

No. 1-13-2686

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ARUN K. BHATTACHARYA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 M1 300334
	)	
R.C.N. TELECOMMUNICATION SERVICES	)	
OF ILLINOIS, LLC.,	)	Honorable
	)	James E. Snyder,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Justices Pierce and Liu concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court's grant of defendant's motion for summary judgment affirmed where plaintiff failed to meet the minimum standards for appellate review.

¶ 2 *Pro se* plaintiff, Arun Bhattacharya, appeals the order of summary judgment entered against him and in favor of defendant, R.C.N. Telecommunication Service of Illinois, LLC, by the circuit court of Cook County, and requests that the trial court's order be reversed and his cause remanded for trial.

¶ 3 The record shows that on February 5, 2013, plaintiff filed a complaint against Jim Holanda of "RCN Corporation." In that complaint, plaintiff alleged that he subscribed for phone service provided by defendant on June 1, 2012, and, on July 12, 2012, his service was disconnected and remained disconnected for six weeks. Plaintiff informed defendant of the disconnection on July 13, 2012, and defendant scheduled a service call for the next day. When defendant's representative did not come at the agreed time and date, he called defendant and the appointment was rescheduled for July 17, 2012. Defendant's representative again failed to come at the scheduled time, and plaintiff sent repeated emails to and left voicemails for defendant, but received no response. Plaintiff alleged that he "needed emergency services[.]" but was unable to call anyone due to the disconnection, that he incurred expenses from making calls from public phones, and that he suffered "emotional distress" because he had to "rush to [a] public telephone wherever he needed to make [a] call during [the] day and night."

¶ 4 Defendant filed a motion to dismiss on March 5, 2013, contending, *inter alia*, that the court did not have personal jurisdiction over Holanda, a New Jersey resident, or "RCN Corporation," as there was no such entity. To the extent that plaintiff was attempting to sue R.C.N. Telecommunication Services, LLC (RCN New Jersey), of which Holanda was the Chief Executive Officer (CEO), that entity was a Delaware Corporation with its principle place of business in New Jersey, which did not do business in Illinois. Phone service to customers in the Chicago area was provided through R.C.N. Telecommunication Service of Illinois, LLC (RCN Illinois).

¶ 5 Plaintiff subsequently amended his complaint, adding RCN Illinois as a defendant, and requesting damages in the amount of \$5,000 "towards the expenses incurred and inconvenience and emotional distress caused to the plaintiff" for defendant's failure to restore his services.

Defendant's motion to dismiss was granted, and plaintiff's claims against Holanda and RCN New Jersey were dismissed with prejudice.

¶ 6 Defendant then filed a motion for summary judgment alleging that no genuine issue of material fact existed. Defendant argued that plaintiff's claim failed because he agreed to be bound by the contract terms, which established that in the event of a lack of service or service interruption, he was entitled only to credit, which he received, and defendant was not liable for further damages. Defendant further asserted that the mere annoyance articulated in plaintiff's complaint was insufficient as a matter of law to state a claim for emotional distress, and he failed to allege that defendant's conduct was "extreme and outrageous" as required to bring such claims. It also contended that public policy prohibited the maintenance of defendant's claim.

¶ 7 On July 31, 2013, the court entered an order granting defendant's motion for summary judgment, and dismissed the case with prejudice. Plaintiff appealed, and, in this court, alleges a number of reasons for which he claims that the trial court erred in granting that motion.

Defendant initially points out that plaintiff has failed to conform his brief with the requirements delineated in Illinois Supreme Court Rules 341 (Ill S. Ct. R. 341 (eff. Feb. 6, 2013)) and 342 (Ill S. Ct. R. 342 (eff. Jan. 1, 2005)). We agree.

¶ 8 We observe that the brief submitted by plaintiff does not contain a paragraph regarding the nature of the action, a jurisdictional statement, the standard of review, an appendix or the required certificate of compliance. Plaintiff's statement of facts is also insufficient, fails to include citations to the record, and contains improper argument. Plaintiff's *pro se* status does not excuse him from complying with the appellate procedures required by our supreme court rules (*Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010)), and his noncompliance with these rules subjects his appeal to dismissal (*LaGrange Memorial Hospital v. St. Paul Ins. Co.*, 317 Ill.

App. 3d 863, 876 (2000)).

¶ 9 Notwithstanding, we determine that plaintiff failed to demonstrate any error by the circuit court in this case. We initially note that our review of this appeal is impeded by an incomplete record, as a number of plaintiff's claims are unsupported by, or reference filings which he has not included in, the record on appeal. An appellant has the burden of presenting a sufficiently complete record of the circuit court proceedings to support any claim of error, and in the absence of such a record, this court will resolve any doubts arising from the incomplete record against appellant, and presume that the circuit court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 10 The record before this court consists of one volume of common law documents. There is no indication in the record of what occurred in the circuit court on any of the court dates, including July 31, 2013, when the court granted summary judgment in favor of defendant. The written order entered on that date indicates only that the motion was granted and plaintiff's complaint was dismissed with prejudice "for the reasons stated in open court." Accordingly, this court has no knowledge of what, if any, evidence was presented, what arguments were made, what findings the court made, or the reasoning and rationale that provided the bases for the circuit court's rulings.

¶ 11 Pursuant to Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)), in lieu of a circuit court transcript, an appellant may file a bystander's report (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) or an agreed statement of facts (Ill. S. Ct. R. 323(d)(eff. Dec. 13, 2005)). In this case, however, the record does not contain a report of the circuit court proceedings in any format. Although the failure to file a report of proceedings is not fatal where the merits of the appeal may be judged on the pleadings (*Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 626

(1985); *DeVries v. Bankers Life Co.*, 128 Ill. App. 3d 647, 650 (1984)), the insufficient record in this case makes it impossible for this court to review the vast majority of defendant's claims.

*Boalbey*, 242 Ill. App. 3d at 462.

¶ 12 For example, plaintiff contends that the trial court "discriminated against" him, allowed defendant to file a "second response" while ignoring his request to file a "response to the defendant's second response[.]" and was "in a hurry to deliver summary judgment." He further alleges that defendant lied on "page 4 of his response filed on the 24th of July, 2013" by stating that he admitted in open court that his complaint was solely a claim of emotional distress, and that the court ignored the law "quoted in item no. 28" of his response to defendant's motion for summary judgment. He also contends that the trial court "ignored the false claim made in the affidavit submitted by defendant[.]" and that he was denied the opportunity to cross-examine the affiant, referring this court to consider his "counter-affidavit and other exhibits filed on the 11th of July, 2013[.]" We have reviewed all of the documents contained in the common law record submitted to this court and have found none of the documents referenced by plaintiff. We also find nothing in the record to otherwise substantiate any of his claims. Under these circumstances, we find that plaintiff has failed to meet the minimum standard required for meaningful review. *Foutch*, 99 Ill. 2d at 394.

¶ 13 Plaintiff also disputes the allegations in defendant's motion that he signed a contract agreement to the terms of service and that he did not pay for services during the outage. He has not included anything in the record, however, to show that he disputed the veracity of his initials on the work order before the trial court, and he may not raise new issues on appeal. *Johnson Press of America, Inc. v. Northern Ins. Co. of New York*, 339 Ill. App. 3d 864, 874 (2003). As to plaintiff's allegation regarding his payment for services, plaintiff admits in his reply brief that the

amount he paid for services during the time in question was refunded to him, but appears to merely argue semantics: that he actually paid for the services before they were refunded.

Defendant has made no argument, and there is no indication in the record why, whether the payment was made and refunded, or not made at all, would be a material issue of fact relevant to the determination of defendant's motion. *DeFoor v. Northbrook Excess & Surplus Insurance Co.*, 128 Ill. App. 3d 929, 932 (1984).

¶ 14 Plaintiff finally contends that summary judgment is "not available to the court as a matter of notion or discretion" because he asserted his "constitutional right of trial by a jury." Plaintiff, however, misunderstands his right to a jury trial, and the concept of summary judgment.

Summary judgment is properly granted when the pleadings, depositions, and admissions, on file, together with any affidavits, establish that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *DeFoor*, 128 Ill. App. 3d at 932.

Where no material issue of fact remains for trial, the right to a jury trial is not implicated and summary judgment does not deny a plaintiff his right to a trial by jury. *Bilut v. Northwestern University*, 296 Ill. App. 3d 42, 48 (1998).

¶ 15 We thus conclude that plaintiff failed to show the existence of any genuine issue of material fact (*DeFoor*, 128 Ill. App. 3d at 932), and affirm the judgment of the circuit court of Cook County granting defendant's motion for summary judgment.

¶ 16 Affirmed.