



Appellate Practice Corner

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Appellate Court Holds the Circuit Court Reacquired Jurisdiction Over the Case Despite a Clerk’s Failure to File the Mandate with the Circuit Court and Absence of a Formal Motion to Reinstate Upon Remand

The focus of appellate practitioners is on prevailing in a court of review. But what happens after an appellate victory, especially when a reviewing court remands the case to a trial court for further proceedings? The First District of the Illinois Appellate Court has recently explained what it means for a case to be “reinstated” in the trial court following a remand.

Law Offices of Brendan Appel, LLC v. Georgia’s Restaurant & Pancake House, 2025 IL App (1st) 231573

In *Law Offices of Brendan Appel, LLC v. Georgia’s Restaurant & Pancake House*, the appellate court remanded the case to the trial court to allow plaintiff to file an attorney fee petition. 2025 IL App (1st) 231573, ¶ 1. The appellate mandate issued in January 2022, but the clerk of the circuit court did not file it. *Id.* ¶ 3. And it was not until 14 months later, in March 2023, that plaintiff filed its petition for attorney fees and costs. *Id.* The circuit court ruled that plaintiff failed to timely reinstate its case on remand, pursuant to Supreme Court Rule 369, and dismissed plaintiffs’ fee petition. *Id.* Plaintiff appealed.

At the outset, the appellate court held that the trial court automatically reacquired jurisdiction over the case once the appellate mandate issued -- despite the clerk’s failure to file the mandate with the circuit court. *Id.* ¶¶ 13-15. The court explained:

Were jurisdiction to revest in the circuit court only upon filing—a ministerial act by the clerk of court—litigants subjected to administrative error would be caught in a jurisdictional “no man’s land,” beyond the reach of the appellate court because its mandate has issued yet unable to seek relief in the circuit court because the mandate has not been filed.

Id. ¶ 14.

The appellate court then reversed the circuit court’s order dismissing plaintiffs’ fee petition as untimely. *Id.* ¶ 24. The court explained that Supreme Court Rule 369(c) governs trial proceedings after a remand. *Id.* ¶¶ 17-18. Rule 369(c) provides:

(c) Remandment. When the reviewing court remands the case for a new trial or hearing and the mandate is filed in the circuit court, the case shall be reinstated therein upon 10 days’ notice to the adverse party.

Ill. S. Ct. R. 369(c). The appellate court noted that this remand provision “does not contain an explicit time frame in which the party seeking reinstatement must act.” 2025 IL App (1st) 231573, ¶ 20. All that a party must do to comply with Rule 369(c) is to “diligently pursue the matter on remand.” *Id.* The court explained:

To assess whether an attempt to reinstate is timely under the remand provision, courts examine whether the prevailing party exercised due diligence and reinstated the case within a “reasonable period of time.” Due diligence requires that an untimely movant for reinstatement have a “reasonable excuse” for not acting sooner.

Id. (internal citations omitted). In making this determination, courts consider “the totality of the circumstances,” while analyzing specific reasons for undue delay. *Id.* ¶ 21.

The appellate court also explained that a formal motion to reinstate is not always required. *Id.* ¶ 18. A substantive motion a party files on remand could constitute “a *de facto* motion to reinstate.” *Id.*

The appellate court found that the plaintiff had a reasonable explanation for why it did not seek its fees on remand until 14 months had passed after the issuance of mandate. Specifically, the plaintiff argued that part of its delay was attributable to settlement negotiations with the defendants. *Id.* ¶ 22. The court also noted that the mandate issued “in the wake of the Covid-19 pandemic while both courts and clerks were navigating a partial return to in-person operations.” *Id.* According to the court, the clerk’s error in failing to file the mandate was “a procedural abnormality,” which should have been considered by the trial court as a part of the totality of the circumstances. *Id.* ¶ 24.

Additionally, the defendants did not argue on appeal that they suffered any prejudice as a result of plaintiff’s delay in reinstating the case. *Id.* ¶ 24. Thus, considering the strong preference for resolving cases on the merits, the appellate court reversed the circuit court’s dismissal of the plaintiffs’ fee petition and remanded for further proceedings on that petition. *Id.*

Justice Oden Johnson issued a special concurrence, agreeing with the majority that the case should be remanded for further proceedings on the plaintiff’s fee petition, but disagreeing with the reason for remand. *Id.* ¶ 29. According to Justice Oden Johnson, “[i]t is the filing of the mandate from the appellate court in the circuit court that reinvests jurisdiction in the circuit court.” *Id.* ¶ 40. Because the clerk of the circuit court failed to file the mandate with the circuit court, “the circuit court was never revested with jurisdiction to take any action on remand.” *Id.* ¶ 42. Thus, according to Justice Oden Johnson, the circuit court did not have jurisdiction to take any action on remand, and its order dismissing plaintiff’s fee petition was void. *Id.*

Panel Built, Inc. v. De Kalb County,
2019 IL App (2d) 180334

Law Offices of Brendan Appel is not the only case in which the appellate court excused a long delay in reinstating the case on remand. In *Panel Built, Inc. v. DeKalb County*, the Second District of the Illinois Appellate Court affirmed a grant of sanctions on remand, even though a party did not seek sanctions until approximately 17 months have passed after the issuance of mandate. 2019 IL App (2d) 180334, ¶ 1.

In *Panel Built*, counsel for DeKalb County made false representation in the written discovery and in responsive pleadings, and plaintiffs sought Rule 137 sanctions. *Id.* ¶¶ 4-7. In the first appeal, the Second District vacated the circuit court’s denial of Rule 137 sanctions and remanded to allow the plaintiff to file an amended motion for sanctions

specifying the amount of fees sought. *Id.* ¶ 13. The appellate mandate was filed with the circuit court on August 16, 2016, but the plaintiff did not file its amended sanctions motion until 527 days later, on January 25, 2018. *Id.* ¶¶ 15-16. The defendants objected, claiming the circuit court lacked jurisdiction to hear the motion because it was filed so long after the mandate issued. *Id.* ¶ 15.

The circuit court, however, rejected the defendant’s argument, allowing the amended motion for sanctions in the interests of “justice and fairness” and based on the “reasonableness of the timeliness.” *Id.* ¶ 17. In particular, the court explained that, after the mandate issued, the parties engaged in settlement negotiations and the plaintiff’s counsel also was involved in a separate lengthy trial. *Id.*

On review, the appellate court ruled that the circuit court had jurisdiction, and acted within its discretion in allowing plaintiff’s sanctions motion, despite its tardiness. *Id.* ¶ 29. The court pointed out that the circuit court had presided over the case for five (5) years before the mandate, whereas the delay after the mandate was less than one and a half years. *Id.* ¶ 35. The court also credited the plaintiff’s explanation that the parties sought to settle their dispute following the remand. *Id.* Hence, the circuit court properly considered the totality of the circumstances, including the reason for the delay, in allowing the amended sanctions motion. *Id.*

Practice tip: Upon conclusion of appellate proceedings, counsel should pay attention to when the appellate mandate issues and make sure that a clerk of the circuit court clerk files it with the circuit court in a timely fashion. If the appellate court remands the case for further proceedings, Supreme Court Rule 369(c) requires the case to be reinstated in the circuit court within a reasonable period of time. Thus, a prevailing party should diligently pursue its remedies in the circuit upon the issuance of mandate —either by filing a formal motion to reinstate the case on remand or else by making any other necessary filing which may be construed as a *de facto* motion to reinstate. Otherwise, if a party does not exercise diligence in prosecuting its case on remand and does not have a reasonable explanation for its delay, it risks a dismissal for untimely reinstatement.

About the Author

Irina Dmitrieva is a partner with *HeplerBroom, LLC*. She focuses her practice on appellate litigation and critical trial motions. Irina has represented both government entities and private clients in federal and state appellate courts, including the Illinois Supreme Court, Illinois Appellate Court, and the U.S. Court of Appeals for the Seventh Circuit. Prior to joining HeplerBroom LLC, she handled all appeals on behalf of the Chicago Transit Authority.

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