SIXTH DIVISION
MAY 27, 2011

No. 1-10-0868

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LOIS JONES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	
SHILUM DAVID LI, M.D., and LOYOLA	)	
UNIVERSITY MEDICAL CENTER,	)	No. 07 L 1342
	)	
Defendants-Appellees,	)	
	)	
and	)	
	)	
NIKUNJ H. SHAH, M.D.,	)	Honorable
	)	Kathy M. Flanagan,
Defendant.	)	Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the court.
PRESIDING JUSTICE GARCIA and JUSTICE CAHILL concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion when it granted defendants' motion to vacate a default and ex-parte judgment and dismiss plaintiff's complaint when plaintiff, a non-lawyer, did not have standing to represent an estate *pro se*.

Plaintiff Lois Jones filed a *pro se* complaint for medical malpractice on behalf of her deceased mother, Clara Trask. After a default order was entered, plaintiff obtained a four million

dollar judgment against defendants, which the trial court subsequently vacated. The trial court then dismissed plaintiff's complaint, finding that plaintiff did not have standing to represent the estate of her mother *pro se*, because she was not a licensed attorney. Plaintiff claims that the trial court abused its discretion in vacating the default order and the award of judgment and that the complaint should not have been dismissed. We affirm.

I. BACKGROUND

Plaintiff Lois Jones filed a *pro se* complaint in her own name on November 12, 2002, claiming damages for medical malpractice to her deceased mother, Clara Trask. Plaintiff alleges in her complaint that defendants' Loyola University Medical Center, Shilum David Li, M.D., and Nikunj N. Shah, M.D., were negligent in their medical care and treatment of her mother. Although the complaint is in the name of Lois Jones, the body of the complaint states, "Lois Jones, individually and as special administrator of the estate of Clara Mae Trask, deceased."

On February 18, 2003, the case was dismissed for want of prosecution. Prior to that dismissal, the defendant's had filed motions for leave to appear, answer and otherwise plead; and to vacate any technical defaults. The motions were docketed for February 27, 2003, with notice to plaintiff. When the case was dismissed on February 18, 2003, the motions were not presented by defendants. On February 27, 2003, plaintiff filed a motion to vacate the dismissal. Defendants claim that plaintiff's motion to vacate was presented without giving notice to the defendants and the dismissal was vacated on the same date. Defendants also claim plaintiff did not provide defendants with a notice of the reinstatement order. However, on February 27, 2003, the circuit court entered defendant's prepared routine order giving them leave to appear and answer.

Plaintiff then filed interrogatories and a request to produce to be answered by defendants on March 23, 2003, which defendants claim they did not receive.

Again, on May 22, 2005, the complaint was dismissed for want of prosecution (DWP). On June 1, 2003, plaintiff again vacated the dismissal and set the matter for trial setting on July 29, 2005, at which time, the case was set for trial on August 22, 2005. Plaintiff's motion to default defendants was also set for August 22, 2005. Defendants claim they again did not receive notice of any of these events.

On August 22, 2005, the circuit court *sua sponte* entered an order appointing Lois Jones as the special administrator of her mother's estate. On August 22, 2005, defendants were found in default for failure to file their appearance or answer, and the case was set for prove-up of damages on the same day. Judgment was then entered against defendants for four million dollars. On August 30, 2005, Dr. Shah filed a motion to vacate the default and judgment pursuant to section 2-1301(e) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2004)), claiming that he was never served with summons. The other defendants also filed a motion to vacate the default and judgment.

In their motion to vacate, defendants claim that they never received a notice or motion to vacate the DWP set for February 27, 2003. In addition, they claim they never received any discovery. In addition, effective June 1, 2003, they moved suites within their same building and claim that they filed notices of change of address in all cases in which their attorneys had appeared.[1] Defendants claimed they never received the notice or motion for default and the

[1] Defendants had yet to file an appearance in this case.

mailing address on plaintiff's affidavit of mailing indicated that defendants' law firm was located in "Suite 2900" when they had already moved to Suite 3300. They claim the same occurred for the motion to vacate the DWP of April 22, 2005, and all motions and orders entered until they filed their motion to vacate the default and judgment. In addition, plaintiff's mailing affidavit indicated that the individual defendants were all mailed copies of all motions and notices of hearing.

On September 8, 2005, the default and judgment was vacated as to all defendants; and on September 14, 2005, an appearance and jury demand was filed for all defendants. Subsequently, the September 14th order was vacated and then re-entered on December 13, 2005. On October 5, 2004, all defendants filed motions to dismiss pursuant to section 2-619 and 2-615 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-619, 2-615 (West 2002). Their motions were based on the Healing Art Malpractice Act (735 ILCS 5/2-622 (West 2002)) and section 2.1 of the Wrongful Death Act (740 ILCS 180/2.1 (West 2002)). Defendants argued for a 2-619 dismissal on the ground that the special administrator had to be approved by the court in a timely manner in accordance with the Wrongful Death Act; and plaintiff now lacked the legal capacity to bring a Wrongful Death claim due to her failure to act in a timely manner. 735 ILCS 5/2-619 (West 2004).

Second, defendants claimed that plaintiff failed to include an affidavit from a health care professional showing that there is a reasonable and meritorious cause for the filing of the medical malpractice action as required by the Healing Art Malpractice Act. 735 ILCS 5/2-622 (West 2002). Third, defendants claimed that plaintiff, a non-lawyer, had no standing to represent the

estate. Fourth, defendants moved for dismissal of plaintiff's claim for intentional infliction of emotional distress and punitive damages. They claimed that plaintiff was specifically precluded from seeking punitive damages in a medical malpractice case under section 5/2-1115. 735 ILCS 5/2-1115 (West 2002). They also claimed that plaintiff could not pursue a claim for intentional infliction of emotional distress without factual allegations establishing that: (1) the conduct involved was truly extreme and outrageous; (2) the actor either intended that his conduct inflict severe emotional distress, or knew that there was at least a high probability that his conduct would cause severe emotional distress; and (3) the conduct did, in fact, cause *severe* emotional distress.

On March 19, 2007, plaintiff re-filed the same complaint and included a section 2-622 affidavit. On July 16, 2010, the complaint was dismissed on the basis that plaintiff lacked standing to represent an estate *pro se*. From the time of the order vacating the default on December 13, 2005, until the final order dismissing plaintiff's complaint on July 16, 2010, plaintiff filed numerous motions to vacate, clarify, or amend, always seeking to reinstate the August 22, 2005, judgment order. Plaintiff also filed three notices of appeal, all of which were dismissed for lack of jurisdiction, as well as a number of filings in the Illinois Supreme Court, including motions for supervisory orders and a petition for leave to appeal. All of her supreme court filings were either dismissed or denied.

On June 27, 2007, plaintiff voluntarily dismissed Dr. Shah as a defendant.

On February 6, 2008, attorney Michael Moore appeared on behalf of plaintiff, but plaintiff continued to file *pro se* motions. On April 9, 2008, Mr. Moore indicated that he was no

longer plaintiff's attorney and his appearance was stricken on May 21, 2008. On January 12, 2010, attorney Daryl R. Berry appeared, but plaintiff continued to file *pro se* motions. On February 9, 2010, plaintiff requested the court to withdraw Mr. Berry's appearance.

On February 23, 2010, Mr. Berry formally withdrew from the case, and then Plaintiff attempted to file a new appearance for Mr. Moore after the case was dismissed, which was denied. The case was also renumbered from 02 L 14299 to 07 L 1342 in 2007. On July 16, 2010, the trial court denied plaintiff's motion to reconsider. This appeal followed.

II. ANALYSIS

A. Plaintiff's Brief on Appeal

Defendants claim that plaintiff's appeal should be dismissed for failure to comply with Illinois Supreme Court Rule 341. Ill. S. Ct. R. 341 (eff. July 1, 2008).

According to Rule 341, an appellant's brief must contain, in the following order:

> "(1) A summary statement, entitled "Points and Authorities," of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear. Cases shall be cited as near as may be in the order of their importance.
>
> (2) An introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question.
>
> (3) A statement of the issue or issues presented for review, without detail or citation of authorities.
>
> (4) A statement of jurisdiction.
>
> ***

> (6) Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal. . .
>
> (7) Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. . . Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.
>
> (8) A short conclusion stating the precise relief sought, followed by the names of counsel as on the cover.
>
> (9) An appendix as required by Rule 342." Ill. S. Ct. R. 341 (eff. July 1, 2008).

It is within this court's discretion to strike an appellant's brief and dismiss his or her appeal for failure to comply with Supreme Court Rule 341. *Budzileni v. Dept. of Human Rights*, 392 Ill. App. 3d 422, 440 (2009); *People v. Thomas*, 364 Ill. App. 3d 91, 97 (2006); *In re Estate of Jackson*, 354 Ill. App. 3d 616, 628-39 (2004); *Marzano v. Dept of Employment Sec.*, 339 Ill. App. 3d 858, 861 (2003); *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51 (2003). However, the striking of an appellate brief, in whole or in part, is a harsh sanction and is appropriate only when procedural violations interfere with or preclude our review. *Budzileni*, 392 Ill. App. 3d at 440; *Thomas*, 364 Ill. App. 3d at 98. Consequently, we may, in the exercise of our discretion choose to address plaintiff's arguments. *See Lindsey v. Board of Education of City of Chicago*, 354 Ill. App. 3d 971, 983-84 (2004) (choosing to address plaintiffs' arguments despite plaintiffs' failure to cite to any pertinent legal authority); *Fender*, 347 Ill. App. 3d at 51 (finding that despite plaintiffs' failure to include an appendix and cite to relevant authority for their claims, dismissal for the violations was not mandatory because of the gravity of the allegations and the straightforward issues of law that governed the court's disposition).

Here, plaintiff has failed to include a "Points and Authorities" summary, a statement of jurisdiction, statement of facts, an argument that contains citations to legal authorities, and an appendix. Despite this blatant failure to adhere to the rules of our court, we choose to address some of plaintiff's arguments because we have the benefit of the record before us, as well as defendants' proper citation to the record on appeal. *Budzileni,* 392 Ill. App. 3d at 440 (choosing to review plaintiff's arguments despite plaintiff's noncompliance with Rule 341because defendant properly cited to record on appeal); *See also Burmac Metal Finishing Co. v. West Bend Mutual Ins. Co*., 356 Ill. App. 3d 471, 478 (2005) (choosing to review plaintiff's arguments despite plaintiff's noncompliance with Rule 341 because defendants have provided a summary of the relevant evidence in its response brief and the issues were simple).

B. Standard of Review

We review a circuit court's order granting a defendant's 2-1301 motion to vacate a default order and judgment under an abuse of discretion standard. *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 716 (2010); *Jackson v. Hooker*, 397 Ill. App. 3d 614, 618 (2010). We find an abuse of discretion only where no reasonable person would take the position adopted by the trial court; that is where the trial court acted arbitrarily or ignored recognized principles of law. *Jackson v. Bailey*, 397 Ill. App. 3d 546, 549 (2008).

We review *de novo* a circuit court's order granting a motion to dismiss. *White v. Phillips*, 405 Ill. App. 3d 190, 192 (2010); *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008); *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004). In considering a motion to dismiss, the circuit court accepts as true all well-pleaded facts and considers whether, in a light most

favorable to the plaintiff, those allegations are sufficient to state a claim upon which relief can be granted. *Beretta*, 213 Ill. 3d at 364. If a complaint fails to allege facts necessary for a plaintiff to recover, the complaint is inadequate, and the motion to dismiss should be granted. See *Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1059 (2002).

C. The Order Vacating the Default and Ex-Parte Judgment

Plaintiff contends that the trial court erred when it granted defendant's motion to vacate the default order and the ex-parte judgment. To vacate orders entered within a 30-day period, a litigant must move under section 2-1301 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1301 (West 2008); see, *e.g.*, *Jackson*, 397 Ill. App. 3d at 621 (citing *Stotlar Drug Co. v. Marlow*, 239 Ill. App. 3d 726, 728 (1993)). Section 2-1301 provides that a court may, in its discretion and before final order or judgment, set aside any default, and may on a motion filed within 30 days after the entry of the order set aside any final order or judgment upon any terms and conditions that shall be reasonable. 735 ILCS 5/2-1301(e) (West 2008). Therefore, within 30 days, a party has the right to seek relief from any nonfinal order of default entered in the case *or* from a final default judgment order. *See Jackson*, 397 Ill. App. 3d at 658.

The overriding consideration under this section is whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits. *Stotlar Drug Co. v. Marlow*, 239 Ill. App. 3d 726, 728-29 (1993). To determine whether substantial justice has been done, the court may consider factors such as the severity of the penalty to defendant as a result of the default judgment, and the attendant hardship on plaintiff if plaintiff is required to proceed to a trial on the merits. *Stotlar*

Drug, 239 Ill. App. 3d at 729. In the present case, eight days after the circuit court entered the default order and judgment, defendants filed motions for leave to appear and to vacate the default order and judgment. Then, twenty-three days later, defendants filed their appearance in the case. Thus, defendants properly sought relief from the default judgment within the 30-day framework provided in section 2-1301.

Furthermore, defendants claimed they were never notified of: (1) the reinstatement of the case; or (2) the August 22, 2005 default and judgment order awarding $2 million to plaintiff. *See Kacinski v. Giles*, 10 Ill. App. 3d 566 (1973) (finding that defendant was entitled to have default judgment set aside when plaintiff never gave notice of intent to obtain default judgment or notice that default was entered where damages reached $35,000).

In reviewing the record, we cannot say that no reasonable person would take the position adopted by the trial court, and we cannot say that the trial court acted arbitrarily or ignored recognized principles of law in vacating the default and the ex-parte judgment.

D. Standing

Plaintiff argues that she had proper standing to pursue her mother's claims. The circuit court found that plaintiff had "no standing to pursue [a] pro se claim on behalf of an estate." We agree.

It is well-settled in Illinois that only "persons duly admitted to practice law in this state may appear on behalf of other persons." 705 ILCS 205/1 (West 2007); *See Blue v. People of the State of Illinois*, 223 Ill. App. 3d 594, 596 (1992) (noting that under "Ill. Rev. Stat.1989, ch. 13, par. 1, 'one not duly authorized to practice law may not represent another in a court of law.' ").

Therefore, where a person undertakes the unauthorized representation of another party, the action must be dismissed. *Blue*, 223 Ill. App. 3d at 596.

The dispositive case on this issue is *Ratcliffe v. Apantaku*, 318 Ill. App. 3d 621 (2008), where we held that a *pro se* plaintiff could not represent an estate "because claims for both wrongful death and survival actions are brought in a representative capacity." *Ratcliffe*, 318 Ill. App. 3d at 626-27. In *Ratcliffe*, a daughter filed a medical malpractice claim on behalf of her mother's estate *pro se*. We found that the daughter's claims were being brought for the damages to the decedent prior to death and as a result of the death. Thus, the claims were being brought by the daughter in a representative capacity for the benefit of the decedent's estate. *Ratcliffe*, 318 Ill. App. 3d at 626-27. Additionally, we noted that medical malpractice and wrongful death claims are "complex cases that require the expertise of an attorney." *Ratcliffe*, 318 Ill. App. 3d at 627.

Here, plaintiff, like the daughter in *Ratcliffe*, brought a medical malpractice claim on behalf of her mother's estate *pro se*. Therefore, plaintiff's claims are being brought in a representative capacity. Furthermore, plaintiff has proceeded *pro se* in this case for nine years. Though plaintiff retained counsel on two separate occasions, she filed motions for their withdrawal almost immediately after they had filed their appearances. During their brief appearances as attorneys of record for plaintiff, these attorneys never filed any pleadings or took any actions on behalf of plaintiff.[2] At the time of the entry of the dismissed order, there were no

[2] Attorney Michael Moore may have helped plaintiff or may have filed a supplement to plaintiff's motion to reconsider.

attorneys representing the estate, only plaintiff acting *pro se*.

E. Plaintiff's Other Claims

Plaintiff argues that "all orders and motions of the appellees for the defendant, Li and Loyola is [*sic*] requested to be reviewed in Case No. 07 L 1342 and investigated for Error of Law and error in administration of the Law Division Court of Cook County." Later, plaintiff argues that the trial court in "accordance to law and the Constitution, should have dismissed (07 L 1342) as to Def./Appellee SHAH, Only." Again, plaintiff makes no effort to cite to the record or to provide any pertinent legal authority to support her arguments. Plaintiff does not even state any reason as to why her suit should have been dismissed against only Defendant Shah. As a result, we will not consider this argument because it is waived. See *Roiser v. Cascade Mountain, Inc.*, 367 Ill. App. 3d. 559, 568 (2006) (by failing to offer supporting legal authority or "any reasoned argument," plaintiffs waived consideration of their argument).

We also will not review plaintiff's arguments regarding whether Judge Maddox should have recused himself from hearing her case due to alleged bias and prejudice against her. We find these arguments nonproductive; and they are also waived since plaintiff has not provided any citations to the record or provided any facts or legal authority to support her claims for relief. *Roiser*, 367 Ill. App. 3d. at 568 (2006).

III. CONCLUSION

We cannot find that the circuit court abused its discretion when it vacated the default and ex-parte judgment. Additionally, we cannot reverse the circuit court's order granting defendants' motion to dismiss because plaintiff is not a licensed attorney capable of bringing claims for an

estate in a representative capacity.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.