

FIRST DIVISION  
June 27, 2011

No. 1-10-1665

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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BOGUMILA and WOJCIEK RECZEK,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Cook County.
	)	
v.	)	No. 07 L 3642
	)	
CHRISTOPHER PARKER,	)	Honorable
	)	Thomas More Donnelly,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hall and Justice Hoffman concur in the judgment.

**Held:** Defendant's appeal was dismissed for failure to file a statement of facts as required under Supreme Court Rules 306(c)(1), 306(c)(7), and 341(h)(6).

**ORDER**

This case involves a collision between two automobiles, one driven by one of the plaintiffs, Wojcek Reczek, in which the other plaintiff, Bogumila Reczek, was a passenger, and one driven by defendant, Christopher Parker. Plaintiffs filed suit against defendant seeking damages for their injuries as a result of the collision. Defendant filed a counterclaim for contribution against plaintiff Wojciek as to plaintiff Bogumila's claims for damages and filed affirmative defenses against both plaintiffs. The counterclaim and affirmative defenses alleged various acts of negligence on the part

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of plaintiffs. The jury returned verdicts in favor of defendant and against plaintiffs. The trial court granted plaintiffs' motions for a new trial. Defendant petitioned this court for leave to appeal from that order pursuant to Illinois Supreme Court Rule (hereinafter, Rule) 306(a)(1) (eff. February 26, 2010). The petition was granted. For the reasons that follow, we dismiss the appeal.

After defendant's petition was granted, he elected, pursuant to Rule 306(c)(7) (eff. February 26, 2010), to file a brief in addition to his petition. Rule 306(c)(7) requires that supplemental briefs conform to the requirements of Rule 341 (eff. Sept. 1, 2006). Rule 341(h)(6) requires that an appellant's brief include a statement of facts "which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment". Ill. S. Ct. R. 341(h)(6) (eff. Sept. 1, 2006). Rule 306(c)(1) also provides that the "petition shall contain a statement of the facts of the case." Ill. S. Ct. R. 306(c)(1)(eff. February 26, 2010).

Neither defendant's supplemental brief, nor his petition for leave to appeal, contain a statement of facts section or any recitation of the facts and history of the case. The supplemental brief adopts the procedural history section contained in the petition for leave to appeal. The five pages of procedural history relate primarily to the circumstances surrounding the issues instruction, in apparent support of defendant's contention that plaintiffs waived their objections to that instruction. The only reference to the trial evidence is contained in the last two paragraphs of the procedural history section with citations to only pages 813 through 881 of the trial transcript, which is over 950 pages in length. Additionally, the procedural history, at times, presents the proceedings in an adversarial manner. Plaintiffs, in their response brief, pointed out that defendant had failed to provide a statement of facts, and suggested this appeal be dismissed. In his reply brief, defendant

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includes a section titled "statement of facts" which is just over one page in length. This section of the reply brief relates only to the waiver argument as to the issues instruction, and is purely argumentative. Defendant, as the appellant, has failed to present a statement of facts as required by Rule 341(h)(6). The failure to provide a statement of facts is significant here because the common law record on appeal (four volumes) and the report of proceedings (an additional four volumes) are lengthy, and, as discussed below, a determination of the issues on appeal depend largely on the facts. Defendant's failure to comply with Rule 341(h)(6) prevents meaningful review of the issues in this case.

Defendant asks this court to consider whether the order of the trial court granting a new trial should be reversed. In determining the propriety of an order granting a new trial, we may consider all grounds alleged by plaintiffs in their posttrial motion. *Mykytiuk v. Stamm*, 196 Ill. App. 3d 928, 932-33 (1990). In their posttrial motion, plaintiffs moved for judgment notwithstanding the verdicts and a new trial. Plaintiffs argued, in part, that the verdicts were against the manifest weight of the evidence, that, at trial, defendant violated motions *in limine* orders, that the evidence did not support the giving of the Illinois Pattern Jury Instructions, Civil. No. 60.01 (2008) (hereinafter, IPI Civil (2008) No. 60.01), that the issues instruction as to certain claims of negligence raised in the counterclaim and affirmative defenses were unsupported by the evidence, and that the cumulative effect of trial errors resulted in an unfair trial. Defendant, in his supplemental brief, presents several arguments which address plaintiffs' posttrial motion. Defendant argues on appeal that the evidence at trial overwhelmingly favored defendant, IPI Civil (2008) No. 60.01 was sufficiently supported by the evidence, that defendant did not violate motions *in limine*, and that plaintiffs waived their

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objections to the issues instruction. Defendant, as the appellant, was required to present a neutral and complete statement of all relevant facts which would aid us in the review of the appellate issues. Ill. S. Ct. R. 341(h)(6) (eff. Sept. 1, 2006). The procedural history section of the petition for leave to appeal, and the purported statement of facts contained in the reply brief, do not satisfy this requirement. For example, defendant has failed to present a recitation of the evidence and testimony presented at trial which would aid in determining whether the verdicts and the challenged instructions were supported by the evidence as defendant contends, and in determining whether plaintiffs were deprived of a fair trial. Defendant has failed to set forth the facts surrounding the granting of the motions *in limine* or a recitation of the evidence or testimony, which, plaintiffs contend, violates the motions. No where in defendant's briefs has he set forth the actual language of the IPI Civil (2008) No. 60.01 instruction at issue.

Furthermore, defendant has failed to present a complete statement of facts concerning the asserted error in the issues instruction, which was the basis of the trial court's order granting plaintiffs a new trial. The trial court found that the issues instruction was improper as it contained allegations of negligence against plaintiffs, which were unsupported by the evidence, and had been struck by the court during the jury instruction conference. The trial court found that the issues instruction had not been modified as it had directed. The trial court further found that the error as to the issues instruction required a new trial, even if plaintiffs had waived any challenge to the instruction. The procedural history, arguably, may be a sufficient recitation of relevant facts to allow meaningful review of whether plaintiffs waived their challenges to the issues instruction. However, "[a] court may properly grant a new trial to correct misleading instructions, considering the fairness

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of the trial to all parties and whether substantial justice was accomplished, even if neither party objected to those instructions." *Blakey v. Gilbane Building Corp.*, 303 Ill App. 3d 872, 884 (1999). Defendant failed to recite facts which set forth the parties' pleadings and the claims raised by these pleadings, including defendant's third-party complaint and affirmative defenses, which gave rise to the questions surrounding the issues instruction. The procedural history does not contain a statement of facts which would allow meaningful review, whether the issues instruction was erroneous and contained allegations unsupported by the evidence and resulted in prejudice that required a new trial, even if plaintiffs had waived their objections to the issues instructions.

We also note that the argument section of defendant's supplemental brief includes references to the testimony and evidence at trial. However, there are no citations to the record or report of proceedings as required by Rule 341(h)(7) in the argument.

Defendant's failure to provide a statement of facts and citations to the record in his argument "is not an inconsequential matter." *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 478 (2005). Plaintiffs made defendant aware of his failure to comply with Rule 341(h)(6) and, in response, defendant merely filed a short "statement of facts" in his reply brief, which was wholly inadequate and argumentative, in further violation of Rule 341. "An appellate court has the right to strike an appellant's brief and dismiss the appeal as a result of the appellant's failure to provide a complete statement of facts." *Burmac Metal*, 356 Ill. App. 3d at 478. Additionally, "[a] party's failure to comply with Rule 341 is grounds for disregarding its arguments on appeal." *Burmac Metal*, 356 Ill. App. 3d at 478.

Accordingly, we dismiss this appeal. The dismissal of this appeal may be viewed as harsh,

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however, we find that dismissal does not offend the interests of justice and is consistent with the mandates of the supreme court rules regarding appellate briefs. Defendant, as the appellant, had the duty to present this court with a statement of facts and failed to do so in either his petition for leave to appeal, or his supplemental brief. Defendant's failure to fully comply with Rule 341 has prevented meaningful review of the issues. However, on retrial, defendant will continue to have the opportunity and right to further defend this action and present his third-party action.

Appeal dismissed.