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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LOXLEY JOHNSON,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	No. 10 L 8478
v.)	
)	Honorable
STEPHEN MARK KOMIE, d/b/a/)	Leon Wool,
KOMIE AND ASSOCIATES,)	Judge, presiding.
)	
Defendant-Appellee.)	

JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err when it granted summary judgment in favor of defendant. Trial court did not err in granting defendant's counterclaim, and it did not err in denying plaintiff's motion for a new trial.

¶ 2 This action arises out of plaintiff, Loxley Johnson's, legal malpractice lawsuit against defendant, Stephen Mark Komie. Initially, plaintiff filed a complaint against defendant for (1) negligence and (2) breach of contract. Defendant responded with a counterclaim and moved to dismiss the complaint under section 2-619 of the Illinois Code of Civil Procedure.

735 ILCS 5/2-619 (West 2012). The trial court dismissed plaintiff's breach of contract claim. Soon after, defendant moved and was granted partial summary judgment on the negligence claim. 735 ILCS 5/2-1005 (West 2012). Plaintiff appealed. On appeal in *Johnson v. Komie*, 2015 IL App (1st) 14-3300-U (Johnson I), we affirmed the judgment of the trial court. Following the disposition of the appeal the case was resumed in the trial court. Upon return to the trial court, defendant moved and was granted summary judgment on the remaining allegations¹ under count I. Defendant's counterclaim proceeded to a bench trial and the court rendered a judgment in his favor.² In the present appeal, plaintiff appears *pro se* and argues, *inter alia*, that (1) the trial court erred in granting summary judgment in favor of defendant on the remaining allegations of the negligence claim; (2) the trial court's judgment for defendant on his counterclaim was against the manifest weight of the evidence; and (3) that plaintiff was denied a fair trial due to the ineffective assistance of counsel and evidentiary errors, therefore the trial court should have granted his motion for a new trial. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4

The history of this case was set forth in *Johnson I*. Therefore, we discuss only the facts that are relevant to the disposition of the current appeal.

¶ 5

Plaintiff is the sole shareholder of L.A. Transportation, (LAT), a medical services corporation. In December 2004 the Illinois Attorney General sent him a letter informing him of a referral from the Illinois State Police, Medicaid Fraud Control Unit, alleging that

¹The allegations are (1) the January 2005 retainer agreement covered the administrative proceedings and did not terminate upon plaintiff's indictment; (2) even if the retainer agreement was limited to the criminal case, defendant engaged in malpractice; (4) Defendant withdrew his representation of plaintiff in bad faith; and (5) plaintiff should recover his loss of business, replacement attorney fees, and fees he paid defendant.

²We do not have a report of proceedings from the summary judgment proceeding or the trial on defendant's counterclaim.

plaintiff had committed Vendor Fraud and Theft. The letter explained that the Attorney General's office had not yet decided whether it would pursue an indictment against plaintiff and invited him or his attorney to contact the office with information.

¶ 6 On January 31, 2005, plaintiff met with defendant and retained his representation in the matter. The attorney-client relationship was memorialized in a retainer agreement. The agreement identified "Loxley Johnson," and stated that it was regarding the "Investigation of allegations of Medicaid Fraud by the Attorney General of Illinois." The agreement also stated that, "due to the nature of the matter and because of the possibility of unforeseen circumstances, it is impossible to predict the course of an investigation, the nature and duration of the consultations, the criminal case, and any civil law suit[sic] that may result." Consistent with the retainer agreement, plaintiff paid defendant \$5,000 in advance for legal services to be rendered.

¶ 7 During the Attorney General's investigation, plaintiff, on advice of defendant, agreed to extend the statute of limitations, allowing the Attorney General more time to bring an indictment. The agreement, dated April 22, 2005, was drafted by defendant and indicates that it was entered into by "Loxley Johnson on behalf of L.A. Transportation" and was signed by plaintiff.

¶ 8 In June 2005, a Cook County Grand Jury indicted "Loxley Johnson d/b/a/ LA Transportation" for Vendor Fraud, Theft, and Public Aid and Mail Fraud.

¶ 9 Subsequently, on July 26, 2005, plaintiff and defendant entered into another retainer agreement and plaintiff paid defendant an additional \$5,000. This agreement included the same language regarding the scope of representation as did the first and identified "Mr. Loxley Johnson." This agreement specifically stated that it was regarding:

"People of the State of Illinois v. Loxley Johnson, No. 05 CR 16469

In the Circuit Court of Cook County, Illinois

Charges: Vendor Fraud/False Statement[.]"

¶ 10 On January 20, 2006, plaintiff received a letter from the Illinois Department of Healthcare and Family Services (Department) stating that it was suspending payments to him pursuant to the Illinois Public Aid Code, which allows it to temporarily withhold payments when a provider, or an individual who is a sole proprietor, officer, or 5% owner, is criminally indicted. 305 ILCS 5/12-4.25 (F-5) (West 2012). The letter explained that if plaintiff was convicted it would retain all of these payments, however, if he were not, all payments would be released to him.

¶ 11 On July 10, 2008, the Department sent plaintiff a Notice of Right to a Hearing. The notice was captioned "IN THE MATTER OF L. A. Transportation" and identified as case number 07 MVH 135. The notice stated that during the period of April 1, 2004, to March 31, 2006, the Department made overpayments in the amount of \$99,083.04, which it was seeking to recover. The notice also informed plaintiff that the Department would take administrative action to terminate LAT and Johnson's eligibility to participate as a vendor in the Medical Assistance Program.

¶ 12 Pursuant to the notice, LAT had a right to request a hearing within 10 days of receipt and an administrative hearing was scheduled for August 14, 2008. Absent any request, the Department's decision would be a final and binding administrative determination. No one requested a hearing on LAT's behalf and LAT did not appear on August 14th. Consequently, LAT was defaulted against and the Department's recommended decision against LAT

imposing monetary damages and excluding LAT and plaintiff, personally, from the program became final.

¶ 13 On September 15, 2008, defendant filed a motion to withdraw as plaintiff's counsel citing irreconcilable differences as the basis. Thereafter, plaintiff retained and paid new counsel \$11,000 for representation in the criminal case. Plaintiff was acquitted of the Vendor Fraud, Theft, and Mail Fraud charges in August 2009.

¶ 14 On January 20, 2009, plaintiff was sent a Notice of Administrative Hearing. The Notice was captioned "IN THE MATTER OF L. A. Transportation, Inc. f/d/b/a Loxley Johnson" and identified as case number 03 MVH 062. This Notice stated that The Bureau of Medicaid Integrity audited vendor Loxley Johnson for the time period of April 1, 2000, to March 31, 2002, and determined that the Department overpaid \$179,484.74. Neither plaintiff nor a representative appeared at the scheduled hearing. Thus, when he failed to appear in this matter, he was defaulted against and a judgment was entered against him personally for \$179,484.74.

¶ 15 A. Johnson I

¶ 16 Plaintiff filed a legal malpractice claim against defendant on July 23, 2010. "Loxley Johnson" was the only named plaintiff. The Fourth Amended Complaint contained two counts. Count I alleged that defendant was negligent in his representation of plaintiff and count II alleged that defendant breached the retainer agreement contract. Plaintiff maintained that he retained defendant to represent him in all actions that related to the allegations of Medicare³ fraud. In addition, plaintiff asserted that in his July 26, 2005, meeting with defendant, defendant "advised Plaintiff that the criminal case would be dispositive of the

³Plaintiff used "Medicare" and "Medicaid" interchangeably.

Administrative actions." Defendant, however, never filed an appearance in the administrative cases and plaintiff was defaulted against. Plaintiff further alleged that defendant owed him a duty of reasonable legal representation in the criminal and civil Medicare actions and included several allegations of defendant's conduct that breached that duty. As a result, plaintiff claimed he suffered \$497,787.48 in monetary damages.

¶ 17 In response to the complaint, defendant filed a counterclaim against plaintiff on May 10, 2012. Defendant sought monetary damages for plaintiff's alleged failure to pay outstanding legal fees. Defendant claimed that the total bill for legal services was \$28,985.25, plus interest and that plaintiff still owed \$23,985.25, plus interest.

¶ 18 On January 17, 2013, the trial court dismissed count II which alleged breach of contract. Subsequently, defendant filed a motion for partial summary judgment. On September 29, 2014, the trial court granted defendant's motion for partial summary judgment. The order states, in relevant part, that "Defendant had no duty to defend L.A. Transportation, Inc.[,] an Illinois corporation," and there is "no just reason to delay enforcement on appeal."

¶ 19 On appeal, plaintiff argued that the trial court improperly granted summary judgment because defendant owed a duty to LAT. *Johnson*, 2015 IL App (1st) 143300-U, ¶ 1. We rejected plaintiff's argument and held that defendant did not owe a duty to LAT. *Id.* ¶ 31. In affirming the trial court, we determined that plaintiff retained defendant to represent him personally and not LAT. *Id.* Although plaintiff was the sole shareholder of LAT, he did not have standing to assert a malpractice claim on behalf of LAT. *Id.* ¶¶ 27, 29. Furthermore we concluded that even if plaintiff had standing to bring the malpractice claim, the trial court's granting of summary judgment was proper because defendant was not retained to represent LAT in any administrative actions. *Id.* ¶¶ 35-37. Instead, based on the language in the

agreements, defendant was retained to represent only plaintiff, and therefore defendant owed no duty to LAT. *Id.* ¶¶ 33, 35. Additionally, we noted that because the case was before us on the narrow issues of standing and to whom the defendant owed a duty, we did not have jurisdiction to address (1) the scope of the retainer agreements; (2) plaintiff's malpractice claims; (3) the merits of defendant's counterclaim; and (4) plaintiff's recovery of attorney's fees. *Id.* ¶ 20.

¶ 20

B. Johnson II

¶ 21

Following the disposition of the appeal, the case was resumed in the trial court. On August 3, 2016, defendant filed a second motion for summary judgment on count I of plaintiff's Fourth Amended Complaint. In response, plaintiff asserted because the appellate court did not address all of the issues in the first appeal, alleged in count I of his complaint, there were genuine issues of material fact.

¶ 22

Subsequently, on September 16, 2016, the trial court granted defendant's motion for summary judgment. Following a February 7, 2017, bench trial on defendant's counterclaim, the trial court entered a judgment of \$43,093.31 in favor of defendant. Plaintiff's attorney was present; however, plaintiff was not at the trial. On March 8, 2017, plaintiff filed a post-trial motion to vacate the judgment or alternatively, for a new trial. On April, 14, 2017, the trial court denied plaintiff's post-trial motion.

¶ 23

II. ANALYSIS

¶ 24

On appeal, plaintiff raises a litany of interrelated arguments including that (1) the trial court erred in granting summary judgment because defendant owed a duty to plaintiff through this attorney-client relationship and was negligent in his representation; (2) the January 31, 2005, retainer agreement included legal services for the administrative hearing

and is not time barred by the statute of limitations; (3) plaintiff should recover attorney's fees he paid to defendant; (4) plaintiff should recover business losses as a result of defendant's negligence and breach of agreement; (5) defendant's withdrawal from the case was in bad faith; (6) the trial court's judgment in favor of defendant's counterclaim was against the manifest weight of the evidence; and (7) plaintiff was denied a fair trial due to his new counsel's ineffective assistance.

¶ 25 At the outset, we note that plaintiff has failed to comply with the rules governing appellate briefs set forth in Illinois Supreme Court Rule 341. Ill. S. Ct. R. 341. Notably, plaintiff's briefs violate Rule 341(h)(6) in that his statement of facts omits facts relevant to our consideration. Ill. S. Ct. R. 341(h)(6) (eff. May. 25, 2018). In addition, plaintiff's briefs violate Rule 341(h)(7) in that he has failed to provide a cohesive argument identifying the issues presented for review and in some instances lacks citation to authority. Ill. S. Ct. R. 341(h)(7); see also *In re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶ 25.

¶ 26 We recognize that plaintiff is a *pro se* litigant; however, he is not entitled to more lenient treatment than attorneys. *U.S. Bank Trust National Ass'n v. Junior*, 2016, IL App (1st) 15109, ¶ 16. *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. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

¶ 27 Our supreme court's rules governing appellate briefs "are rules and not mere suggestions." *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). The failure to adequately and accurately set forth the facts germane to the appellate court's consideration is not an inconsequential matter. See *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App.3d 471, 478 (2005). The errors in plaintiff's brief are sufficient to merit the

striking of its statement of facts or even outright dismissal of plaintiff's appeal. *Hall v. Naper Gold Hospitality LLC*, 2012 IL (2d) 111151, ¶ 9. As we are able to discern the substance of the issues raised, we will proceed to dispose of them on the merits.

¶ 28 From what we can glean from the briefs and the record, plaintiff's arguments revolve around three distinct challenges: (1) that the trial court erred in granting summary judgment because issues of material fact remained disputed and even if these were resolved, he had proven the four elements of legal malpractice; (2) that the trial court's judgment on defendant's counterclaim was against the manifest weight of the evidence; and (3) that he was denied a fair trial due to the ineffective assistance of counsel and evidentiary errors, therefore, the trial court should have granted his motion for a new trial.

¶ 29 A. Summary Judgment

¶ 30 Plaintiff contends that the summary judgment granted in favor of defendant was inappropriate because there was a genuine issue of material fact with respect to the scope of defendant's duty to represent plaintiff in his criminal, civil, and administrative cases. Additionally, plaintiff argues that the court incorrectly granted summary judgment where defendant breached his duty to plaintiff by advising plaintiff to extend the statute of limitations in his criminal investigation, which resulted in plaintiff's criminal indictment, and his related business losses. Plaintiff contends that he should recover attorney's fees he paid to defendant because defendant was negligent in his handling of his criminal litigation. Plaintiff further contends that defendant's withdrawal from the case was in bad faith and because of his withdrawal he had to pay another attorney to represent him. Lastly, plaintiff asserts that he suffered \$497,787.48 in pecuniary and actual monetary losses as a proximate result of defendant's breach and negligence.

¶ 31 We review an order granting summary judgment *de novo*. *Sears, Roebuck & Company v. Acceptance Insurance Co.*, 342 Ill. App. 3d 167, 171 (2003). Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the non-movant, indicate there is no genuine issue of material fact and thus the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). The party seeking summary judgment bears the initial burden of proof; however, this burden is met when the party affirmatively proves an element of the case must be resolved in its favour or establishes an absence of evidence underlying the non-moving party's case. *Bank Financial, FSB v. Brandwein*, 2015 IL App (1st) 143956, ¶ 40. Once this burden is met the party opposing the motion must present a *bona fide* factual issue. *Id.* "Mere speculation, conjecture, or guess is insufficient to withstand summary judgment." *Id.* We are not bound by the reasoning of the trial court, and we may affirm on any basis in the record. *Berglind v. Paintball Business Ass'n*, 402 Ill. App. 3d 76, 85 (2010).

¶ 32 As an initial matter we point out that plaintiff has failed to provide a report of proceedings or an acceptable substitute for the summary judgment proceeding. Illinois Supreme Court Rules 321 and 324 require an appellant to provide a complete record on appeal including, a certified copy of the report of proceedings. See Ill. S. Ct R. 321 (eff. Feb. 1, 1994); Ill. S. Ct. R. 324 (eff. July 1, 2017). If no verbatim account is obtainable, the appellant may file an acceptable substitute, such as a bystander's report or an agreed statement of facts, as provided for in Rule 323. See Ill. S. Ct. R. 323 (eff. July 1, 2017). The burden of providing a sufficient record on appeal is placed upon the appellant. *Maniscalco v. Porte Brown, LLC*, 2018 IL App (1st) 180716, ¶ 30. In the absence of a sufficient record, we

must presume that the trial court acted in conformity with the law and with a sufficient factual basis for its findings. *Id.* (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). Additionally, any doubts arising from an incomplete record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. That said, although we do not excuse plaintiff's lack of compliance, because our review of summary judgment is *de novo*, his failure to comply is not fatal.

¶ 33 To reiterate, plaintiff asserts that there was a genuine issue of material fact with respect to the scope of defendant's duty to represent plaintiff in his criminal, civil, and administrative cases. We disagree.

¶ 34 To prevail in a legal malpractice action the plaintiff must prove the following elements: (1) the defendant owed the plaintiff a duty arising from an attorney-client relationship; (2) that duty was breached; (3) the plaintiff sustained damages; and (4) the defendant's breach of duty proximately caused the plaintiff's damages. *Merrilees v. Merrilees*, 2013 IL App (1st) 121897, ¶ 55. Both the attorney and the client must consent to the formation of an attorney-client relationship. *People v. Clark*, 366 Ill. App. 3d 673, 678 (2008). The client must manifest his authorization for the attorney to act, and the attorney must indicate acceptance. *Id.* "Even when grounded in tort, [a legal malpractice] action arises out of either an express or implied contract for legal services. Consequently, because the scope of the duty owed by the attorney arises out of a contractual relationship, it is necessarily limited by the scope of the contract of engagement." (Internal citations omitted.) *Majumdar v. Lurie*, 274 Ill. App. 3d 267, 270 (1995).

¶ 35 In *Johnson I.*, we addressed whether defendant owed a duty to plaintiff's corporation LAT in representing LAT in administrative actions. We held that defendant owed no duty to

LAT. *Johnson*, 2015 IL App (1st) 143300-U, ¶ 31. In so holding, we found that the language of the first retainer agreement from January 31, 2005, stated that the agreement was between Loxley Johnson and Stephen Mark Komie. *Id.* ¶ 33. Furthermore, we determined the "administrative cases are not referenced, and there is nothing to indicate that these cases were contemplated by the parties when the agreement was made." *Id.* Additionally, we found that the second retainer agreement stated that the agreement was between Johnson and Stephen Mark Komie. *Id.* There was also no mention of Stephen Mark Komie representing Johnson in administrative cases in that agreement. *Id.* This holding is binding on the parties in the present appeal. See *Long v. Elborno*, 397 Ill. App. 3d. 982 (holding that questions of law decided previously on appeal are binding on the parties).

¶ 36 In light of our decision in *Johnson I*, we find that defendant owed plaintiff no duty to represent him in administrative actions. As we noted in *Johnson I*, the retainer agreement from January 31, 2005 states that the contract is between Johnson and Stephen Mark Komie to represent Johnson in the investigation of allegations of Medicaid fraud by the Attorney General of Illinois. Furthermore, the July 26, 2005 agreement states that the agreement is between Johnson and Stephen Mark Komie to represent Johnson in the case captioned *People of the State of Illinois v. Loxley Johnson*, No. 05 CR 16469. The language in the retainer agreements make clear that defendant owed plaintiff a duty with respect to plaintiff's criminal investigation and litigation. No language in the retainer agreements mention representation in any administrative actions.

¶ 37 Having determined that defendant owed no duty to plaintiff regarding any administrative actions, we now address whether defendant breached his duty to plaintiff regarding the criminal investigation and criminal litigation. Plaintiff argues that defendant advised plaintiff

to extend the statute of limitation in his criminal investigation, which resulted in his criminal indictment, and business losses. Thus, he should recover the fees he paid defendant and recover damages for his business losses. Additionally, plaintiff contends that defendant's withdrawal of representation in the criminal litigation was in bad faith.

¶ 38 Even if we did not find plaintiff's arguments to be purely speculative his claims would nonetheless fail. Generally, a plaintiff is required to establish by expert testimony the applicable standard of care and the attorney's deviation from that standard. *Barth v. Reagan*, 139 Ill. 2d 399, 407 (1990). The lack of expert testimony is fatal to a legal malpractice claim unless the "common knowledge" exception applies. *Nettleton v. Stogsdill*, 387 Ill. App. 3d 743, 757 (2008). Under the common knowledge exception, "the common knowledge or experience of lay persons is extensive enough to recognize or infer negligence from the facts, or where an attorney's negligence is so grossly apparent that a lay person would have no difficulty in appraising it, expert testimony as to the applicable standard is not required." *Barth*, 139 Ill. 2d at 407-08.

¶ 39 Plaintiff's multiple allegations of defendant's negligence require an expert witness to establish the applicable standard of care. The record reveals that in response to defendant's motion, plaintiff did not disclose any expert witnesses in support of his legal malpractice claim. Absent an expert opinion, it is impossible for plaintiff to establish the applicable standard of care and whether defendant deviated from that standard. See *Prather v. McGrady*, 261 Ill. App. 3d 880, 890 (1994) ("Without such expert testimony to show the proper standard of care, and breach of standard, as a matter of law, summary judgment was properly entered in favor of the defendants").

¶ 40 In his reply brief, Plaintiff argues for the first time that the common knowledge exception is abundantly clear and applies in this case. A party may not raise an argument for the first time in its reply brief. Thus his argument regarding the common knowledge exception is waived. Ill. S. Ct. R 341(h)(7); see *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29.

¶ 41 Accordingly, we conclude that the trial court did not err in granting summary judgment as defendant owed no duty to represent plaintiff in any administrative proceeding. Further, plaintiff failed to support his legal malpractice claim with the required expert opinion.

¶ 42 B. Defendant's Counterclaim

¶ 43 Plaintiff next assigns error to the trial court's judgment in favor of defendant on defendant's counterclaim for recovery of attorney's fees and costs. Plaintiff contends that the judgment should be reversed because it was against the manifest weight of the evidence. He maintains that the invoice attached to defendant's counterclaim was erroneous, and that in his deposition, defendant testified that the invoice was prepared after he voluntarily withdrew from representing plaintiff. He raises additional arguments about the admissibility of the prepared invoice and contends that the court should not have even considered the document.

¶ 44 Despite plaintiff's invitation for us to review this issue, we are limited by plaintiff's failure to provide a report of proceedings or an acceptable substitute pursuant to Illinois Supreme Court Rules 321 and Illinois Supreme Court Rules 324. See Ill. S. Ct R. 321 (eff. Feb. 1, 1994); Ill. S. Ct. R. 324 (eff. July 1, 2017). Due to the insufficient record, we have no ability to ascertain what evidence was presented to the circuit court in support of plaintiff's claim for payment of attorney's fees and we therefore, have no means to evaluate whether the trial court's award of those fees was against the manifest weight of the evidence. We

reiterate, any doubts arising from an incomplete record are resolved against the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 45 C. Motion For a New Trial

¶ 46 Lastly, plaintiff argues that he did not receive a fair trial because of the ineffective assistance of his new counsel. Plaintiff contends that he did not have an opportunity to testify because his new attorney failed to provide him with notice of the proper trial date. Plaintiff posits that if he had been present, he would have introduced exhibits from defendant's deposition that would have refuted defendant's exhibits and invoices for alleged legal fees.

¶ 47 Plaintiff cites no authority regarding the ineffective assistance of counsel in civil matters and we are not aware of any such authority. See *Wolfe v. Board of Educ.*, 171 Ill. App. 3d 208, 211 (1988) ("Plaintiff has not cited and we are not aware of, any comparable constitutional right to be adequately represented by counsel in a civil matter or an administrative hearing."). Furthermore, as previously mentioned, plaintiff failed to provide transcripts from the trial court proceedings, and therefore, we cannot determine what was admitted at trial and whether plaintiff's proposed exhibits would have had any effect on the court's determination. As such, we again must presume that the trial court acted in conformity with the law and with a sufficient factual basis for its findings.

¶ 48 Plaintiff's request to vacate the judgment or for a new trial based on his attorney's failure to inform him of the correct trial date is without merit. Illinois courts have repeatedly held that it is the duty of a litigant to follow the progress of the case. *Nenadic v. Grant Hospital*, 75 Ill. App. 3d 614, 623 (1st Dist. 1979) (citing *Esczuk v. Chicago Transit Authority*, 39 Ill. 2d. 464, 468-69 (1968)). It is every litigant's duty to follow the progress of his case, rather than to merely assume that counsel is doing all that is necessary and proper. *David Plywood*

& Lumber Co v. Sloan, 52 Ill. App. 3d 71, 75 (1977). Plaintiff admitted that he was aware of the trial date, and knew that his attorney would be requesting a continuance. Plaintiff chose not to appear with his attorney in court. Although the court subsequently denied the request for a continuance, plaintiff cannot shirk his own responsibility to follow his case by placing blame on his attorney. Accordingly, we find that the trial court properly denied plaintiff's motion to vacate the judgment, and his alternative motion for a new trial.

¶ 49

III. CONCLUSION

¶ 50

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 51

Affirmed.