

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).

2013 IL App (4th) 120365-U

NO. 4-12-0365

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 7, 2013
Carla Bender
4th District Appellate
Court, IL

In re: the Marriage of)	Appeal from
KIMBERLY JO REEDER-WARD,)	Circuit Court of
Petitioner-Appellee,)	Clark County
and)	No. 10D34
TIMOTHY DARRELL WARD,)	
Respondent-Appellant.)	Honorable
)	Tracy W. Resch,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in (1) proceeding with a hearing on petitioner's motion when respondent was not present, (2) denying respondent's motion for case management, and (3) executing a judicial deed for the sale of the marital property.

¶ 2 On March 8, 2012, following the dissolution of the marriage of petitioner, Kimberly Jo Reeder-Ward, and respondent, Timothy Darrell Ward, the trial court entered an order removing Timothy from the marital home and prohibiting him from entering the home or removing personal property from the home. The court further ordered the home to be sold to Ken Halcomb of H&R Properties, Inc., and directed Timothy to comply with all requirements of executing the sale of the home.

¶ 3 Timothy appeals, arguing the trial court erred in (1) allowing the March 8, 2012, hearing to proceed in his absence, (2) denying Timothy's motion for case management, and (3)

executing a judicial deed for the sale of the marital home. We disagree and affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5 In May 2010, Kimberly filed a petition for dissolution of marriage. In October 2011, the trial court entered its ruling on the dissolution and directed Kimberly's attorney to prepare a written order. On December 1, 2011, the trial court entered its written dissolution judgment. Timothy appealed the dissolution judgment, and on July 3, 2012, this court affirmed the trial court in *In re Marriage of Ward*, 2012 IL App (4th) 111149-U. The facts surrounding the parties' dissolution are recited in our previous order and need not be repeated here.

¶ 6 On October 4, 2011, when the trial court made its final ruling on dissolution, the court ordered the marital home to be sold at public auction. The court directed Kimberly's attorney to arrange the auction and explained either party was free to solicit offers for the property prior to the auction.

¶ 7 On November 14, 2011, before the trial court entered its written dissolution judgment, Kimberly filed a petition to have Timothy removed from the marital property. Kimberly alleged Timothy was "keeping prospective buyers from purchasing the marital home" by (1) making harassing statements to prospective buyers and creating a hostile environment, (2) setting off fireworks while prospective buyers were on the land, (3) attempting to have prospective buyers' vehicles removed from the property, (4) preventing prospective buyers from gaining access to the property, (5) piling up bags of trash in the yard to make the residence look "undesirable," and (6) refusing to cooperate with Kimberly and her attorney to schedule showings for prospective buyers. Kimberly requested the court to remove Timothy from the property and

transfer all keys to the property to Kimberly.

¶ 8 In the trial court's December 1, 2011, written dissolution judgment, the court ordered the sale of the marital property by public auction. It provided in pertinent part (1) the property was to be sold "for an amount not less than two-thirds of its appraised value," and (2) Kimberly's attorney was to arrange the auction within 120 days of the entry of the dissolution judgment. It further provided as follows:

"Either party may solicit offers for the purchase of the real estate prior to the sale. Either party may show the property to prospective buyers including all portions of the home and acreage. Neither party will keep the other party from showing the home to prospective buyers. Neither party will harass, hassle, badger, or be a nuisance to the other party while showing the property to prospective buyers. Any sale is subject to th[e] [c]ourt's approval."

¶ 9 On December 30, 2011, Kimberly filed a motion to approve the sale of the marital property. Kimberly alleged a licensed real estate appraiser appraised the property at \$265,000 and the parties stipulated to such appraisal. She further alleged Kenneth Halcomb, owner and President of H&R Properties, Inc., offered Kimberly \$265,000 for the property and executed a purchase contract. Kimberly requested the trial court approve the sale of the marital property to Halcomb and order Timothy to execute all necessary documents to facilitate the sale.

¶ 10 On January 5, 2012, Timothy filed a motion to stay the sale of the marital property. Timothy stated he filed a notice of appeal in this court on December 28, 2011, which included an appeal of the division of marital property. Timothy argued the trial court should stay

the sale of the marital property until such appeal was final.

¶ 11 On January 5, 2012, Timothy also filed a motion to approve the sale of the marital property. Timothy alleged his son, Chad Ward, had offered \$266,000 for the property and executed a purchase contract. Timothy requested the trial court approve the sale and order Kimberly to execute all necessary documents to facilitate the sale.

¶ 12 On January 5, 2012, the trial court held a hearing on Kimberly and Timothy's motions. At the start of the hearing, the court granted Timothy's counsel's motion for leave to withdraw, which he had filed on December 27, 2011. Timothy requested additional time to obtain new counsel before proceeding on the motion for the sale of the marital property. The court granted Timothy's request and scheduled a hearing for all pending motions for January 27, 2012.

¶ 13 On January 20, 2012, Timothy filed a motion to strike the sale of the marital property. Timothy alleged the purchase contract presented to the trial court by Kimberly was "not a legal contract to purchase" because it did not contain a property description. Timothy requested the court to strike Kimberly's motion for sale of the marital property. Timothy also filed a motion for case management on Kimberly's petition to remove Timothy from the marital home, which Kimberly had filed on November 14, 2011.

¶ 14 On January 26, 2012, Kimberly's attorney was hospitalized and was unable to appear for the January 27, 2012, hearing. The trial court rescheduled the hearing for March 8, 2012.

¶ 15 On March 5, 2012, Kimberly filed an amended motion for the sale of the marital property. Kimberly alleged Halcomb made an offer of \$330,000 for the marital property and

signed a purchase contract. Kimberly requested the sale of the property to Halcomb for \$330,000, as it was 125% of the appraised value of the property. She also requested Timothy be ordered to execute all necessary documents to facilitate the sale of the property.

¶ 16 On March 8, 2012, Kimberly and her attorney appeared before the trial court but Timothy did not. The court received a call from Tammy Atteberry that Timothy was in the emergency room with chest pains. The court proceeded in Timothy's absence on Kimberly's amended motion for the sale of the marital property and her petition to have Timothy removed from the property.

¶ 17 Kimberly testified Timothy would not cooperate with her and coordinate showings of the property. When Kimberly brought a prospective buyer to the property, Timothy was present with five other people, "neighbors and employees," whom Timothy invited to the property to "try to make it a circus act." Kimberly testified they followed her around while she showed the property, "harassing" her, creating a "hostile environment." On a separate occasion, Kimberly allowed a prospective buyer and his business partner to "scout" the property for wildlife. Timothy called the Department of Natural Resources and reported the prospective buyer as a trespasser and attempted to have his vehicle towed. Timothy also set off fireworks and drove his truck around the property, "shining [his] lights into the woods," in an effort to scare the men off the property. After the incident, the prospective buyer was no longer interested in purchasing the property. Kimberly further testified Timothy intentionally placed "trash" all around the property, deterring prospective buyers.

¶ 18 The court granted Kimberly's amended motion and ordered the property sold to Halcomb for \$330,000. The court found Timothy engaged in conduct to "impoverish th[e]

estate" and was "more interested in dissipating the estate than he [wa]s in preserving it." The court further found "[t]he sale of the property [wa]s in the interests of both parties." In its written order, the court ordered Timothy to execute all necessary documents to effectuate the sale. The court also granted Kimberly's petition and ordered Timothy removed from the property, finding the court "simply ha[d] to enter an order which protects the assets from dissipation." The court turned the marital residence over to Kimberly.

¶ 19 On March 19, 2012, Timothy filed a motion to reconsider the March 8, 2012, order, requesting the trial court to order the marital property sold at public auction.

¶ 20 On March 22, 2012, the trial court held a hearing on Timothy's motion to reconsider. In regard to Kimberly's petition to remove Timothy from the marital home, Timothy argued the evidence and testimony presented was inaccurate. The court denied Timothy's motion with respect to his removal from the property. The court explained, "if the motion to reconsider is going to contest evidence that has previously been given, it has to be supported by an affidavit that specifically informs the court of the necessity for reopening the hearing." The court found Timothy did not file the appropriate affidavit and further clarified it had "considered everything [Timothy] had previously filed" when it entered its March 8, 2012 order.

¶ 21 The trial court also denied Timothy's motion to reconsider with respect to the sale of the marital property. Timothy argued the property would "bring higher dollar value [*sic*]" if the property was broken into smaller pieces and auctioned. The court pointed out to Timothy he had previously filed a motion to have the property sold to his son for \$266,000 and had filed a motion to stay the sale of the property, both of which were directly contradictory to the arguments made in his motion to reconsider. The court further explained to Timothy, "if [he]

wanted to see the property sold, [he] would have taken actions long before now to affirmatively promote the sale of the property."

¶ 22 On April 2, 2012, Kimberly filed a motion for Timothy to sign the deed to effectuate the sale of the marital property. On April 6, 2012, the trial court held a hearing on Kimberly's motion. Timothy refused, three times, to sign the deed. The court directed Kimberly's attorney to prepare a judicial deed for the court to sign in lieu of Timothy's signature.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, Timothy argues the trial court erred in (1) allowing the March 8, 2012, hearing to proceed in his absence, (2) denying Timothy's motion for case management, and (3) executing a judicial deed for the sale of the marital home. Kimberly has not filed an appellee's brief. However, we "may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of an appellee's brief." *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1099 (2009). Because we conclude the record here is simple and the issues can be decided without the aid of an appellee brief, we will proceed on the merits.

¶ 26 Before we address the merits of this appeal, we note Timothy has failed to comply with several supreme court rules. Rule 341(h)(3) requires Timothy to provide this court with the "applicable standard of review for each issue, with citation to authority." Ill. S. Ct. R. 341(h)(3) (eff. July 1, 2008). Timothy makes a blanket statement the trial court abused its discretion but fails to cite applicable authority. Rule 341(h)(6) requires Timothy to provide this court with a statement of facts containing "the facts necessary to an understanding of the case." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Timothy provides, at best, excerpts from various hearings of the

trial court without proceeding in any sort of chronological or narrative fashion that would adequately inform this court of the "facts necessary to an understanding of the case." We are not obligated to read every page of every transcript of the proceedings and the common-law record to understand what transpired in this case to understand what Timothy is appealing, although we did so. Finally, Rule 341(h)(7) requires Timothy to provide argument with citation to the authorities he relies upon. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Again, Timothy failed to do so. In the authority Timothy provides for his argument, such as "Illinois Code of Judicial Conduct Rule 62(A)" and "Fraud Upon the Court," he fails to provide an official citation to a statute, rule, or case; nor does he explain how such authority governs or is applicable to the issue presented. A litigant's *pro se* status does not excuse him from complying with appellate procedures as specified by our supreme court rules. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825, 932 N.E.2d 184, 187 (2010).

¶ 27 Most notable of these errors is Timothy's failure to provide coherent argument and citation to pertinent authority. We note, when Timothy appealed the dissolution judgment, he provided this court with a brief containing similar errors. In the interest of justice, this court expended considerable time deciphering, and at times restructuring, Timothy's arguments, cognizant of the fact Timothy was proceeding *pro se*. See *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462, 610 N.E.2d 769, 770 (1993) (Third District, recognizing *pro se* litigants are held to a lesser standard in complying with rules for appealing to the appellate court). We will not afford Timothy such deference herein, as it is his responsibility to clearly define the issues, present cohesive arguments on those issues, and provide the pertinent authority on which this court should rely. See *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st)

073303-B, ¶ 50, 974 N.E.2d 251, 263. Nevertheless, we will attempt to address the merits of the issues presented and will finesse Timothy's arguments only to the extent necessary to provide a coherent analysis and dispense of the issues raised.

¶ 28 A. March 8, 2012, Order

¶ 29 Timothy first argues the trial court erred by proceeding on Kimberly's amended motion to approve the sale of the marital property in his absence. More specifically, Timothy argues (1) the trial court should have granted him a continuance on March 8, 2012, when he was in the hospital because the court granted Kimberly's attorney a continuance on April 27, 2012, while he was in the hospital; (2) the court abused its discretion in allowing Kimberly to file her amended motion on March 5, 2012, only three days prior to the March 8, 2012, hearing, where the court had previously stated, at the January 5, 2012, hearing, no motions were to be filed seven days before the January 27, 2012, hearing; and (3) the judge presiding over the matter committed a fraud upon the court by failing to review the two purchase agreements.

¶ 30 As to this issue, Timothy does not provide a standard of review. Instead, he makes reference to "Illinois Code of Judicial Rule [*sic*] 62(A)," "Illinois code of Judicial Rule [*sic*] 63(A)(8)," and "Fraud upon the Court." (We note as a general matter, throughout his brief, Timothy argues the trial court abused its discretion or erred as a matter of law but does not provide authority on the standard of review.)

¶ 31 1. *Continuance*

¶ 32 Timothy first argues the trial court's March 8, 2012, order for the sale of the marital property and the removal of Timothy from the property should be reversed. Timothy asserts it should be reversed because the court did not grant him a continuance while he was in

the hospital, and therefore foreclosed on his opportunity to be heard on these matters. In arguing he should have been afforded a continuance, Timothy cites Rules 62(A) and 63(A)(8) of the Illinois Code of Judicial Conduct (Ill. S. Ct. Code of Jud. Con., canons 2, 3 (amended eff. Oct. 15, 1993; eff. Apr. 16, 2007)). He does not, however, explain what these rules are or how they apply to Timothy's argument. Rule 62(A) states, "A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Ill. S. Ct. Code of Jud. Con., canon 2 (amended eff. Oct. 15, 1993). Rule 63(A)(8) states:

"A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so." Ill. S. Ct. Code of Jud. Con., canon 3 (eff. Apr. 16, 2007).

It appears Timothy is arguing the court was biased and did not comply with the law because it granted Kimberly a continuance while her attorney was in the hospital but did not grant Timothy a continuance. However, we find nothing in our review of the record to show Timothy ever requested a continuance; nor does he direct us in his brief to where we might find proof in the record. "No duty is imposed upon a trial court to continue a case when no request for a continuance has been made." *Thilman & Co. v. Esposito*, 87 Ill. App. 3d 289, 293, 408 N.E.2d

1014, 1018 (1980).

¶ 33 Moreover, Timothy does not provide citation to any authority which states a trial court must grant continuances. To the contrary, section 2-1007 of the Code of Civil Procedure (735 ILCS 5/2-1007) (West 2010)) provides the court may grant a continuance in its *discretion*. We conclude the court did not abuse its discretion.

¶ 34 *2. Kimberly's Amended Motion*

¶ 35 Timothy next argues the March 8, 2012, order should be reversed because Kimberly filed her amended motion for the sale of the marital property three days prior to trial. At the January 5, 2012, hearing, the trial court intended to proceed on Kimberly's motion for the sale of the marital property. However, the court afforded Timothy a continuance to obtain new counsel. The court set the matter for January 27, 2012. In scheduling the hearing, the court stated it was "going to provide that no pleadings will be taken up unless they are filed within seven—not less than seven days before the hearing." The January 27, 2012, hearing was continued to March 8, 2012, because Kimberly's attorney was in the hospital. On March 5, 2012, Kimberly filed an amended motion for the sale of the marital property.

¶ 36 Timothy argues the trial court should not have allowed Kimberly to file her amended motion three days prior to the hearing after the court had informed the parties they were to have all of their motions and memorandums of law filed seven days prior to the hearing. For this argument, Timothy again cites the Judicial Code of Conduct, specifically Rules 62(A), 63(A)(4), and 63(A)(8), without explaining what the rules are or how they apply to his argument. It appears Timothy is trying to argue the court did not follow its own rules and was biased in allowing Kimberly's motion to be filed. However, as we have indicated, we will not advance

arguments on Timothy's behalf. Since he was not at the March hearing, Timothy made no objection to proceeding on Kimberly's recently filed motion, nor did he include this in his motion to reconsider.

¶ 37 Nevertheless, we conclude the trial court did not err in allowing Kimberly's motion to be filed on March 5, 2012. Local Rule 4(A)(4) of the Uniform Rules of Practice for the Fifth Judicial Circuit (5th Jud. Cir. Ct. R. 4(A)(4) (revised eff. Aug. 27, 2009)) provides if notice of a motion is given by mail, it shall be in accordance with Supreme Court Rule 12. Rule 12 provides "[s]ervice by mail is complete four days after mailing." Ill. S. Ct. R. 12(c) (eff. Dec. 29, 2009). The certificate of service in the record shows Kimberly mailed the amended motion to Timothy on March 1, 2012. Thus, service was complete four days later, on March 5, 2012, when Kimberly filed her amended motion with the circuit clerk's office. Although the court stated it wanted all motions filed seven days prior to the hearing, we assume the court made such a request for purposes of notice. After the court made its statement about filing seven days before the hearing, Kimberly's attorney asked, "And it must be to Mr. Ward seven days before?" The court responded, "[it] [h]as to be in the mail seven days before." We presume the judge knows the law and the rules on service. This leads us to conclude the court made the statement knowing that if a motion was placed in the mail seven days before the hearing, service would be complete four days later, leaving the party receiving the motion three days before the hearing to review its contents and be prepared to proceed on the motion, which is exactly what transpired in this case.

¶ 38 Moreover, nothing in the record indicates the trial court was not aware of and familiar with the motion when it ruled on it. To the contrary, the court noted the only difference

between the original motion for the sale of the marital property and the amended motion was the purchase price (increasing from \$265,000 to \$330,000). Therefore, we conclude it was not error for the court to allow the amended motion to be filed on March 5, 2012, and heard on March 8, 2012.

¶ 39

3. *Purchase Agreements*

¶ 40 As to Timothy's third point, he neither explains how the trial court's failure to review the two purchase agreements from Halcomb (the first being for \$265,000 and the second being for \$330,000) constitutes a fraud upon the court, nor does he provide any authority on the matter. Thus, he has forfeited the issue. See *People v. Lomax*, 2012 IL App (1st) 103016, ¶ 54, 975 N.E.2d 115, 130 (concluding the supreme court rules require citation to authority in support of arguments made in the appellate brief and failure to cite authority constitutes waiver); see also Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 41

B. Case Management

¶ 42 Timothy's second argument on appeal is the trial court erred by not granting his motion for case management on Kimberly's petition to have him removed from the marital property. Again, Timothy does not provide a standard of review for this issue, in violation of Rule 341(h)(3). Timothy first argues he had a right to case management in accordance with Illinois Supreme Court Rule 201(b)(1) (eff. July 1, 2002) and Rule 213 (Ill. S. Ct. R. 213 (eff. Jan. 1, 2007)) but does not further elaborate on the matter. He then references "Illinois Code of Judicial Rule [*sic*] 62(A) and 63(A)(8)" but does not explain what these rules are or what bearing such rules have on this issue.

¶ 43

Supreme Court Rule 201 pertains to discovery and Rule 213 governs

interrogatories. As described earlier, Rules 62(A) and 63(A) of the Code of Judicial Conduct refer to a judge's duties to comply with the law and remain unbiased. Timothy fails to present any coherent argument as to (1) why the trial court should have set Kimberly's petition for case management and (2) how the above rules apply to this issue. And, as already stated, we will not make Timothy's arguments for him.

¶ 44 C. Judicial Deed

¶ 45 Timothy's last argument on appeal is the trial court abused its discretion when it executed a judicial deed for the sale of the marital property. Timothy indicates in his brief he is "not able to argue this [issue] because [he] do[es] [not] have a copy of the [j]udicial [d]eed." Therefore, Timothy has forfeited this issue. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we affirm the trial court's judgment.

¶ 48 Affirmed.