

2014 IL App (1st) 123591-U
No. 1-12-3591
Order filed March 12, 2014

Third 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

CBS OUTDOOR, INC.)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff,)	
)	
v.)	No. 1-12-3591
)	
LAKEWOOD HOMES, INC.,)	
)	The Honorable
Defendant)	Alexander P. White,
)	Judge, presiding.
MOMCILO FILIPOVICH, and)	
DRAGICA FILIPOVICH,)	
)	
Third Party Intervenors-Appellants,)	
)	
v.)	
)	
LAKEWOOD HOMES, INC., and CBS)	
OUTDOOR, INC.,)	
)	
Appellee.)	

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly denied appellants' motion to intervene where issues raised were barred by doctrine of *res judicata*.

¶ 2 Plaintiff, CBS Outdoor, Inc., filed a motion for turnover of assets to satisfy a default judgment obtained in Arizona against defendant Lakewood Homes, Inc. Momcilo and Dragica Filipovich filed a motion to intervene in the proceeding claiming that CBS's Arizona judgment was fraudulent and that their own default judgment against Lakewood gave them a superior interest in the assets. The trial court denied appellants' motion to intervene finding their claims were barred by the doctrine of *res judicata*. We affirm

¶ 3 **BACKGROUND**

¶ 4 CBS Outdoor, Inc. (CBS) filed a complaint in Maricopa County, Arizona against Lakewood Homes, Inc., (Lakewood) alleging breach of an agreement to provide billboard advertising. On November 24, 2009, CBS obtained a default judgment against Lakewood in the amount of \$60,246 from the Maricopa County Superior Court. On April 29, 2010, in the circuit court of Cook County (10 L 50720), CBS filed a petition to register the foreign judgment. The case was assigned to the Honorable Alexander P. White. On July 2, 2010, CBS filed a citation to discover assets, which was served on Lakewood on July 12, 2010.

¶ 5 In April 2010, Momcilo and Dragica Filipovich, the appellants, also obtained a default judgment against Lakewood, in the amount of \$25,027 in a case alleging consumer fraud, which was filed in Cook County, Illinois and assigned to the Honorable Patrick J. Sherlock. (08 M1 188340.) On May 28, 2010, appellants filed a citation to discover assets with a return date of June 25, 2010. The citation incorrectly listed the courtroom number, the judge, and the time for a postjudgment citation and was therefore dismissed. On July 1, 2010, appellants filed a second citation to discover assets without leave of court, with a return date

of July 22, 2010. Lakewood, through counsel, appeared in response to the second citation to discover assets and informed the court that Lakewood had approximately \$50,380.46 in an account at First Eagle Bank.

¶ 6 On July 28, 2010, CBS filed a motion for turnover of the assets held by First Eagle Bank in their law division case. Appellants responded by filing an emergency motion in their case for turnover of those same assets. CBS objected and, following a hearing on September 1, 2010, Judge Sherlock entered an order denying appellants' motion for turnover and finding that CBS had a valid and superior citation. Judge Sherlock also declared appellants' citation void and dismissed it. Appellants' motion to reconsider was denied.

¶ 7 On September 16, 2010, CBS and appellants' attorney appeared before Judge White for consideration of CBS's motion for turnover. Appellants' attorney argued that they should be allowed to oppose the motion for turnover and file a brief in opposition. Judge White set a briefing schedule and continued the matter until November 15, 2010. The case was later continued until January 27, 2011, on motion by CBS.

¶ 8 In November 2010, CBS and Lakewood reached a settlement agreement, and the funds held by First Eagle were released to CBS, which then dismissed its case. Appellants were not informed of the settlement and appeared before Judge White on January 27, 2011, the date set for the hearing on CBS's scheduled motion for turnover. Not surprisingly, since the matter had already been settled and dismissed, no one appeared on CBS's behalf. Following a hearing, during which the appellants explained the status, background and prior proceedings, Judge White entered an order denying CBS's motion for turnover and ordered that the funds be turned over to the appellants. After the hearing, appellants learned that CBS already had the First Eagle Bank funds and filed a motion for rule to show cause why CBS,

Brian Lewis, CBS's attorney, Lakewood, and First Eagle should not be held in contempt and for an order requiring that \$25,072 be turned over to appellants. The parties appeared before Judge White on March 15, 2011, who found appellants had no standing in the proceeding and denied their motion for rule to show cause.

¶ 9 On April 14, 2011, appellants filed a motion to reconsider. Judge White denied the motion but granted appellants leave to file a brief on the issue of standing. In their motion, appellants asserted the Arizona judgment was fraudulent, noting that Momcilo Filipovich had previously submitted an affidavit stating he had gone to Arizona and could not find a copy of a default judgment in the court file. Appellants stated that after Judge White's May 2011 ruling, they met with CBS's attorney, who showed them what he claimed to be a certified copy of the Arizona judgment. Appellants asserted, however, that the document was obtained only after they raised an issue about the authenticity of the Arizona judgment. Therefore, appellants contended CBS did not have sufficient evidence of a foreign judgment when it filed its motion for turnover of assets.

¶ 10 Appellants further asserted that even if they did not have a valid citation to discover assets, they did have an interest in the money being held by First Eagle Bank by virtue of their default judgment against Lakewood, and therefore, had standing to challenge CBS's motion for turnover of funds. Appellants also reasoned that they should be granted standing to challenge the validity of CBS's foreign judgment, because an Illinois court cannot be expected to monitor a proceeding in Arizona to determine whether a litigant has properly obtained a default judgment.

¶ 11 CBS filed a response asserting, in part, that they filed a properly signed foreign judgment and that appellants' claims are barred by the doctrine of *res judicata*. CBS also sought sanctions against appellants under Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 12 After the parties submitted their proposed findings of fact and conclusions of law, Judge White entered a memorandum decision and judgment on October 30, 2012, denying appellants' motion to intervene. Judge White rejected appellants' argument regarding the validity of CBS's foreign judgment, noting that CBS had filed a valid, authenticated copy of the Arizona judgment with the court, satisfying the requirements of section 12-652(a) of the Uniform Enforcement of Foreign Judgments Act (735 ILCS 5/12-652(a) (West 2012)). Further, the court found that although appellants obtained a judgment against Lakewood before CBS filed its Arizona judgment with the circuit court, appellants are barred by the doctrine of *res judicata* from intervening in the case because Judge Sherlock issued a final judgment dismissing appellants' citation to discover assets after finding it void and holding that CBS had a valid and superior citation to discover assets. Judge White also denied CBS's motion for Rule 137 sanctions, finding the actions of appellants and their counsel to be reasonable at the time. Appellants filed a timely notice of appeal; CBS does not appeal the denial of its motion for sanctions.

¶ 13 ANALYSIS

¶ 14 Appellants argue they have standing to challenge CBS's citation to discover assets and motion for turnover because they have an interest in the funds held by First Eagle Bank by virtue of their default judgment against Lakewood. They further assert they are not barred by the doctrine of *res judicata* because no court has yet to address the validity of CBS's foreign judgment. CBS contends their Arizona judgment is valid and must be given full faith and

credit in Illinois and, that appellants are barred by the doctrine of *res judicata* from relitigating issues on which Judge Sherlock has already issued a final judgment. Appellants did not file a reply brief responding to CBS's arguments.

¶ 15 At the outset, we must address issues regarding the brief appellants filed with this court and their failure to fully comply with Illinois Supreme Court Rules. Illinois Supreme Court Rules 341(h)(6) and (7) require an appellant's brief to include appropriate references to the pages of the record relied on. Ill. Sup. Ct. R. 367(h)(6), (7) (eff. Feb. 6, 2013). See *People v. Karim*, 367 Ill. App. 3d 67, 94 (2006) (it is neither the function nor the obligation of this court to act as an advocate or search the record for error). Although appellants' brief makes reference to the trial court's October 30, 2012 memorandum decision, which is included in an appendix to their brief, they fail to make any reference to the record on appeal. The appellants also failed to adequately comply with Rule 342(a), which requires an appellant to include in his or her brief an appendix with, among other things, a copy of the judgment appealed from, any findings of fact or memorandum opinions issued by the circuit court, any relevant pleadings, and a complete table of contents of the record on appeal. Ill. Sup. Ct. R. 342(a) (eff. Jan. 1, 2005). As noted, the appellants' brief includes a copy of Judge White's October 30 order, but it fails to include a table of contents of the record on appeal. This failure again improperly places the burden on the appellate court to search the record for documents and court orders referred to in the body of the brief.

¶ 16 Supreme court rules are not mere suggestions; they are rules that must be followed. *In re Estate of Michalak*, 404 Ill. App. 3d 75, 99 (2010). Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal.” *Epstein v. Galuscka*, 362 Ill. App. 3d 36, 42 (2005). We recognize, however, that striking a

brief for failure to comply with supreme court rules is a harsh sanction. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). Accordingly, and with these limitations in mind, we will consider the merits of this appeal.

¶ 17 *Res judicata* applies when: (1) a final judgment on the merits was rendered by a court of competent jurisdiction; (2) there is an identity of causes of action; and (3) there is an identity of parties or their privies. *Lane v. Kalcheim*, 394 Ill. App. 3d 324, 329 (2009). “*Res judicata* is an equitable doctrine designed to prevent the multiplicity of lawsuits between the same parties and involving the same facts and the same issues.” *Murneigh v. Gainer*, 177 Ill. 2287, 299 (1997). The bar extends to all matters that were offered to sustain or defeat a claim in the first action, as well as to all matters that could have been offered. *Avria v. Madigan*, 209 Ill. 2d 520, 533, (2004).

¶ 18 To determine whether there is an identity of causes of action between two cases, Illinois courts apply a transactional test, which was adopted by our Supreme Court in *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). The essential showing for purposes of *res judicata* under the transactional test is that the claims arise from a common core of operative facts. *Id.* Using the transactional test, claims may be considered part of the same cause of action even if there is no substantial overlap in the evidence. *Id.* Separate claims will be considered the same cause of action under the transactional test if they arise from a single group of operative facts, regardless of whether different theories of relief are asserted. *Lane*, 394 Ill.App.3d at 392. What constitutes a single transaction should be determined pragmatically, and courts should consider whether the facts are related in time, space, origin, or motivation. *River Park, Inc.* 184 Ill. 2d at 312. Courts should also consider

whether the facts form a convenient trial unit and whether treating them as a one unit conforms with the parties expectations. *Id.*

¶ 19 Appellants contend *res judicata* does not apply to bar their motion to intervene because there was no identity of causes of action between this case and the case before Judge Sherlock. Specifically, appellants argue Judge Sherlock did not address the validity of CBS's Arizona judgment or make a determination as to whether CBS was entitled to the First Eagle funds or whether CBS's motion for turnover should be granted. This is not accurate. On September 1, 2010, Judge Sherlock held an evidentiary hearing on appellants' motion for turnover of the funds held by First Eagle Bank. Both parties submitted briefs and copies of their judgments and citations. After reviewing all of the documents, Judge Sherlock entered an order finding CBS's judgment and citation valid and superior to appellants' citation. He also dismissed appellants' citation after finding it void and denied their motion for turnover.

¶ 20 Appellants filed their motion to intervene in this case to argue they have priority over CBS to funds held by First Eagle Bank. Their motion is based on their contention that they have an interest in the money by virtue of their default judgment and that CBS has no interest because they have not filed a valid foreign judgment. As noted, Judge Sherlock reviewed the documents submitted by both parties to support their citations to discover assets and found CBS's citation to be superior. Appellants' claims in both cases arise from a single group of operative facts, namely the steps each party took in obtaining their citation to discover assets. Judge Sherlock found appellants' steps were insufficient because their first citation included incorrect information and the second citation was filed without leave from the court and thus void. Conversely, he concluded that CBS's citation was valid and thus superior to appellants' citation. Even if, as appellants contend, issues regarding the validity of CBS's foreign

judgment were not addressed in the prior proceeding, appellants had an opportunity to raise them there and thus cannot do so in a separate proceeding. Therefore, because appellants' claims in both cases arise from a single group of operative facts, there is an identity of causes of action between this case and appellants' prior case.

¶ 21 The other two *res judicata* requirements—a final judgment and an identity of parties or their privies—are also satisfied. After Judge Sherlock issued his September 1 order, appellants filed a motion to reconsider, which Judge Sherlock denied. Appellants did not appeal and the orders were never vacated, therefore, they are final. Further, this case and the prior one involve the same parties.

¶ 22 Accordingly, we affirm the trial court's order denying appellants' motion to intervene.

¶ 23 Affirmed.