

NOTICE
Decision filed 04/16/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130591-U

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).

NO. 5-13-0591

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

FRANKLIN-WILLIAMSON PROPERTIES,)	Appeal from the
INC., Assignee of Ellis and Company Financial,)	Circuit Court of
L.L.C., Assignee of Kondaur Capital Corporation,)	Williamson County.
Assignee of Union Planters Bank,)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-72
)	
DENNIS ANDREW BALL,)	
)	
Defendant-Appellant)	
)	
(Unknown Heirs of Eleanor Ball, Community)	
National Bank, n/k/a Midcountry Bank, Adam B.)	
Lawler, as Special Representative, Carol Lee Ball,)	Honorable
Heir, Unknown Tenants, Unknown Owners, and)	Carolyn B. Smoot,
Nonrecord Claimants, Defendants).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Cates and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's brief is stricken, and this appeal is dismissed, where the brief lacks any substantial conformity to the supreme court rules governing the contents of briefs and thus hinders appellate review.

¶ 2 In this mortgage foreclosure action, defendant Dennis Andrew Ball appeals from the circuit court's order confirming the judicial sale of mortgaged real estate. As

explained below, this court has determined that this appeal should be dismissed due to severe deficiencies in the appellant's brief that Ball has filed in this court.

¶ 3 On appeal, Ball has proceeded *pro se* and has filed an appellant's brief and a reply brief. Like any party in an appeal, Ball is obliged to comply with our supreme court's rules governing the content of appellate briefs. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7 (rules governing content of appellate briefs are requirements, not mere suggestions). Ball's *pro se* status does not relieve him of that obligation. See *Biggs v. Spader*, 411 Ill. 42, 44-46 (1951).

¶ 4 Ball's brief has severe deficiencies that cannot be overlooked. This court will discuss a few of them.

¶ 5 In the "Standard of Review" section of the brief, the glaring deficiency is the absence of any standard of appellate review. This deficiency is a violation of Illinois Supreme Court Rule 341(h)(3), which requires an appellant to specify the applicable standard of review. Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013).

¶ 6 The "Statement of Facts" section of the brief is exactly the opposite of what a statement of facts is supposed to be. Under Supreme Court Rule 341(h)(6), a statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Contrary to this rule, Ball's "Statement of Facts," which is only about one page in length, contains essentially no facts, and does not include a single reference to any page of the record on appeal. Meanwhile, it includes arguments that the circuit court of Williamson County

"exceeded its authority" and ruled in an "unconscionable" manner, and that "the appellant believes it is in the *public interest* to Void [sic] The [sic] Order Approving Sale." (Emphasis in original.) In short, Ball's "Statement of Facts" is bereft of necessary material and chock full of prohibited material. It fails to provide this court with any knowledge or understanding of this case.

¶ 7 As for the "Argument" section of Ball's brief, it too is wholly inadequate. An argument is supposed to contain "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Under Rule 341(h)(7), a reviewing court is entitled to have issues clearly defined, with "cohesive arguments" presented and pertinent authority cited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). An appellant forfeits any contention that is not supported by argument or by citation to authority. *Id.* Here, Ball's "Argument" lacks any cohesive argument, lacks any meaningful citation to authorities, and lacks any reference to any page of the record on appeal. It is a confusing mess. Ball cites two decisions, viz.: *American Family Mutual Insurance Co. v. Page*, 366 Ill. App. 3d 1112, 1115 (2006), and *Doria v. Village of Downers Grove*, 397 Ill. App. 3d 752, 756 (2009). *Page* focused on interpretation of the phrase "vacant land" in two homeowners' insurance policies. *Doria* was a negligence case in which the key issue was whether a particular gravel lot, maintained by a municipality, was intended for use as a parking lot. Ball did not attempt to explain how *Page* or *Doria* related to any aspect of this appeal, and the citations therefore are completely unhelpful to this court.

¶ 8 The only other authority cited by Ball in the "Argument" section of his brief is "Rule Sec. 735/ILCS 5/15 Rule 1508(iv)." Obviously, this citation is not a valid citation to authority. Ball may be referencing section 15-1508 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1508 (West 2012)), which governs court orders confirming the judicial sale of real estate after mortgage foreclosure. However, this citation was given in support of the proposition that "[t]his case should have gone to trial on the merits and in the interests of justice." True to form, Ball did not attempt to explain how the citation relates to the proposition it was intended to support, or how the proposition could possibly apply to this case.

¶ 9 The plaintiff-mortgagee, in its appellee's brief, writes that "[i]t is difficult to frame a reply to [Ball's] arguments as they do not contain proper citation to any legal authority and his brief fails to include any basis for reversal of the lower court's rulings." Bewilderment is a natural reaction to Ball's brief.

¶ 10 Where an appellant's brief lacks any substantial conformity to the supreme court rules governing the contents of briefs and thus hinders appellate review, a court may justifiably strike the brief and dismiss the appeal. *Hall*, 2012 IL App (2d) 111151, ¶ 15. Indeed, the absence of a complete statement of facts, in and of itself, justifies striking an appellant's brief and dismissing an appeal. *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001). Due to the severe deficiencies in Ball's brief, the brief is stricken and this appeal is dismissed.

¶ 11 Even if Ball had filed an adequate brief, this court would have been obliged to affirm the circuit court's order confirming the judicial sale of the mortgaged real estate. The record simply lacks any basis for reversal.

¶ 12 The confirmation of judicial sales is governed by section 15-1508 of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508 (West 2012)). Subsection (b) of that statute provides:

"Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 [735 ILCS 5/15-1507] was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently or (iv) that justice was otherwise not done, the court *shall* then enter an order confirming the sale." (Emphasis added.) 735 ILCS 5/15-1508(b) (West 2004).

¶ 13 Section 15-1105(b) of the Foreclosure Law specifies, "The word 'shall' as used in [the Foreclosure Law] means mandatory and not permissive." 735 ILCS 5/15-1105(b) (West 2012). Thus, under the terms of section 15-1508, a court is obliged (a) to conduct a hearing on confirmation of a judicial sale where a motion to confirm has been made and notice has been given, and (b) following the hearing, to confirm the sale unless it finds that any of the four specified exceptions is present. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). The interested party opposing the sale bears the burden of

proving that grounds exist sufficient for the trial court to refuse to enter an order approving the sale. *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 6-7 (2006).

¶ 14 Section 15-1508 confers upon the circuit court broad discretion in approving or disapproving judicial sales. *Lewis*, 229 Ill. 2d at 178. A reviewing court cannot disturb the circuit court's decision to confirm a sale unless the decision represents an abuse of the circuit court's discretion. *Id.* An abuse of discretion occurs when the circuit court's ruling is unreasonable, fanciful, or arbitrary, or where no reasonable person would agree with the view of the circuit court. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). (Neither the content of section 15-1508 nor the abuse-of-discretion standard was mentioned anywhere in Ball's brief.)

¶ 15 The record on appeal shows that in this case, the circuit court entered a judgment of foreclosure, which included an order for the sale of the mortgaged real estate, at public auction, and specified a date for the sale. See 735 ILCS 5/15-1506 (West 2012). The record also includes proof that proper notice of the sale was published in a newspaper of general circulation. See 735 ILCS 5/15-1507 (West 2012). In May 2013, the plaintiff-mortgagee filed a motion for confirmation of the sale, supported by a "report of sale" attached as an exhibit. See 735 ILCS 5/15-1508(a) (West 2012). In December 2013, Ball filed an objection to the motion, on various grounds. A docket entry indicates that on December 17, 2013, the court held a hearing on the motion to confirm sale, and attorneys for the plaintiff-mortgagee and Ball were present. Also on December 17, 2013, the court entered a written order confirming the sale. This order included the court's findings that (i) all required notices were given, (ii) the terms of the sale were fair and not

unconscionable, (iii) the sale was conducted fairly and without fraud, and (iv) justice was done by the sale. Ball promptly filed a notice of appeal from the order confirming sale, thus perfecting this appeal.

¶ 16 This court has no basis upon which to conclude, or even to suspect, that the circuit court erred in its factual findings, or that it abused its broad discretion in approving the judicial sale of the mortgaged real estate. In order to discern such a basis, this court would need to know what happened at the hearing on the motion to confirm sale, and what evidence was presented there. However, the record on appeal does not include a transcript of that hearing or, for that matter, a bystander's report or an agreed statement of facts, as required by Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). In any appeal, it is the appellant (in this case, Ball) who has the burden to present a sufficiently complete record. Ball has failed to present such a record. "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." (Internal quotation marks omitted.) *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). Without an adequate record preserving a claimed error, this court must presume that the circuit court's decision had a sufficient factual basis and conforms with the law. *Id.* Based upon this presumption of correctness, this court would have been obliged to affirm the judgment of the circuit court.

¶ 17 Due to the severe deficiencies in Ball's brief, as detailed above, the brief is stricken, and this appeal is dismissed.

¶ 18 Appeal dismissed.