

No. 1-12-2982

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

MADELEINE CERRONE,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County
)
 v.) No. 11 M 2000195
)
 GLORIA D. RODRIGUEZ,)
) Honorable
) Jeffrey L. Warnick,
 Defendant-Appellee.) Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Neville and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing plaintiff's case with prejudice based on the parties' agreed settlement of the case. Settlement agreement should not be set aside where plaintiff failed to establish mistake or fraud relating to the agreement's execution.

¶ 2 *Pro se* plaintiff Madeleine Cerrone appeals the trial court's dismissal of her case with prejudice following her agreed settlement with defendant Gloria Rodriguez relating to theft allegations. Cerrone claims on appeal that the trial court erred in dismissing her case because she

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was pressured into settling the case for a monetary amount substantially less than the amount that Rodriguez allegedly stole and her children's personal belongings that Rodriguez also allegedly stole were not returned. Cerrone further claims that the trial court erroneously dismissed her case without reviewing bank statements that proved Rodriguez' theft of the money. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 On or about May 3, 2010, Rodriguez and her daughter moved into Cerrone's home in Des Plaines, Illinois, and occupied one of the bedrooms in the home. In early September 2010, Cerrone discovered that her safe located in the basement of her home was broken into and she believed that Rodriguez stole the money stored in the safe. When the theft occurred, approximately \$6,300 was in the safe. Cerrone also discovered that personal items in collection boxes were missing, as well as items from the bedroom that Rodriguez and her daughter occupied. After discovering the missing items, Cerrone's son called the police, who arrived at the home to investigate. Cerrone filed a police report documenting the missing items and following an investigation, Rodriguez admitted to stealing \$1,700 from the safe.

¶ 5 On February 18, 2011, Cerrone filed a *pro se* complaint alleging that Rodriguez admitted to stealing \$1,700, but claimed that \$6,300 was stored in the safe. Cerrone also alleged that "expensive jewelry and other items" were missing. On June 27, 2011, Rodriguez filed a section 2-615(a) motion to dismiss asserting that Cerrone's complaint was insufficient at law and that the pleading must be made more definite or certain regarding the theft allegations and relief requested. On that same day, Cerrone submitted a document listing the allegedly stolen items

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along with a value assigned to each of the items. According to Cerrone, the total value of the stolen items was \$6,817.67, which was in addition to the stolen money totaling \$5,636.18.

During a status hearing, the trial court entered an order allowing Cerrone leave to file an amended complaint providing when, where, and what personal property was taken, including the cash.

¶ 6 On July 6, 2011, Cerrone filed an amended complaint that included additional information regarding the items allegedly missing from the home. On August 15, 2011, the trial court entered an order for mandatory arbitration pursuant to Cook County Circuit Court Local Rule 18 (eff. Aug. 1, 2001). On September 19, 2011, Rodriguez filed an answer to the amended complaint in which she admitted to taking \$1,700, but denied the remaining allegations.

¶ 7 An arbitration was conducted on December 12, 2011. Cerrone was awarded the \$1,700 Rodriguez admitted to taking, and Cerrone rejected the award. Following the arbitration, the trial court entered an order setting the case for a bench trial on August 22, 2012. Cerrone retained an attorney to represent her at trial. On the scheduled trial date, the parties and their attorneys participated in a pre-trial conference.

¶ 8 After the parties reached a settlement at the pre-trial conference, the trial court entered an order directing Rodriguez to pay Cerrone \$3,000 within 75 days and dismissed the case with prejudice. Cerrone timely appealed the trial court's order. Rodriguez complied with the settlement order and tendered a check in the amount of \$3,000 payable to Cerrone. Cerrone has not cashed the check pending the outcome of this appeal.

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¶ 9 This court denied Cerrone's request for a prehearing conference pursuant to Illinois Supreme Court Rule 310 (eff. Aug. 1, 1989). Because Rodriguez failed to timely file a brief, this court entered an order taking this case on the record and Cerrone's brief only.

¶ 10 ANALYSIS

¶ 11 As an initial matter, we must address Cerrone's failure to comply with the supreme court rules. Illinois Supreme Court Rule 341(h) requires an introductory paragraph stating, in part, the nature of the action, the judgment appealed from and whether any question is raised on the pleadings. Ill. S. Ct. R. 341(h)(2) (eff. July 1, 2008). Rule 341(h) also requires the appellant's brief on appeal to include an argument section stating the party's contentions and the reasons therefor, with citation of the authorities and the pages of the record relied on by the party. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Rule 341(h) further requires the appellant's brief to include a short conclusion stating the precise relief sought. Ill. S. Ct. R. 341(h)(8) (eff. July 1, 2008).

¶ 12 Even though Cerrone appears in this appeal *pro se*, she is presumed to have full knowledge of the pertinent court rules and must comply with the same rules as would be required of litigants represented by counsel. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). As a reviewing court, we are entitled to have the issues clearly defined with pertinent authority cited and cohesive arguments presented. *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009). This court is not merely a repository into which an appellant may foist the burden of argument and research, nor is it this court's obligation or function to act as an advocate or search the record for error. *Id.*

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¶ 13 In the argument section of Cerrone's brief, not only does she advance conclusory contentions without adequate citation to the record, but she also fails to cite to any relevant case law. The established procedural rules addressing the requirements and standards for briefs on appeal are rules that require compliance and are not mere suggestions. *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). It is within this court's discretion to strike a brief that fails to comply with those rules and dismiss the appeal. *Id.* However, despite Cerrone's failure to comply with Rule 341(h), this court exercises its discretion to review her contentions on appeal. *Id.*

¶ 14 Cerrone claims that the trial judge and her attorney used pressure and "shock tactics" to encourage her to settle the case in lieu of participating in a bench trial scheduled for the same day as the pre-trial conference. Cerrone also claims that seven of her eight witnesses were present for trial and waited for her trial to commence while she participated in the pre-trial conference in which the trial judge and her attorney "demanded" that she end the case. Because the trial judge and her attorney rejected her request to review the crucial bank statements that she claimed depicted Rodriguez's theft, Cerrone claims she "felt defeated" and signed the pre-trial agreement that included a provision dismissing the case with prejudice.

¶ 15 From what we can decipher from her brief, Cerrone appears to argue that the trial court erred in dismissing her case pursuant to the parties' agreed settlement, which, according to her, she was pressured into executing. Cerrone appears to request that the settlement agreement be vacated and the matter set for trial allowing her to present additional evidence for the trial court's consideration.

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¶ 16 In Illinois, public policy generally approves of the peaceful and voluntary resolution of disputes. *Haisma v. Edgar*, 218 Ill. App. 3d 78, 86 (1991). Absent mistake or fraud, a settlement agreement is presumed valid and conclusive to all matters. *Cameron v. Bogusz*, 305 Ill. App. 3d 267, 271 (1999). Without proof of mistake or fraud, a settlement agreement will not be disturbed or set aside lightly. *Id.* A mistake of fact is defined as "an unconscious ignorance or forgetfulness of a fact past or present material to the contract, or belief in the present existence of a thing material to the contract which does not exist, or in the past existence of a thing which had not existed." *Bogusz*, 305 Ill. App. 3d at 272. Fraud is generally understood to include "anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth or by look or gesture." *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d 419, 433 (1977) (quoting *People ex rel. Chicago Bar Association v. Gilmore*, 345 Ill. 28, 46 (1931)). This court will not reverse a trial court's determination that the parties reached a settlement unless the trial court's finding is against the manifest weight of the evidence. A trial court's finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Webster v. Hartman*, 309 Ill. App. 3d 459, 460 (2000).

¶ 17 In this case, Cerrone contends that the trial court failed to fully consider her allegations and she was denied the opportunity to present her case at the scheduled bench trial. These contentions, however, are not indicative of either mistake or fraud. Litigants decide to settle disputes on the eve of trial in many cases. It is also common that after settlement some litigants

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experience a version of "buyer's remorse" and second-guess their decision to settle rather than go to trial. But there is nothing in the foregoing scenario that requires a trial court to vacate settlements voluntarily entered into. This is particularly true here where Cerrone was represented by counsel. We will not assume, as Cerrone contends, that her attorney, Rodriguez's attorney and the trial court were engaged in a concerted effort to force Cerrone to settle against her will when the record contains no support for such claims.

¶ 18 Moreover, we reject Cerrone's contention that the dismissal with prejudice should be set aside because she was bullied and pressured into settling the case. Although Cerrone does not claim she settled under "duress," we will so interpret her arguments. Generally, duress is defined as: "'(a) any wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition, or (b) any wrongful threat of one person by words or other conduct that induces another to enter into a transaction under the influence of such fear as precludes him from exercising free will and judgment if the threat was intended or should reasonably have been expected to operate as an inducement.'" *Regenold*, 68 Ill. 2d at 433 (quoting Restatement of Contracts, § 492 (1932)). Even accepting as true Cerrone's claim that the trial court repeatedly told her to move on with her life and not to have the case on her mind, we cannot conclude that such statements amount to a wrongful threat precluding Cerrone from exercising free will and judgment thereby inducing her to settle her case. Her counsel's advice in this regard may well have been a reflection of that fact that, as Cerrone acknowledges, no one witnessed Rodriguez stealing the money or the personal belongings from the home.

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Consequently, there is no basis in the record to set aside the settlement and allow Cerrone to reinstate her case.

¶ 19 Although Cerrone raises additional arguments regarding the manner in which the arbitration was conducted, the record does not contain a transcript of the arbitration proceedings. Thus, even if we construed the notice of appeal from the dismissal of Cerrone's case to also encompass matters relating to the arbitration (*Estate of Young v. Department of Revenue*, 316 Ill. App. 3d 366, 373 (2000) (notices of appeal are to be given liberal construction)), the record contains no basis to assign error in this regard. Furthermore, this claim, as well as the arbitration transcript, were not presented to the trial court for its review. For these reasons, Cerrone's contention of error relating to the arbitration proceedings is forfeited. *Id.*

¶ 20 Accordingly, we affirm the trial court's order dismissing Cerrone's case with prejudice.

¶ 21 Affirmed.