

No. 1-16-2043

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

CAROLYN ANDERSON, as Special Representative of the Estate of Christine Anderson, deceased,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiff-Appellant,)	
)	No. 11 M1 173284
v.)	
)	Honorable
ALLSTATE INDEMNITY COMPANY,)	Eileen O’Neill Burke and
)	Ronald Bartkowicz,
Defendant-Appellee.)	Judges Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 **Held:** We affirm the judgment in favor of defendant following trial on plaintiff’s claim for breach of contract. Because the record on appeal does not contain a copy of the trial transcript, the presumption of correctness applies. We dismiss plaintiff’s appeal of the summary judgment entered against her on her bad faith claim, because her brief cites no authority to support reversal.

¶ 2 Christine Anderson filed a two-count complaint against defendant Allstate Indemnity Company alleging breach of contract and bad faith. The court granted summary judgment to Allstate on the bad faith claim and, after a bench trial, entered judgment in Allstate’s favor on the breach of contract claim. We affirm in part and dismiss in part.

¶ 3

BACKGROUND

¶ 4 In 1967, Annie Anderson purchased a home located at 640 North Trumbull Street in Chicago. On October 9, 2009, Annie purchased a homeowners insurance policy from Allstate. Then, Annie renewed the policy for a term covering October 9, 2010 through October 9, 2011. Annie died on December 10, 2010. In January 2011, Christine Anderson, one of Annie's daughters, succeeded Annie as the named insured on the insurance policy.

¶ 5 On July 7, 2011, there was a fire and burglary at the home. The following day, an Allstate claims adjuster inspected the property. On July 18, Christine faxed Allstate a handwritten list of personal property that was allegedly lost or damaged. The list included, among other things, a \$10,000 wall painting, a 63-inch television, \$6000 stored in a safe, a \$5000 coin, \$13,000 worth of purses, and a freezer that contained \$3000 in food. All told, Christine claimed a loss of \$164,250 in personal property.

¶ 6 Allstate assigned Christine's claim to its special investigation unit. On September 11 and October 19, 2011, Christine appeared for an examination under oath conducted by Allstate's defense attorney. On October 27, 2011, Allstate denied coverage for all claims on the basis that Christine made "material misrepresentations in the submission of the claim and concerning the quantity and value of items of personal property claimed to have been stolen in the subject incident."

¶ 7 On November 17, 2011, Christine filed a two-count *pro se* complaint against Allstate for breach of contract and for vexatious and unreasonable delay in paying a claim pursuant to section 155 of the Insurance Code, commonly known as a bad faith claim. See 215 ILCS 5/155 (West 2010). Thereafter, Christine retained an attorney. In April 2013, Christine died. On June 26, 2013, Christine's sister, Ollie Anderson, was appointed special representative of Christine's

estate and was substituted as plaintiff. On January 8, 2015, Ollie's sister, Carolyn Anderson, was appointed substitute special representative of Christine's estate and replaced Ollie as the named plaintiff.

¶ 8 On December 15, 2015, the court granted summary judgment in favor of Allstate on count II of Carolyn's complaint, the bad faith claim. The case then proceeded to a bench trial on count I, the breach of contract claim. On June 8, 2016, the court entered judgment in favor of Allstate, finding that it properly denied the claim based on Christine's misrepresentations.¹ The record does not contain a transcript of the trial. Carolyn did not file a posttrial motion.

¶ 9 On August 3, 2016, Carolyn filed a *pro se* motion for leave to file a late notice of appeal. This court granted the motion.

¶ 10 ANALYSIS

¶ 11 On appeal, Carolyn seeks reversal of the circuit court's orders: (1) granting summary judgment in favor of Allstate on her bad faith claim and (2) entering judgment in favor of Allstate after trial on her breach of contract claim. Carolyn's argument on appeal does not track her breach of contract claim, and has only a fleeting resemblance to her bad faith claim. She maintains that Allstate "unfairly and improperly amended the Annie Anderson 2010 policy to delete Annie as the 'insured' make [*sic*] Christine Anderson the 'insured.'" Instead of doing that, Carolyn submits, "[a]dministratively, Allstate should have used the 'custodian' clause contained within the 'continuing coverage after your death' provision in its designation of Christine to protect Annie's interests." According to Carolyn, under this provision, "Allstate was required to provide continued insurance coverage for Annie's residence and personal property at the time of her death." Thus, Carolyn concludes, "Allstate 'BREACHED' its obligations owed to

¹Although the circuit court's order following trial states that it grants "summary judgment" to Allstate, it is clear from the record that the judgment in favor of Allstate on the breach of contract claim was entered following a trial on the merits.

Annie (her potential estate) in its handling of the ‘Continuing Coverage Provisions,[’] including mislabelling of Christine as the ‘insured’ when Allstate knew or should have known Christine was not the proper insurable party.”

¶ 12 The circuit court disposed of count I by entering judgment in favor of Allstate after a full bench trial. But the record does not contain a transcript of the trial. The Illinois Supreme Court has explained that

“an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

A party’s status as a *pro se* litigant does not excuse complying with this rule. See *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 7 (“An appellant’s *pro se* status does not alleviate the duty to comply with our supreme court’s rules governing appellate procedure.”).

¶ 13 Because Carolyn failed to include a trial transcript or a suitable substitute in the record on appeal (see, *e.g.*, Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005)), the *Foutch* presumption of correctness governs. We must presume that the circuit court’s entry of judgment against Carolyn on her breach of contract claim “was in conformity with law and had a sufficient factual basis.” *Foutch*, 99 Ill. 2d at 392. Accordingly, we affirm the circuit court’s order entering judgment in favor of Allstate on count I of Carolyn’s complaint after trial.

¶ 14 The circuit court disposed of count II through summary judgment. In the circuit court, Carolyn opposed Allstate’s motion for summary judgment by raising arguments attacking Allstate’s naming Christine as the named insured on the policy, arguments similar to those in her appellate brief. Notably, though, she did not argue the claim actually encompassed by count II—vexatious and unreasonable delay in payment of a valid claim.

¶ 15 The Illinois Supreme Court has promulgated rules governing the conduct of parties appearing before the appellate court, including the contents of an appellant’s—in this case, Carolyn’s—appellate brief. Of particular relevance here is Rule 341(h)(7), which requires that appellants supply this court with an appellate brief containing “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. Jan. 1, 2016) (Emphasis added.). Because Carolyn’s brief fails to cite any legal authority whatsoever, we must deem this portion of her appeal waived and dismiss it. See *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095–96, (1993) (dismissing appeal due to appellant’s failure to comply with Rule 341).

¶ 16 CONCLUSION

¶ 17 We affirm the circuit court’s order granting judgment to Allstate on count I under the principles of *Foutch v. O’Bryant*, 99 Ill. 2d 389 (1984). We dismiss the appeal relating to count II for non-compliance with Illinois Supreme Court Rule 341.

¶ 18 Affirmed in part; dismissed in part.