2019 IL App (1st) 182355-U

No. 1-18-2355

Order filed June 28, 2019

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAMES WHITMORE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 17 M6 8222
	)	
G.T.S. TOWING and JIM WILLIS,	)	Honorable
	)	Joyce Marie Murphy Gorman,
Defendants-Appellees.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: We affirm the trial court's dismissal order where plaintiff's brief is insufficient to ascertain his claims and plaintiff failed to furnish a sufficient record such that error can be determined.

¶ 2 Plaintiff James Whitmore appeals *pro se* from the circuit court's order granting defendant G.T.S. Towing's motion to dismiss his amended fraud complaint with prejudice. On appeal, plaintiff contends that the court erred in granting the motion to dismiss because defendant Jim

Willis was paid $750 to perform certain automotive repairs yet refused to either perform the work or return the funds. We affirm.

¶ 3 There is no report of the circuit court proceedings in the record on appeal and the common law record appears to be incomplete. However, the following facts can be gleaned from the limited record on appeal.

¶ 4 In August 2017, plaintiff filed this *pro se* fraud and consumer fraud suit against defendants "Jim Willski" and G.T.S Towing alleging that, although he paid "Willski" $750 to repair his vehicle, the work was not done. On October 11, 2017, the court entered a default judgment and damages of $5760.91 against defendants. The record reveals that plaintiff filed several *pro se* motions "to go back to court" and a *pro se* rule to show cause in an attempt to collect the damages. In November 2017, the court granted plaintiff's *pro se* motion to change the name of defendant "Jim Willski" to "Jim Willis."

¶ 5 On February 26, 2018, the court vacated the judgment against "Willski," ordered plaintiff to serve Willis with the complaint by certified mail, and continued the cause in order to verify "proof of service." On March 19, 2018, the court entered a default judgment in favor of plaintiff and against G.T.S. Towing and Willis in the amount of $5760.91, noting that the default was entered because defendants failed to file appearances.

¶ 6 On April 9, 2018, the court entered a default judgment against Willis in the amount of $5760.91, and granted G.T.S. Towing permission to file a motion to dismiss.[1] G.T.S. Towing

[1] Although the record does not indicate that the court vacated the default judgment previously entered against G.T.S. Towing, the fact that the court granted G.T.S. Towing permission to file a motion to dismiss while simultaneously reentering the default judgment against Willis for the total amount of damages leads to the conclusion that the previously entered default judgment against G.T.S. Towing was vacated.

then filed a motion to strike and dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2018)), alleging the complaint failed to state a claim against it. On June 25, 2018, the court granted the motion to dismiss and gave plaintiff 21 days to file an amended complaint.[2] Although plaintiff apparently filed an amended complaint, that document is not included in the record on appeal.

¶ 7 On September 7, 2018, G.T.S. Towing filed a motion pursuant to section 2-615 of the Code to strike and dismiss the amended complaint, alleging that the amended complaint failed to state any claim upon which relief may be granted against it, and noting that only Willis was named in the amended complaint. On September 13, 2018, the trial court granted G.T.S. Towing's motion and dismissed the amended complaint as to G.T.S. Towing with prejudice. On this record, the previously entered default judgment against Willis for $5760.91 stands.

¶ 8 On September 14, 2018, plaintiff filed a motion to vacate the trial court's order granting G.T.S. Towing's motion to dismiss. He then filed a motion stating that he wanted to appeal his case. The record reveals that on September 28, 2018, the trial court denied plaintiff's motion, and plaintiff filed a notice of appeal.

¶ 9 On appeal, plaintiff contends that the trial court erred when it "prejudie [*sic*] the case" against G.T.S. Towing and Willis because plaintiff paid Willis $750 to fix his vehicle and Willis refused to fix the vehicle or return the funds. He notes that the trial court awarded him damages totaling $5760.91.

¶ 10 On May 22, 2019, this court entered an order taking the case on plaintiff's brief only. Thus, we consider plaintiff's appeal without the benefit of defendants' briefs. See *First Capitol*

[2] The record reveals that G.T.S. Towing's motion only sought dismissal of the complaint against itself. It did not seek dismissal of behalf of Willis.

Mortgage Corp. v. Talandis Construction Corp., 63 Ill. 2d 128, 133 (1976) (a reviewing court can decide the merits of the appeal where the record is simple and the claimed errors can be decided without the aid of an appellee's brief).

¶ 11 Our review of plaintiff's appeal is hindered by his failure to fully comply with Supreme Court Rule 341 (eff. May 28, 2018), which "governs the form and content of appellate briefs." *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. Although plaintiff is a *pro se* litigant, this status does not lessen his burden on appeal. "In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Supreme Court Rule 341(h) provides that all briefs should contain a statement of "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment" and an argument "which shall contain the contentions of the appellant and reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(6), (7) (eff. May 28, 2018). Pursuant to the rule, a reviewing court is entitled to have issues clearly defined with "cohesive arguments" presented and pertinent authority cited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993).

¶ 12 Here, plaintiff's brief is a narrative of the case from his perspective. However, an appellant is required to cite to the pages and volume of the record on appeal upon which he relies "so that we are able to assess whether the facts which [the appellant] presents are accurate and a fair portrayal of the events in this case." *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 58. Moreover, plaintiff cites no pertinent legal authority to support his arguments on appeal. See *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991) ("A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the

appealing party may dump the burden of argument and research."). "Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone." *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 43. Thus, to the extent that plaintiff's brief fails to comply with Supreme Court Rule 341(h)(7), his arguments are forfeited.

¶ 13 That being said, even if we were to attempt to review this appeal on the merits, the deficiencies in the record would prevent us from doing so. Plaintiff appeals from the court's order granting G.T.S. Towing's motion to dismiss defendant's amended complaint with prejudice, yet defendant's arguments on appeal appear to concern Willis, against whom the trial court entered a default judgment. Although plaintiff contends on appeal that Willis is an employee of G.T.S. Towing, he points to nothing in the record to support this conclusion. We also note that the amended complaint is not included in the record on appeal.

¶ 14 On appeal, the appellant, in this case plaintiff, has the burden to provide a complete record for review in the appellate court to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). If no such record is provided, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id.* at 392. This is because, in order to determine whether there was actually an error, a reviewing court must have a record before it to review. *Id.*

¶ 15 We affirm the judgment of the circuit court of Cook County. Nothing in this order is intended to affect any default judgment that may have been entered against Willis individually. See ¶ 7, *supra*.

¶ 16 Affirmed.