2012 IL App (2d) 101270-U
No. 2-10-1270
Order filed August 29, 2012

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

SECOND DISTRICT

PETTI MURPHY & ASSOCIATES,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-AR-224
	)	
RON ERIKSEN and SCOTT WALLIS,	)	Honorable
	)	James R. Murphy,
Defendants-Appellants,	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: Defendants forfeited most issues due to failure to comply with the Illinois Supreme Court Rule governing the form and content of appellate briefs; defendants did not adequately plead damages in alleging claim of fraudulent concealment.

¶ 1 I. INTRODUCTION

¶ 2 Defendants, Ron Eriksen and Scott Wallis, appeal a judgment of the circuit court of Kane County awarding plaintiff, Petti Murphy & Associates, $19, 815. Defendants raise a number of issues on appeal, none of which we find well-taken. Moreover, our review of this matter is hindered significantly by defendants' failure to comply with the applicable rules of the Illinois Supreme Court

concerning the form and content of appellate briefs. Accordingly, we affirm the judgment of the trial court.

¶ 3 II. BACKGROUND

¶ 4 This litigation began when plaintiff filed a complaint seeking damages arising out of defendants' alleged failure to pay for legal services. The services were largely related to defendants' involvement with USA Baby, Inc., a corporation against which an involuntary bankruptcy proceeding was directed. Services were also rendered regarding a postjudgment proceeding directed against Ericksen that involved a foreign judgment. The parties are aware of the facts and procedural history of this case, and we will not restate it here. Instead, we will discuss pertinent material as it relates to the issues presented in this appeal

¶ 5 III. ANALYSIS

¶ 6 As a threshold matter, we note that defendants have forfeited all arguments, save a portion of one, due to their rampant disregard of the Illinois Supreme Court Rules regarding appellate briefs.[1] These rules are not mere suggestions. *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). They have the force of law and are to be obeyed and enforced as they are written. *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶ 10. The failure to comply with these rules may result in the forfeiture of an

---

[1]We note that defendants are parties in as many as 11 additional appeals that are or recently have been pending before this court. Defendants would be well advised to consult and follow the relevant Illinois Supreme Court Rules. It is well established that *pro se* litigants are held to the same standard as attorneys. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001); see also *People v. Haynes*, 174 Ill. 2d 204, 248 (1996) (applying the principle in a case where the death sentence had been imposed).

argument. See, *e.g.*, *People v. Ward*, 215 Ill. 2d 317, 332 (2005); *Bachman v. General Motors Corp.*, 332 Ill. App. 3d 760, 803 (2002). It can also warrant the dismissal of an appeal. *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 292-93 (1991) ("The purpose of the rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved. [Citation.] Where an appellant's brief fails to comply with the rules, this court has inherent authority to dismiss the appeal for noncompliance with its rules."). Indeed, a reviewing court "is not a repository into which an appellant may foist the burden of argument and research and it is neither the function nor the obligation of this court to act as an advocate or search the record for error." *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 29. Rather, "[a] reviewing court is entitled to have issues clearly defined with relevant authority cited." *In re Marriage of Bates*, 212 Ill. 2d 489, 517 (2004). The enforcement of these rules is a matter lying within the discretion of this appellate court. See *U.S. Bank, N.A. v. Diaz*, 2011 Il App (1st) 102812, ¶ 10, quoting *Niewold*, 306 Ill. App. 3d at 737 (" 'It is within this court's discretion to strike the [appellants'] brief and dismiss the appeal for failure to comply with Rule 341.' ").

¶ 7 The most egregious and persistent violations of the rules committed by defendants concern Supreme Court Rule 341(h)(6) and 341(h)(7) (eff. July 1, 2008), specifically, their failure to support the majority of the factual assertions made in their briefs with citations to the record. See *People v. Sprind*, 403 Ill. App. 3d 772, 779 (2010) ("The failure to provide proper citations to the record is a violation of [Rule 341(h)(7) (eff. July 1, 2008)], the consequence for which is forfeiture of the argument lacking those citations."). For example, in the second paragraph of their statement of facts, defendants state:

> "On April 14, 2009, Appellant Ericksen filed a motion to stay for medical reasons. Appellant Ericksen provided numerous basis' [*sic*] for a stay of this proceeding for said medical reasons, which severely hampered his ability to present a reasonable defense throughout the entire proceeding. Appellant Ericksen was under the powerful influence of psychotropic drugs and other medicines, and his condition was exacerbated by the continuation of this proceeding against the advice of his doctor(s) and pastor."

None of these claims are substantiated by citation to evidence in the record; we cannot simply accept them on defendants' word. Moreover, this passage is conclusory in that defendants state that they provided "numerous basis' [*sic*] for a stay of this proceeding for said medical reasons" without telling this court what those bases were. The purported "*said* medical reasons" were never "said." (Emphasis added.) Similarly, in the argument section of their brief, defendants fail to identify where evidence can be found indicating that:

> "Appellants lost their business, USA Baby, due to the collectively [*sic*] non-payment by USA Baby franchisees. Appellants hired Appellee to represent them before the Du Page Court and Bankruptcy Court. Appellee did represent Appellants. Appellee knew of the conduct of said franchisees. Appellee did nothing. Appellee remained silent. Appellee failed to provide the legal solutions it was hired to provide."

Defendants' brief is full of similar unsupported claims of fact. The failure to substantiate factual assertions with appropriate citation to the record warrants the dismissal of an appeal because it makes it "next to impossible for this court to assess whether the facts as presented *** are an accurate and fair portrayal of the events in this case." *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993).

¶ 8 Defendants also disregard the requirement of Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008) that the statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly *without argument or comment*." (Emphasis added.) For example, in discussing the trial court's refusal to dismiss the complaint, defendants state: "This was fatal error by the trial court. This fatal error was fueled by bias against *pro se* parties. The motion should have been construed liberally." Obviously, asserting what one believes should have happened instead of simply stating what happened constitutes argument. Later, defendants state the following: "In other words, Appellees could profit from their own wrongs. And, Appellants couldn't do anything about it. Unbelievable! Preposterous!" This is clearly argumentative. The inclusion of such material may result in a statement of facts being stricken in whole (*Certified Mechanical Contractors, Inc. v. Wight & Co., Inc.*, 162 Ill. App. 3d 391, 396-97 (1987)) or in part (*Hubert v. Consolidated Medical Laboratories*, 306 Ill. App. 3d 1118, 1120 (1999)).

¶ 9 Additionally, defendants set forth a number of propositions of law without identifying a legal basis for them. For example, defendants assert that "[a]ny interference in due process by any party in a case is *prima facie* evidence of fraud on the court." Nothing is cited in support. Later, they claim that plaintiff "remained silent in spite of an overwhelming obligation to speak on [defendants'] behalf." They do not identify the legal source of this purported "overwhelming obligation." Such points are forfeited. *Ward*, 214 Ill. 2d at 332. Moreover, defendants sometimes support their positions with sweeping legal generalizations that, while relevant, are not particularly helpful in analyzing the facts of this case—such as the long list of citations that recognize the powers of a court of equity to remedy fraud.

¶ 10 Turning to defendants' individual arguments, we first recall that "[a] reviewing court is entitled to have issues clearly defined with relevant authority cited." *In re Marriage of Bates*, 212 Ill. 2d at 517. It is also "entitled to have briefs submitted that are articulate and organized and that present cohesive legal argument in conformity with our Supreme Court rules." *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994). Indeed, Rule 341(h)(7) (eff. July 1, 2008) requires that the argument section "contain the contentions of the appellant and the reasons therefor." Hence, mere contentions that are not supported by coherent argument, legal authority, and citation to the record do not merit consideration. See *Sprind*, 403 Ill. App. 3d at 779; *Fuller v. Justice*, 117 Ill. App. 3d 933, 942-43 (1983). The majority of defendants' arguments falls short of these standards.

¶ 11 Defendants begin by arguing that, as *pro se* litigants, they are entitled to more lenient treatment than attorneys. This is simply not the law. In this state, parties choosing to proceed *pro se* must comply with the same rules and will be held to the same standards as licensed attorneys. *People v. Richardson*, 2011 IL App. (4th) 100358, ¶ 12 ("Finally, where a defendant elects to proceed *pro se*, he is responsible for his representation and is held to the same standards as any attorney."); *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) ("Further, we note that *pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys."); *Domenella v. Domenella*, 159 Ill. App. 3d 862, 868 (1987). Defendants cite *Haines v. Kerner*, 404 U.S. 519, 520 (1972), which holds that a *pro se* party's pleadings are to be held "to less stringent standards than formal pleadings drafted by lawyers." *Id.* *Haines* does not apply here because federal procedural rules do not control in state court. *Adams v. LeMaster*, 223 F.3d 1177, 1182 n. 4 (10th Cir. 2000); see also *Valencia v. Smyth*, 185 Cal. App. 4th 153, 167 (2010) ("Like

other federal procedural rules, therefore, 'the *procedural provisions of the [FAA] are not binding on state courts*.' " (Emphasis in original.)); *Whitney v. Alltel Communications, Inc.*, 173 S.W. 3d 300, 306 (Mo. App. 2005); *Gonzalez v. State*, 118 Nev. 590, 594 n.12 (2002). Defendants also cite *Oregon v. Hass*, 420 U.S. 714, 719 (1975), for the proposition that the precedent of the United States Supreme Court is binding on state courts; however, that case is inapposite, as it involved a constitutional rule rather than a procedural one.

¶ 12 Defendants' first argument continues with a series of citations to *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 250 (1944). *Hazel* provides little guidance, for it concerns what remedy is available once fraud is established. *Id*. ("The question remains as to what disposition should be made of this case. *Hartford's fraud, hidden for years but now admitted*, had its genesis in the plan to publish an article for the deliberate purpose of deceiving the Patent Office." (Emphasis added.)). Defendants must first establish that plaintiff engaged in fraud. Similarly, *Chambers v. Nasco, Inc.*, 501 U.S. 32, 44-45 (1991), simply confirms our equitable power to remedy fraud. This is not a controversial proposition, and it does not provide much assistance to defendants. What would have been helpful would have been if defendants had set forth a case with similar facts to this one showing a court exercising that power and analysis as to why that case should control here. Defendants cite another Supreme Court case (*Universal Oil Products Co. v. Roof Refining Co.*, 328 U.S. 575 (1946)); however, they make no attempt to discuss it, so we will not consider it. They then cite *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 n.1 (1st Cir. 1987), for the proposition that a fraud on the court occurs when a party consciously sets "in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim

or defense." In attempting to apply this principle, defendants state that they "are persuaded" plaintiff was in contact with counsel from another law firm. They continue that they have been involved in other cases "where the parties involved *** do work for one another, refer clients to one another, and have continual contact with each other." None of these assertions are substantiated by citation to the record; it is unclear where they come from. Defendants claim that they "demonstrated in their amended complaint that it was common practice for [plaintiff] to make serious misrepresentations to the court," but they do not cite the record or state what these "serious misrepresentations" were—though they claim they do not make such allegations lightly. They also assert that they "have seen [plaintiff] cross the line numerous times in pursuit of their goal of a 'win,' " though they do not state how. This is mere conjecture and is wholly insufficient. See *Alvarez v. American Isuzu Motors*, 321 Ill. App. 3d 696, 706 (2001). Finally, after another series of citations, defendants make another set of unsubstantiated factual claims (to be clear, by "substantiate," we mean provide a citation to evidence in the record that provides a basis for the factual assertion). We deem this argument forfeited. See *Collier*, 248 Ill. App. 3d at 1095.

¶ 13 The next section of defendants brief is entitled "Due Process and Equal Protection Violations." After setting forth a number of constitutional provisions, they then complain of the conduct of their privately retained counsel. Constitutional provisions are limitations on governmental actions. See, *e.g.*, *People v. 1998 Ford Explorer*, 399 Ill. App. 3d 99, 101 (2010); *People v. Boeckmann*, 238 Ill. 2d 1, 16-17 (2010); *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill. 2d 62, 85 (2008). Defendants make no attempt to explain how a private attorney's conduct could amount to a due process or equal protection violation. Moreover, this argument is entirely unsupported by citation to the record. Finally, we note that this section concludes with the following

sentence: "Judge Murphy failed to follow the *Golden Rule*. *Crichton v. Golden Rule Insurance Co.*, 358 Ill. App. 3d 1137, 1150 (2005)." This case bears no apparent relevance to the instant matter. In sum, this argument is also forfeited. *Bachman*, 332 Ill. App. 3d at 803.

¶ 14 In the next section of their brief, titled simply "Point Two," defendants set forth considerable case law, including principles relevant to causes of action under the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 5/1 *et seq.* (West 2008)) and civil conspiracy (see *Vance v. Chandler*, 231 Ill. App. 3d 747, 750 (1992)). Defendants' argument regarding consumer fraud begins with the conclusory assertion, "Appellants sufficiently plead [*sic*] all elements of the Consumer Fraud and Deceptive Business Practices Act." They then assert that their pleadings should have been liberally construed and, in turn, not dismissed. However, defendants never explain *how* any particular allegation should be interpreted, giving it a liberal construction, in such a manner as to avoid dismissal. Defendants acknowledge that the Consumer Fraud Act does not generally apply to the provision of legal services. *Cripe v. Leiter*, 184 Ill. 2d 185, 192 (1998). Defendants ask that we revisit this principle, as, they explain without citation to the record, they "have found that the [Attorney Registration and Disciplinary Commission] does not do a good job of policing attorneys that commit deceptive practices in Illinois" and "[t]his has become an increasing problem in Illinois." Defendants make no attempt to substantiate any of these claims. When they finally attempt to discuss the facts, they do nothing more than make a number of conclusory assertions, wholly lacking in the detail necessary for us to conduct meaningful review, which are also unsupported by citation to the record. For example, defendants assert that "[a]ppellee did not do what it should have done, could have done and was required to do." They do not identify these things that "should have [been] done." We also note that defendants do not set forth anything

relating to a civil conspiracy after setting forth the elements of one—though they return to this theory in a later section of their brief. Again, we find this argument forfeited. *Bachman*, 332 Ill. App. 3d at 803.

¶ 15 Defendants' next argument concerns the tort of fraudulent concealment. See *W.W. Vincent & Co. v. First Colony Life Insurance Co.*, 351 Ill. App. 3d 752, 762 (2004). The elements of such a claim are:

> "(1) a false statement of material fact; (2) knowledge or belief of the falsity by the party making it; (3) an intention to induce the other party to act; (4) action by the other party in reliance on the truth of the statement; and (5) damage to the other party resulting from such reliance." *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 703 (2002).

A plaintiff must also show that "the defendant concealed a material fact when it was under a duty to disclose to the plaintiff." *W.W. Vincent & Co.*, 351 Ill. App. 3d at 762. Though we find a portion of this argument forfeited due to defendants' failure to substantiate their factual assertions with citation to evidence and the fact that a number of them are conclusory as well (*Bachman*, 332 Ill. App. 3d at 803), we will address the core of this argument on the merits.

¶ 16 Defendants contend that plaintiff's failure to inform them that they could have had their case transferred from bankruptcy court to a federal district court constitutes fraudulent concealment. It is not apparent to us how this damaged defendants. In their opening brief, defendants do not explain why a district court would have adjudicated any substantive issue differently than the bankruptcy court. In their reply brief, defendants point us to paragraph 33 of their response to plaintiff's complaint, where they allege that "[t]he removal of this case from bankruptcy court into district court would have enabled [defendants] to rely upon precedential decisions made before the district court."

Defendants do not, however, point to any particular decision of a district court that would have allowed them to prevail on any particular issue. Moreover, the decisions of a district court do not constitute binding authority, even in another case in district court (*United States v. Articles of Drug Consisting of 203 Paper Bags*, 818 F.2d 569, 572 (1987) ("A single district court decision, however (especially one that cannot be appealed), has little precedential effect. It is not binding on the circuit, or even on other district judges in the same district."), but they do constitute persuasive authority in bankruptcy court (*In re Abernathy*, 150 B.R. 688, 693 (Bankr. N.D. Ill. 1993)). Defendants also assert that they could not raise "noncore" issues in the bankruptcy proceeding. See *Cabrera v. First National Bank of Wheaton*, 324 Ill. App. 3d 85, 94 (2001). That simply is not true. *Id*. ("Bankruptcy courts also have jurisdiction over noncore matters."). Thus, defendants have not adequately pleaded damages.

¶ 17 Finally, defendants return to the issue of civil conspiracy. In this section of the brief, they substantiate none of their factual assertions with citation to the record. Moreover, a civil conspiracy requires an agreement to perform an unlawful act or a lawful act in an unlawful manner. *Vance*, 231 Ill. App. 3d at 750. Even if plaintiff's representation of defendants was inadequate—as defendants suggest in their brief—they point to nothing that would indicate that there was an agreement between plaintiff and the parties opposing defendants in the involuntary bankruptcy to render inadequate representation. In short, we find this argument unpersuasive and forfeited (*Bachman*, 332 Ill. App. 3d at 803).

¶ 18 CONCLUSION

¶ 19 In light of the foregoing, the judgment of the circuit court of Kane County is affirmed.

¶ 20 Affirmed.