

¶ 3 Plaintiff *pro se* appeals, arguing that the trial court erred by (1) denying his petition for a writ of *habeas corpus ad testificandum* and (2) ruling in favor of defendant on the merits. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Plaintiff's Criminal Cases

¶ 6 The following facts were gleaned from the parties' pleadings, exhibits, and other supporting documents filed in the small-claims case at issue.

¶ 7 According to plaintiff's complaint, in August 2010, the State charged plaintiff in Douglas County case No. 10-CF-86 (the Douglas County case) with aggravated DUI (625 ILCS 5/11-501(d) (West 2010)) and driving while license revoked (625 ILCS 5/6-303 (West 2010)).

¶ 8 On February 8, 2011, while plaintiff was released on bond from the Douglas County case, the State charged plaintiff in Champaign County case No. 11-CF-204 (the Champaign County case) with (1) aggravated DUI (fifth violation) (625 ILCS 5/11-501(d)(1)(D) (West 2010)), (2) driving while license revoked or suspended (second violation) (625 ILCS 5/6-303(a-5) (West 2010)), and (3) aggravated fleeing or eluding (disobedience of two or more traffic control devices) (625 ILCS 5/11-204.1(a)(4) (West 2010)). The trial court set plaintiff's bond at \$1 million. Because plaintiff was unable to post bond, he remained incarcerated in the Champaign County jail.

¶ 9 On February 15, 2011, plaintiff's then-fiancée, Kristine Douglas, hired defendant to represent plaintiff in the Champaign County and Douglas County cases. Douglas signed a retainer agreement on plaintiff's behalf and wrote two personal checks to defendant, which totaled \$1,500.

¶ 10 In April 2011, plaintiff filed a complaint with the Illinois Attorney Registration and Disciplinary Commission (ARDC) against defendant, alleging that in the Champaign County case defendant failed to (1) consult with plaintiff before entering his appearance, (2) show plaintiff discovery, (3) file the motions that plaintiff wanted filed, (4) provide ethical legal services, (5) defend plaintiff's innocence, and (6) meet with plaintiff in jail a sufficient number of times.

¶ 11 In May 2011, defendant filed identical motions to withdraw as counsel in the Champaign County and Douglas County cases. Those motions delineated defendant's difficulties representing plaintiff, which included plaintiff's (1) intransigence on even the smallest matters concerning his case, (2) insistence that defendant file frivolous motions, and (3) misrepresentations to the court and the ARDC. Defendant also stated that during his representation of plaintiff, he (1) met with the prosecution four to five times and plaintiff twice, (2) made multiple phone calls to plaintiff and Douglas, and (3) made five court appearances on plaintiff's behalf. Later in May 2011, following a hearing, the trial court granted defendant's motion to withdraw as plaintiff's counsel. Thereafter, the court appointed the public defender to represent plaintiff.

¶ 12 In July 2011, a jury found plaintiff guilty of all three charges in the Champaign County case. Although the record on appeal does not reveal the outcome of the Douglas County case, we note that the DOC website does not indicate that plaintiff is currently serving any prison terms for convictions from Douglas County. See *People v. Peterson*, 372 Ill. App. 3d 1010, 1019, 868 N.E.2d 329, 336 (2007) ("[T]his court may take judicial notice of DOC's records because they are public documents.")

¶ 13 B. Plaintiff's August 2011 Original Complaint

¶ 14 In August 2011, prior to plaintiff's sentencing in the Champaign County case, plaintiff—joined by Douglas—*pro se* filed his original complaint in this small-claims case.

Plaintiff and Douglas alleged that defendant (1) conducted an "illegal" and "unauthorized" jail visit with plaintiff on March 27, 2011; (2) "disclosed lawyer-client confidentiality right orally in the courtroom during his motion to withdraw as counsel"; (3) lied to the trial court and the ARDC; and (4) perjured himself to the court by stating that he visited plaintiff twice and spoke with him over the telephone.

¶ 15 In their prayer for relief, plaintiff and Douglas sought, in pertinent part, (1) a judicial declaration that defendant (a) entered into an illegal contract with them, (b) perjured himself, and (c) violated attorney-client confidentiality; (2) an award of \$1,500 in compensatory damages for unearned attorney fees; (3) an award of unspecified compensatory damages for "physical and mental anguish and loss of time and life"; and (4) an award of unspecified punitive damages for "willful violations of plaintiff's rights."

¶ 16 Attached to the complaint were the following exhibits: (1) Douglas's bank receipts, showing that she paid defendant \$1,500; (2) a limited portion of the trial court's docket in the Champaign County case; (3) plaintiff's complaint to the ARDC; (4) defendant's motion to withdraw as counsel in the Douglas County case; (5) a June 2011 affidavit completed by plaintiff, detailing his observations at the May 2011 hearing on defendant's motion to withdraw; and (6) what appear to be two computer printouts showing plaintiff's telephone and visitation records from the Champaign County jail.

¶ 17 C. Plaintiff's Sentence in the Champaign County Case

¶ 18 Although no such information exists in the record before us, our opinion in plaintiff's direct appeal reveals that at a September 2011 sentencing hearing in the Champaign County case, plaintiff elected to waive counsel and proceed *pro se* because he felt the public defender was inexperienced. *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 6, 988 N.E.2d 773. Follow-

ing the presentation of evidence and argument, the trial court sentenced plaintiff to prison terms of 30 years for aggravated DUI, 3 years for driving while license revoked, and 3 years for aggravated fleeing or eluding. *Id.* ¶ 10, 988 N.E.2d 773. The court ordered the aggravated DUI and driving while license revoked sentences to be served concurrently, with the aggravated fleeing or eluding sentence to be served consecutively to those sentences. *Id.* We note that this court ultimately reversed plaintiff's sentences and remanded for a new sentencing hearing. *Id.* ¶ 1, 988 N.E.2d 773. On remand, however, the trial court sentenced plaintiff exactly as it had in September 2011. DOC's website currently lists plaintiff's projected parole date as July 25, 2027.

¶ 19 D. Douglas's Withdrawal and Plaintiff's Amended Complaint

¶ 20 In January 2013, Douglas withdrew from the case, and the trial court dismissed the complaint as to her.

¶ 21 In February 2013, the trial court granted plaintiff leave to file an amended complaint. Plaintiff's *pro se* amended complaint, which set forth claims similar to those in his original complaint, alleged that defendant "violated the [R]ules of [P]rofessional [C]onduct and [plaintiff's] right to [the] effective assistance of counsel." Specifically, plaintiff asserted that his 30-year prison sentence for aggravated DUI was the product of a conspiracy between defendant, the public defender, the assistant State's Attorney, and the trial court. Plaintiff sought \$8,000 in punitive and compensatory damages for defendant's "deceiving the court and committing fraud by making a false representation with an evil intent (scienter) to harm [plaintiff's] criminal trial that resulted in injury [for] which he is entitled relief."

¶ 22 Plaintiff attached to his amended complaint an "Investigative Report." This document—written in the first-person—amounted to a summary of Douglas's thoughts and observations about the Champaign County case, the State's evidence against plaintiff, and defendant's

legal representation of plaintiff. Douglas signed the bottom of the document, "Kristine Douglas, Investigator." The document was neither dated nor notarized.

¶ 23 Plaintiff included with his complaint a *pro se* petition for writ of *habeas corpus ad testificandum*. The petition included no specific court date for which plaintiff desired to be present. Instead, the petition appears to be plaintiff's blanket request that he be allowed to appear—in custody—at all future court proceedings in the small-claims case at issue. (We note that the record contains several of these petitions. For purposes of this appeal, we interpret these petitions as plaintiff's request to be brought before the trial court for a hearing on the merits of his amended complaint.)

¶ 24 On April 12, 2013, plaintiff *pro se* filed a motion for leave to supplement his amended complaint to specify that defendant violated the following provisions of the Rules of Professional Conduct: Rules 1.1(c), 1.2(a), 1.2(f), 1.4(a), 1.5(b), 1.5(c), 1.6(a), 1.8(a), 1.16(d), 1.16(e), 3.3(a), 3.4(a), 3.5(i), and 4.1 (all effective Jan. 1, 2010). The trial court granted plaintiff's motion to supplement the amended complaint.

¶ 25 E. Defendant's Motion To Dismiss

¶ 26 On April 19, 2013, defendant filed a motion to dismiss plaintiff's amended complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). Defendant, citing the Seventh Circuit case of *Levine v. Kling*, 123 F.3d 580 (7th Cir. 1997), argued in his motion that plaintiff's amended complaint failed to state a cause of action for legal malpractice because plaintiff failed to allege that (1) defendant participated in the trial that resulted in plaintiff's 30-year prison sentence, or (2) plaintiff was actually innocent.

¶ 27 On April 25, 2013, the trial court granted defendant's motion to dismiss as to plaintiff's legal-malpractice claim, but it denied the motion as to plaintiff's claim for \$1,500 in

unearned attorney fees. The court agreed with defendant that, to the extent plaintiff's claim could be characterized as one of legal malpractice, plaintiff failed to state a cause of action. Specifically, plaintiff failed to (1) allege he was actually innocent or (2) articulate a connection between defendant's alleged violations of the Rules of Professional Conduct and the prayer for compensatory and punitive damages. However, the court found that plaintiff's amended complaint did set forth the substance of a claim for the return of unearned attorney fees. The court concluded its written order, as follows:

"The court remains mindful that this case is a small claim governed by [Illinois] Supreme Court Rule 286(b) [(eff. Aug. 1, 1992)]. The court does not believe that it is an appropriate use of resources to secure plaintiff's appearance by writ for a hearing on the merits of his remaining claim. The court instead orders that plaintiff submit a sworn, written statement in support of his amended complaint, together with any documents or records he believes are pertinent, on or before June 1. Defendant[is] ordered to file a sworn written statement in response, together with any relevant documents or records, on or before July 1. The court will thereafter render a ruling on the merits of what remains of plaintiff's amended complaint based on the written submissions of the parties."

¶ 28 On April 26, 2013, the trial court received by mail plaintiff's *pro se* reply to defendant's motion to dismiss. The court noted in a docket entry that plaintiff's reply must have crossed paths in the mail with the court's April 25, 2013, order, which granted dismissal of plain-

tiff's legal-malpractice claim. The court found that plaintiff's reply "in no way undermine[d] or cause[d] the court to reconsider the April 25 ruling[.]"

¶ 29 On May 10, 2013, plaintiff *pro se* filed a petition for rehearing, arguing that the trial court erred by partially granting defendant's motion to dismiss because plaintiff was not afforded an adequate opportunity to respond.

¶ 30 F. The Parties' Sworn Statements

¶ 31 1. *Plaintiff's May 2013 Affidavit*

¶ 32 Also on May 10, 2013, plaintiff *pro se* filed an eight-page, handwritten affidavit in which he asserted that (1) Douglas paid defendant \$1,500; (2) defendant never discussed his fee with plaintiff; (3) plaintiff never agreed to representation by defendant; (4) defendant visited plaintiff in jail only once; (5) defendant "lashed out" at plaintiff during the hearing on defendant's motion to withdraw; (6) following his withdrawal as counsel, defendant attended each of plaintiff's subsequent court appearances in the Champaign County case; (7) defendant was seen speaking with plaintiff's public defender; (8) plaintiff's public defender failed to present certain exculpatory evidence at trial, and plaintiff "suspected [defendant] had something to do with this decision"; (9) defendant failed to make certain discovery requests that would have yielded exculpatory evidence; and (10) defendant violated plaintiff's right to the effective assistance of counsel.

¶ 33 Plaintiff attached to his affidavit (1) a second affidavit describing what happened at the hearing on defendant's motion to withdraw; (2) a transcript of that hearing; (3) Douglas's "Investigation Report"; (4) a photograph purporting to show injuries plaintiff suffered during the police chase that resulted in his conviction for aggravated fleeing or eluding; (5) a photograph of plaintiff's work van; (6) a partial transcript of trial testimony from the Champaign County case;

and (7) a partial transcript of the hearing on plaintiff's posttrial motions in the Champaign County case.

¶ 34 In his attached affidavit, plaintiff described the following incident that occurred at the May 2011 hearing on defendant's motion to withdraw as counsel:

"I asked [defendant] if we can talk because I told him I had filed a complaint to the ARDC. [Defendant] became very rude and strongly spoke out loud to me saying that he took care of my ARDC complaint. Furthermore, he said out loud that I'm going to do over 25 years in prison because I had the State take back their 15[-year] plea bargain and now it's back up to 30 [years] and this will have to run consecutive with the case in Douglas County.

[Defendant] said he talked with the [State's Attorney] to raise their plea bargain up to 20 [years] making me to serve a total of 50 years in prison. After a short dispute, [defendant] lashed out and said maybe he should tell the Judge that I said he was a crooked Judge and sentence[s] people unlawfully. *** The Judge was entering the courtroom and by his facial expression it was obvious that he heard [defendant] say that. Following, Judge Klaus would not let me respond to [defendant's] motion to withdraw and told me to be quiet."

¶ 35 *2. Defendant's July 2013 Affidavit*

¶ 36 On July 1, 2013, defendant filed an affidavit in which he asserted he earned the \$1,500 in attorney fees by representing plaintiff for a combined 19.5 hours on the Champaign

County and Douglas County cases. Defendant attached to his affidavit (1) the retainer agreements signed by Douglas and (2) an itemized log of the hours he spent representing plaintiff in the Champaign County and Douglas County cases. Defendant's affidavit addressed only plaintiff's claim for \$1,500 in attorney fees.

¶ 37 G. The Trial Court's Ruling

¶ 38 In December 2013, the trial court entered judgment in favor of defendant, finding in a written order that plaintiff's claims were without merit. Specifically, based upon defendant's affidavit, the court found that the \$1,500 retainer was exhausted by defendant's representation of plaintiff in the Champaign County and Douglas County cases. To the extent that plaintiff requested monetary damages above and beyond the amount of the retainer, the court found that plaintiff's dissatisfaction with defendant's legal representation was without any objective basis, stating, "[n]ot every breakdown of an attorney-client relationship is or should be actionable."

¶ 39 Additionally, despite earlier granting defendant's motion to dismiss the complaint as to plaintiff's legal-malpractice claim, the court fully addressed that claim on the merits as well. Citing *Fink v. Banks*, 2013 IL App (1st) 122177, ¶ 19, 996 N.E.2d 169, the court stated that a criminal defendant must establish his actual innocence before being able to recover for his criminal defense attorney's alleged malpractice. The court further noted that even if actual innocence were not a requirement of such a claim, plaintiff's evidence failed to establish that defendant engaged in any actionable misconduct.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 Plaintiff argues that the trial court erred by (1) denying his petition for a writ of *habeas corpus ad testificandum* and (2) ruling in favor of defendant as to plaintiff's legal-malpractice claim.

¶ 43 Initially, we note that we use the term "legal[-]malpractice claim" to refer to plaintiff's generalized claim that defendant's various instances of misconduct harmed plaintiff. In this sense, we can be only as specific as plaintiff's sweeping claim allows us to be. We further note that plaintiff has forfeited his claim for \$1,500 in unearned attorney fees by failing to present any argument as to that issue in his appellate brief. See *Vancura v. Katris*, 238 Ill. 2d 352, 369, 939 N.E.2d 328, 340 (2010) ("[F]ailure to argue a point in the appellant's opening brief results in forfeiture of the issue.")

¶ 44 A. The Rules Governing Small-Claims Cases

¶ 45 Under the Illinois Supreme Court Rules, "a small claim is a civil action based on either tort or contract for money not in excess of \$10,000, exclusive of interest and costs, or for the collection of taxes not in excess of that amount." Ill. S. Ct. R. 281 (eff. Jan. 1, 2006). Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992) allows the trial court to hold an informal hearing in a small claims case:

"In any small claims case, the court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing. At the informal hearing all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence. The court may call any person present at the hearing to testify and may conduct or participate in direct and cross-examination of any witness or party. At the conclusion of the hearing the court

shall render judgment and explain the reasons therefor to all parties."

¶ 46 "[T]he rules governing small[-]claims actions are intended to provide an expeditious, simplified, and inexpensive procedure for handling small claims." *Harmon Insurance Agency, Inc. v. Thorson*, 226 Ill. App. 3d 1050, 1052, 590 N.E.2d 920, 921 (1992). As this court has previously stated, "[i]t has been generally understood that small[-]claims cases should be, as far as procedural requirements are concerned, kept simple." *Martz v. MacMurray College*, 255 Ill. App. 3d 749, 750, 627 N.E.2d 1133, 1134 (1993).

¶ 47 B. The Trial Court's Denial of Plaintiff's Petition for Writ of *Habeas Corpus ad Testificandum*

¶ 48 Plaintiff argues that the trial court violated his constitutional rights by denying his petition for writ of *habeas corpus ad testificandum*. We disagree.

¶ 49 This small-claims case is unusual because plaintiff was incarcerated throughout the course of the proceedings. The trial court, aware that securing plaintiff's presence at a trial would expend costly governmental resources—perhaps even in excess of the amount in controversy—chose to dispense with a hearing and, instead, accept written evidence from the parties. The court acknowledged that this approach to a small-claims case had neither been explicitly endorsed nor rejected by the appellate or supreme courts.

¶ 50 In *Moeck v. Zajackowski*, 541 F.2d 177, 180-81 (7th Cir. 1976), the Seventh Circuit Court of Appeals addressed whether a prisoner has a constitutional right to attend a trial in a civil action that he initiates:

"We find no support in the Constitution or in judicial precedent for the proposition that a prison inmate has a fundamental interest in being present at the trial of a civil action to which he is a

party, sufficient to outweigh, as a matter of course, the interest of the state in avoiding expense. The due process requirements of the Fifth and Fourteenth Amendments, which guarantee access to the courts, do not grant a prisoner the right to attend court in order to carry on the civil proceedings which he initiates.

* * *

We suggest, although it will be seen that it may not be strictly necessary to this decision, that the determination whether a prisoner's interest in being present in court outweighs the state's relevant interests, is a discretionary one. Some of the relevant considerations would seem to be: How substantial is the matter at issue? How important is an early determination of the matter? Can the trial reasonably be delayed until the prisoner is released? Have possible dispositive questions of law been decided? Has the prisoner shown a probability of success? Is the testimony of the prisoner needed? If needed, will a deposition be reasonably adequate? Is the prisoner represented? If not, is his presence reasonably necessary to present his case?"

¶ 51 In *In re Marriage of Allison*, 126 Ill. App. 3d 453, 459, 467 N.E.2d 310, 314 (1984), the Fifth District held that "the approach of Illinois courts to the matter of attendance of prisoners at court proceedings to which they are a party is similar to that expressed in *Moeck v. Zajackowski* ***." The *Allison* court ultimately held that "[w]hether the testimony of a prisoner is sought for a civil or a criminal case, and whether or not the prisoner is a party to the case, it is

a matter that lies within the sound discretion of the court whether to issue an order of *habeas corpus ad testificandum*." *Id.* Given the purpose of the rules governing small claims—namely, to provide an "expeditious, simplified, and inexpensive procedure" (*Thorson*, 226 Ill. App. 3d at 1052, 590 N.E.2d at 921)—the trial court's discretion to deny a petition for writ of *habeas corpus ad testificandum* is at its broadest in a small-claims action.

¶ 52 In light of the purposes of Rule 286(b) and the factors articulated in *Moeck*, we conclude that court acted within its discretion by denying plaintiff's petition for a writ of *habeas corpus ad testificandum*. Under these facts, the court's decision to accept evidence and arguments in written form was an appropriate alternative to an informal small-claims hearing under Rule 286(b).

¶ 53 C. Plaintiff's Legal-Malpractice Claim

¶ 54 In his brief to this court, plaintiff argues that the trial court erred by granting defendant's motion to dismiss his legal-malpractice claim. However, because the court squarely addressed the merits of plaintiff's legal-malpractice claim in its final order, it appears as if the court implicitly granted plaintiff's petition for rehearing. In any event, because we are presented with adjudication of the merits of that claim, we deem it more appropriate to review the court's decision as a final judgment on the merits instead of a dismissal for failure to state a cause of action under section 2-615 of the Code.

¶ 55 The trial court correctly noted in its final order that under Illinois law "a criminal defendant must establish his or her actual innocence before being able to recover for the criminal defense attorney's alleged malpractice." *Banks*, 2013 IL App (1st) 122177, ¶ 19, 996 N.E.2d 169. In his brief to this court, plaintiff cites the Fifth District's decision in *Morris v. Margulis*, 307 Ill. App. 3d 1024, 1039, 718 N.E.2d 709, 720-21 (1999), which held as follows:

"To apply [the actual-innocence rule] to a situation where a criminal defense attorney intentionally works to insure his client's conviction would be unconscionable. This would allow counsel for the defendant to urge the jury in closing argument to convict his client. Then the same traitorous attorney could defend an action filed by his former client with the plea: 'Well, you were guilty, weren't you?' We will not adopt such a policy. [The] 'actual innocence' rule will not be applied to situations where an attorney wilfully or intentionally breaches the fiduciary duties he owes to his criminal defense client."

¶ 56 *Morris* is inapplicable for two reasons. First, the decision was reversed by the supreme court. *Morris v. Margulis*, 197 Ill. 2d 28, 754 N.E.2d 314 (2001). Second, even if the Fifth District's reasoning was sound despite the supreme court's reversal, plaintiff's allegations in this case come nowhere close to the hypothetical described in *Morris*.

¶ 57 The gist of plaintiff's claim is that defendant conspired with the trial court, the public defender, and the assistant State's Attorney to sentence plaintiff to a harsh prison term in retaliation for plaintiff's filing of an ARDC complaint against defendant. Defendant's professional misconduct, plaintiff contends, caused plaintiff "emotional distress," "physical and mental anguish[,] and loss of time and life." If the record can be said to contain a scintilla of evidence supporting this claim, that evidence comes from the uncorroborated conjecture of plaintiff himself. Throughout this case, plaintiff has alleged facts that he believes demonstrate defendant was hostile to plaintiff or that he violated the Rules of Professional Conduct. However, plaintiff has

offered no evidence establishing a causal connection between defendant's alleged professional misconduct and plaintiff's alleged injuries (whatever they may be).

¶ 58 Plaintiff's claim can fairly and accurately be described as a conspiracy theory. Like most conspiracy theories, plaintiff's claim focuses on the alleged wrongdoer's motive. If the end result of things satisfies the motive, then there must be a connection—no more evidence is needed. This is how plaintiff's theory of the case proceeds. According to plaintiff, defendant was motivated to do wrong by plaintiff because plaintiff filed an ARDC complaint against defendant. After defendant withdrew as counsel, his presence at plaintiff's subsequent court hearings *must* have been for some malicious purpose. When defendant was seen speaking with the public defender, he *must* have been directing her to sabotage plaintiff's case. And when plaintiff was sentenced to 33 years in prison, it *must* have been the work of defendant. These bare assertions do not constitute evidence, and they in no way entitled plaintiff to relief in this case.

¶ 59 Plaintiff's other evidence equally failed to support his claim. Douglas's "Investigative Report," which included her observations about defendant's allegedly suspicious interactions with plaintiff's public defender, was a nullity because it was not a sworn statement. See *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 497, 782 N.E.2d 212, 216 (2002) ("An affidavit that is not sworn is a nullity.") The call log and visitor records from the Champaign County jail, which plaintiff asserts prove that defendant lied about making jail visits, are not accompanied by any sworn statement verifying that they are true and complete records. Most notably, plaintiff has presented absolutely no evidence documenting his alleged "emotional distress." Although a plaintiff is not always required to present expert testimony to prove the existence of his or her emotional distress (*Thornton v. Garcini*, 237 Ill. 2d 100, 109, 928 N.E.2d 804, 809 (2009)), the trial court had no basis in this case to conclude that defendant's alleged viola-

tions of the Rules of Professional Conduct caused actionable injury to plaintiff. Because plaintiff failed to substantiate his legal-malpractice claim with any competent evidence, the trial court properly denied his claim on the merits.

¶ 60 As a final matter, we express our gratitude to the trial court for its detailed and well-reasoned written order, which we found helpful in our consideration of the issues presented in this appeal.

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the trial court's judgment.

¶ 63 Affirmed.