2015 IL App (1st) 140748-U

FIRST DIVISION
May 4, 2015

No. 1-14-0748

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

MICHAEL P. DUNAGAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 13 M5 1286
	)	
DRAGAN ALEKSIC, TS TRUCK LINE	)	
EXPRESS, INC.,	)	Honorable
	)	Russell W. Hartigan,
Defendants-Appellees,	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: We hold the circuit court properly denied plaintiff's motion for substitution of judge pursuant to section 2-1001(a)(2) of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1001(a)(2) (West 2012). The circuit court's judgment order after trial, however, appears to contain errors in the computation of the final award amount. Plaintiff's remaining arguments are procedurally defaulted.

¶ 1 Plaintiff, Michael P. Dunagan, brought a *pro se* complaint in small claims court against defendants Dragan Aleksic and TS Truck Line Express, Incorporated,[1] alleging defendants did not pay him for his work driving defendant's tractor-trailer between August 1 and August 13, of 2013. Plaintiff alleged he responded to an advertisement defendants posted promising payment of 45 cents per loaded mile. After a bench trial, the circuit court entered judgment in plaintiff's favor. Noting that defendants had previously paid plaintiff $700, the circuit court awarded plaintiff an additional $714.70 based on disputed mileage and the recovery of a portion of disputed insurance payments. The judgment order, however, appears to have several typographical or computational errors, and it is unclear how the circuit court arrived at its final judgment amount of $714.70.

¶ 2 Before this court, plaintiff, again appearing *pro se*, raises the following issues for our review: (1) whether the circuit court erred in denying his motion for substitution of judge as of right pursuant to section 2-1001(a)(2) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1001(a)(2) (West 2012)); (2) whether the circuit court improperly found him to be an independent contractor as opposed to an employee of defendants; (3) whether the circuit court made an improper entry on the half-sheet in the record; (4) whether the circuit court judge made an improper statement to plaintiff; (5) whether the circuit court improperly allowed defendants continuances to file an appearance; (6) whether, under the plain error doctrine, this court can excuse his procedural default and review his claim that the circuit court improperly denied his attempts to enter certain evidence at trial; (7) whether the circuit court failed to properly review

[1] Defendants presented a united defense and were represented by the same attorney before the circuit court. It is unclear what exactly the defendants' relationship is to each other, but it appears from the record that Aleksic is an agent of TS Truck Line Express, Incorporated. For the most part, we will refer to defendants collectively.

his motion for modification of judgment; (8) whether the circuit court improperly allowed defendants multiple continuances to contest his bystander's report; (9) whether this court can render an advisory opinion; and (10) whether the circuit court's judgment order contained either a typographical error or a computational error.

¶ 3 After reviewing the record, we hold that the circuit court properly denied plaintiff's motion for substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code. 735 ILCS 5/2-1001(a)(2) (West 2012). Plaintiff is procedurally defaulted from raising his arguments that the circuit court improperly found him to be an independent contractor; that the circuit court made an improper entry on the half-sheet; that the circuit court judge made an improper statement to him; that the circuit court allowed defendants improper continuances to file an appearance or to contest the bystander's report; and that the circuit court failed to properly review his motion for modification of the judgment. We decline plaintiff's request to render an advisory opinion and we reject plaintiff's contention that we can excuse his procedural default and review his claim under the plain error doctrine that the circuit court improperly denied admission of certain evidence at trial. We do, however, agree with plaintiff that the circuit court's judgment order contains either a typographical or computational error that must be corrected. Accordingly, we affirm the judgment of the circuit court but remand the matter to allow the circuit court to file a corrected judgment order consistent with its trial findings.

¶ 4 JURISDICTION

¶ 5 On February 7, 2014, the circuit court denied plaintiff's motion for modification of the judgment. On March 6, 2014, plaintiff timely appealed. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301(eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 6 BACKGROUND

¶ 7 On September 24, 2013, plaintiff, *pro se*, filed his complaint against defendants alleging he drove defendants' tractor-trailer on August 1 through August 13, of 2013. According to plaintiff, defendants agreed to pay him according to the following terms: 45 cents per loaded mile; and 40 cents per unloaded mile, albeit with the first 50 unloaded miles per day to be unpaid. Plaintiff further alleged that he was "to stay 'Over the Road' for two weeks."[2] Defendants failed to pay defendant on August 17, 2013, as agreed to by the parties. Plaintiff classified himself as "an employee[,] *** not a business owner/contractor." Plaintiff further alleged that defendants told him he was in training and that plaintiff cost defendants $1,700 in insurance and trailer rental payments.

¶ 8 Also on September 24, 2013, the circuit court entered an order indicating that plaintiff, defendants, and defense counsel were present in court. The circuit court set the matter for trial on October 16, 2013, and allowed defendants seven days to file an appearance and responsive pleadings.

¶ 9 On October 1, 2013, plaintiff filed a motion for default judgment against defendants arguing that defendants failed to file an appearance in the matter. He asked for a judgment in the amount of $1,500. On October 2, 2013, plaintiff filed another motion seeking a default judgment against defendants similar in substance to his October 1, 2013, default motion. He also asked the court to deny defendants any further extensions. The record before this court does not contain any orders from the circuit court resolving plaintiff's two motions for default judgment.

[2] Plaintiff did not define the term " 'Over the Road' " in his complaint.

¶ 10 On October 4, 2013, plaintiff filed a motion seeking to strike the October 16, 2013, trial date and to set a status date of October 30, 2013. Plaintiff added to his motion the assertion that if defendants had not filed an appearance or answer, than he would ask for summary judgment in his favor in the amount of $1,500.

¶ 11 On October 11, 2013, the circuit court struck the October 16, 2013, court date and set the matter for status on October 30, 2013.

¶ 12 On October 30, 2013, defense counsel filed an appearance on defendants' behalf.

¶ 13 On October 31, 2013, plaintiff filed a motion for substitution of judge pursuant to section 2-1001(a)(2) of the Code. 735 ILCS 5/2-1001(a)(2) (West 2012). The circuit court denied plaintiff's motion on November 12, 2013. The circuit court found the motion to be untimely and stated "substantive rulings have been made." The circuit court also noted that it had been "fully advised."

¶ 14 On December 3, 2013, the matter went to trial. According to the certified bystander's report, the following occurred at trial.[3] Plaintiff argued he was an employee of defendants and that he was not paid according to the oral agreement of the parties based on an advertisement placed on "Craigslist.org" by defendants. A copy of the advertisement was later entered into evidence. Plaintiff argued that the advertisement was an offer to him to work for 45 cents a mile driven and that he drove 4,900 miles on defendants' behalf. Plaintiff determined that defendants owed him $1,817.04 based on the miles he drove on defendants' behalf. He also asked for an additional $50 for moving pallets for defendants in Danville, Illinois. It appears from the bystander's report that Aleksic and plaintiff testified at trial.

[3] We note that the certified bystander's report is difficult to follow and comprehend as it does not appear to follow the typical order of a trial.

¶ 15 Defense counsel argued that the advertisement in question was not a contract between the parties. Defendants put forth evidence that defendants paid plaintiff for the following trips: Joliet, Illinois to Danville, Illinois; Vincennes, Indiana to Forest Park, Georgia; Atlanta, Georgia to Miami, Florida; Warner-Robbins, Georgia to Syracuse, New York; Carthage, New York to Plainfield, Michigan; and New Holland, Michigan to Northlake, Illinois. Aleksic testified defendants paid plaintiff $40 for a detention in Warner-Robbins, Georgia; $50 for moving pallets in Danville, Illinois; and $100 for fuel expended on the trip from Warner-Robbins, Georgia to Syracuse, New York. Aleksic testified defendants deducted the following amounts from plaintiff's paycheck: $10 for a " 'PSP' " report; $20 for an " 'MVR' " report; $60 for drug screening; and $650 for " 'cargo insurance.' " Plaintiff later denied agreeing to the above deductions. Defense counsel argued that plaintiff knew defendants were not going to pay him for unloaded miles, which plaintiff denied. Aleksic classified plaintiff as an independent contractor.

¶ 16 During plaintiff's cross-examination of Aleksic, Aleksic testified that defendants' advertisement stated it was to pay a driver for 45 cents per mile. The advertisement did not say that the 45 cents per mile was only to be paid for "loaded' miles." Aleksic denied that he personally dispatched plaintiff "every day for every load."

¶ 17 Plaintiff testified that defendants directed and controlled where he went, when to arrive, when to leave, whom to get relevant documents from, and where to buy fuel. Defendants directed him to turn in weekly log book pages and to reply to all of its text messages.

¶ 18 The circuit court judge, at least two times during the trial, asked the parties what their relationship was to each other. Plaintiff asserted he was an employee while Aleksic maintained plaintiff was an independent contractor.

¶ 19 The bystander's report also indicates that the court did not allow plaintiff to read from an "outline [plaintiff] prepared which contained questions" regarding whether plaintiff was an employee of defendants. The bystander's report states that the circuit court judge "halted" the questioning due to a " 'time issue.' " The circuit court judge again "halted" plaintiff's reading to the court of our supreme court's decision in, *Jack Bradley, Inc. v. Dept. of Employment Security*, 146 Ill. 2d 61 (1992), and from the Illinois Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et. seq.*)). According to the bystander's report, plaintiff later "attempted to read from [an] outline of questions to set up his actionable fraud claim" but was stopped from doing so by the circuit court.

¶ 20 On December 3, 2013, the record shows that the circuit court entered the following order:

> "The issues here are in dispute as to payment owed for work performed and as to whether compensation is paid for loaded or unloaded vehicles. Further issues were whether the plaintiff had a valid CDL with one year experience and the extent of the mileage driven by the plaintiff and cargo insurance.
>
> The plaintiff can recover ½ of $650.00 for cargo insurance since that was never properly documented nor explained to the plaintiff. The plaintiff can also recover for disputed mileage in the amount of $389.70 which is the difference between 4,090 and 3,124 miles at .045 which is $389.70. Plaintiff was previously paid $700 for his work. Plaintiff quit after 12 days on the job.
>
> Thus the net award is $714.70."

¶ 21 On January 2, 2014, plaintiff filed a motion for modification of the judgment pursuant to section 2-1203 of the Code. 735 ILCS 5/2-1203(a) (West 2012). In his motion, plaintiff argued that he was an employee, not an independent contractor, of defendants and that his claims fall under the Wage Act. He also argued that he stated a claim for fraud and theft. He asked the court to grant him interest on the judgment and attorneys' fees. Accordingly, plaintiff asked the circuit court to modify its judgment to award him $2,363.91. Plaintiff attached multiple documents to his motion, including: receipts; case law; statutory provisions; and an invoice detailing plaintiff's calculations as to the amount he claimed he was owed.

¶ 22 On January 10, 2014, plaintiff filed a motion to file an amended motion to modify the judgment. In the motion, he argued he "stands by most of that motion," but noted that he made typographical errors, forgot to attach case law, made a mathematical error regarding the computation of interest. He also stated that he "will serve *** defendant[s] the amended motion because he *** never served the original motion."

¶ 23 On January 31, 2014, plaintiff filed an amended motion to modify the judgment. In his motion, plaintiff argued he was an employee of defendants and that defendants are subject to the provisions of the Wage Act. Plaintiff attached numerous documents to his amended motion, including two invoices stating defendants owed him $1,615.65 and $653.96, respectively.

¶ 24 On February 7, 2014, the circuit court ordered all of plaintiff's posttrial motions be "denied/stricken." The order further provided that the "judgment [was] previously satisfied by defendant."

¶ 25 On March 6, 2014, plaintiff filed his notice of appeal.

¶ 26 On March 26, 2014, plaintiff filed a motion seeking to certify a bystander's report of the December 3, 2013, trial in this matter. Plaintiff alleged the circuit court showed " 'favoritism' "

towards defendants and asked that the court not allow defendants additional time to evaluate the bystander's report.

¶ 27 On June 27, 2014, the circuit court certified plaintiff's bystanders report "with no objections."

¶ 28 On November 24, 2014, this court, on our own motion, found that defendants failed to file a brief within the time prescribed by Illinois Supreme Court Rule 343(a). Accordingly, this court ordered that the matter be considered on the record and plaintiff's brief only.

¶ 29 ANALYSIS

¶ 30 Plaintiff raises multiple issues for our review. We must first, however, discuss the rules of appellate procedure because plaintiff's brief is very difficult to follow and the record is difficult to comprehend and appears to be incomplete. The rules of appellate procedure and procedural default are well-established. Illinois Supreme Court Rule 341 sets forth the requirements of briefs before this court. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Rule 341(h)(7) requires appellants to refer to the pages of the record relied upon. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). The failure to elaborate on an argument, cite persuasive authority, or present well-reasoned argument violates Rule 341(h)(7) and results in the procedural default of that argument. *Sakellariadas v. Campbell*, 391 Ill. App. 3d 795, 804 (2009); *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). Rule 341(h)(7) requires both citation to relevant authority and argument. *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010). Vague allegations, or allegations that are merely listed, do not satisfy Rule 341(h)(7). *Id.* This court has repeatedly warned litigants that we are "not a depository in which the burden of argument and research may be dumped." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80. Plaintiff's status as a *pro*

se litigant does not relieve him of these requirements. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶8.

¶ 31 Furthermore, we cannot consider matters outside of the record. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). It is the duty of the appellant, plaintiff in this matter, to present a sufficiently complete record to support a claim of error, including presenting a transcript, or bystander's report, or agreed statement of facts. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003); see also Ill. S. Ct. R. 323 (eff. Dec. 13, 2008) (Illinois Supreme Court Rule addressing the presentment on appeal of a transcript, or bystander's report, or agreed statement of facts.) Without a complete record, we must presume that the relevant order of the circuit court had a sufficient basis and conformed to the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392 ; *Smolinksi*, 363 Ill. App. 3d at 757-58 ("In fact, when the record on appeal is incomplete, a reviewing court should actually 'indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.' " (quoting *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985)). When the lower court states that it is "fully advised," our presumption of correctness is especially strong. *Smolinksi*, 363 Ill. App. 3d at 758 (noting the circuit court order stated it was " 'fully advised in the premises' "). Issues raised for the first time on appeal and not first presented to the circuit court will not be considered. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 229 (1986). Additionally, we may affirm the circuit court on any basis that appears in the record. *Trustees of Wheaton College v. Peters*, 286 Ill. App. 3d 882, 887 (1997). With these limitations in mind, we will address each of plaintiff's claims of error.

¶ 32 Substitution of Judge

¶ 33 Plaintiff first argues that the circuit court erred when it denied his motion for substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code. 735 ILCS 5/2-1001(a)(2) (West 2012). According to plaintiff, the circuit court had no discretion to deny his motion because the court had not yet ruled on any substantive motions. Plaintiff acknowledges that he filed two motions for default judgment prior to filing his motion for substitution of judge. Plaintiff insists, however, that subsection 2-1001(a)(2)(iii) of the Code allows a substitution of judge because defendants had not yet appeared when he filed his default motions.

¶ 34 Section 2-1001(a)(2) of the Code allows a litigant one substitution of judge without cause as of right "if it is presented before trial or hearing begins and before the judge to whom it is presented as has ruled on any substantial issue in the case, or if it is presented by consent of the parties." 735 ILCS 5/2-1001(a)(2)(i),(ii) (West 2012). Where a motion under section 2-1001(a)(2) of the Code is properly raised, the circuit court does not have any discretion to deny it. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶13. Matters of scheduling and continuances are not considered substantial rulings under Section 2-1001(a)(2). *Schnepf v. Schnepf*, 2013 IL App (4th) 121142, ¶58. When determining whether the circuit court made a substantial ruling, we utilize a *de novo* standard or review. *Williams v. Estate of Cole*, 393 Ill. App. 3d 771, 775 (2009). We also review issues of statutory construction *de novo*. *In re Estate of Wilson*, 238 Ill. 2d 519, 552 (2010).

¶ 35 Our review of the record shows that prior to plaintiff filing his motion for substitution of judge pursuant to section 2-1001(a)(2) of the Code on October 31, 2013, he filed two motions for default judgment. On October 1, 2013, he motioned for default judgment in the amount of $1,500. On the next day, October 2, 2013, he filed a similar motion for default judgment.

Absent from the record, however, are any orders addressing plaintiff's two motions for default judgment. It is the duty of the appellant, plaintiff in this matter, to present a sufficiently complete record to support a claim of error. *Rogers*, 204 Ill. 2d at 319. Without a complete record, we must presume that the relevant order of the circuit court had a sufficient basis and conformed to the law. *Foutch v.* 99 Ill. 2d at 391-92. On November 12, 2013, the circuit court denied plaintiff's motion for substitution of judge finding the motion untimely and noting that "substantive rulings have been made" and that it was "fully advised." Based on the record, we do not know what the two substantive rulings the circuit court was referring to. Plaintiff failed to provide a transcript, or bystander's report, or agreed statement of facts addressing what happened at the November 12, 2013, court date. Based on the incompleteness of the record, we must presume the circuit court's order conformed to the law. Furthermore, our presumption of the correctness of the circuit court's order is especially strong here due to the fact that the court indicated it was "fully advised." *Smolinksi*, 363 Ill. App. 3d at 758.

¶ 36 Additionally, we can also presume that the substantive rulings the circuit court referred to in its order addressed defendant's two motions for default judgment. This court has held that rulings on motions for default judgment are substantive rulings for the purposes of section 2-1001(a)(2) of the Code. See *Antkiewicz v. Pax/Indianapolis, Inc.*, 254 Ill. App. 3d 723, 727 (1993) ("For instance, plaintiff twice sought to bring a quick end to the cause on its merits by seeking a default judgment, the denial of which has been held to constitute the resolution of a substantial issue in the case); *City of Quincy v. Weinberg*, 363 Ill. App. 3d 654, 662 (2006) ("We find that the trial court's default judgment amounted to a substantial ruling in this case. The ruling directly related to the merits of the case, that being the allegations in the complaint filed by plaintiff."). We hold that based on the record before us, we must affirm the circuit court's

finding that it made substantive rulings prior to plaintiff's filing of his motion for substitution of judge pursuant to section 2-1001(a)(2) of the Code.

¶ 37 Plaintiff next contends he timely filed his motion for substitution of judge pursuant to section 2-1001(a)(2) of the Code because defendants had not filed an appearance when he filed his motions for default judgment. He argues the language of subsection (a)(2)(iii) of section 2-1001 of the Code supports his position. 735 ILCS 5/2-1001(a)(2) (iii) (West 2012). Section 2-1001(a)(2)(iii) of the Code, provides, in relevant part:

> "if any party has not yet entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party." 735 ILCS 5/2-1001(a)(2)(iii) (West 2012).

Based on the plain language of subsection (a)(2)(iii) of section 2-1001 of the Code, we find it applies to parties who had not yet appeared in the matter. Applied to the case at bar, defendants would have been allowed to file a motion for substitution of judge after filing their appearance because they had not filed a substantive motion. It did not apply to plaintiff, who had appeared and filed two substantive motions for default before the court. It would make no sense if plaintiff were to be allowed to file substantive motions yet still seek a substitution of judge because one or all of the other parties had not yet appeared.

¶ 38 We acknowledge that the Fourth District of this court has held that "[o]nly rulings made *after all parties* who are not defaulted make an appearance are to be considered in granting or denying the motion." (Emphasis added.) *Scroggins v. Scroggins*, 327 Ill. App. 3d 333, 336

(2002). The *Scroggins* case relied on the language of the statute in making this holding. Based on our reading of the statute, however, we hold that section 2-1001(a)(2)(iii) allows a party who had not yet appeared in a matter to file a substitution of judge motion, upon filing an appearance, despite other parties' prior substantive motions. We do not think it allows a party to file a motion for substitution of judge, despite filing a prior substantive motion, just because another party had yet to appear. To the extent that *Scroggins* conflicts with our holding in this matter, we respectfully decline to follow it. See *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008) (under the doctrine of *stare decisis*, "the opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels").

¶ 39 We also must reject plaintiff's position based on the state of the record before us. As discussed above, we don't know when the circuit court resolved defendant's two motions for default judgment. We do know from the record that plaintiff filed his motions for default judgment on October 1 and 2, of 2013. Defendants filed an appearance on October 30, 2013. The next day, October 31, 2013, plaintiff filed his motion for substitution of judge. Even assuming plaintiff's position is correct for the sake of argument; we still must reject his position because the circuit court could have made its substantive ruling on plaintiff's motion at some point after defendants filed their appearance but before plaintiff filed his motion for substitution of judge. Without a complete record, we must presume that the circuit court's order conformed to the law. *Foutch*, 99 Ill. 2d at 391-92. Therefore, even if we accept plaintiff's position, we still must hold that the circuit court properly denied his motion for substitution of judge due to the absence of any orders resolving plaintiff's two default motions. Accordingly, the circuit

court properly denied plaintiff's motion for substitution of judge pursuant to section 2-1001(a)(2) of the Code. 735 ILCS 5/2-1001(a)(2)(i),(ii) (West 2012).

¶ 40 Employee vs. Independent Contractor

¶ 41 Plaintiff next argues that the circuit court erred by not finding him to be an employee of defendants. According to plaintiff, had he been found to be an employee, he would have been able to raise a claim under the Wage Act.

¶ 42 In cases tried without a jury, the circuit court judge is to weigh all of the evidence and make factual findings. *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480, 483 (2002). In reviewing a bench trial, we will defer to the circuit court's findings of fact unless they are against the manifest weight of the evidence. *Id.* at 484. "A finding is against the manifest weight of the evidence only when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884, 890 (2010). We will uphold the circuit court's judgment after a bench trial "if there is any evidence supporting it." *Dietl*, 333 Ill. App. 3d at 484. Furthermore, reviewing courts "must not substitute its judgment for that of the trier of fact." *Kalata v. Anheuser-Busch Cos., Inc.*, 144 Ill. 2d 425, 434 (1991).

¶ 43 Plaintiff argues the circuit court found him to be an independent contractor of defendants. Absent from the record, however, is any specific finding made by the circuit court stating it found plaintiff to be an independent contractor of defendants. The circuit court's order after the trial and its order denying plaintiff's posttrial motions do not indicate that the circuit court found plaintiff to be an independent contractor. The bystander's report, however, does show that the question of whether plaintiff was an independent contractor was raised at trial. Our review of the bystander's report also shows that Dragan Aleksic testified that plaintiff was an independent

contractor. Therefore, even assuming that the circuit court did make a finding that plaintiff was an independent contractor of defendants, we must still affirm such a finding because there is evidence in the record supporting such a finding based on Aleksic's testimony. See *Dietl*, 333 Ill. App. 3d at 484 ("A trial court's judgment following a bench trial will be upheld if there is any evidence supporting it."). Therefore, we must reject plaintiff's argument that the circuit court erred in finding him to be an independent contractor because there is evidence in the record supporting such a finding.

¶ 44 Substitution of Attorney on Half-Sheet

¶ 45 Plaintiff next argues that the circuit court erred by recording "an entry of what looks to be 'substitution of attorney' " dated November 1, 2013. Plaintiff argues that there was no substitution of attorney in this matter and clarifies that he "simply wants the record to accurately reflect the actual trial court proceedings." We have reviewed the record and agree that there appears to be an illegible entry recorded in the half-sheet. Although we question the relevance of this argument, we remind plaintiff that it is his burden to present a sufficiently complete record on appeal. *Rogers*, 204 Ill. 2d at 319. Without a complete record, we must presume that the illegible entry conformed to the law. *Foutch*, 99 Ill. 2d at 391-92. Accordingly, we hold this argument has no merit.

¶ 46 Alleged Statement of Circuit Court Judge

¶ 47 Plaintiff next argues that the circuit court improperly "[d]ecree[d] that '[i]t is not the place of this court to decide whether or not you are an employee! That is for the Department of Labor to decide." Plaintiff does not provide a citation to the record for this alleged statement by the circuit court. After reviewing the record, we also did not find such a statement in the record. Illinois Supreme Court Rule 341(h)(7) requires appellants to refer to the pages of the record

relied upon. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Additionally, we cannot consider matters outside of the record. *In re Marriage of Gulla*, 234 Ill. 2d at 422. Therefore, we hold that defendant is procedurally defaulted from raising this argument.

¶ 48 Continuances

¶ 49 Plaintiff next argues that the circuit court improperly granted continuances to defendants to allow them to file an appearance in this matter. Specifically, plaintiff contends the circuit court improperly allowed continuances without defendants making a showing of good cause.

¶ 50 Our review of the record shows that that on September 24, 2013, the circuit court allowed defendants seven days to file an appearance and responsive pleadings. Plaintiff filed two motions for default, one on October 1, 2013, and one on October 2, 2013. As previously discussed, there are no orders in the record resolving the two motions for default. On October 4, 2013, plaintiff filed a motion asking the court to strike the trial date and set the matter for status on October 30, 2013. Plaintiff added in his motion that if defendants had not filed an appearance or answer, then he would ask the court to enter summary judgment in his favor. On October 30, 2013, defendants filed an appearance. It is unclear from the record why defendants did not file an appearance until October 30, 2013. The record does not indicate if continuances were allowed, and if they were allowed, why they were allowed. Accordingly, the record is insufficient for this court to make a determination of whether the continuances were proper or not. It is plaintiff's burden in this matter to present a sufficiently complete record on appeal. *Rogers*, 204 Ill. 2d at 319. Without a complete record, we must presume that the illegible entry conformed to the law. *Foutch*, 99 Ill. 2d at 391-92. Accordingly, based on the presumptions we must make based on the state of the record before us, we reject plaintiff's contention that the circuit court allowed defendants improper continuances in this matter.

¶ 51 Plain Error Doctrine

¶ 52 Plaintiff next argues that the circuit court erred when it did not allow him to read from the following documents at trial: an Illinois Supreme Court case; statutory provisions from the Wage Act; or two outlines he prepared, one addressing his status as an employee of defendants and one addressing defendants' alleged fraudulent actions. Plaintiff admits he did not properly preserve these issues for our review but argues that we may review them under the plain error doctrine.

¶ 53 The bystander's report in the record reveals that the circuit court apparently stopped plaintiff from presenting evidence on four occasions. First, the bystanders report indicates that plaintiff "attempts to read from his outline he prepared which contained the questions he was going to ask [defendant Dragan Aleksic] in order to evidence that [plaintiff] was an employee of [defendants], but he is abruptly halted by [the circuit court] – apparently, 'time issues' were the *** cause of the interruption." Next, the bystander's report shows that plaintiff tried to read to the court the case of *Jack Bradley, Inc. v. Department of Employment Security*, 146 Ill. 2d 61 (1992), before being stopped by the court. Plaintiff then attempted, unsuccessfully, to read from the Illinois Wage Act. Finally, the bystander's report indicates that plaintiff "attempted to read from an outline of questions to set up his actionable fraud claim" before being stopped by the circuit court. Plaintiff did not object to the circuit court's interjections or submit offers of proof describing to the circuit court the contents of the evidence. Failure to put forth an offer of proof detailing excluded evidence results in the procedural default of such evidence on appeal. *Kim v. Mercedez-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 451-52 (2004). Plaintiff, however, has invoked the plain error doctrine before this court.

¶ 54 Although typically raised in criminal matters, the plain error doctrine has been applied in limited circumstances in civil matters. *Wilbourn v. Cavalenes, M.D.*, 398 Ill. App. 3d 837,

855-56 (2010); *Dowell v. Bitner*, 273 Ill. App. 3d 681, 693 (1995) ("Application of the plain error doctrine to civil cases should be exceedingly rare and limited to circumstances amounting to an affront to the judicial process."). In light of the plain error doctrine's limited applicability to civil cases, waiver principles must be strictly applied "unless the prejudicial error involves flagrant misconduct or behavior so inflammatory that the jury verdict is a product of biased passion, rather than an impartial consideration of the evidence." *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 375-76 (1990). Further, it must be shown that the alleged "prejudicial error was so egregious that it deprived the complaining party of a fair trial *and* substantially impaired the integrity of the judicial process itself." (Emphasis in original.) *Id.* at 377.

¶ 55 In this matter, plaintiff has not shown that any of the alleged errors were prejudicial errors. The admission of evidence is a matter within the sound discretion of the trial judge which we will not reverse absent an abuse of that discretion. *Wilbourn.*, 398 Ill. App. 3d at 847-48. Under this deferential standard of review, the complaining party has the burden of establishing that the alleged errors were substantially prejudicial and affected the case's outcome. *Id.* at 848. Furthermore, an abuse of discretion occurs only where " 'no reasonable person would take the view adopted by the trial court.' " *Id.* (quoting *Foley v. Fletcher*, 361 Ill. App. 3d 39, 46 (2005). For two of plaintiff's complained of errors, he claims the circuit court erred when it did not allow him to read from case law or from a statute. It is well-established, however, that a trial judge in a bench trial is presumed to know the law. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 65. Accordingly, the exclusion of the legal authority plaintiff attempted to read to the court did not affect the outcome of the case where the trial judge is presumed to know the law.

¶ 56 Plaintiff's other two claims of error concerned two "outlines," which he prepared that he claims supported his positions that he was an employee of defendants and that defendants committed fraud against him. Our review of the bystander's report, however, shows that plaintiff still managed to present evidence to support both of his arguments. For example, the bystander's report shows that plaintiff asked Aleksic various questions tending to show that plaintiff was an employee of defendants. Plaintiff asked Aleksic whether plaintiff could have made money from other sources, whether he was incorporated, and questions establishing defendants' level of control over plaintiff's work day. Plaintiff's fraud claim is based on defendants' advertisement of employment and defendants' improper deduction of various expenses from plaintiff's paycheck. Plaintiff introduced the advertisement into evidence and elicited testimony from Aleksic regarding the meaning of the terms contained in the advertisement. Plaintiff also elicited testimony from Aleksic showing plaintiff did not assent to the deduction of various fees and expenses from his paycheck. As the above evidence demonstrates, plaintiff still managed to put forth evidence supporting his arguments that defendants committed fraud and that he was an employee of defendants. Therefore, the circuit court did not abuse its discretion here because plaintiff cannot show that the outcome of his trial would have been different had the circuit court allowed him to read from his outlines.

¶ 57 It follows that plaintiff's plain error argument fails because he has not shown that prejudicial error occurred. Therefore, we must honor plaintiff's procedural default for failing to submit an offer of proof to support his evidentiary objections at trail.

¶ 58 Circuit Court's Consideration of Motion for Modification of Judgment

¶ 59 Plaintiff next argues that the circuit court did not properly review his motion for modification of the judgment. According to plaintiff, the circuit court judge reviewed his

motion "only 'between the cases of the court call.' " Plaintiff does not provide a citation to the record for this alleged conduct of the circuit court in violation of Illinois Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We also did not find any evidence of such conduct in the record. We cannot consider matters outside of the record. *In re Marriage of Gulla*, 234 Ill. 2d at 422. Therefore, we hold that defendant is procedurally defaulted from raising this argument.

¶ 60 Bystander's Report

¶ 61 Plaintiff raises two similar claims of error concerning the certification of his bystander's report. According to plaintiff, the circuit court allowed defendants multiple continuances to contest his proposed bystander's report. Plaintiff did not provide any citation to the record showing where this court could find the circuit court's allowance of multiple continuances. Our review of the record shows that on March 26, 2014, plaintiff filed his bystander's report which the circuit court certified on June 2, 2014. Plaintiff's failure to provide citation to the record violates Illinois Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Plaintiff's argument also relies upon matters apparently outside of the record, which we cannot rely on. *In re Marriage of Gulla*, 234 Ill. 2d at 422. Therefore, we hold that plaintiff is procedurally defaulted from raising this argument.

¶ 62 Regardless of plaintiff's procedural default, we do not see the relevance of this argument where the circuit court certified plaintiff's version of the bystander's report. The record shows that the June 2, 2014, order certifying the bystander's report indicated that defense counsel was present but did not object to plaintiff's bystander's report. Any alleged error regarding the bystander's report is harmless where plaintiff's bystander's report was eventually certified by the circuit court.

¶ 63 Advisory Opinion

¶ 64 Plaintiff next asks this court to render an advisory opinion. Specifically, he asks "whether a plaintiff can petition for a *** substitution of judge for cause *** after his case is appealed and after his bystander's report is certified." Reviewing courts, however, do not render advisory opinions on unfiled motions barring exceptional circumstances not present here. *Golden Rule Ins. Co. v. Schwartz*, 203 Ill. 2d 456, 469 (2003).

¶ 65 Circuit Court's December 3, 2013, Judgment Order

¶ 66 Plaintiff additionally argues in several sections of his brief that the circuit court's December 3, 2013, judgment order entered after trial contained either a typographical error or a computation error. The record shows that the December 3, 2013, judgment order contained the following language:

> "plaintiff can recover ½ of $650.00 for cargo insurance since that was never properly documented nor explained to the plaintiff. The plaintiff can also recover for disputed mileage in the amount of $389.70 which is the difference between 4,090 and 3,124 miles at .045 which is $389.70. Plaintiff was previously paid $700 for his work. Plaintiff quit after 12 days on the job.
>
> Thus the net award is $714.70."

¶ 67 We agree with plaintiff that the judgment order does appear to have a typographical error or computation error. Half of $650 is $325, and $325 plus $389.70 equals $714.70, which the circuit court found to be the "net award." The error, however, is contained in the following language of the order: "plaintiff can also recover for disputed mileage in the amount of $389.70 which is the difference between 4,090 and 3,124 miles at .045 which is $389.70." The

difference between 4,090 and 3,124 miles is 966 miles. Multiplying 966 miles by 4.5 cents, *i.e.* the ".045" used in the judgment, equals $43.47, not $389.7. Additionally, there is no evidence in the record that plaintiff was to be paid at 4.5 cents a mile. Rather, the only evidence in the record is that plaintiff was to be paid at 45 cents a mile. Multiplying 966 miles by 45 cents, however, results in an award of $434.70, not $389.70. Accordingly, the circuit court's December 3, 2013, judgment order contains either a typographical or computational error, or possibly both. It is unclear how the circuit court arrived at its final judgment amount of $714.70. Therefore, upon remand, we direct the circuit court to correct its judgment order to clearly reflect an award consistent with its findings at trial.

¶ 68 In conclusion, we affirm the judgment of the circuit court but remand the matter with a directive to the circuit court to correct its December 3, 2013, judgment order to clearly reflect an award consistent with its findings at trial. Specifically, the language of the December 3, 2013, order stating "the amount of $389.70 which is the difference between 4,090 and 3,124 miles at .045 which is $389.70" appears to have either a typographical error, computational error, or both. We stress that the circuit court's factual findings are affirmed and upon remand, the circuit court may again find the final award to be $714.70. The computations in the December 3, 2013, order, however, do not support that final award and must be corrected to reflect the circuit court's factual findings at trial.

¶ 69 CONCLUSION

¶ 70 The judgment of the circuit court of Cook County is affirmed and the cause is remanded with a directive to the circuit court to correct portions of its December 3, 2013, judgment order.

¶ 71 Affirmed and remanded with directions.