THIRD DIVISION
June 15, 2016

No. 1-15-0797 & 1-15-1022
(CONSOLIDATED)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LOUIS ROBERT FASULLO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 M1 16603
	)	
CAVALLINI'S IN THE PARK, INC.,	)	Honorable
	)	Martin Moltz, and
	)	Jessica A. O'Brien,
Defendant-Appellee.	)	Judges Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

O R D E R

¶ 1 *Held:* In appeal No. 1-15-0797, we dismiss the matter for lack of jurisdiction because the order appealed from was not final and appealable; in appeal No. 1-15-1022, circuit court's denial of plaintiff's untimely jury demand affirmed where reasoning for denial was not included in record on appeal and plaintiff's contention that court erred in granting judgment in favor of defendant after trial affirmed where plaintiff did not provide a record of the trial proceedings.

¶ 2 In this consolidated appeal, plaintiff Louis Robert Fasullo appeals from the circuit court's order setting his lawsuit against defendant, Cavallini's In the Park, Inc., a cafe located at the Metra train station in Tinley Park, Illinois, for trial (appeal No. 1-15-0797) and from the subsequent bench trial, resulting in a judgment in favor of defendant (appeal No. 1-15-1022). This case arose from plaintiff's tort action for damages sustained as a result of defendant's statements to the police which caused plaintiff to be issued a trespass notice barring him from defendant's cafe. On appeal, plaintiff contends that (1) he requested, but did not receive, a jury trial and (2) the circuit court erred in granting judgment to defendant after trial. We dismiss appeal No. 1-15-0797 and affirm appeal No. 1-15-1022.

¶ 3 On October 15, 2014, plaintiff filed a *pro se* complaint in tort, alleging that on an unnamed date, he ordered a cup of coffee from defendant. After his debit card was declined, defendant's owner offered him the coffee for free, which plaintiff refused because he believed he had enough money. The owner responded that he did not want plaintiff's business and asked him to leave the cafe. Consequently, plaintiff called the police. Plaintiff stated that when the police arrived, the owner told them that plaintiff was bothering customers, which plaintiff alleged was false. Because there were other people in the cafe at the time, plaintiff sought damages for slander, "telling false statements to police," and "disgrace for ruining [his] reputation." When plaintiff filed his initial complaint, he checked "Yes" on a box on the "Civil Action Cover Sheet," next to the words "Jury Demand," but he did not file a separate written jury demand.

¶ 4 A month later, defendant filed an answer to plaintiff's complaint, denying the allegations therein.

¶ 5 On February 10, 2015, plaintiff filed an amended *pro se* complaint, restating the facts from his initial complaint. He added that after the police spoke to defendant's owner, Tinley Park Police Officer Duane Pulchinski issued him a trespass notice, which plaintiff attached to the amended complaint. The notice prohibited plaintiff from entering 6700 South Street in Tinley Park, the "Metra Train Station," specifically "Cavallini's Cafe." Although Pulchinski issued plaintiff the notice, plaintiff alleged that he and Pulchinski had a "verbal agreement" that he could use the Metra train station for commuting, but could not order anything from defendant. Plaintiff also alleged that defendant declined his debit card "with intent to defraud pursuant to" section 5-17 of the Criminal Code of 2012 (720 ILCS 5/17-0.5 *et seq.* (West 2014)). Plaintiff stated that defendant committed slander by falsely stating to the police that he made threats to customers, which resulted in him being issued the trespass notice, and ruined his reputation. Plaintiff requested $25,000 in damages or an amount determined by the court for "personal injury of disgrace and mental anguish."

¶ 6 Three days later, defendant filed an answer to plaintiff's amended complaint, denying the allegations therein.

¶ 7 On March 24, 2015, the circuit court set the matter for trial. Plaintiff filed a notice of appeal (No. 1-15-0797) from the court's order that day, requesting a "writ of mandamus" as his relief. Plaintiff also filed a *pro se* emergency motion in this court for "an order of mandamus" to direct the circuit court to grant plaintiff a jury trial. This court denied the motion, finding: (1) the

circuit court's order setting the matter for trial not final and appealable; (2) plaintiff failed to identify a supreme court rule granting jurisdiction in this court over the order; (3) the Illinois Constitution grants mandamus power only to the supreme court; and (4) the online docket revealed that plaintiff never filed a jury demand. Approximately a week later, plaintiff filed a written jury demand in the circuit court.

¶ 8 On April 13, 2015, according to a trial call order, a trial was held, with both parties present. The circuit court granted judgment in favor of defendant. The docket sheet reflects the same. Plaintiff timely filed a notice of appeal (No. 1-15-1022) from that judgment. This court subsequently consolidated plaintiff's appeals, which now follow.

¶ 9 Initially, we must address our jurisdiction in appeal No. 1-15-0797, which plaintiff initiated from the circuit court's order setting his matter for trial. Pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), every final judgment in a civil case from the circuit court is appealable as of right. "A final and appealable judgment for purposes of Rule 301 is one that fixes the rights of the parties absolutely and finally in the litigation and terminates the litigation on the merits so that if the judgment is affirmed, the only thing left to do is to proceed with the execution of the judgment." *In re Application of County Collector*, 395 Ill. App. 3d 155, 159 (2009).

¶ 10 Here, as the circuit court's order merely set plaintiff's matter for trial, it did not fix the rights of the parties absolutely and finally in the litigation, and terminate the litigation on the merits. Therefore, the court's order was not final and appealable, and his appeal was premature. Furthermore, plaintiff has not identified any other grounds allowing him to appeal the court's

order. Because plaintiff's appeal was premature, this court has no jurisdiction to hear it. *Id.* at 160. Accordingly, we must dismiss the appeal for lack of jurisdiction. *Id.*

¶ 11 Next, we address appeal No. 1-15-1022, which is what plaintiff's claimed errors on appeal appear to focus on. As best as we can discern from his brief, plaintiff raises two issues: (1) whether he was entitled to a jury trial and (2) whether the circuit court erred in granting judgment in favor of defendant after trial. Although defendant, the appellee, has not filed a brief in this matter, that is not a bar to our consideration of the appeal's merits. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 12 We begin by noting that plaintiff has failed to comply with multiple supreme court rules on civil appeals. First, despite being ordered by this court to file a docketing statement for both appeals, plaintiff has failed to do so in violation of Illinois Supreme Court Rule 312 (eff. Mar. 8, 2016). Additionally, plaintiff failed to present an organized and cohesive legal argument. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); see also *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. Although we recognize plaintiff appeals *pro se,* we cannot excuse a brief which fails to comply with our supreme court's rules in so many ways. "It is well established that '[r]eviewing courts are entitled to have the issues clearly defined, to be cited pertinent authorities and are not a depository in which an appellant is to dump *** argument and research as it were, upon the court.' " *Northwestern Memorial Hospital v. Sharif,* 2014 IL App (1st) 133008, ¶ 20 (quoting *In re Estate of Kunz,* 7 Ill. App. 3d 760, 763 (1972)). The appellant cannot expect the reviewing court to develop his arguments and research the issues on his behalf. See *id.*

¶ 13 Nevertheless, we address what we can from plaintiff's brief. He first contends that he should have been granted a jury trial. He asserts that in his "Civil Action Cover Sheet," he checked the "Yes" box next to the words "Jury Demand." The cover sheet, however, expressly states it is an administrative document only. Therefore, the cover sheet is not part of plaintiff's complaint, and checking a box on the cover sheet alone does not entitle him to a jury trial.

¶ 14 Instead, pursuant to section 2-1105(a) of the Code of Civil Procedure (735 ILCS 5/2-1105(a) (West 2014)), "[a] plaintiff desirous of a trial by jury must file a demand therefor with the clerk at the time the action is commenced." Here, plaintiff did not file a jury demand at the time he commenced his action. Rather, he filed a jury demand on April 3, 2015, 10 days before his scheduled trial, which rendered the demand untimely. See *id.*

¶ 15 However, Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011) affords the circuit court discretion to decide whether to grant a party's untimely request for a jury trial. *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 29. The party must establish good cause for failing to file the timely jury demand. *Id.* Here, we do not have any record regarding why the circuit court denied plaintiff's untimely jury demand. Plaintiff, as the appellant, has the duty to provide this court with a sufficient record of the trial proceedings to support his claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Having provided us with no report of proceedings or an acceptable substitute pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005) revealing why the circuit court denied his jury demand, we must presume the court acted in conformity with the law and with a sufficient factual basis when it denied plaintiff a jury trial. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 16 Plaintiff next contends that the circuit court erred in granting judgment in favor of defendant after trial. Specifically, plaintiff argues that he proved defendant made false statements to the police, "defraud[ed]" him and ultimately committed slander against him. However, plaintiff's argument is not supported by the record on appeal.

¶ 17 As discussed, plaintiff has the duty to provide this court with a sufficient record of the trial proceedings to support his claims of error. *Id.* Here, plaintiff has not provided this court with a transcript from that trial. The only documents in the record on appeal related to the trial are a trial call order and docket sheet from the circuit court, stating judgment was found in favor of defendant after trial. Additionally, plaintiff has not provided an acceptable substitute under Rule 323. Accordingly, in the absence of the trial transcript or an acceptable substitute, we must presume the circuit court acted in conformity with the law and with a sufficient factual basis when it rendered judgment in favor of defendant after trial. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 18 Lastly, to the extent plaintiff has raised any other issues in his brief, we find them waived for his failure to adequately present argument on them. See *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 401 (1987) ("[B]y failing to adequately brief or argue the issue in this court, [the party] has waived the issue.").

¶ 19 For the foregoing reasons, we dismiss appeal No. 1-15-0797 and affirm the judgment of the circuit court of Cook County in appeal No. 1-15-1022.

¶ 20 No. 1-15-0797, Appeal dismissed.

¶ 21 No. 1-15-1022, Affirmed.