

THIRD DIVISION
June 10, 2015

No. 1-14-2305

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

NICK DAVYDOV,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 M3 2857
)	
STEVEN M. GOLDMAN,)	Honorable
)	Thomas David Roti,
Defendant-Appellee.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Where plaintiff lacked standing to sue defendant for breach of contract, dismissal of plaintiff's complaint was proper.
- ¶ 2 Plaintiff Nick Davydov sued defendant Steven M. Goldman, claiming breach of contract. Davydov appeals *pro se* from the circuit court's order granting Goldman's motion to dismiss with prejudice. Although the appellee has not filed a response brief in this court, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63

Ill. 2d 128, 133 (1976). On appeal, Davydov asks this court to review the case and decide "who is right and who is guilty."

¶ 3 Davydov filed a complaint against Goldman, alleging that he had hired Goldman to represent his stepson in a criminal case, but that Goldman was incompetent, did not follow their agreement, deceived them, and caused permanent harm to their family. Goldman filed a motion to dismiss. The trial court granted the motion to dismiss but allowed Davydov leave to file an amended complaint.

¶ 4 In his amended complaint, Davydov alleged that Goldman breached a verbal agreement they had made in April 2012. Davydov alleged that Goldman promised him (1) that the "whole process" would take a maximum of six months and Goldman was absolutely positive that he would win the case; (2) that the stepson would be released in six months without any charges of sexual assault; and (3) that there was no need "to worry about thirty months of probation, because they would be dismissed automatically." Davydov asserted that Goldman breached these promises because the criminal case was not resolved until July 2013; his stepson was sentenced to five years' imprisonment; a charge of violation of probation was not dismissed, but rather, his stepson received an additional three years of imprisonment for that offense; and Goldman did not give the trial court copies of petitions prepared by Davydov and his stepson. Davydov further alleged that Goldman consciously lied to him, his wife, and his stepson when he represented that the stepson would receive a maximum sentence of two months if he would agree to accept an offer to plead guilty to aggravated battery, and that such a plea would not lead to deportation; that although he knew the stepson was not in good mental health, he did not inform the trial court of the stepson's condition and forced the stepson to make vital decisions despite his mental

impairments; and that Goldman never informed Davydov about defense strategy and declined all of Davydov's attempts to contact him after receiving his money. Davydov asserted that Goldman's conduct permanently harmed his family, as his stepson was ready to commit suicide and ready to agree with deportation because he was "tired from this life"; Davydov himself had a "transient ischemic (brain) attack" because of stress; Davydov's wife was using mental health medications on a regular basis; Davydov's mother-in-law had to sell property in Lithuania to hire an immigration lawyer for her grandson; Davydov and his wife declared bankruptcy in order to afford Goldman's services; and the stepson's son may "never see his father again." Davydov sought \$20,000 in damages, \$7,500 of which represented recovery for payments made to Goldman, and \$12,500 of which was to help cover expenses for the stepson's treatment.

¶ 5 Goldman filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2012)). With regard to section 2-615, Goldman asserted that the complaint failed to state a cause of action because Davydov did not allege facts sufficient to support the essential elements of a breach of contract action, state the terms of the alleged contract or the methods by which it was breached, or assert any legally recognized damages caused by the alleged breach. Goldman reported that the stepson – who was over 18 years old, was competent to make his own decisions, and had never been adjudicated insane or unfit to make his own decisions – had retained Goldman to represent him in a criminal case, and that Davydov was not present for any pretrial discussions between Goldman and the stepson. Goldman stated that he was present in court on July 16, 2013, and was ready, willing, and able to proceed to a jury trial, but that on that date, the stepson made his own decision against the advice of counsel to plead guilty to aggravated battery and accept a five-year sentence. Goldman argued

that the transcript of the guilty plea hearing evidenced that the stepson's plea was made freely, voluntarily, and against the advice of counsel, and that therefore, Davydov's allegations were disingenuous and not based on fact. Goldman further argued that Davydov had not identified any relationship between them that would give Davydov legal standing to bring suit for services rendered to another party.

¶ 6 With regard to section 2-619, Goldman asserted lack of standing as an affirmative defense. Goldman argued that Davydov lacked standing because the damage he complained of was "mental health problems" suffered not by himself, but by a third party, the stepson. Goldman asserted that Davydov did not have standing to sue on behalf of his adult stepson based on services rendered to the stepson. Further, Goldman argued that Davydov had no standing to comment on the mental health condition of a third party adult whose mental health status was never called into question; that the alleged damages were in no way traceable to any alleged contractual relationship between Davydov and Goldman or an alleged breach thereof; that the alleged injuries were not substantially likely to be prevented or redressed by the grant of the requested relief of \$20,000; and that any amount of monetary relief would not change or reverse the stepson's guilty plea.

¶ 7 Attached to the motion to dismiss was a copy of the transcript of the stepson's guilty plea hearing. The transcript revealed that at the hearing, Goldman made the following statement:

"Judge, I did have plenty of time to speak with my client regarding this offer. I explained to him that I am ready for a jury trial. I even wore my jury tie. Judge, I have explained to him the ramifications of pleading guilty as he has a green card, and I explained to him that this felony conviction, any conviction,

could adversely affect his status in the United States, and he understands that. I explained to him the strength and the weakness of the State's case, and he has chosen not to take my suggestion but to rather plead guilty to the aggravated battery, and this is his own choice."

Following this statement, the stepson indicated to the trial court that he had heard his attorney, and that it was his decision to plead guilty to a violation of probation for a sentence of three years' imprisonment, as well as to a charge of aggravated battery for a concurrent sentence of five years' imprisonment. The trial court thereafter admonished the stepson regarding the rights he was waiving and the immigration consequences of his pleas, and the stepson indicated he understood. The stepson stated that no one threatened him or promised him anything to make him plead guilty, and when given an opportunity to address the court, said only, "It's been a long journey. It's been a long journey," and later, "I have said enough."

¶ 8 The trial court granted Goldman's motion to dismiss with prejudice.

¶ 9 On appeal, Davydov states that he disagrees with the trial court's decision. He argues that the trial court was prejudiced and did not take him seriously; lists the promises that Goldman allegedly made and broke with regard to his representation of the stepson; and claims that Goldman lied to the trial court about being out of town and not being served. Davydov asks this court to review the case and reveal "who is right and who is guilty."

¶ 10 Supreme Court Rule 341(h)(7) (eff. February 6, 2013) provides that an appellant's brief must contain contentions and the reasons therefor, with citation to the authorities upon which the appellant relies. As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App

(1st) 103488, ¶5. "The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Arguments that are not supported by citations to authority fail to meet the requirements of Supreme Court Rule 341(h)(7) and are procedurally defaulted. *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010). *Pro se* litigants are not excused from following rules that dictate the form and content of appellate briefs. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008).

¶ 11 Davydov's brief does not contain any of the elements required by Rule 341(h)(7) and does not present an organized and cohesive argument. Because Davydov has failed to provide a reasoned basis for his contentions or citations to pertinent authorities, his contentions are forfeited.

¶ 12 Forfeiture aside, and to the extent that Davydov has made a legal argument, his appeal fails on the merits. Our review of the dismissal of a complaint pursuant to both sections 2-615 and 2-619 is *de novo*. *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 68 (2004). On appeal, we accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Unterschuetz*, 346 Ill. App. 3d at 68-69. Dismissal is proper under either section if the plaintiff fails to allege any set of facts to support a cause of action that would entitle him to relief. *Unterschuetz*, 346 Ill. App. 3d at 69.

¶ 13 Davydov attempted to plead a claim of breach of contract in his complaint. To state a claim for breach of contract, a plaintiff must establish the existence of a contract, the plaintiff's performance of all contractual conditions, the defendant's breach of that contract, and consequential damages. *Unterschuetz*, 346 Ill. App. 3d at 69. In addition, only a party to a

contract, one in privity with a party, or a third-party beneficiary of a contract made for his benefit has standing to sue on a contract. *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 18; *Wilde v. First Federal Savings & Loan Ass'n*, 134 Ill. App. 3d 722, 731 (1985).

¶ 14 We agree with Goldman's position, as set forth in the motion to dismiss, that Davydov lacks standing to sue him for breach of contract. The attorney-client relationship in the instant case existed between Goldman and the stepson, not Goldman and Davydov, even if it was Davydov and not the stepson who paid Goldman for his services. See *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 204 (1997) (the payment of fees is merely incidental to the attorney-client relationship). The subject matter of Davydov's complaint is Goldman's representation of the stepson. Davydov had no contract with Goldman or other relationship that would give him standing to sue, and Davydov has no standing to sue on behalf of his stepson, wife, or mother-in-law. See *People v. Bond*, 205 Ill. App. 3d 515, 518 (1990) (standing exists when the proponent asserts his own legal rights and interests, rather than basing his claim for relief upon the rights of third parties). Moreover, any oral representation by an attorney guaranteeing the outcome of a criminal case would be unenforceable as a matter of law. See *Collins v. Reynard*, 154 Ill. 2d 48, 56 (1992) (Miller, C.J., specially concurring) ("It would be rare indeed for an attorney to guarantee or to promise to achieve a particular result in a matter"). In these circumstances, dismissal of Davydov's complaint was proper.

¶ 15 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 16 Affirmed.