2015 IL App (1st) 141891-U

FIFTH DIVISION
June 5, 2015

No. 1-14-1891

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

ROSE HERNANDEZ,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	13-M1-13064
	)	
ROBERTO RODRIGUEZ,	)	Honorable
	)	Sidney A. Jones,
Defendant-Appellee.	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff's brief and the record on appeal from small claim regarding damage to the plaintiff's car were inadequate to determine whether the trial court erred by entering judgment in favor of the defendant and denying the plaintiff's post-trial motion.

¶ 2 Plaintiff *pro se* Rose Hernandez filed a property damage suit against Roberto Rodriguez in which she alleged that he deliberately struck and damaged her car with his car. The matter was referred to the court's mandatory arbitration system, where she was awarded $882 for damages and $184 in court costs. Rodriguez, however, exercised his right to reject the arbitration award

and proceed to trial, and at the bench trial, he prevailed. On appeal, Hernandez contends the judgment was in error because she was not allowed to fully present her case to a jury.

¶ 3 Hernandez recounts that the incident at issue occurred on December 9, 2012, at 6:40 p.m. during a Christmas shopping trip to the shopping center at Harlem Avenue and Irving Park Road in Chicago. While Hernandez was waiting for another driver to back up and vacate a parking spot for her, Rodriguez drove passed her, and then backed up toward her (and the parking spot) and began gesturing and grinning. She thought she might know him, but after taking a good look at him, she realized they were not acquainted. As she was pulling into the vacated spot, Rodriguez deliberately backed his car into her car, striking the driver's side door of her vehicle, not once, but twice. She opened her car door and wrote down his license plate number. She had time to record the plate number accurately and verify it twice before he left the scene, because he was temporarily trapped in the narrow lane while three other cars passed by. She called the police, but by the time they got to the shopping center, Rodriguez was gone.

¶ 4 Hernandez has attached to her brief a number of documents that were not included in the record of proceedings that was compiled and bound by the clerk of the circuit court for our review. This was improper. If the documents were filed with the court but omitted from the official record, then the proper procedure was for Hernandez to tender copies to the clerk of the circuit court so that a supplemental volume of the record could have been prepared and transmitted to us. *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, 12 N.E.2d 620 (tendering documents directly to the appellate court is not the proper way to supplement the record). On the other hand, if the documents were never tendered to the court during the proceedings at issue, then the documents should not be given to this court, as our function is to review proceedings for error rather than consider new arguments and exhibits. In any event, the

documents convey additional details about Hernandez's claim but do not affect the outcome of this appeal. Accordingly, in our discretion, we include them in this summary of facts.

¶ 5 The documents attached to Hernandez's appellate brief are a Norridge (Illinois) police report of the "Hit & Run" collision; two color photographs of her damaged vehicle; two written, detailed estimates for the repairs, and a receipt for the completed work. One shop estimated the repair would cost $854 and the other shop, which is where she had the work performed in January 2013, estimated the job at $882.

¶ 6 The record indicates that about six months after the incident, Hernandez filed this lawsuit. In June and July 2013, Rodriguez's attorney filed an appearance, a six-person jury demand, and a discovery request encompassing things such as photographs documenting the damages, any witnesses, and any medical bills. The circuit court assigned the case to mandatory arbitration and the case was arbitrated in November 2013. The arbitrators' written award does not specify who attended the hearing, but does state, "All parties participated in good faith." As we indicated above, Hernandez was awarded the full amount of her $882 repair bill and $184.86 in court costs. Rodriguez, however, paid a $200 fee to reject the award and demand a trial.

¶ 7 In accordance with the jury demand that Rodriguez had filed when the case first began, a jury trial was scheduled for April 2014. The individuals scheduled to testify included the two parties, as well as Sandra Rodriguez, and Christopher Eden. The police report indicates Sandra Rodriguez and the defendant are co-owners of the car that struck Hernandez's car. The record does not disclose Christopher Eden's relationship to the case.

¶ 8 Although defendant Rodriguez had initially requested a jury trial, on the trial date, he waived his request and the case was assigned for a bench trial. We have not received a verbatim transcript, bystander's report, or agreed statement of facts indicating what occurred in court that

day. However, in her brief, Hernandez states that she asked the trial judge if the case could still go to a jury and the judge replied, "No."

¶ 9 Hernandez also states that Rodriguez denied being the driver of the vehicle. She counters that by stating, "However, when the investigating officer, Officer Tim Mazurito #28 called me the next day after the accident, he asked me if I thought I could describe Mr. Roberto Rodriguez. I said I thought I could which I did over the phone. Officer Mazurito then replied, 'You have just described him to as T.' " Continuing with her recollection of the proceedings, Hernandez contends:

> "In court I was never allowed to say what happened and the judge wouldn't let me speak only saying, 'I only want to know how the 2 cars touched' and don't repeat yourself. This made me very nervous. The judge's behavior towards me was counter to the policy of treating senior citizens with compassion, respect and *** patience ***. Specifically, the Elder Law and Miscellaneous Remedies Division is described as 'judges and court room staff [who] are trained to be sensitive to the vulnerability of elder litigants and to identify underlying issues and concerns.' "

¶ 10 At the conclusion of the trial, the judge entered judgment for the defendant. The record indicates that about two weeks after the trial, Hernandez filed a motion for "re hearing" in which she asserted two arguments. First, she said she was told to expect a jury trial but at the "last minute, they cancelled." Second, the trial judge did not allow her to speak about the accident or show her "proof," therefore the judgment for the defendant was rendered "because only the other side spoke/not me." The judge treated Hernandez's motion for "re hearing" as one seeking a new trial and denied the motion. This appeal followed.

¶ 11 Appellant Hernandez now reiterates the arguments she made in her post-trial motion and contends the facts show that Rodriguez is liable for the damage to her car. Appellee Rodriguez did not file a brief in support of the trial court's order. In *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court indicated that when a record on appeal is simple, the claimed error is simple, and a reviewing court can easily decide the issues without the benefit of the appellee's brief, the reviewing court should proceed to the merits of the appeal. Because this appeal fits within those parameters, we will address the merits.

¶ 12 Our first concern on appeal is that Hernandez provides a fairly thorough description of what led her to take this appeal, but she does not discuss any legal principles. It was her burden as the appellant to discuss the legal principles that governed the proceedings in the trial court and argue why those principles should lead us to reverse the rulings. It was her burden to do this even though she is a *pro se* individual acting without benefit of legal training and experience. All appellants bear the same burden. It is well established that a court of review is entitled to briefs that conform to the supreme court rules. *Schwartz v. Great Central Insurance Co.*, 188 Ill. App. 3d 264, 268, 544 N.E.2d 131, 133 (1989) (appellants' briefs are to provide cohesive legal arguments in conformity with the supreme court rules). Supreme Court Rule 341 requires the appellant to clearly define the issues, present coherent argument, and cite pertinent authority. S. Ct. R. 341(e)(7) (eff. Feb. 6, 2013); *In re Estate of Kunz*, 7 Ill. App. 3d 760, 763, 288 N.E.2d 520, 523 (1972) (appellants, not the court, bear the burden of research and argument). Arguments inadequately presented on appeal are waived. *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 401, 515 N.E.2d 1222, 1227 (1987) (conclusory statement made in passing was waived); *In re Marriage of Drummond*, 156 Ill. App. 3d 672, 684, 509

N.E.2d 707, 716 (1987) (the failure to meet the requirements of the rule rendered an issue waived). If a question is of sufficient importance to ask this court to address it, then it is worthy of the appellant's care in presenting it. *Kelley v. Kelley*, 317 Ill. 104, 107, 147 N.E. 659, 660 (1925). "If the case is not properly presented and the court is not given the benefit of precedents, there is a danger of a decision being rendered that will not be in harmony with the weight of authority. It is the duty of [the writer of an appellate brief] to present to the court the authorities supporting their views, and to assist the court in reaching a correct conclusion." *Kelley*, 317 Ill. at 107, 147 N.E. at 660. Because Hernandez has failed to cite and discuss any court rule, statute, or precedent in support of her appeal, she has waived appellate review, and we affirm the rulings of the trial court.

¶ 13 Even if Hernandez had met her obligation to provide reasoned argument in support of her appeal, there is a second and independent reason to affirm the trial court: the record does not disclose why the trial court ruled as it did. On each court date, the trial court wrote a brief summary on its half sheet. The half sheet notation for the trial date is: "[Defendant] waives jury demand. Tried by court. Finding for defendant. Judgment for defendant + cs." The half sheet notation regarding Hernandez's subsequent motion for "re hearing" is: "M[otion] P[laintiff] new trial denied." Thus, the trial court's notations do not disclose the basis for the rulings.

¶ 14 In a typical appeal, we are provided with a verbatim transcript, bystander's report, or agreed statement of facts which discloses the trial court's rationale, but none of these documents appear in the record tendered in this appeal. See Ill. S. Ct. R. 323(a) (eff. Dec.13, 2005) (the report of proceedings shall include all the evidence pertinent to the issues on appeal; within the time for filing the docketing statement the appellant shall make a written request to the court reporting personnel to prepare a transcript of the proceedings that appellant wishes included in

the report of proceedings); R. 323(c) (if a verbatim transcript of the proceedings is unobtainable, then the appellant may prepare a proposed bystander's report, serve the proposed report on all parties, receive the other parties' alternative versions, and present all proposals to the trial court for settlement, approval, and certification for inclusion in the record on appeal); R. 323(d) (in lieu of a transcript, the parties may stipulate to one agreed statement of facts material to the controversy and file it without certification).

¶ 15 Absent a transcript or other factual record of the proceeding, an issue relating to a trial court's factual findings and basis for its legal conclusions cannot be reviewed. *Webster v. Hartman*, 195 Ill.2d 426, 432, 749 N.E.2d 958, 962 (2001); *People v. Bell*, 2013 IL App (3rd) 120328, ¶ 10, 989 N.E.2d 1211 ("where an issue on appeal relates to the conduct of a hearing or proceeding, the issue will not be reviewed absent a report of the proceedings or at least a bystander's report or agreed statement of facts if no transcript exists").

¶ 16 As we noted above, the only account of the trial proceedings appears in appellant's brief. Thus, it is presented from Hernandez's perspective, rather than from the neutral account that would be conveyed through a verbatim transcript, a bystander's report which has been reviewed and approved by the court, or an agreed statement of facts which both sides reviewed and stipulated on. For obvious reasons, it is inappropriate for us to rely on an appellant's description of proceedings that the appellant is challenging. Instead, when a record on appeal lacks information that is essential to our review, we are to presume the trial court had a sufficient factual basis for its holding and that its order conforms with the law. *Webster*, 195 Ill. 2d at 432, 749 N.E.2d at 962, *citing Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984).

¶ 17 Without an adequate record of what occurred when Hernandez's lawsuit went to trial, we have no basis for deciding that the trial court abused its discretion, and we must presume that the court's judgment for the defense and denial of the post-trial motion were rulings that were consistent with the facts and law. Therefore, if we had not found that Hernandez waived appellate review by failing to adequately brief her appeal, we would summarily affirm due to the absence of a transcript or equivalent record of the proceedings at issue.

¶ 18 In any event, there is no way for us determine why the trial judge entered judgment for the defendant, and so we cannot speak to that issue, but we can shed some light on why Hernandez's jury demand *on the trial date* was summarily denied.

¶ 19 Jury demands are governed by section 2-1105 of the Code of Civil Procedure. 735 ILCS 5/2-1105 (West 1994). This statute plainly required plaintiff Hernandez to file her jury demand when she filed her complaint:

> "(a) *A plaintiff desirous of a trial by jury must file a demand therefor with the clerk at the time the action is commenced*. A defendant desirous of a trial by jury must file a demand therefor not later than the filing of his or her answer. *Otherwise, the party waives a jury*." (Emphasis added.) 735 ILCS 5/2-1105 (West 1984).[1]

¶ 20 When a party makes a late demand for a jury, the party must first show good cause for his or her delay, and if the party makes that showing, then the trial court may, in its discretion, decide to grant the late demand. *Greene v. City of Chicago*, 73 Ill. 2d 100, 105, 382 N.E.2d 1205, 1207-08 (1978). The determination of what constitutes good cause shown depends on the facts of

[1] The statute has been revised effective June 1, 2015. Public Act 98-1132, § 10 (eff. June 1, 2015). The revisions concern the fees that are charged to litigants for a jury demand and do not alter the language quoted above.

a particular case. *Greene*, 73 Ill. 2d at 106, 382 N.E.2d at 1208-09. It is firmly established, however, that stating that one has made a mistake or has inadvertently failed to file a jury demand on a timely basis does not constitute a showing of good cause that excuses the delay. *Greene*, 73 Ill. 2d at 107, 382 N.E.2d at 1209.

¶ 21 In *Greene*, for instance, the plaintiff filed his complaint without a jury demand, the defendant municipality filed its answer without a jury demand, and the case was assigned a nonjury trial date. *Greene*, 73 Ill. 2d at 104, 382 N.E.2d at 1207. After the trial date was set, an additional attorney was added to the defense team and this new lawyer filed a motion for leave to file *instanter* a demand for a jury trial. *Greene*, 73 Ill. 2d at 104, 382 N.E.2d at 1207. Counsel explained that the failure to file a jury demand along with the original answer was the result of " 'inadvertence and oversight of the [attorney] who was handling the case at the time.' " *Greene*, 73 Ill. 2d at 104, 382 N.E.2d at 1207. The trial court denied the motion and the case went to trial without a jury, where the plaintiff prevailed on his claim for $750,000 in damages from the defendant. *Greene*, 73 Ill. 2d at 104, 382 N.E.2d at 1207. On appeal, the defendant argued that the late jury demand should have been granted because granting it would not have inconvenienced or prejudiced the court or the other litigant. *Greene*, 73 Ill. 2d at 107, 382 N.E.2d at 1208. The supreme court ruled, however, that this argument did not amount to a showing of good cause for the failure to make a timely jury demand (*Greene*, 73 Ill.2d at 107, 382 N.E.2d at 1209), and the court declined to upset the money judgment that had been entered (*Greene*, 73 Ill. 2d at 108, 382 N.E.2d at 1209).

¶ 22 Another example is *Pechan*, in which a former employee was suing based on her exposure to second-hand smoke in the workplace. *Pechan v. Dynapro, Inc.*, 251 Ill. App. 3d 1072, 622 N.E.2d 108 (1993). The plaintiff alleged that in 1990, her employer knew she was

acutely sensitive to second-hand smoke, but did not enforce a company policy to limit smoking to designated areas, ignored a petition she circulated amongst her co-workers, disregarded letters from her allergist, and took no action when the county health department notified the employer that it was legally obligated to provide a smoke-free work environment. *Pechan*, 251 Ill. App. 3d at 1075, 622 N.E.2d at 111. The trial court considered these allegations, granted summary judgment on one of her claims, and then granted her leave to file a late jury demand. *Pechan*, 251 Ill. App. 3d at 1090, 622 N.E.2d at 122. When the employer's attorney asked the trial court what good cause had been shown for the filing of a late jury demand, the court replied that the "social problems presented, the effects of second-hand smoke" where issue that should be heard by a jury. *Pechan*, 251 Ill. App. 3d at 1092, 622 N.E.2d at 1092. However, the appellate court looked at the record and determined that no good cause had been shown. *Pechan*, 251 Ill. App. 3d at 1091-92, 622 N.E.2d at 122-23. The appellate court reversed the trial court order granting the late jury demand. *Pechan*, 251 Ill. App. 3d at 1091-92, 622 N.E.2d at 122-23.

¶ 23 Here, given the lack of a transcript, bystander's report, or agreed statement of facts, we do not know what Hernandez said in the courtroom when she made her late request for a jury trial. Nonetheless, what she relates in her subsequent motion for "re hearing" indicates that she did not show good cause. In her post-trial motion she stated to the trial court, "I was told it would be a jury trial, then last minute, they canceled. I am asking for a jury trial (as I was told)." Hernandez gives a similar account in her appellate brief, stating, "[W]hen we got there for the jury trial then [the defense attorney] changed her mind. At that time I asked the judge *** can I still have the jury trial. He said no." Thus, it appears Hernandez's only basis for making a late jury demand was that she was anticipating that the case would be heard by a jury. This expectation in April 2014 is not an excuse for her failure to make a jury demand when she filed her complaint almost

a year earlier in May 2013. Hernandez's failure to show good cause for her delay in requesting a jury meant that the trial court had no discretion to grant her untimely request.

¶ 24 Thus, while the inadequate record and appellate brief prevent us from reviewing whether the trial judge erred in rejecting Hernandez's damage claim, we can say that there is no apparent error in the court's decision to deny Hernandez's late jury demand.

¶ 25 Affirmed.