2019 IL App (1st) 172366-U

No. 1-17-2366

Order filed February 26, 2019.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAMES MAHONEY, Plaintiff-Appellee, v. KARI BLUNDA, as Trustee of the Mahoney & Associates Trust, under Trust Agreement dated May 6, 1996, and THE MAHONEY & ASSOCIATES TRUST, CLINTON MAHONEY, individually and as Trustee of the Mahoney & Associates Trust, DANIA MAHONEY, THE MAHONEY TRUST, and 12736 SOUTH RIDGEWAY, LLC, Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 11 CH 41789 The Honorable Rodolfo Garcia, Judge Presiding.

JUNE MAHONEY Third-Party Plaintiff-Appellee, v. KARI BLUNDA, in her individual capacity and in her capacity as Trustee of the Mahoney & Associates Trust, under Trust Agreement dated May 6, 1996, and the	)	Appeal from the Circuit Court of Cook County. No. 11 CH 41789

Mahoney Trust, under Trust Agreement dated November 1, 1992, CLINTON MAHONEY, THE MAHONEY & ASSOCIATES TRUST, and THE MAHONEY TRUST,	)	The Honorable Rodolfo Garcia, Judge Presiding.
Third-Party Defendants-Appellants.	)	

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in awarding the appellees punitive damages, and the appellants waived many of their claims by failing to raise them in the trial court. This court affirmed the judgment of the circuit court.

¶ 2 Appellants Mahoney & Associates Trust (Trust), The Mahoney Trust, and Clinton Mahoney, appeal from the circuit court's final order granting summary judgment to appellees James and June Mahoney and awarding appellees punitive damages. We affirm.

¶ 3 BACKGROUND

¶ 4 This case involves a complicated history of litigation revolving around a family dispute over money. It has led to a former husband (James) suing his former wife (Kari); a child (Clinton) suing his parents (James and Kari); a grandmother (June) suing her son and grandchild (Clinton); and bankruptcy proceedings, among other lawsuits. This court has reviewed and ruled on a number of other appeals involving the parties in litigation (Nos. 1-14-0113, 1-15-0308, 1-15-0181, and 1-14-3198). To put it mildly, this is a litigious family. We now recite only those facts needed to dispose of this case, as a more in-depth factual background has already been provided in *Mahoney v. Blunda*, 2015 IL App (1st) 14-1649-U.

¶ 5 The long and the short of this case is that James and June loaned money to a Trust (established in the 1990s by James and Kari), and years later after countless court filings, they have yet to be repaid despite the opportunity for repayment having existed. The history of this case shows that Clinton was and is the Trust's sole beneficiary. Legal disputes and litigation

arose regarding the Trust some 10 years ago, in 2009. By then, James and Kari were divorced, and they subsequently participated in a mediation. Before the mediation agreement was signed, Clinton spoke to Kari and the mediator by telephone since he was not then present; the terms were read to Clinton, and he approved the agreement. The mediation agreement provided for the repayment of June's earlier loan upon certain conditions being met, although she was not an actual party to the mediation. As of 2012, the Trust possessed some $4.3 million due to the sale of property. James sued Kari and the Trust to obtain money from his initial loan. June eventually intervened, filing a third-party complaint against James, Kari, and the Trust and Clinton for tortious interference, claiming she was also owed the money on her earlier loan. The parties (James, June, Kari, and the Trust) eventually entered "Agreed Orders" in November 2012, wherein they agreed that the Trust would maintain sufficient assets, nam ely in excess of about $2 million. It was understood that the Trust actually maintained these funds for the loan repayments and that they had been frozen. Nonetheless, even before the Agreed Orders were entered, and without informing James or June, Kari (who was then trustee) had already transferred money to Clinton. This precluded loan repayments in accordance with the Agreed Orders. Even after the Agreed Orders, Kari continued to dissipate funds from the Trust by transferring money to Clinton and others. Kari and Clinton attempted to conceal their dissipation by creating a number of sham mortgages.

¶ 6 James and June subsequently filed a motion for rule to show cause, seeking to hold Kari and the Trust in indirect civil contempt of court for dissipation of those funds and failure to abide by the Agreed Orders. In 2014, the trial court held that all trust assets were frozen and no transactions or transfers of any kind could be made without leave of court. On February 21, 2014, Kari resigned as trustee, and Clinton then became the successor trustee. On March 4, the

court issued a rule to show cause against Kari, as former trustee, and the Trust as to why they should not be held in contempt for violating the Agreed Orders. Following an evidentiary hearing, on April 25, the court entered an order finding the purpose of the Agreed Orders clearly was to "preserve a limited amount of the funds" or about $2 million until James and June's claims were adjudicated. The court held Kari and the Trust had violated the terms of the Agreed Orders, in relevant part, by failing to maintain and preserve assets in excess of the stated amount. Accordingly, the court found Kari and the Trust in indirect civil contempt. As a result, the court ordered the Trust to deposit $2 million in a court-administered escrow, froze all trust assets, and ordered them to pay attorney fees.

¶ 7 Several months later in 2014, James and June filed separate complaints against Kari, Clinton, the Trust, and others for claims such as fraudulent transfer, civil conspiracy to commit tortious interference with a contract (the mediation agreement), tortious interference with a contract (the mediation agreement), and aiding and abetting violation of the Agreed Orders. They also requested punitive damages, alleging intentional, willful, and malicious conduct by Kari and Clinton, and they requested that a constructive trust be established. They alleged that Clinton and Kari, together, conspired to dissipate the Trust so that no funds would be available to repay James and June. They alleged the funds in fact were improperly dissipated as a result.

¶ 8 James and June eventually filed motions for summary judgment. In support, they submitted a "joint statement of undisputed material facts," with citation to a compendium of exhibits. Clinton and the Trust did not dispute their statement of facts, but rather, filed their own skeletal two-issue motion for partial summary judgment (discussed later in the analysis), which was denied. As to punitive damages and without argument or citation to legal authority, Clinton and the Trust simply stated, "[a]s a matter of fact and as a matter of law, there is no basis for an

additional punitive damage award in this case." The court granted James and June's summary judgment motions, in part, and denied them, in part. Following hearings on the motions, the trial court entered an order on August 23, 2017, imposing a total of $1,000,000 in punitive damages against Clinton, Kari, and the relevant trusts, jointly and severally, in addition to compensatory damages and costs for the above-stated claims. Clinton filed a motion to reconsider, which was also denied. Clinton, the Trust, and The Mahoney Trust then appealed. Kari is not party to this appeal.

¶ 9 ANALYSIS

¶ 10 Clinton[1] now challenges the circuit court's judgment granting summary judgment in favor of James and June.[2] The purpose of summary judgment is to determine whether there are any genuine issues of material fact, and summary judgment should be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Colvin v. Hobart Brothers*, 156 Ill. 2d 166, 169 (1993). In order to withstand a motion for summary judgment, the nonmovant must present some factual basis that arguably may entitle him to judgment. *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1024 (1992). In other words, if the moving party supplies facts which, if not contradicted, would entitle that party to judgment as a matter of law, the opposing party cannot rely on his pleadings alone to raise a material issue of fact. *Id.*

[1]Hereinafter, and for ease of reading, we refer to the appellants only in Clinton's name. Where there is need to distinguish between Clinton and the Trust and The Mahoney Trust, it will be made clear.

[2]Clinton does not challenge on appeal counts 1 and 2 in James' complaint relating to breach of the mediation agreement and breach of the promissory note against the M & A Trust, which resulted in judgment for James in the amount of about $1.8 million. Nor does he challenge count 1 in June's complaint relating to breach of the mediation agreement, resulting in Kari's liability to June for $300,000.

¶ 11 Before this court, Clinton argues that issues of material fact existed with regard to various counts in James and June's complaints, including tortious interference with the mediation agreement, conspiracy to commit that tortious interference, and the fraudulent transfers. He also argues issues of law precluded summary judgment.

¶ 12 Clinton, however, did not raise these arguments in the trial court, nor did he effectively contradict the facts presented by James and June in support of their summary judgment motions. *Sacramento Crushing Corp. v. Correct/All Sewer, Inc.*, 318 Ill. App 3d 571, 575 (2000) (the suggestion that an issue of material fact exists, without supporting evidence, is insufficient to create one). Rather, Clinton filed a 3-page response to the summary judgment motions of James and June, wherein he contested only certain interest charges and the punitive damages award. In fact, at the hearing on July 13, 2017, the trial court specifically noted that the parties would have the opportunity to "present whatever argument or summary argument" to preserve for the record, which would be in addition to their written motions. The court then pointedly asked Clinton's counsel "[y]ou're not contending that there's a material question of fact that would preclude summary judgment," to which his counsel responded, "[r]ight." Counsel acknowledged on the record he was only raising a question of law as to interest.

¶ 13 An appellant who fails to raise an issue in the circuit court forfeits that issue on appeal. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 306 (2000); *Olson v. Williams All Seasons Co.*, 2012 IL App (2d) 110818, ¶ 41. Because Clinton failed to raise the above-stated arguments below, he has forfeited them. We need not consider them further.

¶ 14 Clinton next argues the trial court erred in awarding punitive damages. Punitive damages are meant to punish defendants, deter others from the same conduct, and should thus be awarded only in aggravated cases involving fraud, willfulness, wantonness or malice. *Dowd and Dowd,*

Ltd. v. Gleason, 352 Ill. App. 3d 365, 387 (2004). They are permitted only where the wrong involves some violation of a duty arising from the relationship of trust or confidence. *Id*. at 387-88. Whether to award punitive damages is an issue we leave to the sound discretion of the trial court, and its decision will not be disturbed absent an abuse of discretion. *Id*. at 388. For the reasons to follow, we cannot say the court abused its discretion.

¶ 15 Here, the trial court found punitive damages were warranted based on "the testimony and evidence adduced and the findings made during the contempt proceedings *** due to the egregious conduct" of Kari, individually, and as former trustee of the Trust and other trusts, and also Clinton. The court's order and oral pronouncements reflect that it considered the entire record, including the uncontested factual allegations in the summary judgment motions, before making its ruling. Likewise, in response to Clinton's bare-bones argument contesting the damages, the court responded that the contempt finding, which ordered funds into escrow and froze the Trust's assets to ensure loan repayment, resulted in only attorney fees; as such, punitive damages on the complaints were not duplicative. See *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43-47 (1990) (noting, an individual's failure to abide by a court order may result in the imposition of sanctions intended to coerce compliance with the order). In other words, while the attorney fees constituted a sanction or fees associated with James and June's pursuit of the rule to show cause, they were remedial in nature and not meant as *punishment* for Kari and Clinton's bad acts or as a means of vindicating the court's authority. *Mid-American Elevantor Co., Inc. v. Norcon, Inc.*, 287 Ill. App. 3d 582, 591 (1996) (noting, courts may properly assess attorney fees as a sanction for contemptuous behavior); see also *Felzak v. Hruby*, 226 Ill. 2d 382, 391 (2007) (stating, "civil contempt is 'a sanction or penalty designed to compel future compliance with a court order.' ''). Indeed, the contempt hearing was a separate proceeding relating solely to

whether Kari and the Trust violated the Agreed Orders against the trial court's clear direction, even if it also provided evidentiary fodder for James and June's later complaints.

¶ 16 What's more, Clinton did not and does not now dispute that punitive damages may be awarded under the common law and also by statute from the counts alleged in James and June's complaints, which included fraudulent transfer, civil conspiracy to commit tortious interference with a contract, tortious interference with a contract, and aiding and abetting violation of the Agreed Orders. In addition, as stated, Clinton did not contest the statement of facts submitted by James and June in support of their summary judgment motions or adequately challenge the counts substantively. The trial court thus correctly found that because James and June were entitled to summary judgment on their underlying claims, they were also entitled to summary judgment on the accompanying punitive damages claims for Kari and Clinton's intentional dissipation of funds needed to repay the loans of James and June. See *Carter v. Carter*, 2012 IL App (1st) 110855, ¶ 39; *Briones v. Mobil Oil Corp.*, 150 Ill. App 3d 41, 47 (1986).

¶ 17 Clinton nonetheless argues that the damages improperly stemmed from the contempt hearing and its resulting judgment, entered April 25, 2014. Clinton argues the contempt judgment became final 30 days after being entered in 2014, and it was error to award punitive damages in 2017 based on the same proceedings. His argument holds no water for several reasons. First, only a contempt judgment that imposes a sanction is a final, appealable order. *In re Marriage of Gutman*, 232 Ill. 2d 145, 152-53 (2008). Here, the April 25, 2014, judgment did not result in a specific sanction. Rather, it required the parties to essentially return to the *status quo* by ordering the exact same money previously pledged to James and June be placed into a court-administered escrow for safe-keeping and freezing the spending of any additional assets from the Trust. While the attorney fees awarded to James and June could have been construed as

a "sanction," the judge only awarded "reasonable attorney fees" without specifying the amount. See *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1036 (2001) (finding that since there was no monetary sanction in contempt order, but only "reasonable attorney fees," there was no appellate jurisdiction under Supreme Court Rule 304(b)(5)). As such, the order was not then final and appealable, as Clinton now argues.[3] See *id*.

¶ 18 Second, as stated, the point of the contempt was not punitive in nature, but meant to coerce compliance with the court's previous orders. Clinton also has not cited any authority showing that the full record – together with admissions by a witness at a hearing, as well as the trial court's findings and judgment that resulted from that hearing – cannot be utilized at the summary judgment stage.

¶ 19 To that end, Clinton's argument that he was not complicit or responsible for the dissipation of funds from the Trust also fails. Again, Clinton did not submit any statement of facts or documents contradicting those of James and June, which showed his bad acts. See *Sacramento Crushing Corp*, 318 Ill. App 3d at 575 (the suggestion that an issue of material fact exists, without supporting evidence, is insufficient to create one); see *e.g.*, *Burks Drywall, Inc. v. Washington Bank and Trust Co.*, 110 Ill. App. 3d 569, 575-76 (1982) (generally requiring opposing party in summary judgment proceedings to contradict well-pled facts). While Kari acted as the trustee, and thus handled the transactions that depleted its funds, Clinton was the

[3]Clinton curiously also asks that we review the validity of the contempt order even while claiming it was a final and appealable order as of 2014, which would preclude our review. He asserts the exact same argument as raised at the 2014 hearing by Kari and the Trust that while the Trust did not maintain sufficient funds, it did maintain sufficient "assets." Clinton cannot have his jurisdictional cake and eat it, too. Meaning, one argument precludes the other, especially where he did not frame the validity of the order as an alternative argument. Regardless, he fails to provide sufficient record citation to the hearing or to legal authority for this court to fully consider his argument. He cites only the court orders, rather than any testimony. His one case citation is incorrect, and he fails to identify which portion of a lengthy statute on which he's relying or explain its significance. Clinton, accordingly, has forfeited this claim. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017); see also *Carter v. Carter*, 2012 IL App (1st) 110855, ¶ 12 (where an appellant's brief violates the requirements of our supreme court rules, we have the discretion to disregard the appellant's arguments).

beneficiary of the Trust and often the recipient of the funds or their benefits to the detriment of James and June ever obtaining repayment. The uncontradicted facts, together with their reasonable inferences, showed he knew about the mediation agreement and Agreed Orders and participated in creating sham mortgages as a means of covering up the depletion of Trust funds in violation of those orders. Accordingly, we reject Clinton's arguments with respect to the punitive damages award.

¶ 20 Finally, Clinton argues the award of punitive damages was excessive and unconstitutional. Clinton reargues there was no evidence to support punitive damages and his bad acts in particular, while also noting that the court improperly relied on James and June's citation to various cases in support of the punitive damages award. However, Clinton has failed to fully develop his appellate argument with citation to appropriate authority. Ill. S. Ct. Rule 341(h)(7) (eff. Nov. 1, 2017). As James and June note, he omits any mention of the factors needed to assess the constitutional question on punitive damages. See *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 71 (2009). He also forfeited the matter in the trial court. Again, his one-sentence written response opposing punitive damages as a matter of law and fact was insufficient to counter the summary judgment motions of James and June. Likewise, at the hearing on July 31, 2017, where James and June proposed that punitive damages total $1,000,000, counsel[4] for Clinton responded "only to the extent of the dollar amount asserted," but then did not then or thereafter submit any information that would have aided the court in determining the amount of punitive damages despite having more than a month to do so. Clinton's argument fails.

[4]Donald McNeil previously represented Clinton and appeared at this hearing. Gregory Stern also appeared as counsel on behalf of Clinton, although he apparently only entered his formal appearance with the court at the next hearing on August 8, 2017. At the August 8 hearing, another attorney, Herman Marino, appeared on behalf of Clinton as well.

¶ 21 We further note that Clinton's brief is deficient in a number of ways. At various points, he has failed to provide pincites for cases, provided an incorrect citation format, failed to provide the correct citation for the legal proposition identified, and made tortured legal arguments that disregard the summary judgment stage at which this case has reached us. See Ill. S. Ct. Rule 341(h)(7) (eff. Nov. 1, 2017) (an appellant must set forth contentions on appeal and the reasons therefor, with citation to the authorities and the pages of the record relied on). This court is not a repository for an appellant to foist burden of argument and research. *Enadeghe v. Dahms*, 2017 IL App (1st) 162170, ¶ 23. Our docket is full, and noncompliance with the rules does not help us resolve appeals expeditiously. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15. Therefore, the arguments not properly raised on appeal are waived and cannot be raised in a reply brief. *Enadeghe*, 2017 IL App (1st) 162170, ¶ 23. To that end, we decline to consider Clinton's argument that the trial court abused its discretion in denying his motion to reconsider because he has not developed the argument with proper citation to the record and authority. See Ill. S. Ct. Rule 341(h)(7) (eff. Nov. 1, 2017).

¶ 22 CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court.

¶ 24 Affirmed.