2015 IL App (1st) 143688-U

SECOND DIVISION
November 3, 2015

No. 1-14-3688

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL G. EASTER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CH 9610
	)	
ROBERT GARY,	)	Honorable
	)	Rodolfo Garcia,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Dismissal of plaintiff's civil complaint affirmed.

¶ 2 Plaintiff, Michael Easter, *pro se*, appeals from an order of the circuit court of Cook County granting defendant Robert Gary's motion to dismiss with prejudice his civil complaint challenging the 2003 appointment of Gary as standby guardian of plaintiff's then-minor children, M.E. and K.E. Defendant has not filed a brief in response, however, we may consider the merits

of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 3 The record shows that in 2003, plaintiff and his then-wife, Gloria Thomas, entered into an agreed order of parentage for their minor child, M.E., naming Thomas as the natural mother and plaintiff as the natural father. As part of that order, plaintiff was directed to provide the court with proof of disability and social security information or income information on the next court date in order to determine his support obligations. Meanwhile, Thomas filed an Emergency Motion to appoint her brother, Robert Gary, as standby guardian for M.E. and K.E. In that motion, Thomas stated that she was in the hospital and unable to care for the children and that plaintiff was an active drug user who physically abused K.E. while under the influence of drugs. On September 12, 2003, the court granted that motion.

¶ 4 Following that appointment, Gary filed a motion for temporary custody, child support, and other relief. In his motion, Gary advised the court that Thomas had died of cancer on September 25, 2003, and that plaintiff had been incarcerated since October 5, 2003. He requested that he be awarded temporary custody of the two children, and that plaintiff be ordered to pay child support according to the guidelines. The record filed on appeal does not include the resolution of that motion; however, in 2006, the court awarded Gary sole custody of M.E. (K.E. had reached the age of majority).

¶ 5 On June 9, 2014, plaintiff filed a *pro se* "Civil Complaint" against Gary seeking a "declaration of malicious prosecution, abduction, and aid abetting child abduction [*sic*]." He alleged, *inter alia*, that Thomas' Emergency Motion contained false information, and that his

right to due process under the Fourteenth Amendment was violated because he did not receive notice of the guardianship hearing, was not allowed to present evidence in his defense, and the court did not provide a basis for its ruling.

¶ 6 On July 16, 2014, plaintiff filed a "Notice of motion for a declaration of rights under 735 ILCS 5/2-701 under (B)(C)" indicating that he mailed notice of his "Civil Complaint" to Gary, and that his motion was seeking a "declaration of rights." The common law record contains orders from July 23, 2014, and August 21, 2014, which indicate that Gary was not present in court on July 23, 2014, but did appear on August 21, 2014, when plaintiff asked for another court date so that he could amend the complaint. On September 8, 2014, plaintiff filed a notice of motion to "Dismiss Respondent [*sic*] motion for dismissal, and change of venue to the law division." In that motion, he contended that he was before the court seeking a "declaration action," and that "Gary stand [*sic*] befor[e] Your Honor liable for his negligence of aid abetting child abduction [*sic*]," which, he contended, was a question of "constitutional convention."

¶ 7 The next filing in the common law record indicates that plaintiff filed a "Response motion to defendant requesting immediate dismissal." In that motion, plaintiff again contended that in granting Thomas' Emergency Motion to appoint Gary as standby guardian, the trial court relied on false information supplied by her and Gary. On October 30, 2014, the trial court dismissed plaintiff's complaint at a hearing on defendant's motion to dismiss, which, we observe, has also not been included in the record on appeal. In its written order, the trial court stated that plaintiff's complaint was dismissed with prejudice based on "plaintiff's concession that his

Complaint is based on a prior ruling" by the trial court. The court also stated that its order was final and appealable and that plaintiff had been instructed of his right to seek an appeal.

¶ 8 In this court, plaintiff repeats the arguments contained in his written motions before the trial court, and further contends that the trial court should have transferred his cause to the trial court judge who ruled on the 2003 Emergency Motion.

¶ 9 We initially note that it is the responsibility of plaintiff, as appellant, to provide an adequately complete record of the proceedings that is sufficient for reviewing the issues raised on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, it is presumed that the trial court's judgment conformed with the law and had a sufficient factual basis, and any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id*. at 392. Although we are cognizant of the basic elements of fairness and procedural due process, a party appealing *pro se* must still comply with the established rules of procedure. *Lill Coal Co. v. Bellario*, 30 Ill. App. 3d 384, 385 (1975).

¶ 10 Here, plaintiff has only filed the common law record, and the brief he submitted does not conform to the Supreme Court Rules governing appellate review. Ill. S. Ct. R. 341 (eff. Feb. 6, 2013); Ill S. Ct. R. 342 (eff. Jan 1, 2005); *Twardowski v. Holiday Hospitality Franchising, Inc*., 321 Ill. App. 3d 509, 511 (2001). Although plaintiff separated the statement of facts and argument sections in his brief, he has also made factual allegations that are unsupported by references to pages in the record on appeal, and his statement of facts contains a mixture of fact, argument, and comment, in violation of Supreme Court Rule 341(h)(6) (Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013)). *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 824 (2010). In addition,

plaintiff has included in the appendix of his brief, defendant's motion requesting immediate dismissal of his civil complaint, and an order dated July 6, 2009, denying plaintiff's motion for custody of M.E. Since these filings were not included in the record filed on appeal, we may not consider them. *In re Parentage of Melton*, 321 Ill. App. 3d 823, 826 (2001).

¶ 11 That said, we discern through his "Civil Complaint," and appeal in this court, that plaintiff is challenging the 2003 ruling of the circuit court appointing Gary as the standby guardian of his children, both of whom have now reached the age of majority. Plaintiff contends that instead of dismissing his complaint, the trial court should have transferred the case to the proper court, or, in the alternative, that the trial court should have considered the complaint "because it is a question of the construction of a statute involving a constitutional" question. He, therefore, urges this court to remand this cause for an order to modify and "terminate the record of standby guardian."

¶ 12 In its written order, the circuit court noted plaintiff's concession that his complaint was based on the 2003 ruling on Thomas' Emergency Motion to appoint Gary as standby guardian. As such, his challenge eleven years later is tardy, and, in fact, that order was superseded, in part, by the order entered in 2006 granting Gary sole custody of M.E., a matter which plaintiff does not address in his Civil Complaint or in his brief in this court. Accordingly, we find that the issue is moot (*Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001)) and that plaintiff's untimely challenge to the order of 2003 was properly dismissed by the circuit court.

¶ 13 We, therefore, affirm the order of the circuit court of Cook County to that effect.

¶ 14 Affirmed.