

2018 IL App (1st) 173036-U
No. 1-17-3036
Order filed September 28, 2018

Fourth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee)	Cook County
)	
v.)	No. 118723101
)	
LISA J. GILLARD,)	Honorable
)	Jim Ryan,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* We dismiss the appeal due to defendant's failure to comply with Supreme Court Rules 341 (eff. May 25, 2018) and 342 (eff. July 1, 2017).

¶ 2 Following a bench trial, defendant Lisa Gillard, *pro se*, was found guilty of harassment by telephone (720 ILCS 5/26.5-2 (West 2014)) and sentenced to 10 days in the Cook County Department of Corrections. On appeal, defendant contends that the trial court erred in denying her motion to vacate the judgment, the court erred by "ruling a reasonable and prudent standard is applicable under a mental state and intent defense," and that the trial court judge should have

recused himself because of his relationship to the Cook County Sheriff's Department. For the reasons that follow, we strike defendant's brief and dismiss the appeal.

¶ 3

I. BACKGROUND

¶ 4 The record filed on appeal shows that defendant was charged with two counts of harassment by telephone in connection with a series of telephone calls she placed to Nanette Comeaux-Brookins, a court reporter supervisor at the 555 West Harrison Street courthouse, in Chicago, Illinois. Comeaux-Brookins testified that on April 25, 2017, she assisted defendant in obtaining transcripts from a previous case. Comeaux-Brookins provided defendant with her office phone number so that defendant could call and find out when the transcripts were ready. Defendant picked up the transcript on May 11, and Comeaux-Brookins testified that at that time defendant did not have any more business with the court reporters office. Defendant called her after picking up the transcripts and thanked Comeaux-Brookins for being so efficient. Comeaux-Brookins told defendant, "you're welcome, please do not call me again."

¶ 5 Comeaux-Brookins testified that defendant did call her again, however. Defendant called Comeaux-Brookins again on May 11, on May 12, and "18 or 20 more times after that." Comeaux-Brookins testified that defendant continued to call her for the whole month of May until she was arrested at the end of May. Defendant called Comeaux-Brookins four more times after her arrest. Comeaux-Brookins identified the State's exhibit, which were voice recordings of the voice messages defendant left on Comeaux-Brookins's office phone. The State then played the recordings for the court, which the State contended consisted of 20 voice messages left by defendant on Comeaux-Brookins's phone. Comeaux-Brookins testified that defendant's multiple voice messages made her feel "[u]pset, nervous, scared, concerned for [her] safety." Comeaux-Brookins acknowledged that she filed an order of protection against defendant.

¶ 6 Jeanine LaMantia-Porter testified on defendant's behalf that she also worked at the court reporter's office and was Comeaux-Brookins's coworker. LaMantia-Porter testified that she had contact with defendant in the past and defendant did not make her feel uncomfortable. LaMantia-Porter further testified that she believed that defendant's contact with Comeaux-Brookins "rose to the level of harassment."

¶ 7 After listening to the voice messages entered into evidence, the court issued its ruling. The court stated that the voicemails spoke for themselves and that Comeaux-Brookins and LaMantia-Porter were credible witnesses. The court found that the voice messages defendant left on Comeaux-Brookins's phone were "not designed to accomplish a purpose reasonable under the circumstances" because the messages were not about court business. The court noted that defendant made additional calls to Comeaux-Brookins even after Comeaux-Brookins asked defendant to stop calling her, which was further evidence of defendant's intent to harass. Accordingly, the court found that defendant had been proved guilty beyond a reasonable doubt of harassment by telephone. The court then sentenced defendant to 10 days in the Cook County Department of Corrections, with time considered served.

¶ 8 Defendant filed an "Amended Motion to Vacate Judgment Pursuant to 735 ILCS 5/2-1203" in which she contended that she was actually innocent of the charge of telephone harassment because of "emotional distress." She also argued that she lacked the intent to harass Comeaux-Brookins because the phone calls were made in "good faith."

¶ 9 The court denied defendant's motion stating that the evidence showed that defendant harassed Comeaux-Brookins according to the terms of the statute. The court stated that defendant's actions were judged by the standard of a reasonable person, and the evidence

showed that defendant continued to contact Comeaux-Brookins about matters that were not related to court business even after she asked defendant to not contact her anymore.

¶ 10

II. ANALYSIS

¶ 11 Defendant now appeals from the trial court's judgment. In her *pro se* brief, defendant asks this court to reverse and vacate the trial court's judgment and award her "damages and restitution" of \$51 million.

¶ 12 We note that we previously struck defendant's brief for failure to comply with Supreme Court Rule 341(h) (eff. May 25, 2018), and granted defendant leave to re-file a brief in compliance with the Illinois Supreme Court rules. Defendant's new brief suffers from the same infirmities that prompted us to strike her initial brief. In particular, defendant's brief fails to comply with subsections (h)(6) and (h)(7) of Rule 341. Rule 341(h)(6) requires the appellant's brief to contain a statement of facts necessary to an understanding of the case with appropriate reference to the pages of the record. Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018). Defendant's brief, however, does not include a statement of facts. Similarly, Rule 341(h)(7) requires citation to the record in the argument section of an appellant's brief. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Defendant does not cite to the record in any section of her brief. Further, subsection (h)(9) of Rule 341 requires an appendix in accordance with Supreme Court Rule 342 (eff. July 1, 2017), which requires a table of contents, and the inclusion of the judgment appealed from, or other orders entered by the trial court. Here, there is no appendix attached to defendant's opening brief and attached to defendant's reply brief are filings from an unrelated civil action.

¶ 13 Our supreme court has stated that Illinois Supreme Court rules "are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written." (Internal quotation marks omitted.) *Rodriguez v. Sheriff's Merit*

Commission of Kane County, 218 Ill. 2d 342, 353 (2006) (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002)). We are cognizant of defendant's *pro se* status, but recognize that *pro se* litigants must comply with the applicable court rules. See *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) ("we note that *pro se* litigants 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."). Where a party fails to comply with these procedural rules we may, in our discretion, strike the brief and dismiss the appeal. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12 (citing *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77). Here, in our discretion, we strike defendant's brief and dismiss the appeal.

¶ 14 Even if we were to consider the merits of defendant's arguments in spite of these omissions, we would find defendant's brief deficient. Defendant's brief consists of three argument sections. In section one, defendant contends that the court erred in denying her motion to vacate its judgment based on newly discovered evidence. In section two, defendant contends that the trial court erred in ruling that a "reasonable and prudent standard is applicable under a mental state and intent defense." Finally, in section three, defendant asserts that the trial court judge should have recused himself because of his relationship to the Cook County Sheriff's Department.

¶ 15 With regard to sections one and three of defendant's brief, we observe that although defendant provides ample citations to Illinois and United States Supreme Court precedent and Illinois statutes with extensive quoting, defendant fails to make any arguments in support of her contentions. Indeed, without the argument headings, it is difficult to discern the substance of defendant's contentions. Defendant cites broad legal standards such as the standard for the court

to set aside an order based on newly discovered evidence and the standard for a trial court judge's recusal, but fails to adequately identify with either citations to the record or legal argument how such standards are applicable to the case at bar.

¶ 16 We also note that defendant raises the contention that the trial court judge should have recused himself because of his relationship to the Cook County Sheriff's Department for the first time on appeal. "To preserve an issue for appeal, both a timely objection at trial and written posttrial motion raising the issue are required." *People v. Harris*, 228 Ill. 2d 222, 229 (2008) (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). Here, defendant failed to raise this issue at any point before the trial court and, perhaps more importantly, fails to support her contention with any record citations that would show a suggestion of bias necessitating the trial judge's recusal or present any other evidence or argument suggesting that recusal was required in this case.

¶ 17 The only section of defendant's brief that contains actual contentions, rather than mere legal principals, is the second section of her argument in which she contends that the court applied the incorrect legal standard. Although the arguments in that section are unrelated to the section heading, defendant appears to challenge the sufficiency of the evidence to sustain her conviction and the trial court's ruling on her motion to vacate. Defendant asserts that "[t]he trial court transcripts and audio as material fact evidence are evidence showing actual and legal innocence." To the extent that defendant challenges the sufficiency of the evidence to sustain her conviction. She fails, however, to cite portions of the record or provide any more than broad legal conclusions to challenge the trial court's judgment. We further observe that it is responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw

reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Here, the State presented evidence from Comeaux-Brookins who received the calls from defendant and entered recordings of defendant's voice messages into evidence.¹ The court found that the voice messages "speak for themselves" and that Comeaux-Brookins and Lamantia-Potter were credible witnesses who both testified that defendant's phone calls rose to the level of harassment. The court determined that this evidence adequately established the elements of the charged offense, and defendant fails to raise any argument to rebut this finding.

¶ 18 The remainder of her argument in this section repeats many of the same contentions raised in her motion to vacate before the trial court. The trial court denied her motion finding that the evidence established that defendant's actions constituted harassment by telephone. Defendant contended in her motion, and in her brief before this court, that her motion to vacate was based on "newly discovered evidence." However, she fails to identify any newly discovered evidence and merely repeats her contentions from her motion to vacate that her actions were done in "good faith" and a result of emotional distress. As the trial court determined, these contentions are without merit, and, once again, unsupported by citations to the record, legal authority, or argument.

¶ 19 In short, defendant's brief is wholly deficient and without a coherent argument section containing adequate citation to the record, it is impossible for this court to address the contentions in her brief. This court has already provided defendant with the opportunity to

¹ We note that the CDs containing the voice messages were not included in the record filed on appeal. It is defendant's burden, as the appellant, to provide a sufficiently complete record to support a claim of error, and in the absence of such a record on appeal, we will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

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correct her brief to address these issues, but she has failed to do so. Therefore, in our discretion, we strike defendant's brief and dismiss this appeal.

¶ 20

III. CONCLUSION

¶ 21 Appeal dismissed.