SECOND DIVISION
June 30, 2017

No. 1-15-1548

GINA SCOZZAFAVE, Petitioner, v. MARK KODLOWSKI, Respondent, (Eric C. Onyango, Appellant; Alta at K Station, Appellee).	)))))))))))	Appeal from the Circuit Court of Cook County No. 13 OP 78310 The Honorable Cynthia Ramirez, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in granting sanctions against appellant. Appellant's failure to provide a complete statement of facts regarding the proceedings below results in forfeiture of his remaining arguments on appeal, and we affirm the remainder of the circuit court's judgment on that basis.

¶ 2 Appellant Eric C. Onyango represented petitioner during the course of a domestic violence proceeding. Appellant served subpoenas on various third parties, including the appellee, Alta at K Station. The circuit court entered orders sanctioning appellant and ordered him to pay attorney fees and costs in connection with litigating the subpoenas. On appeal, appellant seeks reversal of two of the sanctions orders. Although his brief contains myriad violations of our supreme court's rules, we are able to address some of his arguments on their merits, and affirm

the circuit court's May 8, 2014, order. However, due to appellant's failure to provide us with a complete explanation of the proceedings below, we find that he has forfeited any argument based on facts omitted from his statement of facts, and therefore summarily affirm the (1) July 10, 2014, order granting Alta's June 19, 2014, motion for sanctions and denying appellant's motion to reconsider or vacate the May 8 order, and (2) April 24, 2015, order denying appellant's August 8, 2014, motion to reconsider. We further deny appellee's request to impose appellate sanctions on appellant.

¶ 3 BACKGROUND

¶ 4 Appellant represented petitioner in a proceeding seeking a civil no-contact order and order of protection against respondent. Petitioner alleged that respondent assaulted her at respondent's residence, which was located in Alta at K Station (Alta). During the course of the case, appellant sought to obtain video surveillance footage from a security camera located in Alta's lobby at the time of the alleged assault. According to an affidavit executed by appellant, he spoke to Linda Jasinski, Alta's manager, who stated that she had the video footage, but would not release it without a subpoena. On January 9, 2014, appellant purported to serve a subpoena on Alta in an effort to obtain the footage.[1] When appellant followed up with Alta, another individual indicated that the footage was transferred to a CD, and that she was awaiting approval from Jasinski to mail the CD to appellant. Appellant's calls to Alta over the next few days went unreturned.

¶ 5 On or about January 30, appellant claimed to have spoken with an attorney for Alta, J. Hayes Ryan with the law firm of Gordon & Rees, LLP. Ryan would not acknowledge whether

[1]The subpoena was issued by the clerk of court on January 9, 2014. The subpoena reflects that it was served on Alta by certified mail on January 9, 2014, and received on January 13, 2014. The certificate of service, however, was not notarized until January 24, 2014. Appellant admitted in open court that he back-dated the certificate of service on the subpoena.

Alta received the January 9 subpoena. Appellant then filed a motion for an order to show cause against Alta and to compel production of the video. An attorney from Gordon & Rees appeared in court on February 6, 2014, to object to the January 9 subpoena and to inform the court that the video footage had been lost due to a "cold weather power outage" on January 10, 2014. According to appellant, he believed that the representations made in court conflicted with Alta's previous representation that the video had been copied to a CD that would be sent to him in response to a subpoena. At no point in the proceedings did an attorney from Gordon & Rees file a written appearance in the circuit court.

¶ 6 Appellant served Alta with a second subpoena on February 9, 2014, requesting work orders, logs of received certified mail, a list of personal cell phone numbers for all Alta personnel, documentation for any complaints or incidents at respondent's apartment, and a list of Alta personnel on duty on January 9 and 10.

¶ 7 On February 28, 2014, Todd Murphy, an attorney with the law firm Clausen Miller P.C., filed an appearance on behalf of Alta, along with a motion to quash the January 9 and February 9 subpoenas. In a footnote in the motion, Murphy wrote that, "[f]or reasons related purely to insurance coverage, *** Todd Murphy, *** has assumed the representation of [Alta] going forward." The motion to quash was fully briefed. Alta attached several emails from Alta personnel that purported to show that the video footage had been lost.

¶ 8 On March 1, 2014, appellant served Alta and Gordon & Rees with subpoenas requesting production of documents regarding "advice or opinions" that Alta sought from any "attorney, law firm, insurance company or any other entity regarding the incident that occurred in [respondent's residence] on or about December 22, 2013." On March 14, 2014, appellant served Alta with a subpoena that, in part, sought production of documents it "generated or received

regarding the repair, diagnostics, check-up, file recovery, or maintenance of the video surveillance equipment or computers that are used for businesses [*sic*] purposes for the building located at [Alta's address] from December 21, 2013 to present."

¶ 9 On April 2, 2014, Alta filed a motion to quash the March 1 subpoenas, while also noting that it had attempted to respond to all subpoenas in good faith. The record does not reflect whether this motion was scheduled for a hearing or presented to the circuit court for a ruling.

¶ 10 On April 3, 2014, appellant served a subpoena on an entity named Neustar, Inc., at an address in Virginia, and served a subpoena on another entity named DnsPark, LLC, at an address in Arkansas. Appellant claims that he believed these two entities were the internet service providers for Gordon & Rees and Alta, respectively. The subpoena served on Neustar sought email messages exchanged between Alta and Gordon & Rees between January 10, 2014, and February 16, 2014. The subpoena served on DnsPark requested "[c]opies of any and all email messages, including heading information, directed to, or copied to [an address at the domain name of altaatkstation.com] between January 10, 2014, and February 16, 2014."

¶ 11 On April 4, 2014, the circuit court held a hearing on Alta's motion to quash the January 9 and February 9 subpoenas. During the course of the hearing, appellant mentioned that he had served subpoenas on April 3 on Nuestar and DnsPark, stating that they hosted email services for Alta. The circuit court made statements on the record that the surveillance video and information related to the video, including the subpoenas to Neustar and DnsPark, were not relevant. The circuit court entered a written order finding that the surveillance video of Alta was "not relevant to support petitioner's injuries," and quashed the subpoenas seeking production of the surveillance video.[2] It is not clear from the record whether the circuit court ever ruled on Alta's

[2]A copy of a transcript from the April 4, 2014, hearing is included in the record as an exhibit to one of Alta's filings. An incomplete copy of this transcript is also included in the separate appendix to

motion to quash the March 1 subpoenas served on Alta and Gordon & Rees. The circuit court set a trial date of May 8 for the underlying case.

¶ 12 On April 9, 2014, appellant claims to have spoken with a representative from Neustar and was informed that Neustar did not provide email services to its customers. Appellant allegedly instructed Neustar to disregard the April 3, 2014, subpoena. On April 15, Murphy sent an email to appellant requesting that the subpoenas issued to Neustar and DnsPark be withdrawn. Appellant responded that Alta lacked standing to challenge the subpoenas, and he declined to withdraw them. Appellant did not tell Murphy that he had spoken with Neustar, or that he had instructed Neustar to disregard the subpoena. Murphy informed appellant that the materials requested by the subpoenas sought privileged attorney-client communications between Alta and Gordon & Rees, and that he would file a motion to quash the subpoenas if they were not withdrawn. Appellant responded that the circuit court's April 4 ruling mooted the question of whether Alta needed to turn over emails between it and its attorneys or insurance agents, but insisted that the circuit court had not ruled on the subpoenas issued to Neustar or DnsPark.

¶ 13 On May 5, 2014, Gordon & Rees filed a motion to quash the April 3 subpoenas served on Neustar and DnsPark, and sought sanctions against appellant pursuant to Supreme Court Rule 219(c) (eff. July 1, 2002). Gordon & Rees argued that on April 4, the circuit court ruled that the video surveillance tape was not relevant, and also stated on the record that the subpoenas to Neustar and DnsPark did not seek production of relevant evidence. Gordon & Rees argued that, despite those rulings, appellant served the subpoenas on Neustar and DnsPark seeking production of discovery materials that the circuit court already ruled were not relevant, and refused to withdraw the subpoenas, which was an abuse of the discovery process.

---

appellant's brief, although it lacks any certification from the court reporter. We observe that appellant has failed to file a supplemental record on appeal that includes a report of proceedings that complies with Supreme Court Rule 323 (eff. Dec. 13, 2005).

¶ 14 On May 6, 2014, Appellant filed a response to Gordon & Rees's motion, along with his own motion for sanctions pursuant to Supreme Court Rule 137 (eff. July 1, 2013). He asserted that Gordon & Rees's motion did not contain any statement regarding Supreme Court Rule 201(k) (eff. Jan. 1, 2013). He argued that the circuit court's April 4 order rendered his subpoenas to Neustar and DnsPark moot, and that Gordon & Rees's motion to quash was brought in bad faith since it should have known that appellant considered the matter moot. Appellant further claimed that he had not taken any steps to enforce the subpoenas. Appellant argued that Gordon & Rees were seeking recovery of attorney fees incurred while representing its own interests rather than Alta's interests. Appellant, on behalf of his client, requested Rule 137 sanctions because the motion to quash was not well-grounded in fact and designed to increase the cost of litigation.

¶ 15 On May 8, 2014, the circuit court entered a written order quashing the April 3 subpoenas to Neustar and DnsPark, granting Gordon & Rees's motion for sanctions against appellant, and directed Gordon & Rees to file an affidavit detailing attorney fees incurred in responding to the subpoenas by May 15. Also on May 8, the circuit court held a trial on petitioner's domestic violence claim, and found in favor of respondent.[3]

¶ 16 Between May 9 and May 30, 2014, appellant filed at least 12 motions seeking various forms of relief, including motions to withdraw previously-filed motions. Appellant has not described these motions in his appellant's brief, and they are not included in the record on appeal. On July 10, 2014, the circuit court entered a written order (1) granting Gordon & Rees's motion for sanctions, (2) granting a June 19 motion for sanctions filed by Clausen Miller, and (3) denying "petitioner's motion to vacate or reconsider and for sanctions," which appellant also fails to describe in his statement of facts. The July 10 order states that "the aforementioned

[3]This appeal does not involve any portion of the trial on the underlying case.

rulings are more fully set forth in the record," although appellant does not direct our attention to the portion of the record on appeal containing the circuit court's reasoning.[4]

¶ 17 On August 8, 2014, appellant, now represented by his own counsel, filed a motion to reconsider the July 10, 2014, order. The circuit court denied appellant's motion to reconsider on April 24, 2015. Appellant filed his notice of appeal on May 22, 2015, seeking reversal of the (1) May 8, 2014, order granting sanctions in favor of Gordon & Rees, (2) July 10, 2014, order granting sanctions in favor of Gordon & Rees and Alta, and denying appellant's motion to vacate or reconsider the May 8, 2014, order, and (3) April 24, 2015, order denying appellant's motion to reconsider the July 10, 2014, order. Alta argues that this appeal is frivolous, and requests that we impose appellate sanctions on appellant and his counsel.

¶ 18 ANALYSIS

¶ 19 On appeal, appellant argues that the circuit court (1) abused its discretion by granting Gordon & Rees's May 5 motion for sanctions because the circuit court failed to make any findings of fact and failed to recognize that Alta had discharged Gordon & Rees, (2) erred in granting Alta's June 19 motion for sanctions because it was untimely and based on the same facts as those advanced by Gordon & Rees in support of its May 5, 2014, motion for sanctions, (3) erred in denying appellant's May 30 motion to reconsider, and (4) abused its discretion in denying appellant's August 8 motion to reconsider the July 10 order.

¶ 20 Before we address any of appellant's arguments, we must consider the effect of his myriad violations of our supreme court's rules. We note that appellant is represented by counsel in this appeal, and further note that we dismissed this appeal on two separate occasions for want of prosecution prior to appellant filing his opening brief.

[4]Appellant does, however, include what purports to be a transcript from the July 10 hearing in the appendix to his appellant's brief.

¶ 21 Appellant's brief contains numerous violations of Supreme Court Rule 341 (eff. Jan. 1, 2016). Supreme Court Rule 341(h)(2) requires "[a]n 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." Ill. S. Ct. R. 341(h)(2).[5] Here, appellant's introduction informs us that he was sanctioned during the course of representing the petitioner in a domestic violence proceeding, and that he seeks reversal of the sanctions award. These facts, however, are buried within two and a half pages of argument, conjecture, and assertions that are not part of his statement of facts. For example, he claims that sanctions were sought against him based on his status as "a new minority member of the bar," suggests that the proceedings would have been more efficient if the circuit court had a "standing order," claims that there was no conduct warranting sanctions, and accuses the circuit court judge of engaging in *ex parte* communications with the attorneys that filed the motions for sanctions. Appellant's introduction also includes a lengthy footnote offering a blunt critique of the trial judge's competence and partiality. This information does not help to inform us as to the general area of law in which the case falls. Furthermore, the introductory statement does not adequately identify the nature of the orders entered or the circuit court's basis for awarding sanctions. We find that appellant's introduction does not comply with Supreme Court Rule 341(h)(2).

¶ 22 Next, appellant's brief does not comply with Supreme Court Rule 341(h)(6) because his statement of facts is incomplete and argumentative, and he repeatedly fails to cite to the record to

[5]The rule even provides an illustration of what an introductory paragraph should look like: "This action was brought to recover damages occasioned by the alleged negligence of the defendant in driving his automobile. The jury rendered a verdict for the plaintiff upon which the court entered the judgment from which this appeal is taken. No questions are raised on the pleadings." Ill. S. Ct. R. 341(h)(2) (eff. Jan. 1, 2016). The committee comments make it clear that "the introductory paragraph is for the purpose of informing the court of the general area of the law in which the case falls, whether there was a jury trial, and whether there is a pleading question and if so what it is." Ill. S. Ct. R. 341 Committee Comments.

support his claims. Rule 341(h)(6) requires a 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 ***, or to the pages of the abstract ***." Ill. S. Ct. R. 341(h)(6). "A party's failure to comply with Rule 341 is grounds for disregarding its arguments on appeal based on an un-referenced statement of facts." *Jeffrey M. Goldberg & Associates, Ltd. v. Collins Tuttle & Co., Inc.*, 264 Ill. App. 3d 878, 886 (1994).

¶ 23 Here, appellant offers no meaningful description of any of the proceedings that followed the circuit court's May 8 order granting Gordon & Rees's motion for sanctions. He makes no reference at all to the host of filings he made between May 9 and May 30. See *supra* ¶ 16. He provides no explanation as to which motions were withdrawn, what proceedings were had in connection with any of the motions that were not withdrawn, what orders the circuit court entered with respect to those motions, or when those orders were entered. We have expended considerable time and resources attempting to understand the proceedings, both before and after May 8, 2014, with limited success. For example, we have not been able to determine the substance of any of appellant's motions that might have been pending before the circuit court on July 10 because the motions do not appear in the record on appeal. It appears that some of those motions were fully briefed and that the circuit court conducted a hearing on July 10, although without the benefit of those motions, we have no understanding of the arguments that appellant advanced in the circuit court. We find that appellant's brief does not comply with Rule 341(h)(6) because it does not provide all of the facts necessary to understand the case and appellant's arguments on appeal.

¶ 24 Appellant's brief also violates Rule 341(h)(6) by failing to cite to the record on appeal in support of many of appellant's factual assertions. As noted above, Rule 341(h)(6) requires citations to either the record or an abstract, if an abstract was required. Ill. S. Ct. R. 341(h)(6). We did not require appellant to file an abstract of the record. We have been able to infer that appellant's citations to "R__" are citations to the record, while citations to "A__" are citations to appellant's 341-page separate appendix. Appellant regularly cites to his separate appendix without providing parallel citations to the record on appeal. Furthermore, none of the documents in appellant's appendix bear a Bates stamp which might aid us in locating the documents in the record on appeal. As a result, we have had to compare the appendix to the record on appeal to ensure that appellant is not relying on documents that are not part of the record. This is unacceptable appellate practice. It is the appellant's burden to show that his assertions are supported by the *record* on appeal, not by documents appended to his brief. We should not be left with the task of determining whether documents attached to the appellant's appendix are included in the record. For these reasons, we further find that appellant's brief does not comply with Rule 341(h)(6).

¶ 25 Finally, appellant's brief repeatedly violates Rule 341(h)(7) by failing to develop any meaningful legal argument supported by citations to the record and to authority. He frequently includes headings for arguments that he does not actually develop.

¶ 26 Appellant's brief also runs afoul of Rule 342(a) (eff. Jan. 1, 2005), which requires:

> "The appellant's brief shall include, as an appendix, a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge ***, any pleadings or other materials *from the record* which are the basis of the appeal or pertinent to it, the notice of appeal, and a

complete table of contents, with page references, of the record on appeal." (Emphasis added.)

Here, the first 77 pages of appellant's appendix are transcripts or portions of transcripts from hearings before the circuit court, although it is not clear whether appellant followed the procedure in Rule 323 (eff. Dec. 13, 2005) for making those transcripts part of the record on appeal. Alta's appellee brief provides us with citations to portions of the record that contain transcripts of some of the circuit court's hearings,[6] but it was appellant's responsibility to provide us with a proper record of the proceedings to support his claims of error. We also note that appellant's appendix includes a filing titled "Response and Opposition to Gordon & Rees['s] *** Petition For Attorneys' Fees In Accordance with the May 7 [*sic*], 2014 Order Granting Gordon & Rees'[s] Motion for Sanctions," bearing a file stamp of May 30, 2014, which we also have not been able to locate in the record on appeal.

¶ 27 Appellant's violations of our supreme court's rules have frustrated our review of his claims on appeal. We have spent a considerable amount of time attempting to understand the proceedings below, as well as determining the scope of our ability to review the circuit court's judgment. As a court of review, we are entitled to have the issues on appeal clearly presented. *Holmstrum v. Kunis*, 221 Ill. App. 3d 317, 325 (1991). "Reviewing courts will not search the record for purposes of finding error in order to reverse [a] judgment when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. It is not our duty to scour the record in an effort to understand an appellant's case when the appellant fails to adequately describe the proceedings below. We have the discretion to strike the appellant's brief or portions of his brief

[6]The transcripts were included as exhibits to a filing Alta made in response to one of appellant's numerous motions filed between May 9 and May 30.

for failure to comply with our supreme court's rules. We also have the discretion to dismiss an appeal where those violations are so egregious as to impair our review of the merits of a claim.

¶ 28 Here, rather than strike appellant's brief or dismiss this appeal, we find that appellant's myriad violations of our supreme court's rules, particularly his failure to provide us with a complete set of facts with citation to the record on appeal, results in forfeiture of his challenges to any of the circuit court's orders entered after May 8, 2014. While we recognize that this is a harsh result, we again note that this appeal was twice dismissed for want of prosecution before appellant filed his opening brief, once due to appellant's failure to timely file the record on appeal, and once due to appellant's failure to timely file his opening brief after numerous extensions of time. Appellant was afforded an ample amount of time to prepare his statement of facts and arguments, and we see no just reason to excuse his failure to adequately describe a significant portion of the proceedings below. Therefore, we do not reach the merits of appellant's arguments regarding whether the circuit court abused its discretion by (1) denying appellant's May 30 motion to reconsider the May 8 order, (2) granting Alta's June 19 motion for sanctions, or (3) denying appellant's August 8 motion to reconsider, as we have not been provided an adequate basis from which we can determine whether the circuit court abused its discretion. The circuit court's July 10 order denying appellant's May 30 motion to reconsider and granting Alta's June 19 motion for sanctions, as well as the circuit court's April 24, 2015, order denying appellant's August 8 motion to reconsider are affirmed.

¶ 29 We now turn to appellant's first set of substantive arguments, which focus on whether Gordon & Rees could pursue the May 5 motion to quash and for sanctions, and whether the circuit court had "authority to entertain" the motion. Appellant contends that Gordon & Rees (1) was discharged by Alta, (2) lacked authority to settle claims on behalf of Alta, (3) failed to

file a written appearance, resulting in prejudice to petitioner and appellant, (4) was not entitled to fees incurred while representing its own interests, and (5) filed a motion in its own name to recover fees but then appeared in court to pursue the motion on behalf of Alta. In support of these claims, appellant primarily relies on a footnote in Alta's February 28 motion to quash the January 9 and February 9 subpoenas explaining that Todd Murphy "has assumed the representation of [Alta] going forward." Appellant infers from this footnote and the fact that Murphy represented Alta after February 28 that Alta "discharged" Gordon & Rees rendering that firm ineligible for a sanctions award.

¶ 30 First, the record does not support appellant's contention that Alta "discharged" Gordon & Rees. Although Alta indicated that Murphy "had assumed the representation of Alta going forward," that statement does not establish that Alta "discharged" Gordon & Rees. Nor has appellant provided any explanation of what he means when he claims that Alta "discharged" Gordon & Rees. The record contains no representation from Alta, either through its representatives or any of its attorneys, that Gordon & Rees was no longer authorized to represent Alta. Appellant relies on authority that, following discharge, an attorney is not entitled to the full amount of fees agreed to in a contract, (see *In re Smith*, 168 Ill. 2d 269, 293 (1995)), and that a circuit court abuses its discretion by refusing to allow a discharged attorney to withdraw as counsel (see *Savich v. Savich*, 12 Ill. 2d 454, 458 (1957)), but those propositions are inapplicable to the situation here where there is nothing in the record to suggest that Alta discharged Gordon & Rees. The record reflects that Gordon & Rees's fee petition was supported by the affidavits of attorneys Ryan and Gamboa, who stated under oath that Alta retained Gordon & Rees on January 30, 2014, and agreed to pay Gordon & Rees's partners an hourly rate to represent its interests regarding the subpoenas. Appellant does not direct our attention to

anything in the record that rebuts these sworn statements. We find that appellant has failed to establish that Alta discharged Gordon & Rees.

¶ 31 Second, appellant has not demonstrated that Gordon & Rees's failure to file a written appearance on behalf of Alta is a basis for invalidating any of its filings, and that the failure to file a written appearance resulted in any actual prejudice to petitioner or appellant.[7] Appellant correctly notes that Supreme Court Rule 13(c)(1) (eff. July 1, 2013) states that, "[a]n attorney shall file his written appearance or other pleading before he addresses the court unless he is presenting a motion for leave to appear by intervention or otherwise." Appellant recognizes, however, that the failure to file a timely appearance does not necessarily invalidate an otherwise proper motion. See *Ebert v. Dr. Scholl's Foot Comfort Shops, Inc.*, 137 Ill. App. 3d 550, 555 (1985) (finding no authority "requiring the nullification of an otherwise proper motion merely because of counsel's failure to file a timely substitution of attorneys," and further finding a lack of prejudice to defendant or substantial inconvenience to the circuit court). He insists however that Gordon & Rees's failure to file a written appearance, coupled with Alta having "discharged" Gordon & Rees, means that the motions filed by Gordon & Rees are not "proper" motions. As discussed above, appellant has failed to establish that Gordon & Rees was discharged. Second, Gordon & Rees moved to quash subpoenas that broadly sought confidential communications between Alta and Gordon & Rees. Appellant previously indicated that he would not withdraw those subpoenas, despite having been informed by Neustar that it did not provide email services and thus could not produce the requested information. Gordon & Rees brought the motion to quash the Nuestar and DnsPark subpoenas, in part, as an effort to prevent the disclosure of

[7]Appellant appears to have raised this argument for the first time in his motion to vacate or reconsider the May 8, 2014, order granting Gordon & Rees's motion to quash and for sanctions. Appellant does not identify the motion in which he raised this argument, and the motion does not appear in the record on appeal. The issue, however, is not complicated, and we can address it on its merits.

confidential communications between itself and Alta, which was a proper motion brought for a legitimate purpose.[8] Under the circumstances of this case, we find that the lack of a written appearance did not preclude the circuit court from considering Gordon & Rees's motion to protect its client's privileged communications. Furthermore, we find that appellant has not demonstrated that he suffered any prejudice due to a lack of a written appearance by Gordon & Rees.

¶ 32 We also reject appellant's argument that Gordon & Rees was representing its own interests when it brought the motion to quash and for sanctions. Appellant's argument is premised on his claim that Gordon & Rees had been discharged by Alta, which we previously explained is unsupported by the record. Gordon & Rees clearly brought the motion to quash in order to protect the confidentiality of its client's communications, which was necessitated by the subpoenas served by appellant on Neustar and DnsPark. Appellant's reliance on *In re Marriage of Tantiwongse*, 371 Ill. App. 3d 1161, 1164 (2007) is misplaced, since that case involved an attorney seeking attorney fees that he incurred while attempting to collect attorney fees already owed to him. Appellant's reliance on *Hamer v. Lentz*, 132 Ill. 2d 49 (1989) is also misplaced, as that case involved an attorney attempting to recover attorney fees he incurred while representing himself in connection with litigating a Freedom of Information Act request. Simply put, appellant has not established that Gordon & Rees was seeking to collect fees it incurred on its own behalf. Based on the record before us, the circuit court could reasonably conclude that Gordon & Rees was seeking to recover fees it incurred on behalf of Alta.

[8]Illinois Rule of Professional Conduct 1.6(e) (eff. Jan. 1, 2016) states: "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Although this rule was not in place at the time of the instant litigation, we believe it is helpful in considering the propriety of Gordon & Rees's motion to quash.

¶ 33 Next, appellant argues that Gordon & Rees's May 5 motion was filed on behalf of Gordon & Rees, but that Gordon & Rees attorneys appeared in court on May 8 to pursue the motion on behalf of Alta. This argument fails because Gordon & Rees had not been discharged by Alta, and the motion sought attorney fees incurred by Gordon & Rees on behalf of Alta.

¶ 34 Finally, we reject appellant's argument that Alta or Gordon & Rees waived any objection to the Neustar or DnsPark subpoenas by asserting objections after the return date on the subpoena. Appellant relies solely on *People v. Bauman,* 2012 IL App (2d) 110544, to support his argument that a party's objection to a subpoena is waived if not asserted before the return date of the subpoena. Appellant's reliance on *Bauman* is completely misplaced. In *Bauman*, a criminal defendant made a timely speedy-trial demand. *Id.* ¶ 4. The State served defendant with a subpoena commanding him to appear in court on a specific date. *Id.* ¶¶ 6-9. The State supplied the date, not the circuit court, and when the defendant failed to appear, the State argued that defendant waived his speedy-trial demand pursuant to section 103-5(b) of the Code of Criminal Procedure of 1963 (735 ILCS 5/103-5(b) (West 2010)), which provides that a defendant's failure to appear for any court date set by the court results in a waiver of a defendant's speedy-trial demand. The *Bauman* court rejected the State's argument, finding that the State, not the court, wrote the date on the subpoena, and thus section 103-5(b) did not apply. *Id.* ¶ 27. *Bauman* does not stand for the proposition that a failure to object to a subpoena prior to the return date results in waiver, and thus has no application here. Therefore, we find that appellant has failed to demonstrate that Alta or Gordon & Rees waived any objection to the Neustar or DnsPark subpoenas by asserting objections after the return date on the subpoena.

¶ 35 The second set of arguments raised by appellant address whether sanctions were warranted under the circumstances. He argues that (1) he did not refuse to comply with any

discovery rules, (2) he did not refuse to comply with any court order, (3) there were no "legitimate interests at stake" because the Neustar and DnsPark subpoenas sought information that did not in fact exist, (4) the circuit court "encouraged" appellant to file motions, and (5) Gordon & Rees made no effort to resolve the matter with appellant prior to seeking sanctions.

¶ 36 We review a circuit court's ruling on a motion for sanctions for an abuse of discretion. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16. A circuit court abuses its discretion only if it "act[s] arbitrarily without the employment of conscientious judgment, exceed[s] the bounds of reason and ignore[s] recognized principles of law [citation] or if no reasonable person would take the position adopted by the court." *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006) (citing *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 266 (2005)).

¶ 37 Appellant argues that he did not violate any discovery rules or court orders. He argues that the purpose of the April 3 subpoenas to Neustar and DnsPark was to "verify the authenticity of emails and other materials that Alta submitted to the court for its argument that it substantially complied with the January 9, 2014, and February 9, 2014 subpoenas." He argues that the subpoenas were reasonable since an Alta employee told him that the surveillance video had been copied to a CD that was sitting on the manager's desk. Appellant asserts, without citing to any authority, that he had a right to verify the emails and that even if the circuit court determined that the surveillance tape was not relevant, the "issue of whether Alta presented false information to the court to support its motion to quash was relevant, and could not have been resolved by subpoenas that were quashed on April 4, 2014." Appellant argues that the April 3 subpoenas to Neustar and DnsPark were served before the circuit court's April 4 order quashing his other subpoenas, and that "withdrawing the April 3, 2014 subpoenas without an explicit court order or petitioner's authorization would have been improper because Appellant had a duty to preserve

petitioner's appellate rights and such an action would have constituted an unauthorized waiver of the issue." He claims that not all communications between a client and an attorney are privileged, and that the April 3 subpoenas "did not specify the character of the materials sought in enough detail to compel the conclusion that the emails sought were privileged." He asserts that because Neustar later confirmed that it did not provide email services to its clients, the attorney-client privilege did not "attach to non-existent or abstract communications," and therefore the subpoenas sought information that was not privileged.

¶ 38 Supreme Court Rule 219(c) provides:

> "If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just ***." Ill. S. Ct. R. 219(c) (eff. July 1, 2002).

The circuit court may impose "upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee ***." *Id.* If the conduct is willful, the circuit court may impose a monetary penalty. *Id.*

¶ 39 Rule 219(d) provides:

> "The court may order that information obtained through abuse of discovery procedures be suppressed. If a party wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which that party is not entitled, or otherwise abuses these discovery rules, the court may

enter any order provided for in paragraph (c) of this rule." Ill. S. Ct. R. 219(d) (eff. July 1, 2002).

¶ 40 Based on the record before us, we find that the circuit court did not abuse its discretion in granting the May 5 motion for Rule 219 sanctions. We find the circuit court's comments at the May 8 and July 10 hearings instructive. On May 8, the circuit court told appellant "[y]ou cannot take it upon yourself to turn around and say, 'I think Judge Ramirez was wrong so I'm going to do an end run around the judge ***.' " On July 10, the circuit court observed that appellant's January 9, 2014, subpoena had been improperly served and that appellant never established the relevancy of the surveillance tape. The circuit court further observed that appellant served four subpoenas on Alta for the surveillance tape without ever establishing that the tape might have relevant information. Furthermore, appellant "continuously sought information that had been ruled and deemed irrelevant," and "continued to pursue subpoenas directed at [Neustar and DnsPark] *** in complete disregard of my prior ruling that that video was irrelevant." The circuit court found that appellant used the April 3 subpoenas to seek "email communication between Alta and its attorneys, knowing [full] well that that communication was privileged attorney[-]client information ***." The circuit court observed that when Murphy asked appellant to withdraw the April 3 subpoenas, appellant refused to do so and threatened to report Murphy to the ARDC.

¶ 41 Furthermore, the record supports a finding that after appellant refused to withdraw the April 3 subpoenas, he failed to communicate to Alta that he would not attempt to enforce the subpoenas. Appellant then opposed the May 5 motion to quash the April 3 subpoenas, which resulted in Alta incurring attorney fees and costs in connection with the effort to quash subpoenas that sought production of information to which appellant was not entitled. Under the

facts of this case, the circuit court could reasonably have concluded that appellant willfully abused the discovery process.

¶ 42 Next, appellant argues that the circuit court abused its discretion in granting Alta's motions for sanctions because there "were no legitimate interests at stake" where neither Neustar nor DnsPark had control of any information responsive to the subpoenas. Appellant has forfeited this contention by failing to develop any meaningful legal argument in support. Ill. S. Ct. R. 341(h)(7). The fact remains that appellant served the April 3 subpoenas in an effort to obtain production of emails between Alta and its attorneys, subpoenas that clearly implicated the attorney-client privilege, which is an important interest to protect. The subpoenas were served on disinterested third parties that, presumably, were required to comply with the command or otherwise move to be relieved from responding to the subpoenas. We also note that appellant's argument leaves unanswered questions as to whether he conducted a reasonable investigation into Neustar or DnsPark prior to serving the April 3 subpoenas.

¶ 43 Appellant has also forfeited his argument that the circuit court "encouraged" him to file written motions, as he fails to direct our attention to the portion of the record that supports this assertion, and he further fails to explain how that relates to an abuse of the circuit court's discretion. He also forfeited his argument that Gordon & Rees did not make an effort to resolve the April 3 subpoenas prior to filing the May 5 motion to quash and for sanctions, since appellant simply states that no efforts were made, but he advances no argument that Gordon & Rees was required to attempt to resolve the dispute prior to bringing a motion to quash or for sanctions. Again, appellant's contentions are not adequately developed and clearly do not indicate that the circuit court abused its discretion in the imposition of sanctions against the appellant, and warrant no further consideration. Ill. S. Ct. R. 341(h)(7).

¶ 44 Finally, Alta requests that we impose sanctions on appellant and his counsel pursuant to Supreme Court Rule 375(b) (eff. Feb. 1, 1994). Alta contends that this appeal is "unfounded and frivolous," and that sanctions are warranted because the primary purpose of this appeal "was to further delay the payment of sanctions."

¶ 45 Rule 375(b) provides:

> "If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense."

¶ 46 After careful consideration of the briefs, the record, and the proceedings in this court, we decline to sanction appellant for this appeal. It is true that there were significant delays between the filing of the notice of appeal and the filing of appellant's opening brief, including two dismissals for want of prosecution. It is also true that appellant forfeited several of his arguments due to non-compliance with our supreme court's rules. However, imposition of sanctions against an attorney and a request to reverse those sanctions cannot be viewed as frivolous where some of appellant's arguments presented legitimate legal challenges to the circuit court's orders, even if

they were unpersuasive. We therefore do not find that the appeal was entirely frivolous, or that the primary purpose of the appeal was to delay, harass, or cause needless expense.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 49 Affirmed.