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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FAITH MARY PRANNO,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 17 CH 07931
)	
MICHELE J. PRANNO DONKLE, as successor)	
trustee to the Amended First Restatement of the)	The Honorable
Louise J. Pranno Trust dated January 27, 1998,)	Thomas R. Mulroy,
)	Judge Presiding.
Defendant-Appellee.)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin in the judgment.

ORDER

Held: The trial court's judgment in favor of the defendant on the plaintiff's claims of breach of fiduciary duty was affirmed where the plaintiff failed to demonstrate that the defendant breached her duties in distributing the decedent's personal property, purchasing the decedent's home, and utilizing trust funds for personal use. Because the plaintiff failed to demonstrate that the defendant breached her fiduciary duties, her claims that the trial court erred in finding that the plaintiff failed to prove damages and that the defendant was entitled to have her attorney's fees paid from the trust were moot. In addition, the plaintiff forfeited any claim of error with respect to her claim for accounting because she abandoned the claim in the trial court.

¶ 1 Following a bench trial, the trial court entered judgment in favor of defendant, Michele J. Pranno Donkle, and against plaintiff, Faith Mary Pranno, on plaintiff's verified complaint, which

included claims of breach of fiduciary duty and accounting. Plaintiff appeals, arguing that the trial court's conclusions that defendant did not breach her fiduciary duty, plaintiff did not suffer any damages, defendant was entitled to have her attorney's fees from the trust at issue, and plaintiff was provided an accounting were against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 The present dispute arises out of the administration of a trust following the death of its creator, Louise J. Pranno. Louise was the mother of the parties, two sisters who appear to have an acrimonious history with each other. Upon her death, Louise's will provided that all of her property be placed into the Louise J. Pranno Trust dated January 27, 1998 (Trust). Defendant was made the successor trustee of the Trust following Louise's death on September 16, 2012.

¶ 4 At the time of Louise's death, the Trust was governed by the terms provided in the First Restatement of the Trust and the First Amendment to the First Restatement of the Trust (collectively, the Trust Documents). The Trust Documents provided the following relevant terms.

“3.1 Tangible Personal Property. *** Any decisions made in good faith by the trustee in distributing tangible personal property shall not be subject to review, and the trustee shall be held harmless from any cost or liability as to those decisions. ***

3.2 Gifts of Remaining Tangible Personal Property. I give all tangible personal property not otherwise effectively disposed of in shares of equal value to my children who survive me (to the exclusion of the descendants of any child who does not survive me), to be divided among them as they agree, or, if they cannot agree within 60 days after my death, as the trustee determines.”

“[3.3(e)] If I own my home at 1231 N. Hamlin, Park Ridge, Illinois at the time of my death, I direct that said home shall be sold as soon as is practical and economically prudent after my death as determined by my Successor Trustee. MICHELE J. PRANNO DONKLE shall receive 10% of the net proceeds of sale for assisting me maintain my home. This payment shall be in lieu of all fees for acting as successor trustee or executor of my estate. Further, I grant MICHELE J. PRANNO DONKLE the right of first refusal to purchase my home from my trust or estate for fair market value at the time of my death.

[3.3(f)] I direct that all accounts held at Chase Bank and US Bank, including checking, savings, certificate of deposit, and annuity accounts be used to pay the expenses of my estate and to satisfy the specific gifts in sub-Paragraphs 3.3a through 3.3d. Any funds remaining after payment of these expenses and gifts shall go to my daughter, MICHELE J. PRANNO DONKLE. This in no way detracts from the love and affection that I hold for my other children but reflects gifts made to my other children during my lifetime and the abundance of care that my daughter MICHELE J. PRANNO DONKLE has given me in recent years.”

“8.2 **Sale.** [The trustee shall have the power t]o sell at public or private sale, contract to sell, grant options to buy, convey, transfer, exchange, or partition any real or personal property of the trust for such price and on such terms a[s] the trustee sees fit.”

¶ 5 In June 2017, plaintiff initiated this action with the filing of her verified complaint. In count I of that complaint, plaintiff alleged that defendant breached her fiduciary duty by failing to timely notify plaintiff of Louise’s death, failing to properly probate the estate, distributing the estate property in unequal shares, failing to distribute the entirety of plaintiff’s share of the estate, failing to give plaintiff her full share of the estate sale proceeds, failing to properly and timely list

Louise's home for sale, residing in Louise's home rent free, committing waste in not properly and timely preparing and presenting Louise's home for sale, failing to provide plaintiff with a proper and timely accounting, failing to maintain proper communication with plaintiff, and failing to deal fairly with plaintiff. In count II, plaintiff alleged that defendant failed to distribute plaintiff's interest in the Trust. In count III, plaintiff requested the trial court to enter an injunction enjoining defendant from living in Louise's home rent free and using the Trust funds to pay her attorneys. Finally, in count IV, plaintiff requested an accounting of assets and expenses of the Trust.

¶ 6 A bench trial was held on plaintiff's complaint in November 2018. Defendant testified first and offered the following testimony. The reference to Louise's children in the Trust Documents referred to plaintiff, defendant, and their brother, Arthur. About a week before Louise's death, Louise went into hospice care. Defendant did not notify plaintiff that Louise had entered hospice. When Louise died, defendant did notify plaintiff of Louise's death, but she could not recall how long after Louise's death she did so. She also could not recall whether she notified plaintiff of Louise's funeral. At the time of Louise's death, defendant lived with Louise in Louise's home.

¶ 7 Defendant testified regarding a series of text messages between her and defendant, which were admitted into evidence. The first exchange in that series took place on October 12, 2012. Defendant testified that she believed she exchanged text messages with plaintiff prior to that date but that she did not have those messages. In the initial message in the exhibit, defendant told plaintiff that she (defendant) and Arthur would not be taking anything from Louise's home, but that Al and Mary Ann (defendant's brother and sister-in-law) had taken "lots." According to defendant's trial testimony, "lots" meant less than \$100 worth of items that she and Arthur had agreed to give Mary Ann and Al. She testified that she and Arthur had attempted to discuss this

issue with plaintiff but had been unable to reach her. In the October 12 texts, defendant asked that plaintiff send a list of the items she wanted as soon as possible. Plaintiff responded that she would provide defendant with a list by the end of the month, to which defendant responded that everything would be sold by that time. Defendant told plaintiff that Louise had no money and that defendant planned to sell the house right away. She asked the plaintiff to send the list “right now” and stated that she could not guarantee that plaintiff would get everything she asked for. Defendant explained at trial that Louise’s estate needed money, so she was trying to organize an estate sale and that she needed a list from plaintiff so that she could set aside plaintiff’s requested items. Plaintiff responded to defendant’s text by saying that defendant would be hearing from her attorney. Over the remaining text messages exchanged that day, defendant told plaintiff that Louise had left a detailed trust that put defendant in charge of everything and made her decisions final. Defendant continued to push plaintiff to provide a list of requested items immediately and repeated that she would try to provide plaintiff with everything she wanted. Plaintiff maintained that she would be contacting her attorney.

¶ 8 On October 17, 2012, plaintiff sent a text message to defendant containing a list of various items that she wanted from Louise’s home and stating that defendant would be contacted at the end of the week to make pickup arrangements. The list included, among other things, Louise’s Hummel figurine collection, some of Louise’s jewelry, chairs that her father had made, marble statutes, various crystal and silver pieces, an antique clock, and a radio. The following day, defendant responded, “i finished reading your list i told u tuesday. sorry i cant help you. please remember there r other people involved and y do not have the right to take everything. if u enter my home i will have u arrested. moms lawyer has been notified. i will split the money evenly three ways.” At trial, defendant clarified that she meant that if plaintiff entered the home and took

anything without permission, then plaintiff would be arrested, but otherwise plaintiff was welcome in the home. On October 19 and 20, 2012, defendant sent plaintiff a number of text messages, advising plaintiff that a number of the items requested by plaintiff had not been found, were found and being held, or were not as plaintiff described. Plaintiff did not respond.

¶ 9 A string of text messages on October 21, 2012, started with a message from defendant to plaintiff, stating that she was in church and requesting that plaintiff call the Trust's lawyer, Scott Kuntz, before plaintiff did anything. The record does not indicate what defendant was referring to when she asked plaintiff not to do anything before contacting Kuntz. In response, plaintiff stated that her attorney would contact Kuntz and that she would see defendant in court so that defendant could explain why she caused Louise grief, did not call plaintiff until October 1, and allowed non-blood related individuals to take items from Louise's home while not allowing plaintiff to have the items she wanted. Later that evening, defendant sent plaintiff a message, stating that she was sorry for how the day went and that it did not have to be that way. Defendant told plaintiff that if she would have returned defendant's messages, they could have reached a solution. She also told plaintiff that it would have been easier if plaintiff "were to have taken the items." Defendant told plaintiff that she would pack up the items that Louise had put plaintiff's name on and some items like those defendant had sent to Mary Ann and Al and would get them in the mail. In response, plaintiff said that was not acceptable and that it was "court time." Defendant explained that any court costs would come out of the Trust funds and that Louise had given away certain items, including some requested by plaintiff, prior to her death. Defendant requested that plaintiff work with her to identify items for plaintiff to have and warned that the longer plaintiff waited, the fewer items there would be to choose from. Plaintiff's response, once again, was to state that she would see defendant in court.

¶ 10 In text messages sent between October 25 and 26, 2012, defendant offered plaintiff a number of items, including a radio plaintiff requested and her choice of china and silverware. Plaintiff refused those offers.

¶ 11 Defendant testified to an email she sent to plaintiff on October 28, 2012, in which she went line by line through the items that plaintiff had requested from the Trust and identified the status of each item. For example, defendant identified items that could not be located in Louise's home, items that had been broken or disposed of, items that would be held for plaintiff, and items that had already been sent to plaintiff. Defendant also identified a number of items that she set aside for plaintiff to purchase at the estate sale. At the end of the email, defendant told plaintiff that she had received more from the Trust than any other family member and that plaintiff was welcome to attend the estate sale to purchase anything else that she wanted. In her trial testimony, defendant explained that if plaintiff came to pick up the items prior to the estate sale, she could just take the items. If she came during the estate sale, however, she would have to purchase them. This was because once the estate sale had been prepared and started, the company who did the work for the estate sale would need to be paid.

¶ 12 Defendant testified that the estate sale proceeds were approximately \$3,500, which was split equally between plaintiff, defendant, and Arthur. Defendant acknowledged at trial that the estate sale was held within 60 days of Louise's death, but testified that was because she and plaintiff were unable to negotiate and come to an agreement

¶ 13 On November 12, 2012, following the estate sale, defendant sent an email to plaintiff stating that she had set aside a number of items for plaintiff and was still holding them for her. She asked that plaintiff give her notice of when she would pick them up and if she did not, defendant would dispose of them. Defendant also identified a list of all the items that plaintiff was

given from Louise's estate. Defendant testified that some of the items on that list were things that plaintiff had requested while others were not. The items that were not requested by plaintiff were ones that defendant had identified as being similar to what she had distributed to other family members and that defendant felt were necessary to give to plaintiff in order to keep the distributions fair. Defendant testified that, in total, she spent three months contacting plaintiff regarding the distribution of Louise's personal property.

¶ 14 Defendant testified that following Louise's death, she continued to live in Louise's home, but did not pay rent at that time. Two weeks after Louise's death in 2012, a realtor opined that the house was worth \$363,000, meaning that is the price at which the realtor would have listed the house for sale. An independent appraiser retained by defendant, Paul Rowe, appraised the house's value at \$225,000 as of September 30, 2012. Based on that appraisal, in approximately June 2014, defendant and her husband made an offer to purchase the house for \$211,500, which reflected a discount for the realtor fees that would not be incurred by defendant foregoing using a realtor. Plaintiff did not like that offer and filed a lawsuit, and, as a result, that sale was never completed. Afterwards, they were unable to lease out the home because of black mold found during renovations. Instead, defendant continued to live in the house to make sure that it was safe. During this time, defendant did not pay rent to the Trust for living in the house.

¶ 15 In December 2014, plaintiff obtained an appraisal of the home, which came back at \$290,000. In January 2015, defendant had Paul Rowe conduct another appraisal. This one placed the value of the house at \$285,000. Shortly thereafter, defendant listed the house for sale for \$329,000. Defendant testified that she did not list the home for sale sooner, because of the repairs and mold remediation that needed to be performed. At the time of listing, defendant and her

husband intended to buy the house only if they were unable to secure a better sale. As a result, she did not exclude herself or her husband from the agent commission clause of the listing agreement.

¶ 16 In total, four purchase offers were made on the house: \$335,000, \$329,000, \$312,000, and \$309,000. The \$335,000 offer was subsequently withdrawn. Defendant initially accepted the \$329,000 offer, but the sale did not ultimately go through, because defendant did not believe it to be a viable option. She testified that it would have been an FHA loan, no inspection was performed, repairs would have been necessary, and the purchasers could not close until May 2015. She later testified, however, that the purchase offer of \$329,000 included a written rider that stated that the property was being sold as is and that the buyer would be responsible for making any necessary repairs. She also testified that she was concerned about the financing for that offer going through, given that the offer was for substantially more than the appraised value. Ultimately, defendant accepted the \$309,000 cash offer in March 2015, which was made by her and her husband. They closed less than a week later. Out of the purchase price, the realtor was paid \$15,945 in commission, \$1,500 was paid in seller's attorney's fees, and \$6,204.51 was paid in "trust fees."

¶ 17 Defendant identified a number of expenditures she made from a Chase Bank account ("Chase account") to maintain Louise's home and to herself and for her benefit. She explained that she wanted to make sure that the house remained in good condition and that under the terms of the Trust Documents, she was to use the Chase account to pay Trust expenses and gifts, but that the remainder of the money in that account was hers. Accordingly, it made no difference that she used some of the funds for her own benefit, because they would have been distributed to her anyway. At the time of trial, defendant had distributed the proceeds of the estate sale and the specific gifts identified in the Trust Documents. In addition, she paid some of her attorney's fees

from the Trust. She had not yet distributed the proceeds from the sale of Louise's home because of the pending litigation.

¶ 18 During her questioning of defendant, plaintiff attempted to introduce into evidence an accounting of the Trust that defendant's prior counsel had prepared and provided to plaintiff. The trial court did not allow the introduction of that accounting, because plaintiff failed to establish the proper foundation for its admission.

¶ 19 Plaintiff offered the following testimony at trial. She was not notified when Louise was placed in hospice care, and she was not notified of Louise's death until October 1, 2012, when she received a voicemail from defendant. The first communication that she had with defendant regarding the Trust were the text messages on October 12, 2012. Plaintiff denied having any communication—texts, phone calls, or emails—with defendant regarding the Trust other than the text messages admitted into evidence. Plaintiff denied seeing any of the emails that defendant discussed in her testimony. According to plaintiff, if defendant sent her any emails, they must have gone to her spam folder, which plaintiff never checked.

¶ 20 Prior to Louise's death, plaintiff, who lived in Nebraska, would visit Louise every fall for one week. The last time that plaintiff saw Louise and her home was during her visit in fall of 2011. Plaintiff made her fall 2012 visit following Louise's death to attend a memorial service held for Louise on October 21, 2012. Prior to that visit, on October 18, 2012, plaintiff reached out to defendant via text message to arrange for the pickup of the items she wanted from Louise's home. Defendant's response was that if plaintiff entered her home, she would be arrested.

¶ 21 When shown the list of items defendant claimed to have sent her, plaintiff testified that she did not receive all of the items on the list and that some of the items on the list were items that otherwise belonged to her from childhood. Plaintiff acknowledged that there were some items that

defendant offered to her that plaintiff refused. Included in these was a radio that plaintiff requested. Plaintiff testified that despite defendant offering the radio to her, she refused because “she was done arguing with [defendant].” Although plaintiff knew that an estate sale would be held, she never inquired as to when the sale would be held, because plaintiff felt that she should not have to attend an estate sale to get what was “rightfully [hers].” Plaintiff agreed that because she and defendant could not reach an agreement on the division of the personal property, the Trust provided that the determination was to be made by defendant. Ultimately, an estate sale was held and plaintiff received one-third of the proceeds from that sale.

¶ 22 Regarding the list of items that she requested, plaintiff testified that the Hummel figurines were worth approximately \$1,000. Plaintiff’s opinion was based on the fact that she purchased over half of Louise’s figurines for her. She valued Louise’s jewelry at well over \$10,000, based on the fact that she had experience purchasing jewelry. She valued the two chairs made by her father at \$100 each. With respect to the marble statues she requested, plaintiff testified, “Oh, I don’t even begin to value, but they would be of value. I mean, they’re marble.” She valued the requested silver at over \$100, but testified that it was “just a guess.” She also testified that she “couldn’t even begin to tell” the value of the requested crystal. Overall, plaintiff testified that she believed she was entitled to approximately \$30,000 from defendant for the personal property that she requested but did not receive. This number was based on her online research on Ebay and other sites. She admitted that she had no expertise in valuing personal property. She could not say that Louise still possessed all of the requested items at the time of her death.

¶ 23 Paul Rowe testified as an expert real estate appraiser. He performed two appraisals on Louise’s home. One was a retrospective appraisal, meaning that although he performed the appraisal in 2014, he was assessing the value of the house as of 2012. He appraised the home at

\$225,000 as of 2012. He performed a second appraisal in 2015 to assess the current market value, which he determined to be \$285,000. In conducting his 2015 appraisal, Rowe relied in part on an inspection performed on the home that noted some issues with the house, including the presence of black mold and foundation issues.

¶ 24 Attorney Scott Kuntz testified that he drafted Louise's estate plan, including the Trust Documents and all subsequent amendments. He believed that the Trust Documents accurately represented Louise's wishes with respect to the administration of her estate. Louise reviewed and signed all of the Trust Documents. Following Louise's death, he understood defendant's plan with respect to Louise's house was to get the house into salable condition and then put it on the market. With respect to personal property, defendant told him that she had boxed up and mailed the smaller items plaintiff had requested and had set aside the larger items for plaintiff.

¶ 25 Finally, attorney Peter Schmiedel testified as an expert in the area of trust law. Because the trial court sustained plaintiff's objections to questions on whether defendant breached her duties under the Trust Documents, Schmiedel's testimony consisted primarily of reciting various provisions of the Trust Documents.

¶ 26 In closing, plaintiff argued that defendant breached her fiduciary duties in a number of ways—purchasing Louise's house for \$309,000, failing to exclude herself from the realtor commission, giving away Louise's personal property before notifying plaintiff, holding the estate sale within 60 days of Louise's death, and generally not acting in good faith.

¶ 27 Plaintiff also argued that defendant's alleged breaches of fiduciary duty caused a number of damages. With respect to defendant's breaches in the in the distribution of the personal property, plaintiff argued that the property she requested but did not receive was valued at \$30,000, but she also admitted that she was only guessing in reaching that number. If the trial court did not

accept the \$30,000 valuation, plaintiff argued, it should nevertheless award plaintiff nominal damages for the lost property. When the trial court questioned how it could do that when there had been no evidence presented as to the value of the personal property, plaintiff's counsel stated, "I understand." With respect to Louise's house, she argued that defendant's self-dealing in purchasing the house caused the Trust to sustain damages in the form of \$15,945 for the realtor commission paid and \$20,000 for difference between the \$329,000 purchase offer and the \$309,000 defendant paid to purchase the house. Plaintiff acknowledged that whatever damages the trial court might award would need to be divided by three—split between plaintiff, defendant, and Arthur—with the exception of the damages for the personal property claim if defendant and Arthur did not want any of the items at issue.

¶ 28 Plaintiff also initially argued that she was entitled to an accounting that accounted for the difference between the house proceeds of approximately \$274,000 and the current \$195,000 value of the Trust. According to plaintiff, because the trial court denied the admission of the accounting that plaintiff attempted to introduce into evidence, defendant had not provided an accounting. "That was not admitted. There is no accounting. Defendant has provided no accounting. They objected to the accounting that we believed was [an] accounting. So at this point, we have not received any accounting." The remainder of the discussion regarding the accounting went as follows.

"THE COURT: Okay. So if I grant your—if I find for you on the accounting, what more would you want that you haven't had already produced?"

MR. YOURA [plaintiff's counsel]: In accounting of the difference between 274 of the proceeds of the house and current value of the trust, which is testified to be 195.

THE COURT: But at the beginning of the case, they told you where that money went.

MR. YOURA: That's the attorneys' fees issue, Judge. And if it's—Well, there's two pieces to that. There's the compensation, the 10 percent, which we are going to argue right now that she's not entitled to due to the breach, and then the attorneys' fees that they have paid for litigation in this case, which are not provided for in the trust and are not properly deducted from the trust.

THE COURT: But in an *[sic]* accounting means, where did the money go and when was it disbursed? You have that information?

MR. YOURA: Right. But the issue with the accounting is then the accounting—if we're going to resolve everything today, I don't need an accounting. I'm not trying to demand something I don't need. But what I'm trying to say is, by getting the accounting and seeing where the money went, now I have a basis to object to where the money went. As we stand right now, I don't know where the money went.

THE COURT: Right. So you said that before, and that—I'm really not following that. That sounds like you were unable to present your case.

MR. YOURA: No. An accounting is a specific remedy of its own.

THE COURT: And I keep asking you what is it in that remedy that you don't already have.

MR. YOURA: If we're going—if the testimony is that the drop from 275 to 195 is nothing but compensation, the 10 percent compensation, plus attorneys' fees for this case, then I know.

THE COURT: Right. That was a conversation we had when the trial started, and I think it's on the record. And I think that's what they said, and I think they gave us some specifics. I don't think that accounts for what you spent in the trial today. What I'm

worried about, and I want to make sure I'm hearing you right, I'm worried that you're suggesting that you don't have enough information to have prosecuted this case.

MR. YOURA: Okay. I understand what you're saying, and that's—I guess what I'm worried about is, I'm worried that you're going to say, 'You didn't present any evidence regarding attorneys' fees paid by the defendant to their attorneys and therefore can't argue those attorneys' fees aren't properly deducted from the trust.'

THE COURT: I don't think that's in dispute, that the lawyers were paid from the trust.

MR. GAROFALO [defendant's counsel]: I mean, that's our position, Your Honor.

THE COURT: It's not—I mean, if I asked you to give me your bills on how much you charged the trust and how much they paid you, you'd be able to do that? There's no dispute about it, right?

MR. GAROFALO: Yes.

THE COURT: You're not saying you weren't paid or you didn't submit the bills. I don't think there's any dispute they were paid by the trust. The exact precise dollar amount, I don't think we arrived at yet, but the concept is the same.

MR. YOURA: Right. All I'm trying to say—

THE COURT: So if I found that was wrong, then later on, we can figure out how much has to be put back. Maybe that's what you're saying.

MR. YOURA: That's exactly what I'm saying. And I guess my concern is that the Court has expressed repeatedly a desire to complete this case today, and I understand that, and I agree. My problem is, as long as we're dealing with those attorneys' fees, we don't need the exact number as long as we know those attorneys' fees are a block, and we can argue against them.

THE COURT: Okay.

MR. YOURA: You follow me?

THE COURT: Yup. But we're arguing really against the concept of the trust paying the fees and whether or not that in itself is a breach.

MR. YOURA: Exactly.

THE COURT: So the number—

MR. YOURA: The number doesn't matter.”

The trial court and plaintiff's counsel then apparently considered the matter resolved, as they moved on to other issues.

¶ 29 Finally, plaintiff argued that defendant's breaches, even the ones that plaintiff admitted did not cause damages, were cumulative and warranted defendant's forfeiture of her compensation (the 10% of the house proceeds). Plaintiff also argued that because of these breaches, defendant was not entitled to have her attorney's fees paid from the Trust.

¶ 30 In response, defendant argued that she had not breached her fiduciary duty in any respect and, even if she did, she acted in good faith, which exempted her from liability under the terms of the Trust Documents.

¶ 31 Ultimately, the trial court found in favor of defendant and against plaintiff. In its written decision, the trial court stated that it had considered every alleged breach of duty raised by plaintiff and all of the evidence presented at trial, and it found that plaintiff had failed to carry her burden of proof in establishing any breaches of fiduciary duty by defendant. As an initial matter, the trial court explicitly stated that it found defendant's testimony to be credible and plaintiff's to be “unreliable and not credible.” More specifically, with respect to the sale of Louise's house, the trial court credited defendant's testimony that her purchase of the home was more advantageous

than the \$329,000 FHA loan sale would have been and that she did not exempt herself from realtor commissions because she was unsure that she would purchase the home.

¶ 32 As for the breaches related to the distribution of the personal property, the trial court noted that plaintiff offered little evidence of any breach, having testified that she could only guess at the value of the personal property she did not receive and that she could not even say whether Louise owned the property at issue at the time of her death. According to the trial court, plaintiff suspected that defendant acted improperly but had no concrete or credible evidence of it. The trial court also noted that plaintiff agreed and stipulated in closing that she had failed to prove by a preponderance of the evidence the value of the personal property she did not receive. Overall, the trial court found the evidence to be overwhelming that defendant “did an excellent job administering this estate; her decisions were fair and reasonable.”

¶ 33 Plaintiff then appealed.

¶ 34 ANALYSIS

¶ 35 On appeal, plaintiff argues that the trial court erred in (1) finding that plaintiff failed to prove defendant breached her fiduciary duties; (2) finding that plaintiff did not suffer any damages; (3) allowing defendant to have her attorney’s fees paid from the Trust; and (4) concluding that plaintiff had already been provided an accounting. We hold that the trial court’s conclusion that plaintiff failed to prove defendant breached her fiduciary duties was not against the weight of the evidence. As a result, we need not address the issue of whether plaintiff was damaged or her contention that defendant was not entitled to have her attorney’s fees paid from the Trust. With respect to plaintiff’s claim for an accounting, we conclude that plaintiff has forfeited any error in that respect.

¶ 36 Breach of Fiduciary Duty

¶ 37 Plaintiff first argues on appeal that the trial court erred in finding that she failed to prove that defendant breached her fiduciary duties. According to plaintiff, the trial court's decision was against the manifest weight of the evidence, because defendant breached her fiduciary duties with respect to the distribution of Louise's personal property, the sale of Louise's home, and her personal use of the Chase account. We disagree.

¶ 38 A claim for breach of fiduciary duty requires proof of the following: (1) the existence of a fiduciary duty, (2) breach of that fiduciary duty, and (3) injury to the plaintiff proximately caused by that breach. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 69. A trial court's findings regarding a breach of fiduciary duty will not be reversed unless they are against the manifest weight of the evidence. *Id.* at ¶ 70. A decision is against the manifest weight of the evidence "only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence." *Id.* As trustee, defendant was obligated to abide by the terms of the Trust Documents, act with fidelity and good faith, and serve the beneficiaries' interests with complete loyalty. *In re Estate of Halas*, 209 Ill. App. 3d 333, 344 (1991).

¶ 39 Plaintiff's contentions regarding the alleged breaches of duty related to the personal property are somewhat difficult to follow in that it is difficult to ascertain what plaintiff alleges is an actual breach and what she claims is simply evidence that the alleged breaches were not good faith actions by defendant. From the best we can understand, however, plaintiff argues that defendant breached her fiduciary duties in distributing the personal property by holding an estate sale within 60 days of Louise's death, failing to allow plaintiff to view all of Louise's personal property, failing to disclose gifts Louise had made to defendant prior to her death, failing to provide a proper inventory of Louise's personal property in the home, and failing to notify plaintiff of

Louise's death and the funeral. Plaintiff also argues that the trial court's conclusion that defendant was a credible witness was undercut by inconsistent text messages from defendant and the fact that defendant did not disclose to plaintiff that Louise had gifted certain items to defendant prior to her death.

¶ 40 With respect to plaintiff's claim that the trial court's finding that defendant was a credible witness, plaintiff has not demonstrated on appeal that such a finding was manifestly erroneous. See *Maple v. Gustafson*, 151 Ill. 2d 445, 460 (1992) ("The question of whom to believe and what weight to be given all of the evidence was a decision for the trier of fact, whose determinations should not be upset on review unless manifestly erroneous."). According to plaintiff, the trial court's determination that defendant was credible was incorrect because defendant told plaintiff that Marianne and Al had taken "lots" of Louise's personal property but then later testified they were only given items worth less than \$100. In addition, defendant first said the Hummel figurines were given to A.J. but then later said that some of the figurines were mailed to individuals and the rest would be placed in the estate sale, all while failing to disclose that Louise had gifted the figurines to defendant prior to her death. We do not believe that these statements are so inconsistent as to make the trial court's credibility determination manifestly erroneous. For example, even if the value of the items given to Marianne and Al was low, that does not necessarily mean that there were not a lot of items given to them. Additionally, with respect to the allegedly inconsistent statements regarding the Hummel figurines, the question of credibility relates to whether the trial court was correct in finding defendant's *testimony* to be credible, not whether every statement made to plaintiff was 100% accurate or clear. Plaintiff questioned defendant about these statements during trial and plaintiff clarified that although she told plaintiff that Louise had sent the Hummels to A.J., Louise had not sent all of them to him and had gifted the remainder of

them to defendant. Defendant chose, however, not to keep them and put them in the estate sale. The trial court found this testimony to be credible, and we see no reason, based on plaintiff's arguments, to disturb that determination.

¶ 41 Turning now to the alleged breaches in distributing the personal property, plaintiff first argues that the trial court's determination that defendant did not breach her fiduciary duty by holding the estate sale within 60 days of Louise's death was against the manifest weight of the evidence. According to plaintiff, the Trust Documents specifically provided that the beneficiaries were given 60 days to reach an agreement on the distribution of the property and, thus, holding the estate sale prior to the expiration of those 60 days was a *per se* breach of fiduciary duty. We disagree.

¶ 42 Plaintiff is correct that the Trust Documents provided that Louise's personal property was to be distributed as her surviving children agreed if they agreed within 60 days. Specifically, the Trust Documents provided that "if [the children] cannot agree within 60 days after my death, [personal property is to be distributed] as the trustee determines." Although this language clearly provides that the personal property must be distributed by agreement of the parties if that agreement is reached within 60 days, it does not require that defendant wait to distribute the property until 60 days have elapsed if it is obvious that agreement within 60 days is futile. In other words, the language says that agreement must occur, if at all, within 60 days; it does not say, however, that the sale must occur, in all circumstances, outside of 60 days.

¶ 43 Here, Louise died on September 16, 2012, setting the 60-day mark at November 15, 2012. On November 1, 2012, defendant sent plaintiff an email stating that she had set aside some furniture for plaintiff and asking that plaintiff notify her if plaintiff intended to attend the estate sale. On November 12, 2012, defendant sent another email to plaintiff, this time indicating that

the estate sale was over. Accordingly, the sale must have been held somewhere between November 2 and November 11, 2012. Thus, the sale was held no more than 13 days early. Prior to November 2, 2012, the evidence at trial makes clear that the parties were making no progress whatsoever in reaching an agreement on the distribution of the personal property plaintiff requested. Within the first hour and a half of the October 12 text message exchange between the parties, plaintiff informed defendant that she would be getting her attorney involved, because defendant requested that plaintiff send her list of requested items immediately before everything was gone. Throughout the text messages exchanged over the coming two weeks, the hostility between the parties did not lessen. Defendant did, however, attempt to communicate with plaintiff regarding the items plaintiff requested, asking for clarification on which items plaintiff was referring to, advising plaintiff of which items had been found or were not present at the home, and offering plaintiff additional items. Defendant's attempts were met with silence, threats of litigation, or petulant refusals of the offered items. At trial, both parties agreed that they were unable to reach any agreement on the distribution of the personal property. Based on this evidence, we cannot say that it was against the manifest weight of the evidence to conclude that the parties would not reach an agreement within 60 days and that defendant did not breach her fiduciary duty by holding the estate sale before the expiration of 60 days. Our conclusion that defendant had latitude in this respect is further supported by the fact that the Trust Documents provide that defendant had the power to sell any real or personal property as she saw fit.

¶ 44 As for plaintiff's other contentions of breach of fiduciary duty in the distribution of the personal property—failing to allow plaintiff to view all of Louise's personal property, failing to disclose gifts Louise had made to defendant prior to her death, failing to provide a proper inventory of Louise's personal property, and failing to timely notify plaintiff of Louise's death and the

funeral—plaintiff has failed to cite any authority in support of her claims that these alleged failures actually constitute breaches of defendant’s fiduciary duties. More specifically, plaintiff does not cite any caselaw, statute, or Trust provisions that demonstrate that defendant was obligated to permit plaintiff into her home to view all of Louise’s property, disclose all gifts Louise had made to defendant, voluntarily provide an inventory of Louise’s personal property to plaintiff, or notify plaintiff of Louise’s death or funeral within a specific timeframe. Although the Trust Documents required defendant to pay Louise’s funeral expenses from the Trust funds, there was no requirement that defendant make the funeral arrangements or notify anyone of the funeral. She also does not make any good faith arguments as to why existing fiduciary law should be extended to encompass these alleged failures as breaches of defendant’s fiduciary duties. For this reason alone, plaintiff has forfeited review of these contentions. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (requiring that the argument section of appeals briefs “shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on”); *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) (“The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7) [citation], resulting in waiver.”); *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986) (“A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.”).

¶ 45 We pause, however, to note a few things with respect to these alleged breaches. Regarding the claims that defendant did not permit plaintiff to view all of Louise’s personal property or provide plaintiff with a proper inventory of Louise’s personal property, nothing in the record indicates that plaintiff ever requested the opportunity to view the property or that she be provided

an inventory of the property. From the record, it appears that plaintiff had no difficulty compiling her list of requested items without viewing the property in person or on an inventory. Moreover, plaintiff's claim that defendant's threat of having plaintiff arrested if plaintiff entered defendant's home precluded her from ever viewing the property is belied by defendant's later communications, by text message and email, repeatedly requesting that plaintiff attend the estate sale to view, select the items she would like, and pick up the items defendant had set aside for her.

¶ 46 With respect to defendant's alleged failure to timely notify plaintiff of Louise's death and her funeral, we note that there is no real explanation for this failure on defendant's part other than the strained relationship between her and plaintiff. Although such a failure, if intentional, can only be characterized as unkind and immature, we do note that plaintiff was notified of Louise's death within two weeks, which left her ample opportunity to request the items she desired. Moreover, although some items might already have been distributed to others, nothing in the Trust entitled plaintiff to first choice of anything and everything she wanted to the exclusion of all others.

¶ 47 We turn now to plaintiff's contention that defendant breached her fiduciary duty with respect to the sale of Louise's home. Plaintiff argues that defendant breached her fiduciary duty by engaging in self-dealing by buying Louise's house herself at a price that was \$20,000 lower than the highest purchase offer, incurring a realtor fee of \$15,945, and delaying the sale of the house until 2015. A trustee is prohibited from engaging in self-dealing that results in a loss to the trust, regardless of negligence or good faith. *Continental Illinois National Bank & Trust Co. of Chicago v. Kelley*, 333 Ill. Ap. 119, 126 (1948). Similarly, where a fiduciary has benefited by virtue of his or her fiduciary status, there is a presumption of fraud or undue influence. *In re Estate of DeJarnette*, 286 Ill. App. 3d 1082, 1088 (1997). In such situations, the burden of proof shifts

to the fiduciary to demonstrate by clear and convincing evidence that they have acted in good faith and have not betrayed the confidence bestowed on them. *Id.*

¶ 48 Different rules apply, however, where the creator of the trust contemplated, created, or sanctioned the trustee's conflict of interest in the trust documents. *Halas*, 209 Ill. App. 3d at 344. "The creator of the trust can waive the rule of undivided loyalty by expressly conferring upon the trustee the power to act in a dual capacity, or he can waive the rule by implication where he knowingly places the trustee in a position which might conflict with the interests of the beneficiaries. *Id.* at 344-45. Under these circumstances, the trustee cannot be held liable for his or her actions unless the party challenging the conduct proves that the trustee acted dishonestly or in bad faith or that he abused his discretion. *Id.* at 345. The burden of proof remains with the party challenging the trustee's conduct. *Id.*

¶ 49 Here, Louise contemplated and sanctioned the conflict of interest created by defendant's purchase of the house from the Trust when she explicitly provided that defendant had the right of first refusal to purchase the house at the fair market value at the time of her death. Accordingly, defendant's actions could constitute a breach of fiduciary duty only if she acted dishonestly or in bad faith, or abused her discretion. We cannot say that the conclusion she did not was against the manifest weight of the evidence.

¶ 50 Defendant, under the explicit terms of the Trust Documents, was entitled to purchase the home if she so desired. Moreover, she was entitled to purchase it for its fair market value at the time of Louise's death. Rowe, a professional certified appraiser, placed the value of the home on September 30, 2012—14 days after Louise's death—at \$225,000. Accordingly, under the terms of the Trust Documents, defendant would have been well within her rights to purchase the home

for \$225,000. Instead, she purchased the home for \$309,000, well above the fair market value of the home at the time of Louise's death and even above the 2015 appraised value.

¶ 51 Nevertheless, plaintiff contends that it was a breach for defendant not to accept the \$329,000 offer and that her failure to do so caused a loss to the Trust. As just discussed, however, defendant had the right of first refusal to purchase the house for \$255,000. Plaintiff cites no authority for the notion that defendant was under an obligation to forego that right simply because a higher offer was made, and we find no support for that position in the Trust Documents. Moreover, the Trust did not sustain a loss by defendant's purchase of the house for \$309,000, because neither plaintiff nor the Trust was entitled to collect on that higher offer. In fact, the Trust actually collected *more* than it was entitled to, given that defendant could have purchased the house for \$225,000 but instead paid \$309,000. Therefore, the trial court was correct in finding no breach of fiduciary duty in defendant's purchase of the house.

¶ 52 As for plaintiff's complaint that defendant incurred unnecessary realtor fees by failing to exclude herself from paying them when she signed the listing agreement, the record does not indicate that defendant acted dishonestly or in bad faith in doing so. Defendant testified that she did not exclude herself from paying the commission because she did not intend to buy the house unless she could not secure a better offer. The trial court credited this testimony and we see no reason to disturb that determination. Moreover, we cannot help but note that there would be no reason or benefit to defendant intentionally incurring unnecessary fees. The proceeds from the sale of the house were to be divided equally between plaintiff, defendant, and Arthur. The payment of the realtor commission reduced the amount of the proceeds deposited into the Trust. Accordingly, the payment of the commission reduced not only the amount plaintiff would receive from the sale of the house but also the amount defendant would receive. It would have been

illogical for defendant to have maliciously incurred those fees, as she would have also reduced her own share by doing so.

¶ 53 Finally, plaintiff's contention that defendant breached her duty by not selling the house until 2015 also does not warrant reversal. The Trust provided that defendant was to sell the house "as soon as is practical and economically prudent after [Louise's] death as determined by [defendant]." Defendant testified that she attempted to purchase the house in 2014, but plaintiff objected. Thereafter, it was discovered that the home contained black mold and required other repairs, which prolonged defendant's ability to place the home for sale. The trial court credited this testimony, and, again, we see no reason to disturb that credibility determination. As such, it was not practical or prudent to place the home for sale until the repairs were made.

¶ 54 The final breach of fiduciary duty that plaintiff contends the trial court should have found was defendant's mismanagement of the funds in the Chase account. In support of this claim, plaintiff argues that defendant's personal use of the Chase account funds was improper. We agree with the trial court that plaintiff failed to demonstrate that this constituted a breach. The Trust provided:

"I direct that all accounts held at Chase Bank and US Bank ***be used to pay the expenses of my estate and to satisfy the specific gifts in sub-Paragraphs 3.3a through 3.3d. Any funds remaining after payment of these expenses and gifts shall go to my daughter, Michele J. Pranno Donkle."

Under this language, defendant was to receive all the funds in the Chase account other than those necessary to pay the specific Trust gifts and expenses. Accordingly, defendant's personal use of the Chase account funds would not constitute a breach unless it cut into the funds necessary to make the specified gifts and pay the estate expenses. Plaintiff has made no contention, either on

appeal or in the trial court, that defendant's personal use of the Chase account funds created a shortfall for the payment of estate expenses and gifts.

¶ 55 The plaintiff does argue, however, that defendant's personal use of the Chase account funds occurred prior to these payments being made and thus constituted a breach. As an initial matter, plaintiff made this argument for the very first time in her reply brief on appeal. Accordingly, it is waived. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) ("Points not argued [in the opening brief] are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). More importantly, although the Trust says that the excess Chase account funds shall be given to defendant "after payment" of the estate expenses and gifts, we interpret this not as a requirement that the expenses and gifts be physically paid out of the Trust before defendant may access the excess funds, but instead that the Chase account funds be allocated to the estate expenses and gifts before defendant may allocate the excess funds for her personal uses. In any case, even if this language of the Trust imposed a requirement that the estate expenses and gifts be physically paid first, plaintiff's argument nevertheless fails, because she did not present any evidence or argument at trial regarding when the personal use of the funds occurred in relation to the payment of the estate expenses and gifts.

¶ 56 In sum, we conclude that the trial court's determination that plaintiff failed to demonstrate that defendant breached her fiduciary duties in any respect was not against the manifest weight of the evidence.

¶ 57 Damages

¶ 58 Plaintiff's next argument on appeal is that the trial court's determination that she failed to prove damages was against the manifest weight of the evidence, because she should have at least received nominal damages and because defendant should have forfeited her trustee compensation

for breaching her fiduciary duties. Because we conclude that the trial court was correct in finding that plaintiff did not prove any breach of fiduciary duty on the part of defendant, we need not address plaintiff's contentions of error with respect to damages. See *Lawlor*, 2012 IL 112530, ¶ 69 (claim for breach of fiduciary duty requires proof of all three elements).

¶ 59 Nevertheless, we pause to make a few observations about plaintiff's contentions. First, plaintiff argues that her failure to provide specific damages related to the personal property was defendant's fault, because defendant misled plaintiff regarding the disposition of certain items, held the estate sale without informing plaintiff, did not provide plaintiff with a current accounting, did not track the items that were sold, and determined on her own that the estate was worth less than \$100,000. These contentions are red herrings. Regardless of the truth of these accusations, they are irrelevant to the issue of whether plaintiff proved damages resulting from her claims related to the disposition of the personal property. Plaintiff's complaint throughout trial was that she did not receive the items that she requested. Yet, when questioned about the value of these items, she could only guess. She even agreed in closing arguments that she had failed to demonstrate her damages in that respect. The above contentions have nothing to do with the value of the items that plaintiff claims she was entitled to but did not receive. Thus, they have no relevance to the question of whether plaintiff proved her damages. We note that plaintiff points out that defendant also guessed at the value of some of the items plaintiff requested. Again, it does not matter. As the plaintiff, the burden was on her, not defendant, to prove her damages. Accordingly, plaintiff's "well-she-did-it-too" argument is no more than tit for tat and has no impact on our determination.

¶ 60 Plaintiff also argues that she proved her damages with respect to defendant's alleged mishandling of the sale of Louise's house, including the \$20,000 difference between the \$329,000

offer that defendant did not accept and the \$309,000 sale price. As discussed above in the breach section, the Trust was never entitled to this amount, because the Trust Documents explicitly provided that defendant could purchase the house at the much lower 2012 fair market value. Thus, they cannot be considered damages.

¶ 61 Finally, plaintiff argued in her reply brief that the trial court refused to find liability because the damages would have to be split between plaintiff, defendant, and Arthur and that the trial court is not permitted to “cherry-pick[] the finding of liability because damages may be too small.” Plaintiff should re-read the trial court’s decision before casting such aspersions. In its recitation of facts, the trial court noted—accurately, we might add—that plaintiff had agreed at trial that any damages awarded in the suit would have to be divided among the three beneficiaries. That is the entirety of the trial court’s comments in that respect. At no point did the trial court state, either explicitly or implicitly, that there was any relationship between the amount of potential damages and its conclusion that plaintiff had failed to make out her case.

¶ 62 Attorney’s Fees

¶ 63 Plaintiff next contends that the trial court erred in not requiring defendant to reimburse the Trust for attorney’s fees it had paid on her behalf related to this litigation. According to plaintiff, because defendant had committed numerous breaches of fiduciary duty, she was not entitled to have her attorney’s fees paid out of the Trust. Although there is certainly authority for the proposition that a trial court has the discretion to refuse payment of attorney’s fees from the Trust to a trustee who has breached his or her fiduciary duty (*Northern Trust Co. v. Heuer*, 202 Ill. App. 3d 1066, 1071 (1990)), plaintiff, again, has failed to demonstrate any breach on the part of defendant. Accordingly, the trial court’s decision in this respect is affirmed.

¶ 64 Accounting

¶ 65 Finally, plaintiff argues that the trial court erred in not awarding her an accounting. This argument is without merit and borders on frivolous, given that plaintiff's counsel essentially abandoned the claim for an accounting during closing arguments. Moreover, it is clear from the record that plaintiff had already received an accounting by the time of trial.

¶ 66 As recited in the summarized facts above, plaintiff's counsel argued that an accounting was necessary to account for the difference between the \$274,000 house sale proceeds and the \$195,000 in the Trust at the time of trial. In discussing this matter with the trial court, plaintiff's counsel acknowledged that he had been previously informed that the difference was attributable to the fact that some of defendant's attorney's fees had been paid from the Trust and that defendant had been paid the 10% of the house sale proceeds as her compensation per the terms of the Trust Documents. Plaintiff's counsel never questioned the accuracy of those representations, but instead expressed concern that because the previously provided accounting was not admitted at trial, he would not be permitted to argue that defendant's breaches of fiduciary duty precluded the payment of her attorney's fees from the Trust. It was for that reason alone that plaintiff sought an accounting—not because plaintiff needed additional information. After further discussion with the trial court, plaintiff's counsel acknowledged that he did not need the precise amount of attorney's fees paid, so long as he could make the general argument that defendant was not entitled to the payment of any of her attorney's fees from the Trust because of her alleged breaches of fiduciary duty. In other words, plaintiff's counsel abandoned the claim for an accounting once the trial court permitted him to argue that defendant was not entitled to payment of her attorney's fees from the Trust. Plaintiff fails to discuss any of this exchange in her argument on appeal, except to cherry-pick quotes regarding why the accounting was requested. Because plaintiff, through counsel, represented that an accounting was unnecessary where she was allowed to argue against the

payment of defendant's attorney's fees, she cannot now claim on appeal that the trial court erroneously denied her an accounting. See *McMath v. Katholi*, 191 Ill. 2d 251, 255 (2000) (“ ‘It is fundamental to our adversarial process that a party waives his right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding.’ [Citation.] A party cannot complain of error which he induced the court to make or to which he consented.”).

¶ 67 Plaintiff also argues that she never received an accounting, but in the next breath goes on to reference the accounting that she unsuccessfully attempted to introduce into evidence. She refers to this as a “draft accounting,” but the transcript reflects that although plaintiff's accounting exhibit was labeled a draft, defendant's exhibits contained the same accounting in its “final” form. Plaintiff admitted that defendant's accounting exhibit was the same as hers, and asked the trial court to look at defendant's for purposes of determining its admissibility. In any case, plaintiff was not able to establish a foundation for the accounting and, thus, the trial court did not admit it into evidence. From this, however, it is clear that plaintiff did, in fact, possess an accounting.

¶ 68 Plaintiff goes on to complain that the accounting that she attempted to introduce into evidence was prepared by defendant's prior counsel and not her counsel at trial, who represented her at the time Louise's house was sold. Plaintiff did not make this argument at trial, and thus it is waived. *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 59 (arguments not raised in the trial court are waived on appeal).

¶ 69 Finally, plaintiff complains that the trial court did not have an accounting to consider as a basis for its decision. She does not, however, explain what decision of the trial court required consideration of the accounting. Accordingly, she has waived this contention. See Ill. S. Ct. R. 341(h)(7); *Sakellariadis*, 391 Ill. App. 3d at 804; *Thrall Car Manufacturing Co.*, 145 Ill. App. 3d

at 719. Moreover, it is blatantly apparent that the reason the trial court did not have an accounting to consider was because plaintiff failed to lay a proper foundation for its admission, not because she was not provided an accounting or because the trial did not order one.

¶ 70 CONCLUSION

¶ 71 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 72 Affirmed.