

2011 IL App (2d) 100858-U
Nos. 2—10—0858 & 2—10—0859 cons.
Order filed July 14, 2011

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THOMAS GIERLAK,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	No. 09—AR—149
)	
SCOTT WALLIS and RON ERIKSEN,)	Honorable
)	Bruce R. Kelsey,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: Defendants forfeited certain arguments by failing to provide adequate record on appeal; arguments that were not forfeited were largely undeveloped and unpersuasive, including claim that trial court was biased, claim that trial court lacked authority to dismiss, *sua sponte*, certain claims, and apparent claim that *res judicata* somehow applied to these proceedings.

¶ 1 Defendants, Scott Wallis and Ron Eriksen, appeal the trial court's judgment awarding plaintiff, Thomas Gierlak, \$27,985.79 on his claim under the Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et seq.* (West 2008)). Defendants, appearing *pro se*, raise various arguments that are difficult to summarize. We affirm.

¶ 2 Defendants were officers of a corporation called USA Baby, Inc., a retailer of infant and children's furniture and accessories. Gierlak was employed by USA Baby, Inc. After the corporation filed for bankruptcy, plaintiff sued defendants personally under various theories. As relevant here, he alleged that defendants knowingly permitted the corporation to fail to pay plaintiff's wages. At some point, both defendants were defaulted. The trial court conducted a prove-up hearing, following which it awarded plaintiff \$27,985.79 on his Wage Act claim. Each defendant filed a timely notice of appeal. On our own motion, we consolidated the appeals.

¶ 3 Initially, we note that, although the common-law record consists of approximately 2,500 pages, the record does not contain any transcripts of the numerous hearings in this matter. This fact alone makes it impossible to review many of defendants' claims. An appellant has the burden to present a sufficiently complete record of the trial court proceedings to support his claim of error, and in the absence of such a record, we presume that the trial court's order conformed with the law and had a sufficient factual basis. Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 4 Defendants' statement of issues presented for review lists 15 points, but these do not correspond neatly with anything in the argument section of their joint brief. Instead, the argument section is divided into five sections in which they argue, essentially, that (1) the trial court's award of damages to plaintiff on his Wage Act claim was against the manifest weight of the evidence; (2) the trial court was biased against defendants; (3) the trial court erred by dismissing, *sua sponte*, defendants' counterclaims and third-party claims; (4) service on defendant Wallis was improper; and (5) defendant Eriksen was defaulted twice.

¶ 5 Defendants' first argument is forfeited. While less than crystal clear, defendants' argument appears to challenge the sufficiency of the evidence supporting the judgment for plaintiff on the Wage Act claim. However, as noted, we lack transcripts of the relevant proceedings. Thus, we do not know what evidence was presented to the trial court, and must presume that the court's judgment had a sufficient factual basis. *Id.*, 99 Ill. 2d at 391-92.

¶ 6 Defendants' second contention is that the trial court was biased against them. Their argument on this point is largely undeveloped and short on specific examples. The lack of transcripts of the relevant proceedings hampers review of this issue as well.

Defendants' primary point under this contention appears to be that the trial court denied their motions and granted plaintiffs' motions. However, defendants do not argue the merits of any specific motions, *i.e.*, why their motions should have been granted and plaintiff's motions should have been denied. In any event, mere adverse rulings will seldom support a claim of judicial bias. Trial judges are presumed to be fair and impartial. A party alleging judicial bias must overcome this presumption. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Adverse rulings alone are almost never sufficient to support a claim of judicial bias, even if those rulings are alleged to be erroneous. *Id.* at 280. The party claiming bias must show either a personal bias stemming from some source other than the litigation (*id.*) or comments made in the course of the proceedings that “ ‘reveal such a high degree of favoritism or antagonism as to make fair judgment impossible’ ” (*id.* at 281 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994))). Defendants' allegations fall far short of this standard. Our review of the limited record reveals that, far from being biased against them, the trial court was extraordinarily patient with defendants.

¶ 7 Defendants next contend that the trial court erred by dismissing, *sua sponte*, their numerous counterclaims and third-party claims. As with their other arguments, defendants' argument on this point is undeveloped and lacks specifics. They make no attempt to identify the particular claims they attempted to raise, much less argue why the trial court erred by dismissing them. To the extent defendants challenge the trial court's authority to act *sua sponte*, it is clear that it had the authority to do so. *People v. Vincent*, 226 Ill. 2d 1, 12-13 (2007) (trial court had inherent authority to dismiss *sua sponte* a legally insufficient complaint); *Bilski v. Walker*, 392 Ill. App. 3d 153, 156 (2009) (same).

¶ 8 We note that in *People v. Laugharn*, 233 Ill. 2d 318, 323-24 (2009), the supreme court held that the *sua sponte* dismissal of a criminal defendant's section 2—1401 petition (720 ILCS 5/2—1401(a) (West 2008)) within 30 days of its filing was premature. We need not decide whether *Laugharn's* rule applies generally to all complaints and counterclaims, as defendants have forfeited any such argument. Their argument appears to be that the trial court lacked any authority to dismiss *sua sponte* their pleadings. They do not contend that the dismissal here was premature.

Defendants' fourth contention is that service on Wallis was improper. Defendants do not explain this contention or cite anything in the record to support it. As Wallis personally appeared in the proceedings and filed numerous pleadings and documents, he waived any objection to personal jurisdiction. See 735 ILCS 5/2—301(a—5) (West 2008) (by filing responsive pleading or motion before objecting to jurisdiction, party waives all objections to lack of personal jurisdiction); *Higgins v. Richards*, 401 Ill. App. 3d 1120, 1126 (2010) (party may waive defect in personal jurisdiction by proceeding without objection).

¶ 9 Defendants' final contention is that "Eriksen was Twice Defaulted, Twice Tried." We are not sure what defendants mean by this contention, which is unaccompanied by citation to the record or to pertinent authority.

¶ 10 Defendants cite Justice Black's dissent in *Bartkus v. Illinois*, 359 U.S. 121, 150-70 (1959) (Black, J., dissenting, joined by Warren, C.J., and Douglas, J.), discussing the double jeopardy clause (U.S. Const., amend. V). "As a general rule, however, double jeopardy attaches for subsequent or multiple criminal prosecutions, not for subsequent or multiple civil proceedings." *Sanders v. Shepherd*, 185 Ill. App. 3d 719, 731 (1989). The doctrine of *res judicata*, applicable to civil proceedings, embodies many of the same concerns as the double jeopardy clause. The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between the parties involving the same cause of action. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). Three requirements must be satisfied for *res judicata* to apply: (1) a final judgment on the merits, rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies. *Id.* Defendants do not contend that there was an earlier final judgment in a case involving the same parties. As only one judgment was entered against Eriksen, *res judicata* does not apply.

¶ 11 The judgment of the circuit court of Du Page County is affirmed.

¶ 12 Affirmed.