

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).

2014 IL App (4th) 140172-U

NO. 4-14-0172

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 20, 2014

Carla Bender

4th District Appellate

Court, IL

ANTHONY J. GRASON,
Plaintiff-Appellant,

v.

ELIZABETH CURRIE LOVEGOVE, d/b/a SUGAR
CREEK STABLES, INC.,
Defendant-Appellee.

) Appeal from
) Circuit Court of
) Sangamon County
) No. 12SC5263
)
) Honorable
) Brian Otwell,
) Judge Presiding.

JUSTICE POPE delivered the judgment of the court.

Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment is affirmed as plaintiff forfeited all issues raised with regard to trial court rulings.

¶ 2 On November 15, 2012, plaintiff, Anthony J. Grason, filed a small-claims complaint against defendant, Elizabeth Currie Lovegove, d/b/a Sugar Creek Stables, Inc., alleging defendant breached a horse boarding contract by withholding food, exercise, and care to plaintiff's horses. On January 29, 2013, defendant filed a counterclaim against plaintiff, seeking unpaid boarding fees, compensation for damage caused by one of plaintiff's horses, unpaid veterinary and other expenses, attorney fees and other expenses pursuant to the Illinois Innkeepers Lien Act (Lien Act) (770 ILCS 40/0.01 to 40/50a (West 2012)). On September 12, 2013, the trial court granted judgment for defendant on plaintiff's claim and defendant's counterclaim, awarding defendant \$880 in boarding fees, \$75 in late fees, \$240 for advertising

costs, and \$121 in court costs. On February 7, 2014, the court granted defendant's request for attorney fees in the amount of \$2,300. Plaintiff appeals, alleging the court erred in awarding defendant attorney fees pursuant to section 49 of the Lien Act (770 ILCS 40/49 (West 2012)) and in not rendering judgment in favor of the plaintiff or taking plaintiff's expenses and damages into consideration. Plaintiff also alleges defendant's demand for attorney fees was "grossly inappropriate." We affirm.

¶ 3

I. BACKGROUND

¶ 4

On November 15, 2012, plaintiff filed a complaint against defendant for breach of a boarding contract for four of plaintiff's horses. On November 30, 2012, plaintiff filed an amended complaint for breach of contract and requested the trial court issue a 30-day stay of the sale of plaintiff's horses. On January 2, 2013, the trial court gave defendant until January 30, 2013, to file a counterclaim. The court also ordered plaintiff could satisfy the lien on his horses by paying \$1,493 by January 7, 2013.

¶ 5

On January 29, 2013, defendant answered plaintiff's amended complaint and filed a counterclaim against plaintiff for boarding fees, late fees, property damage, veterinary expenses, attorney fees, advertising costs for the sale of the horses, and court filing fees. Defendant acknowledged plaintiff paid \$1,500 on January 7, 2013.

¶ 6

On January 30, 2013, plaintiff received a letter from defendant's attorney dated January 26, 2013, stating the horses would be sold on February 26, 2013, because plaintiff was again past due on his boarding charges. On February 13, 2013, plaintiff filed an emergency motion for stay of the sale of his horses. Plaintiff alleged defendant had failed to provide 30

days' notice of the sale. That same day, plaintiff also filed a motion to dismiss the lien and attorney fees claim demanded by defendant.

¶ 7 On February 22, 2013, the trial court granted plaintiff's request for a stay of the sale of the horses as service on plaintiff of notice of the sale was not timely.

¶ 8 On March 13, 2013, the case was called for a scheduled bench trial. Plaintiff agreed to remove his horses from defendant's stable on March 15, 2013, between 5 and 7 p.m. Defendant agreed to allow plaintiff and/or his agent access to remove the animals. The court scheduled a status hearing for March 19 in the event the horses were not removed as scheduled. The record notes no one appeared for this status hearing.

¶ 9 On September 12, 2013, following a bench trial, the trial court entered judgment for defendant on plaintiff's claim and defendant's counterclaim. The court awarded defendant \$880 in boarding fees, \$75 in late fees, \$240 in advertising costs, and \$121 in court costs. That same day, defendant filed a motion for statutory attorney fees and court costs pursuant to the Lien Act. Defendant sought \$13,812.50 in attorney fees and \$121 for costs.

¶ 10 On September 16, 2013, plaintiff filed a motion for sanctions against defendant and/or her attorney. On October 10, 2013, plaintiff filed a motion to reconsider and vacate judgment.

¶ 11 On November 6, 2013, the trial court denied plaintiff's motion to reconsider and vacate judgment and motion for sanctions.

¶ 12 On February 7, 2014, the trial court entered an order regarding attorney fees. The court ordered plaintiff to pay \$2,300 in attorney fees to defense counsel.

¶ 13 This appeal followed.

¶ 14

II. ANALYSIS

¶ 15 This court has often reminded parties the appellate court "is not a depository into which the burden of research may be dumped and failure to cite legal authority in the argument section of a party's brief waives the issue for review." *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613, 708 N.E.2d 539, 543 (1999). Supreme Court Rule 341(h)(7) states an appellant's brief shall contain:

"Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 16 The first issue defendant raises alleges the trial court erred in awarding defendant attorney fees pursuant to section 49 of the Lien Act (770 ILCS 40/49 (West 2012)). Plaintiff argues a stable keeper's lien pursuant to section 49 of the Lien Act "is a possessory lien only; without Judicial oversight, review, authority, relief, or process of law." As a result, according to defendant, the court lacked authority under section 49 to award attorney fees, court costs, or other relief sought by defendant.

¶ 17 Our state constitution provides: "Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law." Ill. Const.1970, art. VI, § 9. Plaintiff cites no authority to support his contention the trial court did not have jurisdiction to award attorney fees, court costs, or other relief pursuant to section 49. As a result, we find this argument forfeited pursuant to Supreme Court Rule 341(h)(7).

¶ 18 Plaintiff also alleges:

"For the stable keeper to benefit monetarily from the possessory lien allowed under the Illinois Innkeepers Lien Act; said possessory lien must be brought to finality or full and complete 'enforcement' as clearly stated and outline[d] in section[s] (d), (e), and (f). Enforcement of lien is only permitted when legally sufficient and when all criteria and requirements are accomplished by the Stable Keeper."

According to plaintiff, because defendant never sold any of the plaintiff's horses, defendant is not entitled to attorney fees. This presents a question of statutory interpretation.

¶ 19 In granting defendant's request for attorney fees, the trial court found section 49 of the Lien Act "authorizes recovery for attorney fees incurred in the process of attempting to enforce such a lien, and such a claim should not be defeated when that lien is resolved short of a sale." Plaintiff fails to address the trial court's interpretation of the Lien Act or the subsection

relied on by the court. Instead, defendant simply quotes portions of three other subsections of section 49. As stated earlier, it is not the function of this court to research and make arguments for an appellant. *Campbell*, 303 Ill. App. 3d at 613, 708 N.E.2d at 543. As a result, we find plaintiff forfeited this argument.

¶ 20 Plaintiff next alleges the trial court erred in not entering judgment on his behalf.

We first note we do not have a transcript of the trial in this case, a bystander's report, or an agreed statement of facts. Ill. Sup. Ct. R. 323 (eff. Dec. 13, 2005). It is the appellant's duty to provide a sufficient record for this court to review to establish error. *Midstate Siding and Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1252 (2003). "[I]n the absence of such a record on appeal, the reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis [Citation]." *Id.* As a result, because we do not know all of the evidence the trial court heard, we presume the trial court had a sufficient factual basis for ruling in defendant's favor.

¶ 21 Next, relying on section 15 of the Equine Activity Liability Act (Equine Act) (745 ILCS 47/15 (West 2012)), plaintiff alleges the trial court erred in awarding defendant damages. Section 15 states in part:

"Each participant who engages in an equine activity expressly assumes the risk of and legal responsibility for injury, loss, or damage to the participant or the participant's property that results from participating in an equine activity, except in specific situations as set forth in Section 20, when the equine activity

sponsor or equine professional may be held responsible." 745

ILCS 47/15 (West 2012).

However, defendant fails to offer any argument why this section applies to defendant in this case. While boarding equines is an equine activity pursuant to section 10(c)(3) of the Equine Act, boarding an equine is not included within the definition of "engages in an equine activity" found in section 10(a) of the Equine Act, which states:

" 'Engages in an equine activity' means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted, or assisting a participant. The term 'engages in an equine activity' does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the equine activity." 745 ILCS 47/10(a) (West 2012).

As stated earlier, it is not the function of this court to make arguments for appellant. As a result, because plaintiff makes no argument why the General Assembly intended for a horse boarding operation to be included within the definition of "engages in an equine activity," we find this argument is also forfeited.

¶ 22 Finally, plaintiff alleges defendant's demand for attorney fees was grossly inappropriate. As we already ruled, plaintiff forfeited his argument defendant was not entitled to attorney fees in this case. Further, we note the trial court awarded defendant attorney fees in an amount significantly less than defendant requested.

¶ 23 We also note defendant did not file a brief with this court. However, this does not require automatic reversal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-32, 345 N.E.2d 493, 494-95 (1976). As this court has noted, the appellant still has the burden of establishing error. *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173, 890 N.E.2d 1220, 1223 (2008). Because plaintiff forfeited all the issues he raised, he did not establish any error.

¶ 24 III. CONCLUSION

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

¶ 26 Affirmed.