

No. 1-17-2406

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

KENNITH L. WHALEY,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County
)
 v.) No. 13 CH 3802
)
 KINGSWAY AMERICA,)
) Honorable
) Rita M. Novak,
 Defendant-Appellee.) Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County where plaintiff forfeited his claims on appeal and failed to present a sufficient record on appeal to support a claim of error.

¶ 2 Plaintiff Kenneth Whaley, appearing *pro se*, appeals from a trial court order (1) denying his motion to strike an affidavit accompanying defendant Kingsway America’s motion for summary judgment, (2) granting summary judgment in favor of defendant on plaintiff’s claim pursuant to section 155 of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/155 (West

2014)), and (3) denying plaintiff's motion for summary judgment on the section 155 claim. On appeal, plaintiff contends the trial court erred where there was evidence the signature on defendant's affidavit was forged and where defendant's failure to communicate with him and settle his claim was unreasonable pursuant to section 155 of the Insurance Code. For the reasons stated herein, we affirm.

¶ 3

BACKGROUND

¶ 4 As this matter is before us solely on review of an order granting summary judgment for defendant on plaintiff's section 155 claim and denying plaintiff's motion to strike defendant's affidavit, we recite only those facts pertinent to this appeal. Moreover, because plaintiff amended the complaint multiple times and defendant advances arguments on appeal regarding an inoperative complaint, we will briefly recite the procedural history of this case.

¶ 5 This matter arose out of plaintiff's insurance collision claim following a motor vehicle accident wherein plaintiff's vehicle was totaled. Plaintiff's initial complaint sounded in breach of contract for defendant's failure to settle his insurance claim. Plaintiff was granted leave to file an amended complaint, which included an additional request for punitive damages. Plaintiff thereafter filed a second amended complaint, the operative complaint in this matter, without first obtaining leave from the trial court to do so.¹ Plaintiff then filed a third amended complaint, followed by a request for leave to file the same, which was denied.

¶ 6 Only a portion of plaintiff's operative complaint is contained in the record. Although this court ordered the parties to supplement the record on appeal with a complete copy of the operative complaint, plaintiff filed an identical copy of the complaint that already appears in the

¹ As discussed below, both parties filed a motion for summary judgment regarding plaintiff's operative complaint. Defendant failed to argue the complaint was filed without leave of court, and instead attacked the merits of the complaint. Defendant therefore forfeited the issue on appeal of plaintiff's failure to obtain leave of court prior to filing the operative complaint. *In re Estate of Chaney*, 2013 IL App (3d) 120565, ¶ 8 (issues not raised in the trial court are forfeited and may not be raised for the first time on appeal).

record.

¶ 7 The operative complaint included four counts, but several pages that name two of the counts are missing from the record and supplemental record. Count I of the operative complaint appears to be a statement of facts followed by a request for punitive, actual, and consequential damages, plus costs associated with the claim. The next page of the operative complaint included the final portion of a claim pursuant to section 155 of the Insurance Code, followed by count IV which sounded in breach of contract.

¶ 8 Plaintiff subsequently filed a motion for summary judgment, arguing defendant's delay in communicating with him and settling the claim was unreasonable as defined by part 919.80(b)(2) of the regulations to the Illinois Administrative Code (Administrative Code) (50 Ill. Adm. Code 919.80(b)(2) (2002)), and the delay was therefore unreasonable pursuant to section 155 of the Insurance Code. 215 ILCS 5/155 (West 2014). Plaintiff also referenced a "bad faith claim" which appears to be based on defendant's alleged unreasonable delay pursuant to section 155 of the Insurance Code, but no such claim appears in the operative complaint contained in the record and supplemental record.

¶ 9 Defendant filed a combined response and cross-motion for summary judgment, arguing that it had, in fact, communicated with plaintiff in accordance with part 919.80(b)(2) of the Administrative Code. 50 Ill. Adm. Code 919.80(b)(2) (2002). Defendant attached to its response and cross-motion an affidavit of its claims adjuster, Jennifer Grant (Grant), attesting to defendant's communications with plaintiff. Defendant also attached to its response and cross-motion an identical copy of plaintiff's incomplete operative complaint.

¶ 10 Plaintiff thereafter moved to strike Grant's affidavit, arguing her signature was forged because it was misspelled and appeared to be inconsistent with her signature on another

document. In response, defendant attached a second affidavit signed by Grant wherein she averred that she signed the prior affidavit.

¶ 11 Prior to the trial court ruling on the motion to strike, plaintiff filed a reply in support of his motion for summary judgment, arguing that he did not receive one of the alleged communications from defendant. Following a hearing, plaintiff's motion to strike and motion for summary judgment were denied, and defendant's cross-motion was granted "on the Implied Duty of Good Faith/ § 155 Count." After plaintiff's remaining claim was resolved in his favor, defendant filed a postjudgment motion, which was denied. This appeal followed.

¶ 12 ANALYSIS

¶ 13 We first address the issue raised by defendant regarding this court's lack of jurisdiction. Defendant maintains that this court does not have jurisdiction to hear the instant appeal because "Plaintiff is appealing the order entered on April 29, 2016. Plaintiff filed a motion to reconsider which was also denied on August 27, 2016. This matter then went to a bench trial on April 21, 2017. The notice of appeal was filed on September 29, 2017." Our review of the record reveals this is an inaccurate and misleading statement of the facts in this case. Although an appellee is not required to file a statement of facts, if it elects to do so it must comply with Illinois Supreme Court Rule 341(h)(6). See Ill. S. Ct. R. 341(h)(6), (i) (eff. May 25, 2018); *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1100 (2008). Rule 341(h)(6) requires the statement of facts to be stated "accurately and fairly." (Emphasis added.) See Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018). Here, defendant's statement of facts as well as his jurisdictional argument fail to accurately or fairly present the procedural facts of this case. Furthermore, defendant also fails to provide to this court the pertinent fact that it filed a posttrial motion to reconsider on May 10, 2017, which was denied on August 30, 2017. Thirty days later, on September 29, 2017, the notice of appeal

was filed. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). When a timely posttrial motion is filed, the notice of appeal must be filed “*within 30 days after the entry of the order disposing of the last pending postjudgment motion.*” (Emphasis added.) See *id.* Accordingly, the notice of appeal was timely filed and we have jurisdiction to consider this appeal. See *id.*; *Dus v. Provena St. Mary’s Hospital*, 2012 IL App (3d) 091064, ¶¶ 11-12. We now turn to address plaintiff’s contentions on appeal.

¶ 14 Plaintiff raises two arguments on appeal. First, he contends the trial court erred in denying his motion to strike Grant’s affidavit. Second, he maintains the trial court erred in denying his motion for summary judgment and in granting defendant’s cross-motion for summary judgment regarding his section 155 claim.

¶ 15 In response, defendant argues (1) the trial court properly denied plaintiff’s motion to strike because plaintiff’s argument was not supported by evidence, (2) plaintiff’s motion for summary judgment was properly denied due to lack of evidence, and (3) defendant’s cross-motion was properly granted because Grant’s affidavit established defendant was in compliance with section 155 of the Insurance Code.

¶ 16 Prior to addressing the merits of the appeal, we observe that a *pro se* litigant, such as plaintiff here, is not entitled to more lenient treatment than attorneys. *U.S. Bank Trust National Ass’n v. Junior*, 2016 IL App (1st) 152109, ¶ 16. 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). These rules are not mere suggestions, but are compulsory. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. The purpose of the rules is to require the parties to present clear and

orderly arguments before the reviewing court, so that the court can properly ascertain and dispose of the issues involved. *Id.*

¶ 17 With these principles in mind, we note that plaintiff's briefs fail to comply with our supreme court rules in several ways. First, plaintiff failed to file an appendix as required by Illinois Supreme Court Rule 342 (eff. July 1, 2017). Rule 342 requires the appellant's brief to include, as an appendix, the judgment appealed from, any pleadings that are the basis of the appeal, a table of contents of the record on appeal, and other pertinent documents. Ill. S. Ct. R. 342 (eff. July 1, 2017). Plaintiff's violation is notable because only a portion of plaintiff's operative complaint is contained in the record, and it included only a short portion of his section 155 claim. Even after this court ordered the parties to supplement the record with a complete copy of the operative complaint, plaintiff filed an identical copy of the incomplete complaint.

¶ 18 Second, plaintiff failed to present coherent legal arguments supported by citations to legal authority in violation of Rule 341 as to both of his arguments on appeal. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Rule 341(h)(7) requires that the argument "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." *Id.* "A reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments; it is not merely a repository into which an appellant may 'dump the burden of argument and research,' nor is it the obligation of this court to act as an advocate." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)). An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Rule 341(h)(7) and is, therefore, forfeited. *In re Estate of Doyle*, 362 Ill. App. 3d 293, 301 (2005).

¶ 19 Although plaintiff cites several cases, they have no application to the case at bar. For

example, in support of his argument that the trial court erred in denying his motion to strike Grant's affidavit, plaintiff quotes *John Allen Co. v. Brandow*, 59 Ill. App. 2d 328, 333 (1965), and *Ruehl Brothers Brewing Co. v. Atlas Brewing Co.*, 187 Ill. App. 392, 398 (1914), for the proposition that "Illinois bars claims where the gravamen of the charge is that the Defendants 'have been guilty of perjury or have suborned or attempted to suborn perjury,' " and that perjury is only punishable by prosecution in criminal proceedings. These cases do not involve allegedly forged or inconsistent signatures and have no relevance here. It is unclear why plaintiff references them. Because plaintiff failed to present a coherent legal argument supported by citations to legal authority, he has forfeited his argument regarding the motion to strike Grant's affidavit. *Estate of Doyle*, 362 Ill. App. 3d at 301.

¶ 20 Plaintiff similarly fails to support his section 155 claim with relevant legal authority. Plaintiff relies solely on *Norman v. American National Fire Insurance Co.*, 198 Ill. App. 3d 269 (1990), for the proposition that "[i]n this case the Defendant failed to acknowledge the Plaintiff's prompt and repeated calls and status of the claim." The citation to *Norman* violates Rule 341 where it is inapposite to the facts in this case. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). In *Norman*, the plaintiffs did not place any calls to the defendant insurance provider. *Id.* Instead, they mailed several letters to the defendant, which went unanswered for more than three months, at which time the defendant denied the plaintiffs' claim. *Id.* at 273-74. Here, defendant allegedly mailed a letter to plaintiff within 35 days of his claim being filed and later called plaintiff to inform him of the reason for the settlement delay. Moreover, unlike the defendant in *Norman* which denied the plaintiff's claim, defendant here presented a settlement offer to plaintiff. *Norman*, 198 Ill. App. 3d at 274. *Norman*, the only case plaintiff relies on, therefore fails to provide relevant support to his legal argument in contradiction of Rule 341. See Ill. S. Ct. R.

341(h)(7) (eff. May 25, 2018).

¶ 21 In addition, plaintiff relies on defendant’s alleged violation of part 919.80(b)(2) of the Administrative Code—which requires the insurer to provide to the insured a reasonable written explanation for the delay in settling a claim which remains unresolved for more than 40 days—to argue that defendant’s delay was unreasonable pursuant to section 155 of the Insurance Code. Yet plaintiff provides no legal authority to support the proposition that a violation of the Administrative Code amounts to a vexatious or unreasonable delay as contemplated by section 155 of the Insurance Code. Because plaintiff has completely failed to provide (1) a coherent legal argument, and (2) any citations to legal authority in support of that argument, he has forfeited his section 155 claim on appeal. *Estate of Doyle*, 362 Ill. App. 3d at 301. In sum, plaintiff’s brief before this court is wholly deficient and in violation of the supreme court rules. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Accordingly, we find his arguments to be forfeited. See *Hall*, 2012 IL App (2d) 111151, ¶ 12; *Estate of Doyle*, 362 Ill. App. 3d at 301; *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994).

¶ 22 Even if we were to consider plaintiff’s argument regarding the motion and cross-motion for summary judgment, we cannot do so because the record is severely deficient. Plaintiff, as the appellant, has the burden to present a sufficiently complete record of the proceedings in the trial court to support a claim of error; 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 the law and had a sufficient factual basis. See *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392. Here, plaintiff, as the appellant, failed to present a sufficiently complete record by failing to include a copy of his entire complaint, specifically his section 155 claim, in the record on appeal.

We can think of no more crucial pleading than the one that served as the basis of plaintiff's claim and that framed the issues. Because we do not have the benefit of plaintiff's section 155 claim before us, we have no basis for determining whether or not he brought a section 155 claim. Additionally, the record does not contain a report of proceedings, so there is no transcript of the hearing on the motion and cross-motion for summary judgment in the record. We must therefore presume the trial court acted in conformity with the standards applicable to motions for summary judgment and that the dismissal had a sufficient factual basis. *Id.* at 391-92. Accordingly, we affirm the trial court's order granting summary judgment in favor of defendant.²

¶ 23

CONCLUSION

¶ 24 For the reasons stated above, we affirm the circuit court's order denying plaintiff's motion to strike defendant's affidavit and motion for summary judgment, and granting defendant's cross-motion for summary judgment.

¶ 25 Affirmed.

² In addition, because plaintiff supplemented the record on appeal with an identical copy of his incomplete complaint, it is possible he never filed a section 155 claim against defendant in the trial court. Plaintiff's failure to bring such a claim against defendant would preclude a motion for summary judgment on the claim. We therefore affirm the dismissal of plaintiff's claim on this additional ground.