2016 IL App (1st) 152378-U

FIFTH DIVISION
April 29, 2016

No. 1-15-2378

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Estate of ROBERTA INEZ BOULDEN, an Alleged Disabled Adult,	)	Appeal from the Circuit Court of Cook County
(Roberta Inez Boulden,	)	
Respondent-Appellee,	)	No. 15 P 4376
v.	)	
Patricia A. Breckenridge,	)	Honorable Aicha MacCarthy, Judge Presiding.
Petitioner-Appellant).	)	

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court where the appellant has failed to provide a sufficient legal basis and, thus, we must presume that the circuit court acted in conformity with the law.

¶ 2 Petitioner, Patricia Breckenridge (Patricia), appeals the order of the circuit court of Cook County dismissing her petition to be appointed the guardian of her 88-year-old mother, Roberta

Boulden (Roberta). In dismissing the petition, the circuit court also determined that a power of attorney naming Patricia's sister, Debra Jones (Debra), as the agent was valid and that there was no just cause to disturb the power of attorney. On appeal, Patricia contends the power of attorney has effectively denied Roberta her right to privacy and her right to freedom of religion and, therefore, the circuit court erred in dismissing her petition for guardianship. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On July 14, 2015, Patricia filed a petition to be appointed the guardian of Roberta pursuant to section 11a-8 of the Probate Act of 1975 (755 ILCS 5/11a-8 (West 2014)). In the petition, Patricia alleged Roberta was 88-years-old, resided in a nursing home, and suffered from a stroke and osteoporosis. Patricia requested Roberta be adjudicated a disabled person and that she be appointed as Roberta's guardian.

¶ 5 A guardian *ad litem* (GAL) was appointed to inquire into Roberta's wishes and file a report with the court. On August 19, 2015, the GAL interviewed Roberta at the nursing home where she resided. Roberta was alert and when asked if she understood what a guardian is she answered affirmatively. The GAL then asked Roberta if she wanted a guardian and, if so, did she want Patricia to be her guardian. Roberta responded, "That's fine, Patricia or Debra can be by guardian." Roberta also answered affirmatively when asked if she wanted to live at Patricia's residence.

¶ 6 According to the GAL's report, Roberta was admitted to the nursing home on October 24, 2014. Previously, she lived with Debra, but was placed in the nursing home because the City of Chicago cited Debra's building for having an unsafe porch. The GAL's report further indicated that Roberta was in a wheel chair and required two individuals to move her from her bed. In

addition, Roberta required assistance from others in order to conduct all of her daily activities.

¶ 7 The GAL also stated in her report that she spoke with Charles, a social worker at Roberta's nursing home.[1] Charles indicated that Debra was listed as the agent on the power of attorney which the nursing home had on file and that Debra was "very responsive to Debra's medical needs and sees her regularly."

¶ 8 The GAL further reviewed the report of Dr. Vivek Gupta, Roberta's physician. In the report, Dr. Gupta indicated that Roberta is disabled from a cardiovascular accident (stroke), hypertension, and senile dementia. He further indicated that partial guardianship is warranted and that Roberta was not capable of making personal and financial decisions.

¶ 9 The GAL also spoke with Debra. Debra indicated that she had been Roberta's caretaker for 30 years and that Roberta had some mental health issues in the past that prevented her from living alone. According to the GAL's report, Debra stated she could not reason with Patricia over what was in the best interests of their mother. Debra further stated that she did not believe Patricia should serve as Roberta's guardian because she does not fully appreciate the level of care required for Roberta.

¶ 10 In addition the GAL reported that Debra was listed as the agent under a power of attorney for Roberta executed in 2007. Debra had previously utilized the power of attorney for hospital visits and for placement in the nursing home.

¶ 11 Lastly, the GAL stated that, in her view, Patricia's plan to care for Roberta "has not fully come together and needs work before it can be considered." According to the report, Patricia's plan was to remove Roberta from the nursing home and move her into Patricia's apartment. The GAL noted, however, that Patricia works full time and would need to consider the assistance of

[1] Charles' last name is not included in the GAL's report nor does it appear in the record on appeal.

two additional individuals to help properly care for Roberta.

¶ 12 The GAL ultimately recommended that because Roberta "already has an existing agent under a presumptuous [*sic*] valid power of attorney for health care, appointment of a guardian is not necessary."

¶ 13 On August 21, 2015, the petition was presented to the court with the GAL, Patricia, "Respondent's POA" and "physician" being present.[2] In a written order, the circuit court indicated it had reviewed the power of attorney presented by Debra and found it to be valid and that there was no just case to disturb it. The circuit court accepted the GAL's report, discharged the GAL, and dismissed the petition. This appeal followed.[3]

¶ 14 ANALYSIS

¶ 15 On appeal, Patricia (proceeding *pro se*) has set forth numerous arguments that involve the petition for guardianship and Roberta's power of attorney. From what we can discern, Patricia's main argument is that the power of attorney has effectively denied Roberta her right to privacy and her right to freedom of religion and, therefore, the circuit court erred in dismissing her (Patricia's) petition for guardianship. None of these arguments are supported by the record. It is Patricia's duty, as the appellant, to provide this court with a sufficient record of the trial proceedings to support her claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we must presume the circuit court acted in conformity with the law and with a sufficient factual basis for its findings. *Id.* In addition, any doubts arising from an incomplete record will be resolved against the appellant. *Id.* In this case, there are no transcripts in the record of the proceedings below, no bystander's report was submitted to and approved by

[2] The record does not expressly indicate who "Respondent's POA" and "physician" are.

[3] On April 14, 2016, this court entered an order taking the matter solely on Patricia's brief.

the circuit court, and no agreed statement of facts was provided to this court as allowed by Rule 323 (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)). Accordingly, this court can only rely on the documents submitted within the record on appeal and, in the absence of a record of what occurred in the circuit court, we will presume the circuit court acted in conformity with the law. See *Foutch*, 99 Ill. 2d at 391-92. In addition, Patricia's brief fails to comply with our supreme court's rules regarding the structure and content of appellate briefs. See Ill. S. Ct. Rs. 341 (eff. Feb. 6, 2013), 342 (eff. Jan. 1, 2005). Furthermore, Patricia's assertions are not legal arguments and are not supported by citations to legal authority as required by Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013). In addition, the brief does not contain a factual basis to support her claims and is not helpful to the court.

¶ 16 A *pro se* litigant, such as Patricia here, is not entitled to more lenient treatment than attorneys. See *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5 ("*Pro se* litigants are not excused from following the rules that dictate the form and content of appellate briefs."). In Illinois, parties choosing to represent themselves without a lawyer are "presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

¶ 17 Illinois Supreme Court Rules 341 and 342 govern the procedure concerning appellate briefs. These rules are not mere suggestions, but are compulsory. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. The purpose of these rules is to require the parties to present clear and orderly arguments before a reviewing court, so that the court can properly ascertain and dispose of the issues involved. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Where an appellant's brief fails to comply with supreme court rules, this court has

the inherent authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005).

¶ 18 We initially observe that Patricia's brief does not comply with numerous subsections of Rule 341 pertaining to the form and substance of appellate briefs. Rule 341(c) requires the appellant to submit a signed certification along with the brief that indicates the brief complies with the form and length paragraphs for briefs under Rules 341(a) and (b). Ill. S. Ct. R. 341(c) (eff. Feb. 6, 2013). Patricia has not submitted such a certification. Rule 341(h)(1) requires the appellant to provide a summary statement entitled "Points and Authorities." Ill. S. Ct. R. 341(h)(1) (eff. Feb. 6, 2013). Patricia has provided such a statement, however, it is not in compliance with the rule as it does not include references to the pages on the brief where each heading appears, nor does it contain any citation or reference to case law authority. Patricia's brief also does not contain a statement of jurisdiction in violation of Rule 341(h)(4)(ii) or a statement of the standard of review with citation to authority in violation of Rule 341(h)(3). See Ill. S. Ct. R. 341(h)(3), (4)(ii) (eff. Feb. 6, 2013).

¶ 19 In addition, Patricia does not provide a statement of facts regarding the history of the matter in the circuit court in violation of Rule 341(h)(6). Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Instead, Patricia included a personal history of her mother's life and a narrative regarding the various obstacles Roberta, Patricia, and Debra have had to overcome. This personal history takes up a majority of Patricia's brief. Unfortunately, the brief contains no citations to the record in violation of Rule 341(h)(7) and, in fact, consists primarily of facts that do not appear anywhere in the circuit court record. The failure to substantiate factual assertions with such citation to the record warrants the dismissal of an appeal because it makes it "next to impossible for this court to assess whether the facts as presented *** are an accurate and fair portrayal of the events in this case." *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993).

¶ 20 We also note that Patricia included documents in her appendix that are not in the record in violation of Rule 342(a) such as Roberta's power of attorney, Patricia's birth certificate, a blank "Revocation of Power of Attorney" form, an unexecuted "Durable Power of Attorney," a list of building code violations at Debra's purported address, and Patricia's apartment lease. See Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). While the appellant may include other materials besides a copy of the judgment appealed from in the appendix, these materials must come from the record. *Id.* The documents Patricia included in her appendix are not in the record on appeal and, thus, are not properly before this court. See *id.*

¶ 21 Most importantly, Patricia did not set forth any legal argument or citation to authority as required by Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). In fact, we cannot accurately discern Patricia's exact legal argument based on the brief she provided. Rule 341(h)(7) requires that the argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." *Id.* "It is a rudimentary rule of appellate practice that an appellant may not make a point merely by stating it without presenting any argument in support." *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009). Failure to properly develop an argument does "not merit consideration on appeal and may be rejected for that reason alone." *Id.*

¶ 22 While we understand that Patricia represents herself in this appeal, we cannot bypass our supreme court rules to make an exception for a brief that does not comply with the rules in a multitude of ways. "Supreme Court Rule 341 governing the form and contents of briefs is not just an arbitrary exercise of the supreme court's supervisory powers; its end purpose is that a reviewing court may properly ascertain and dispose of the issues involved." *Tannenbaum v. Lincoln National Bank*, 143 Ill. App. 3d 572, 574-75 (1986). As a reviewing court, we are

entitled to have the issues clearly defined with pertinent authority cited. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15 (quoting *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 20). An appellant cannot expect this court to develop arguments and research the issues on the appellant's behalf. See *Northwestern Memorial Hospital*, 2014 IL App (1st) 133008, ¶ 20 ("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.' " (quoting *In re Estate of Kunz*, 7 Ill. App. 3d 760, 763 (1972))). Patricia's brief does not allow us to properly ascertain and dispose of the issues involved based on what was provided to this court. See *McCann*, 2015 IL App (1st) 141291, ¶ 20.

¶ 23 Furthermore, it appears as though Patricia is attempting to bring forth arguments that, according to the record before us, were not raised in the circuit court. Generally, arguments that are not raised in the circuit court are forfeited on appeal. *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14. "The purpose of this court's forfeiture rules is to encourage parties to raise issues in the trial court, thus ensuring both that the trial court is given an opportunity to correct any errors prior to appeal and that a party does not obtain a reversal through his or her own inaction." *Id.* While we acknowledge that it is possible that Patricia may have raised these arguments before the circuit court judge, no transcript of the proceedings or a bystander's report was provided to this court which would support the arguments Patricia raises on appeal. See Ill. S. Ct. R. 323 (eff. Jan. 1, 2005). Accordingly, we conclude Patricia's arguments are forfeited. See *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 15.

¶ 24 Even if we consider the arguments, they provide no legal basis in which to reverse the decision of the circuit court. Although this court is always aware of the basic elements of

fairness and procedural due process, a party appealing *pro se* must still comply with the established rules of procedure. The orderly administration of the affairs of this court necessitate that its rules and precedents be followed. *Biggs v. Spader*, 411 Ill. 42, 46 (1951); *Lill Coal Co. v. Bellario*, 30 Ill. App. 3d 384, 385 (1975). As previously discussed, where a brief on appeal fails to articulate an organized and cohesive legal argument for the court's consideration and fails to comply with our supreme court rules the appeal should be dismissed. *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074-75 (1982). However, based on the fact that Patricia provides no legal basis to reverse the circuit court, we must presume that the court followed the law and must affirm its decision. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 25 CONCLUSION

¶ 26 For the reasons outlined above, we affirm the judgment of the circuit court.

¶ 27 Affirmed.