *Direx Isr., Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 814 (4th Cir. 1992).

16. *D.T.*, 212 Ill.2d at 356, 818 N.E.2d at 1222.

17. *State Farm Fire & Cas. Co. v. Levertton*, 314 Ill.App.3d 1080, 1083, 732 N.E.2d 1094, 1096 (4th Dist. 2000).

18. *Lewy v. Koeckritz Int'l, Inc.*, 211 Ill.App.3d 330, 334-35, 570 N.E.2d 361, 365 (1st Dist. 1991).

19. *Beehn v. Eppard*, 321 Ill.App.3d 677, 680, 747 N.E.2d 1010, 1013 (1st Dist. 2001).

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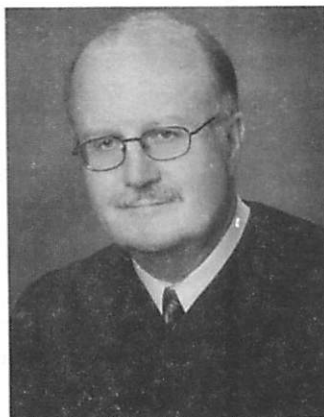
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resolution of factual issues and the applicable standard of review is abuse of discretion, the trial court's findings of fact will not be disturbed unless they are entirely unsupported by evidence in the record.²⁰ In determining whether there has been an abuse of discretion, the reviewing court may not substitute its judgment for that of the trial court, or even determine whether the trial court exercised its discretion wisely.²¹

Generally, where discretion has been vested in the trial court, only a clear abuse of discretion or an application of impermissible legal criteria justify reversal.²² However, a trial court's refusal to exercise discretion due to the mistaken belief that it has no discretion is error that may warrant reversal.²³

Application of the Standards of Review

De Novo. The *de novo* standard is applied when pure questions of law are at issue.²⁴ Because the appellate court does not have access to live testimony, *de novo* review is not appropriate where either witness credibility or the weight to be accorded to conflicting testimony is at issue.²⁵

Some common instances in which the *de novo* standard is applied are circuit court rulings on motions attacking the legal sufficiency of pleadings, such as motions to strike or dismiss for failure to state a claim²⁶ and motions to dismiss for certain defects or defenses.²⁷ Judgment on the pleadings is also reviewed under the *de novo* standard.²⁸ The court's decision on whether to grant summary judgment presents a question of law and is re-

viewed *de novo*, as well.²⁹

In a bench trial, when the trial court finds for the defendant at the close of the plaintiff's case in chief because the plaintiff failed to present a *prima facie* case, the ruling is reviewed *de novo*.³⁰ Likewise, where the trial court takes the case from the jury, the court's ruling is an issue of law to be reviewed *de novo*.³¹ This is also the proper standard for reviewing rulings when the court directs a verdict³² or enters judgment notwithstanding the verdict.³³

Trial court rulings on the merits that involve the application of law to undisputed facts are reviewed *de novo* because the appellate court is in as good a position to determine the issue as is the circuit court.³⁴ For example, the grant or denial of a permanent injunction where the facts are undisputed is subject to *de novo* review.³⁵

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20. *Schwartz v. Cortelloni*, 177 Ill.2d 166, 176, 685 N.E.2d 871, 876 (1997).
21. *Simmons v. Garces*, 198 Ill.2d 541, 568, 763 N.E.2d 720, 737 (2002).
22. *Boatmen's Nat'l Bank of Belleville v. Martin*, 155 Ill.2d 305, 314, 614 N.E.2d 1194, 1198-99 (1993).
23. *Selvy v. Beigel*, 309 Ill.App.3d 768, 775-76, 723 N.E.2d 702, 708 (1st Dist. 1999).
24. *Williams v. Staples*, 208 Ill.2d 480, 487, 804 N.E.2d 489, 492 (2004).
25. *MO Constr. Co., Inc. v. Intercargo Ins. Co.*, 318 Ill.App.3d 673, 679, 742 N.E.2d 820, 824 (1st Dist. 2000).
26. 735 ILCS 5/2-615. *Bajwa v. Metro. Life Ins. Co.*, 208 Ill.2d 414, 421, 804 N.E.2d 519, 525 (2004).
27. 735 ILCS 5/2-619. *Borowiec v. Gateway 2000, Inc.*, 209 Ill.2d 376, 383, 808 N.E.2d 957, 962 (2004), *cert. denied*, 125 S. Ct. 88 (2004).
28. 735 ILCS 5/2-615(e). *H & M Commercial Driver Leasing, Inc. v. Fox Valley Containers, Inc.*, 209 Ill.2d 52, 57, 805 N.E.2d 1177, 1179-80 (2004).
29. 735 ILCS 5/1005. *Adams v. Northern Ill. Gas Co.*, 211 Ill.2d 32, 43, 809 N.E.2d 1248, 1256 (2004).
30. 735 ILCS 5/2-1110. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 275, 786 N.E.2d 139, 148 (2003), *cert. denied*, 540 U.S. 818 (2003). However, where the trial court weighed the evidence, the appellate court will determine whether the trial court's ruling was against the manifest weight of the evidence. *Id.* at 276, 786 N.E.2d at 149.
31. *People v. Johnson*, 334 Ill.App.3d 666, 676, 778 N.E.2d 772, 781 (4th Dist. 2002), *appeal denied*, 203 Ill.2d 558, 788 N.E.2d 732 (2003).
32. 735 ILCS 5/2-1202(a). *Evans v. Shannon*, 201 Ill.2d 424, 427, 776 N.E.2d 1184, 1186 (2002).
33. 735 ILCS 5/2-1202(b). *Snelson v. Kamm*, 204 Ill.2d 1, 42, 787 N.E.2d 796, 819 (2003).
34. *In re Marriage of Peters*, 326 Ill.App.3d 364, 366, 760 N.E.2d 586, 588 (2nd Dist. 2001).
35. *C.J. v. Dep't of Human Servs.*, 331 Ill.App.3d 871, 878-79, 771 N.E.2d 539, 547 (1st Dist. 2002).

Other examples of purely legal issues reviewed under the *de novo* standard are determinations of the constitutionality of a statute,³⁶ questions of *res judicata*,³⁷ and the application of legal privileges against the admission of evidence.³⁸

Clear Error. The clear error standard is applied to "mixed questions" of law and fact.³⁹ That is, where "the historical facts are admitted or established, the rule

of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or ... whether the rule of law as applied to the established facts is or is not violated."⁴⁰

Perhaps the most common appearance of "mixed questions" arises in administrative review. In those cases, where the appellate court reviews the decision of the administrative agency rather than that of the circuit court,⁴¹ the

clear error standard applies.⁴²

The clear error category also encompasses such miscellaneous "mixed questions" as the trial court's assessment of damages⁴³ and rulings on allegedly discriminatory jury challenges.⁴⁴

Manifest Weight of the Evidence. Typically, the manifest weight of the evidence standard is appropriate to review findings of fact made by a trial judge.⁴⁵ The reviewing court gives defer-

36. *City of Chicago v. Holland*, 206 Ill.2d 480, 488, 795 N.E.2d 240, 245 (2003).

37. *In re Nancy A.*, 342 Ill.App.3d 355, 356-57, 795 N.E.2d 377, 379 (5th Dist. 2003).

38. *Reda v. Advocate Health Care*, 199 Ill.2d 47, 54, 765 N.E.2d 1002, 1007 (2002). However, as noted below, other aspects of admission or exclusion of evidence are reviewed for abuse of discretion. *Id.*

39. *Knorst v. State Univ. Civil Serv. Sys.*, 325 Ill.App.3d 858, 861, 757 N.E.2d 939, 941 (1st Dist. 2001), *appeal denied*, 198 Ill.2d 592, 766 N.E.2d 240 (2002).

40. *AFM*, 198 Ill.2d at 391, 763 N.E.2d at 279, citing *Pullman-Standard v. Swint*, 456 U.S. 273, 289 (1982).

41. *Bertucci v. Retirement Bd. of the Firemen's Annuity and Benefit Fund of Chicago*, 351 Ill.App.3d 368, 370, 813 N.E.2d 1021, 1023 (1st Dist. 2004), *appeal denied*, 212 Ill.2d 528, 824 N.E.2d 282 (2004).

42. *City of Belvedere*, 181 Ill.2d at 205, 692 N.E.2d at 302. While the final determination is subject to clear error review, questions of law are reviewed *de novo* and findings of fact are reviewed under the manifest weight of the evidence standard. *Id.*

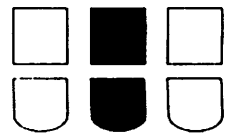
43. 735 ILCS 5/2-1206. *Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525, 543, 662 N.E.2d 1248, 1256 (1996), *cert. denied*, 519 U.S. 910 (1996).

44. *McDonnell v. McPartlin*, 192 Ill.2d 505, 527, 736 N.E.2d 1074, 1087 (2000).

45. *Best v. Best*, 358 Ill.App.3d 1046, 1053, 832 N.E.2d 457, 464 (2nd Dist. 2005).

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ence to the lower court as the finder of fact because the trial court is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that the appellate court does not obtain.⁴⁶ A reviewing court, therefore, must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.⁴⁷

Besides its application to find-

ings of fact in bench trials,⁴⁸ this standard is applied to review of other factual determinations made by the trial court after a hearing, such as those arising from civil contempt proceedings⁴⁹ and permanent injunctions.⁵⁰

The circuit court's determinations of two types of "for cause" challenges are also sustained unless found to be against the manifest weight of the evidence: a motion for substitution of judge for cause⁵¹ and a challenge to a venire member for cause.⁵²

Abuse of Discretion. It is

traditionally said that abuse of discretion review applies to trial court rulings involving overseeing the courtroom or maintaining the progress of a case.⁵³ Within that framework, the scope of rulings reviewed under this most lenient standard is quite broad. Ordinary matters of trial procedure, such as rulings on objections to the scope of witness examination,⁵⁴ the propriety of opening statements or closing arguments,⁵⁵ and motions for a mistrial,⁵⁶ are included.

Also accorded review under

46. *In re Edricka C.*, 276 Ill.App.3d 18, 29, 657 N.E.2d 78, 85 (1st Dist. 1995), *appeal denied*, 165 Ill.2d 551, 662 N.E.2d 424 (1996).

47. *In re D.E.*, 201 Ill.2d 476, 499, 777 N.E.2d 930, 943 (2002).

48. *People ex rel. Ryan v. Agro, Inc.*, 345 Ill.App.3d 1011, 1023, 803 N.E.2d 1007, 1014 (2nd Dist. 2004), *aff'd*, 214 Ill.2d 222, 824 N.E.2d 270 (2005).

49. *In re Marriage of Logston*, 103 Ill.2d 266, 286-87, 469 N.E.2d 167, 176 (1984) ("[W]hether a party is guilty of contempt is 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").

50. *Hasselbring v. Lizzio*, 332 Ill.App.3d 700, 704, 773 N.E.2d 770, 774 (3rd Dist. 2002), *appeal denied*, 202 Ill.2d 602, 787 N.E.2d 156 (2002). Where the facts are undisputed, the entry or denial of a permanent injunction is reviewed *de novo* (*Young v. Mory*, 294 Ill.App.3d 839, 844, 690 N.E.2d 1040, 1043 (5th Dist. 1998)) and the trial court's ruling on each of the elements necessary to establish the right to a permanent injunction is reviewed for abuse of discretion. *Id.*

51. 735 ILCS 5/2-1001(a)(3). *Jacobs v. Union Pac. R.R. Co.*, 291 Ill.App.3d 239, 244, 683 N.E.2d 176, 180 (5th Dist. 1997). See also *In re J.D.*, 332 Ill.App.3d 395, 404, 772 N.E.2d 927, 934-35 (1st Dist. 2002). There is a split of authority on this point, with some appellate districts applying the abuse of discretion standard. See, e.g., *Partipilo v. Partipilo*, 331 Ill.App.3d 394, 401, 770 N.E.2d 1136, 1142 (1st Dist. 2002), *appeal denied*, 201 Ill.2d 575, 786 N.E.2d 187 (2002); *Hartnett v. Stack*, 241 Ill.App.3d 157, 169, 607 N.E.2d 703, 711 (2nd Dist. 1993), *appeal denied*, 151 Ill.2d 563, 616 N.E.2d 334 (1993); *Jurgensen v. Haslinger*, 295 Ill.App.3d 139, 143, 692 N.E.2d 347, 350 (3rd Dist. 1998).

52. 735 ILCS 5/2-1105.1. *O'Donnell v. Holy Family Hosp.*, 289 Ill.App.3d 634, 649, 682 N.E.2d 386, 396 (1st Dist. 1997), *appeal denied*, 175 Ill.2d 530, 689 N.E.2d 1140 (1997).

53. *D.T.*, 212 Ill.2d at 355, 818 N.E.2d at 1222.

54. *McDonnell*, 192 Ill.2d at 533, 736 N.E.2d at 1090.

55. *Simmons*, 198 Ill.2d at 568, 763 N.E.2d at 737.

56. *McDonnell*, 192 Ill.2d at 534-35, 736 N.E.2d at 1091.

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this standard are evidentiary rulings such as the admission or exclusion of evidence,⁵⁷ rulings on motions *in limine*,⁵⁸ and the entry of protective orders.⁵⁹

The addition of parties, either through joinder⁶⁰ or intervention,⁶¹ are matters of discretion. A transfer⁶² or dismissal⁶³ of a case for *forum non conveniens* re-

ceives discretionary review, as well. In addition, some very significant substantive trial court rulings are reversed only for abuse of discretion. These include the grant or denial of a declaratory judgment,⁶⁴ the determination of whether to grant relief from a judgment,⁶⁵ the entry of sanctions,⁶⁶ and the grant or denial of a preliminary injunction.⁶⁷

Conclusion

Selecting the appropriate standard of review is sometimes straightforward and obvious, and occasionally difficult and com-

plex. It is always important and should be considered carefully because the governing standard will always affect the type of arguments available on appeal and may, in some cases, dictate the result of the appeal.

Timothy J. Storm is an attorney with over fourteen years' experience representing parties and amici curiae on appeal. He is the principal of the Law Offices of Timothy J. Storm, which is located in the northwest suburbs of Chicago. The firm's practice is concentrated in appellate litigation and consultation in the state and federal courts of Illinois and other states. His website is located at www.timothyjstorm.com and he can be reached at tjstorm@sbcglobal.net or 847-526-6300.

57. *Simmons*, 198 Ill.2d at 567-68, 763 N.E.2d at 737 (To warrant reversal, an error must have been substantially prejudicial and affected the outcome of the case).
58. *Swick v. Liautaud*, 169 Ill.2d 504, 521, 662 N.E.2d 1238, 1246 (1996).
59. Ill. Sup. Ct R. 201(c)(1). *Skolnick v. Alzheimer & Gray*, 191 Ill.2d 214, 224, 730 N.E.2d 4, 12 (2000).
60. *Carrao v. Health Care Serv. Corp.*, 118 Ill.App.3d 417, 430, 454 N.E.2d 781, 791 (1st Dist. 1983) (Ill. Sup. Ct R. 404); *Watson v. Auburn Iron Works, Inc.*, 23 Ill.App.3d 265, 271-72, 318 N.E.2d 508, 513 (2nd Dist. 1974) (Rule 405); *Winter v. Henry Serv. Co.*, 143 Ill.2d 289, 293-94, 573 N.E.2d 822, 824 (1991) (Rule 406).
61. Ill. Sup. Ct R. 408. *People ex rel. Birkett v. City of Chicago*, 202 Ill.2d 36, 58, 779 N.E.2d 875, 888 (2002).
62. Ill. Sup. Ct R. 187(c)(1). *Dawdy v. Union Pac. R. R. Co.*, 207 Ill.2d 167, 176-77, 797 N.E.2d 687, 696 (2003).
63. Ill. Sup. Ct R. 187(c)(2). *Kwasniewski v. Schaid*, 153 Ill.2d 550, 552-53, 607 N.E.2d 214, 216 (1992).
64. *East St. Louis Sch. Dist. No. 189 Bd. of Educ. v. East St. Louis Dist. No. 189 Fin. Oversight Panel*, 349 Ill.App.3d 445, 453, 811 N.E.2d 692, 701 (5th Dist. 2004) ("While the grant or denial of declaratory relief is discretionary, the trial court's exercise of discretion is not given the same deference as it is in other contexts. Instead, it is subject to an independent, searching review"). Questions of fact decided in a declaratory judgment proceeding are reviewed under the manifest weight of the evidence standard (*id.*) and decisions of law are reviewed *de novo*. *Abrell v. Employers Ins. of Wausau*, 343 Ill.App.3d 260, 262, 796 N.E.2d 643, 645 (3rd Dist. 2003), *appeal denied*, 206 Ill.2d 617, 806 N.E.2d 1064 (2003).
65. 735 ILCS 5/2-1401. *People v. Pinkonsky*, 207 Ill.2d 555, 562, 802 N.E.2d 236, 241 (2003).
66. Ill. Sup. Ct R. 137. *Morris B. Chapman & Assoc., Ltd. v. Kitzman*, 193 Ill.2d 560, 579, 739 N.E.2d 1263, 1275 (2000).
67. *People ex rel. Klaeren v. Village of Lisle*, 202 Ill.2d 164, 177, 781 N.E.2d 223, 231 (2002). See also *Jacksonville Sav. Bank v. Kovack*, 326 Ill.App.3d 1131, 1136, 762 N.E.2d 1138, 1142 (4th Dist. 2002) (abuse of discretion standard applied to ruling staying proceedings, which is a form of injunction).

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