

No. 1-12-0452

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF JAMES M. LARKIN,)	Appeal from
Deceased.)	the Circuit Court
)	of Cook County.
)	
MARY ELLEN LARKIN,)	
)	
Petitioner-Appellant,)	
)	
v.)	No. 10 P 598
)	
HUI TUNG CHEUNG, a/k/a)	
BRIGITTA CHEUNG LARKIN,)	Honorable
)	Susan M. Coleman,
Respondent-Appellee.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶1 *Held:* Petitioner-appellant forfeited any arguments she could raise on appeal seeking reversal of the circuit court's granting of respondent's motion to dismiss her amended petition by failing to make any arguments in support of denial of the motion to dismiss before the circuit court. Petitioner also failed to file a record on appeal sufficient for this court to properly review appellant's contentions on appeal. Therefore, the circuit court's finding that petitioner's amended petition failed to state a cause of action is affirmed.

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¶ 2 An appeal was filed by a sister of the decedent seeking to overturn the dismissal of a petition which sought to disqualify the decedent's wife from inheriting anything from her husband pursuant to the Illinois Slayer Statute (755 ILCS 5/2-6 (West 2010)), alleging that the wife intentionally caused her husband's death after he died more than two years after moving to China with his wife.

¶ 3 The petition was initially filed on September 29, 2010 by the decedent's two sisters, Mary Ellen Larkin and Margaret Larkin and the decedent's two daughters, Lorraine Demma and Kimberly Larkin. On April 13, 2011, the circuit court granted the defendant-wife's section 2-615 motion to dismiss the petition (735 ILCS 5/2-615 (West 2010)) and allowed petitioners 42 days to file an amended petition. On May 18, 2011, all petitioners were granted an extension until June 27, 2011, to file an amended petition. Two weeks before the amended petition was due, on June 13, 2011, petitioners Mary Ellen Larkin and Margaret Larkin consented to their attorneys' request to withdraw from the case which was approved by the circuit court. The court gave the two petitioners 28 days to secure new counsel or appear *pro se*. Following another request for extension of time, petitioners were given until July 11, 2011 to file an amended petition. The two petitioners, Mary Ellen Larkin and Margaret Larkin, now appearing *pro se*, filed a third motion for extension of time to file an amended petition which was allowed. Additionally, counsel for petitioners Lorraine Demma and Kimberly Larkin consented to their attorneys' request to withdraw from the case which was approved by the circuit court on August 12, 2011.

¶ 4 On August 12, 2011, attorney David L Clark filed an appearance solely on behalf of Mary Ellen Larkin. On September 2, 2011, petitioner filed a First Amended Verified Petition To Disqualify Respondent Brigitta Cheung Larkin From Inheritance, naming Mary Ellen Larkin as the

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sole petitioner. On October 31, 2011, respondent filed her motion to dismiss the amended petition pursuant to both sections 2-615 and 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-615, 5/2-619 (West 2010). Initially, petitioner was allowed 28 days to respond to the motion. Petitioner filed one extension of time requesting an additional 14 days, until December 12, 2011 to respond to the motion to dismiss which was allowed. At that time, a status hearing was set for January 11, 2012, before the circuit court. Petitioner never filed any response to the respondent's motion to dismiss the amended petition. No other motion for extension of time was filed or any other written explanation as to why a response to the respondent's motion to dismiss was not forthcoming. At the previously scheduled January 11, 2012 status hearing, the circuit court, *sua sponte*, considered the petitioner's first amended petition on file together with the respondent's motion to dismiss and found that the amended petition failed to state a cause of action and dismissed the amended petition with prejudice.

¶ 5 On February 9, 2012, petitioner's attorney filed a timely notice of appeal. In her opening appellate brief, petitioner never mentioned that she failed to file any challenge to respondent's motion to dismiss her amended petition. The respondent argues, in her responsive brief on appeal, that because no arguments were submitted to the circuit court on the motion to dismiss the amended petition, petitioner has forfeited any ability to raise arguments to challenge the circuit court's ruling on appeal. This court has consistently held that issues not raised before the circuit court are forfeited and cannot be raised for the first time on appeal. *Wilkins v. Williams*, 2012 IL App (1st) 101805, ¶ 18 (citing *Eagan v. Chicago Transit Authority*, 158 Ill. 2d 527, 534 (1994)). After receiving an extension of time to file a response to the motion to dismiss the amended petition, petitioner failed

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to file any response. The circuit court waited an additional 30 days before granting the motion to dismiss. It has long been held that the circuit court has inherent discretionary authority to make both procedural and factual determinations in order to manage its affairs so as to achieve the orderly and expeditious disposition of cases pending before it. *In re Marraige of Thomas*, 389 Ill. App. 3d 214, 223 (2003) (citing *In re Marraige of Elliott*, 265 Ill. App. 3d 912, 917 (1994)). Because the circuit court is considered to be most familiar with all facets of progression of the case and with any justifiable reasons for delay, "the task of weighing and balancing 'the contrasting factors is peculiarly one for the trial judge...' " *Geir v. Hamer Enterprises*, 226 Ill. App. 3d 372, 382 (1992) (quoting *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 12 (1980)). The petitioner's failure to provide any response to the respondent's motion to dismiss or to provide any justification for the failure to do so, together with the age of the claim and the court's allowance of petitioner's every requested extension of time since the case's inception, warranted the exercise of the circuit court's inherent discretionary authority to insist upon some measure of diligence both in managing its docket and by petitioner in keeping up-to-date with her case. It cannot reasonably be said to constitute an abuse of discretion for the circuit court to have considered and ruled on respondent's motion to dismiss the amended petition in these circumstances. After the circuit court granted respondent's motion to dismiss on January 11, 2012, petitioner never filed either a motion to vacate the court's ruling or a motion for reconsideration. It does not appear from this record that the circuit court acted arbitrarily or without conscientious judgment in ruling on respondent's motion to dismiss. It also does not appear that the court's ruling exceeded the bounds of reasonableness, resulting in substantial injustice.

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¶ 6 Further, petitioner does not supply this court with either a transcript or a bystander's report to allow evaluation of what transpired on January 11, 2012, when the circuit court entered the order the petitioner now appeals. It has long been held to be the appellant's responsibility to see that a sufficient record is filed with the appellate court. Supreme Court Rule 323; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 398 (1984); *Djikas v. Grafft*, 344 Ill. App. 3d 1, 14 (2003). "[I]n the absence of such a record on appeal, a reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Wackrow v. Niemi*, 231 Ill. 2d 418, 428 (2008).

¶ 7 Finally, petitioner has failed to file a reply brief in this court and in so failing, never addresses the defects raised by respondent in her appellate brief.

¶ 8 For these reasons, we affirm the judgment of the circuit court.

¶ 9 Affirmed.