

No. 1-10-0581

NOTICE: This order was filed under Supreme Court Rules 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

SARA BALAKAR,) Appeal from
) the Circuit Court
Plaintiff-Appellant,) of Cook County
)
v.)
) No. 09 L 6224
JAMES M. URTIS; THE LAW OFFICE OF JAMES M.)
URTIS; ANTONIO M. ROMANUCCI; STEPHEN J.)
BLANDIN; and ROMANUCCI & BLANDIN, LLC,) Honorable
) Diane J. Larsen,
Defendants-Appellees.) Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Justices McBride and Robert E. Gordon concurred in the judgment.

ORDER

¶ 1 **Held:** Trial court properly granted defendants' motion to dismiss plaintiff's fourth amended complaint against them alleging fraud and legal malpractice after plaintiff voluntarily dismissed the action on two separate occasions and the court dismissed the third action on defendants' motion.

¶ 2 This professional malpractice suit arises from a negligence action brought by plaintiff

Sara Balakar against DeWayne Allen for injuries she allegedly sustained in a February 21, 2002,

pedestrian-automobile accident. The trial court dismissed plaintiff's fourth amended complaint against defendants, attorneys James M. Urtis, Antonio M. Romanucci, Stephen Blandin and the law firm of Romanucci & Blandin, LLC, after finding the complaint constituted an impermissible fourth filing of the same action and was barred by the doctrine of *res judicata*. Plaintiff appeals, arguing defendants committed fraud to dismiss her complaint. We affirm.

¶ 3 The complicated procedural history of this case has been set out in detail in *Sara Balakar v. James M. Urtis, et. al.*, Nos. 1–09–1606 & 1–09–2994 Cons. (March 31, 2010) (unpublished order under Supreme Court Rule 23) (*Balakar*). We recount that history here to the extent necessary to understand the issue raised on appeal.

¶ 4 After the accident, plaintiff retained the law firm of Romanucci & Blandin, LLC, who referred her case to Urtis. Urtis filed a complaint against Allen, the driver of the car that hit plaintiff, but Urtis did not cause a summons to be placed. The statute of limitations expired and Urtis withdrew from the case. Plaintiff retained another attorney who filed an amended complaint against Allen and added a professional negligence action against defendants for their alleged failure to timely effect service on Allen. Plaintiff voluntarily dismissed that action. Plaintiff refiled the malpractice action and, on the eve of trial, moved to voluntarily dismiss the action again. The trial court granted plaintiff's motion, admonishing her that a second voluntary dismissal is a final disposition of the matter.

¶ 5 On the date plaintiff voluntarily dismissed her second action against defendants, she refiled the action for a third time. The trial court granted defendants' motion to dismiss the case with prejudice. The court also denied plaintiff leave to file an amended complaint, noting it

would be the third filing of the same action.

¶ 6 Plaintiff then filed a fourth suit against defendants, alleging professional malpractice, fraud and negligence. Defendants moved to dismiss the case with prejudice, arguing it constituted an impermissible fourth filing of the same action. Defendants also argued that plaintiff's suit was barred by the doctrine of *res judicata*. The trial court agreed and dismissed plaintiff's fourth complaint against defendants with prejudice.

¶ 7 Plaintiff filed three separate notices of appeal. On plaintiff's motion, we consolidated her appeals from the trial court's orders granting her motion to voluntarily dismiss the case for a second time and denying her leave to file a third amended complaint. See *Balakar*, Nos. 1-09-1606 & 1-09-2994 Cons. (2010). We denied plaintiff's motion to consolidate her third appeal (appeal No. 1-1-0581) with the appeals in *Balakar*. On our own motion, we dismissed this appeal for want of prosecution based on plaintiff's failure to file a record. Plaintiff filed a motion to reconsider, arguing the record was timely filed. We granted plaintiff's motion to reconsider and vacated our previous order dismissing the appeal after finding the record was filed as part of the record for the consolidated appeals in *Balakar*. Because plaintiff briefed the issue raised in this appeal in the briefs she filed under *Balakar*, we continue to rely on those briefs here.

¶ 8 Plaintiff argues that defendants committed fraud to dismiss her complaint by "us[ing] their legal skills to concoct a lie to undermine and frustrate [her] *** legal malpractice case against them[.]" Although plaintiff claims the trial judge colluded with defendants to perpetrate fraud and dismiss her complaint, she does not specify the fraud committed or how defendants

succeeded in dismissing her complaint. Plaintiff's argument is best illustrated in her own words:

“Attorney James Urtis’ concoction was calculated to defraud [her] ***, to intimidate her lawyer Lanre O. Amu, and to make this litigation prohibitively expensive.

To date, defendant lawyers have hidden under cover, no one has allowed a hearing to confront them on the bogus lie they made up ‘whole cloth’ to undermine [her] malpractice case against them. These are sophisticated lawyers who know the inner workings of the courts and were using and abusing the court system in their favor. *** All of plaintiff’s counsel’s cr[ies] of foul went on deaf ears to [the trial judge]. To date, these attorneys have escaped justice for the fraud perpetrated by their falsehood. When in fact they should face a fraud complaint and [be] made to compensate [her] for the injury and damages they caused by their fraud.”

Plaintiff also maintains defendants influenced the trial judge to “turn a blind eye and see things their way.”

¶ 9 Plaintiff’s appellate brief does not comply with Illinois Supreme Court Rule 341 (eff. July 1, 2008). Plaintiff’s brief includes a 26-page statement of facts which recounts the history of the case, raises legal arguments and expresses displeasure with the trial judge, but the statement fails to comply with Illinois Supreme Court Rule 341(h)(6) (eff. July, 2008). Also, in her argument section, plaintiff has failed to properly or informatively state the errors relied on for reversal or

present an organized and cohesive legal argument for this court's consideration. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Universal Casualty Co. v. Lopez*, 376 Ill. App. 3d 459, 465, 876 N.E.2d 273 (2007) (arguments not supported by relevant authority are waived). "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26, 441 N.E.2d 360 (1982). It is not the function of this court to act as an advocate or search the record for error. *XLP Corp. v. County of Lake*, 359 Ill. App. 3d 239, 256, 832 N.E.2d 480 (2005).

¶ 10 Plaintiff also refers in her brief to instances of alleged court misconduct occurring during in-chambers discussions. However, plaintiff has failed to include in the record a report of those proceedings, a bystander's report or an acceptable substitute from which we may ascertain the conduct of the court as required by Illinois Supreme Court Rule 323(a), (c) (eff. December 13, 2005). Plaintiff acknowledges that "[t]here is no record of any of [these]" discussions. Plaintiff claims this is because the trial judge was in collusion with defendants and refused to make a "balanced record." Plaintiff, as appellant, has the responsibility to provide a complete record on review. *Tekansky v. Pearson*, 263 Ill. App. 3d 759, 764, 635 N.E.2d 605 (1994). Absent such record, a reviewing court will presume that the circuit court's decision had a sufficient factual basis, and any doubt arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958 (1984).

¶ 11 In reaching this conclusion, we note that this is plaintiff's fourth action against defendants and there is nothing to show that the trial court erred in dismissing it.

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¶ 12 Affirmed.