

No. 1-12-3196

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

ON TAI,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 M1 725033
)	
WEN XUAN,)	Honorable
)	Patrick J. Sherlock,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶1 *Held:* The trial court did not abuse its discretion when it found *pro se* defendant did not present his petition for substitution of judge for cause with reasonable notice. The trial court's award of attorneys fees and costs after the dismissal of defendant's third and fourth appeals to plaintiff is affirmed. However, where the record demonstrated certain costs were less than what was determined by the court and that one fee was charged to defendant twice, the award is modified to reflect the accurate amount.

¶2 Defendant-appellant, Wen Xuan, appeals an award of attorneys fees and costs to plaintiff-appellee, On Tai. Defendant also appeals an order striking his "motion" for substitution of judge for cause. For the reasons which follow we affirm the orders of the trial court, but modify the

amount of the award.

¶3

BACKGROUND

¶4 The parties in this matter have filed numerous motions and petitions throughout the litigation as well as numerous appeals. We now turn to set forth only the facts relevant to this appeal.

¶5 On September 26, 2007, plaintiff filed a forcible entry and detainer action against defendant for his failure to pay rent for the premises located at 2159 B. South China Place in Chicago. On October 2, 2007, defendant was served with process by the Cook County Sheriff. On October 12, 2007, a default order for possession was entered by the trial court against defendant. Plaintiff was awarded the amount of \$4,230.50 plus costs.¹ The matter was continued for plaintiff to present a petition for attorneys fees.² On October 24, 2007, plaintiff was awarded \$824.00 in attorneys fees. On October 26, 2007, defendant filed a motion to vacate "all orders and judgments that were entered by this [c]ourt," which was subsequently denied on November 9, 2007.

¶6 On November 13, 2007, defendant filed his first notice of appeal. Upon plaintiff's motion, the appeal was dismissed by this court on February 28, 2008.

¶7 Beginning on April 10, 2008, plaintiff initiated supplemental proceedings to enforce the judgment in the circuit court. Plaintiff filed numerous citations to discover assets against defendant with the circuit court. Litigation over the citations was contentious, with defendant filing multiple motions to dismiss the citations, motions to vacate the order of October 12, 2007, and motions for sanctions pursuant to Illinois Supreme Court Rule 137. Defendant failed to

¹ The order does not indicate the amount of costs.

² Plaintiff's petition for fees is not included in the record on appeal. Defendant asserts he never received a copy of this petition.

prevail on any of these motions.

¶8 On March 13, 2009, plaintiff filed a petition for additional attorneys fees and costs which included costs associated with defendant's first appeal, attorneys fees incurred since the dismissal of defendant's first appeal, and costs of the supplemental proceedings, totaling \$4,130.25. On June 18, 2009, after the matter was fully briefed and argued, the trial court granted plaintiff's petition for additional attorneys fees and costs in the amount of \$2,856.25. The order did not indicate why plaintiff's requested fees and costs were reduced.

¶9 On June 22, 2009, defendant filed a motion to vacate the order of possession pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)). On June 29, 2009, the trial court denied defendant's motion to vacate and also indicated that "Plaintiff's request for Rule 137 sanctions is denied" and "Plaintiff's request for attorneys fees is denied." The record does not indicate when plaintiff's request was made nor does it contain a petition by plaintiff for sanctions or attorneys fees.

¶10 On August 21, 2009, the trial court entered a satisfaction and release of judgment relating to the October 12, 2007, order for possession.

¶11 On September 21, 2009, defendant filed his second notice of appeal. On November 5, 2010, after the matter was fully briefed, this court dismissed the appeal by summary order.

¶12 On January 18, 2011, plaintiff filed a petition in the circuit court for additional attorneys fees and costs in the amount of \$5,240 which were incurred while defending the second appeal. On January 31, 2011, the motion was granted, awarding plaintiff an additional \$4,399.50 in attorneys fees and costs of \$15.00. The order did not indicate why the requested amount was reduced.

¶13 On March 2, 2011, defendant filed his third notice of appeal, contesting the order entered

January 31, 2011.

¶14 On April 5, 2011, plaintiff filed an alias citation to discover assets against defendant, ordering him to appear on April 27, 2011, regarding the judgment entered on January 31, 2011. Defendant was personally served with the citation on April 10, 2011. On April 27, 2011, defendant did not appear in court and a rule to show cause was issued against him. On June 2, 2011, defendant failed to appear in the circuit court and another rule to show cause was issued against defendant returnable on July 15, 2011.

¶15 On July 1, 2011, defendant filed his fourth notice of appeal, contesting the order entered on June 2, 2011. On July 19, 2011, plaintiff filed with the circuit court a motion for issuance of a body attachment. Defendant presented a motion to strike plaintiff's motion for issuance of a body attachment filed July 19, 2011, which the court granted on August 1, 2011.³ The trial court continued the matter to September 12, 2011, for a hearing on plaintiff's petition for rule to show cause for defendant's failure to respond to the citation.

¶16 On September 12, 2011, the trial court entered an order requiring defendant to post a bond in the amount of \$6,600 and entered and continued the petition for rule to show cause. The record does not indicate why the trial court ordered defendant to post a bond.

¶17 On September 27, 2011, the trial court dismissed the petition for rule to show cause against defendant, indicated defendant had posted the \$6,600 bond, and that "[a]ll supplemental proceedings to this cause are stayed pending the appeal."

¶18 On October 13, 2011, both the third and fourth appeals were dismissed by this court. On December 20, 2011, the mandate was filed in the circuit court.

¶19 On December 21, 2011, plaintiff filed a "combined petition for additional attorneys fees

³ Defendant's motion is not included in the record.

and costs and motion for turnover of funds." Plaintiff stated it was entitled to attorneys fees and costs based on section 15 of the lease. The petition asserted that since February 7, 2011, plaintiff had incurred attorneys fees and costs related to postjudgment proceedings, including the issuance of citations to discover assets and rules to show cause, and defending the third and fourth appeals. Plaintiff further requested the bond posted by defendant be turned over to him in satisfaction of the amounts due. Attached as an exhibit to the motion was a copy of an unsigned lease between the parties, which stated:

"Lessee [defendant] shall pay on demand all Lessor's [plaintiff's] costs, charges and expenses, including fees of attorneys, agents and others retained by Lessor, incurred in enforcing any of the obligations of Lessee under this lease or in any litigation, negotiation or transaction in which Lessor shall, without Lessor's fault, become involved through or on account of this lease."

Also attached to the motion was the affidavit of attorney Mario A. Sullivan, which stated that pursuant to the lease, the "Landlord is entitled to recover all of its costs, charges, expenses, including fees of attorneys, incurred by the Landlord in enforcing Defendants' [sic] obligations under the subject-lease * * *." Sullivan averred the total costs incurred were \$416.08 and total attorneys fees were \$2,961.25. Plaintiff further attached an invoice detailing the hours spent on the matter.

¶20 On January 5, 2012, the trial court set a briefing schedule which provided defendant 21 days to respond and plaintiff 14 days to reply to the petition for additional attorneys fees. The matter was set for hearing on February 16, 2012. Also on January 5, 2012, the mandate, which was previously issued on December 20, 2011, was recalled.

¶21 On January 10, 2012, while the mandate was recalled, defendant filed a "petition for

relief from a final order for money entered on 01/31/2011 because plaintiff fraudulently concealed the fact & made some grounds for relief to be sought pursuant to 735 ILCS 5/2-1401 and numerous case law precedents" in the circuit court. On January 24, 2012, the trial court continued defendant's petition for hearing on February 3, 2012, as plaintiff's counsel was not present in court.

¶22 On January 25, 2012, defendant filed his response to plaintiff's petition for additional attorneys fees and costs. Defendant disagreed with plaintiff's characterization of the facts and argued there was a reason to have the petition "stricken with prejudice." Defendant argued: (1) the petition was untimely because it should have been filed before October 27, 2011, pursuant to Illinois Supreme Court Rule 374(c); (2) section 40 of the rider to the lease was in conflict with section 15 of the lease and did not entitle plaintiff to attorneys fees; (3) plaintiff's petition is barred by *res judicata* as the June 29, 2009, order denied plaintiff attorneys fees; (4) the petition is untimely as it should have been filed "within 30 days of entry of order"; and (5) this cause should be stayed and the petition "stricken with prejudice" because the appeal is pending in "the supreme court." A copy of the rider to the lease was not attached to defendant's response.

¶23 On February 6, 2012, after hearing arguments, the trial court denied defendant's petition for relief from the order entered on January 31, 2011. The trial court further barred defendant "from filing any additional motions before this court for matters pertaining to the underlying action" and "further [found] that the order of this court on August 21, 2009, stands." Plaintiff's December 21, 2011, petition for additional attorneys fees and costs remained pending, as it was not scheduled for a hearing until February 16, 2012.

¶24 On February 8, 2012, plaintiff filed his reply regarding his petition for additional attorneys fees and costs. Plaintiff asserted defendant's response "contained numerous

extraneous, irrelevant, and misstated facts" and irrelevant citations to Illinois Supreme Court Rules and statutes. Plaintiff further stated defendant misinterpreted the meaning of *res judicata*.

¶25 On February 16, 2012, plaintiff's December 21, 2011, petition for additional attorneys fees and costs was scheduled for hearing. The trial court, however, entered and continued plaintiff's petition for additional attorneys fees and costs for hearing to May 10, 2012.

¶26 On March 7, 2012, defendant filed a motion for reconsideration of the trial court's February 6, 2012 order. On March 20, 2012, the trial court entered and continued the motion to April 5, 2012. The motion was not heard on April 5, 2012, and was again entered and continued. On April 24, 2012, the trial court entered an order stating "Defendant Xuan's motion for reconsideration of 2/6/12 order is denied."

¶27 On May 10, 2012, the trial court entered and continued plaintiff's petition for additional attorneys fees and costs to June 8, 2012. On May 15, 2012, the mandate regarding defendant's third and fourth appeals was filed by the clerk of the appellate court with the circuit court. On June 8, 2012, the trial court entered an order granting plaintiff's petition for additional attorneys fees and costs for \$6,216.25 in fees and \$416.08 in costs pursuant to an updated attorney fee affidavit reflecting the same amounts. The trial court further ordered the clerk of the circuit court to turnover the funds it was holding to plaintiff "immediately to satisfy the judgment of January 31, 2011, and remaining funds to be applied to today's judgment."

¶28 On July 9, 2012, defendant filed a motion to reconsider the order of June 8, 2012, in which he asserted plaintiff's petition for attorneys fees and costs relating to the third and fourth appeals should have been presented in the appellate court pursuant to Illinois Supreme Court Rule 374(c); that the costs awarded to plaintiff were incorrect and unsupported by receipts; that \$187.50 of the attorneys fees and costs included in the award had already been awarded to

plaintiff in the January 31, 2011, order; that the trial court did not have jurisdiction to grant plaintiff's petition; and that the trial court did not allow him to argue against plaintiff's petition. When the motion was presented to the trial court on August 16, 2012, it was entered and continued to September 27, 2012, without a briefing schedule.

¶29 On September 27, 2012, at 9:15 a.m., defendant filed a "motion for substitution of judge for cause" which was noticed for September 27, 2012, at 9:30 a.m. and indicated defendant "will serve a copy of the foregoing on the attorney of record by either faxing it * * * or personal delivery on or about September 27, 2012." The trial court struck the motion for substitution of judge for cause based on improper notice. The motion for reconsideration, which was previously filed with the circuit court, was denied without any reason stated in the order.

¶30 On October 29, 2012, defendant timely filed a *pro se* notice of appeal.⁴

¶31 ANALYSIS

¶32 Defendant contends the December 21, 2011, petition for attorneys fees and costs was granted in error because: (1) pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012)) plaintiff was not entitled to attorneys fees and costs; (2) the trial court lacked jurisdiction to enter the order because it violated Illinois Supreme Court Rule 374(c) (eff. Feb. 1, 1994) and was filed "about 40 days later than the time it should have been filed"; (3) pursuant to section 2-619(a)(4) of the Code the order was barred by the doctrine of *res judicata* because on June 29, 2009, the trial court denied plaintiff's request for attorneys fees and on August 21, 2009, an order was entered indicating plaintiff had received full satisfaction and payment; (4) pursuant to section 12-716(a) of the Code and Illinois Supreme

⁴ The thirtieth day upon which defendant was required to file his appeal fell on a Saturday in 2012.

Court Rule 369(b) (eff. July 1, 1982) costs were included in the petition that were improperly incurred by plaintiff; (5) the petition was barred by the doctrine of *res judicata* based on the June 29, 2009, order; (6) at the June 8, 2011, hearing on the petition defendant was "immediately interrupted and his request then directly denied by Judge Sherlock, which entirely deprived Defendant of his equal protection right"; (7) "Judges in circuit court had abusively used their discretion, repeatedly violated the either Court Rules or case law precedents & failed to guarantee fairness and equality in the treatment of minority Defendant Pro Se when ruling & granting [the petition]"; (8) the trial court lacked jurisdiction to enter orders after he filed his third notice of appeal on March 2, 2011; (9) the trial court exhibited "bias & prejudice against Defendant pro se during the matter"; and (10) "under the principles of equity and fairness" the matter requires reversal.

¶33

A. Standard of Review

¶34 Trial courts have broad discretionary powers when it comes to awarding attorneys fees, and its decision will not be reversed absent an abuse of discretion. *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314 (2007). In addition, a reviewing court will not disturb a trial judge's determination as to the sufficiency of the notice for a motion to substitute judge absent an abuse of discretion. *Koch v. Carmona*, 268 Ill. App. 3d 48, 57-58 (1994).

¶35

B. Inadequacy of Record

¶36 We note that defendant failed to provide this court with reports of the various proceedings. In the absence of a report of proceedings, Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) authorizes a bystander's report, and Illinois Supreme Court Rule 323(d) (eff. Dec. 13, 2005) authorizes an agreed statement of facts. Neither of these alternatives has been provided to us in this case. It is defendant's burden as appellant to preserve the trial evidence and

to present a sufficiently complete record of the trial proceedings to support a claim of error on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we must presume that the trial court's decisions are in conformity with the law and have a sufficient factual basis. *Id.* at 392. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.*

¶37

C. Forfeiture

¶38 We address the contentions made by both parties that the briefs do not conform to our supreme court rules. Plaintiff contends that defendant's brief violates Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) by setting forth "facts that are argumentative and/or contain comments, are not stated fairly or accurately, and are not relevant" to this appeal. Defendant asserts plaintiff failed to set forth arguments supported by citation to authority or to set forth the pages in the record relied upon as required by Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013).

¶39 We acknowledge the fact that defendant is proceeding in this appeal *pro se*. This fact, however, does not excuse defendant from following our supreme court rules, as "*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). "Our supreme court's rules are mandatory rules of procedure, not mere suggestions." *Menard v. Illinois Workers' Compensation Commission*, 405 Ill. App. 3d 235, 238 (2010). The purpose of Rule 341 is to require the parties to present clear and orderly arguments so that the reviewing court may ascertain and dispose of the issues involved. *Collier v. Avis Rent a Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993). Rule 341(h)(7) states the argument section of the brief "shall contain the contentions of the

appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Feb 6, 2013). Thus, to the extent an issue is unsupported, undeveloped, or incoherent it fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is, therefore, forfeited. *JPMorgan Chase Bank, N.A. v. East-West Logistics, L.L.C.*, 2014 IL App (1st) 121111, ¶ 58.

¶40 Further, we agree with defendant that plaintiff's brief sets forth no citation to authority in support of his arguments. In his entire brief plaintiff references only two cases and neither support the main portions of his argument. Notably, one case plaintiff cites, *Elder v. Bryant*, 324 Ill. App. 3d 526 (2001), states "[c]ontentions that are supported by some argument, yet lack citations to authority, do not meet the requirements of Rule 341(e)(7)." *Id.* at 533 (citing a prior version of what is now Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013)). We find that proposition applies to both plaintiff's and defendant's briefs. Accordingly, and as previously discussed, where either party fails to support his argument with citation to authority, we find them forfeited as noted herein.

¶41 We find the following arguments raised by defendant regarding the December 21, 2011, petition for attorneys fees and costs to be forfeited: (1) that pursuant to section 2-619(a)(9) plaintiff was not entitled to attorneys fees and costs; (2) pursuant to section 2-619(a)(4) the trial court improperly denied plaintiff's request for attorneys fees because an order had already been entered on August 21, 2009, indicating plaintiff had received full satisfaction and payment; (3) pursuant to section 12-716(a) the trial court improperly granted costs to plaintiff; (4) the petition was barred by the doctrine of *res judicata* based on the June 29, 2009, order; (5) at the June 8, 2011, hearing on the petition defendant was "immediately interrupted and his request then directly denied by Judge Sherlock, which entirely deprived Defendant of his equal protection

right"; (6) "Judges in circuit court had abusively used their discretion, repeatedly violated the either Court Rules or case law precedents & failed to guarantee fairness and equality in the treatment of minority Defendant Pro Se when ruling & granting [the petition]"; (7) the trial court exhibited "bias & prejudice against Defendant pro se during the matter"; and (8) "under the principles of equity and fairness" the matter requires reversal.

¶42 "[I]t is well established that a reviewing court is not 'simply a depository in which the appealing party may dump the burden of argument and research.' " *Batson v. Oak Tree, Ltd.*, 2013 IL App (1st) 123071, ¶ 41 (quoting *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26 (1982) (holding that plaintiff's failure to cite any authority in support of his three-page argument forfeited the claim)). Here, defendant has failed to present clear, coherent arguments with appropriate citations to authority as is mandatory according to our supreme court rules as to the arguments listed on this basis. Accordingly, we find these arguments are forfeited.

¶43 Additionally, plaintiff contends that defendant has forfeited a majority of his arguments on appeal because they were raised previously in his appellate brief on his third appeal. Plaintiff asserts, without any citation, that because these issues were raised previously on appeal and that the appeal was subsequently dismissed, defendant cannot now raise these same issues in the current appeal.

¶44 "[I]t is well settled that no question which was raised or could have been raised in a prior appeal on the merits can be urged on subsequent appeal and those questions not raised are waived." *Anest v. Bailey*, 265 Ill. App. 3d 58, 62 (1994). However, defendant's arguments, for the most part, are regarding the June 8, 2012, and September 27, 2012, orders which were not the subject of the third and fourth appeals and in fact were entered after the third and fourth appeals were dismissed. Therefore, we do not see how any issue raised by defendant regarding these

orders would be forfeited as plaintiff suggests. Accordingly, we turn to address defendant's remaining contentions regarding the propriety of the award of attorneys fees and costs to plaintiff.

¶45 D. Jurisdiction

¶46 Defendant contends that the trial court lacked jurisdiction to enter any orders after he filed his March 2, 2011, notice of appeal (the third appeal). We, however, lack jurisdiction to consider this argument or any of defendant's other arguments as they relate to orders not specified in his current notice of appeal. See *Filliung v. Adams*, 387 Ill. App. 3d 40, 48 (2008) (citing *People v. Smith*, 228 Ill. 2d 95, 104 (2008)).

¶47 Illinois Supreme Court Rule 303(b)(2) provides that the notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. June 4, 2008). "[O]nce the judgment or part is named, the 'notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice.'" *Filliung*, 387 Ill. App. 3d at 48 (quoting *Smith*, 228 Ill. 2d at 104). "[A] notice of appeal will confer jurisdiction on an appellate court if the notice, when considered as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal." *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433-34 (1979). The notice of appeal, however, is to be liberally construed. *Id.* at 433.

¶48 Defendant's notice of appeal seeks review of the orders of June 8, 2012, and September 27, 2012. The June 8, 2012, order granted plaintiff's petition for attorneys fees and costs and the September 27, 2012, order denied defendant's motion to reconsider the court's order of June 8, 2012, and also struck defendant's motion for substitution of judge for cause. Liberally construed,

the notice of appeal notified plaintiff that defendant was seeking a review of these orders and proceedings related to them. The remainder of the orders defendant seeks to have us review were entered between April 27, 2011, and May 10, 2012, and surround the January 31, 2011, order awarding plaintiff attorneys fees and costs and its subsequent enforcement. None of these orders relate to the award of attorneys fees pursuant to the December 21, 2011, petition.

Because defendant failed to specify these orders in the notice of appeal according to Rule 303(b)(2), we lack jurisdiction to review the orders entered between April 27, 2011, and May 10, 2012. Accordingly, we will only consider properly raised arguments regarding plaintiff's December 21, 2011, petition for attorneys fees and costs and the June 8, 2012, order striking defendant's motion for substitution of judge for cause.

¶49 E. The December 21, 2011, Petition for Attorneys Fees and Costs

¶50 Defendant raises the following issues regarding the propriety of the trial court's order granting plaintiff's December 21, 2011, petition for attorneys fees and costs: (1) whether the trial court had jurisdiction to consider the petition in light of Illinois Supreme Court Rule 369(b) (eff. July 1, 1982); (2) whether the petition was untimely; and (3) whether the trial court properly calculated the attorneys fees and costs. We address each issue in turn.

¶51 1. Whether the Trial Court had Jurisdiction to Consider the Petition

¶52 Defendant asserts the trial court lacked jurisdiction to hear the December 21, 2011, petition for attorneys fees and costs because the mandate as to the third and fourth appeal had not been filed in the circuit court pursuant to Illinois Supreme Court Rule 369(b) (eff. July 1, 1982).

Rule 369(b) provides in full:

"(b) Dismissal or Affirmance. When the reviewing court dismisses the appeal or affirms the judgment and the mandate is filed in the circuit court, enforcement of the

judgment may be had and other proceedings may be conducted as if no appeal had been taken." Ill. S. Ct. R. 369(b) (eff. July 1, 1982).

"The appellate court's mandate is the transmittal of the judgment of the reviewing court to the circuit court and reverts the trial court with jurisdiction." *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1035 (2001). "[A] trial court *may not rule* on a petition that is filed before the appellate court issues its mandate *if the petition involves issues that were presented to the appellate court for review.*" (Emphasis added.) *Id.* Additionally, the phrase "other proceedings" found in Rule 369(b) "contemplates only those proceedings which are consistent with the entry and enforcement of the final judgment." *Id.*

¶53 In the present case, the mandate regarding defendant's third and fourth appeals was filed on December 20, 2011. Plaintiff's petition for attorneys fees and costs was filed on December 21, 2011. On January 5, 2012, however, the appellate court recalled its mandate. On that same day, the trial court entered a briefing schedule for plaintiff's petition for fees. On May 15, 2012, the mandate was filed with the circuit court regarding the dismissal of defendant's third and fourth appeals. On June 8, 2012, the trial court granted plaintiff's petition. As the trial court did not rule on plaintiff's petition until after the mandate was filed on May 15, 2012, it had jurisdiction to enter the June 8, 2012, order. In addition, the petition for attorneys fees and costs did not involve an issue presented to the appellate court for review, as it sought fees incurred defending the third and fourth appeals and enforcing the judgment after the appeals were filed. Accordingly, the trial court had jurisdiction to enter the June 8, 2012, order.

¶54 2. Whether the Petition was Untimely

¶55 Defendant contends the December 21, 2011, petition for attorneys fees and costs was untimely as it was filed more than 30 days after the appeal was dismissed. Defendant relies

solely on *Herlehy v. Marie V. Bistersky Trust Dated May 5, 1989*, 407 Ill. App. 3d 878 (2010), for the proposition that plaintiff was required to file its request for appellate fees and costs within 30 days of the appellate court's dismissal.

¶56 The facts of *Herlehy* surrounded an action for construction of a trust agreement, breach of fiduciary duty against LaGrange Bank, and a claim of unjust enrichment against the residual beneficiaries. *Id.* at 879. We considered whether the trial court erred when it found it lacked jurisdiction to hear LaGrange Bank's motion for reimbursement of attorneys fees because the motion was untimely filed. *Id.* at 898. In *Herlehy*, the trial court granted defendant LaGrange Bank's motion to dismiss with prejudice on June 17, 2008, finding LaGrange Bank had no duty to amend the trust at issue. *Id.* On December 2, 2008, the trial court granted LaGrange Bank's request to insert Rule 304(a) language in the June 17, 2008, order. *Id.* at 898. On July 22, 2009, LaGrange Bank filed a petition for attorneys fees in the underlying action pursuant to trust documents. *Id.* at 888. We concluded the petition for attorneys fees was untimely because the trial court's June 17, 2008, order became a final order on December 2, 2008, when the Rule 304(a) language was added. As a result, the litigation between LaGrange Bank and plaintiffs was terminated. *Id.* at 899. Therefore, LaGrange Bank had 30 days from the entry of the December 2, 2008, order to file its petition for attorneys fees. *Id.* Because LaGrange Bank failed to file within 30 days, the trial court lacked jurisdiction to hear the petition. *Id.* at 900.

¶57 The present case, however, is factually distinguishable from *Herlehy*, as the procedural postures of the two cases are inapposite. Where *Herlehy* involved a petition for attorneys fees resulting from the underlying cause of action, here, plaintiff's December 21, 2011, petition sought attorneys fees and costs resulting from the dismissal of defendant's third and fourth appeals. Additionally, in *Herlehy*, we concluded plaintiffs' litigation against LaGrange Bank was

terminated when the Rule 304(a) language was added to the order dismissing LaGrange Bank with prejudice. Here, the supplementary proceedings were not terminated, and were, in fact, ongoing. Defendant provides no other support for his contention that the petition for attorneys fees must be filed within 30 days of the appellate court's dismissal. Accordingly, we conclude the motion was not untimely filed.

¶58 3. Improper Calculation of Attorneys Fees and Costs

¶59 Defendant also claims plaintiff falsely represented the costs of filing the alias citation and the special process server fee. Specifically, defendant asserts the cost of the alias citation was \$6.00 not \$9.00 as the affidavit stated; the special process server fee was " '\$80.00,' '\$145.00' & then '\$95.00,' which were neither approved by any Court Order nor supported by any receipts ***"; and that defendant was double billed because plaintiff's fees for December 18, 2009, in the amount of \$187.50 were granted in a prior petition.

¶60 "While the trial court has broad discretion in determining the 'reasonable compensation' to be allowed an attorney, its award will be altered where the determination is an abuse of discretion." *In re Estate of Johnson*, 219 Ill. App. 3d 962, 967 (1991) (quoting *In re Estate of Enos*, 69 Ill. App. 3d 129, 131-32 (1979)).

¶61 Plaintiff's affidavit in support of attorneys fees and costs indicated an "Alias Citation to Discover Assets-Defendant" cost \$9.00. Attached to plaintiff's affidavit was a receipt dated April 27, 2011, in the amount of \$6.00 for "Alias Citation." Accordingly, plaintiff sought to overcharge defendant by \$3.00 for the cost of the alias citation and the trial court abused its discretion in awarding \$9.00 instead of \$6.00 to plaintiff for this charge.

¶62 We now turn to address defendant's argument that the process server fees were improper because plaintiff failed to have these fees approved in advance by the court. Defendant fails to

support this contention with any citation to authority in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). In addition, due to the fact we lack a record of proceedings, the trial court's award of these costs to plaintiff indicates it considered them to be reasonable. See *Bartsch v. Gordon N. Plumb, Inc.*, 138 Ill. App. 3d 188, 205 (1985) (finding, in absence of a record of proceedings, it is presumed the trial court's decision to award attorneys fees was supported by sufficient proof). Accordingly, we find the trial court did not abuse its discretion in granting these costs relating to the special process server.

¶63 Lastly, defendant asserts he was double billed in the amount of \$187.50, for attorneys fees incurred on December 18, 2009. The attorney's invoice attached to the December 21, 2011, petition states this charge was for "Draft and file Response to Defendant's Motion for Approval of Filing 44 Documents on a final list of contents of the supplemental record." This entry refers to defendant's second notice of appeal, which was filed on September 21, 2009. A review of the record indicates this item was included in plaintiff's petition for attorneys fees and costs which was granted on January 31, 2011. Accordingly, we find the trial court abused its discretion when it awarded this charge a second time.

¶64 For the reasons stated, we therefore modify the award of attorneys fees and costs pursuant to our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) by decreasing the award of attorneys fees to \$6,028.75 and costs to \$413.08. See *In re Estate of Johnson*, 219 Ill. App. 3d at 967-8 (modifying attorneys fees pursuant to Rule 366(a)(5)).

¶65 F. The Petition to Substitute Judge for Cause

¶66 Defendant contends the trial court erred in denying his "motion to substitute judge for cause" because the trial court did not allow a hearing on the matter and because the trial court

was biased against him.⁵ For the reasons which follow, we conclude defendant's position is unsupported by the record, as the record establishes the trial court struck the petition because it was improperly noticed.

¶67 Each party in a matter is entitled to file a petition for substitution of judge for cause. 735 ILCS 5/2-1001(3)(i), (ii) (West 2012); see *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 28 (cautioning the "bench and bar" not to bring "motions" to substitute a judge for cause). There are, however, requirements for filing such a petition: "[e]very application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant." 735 ILCS 5/2-1001(3)(ii) (West 2012). Such a petition may be made in the court in which the case is pending with "reasonable notice of the application having been given to the adverse party or his or her attorney." 735 ILCS 5/2-1001(b) (West 2012). "Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition." 735 ILCS 5/2-1001(3)(iii) (West 2012). However, "a party's right to have a petition for substitution of judge heard by another judge is not automatic." *In re Estate of Wilson*, 238 Ill. 2d 519, 553 (2010); *Deutsche Bank National Trust Company v. Nichols*, 2013 IL App (1st) 120350, ¶ 12. A judge may deny a petition without referring it to another judge if it fails to meet threshold requirements. *In re Estate of Wilson*, 238 Ill. 2d at 567. Specifically, the trial court may deny the petition if it: (1) was not timely filed; (2) failed to include an affidavit; or (3) alleged bias not stemming from an extrajudicial source. *Id.* "It is well settled that a trial court may deny a

⁵ We note that the order at issue did not deny defendant's "motion to substitute judge for cause," but instead struck it. The order of which defendant complains states in pertinent part: "Motion for substitution of judge is stricken not having been properly noticed up by the petitioner/movant."

motion for substitution of judge if reasonable notice has not been given to the adverse party.

[Citation.] What constitutes reasonable notice depends on the facts and circumstances of each case, and a trial judge's determination as to the sufficiency of notice will not be disturbed absent an abuse of discretion. [Citations.]" *Koch*, 268 Ill. App. 3d at 57-58.

¶68 In the instant case, the trial court found that the notice provided was improper. A review of the record reveals defendant's petition was filed at 9:15 a.m. on September 27, 2012. In addition, the petition was noticed to be heard at 9:30 a.m. on September 27, 2012. Further, the notice of the petition indicated defendant "*will* serve a copy of the foregoing on the attorney of record by *either* faxing it * * * or personal delivery on or about *September 27, 2012*." (Emphasis added.) Based on the record, we cannot say the trial court abused its discretion in striking defendant's petition. See *id.* (finding notice of the motion 24 hours prior to the presentment of the petition for substitution of judge was unreasonable under the circumstances).

¶69

CONCLUSION

¶70 For the aforementioned reasons we affirm the orders of the circuit court but modify the award of attorneys fees and costs to reflect a total amount of \$6,028.75 in attorneys fees and \$413.08 in costs.

¶71 Affirmed as modified.