

No. 1-14-0585

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 JUDICIAL DISTRICT

ANDREW J. MICHALAK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CH 2450
)	
STEVEN J. MICHALAK,)	Honorable
)	Sophia H. Hall,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

O R D E R

¶ 1 *Held:* Where the record is not sufficient to review the trial court's judgment in favor of plaintiff, we must presume that the trial court's finding was sufficiently supported by the evidence; the trial court's judgment was affirmed.

¶ 2 Defendant Steven Michalak (Steven) appeals *pro se* from a circuit court order entering judgment against him and in favor of plaintiff Andrew Michalak (Andrew) on his complaint to release the net proceeds of the sale of their deceased mother's home, which were held in escrow.

On appeal, Steven apparently contends that the judgment of the trial court should be reversed

because his mother's "wishes" were not honored where estate documents in her name were fraudulently executed and signed under duress. Andrew has not filed a brief in response; however, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We affirm.

¶ 3 The record shows that on October 16, 2003, Jeanette Michalak (Jeanette), the mother of Steven and Andrew, executed documents to establish her estate plan, including, in pertinent part, her will and a quit claim deed. The deed transferred her interest in real estate located at 3539 South 56th Court in Cicero (Real Estate) to Andrew. Jeanette's will provided that the remaining tangible personal property should be divided between two of her three sons, Daniel, who is not a party to this appeal, and Andrew. The will specifically stated that, "In no event shall any funds be provided to my son, Steven Michalak of St. Charles, Illinois. It is my belief that I have fully provided for him during his lifetime." Jeanette gave the residue of her estate to Daniel and Andrew, again stating that "I am not providing for any part of my estate to be given to my son Steven Michalak."

¶ 4 On November 20, 2010, Jeanette died. Andrew held title to the Real Estate pursuant to the 2003 deed.

¶ 5 In June 2011, Steven filed a two-count complaint against Andrew to quiet title and alleging slander of title. In particular, Steven requested that the deed be adjudged forfeited as it contained a forged signature of Jeanette, and that title to the Real Estate be found and adjudged to be in the heirs of Jeanette. Steven also filed a *lis pendens* against the Real Estate. In consideration of a release of *lis pendens*, the parties entered into a strict joint order escrow with Fidelity Title Insurance Company (Fidelity) as escrowee, to hold the net proceeds of the sale of the Real Estate, which occurred in October 2011.

¶ 6 Extensive litigation ensued culminating in an apparent settlement between Andrew and Steven. An October 23, 2013, court order indicated that the parties reached an agreement in principle and needed time to document the settlement terms and disbursement of the escrowed funds. The matter was continued for settlement status on November 7, 2013, and the court stated that the parties had to file all dispositive motions and agreed orders by that date. No dispositive motions or agreed orders are contained in the record on appeal. The matter was again continued to December 27, 2013.

¶ 7 On December 27, 2013, a court order indicated that the matter came on call for a hearing on Andrew's motion for release of the escrow held by Fidelity under the parties' strict joint escrow agreement. No such motion or transcripts from the hearing on said motion are contained in the record on appeal. In its findings of fact, the court noted that the only matter pending before it was the complaint of Andrew to release the escrow funds. The court then entered judgment in favor of Andrew and against Steven. Specifically, the court ordered the funds held in escrow by Fidelity under the strict joint order were subject to release, and that Fidelity was authorized to release the funds to Andrew's attorney's trust fund account pending distribution. The court further held that said authorization would take effect on January 27, 2014, when the judgment of the court became final. The December 27 order concluded all issues in the case at bar.

¶ 8 On January 27, 2014, Steven filed a motion to reconsider, to which he attached various documents, including a will executed by Jeanette in 1997, checks, financial statements, and correspondence. The trial court denied Steven's motion on February 5, 2014. Steven filed a timely notice of appeal from the February 5 order on February 21, 2014, asserting that the trial court ignored and overlooked the evidence in his motion to reconsider, as well as "all pleadings."

¶ 9 On appeal, Steven essentially reiterates the claims from his June 2011 complaint in his *pro se* brief. He asserts that Jeanette's 2003 deed was fraudulently executed, her will was signed at the hospital under duress, and her "true wishes have been mocked and dishonored." Steven thus requests that the December 27 order be reversed.

¶ 10 We initially note that Steven's brief fails to comply with Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013), particularly where it fails to cite to the record or legal authority. A reviewing court has the inherent authority to dismiss an appeal for noncompliance with the rules regarding briefs, but we will not do so here as striking a brief or dismissing an appeal for failure to comply with supreme court rules is a harsh sanction. *People v. Webb*, 267 Ill. App. 3d 954, 956-57 (1994).

¶ 11 Nevertheless, we find that we are unable to reach the merits of Steven's appeal based on an insufficient record. Steven, as appellant, has the responsibility to provide a complete record on review. *Tekansky v. Pearson*, 263 Ill. App. 3d 759, 764 (1994). Absent a complete record, a reviewing court must presume that the trial court's decision had a sufficient factual basis, and any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 12 The common law record in this case appears to show that the parties reached a settlement agreement regarding the escrowed net proceeds from the sale of the Real Estate, but no settlement agreement is in the record on appeal. Even if no settlement had been reached, the common law record further shows that Andrew filed a motion for release of the escrowed funds, and a hearing was held on said motion. Again, the record on appeal does not include Andrew's motion, a transcript of the hearing, or an acceptable alternative to reflect any evidence presented before the circuit court concerning the contentions now raised (Ill. S. Ct. R. 323(c) (eff. Dec. 13,

2005); *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993)). We generally review the trial court's decision on whether to release escrow funds *de novo* (*Downs v. Rosenthal*, 2013 IL App (1st) 121406, ¶ 19), but in the absence of an adequate record, we must presume that the December 27 order releasing the escrowed funds conformed with the law and had a sufficient factual basis (*Foutch*, 99 Ill. 2d at 391-92).

¶ 13 Under these circumstances, where the record is insufficient for review, we invoke the presumption in favor of the regularity of proceedings and that the evidence presented to the trial court was sufficient to support its decision. *Foutch*, 99 Ill. 2d at 394. Accordingly, we affirm the judgment of the circuit court.

¶ 14 Affirmed.