

No. 1-14-1950

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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VIVIAN WILSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 M1 117981
	)	
DANIEL FRANKS,	)	Honorable
	)	Sheryl A. Pethers,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Neville and Liu concurred in the judgment.

**O R D E R**

¶ 1 *Held:* When the appellant files in the appellate court a record that does not adequately support her factual assertions and arguments, the appellate court must affirm the trial court's judgment.

¶ 2 *Pro se* plaintiff Vivian Wilson appeals from the trial court's order dismissing, with prejudice, her breach of contract complaint against defendant Daniel Franks. On appeal, Wilson contends that the trial court erred when it dismissed the cause because she is entitled to a refund of \$27,000 because Franks provided ineffective assistance of counsel to her son. We affirm.

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¶ 3 The limited record on appeal establishes the following facts.<sup>1</sup> Wilson's son James retained attorney Franks to represent him in certain criminal matters. In May 2005, the trial court, upon James' petition, ordered that any refund due to James from his \$30,000 bond deposit be refunded to Franks as James' attorney of record (see 725 ILCS 5/110-7(f) (West 2004)), as payment for legal services rendered.

¶ 4 In 2013, Wilson filed a *pro se* breach of contract claim against Franks seeking \$21,000. The complaint alleged that although Franks received \$30,000 from the "bond slip" he was only entitled to \$10,000 because he had withdrawn as James' attorney. The complaint further alleged that when James went to Franks to get a refund, Franks gave James \$1,000 and offered him \$21,000 in credit which James refused because the money at issue actually belonged to Wilson.

¶ 5 On March 24, 2014, the trial court granted Franks' motion to dismiss. On April 30, 2014, that order was vacated and Wilson was given 21 days to file an amended complaint.

¶ 6 Wilson then filed a *pro se* amended complaint alleging that Franks committed theft by deception and provided ineffective assistance of counsel to James by agreeing to represent James, taking the "designated funds" and then withdrawing. The amended complaint further alleged that Franks orally agreed to return \$27,000, and wrote James a \$1,000 check on March 6, 2010. The record also contains James' affidavit in which he averred that Franks agreed to pay back the entire \$30,000, and asked to enter into a payment plan.

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<sup>1</sup> The one-volume record on appeal is titled "Supplemental Record." A portion of the appendix attached to Wilson's *pro se* brief is paginated and bears the cover sheet for records filed with this court; however, documents attached to briefs but not included in the record on appeal cannot be considered by this court. *Babich v. River Oaks Toyota*, 377 Ill. App. 3d 425, 430 (2007) (a reviewing court cannot consider any documents not included in the record on appeal).

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¶ 7 Franks filed a motion to dismiss pursuant to sections 2-619(a)(5), (a)(9), and 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(5), (a)(9), 2-615 (West 2014)), alleging, in pertinent part, that because the contract at issue was between defendant and James, Wilson had no standing as to that contract. The motion also alleged that the cause was barred by the statute of limitations applicable to oral contracts, and that the complaint did not state a cause of action.

¶ 8 The trial court granted Franks' motion and dismissed the cause with prejudice on June 19, 2014. Although this order is not included in the record on appeal, Wilson's *pro se* notice of appeal states that she appeals from the trial court's June 19, 2014 order dismissing the cause with prejudice.

¶ 9 On appeal, Wilson contends that the trial court erred when it granted Franks' motion to dismiss on March 24, 2014, because she "believes" that the bond money should be refunded to her because Franks failed to "adequately defend her son's interests."

¶ 10 In response, Franks asserts in a motion to dismiss that this court lacks jurisdiction to consider Wilson's appeal based upon (1) the lack of a final appealable order, (2) the fact that no notice of appeal is included in the record, and (3) the "inference" that Wilson spoiled the record.

¶ 11 "Every final judgment of a circuit court in a civil case is appealable as of right" and is initiated by filing a notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). A judgment or order is "final" if it disposes of the rights of the parties, either on the entire case or with regard to some definite and separate part of the controversy. *Dubina v. Merisow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997).

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¶ 12 Although Franks correctly argues that the notice of appeal is not included in the record on appeal, we decline to dismiss the appeal. Wilson filed a *pro se* notice of appeal in the circuit court on June 19, 2014, and this notice was subsequently filed with the clerk of this court on July 2, 2014. The notice of appeal states that Wilson seeks to appeal the trial court's June 19, 2014 order dismissing the cause with prejudice. Therefore, we reject Franks' contention that Wilson failed to appeal from a final order. See *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989) (a judgment is final for purposes of appeal if it determines the litigation on the merits).

¶ 13 Turning to the merits of Wilson's appeal, we first note Franks has not filed an appellee's brief. However, the record is simple and the claimed errors are such that we can easily decide them without an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 14 On appeal, Wilson challenges the trial court's March 24, 2014 grant of Franks' motion to dismiss. However, the record reveals that the trial court vacated that order on April 30, 2014, and Wilson was given 21 days to file an amended complaint. To "vacate" is defined as "[t]o nullify or cancel; make void; invalidate." Black's Law Dictionary 1584 (8th ed. 2004). The effect of a vacated order is that of a void order. *Kelch v. Watson*, 237 Ill. App. 3d 875, 877 (1992) (order vacating inadvertent dismissal of the complaint did not render the subsequent refiling of the complaint after voluntary dismissal improper). Because the trial court vacated the March 24, 2014 order, there is no order on that date from which Wilson could appeal, and no relief that this court could grant her.

¶ 15 We note, however, that Wilson's notice of appeal states that she appeals from the trial court's June 19, 2014, order dismissing the cause with prejudice. Wilson makes no arguments on

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appeal regarding this order; accordingly, the issue is waived. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued are waived).

¶ 16 Furthermore, although we review *de novo* a dismissal under either section 2-615 or section 2-619 of the Code (see *Carr v. Koch*, 2012 IL 113414, ¶ 27), our review in this case is hindered by the fact that neither Wilson's response to the motion to dismiss nor the trial court's June 19, 2014 order dismissing the cause is included in the record on appeal. Additionally, Wilson's brief is inadequate as it does not state the trial court's basis for granting the motion to dismiss, nor does it explain Wilson's reasoning for overturning the trial court's order. It is the burden of Wilson, as the appellant in this case, to present a "sufficiently complete record of the proceedings at trial to support a claim of error" and any doubts arising from the incompleteness of the record will be resolved against her. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Where the record is not complete, "the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005).

¶ 17 Because the record on appeal does not support any of Wilson's allegations of trial court error and she has forfeited any other allegations of error by failing to argue them, we affirm the trial court's judgment.

¶ 18 Affirmed.