

No. 1-16-0072

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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DONALD J. SCHAFFER, as Trustee of the J. Marion Gutnayer Revocable Trust, dated January 10, 1990, and as Trustee of the Alice Gutnayer Revocable Trust, dated January 10, 1990,	)	Appeal from the
	)	Circuit Court of
	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 09 CH 52592
v.	)	
	)	
GLENN GUTNAYER and JEROME GUTNAYER, as beneficiaries of the J. Marion Gutnayer Revocable Trust and the Alice Gutnayer Revocable Trust, and ELAINE GUTNAYER, as beneficiary of the Alice Gutnayer Revocable Trust,	)	
	)	
Respondents,	)	Honorable
	)	Moshe Jacobius,
(Jerome Gutnayer, Respondent-Appellant).	)	Judge, Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Cunningham and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court is affirmed where the appellant failed to present an adequate record on appeal and failed to comply with the Supreme Court Rules governing the form of appellate briefs.

¶ 2 The respondent, Jerome (Jerry) Gutnayer, *pro se*, appeals from an order of the circuit court of Cook County which, *inter alia*, granted the petitioner, Donald J. Schaffer's, petition to approve a final accounting of the J. Marion Gutnayer Revocable Trust (Marion Trust) and Alice Gutnayer Revocable Trust (Alice Trust), approve the distribution of trust assets, and appoint a successor corporate trustee. In granting the petition, the circuit court also denied Jerry's request for a continuance to file a counterclaim. For the reasons that follow, we find that Jerry did not preserve any issues for review because he failed to provide a sufficient record on appeal and violated the Supreme Court Rules relating to the form of appellate briefs.

¶ 3 In January 1990, husband and wife, Marion and Alice Gutnayer, each executed their own trust, the Marion Trust and the Alice Trust, respectively. Each trust contained a gift on death provision creating a marital trust for the surviving spouse and, upon the death of the survivor, a distribution *per stirpes* to their two sons, Glenn and Jerry. Following Marion's death, Alice amended the Alice Trust, by adding Jerry's wife, Elaine Gutnayer, as a beneficiary. She also amended the distribution on death provision to provide that, upon her death, 50% of the trust *res* shall be distributed to Glenn, 25% to Jerry, and 25% to Elaine. Alice died on November 15, 2006.

¶ 4 After her death, a dispute arose over the distribution of assets held in the Marion and Alice Trusts. On December 30, 2009, Schaffer, as trustee of the trusts, filed a petition for instructions in the circuit court seeking, *inter alia*, a determination as to whether he could withhold and preserve the principal held in the trusts for Jerry's benefit while distributing the income generated from the principle.

¶ 5 In his petition, Schaffer alleged that Jerry, a former attorney, has a longstanding dispute with Glenn stemming from a failed partnership in a homebuilding company. Schaffer explained

that, after the partnership dissolved, each brother started his own company. While Glenn's business prospered, Jerry's business floundered. Beginning in 2001, Jerry filed seven lawsuits against Glenn in state and federal courts, alleging that his business's failure was the result of a conspiracy that included, among others, Glenn and Glenn's wife, Glenn's company, a real estate company, and an architectural firm. Although all of these cases have been dismissed, the petition alleged that Jerry and Glenn have incurred significant legal expenses and that Jerry has been fined over \$120,000 in sanctions. Schaffer further stated that these lawsuits have consumed Jerry's life and that Jerry will continue to sue Glenn or otherwise expend resources to hold his brother accountable for perceived wrongs that he committed. Schaffer also alleged that Alice amended the Alice Trust "to provide exclusively for Elaine because [Alice] recognized that Jerry's financial irresponsibility could harm her daughter-in-law."

¶ 6 The record reveals that, on August 4, 2011, the circuit court entered separate orders authorizing Schaffer to distribute to Glenn his entire share of the Marion Trust, to make partial distributions to Jerry and Elaine from the Marion Trust and Alice Trust, respectively. Jerry appealed that order, and this court dismissed the appeal for want of prosecution. *Schaffer v. Gutnayer*, No. 1-11-2350 (2013) (dispositional order).

¶ 7 On February 15, 2012, the circuit court granted a subsequent petition filed by Schaffer, this time authorizing him to distribute to Glenn and Elaine their entire respective shares of the Alice Trust, subject to a \$100,000 withholding to cover expenses that Schaffer might incur in winding down the trust estate. Meanwhile, in an order entered on August 20, 2012, the court ordered Schaffer to "maintain the status quo and continue to hold assets in trust and distribute income/principal to [Jerry] for his best interests in [Schaffer's] discretion."

¶ 8 On May 1, 2015, Schaffer filed a petition to approve the final accounting, distribute the

remaining assets held in trust for Glenn and Elaine, and appoint Associated Bank as a successor corporate trustee to manage the assets held in trust for Jerry's benefit. Schaffer also requested that any attorney fees and costs incurred as a result of objections that Jerry might file be assessed against the assets held in trust for his benefit. A hearing on Schaffer's petition was scheduled for August 27, 2015.

¶ 9 On August 24, 2015, Jerry filed an objection to Schaffer's request to appoint a successor corporate trustee, arguing that Associated Bank "is a stranger to this case" and has "no direct contractual arrangements with Jerry." He also asked the court retain jurisdiction over the case "in the event a future issue of misconduct or similar problem would arise."

¶ 10 On August 27, 2015, the court entered an order granting Jerry until November 2, 2015, to propose an alternative successor corporate trustee.

¶ 11 Thereafter, on October 26, 2015, Jerry filed a motion requesting the court grant him a continuance of "75 days to file a motion for leave \*\*\* to file a counterclaim." He alleged that he "is in the process of drafting" a counterclaim that "would sufficiently negate, counteract, and refute the many lingering claims and assertions directed against [him]." Jerry further asserted that:

"In this 15th year of litigation by obfuscation and bad faith litigation on the part of adversaries of Jerry \*\*\* (the origins of this litigation can be traced back to 2001 and earlier; \*\*\*), the evolution of events over time resulted in the existence now of an extraordinary number of legal and economic issues that Jerry \*\*\* must disentangle and address because Jerry \*\*\* wants to recover major losses caused by his adversaries and because Jerry \*\*\* seeks many other appropriate remedies."

¶ 12 In a written order entered on November 2, 2015, the circuit court granted Jerry a final

extension of time to propose an alternative successor trustee to manage the assets being held in trust for his benefit. Rather than propose a successor corporate trustee, Jerry instead filed additional objections to Schaffer's petition. The grounds of his objections are not clear as he makes unintelligible statements using language similar to his October 26, motion.

¶ 13 On December 10, 2015, the circuit court entered a written order granting Schaffer's petition to approve the final accounting, distribute the remaining assets held in trust for Glenn and Elaine, and appoint Associated Bank as a successor corporate trustee. The court further ordered that any attorney fees and costs incurred as a result of future objections filed by Jerry be assessed against the assets held in trust for his benefit. Finally, the court denied Jerry's request "for time to plead a counterclaim." The court found that this order was final and appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

¶ 14 In his notice of appeal, Jerry states that he "appeals all \*\*\* terms and provisions of the final order dated December 10, 2016 [sic]" except for "the term and provision" authorizing Schaffer to distribute trust assets to his wife, Elaine. As best we can tell, however, Jerry's 62-page brief contains only a single argument, namely that, there is a broad conspiracy against him and that the purported conspiracy violates state and federal laws.

¶ 15 Schaffer asks that we affirm the circuit court's December 10, 2015, order because the record on appeal is inadequate and does not contain evidence or facts to support Jerry's claim of error. Schaffer also argues that Jerry's brief fails to comply with Supreme Court Rule 341 (eff. Jan. 1, 2016) and does not present cogent arguments with record support. As a consequence, Schaffer asserts that Jerry has failed to preserve for appellate review any issue regarding the circuit court's December 10, 2015, order. We agree.

¶ 16 As the appellant, Jerry "has the burden of presenting a sufficiently complete record of the

proceedings \*\*\* to support a claim of error." *Midstate Siding and Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). In the absence of a complete record, a reviewing court presumes that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. "In fact, when the record on appeal is incomplete, a reviewing court should actually 'indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.'" *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006) (quoting *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985)).

¶ 17 In this case, the record before us contains seven volumes and 1,606 pages of common-law record. Jerry failed to file, however, any transcripts or reports of the many proceedings in the circuit court or, in the absence of such transcripts, bystander's reports or agreed statements of facts as allowed by Supreme Court Rule 323(c), (d) (eff. Dec. 13, 2005). Where, as here, the circuit court's ruling on Schaffer's petition is subject to the manifest weight of the evidence standard of review (see *Stuart v. Continental Illinois National Bank & Trust Co. of Chicago*, 68 Ill. 2d 502, 532 (1977); *Gregory v. First Nat. Bank & Trust Co.*, 84 Ill. App. 3d 957, 965 (1980)), we cannot examine the court's factual findings or basis for its legal conclusions absent a report or record of the proceeding. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Likewise, the decision to grant or deny a continuance to file a counterclaim is a matter committed to the sound discretion of the circuit court and, such discretionary rulings cannot be reviewed absent a sufficient record showing the basis for the court's decision. *Foutch*, 99 Ill. 2d at 392. Because we do not have a record of the issues that were addressed or the arguments and evidence that were presented or considered by the circuit court in granting Schaffer's petition and denying Jerry's request for a continuance, we cannot determine if the circuit court's order

amounted to error. Accordingly, based on the insufficiency of the record on appeal, we must presume the order of the circuit court of which Jerry complains was "in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 392.

¶ 18 Additionally, Jerry has failed to comply with our supreme court's rules governing the form of an appellant's brief in numerous respects. Most significantly, his brief fails to comply with Rules 341(h)(6) and (h)(7). Ill. S. Ct. R. 341(h)(6), (h)(7) (eff. Jan. 1, 2016).

¶ 19 Rule 341(h)(6) states that the appellant's brief "shall contain [a statement of] 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." Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Rule 341(h)(7) states that the appellant's 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. Jan. 1, 2016).

¶ 20 Our supreme court has stated that supreme court rules are not merely suggestions, but have the force of law, and the presumption must be that they will be obeyed and enforced as written. *Rodriguez v. Sheriff's Merit Comm'n of Kane County*, 218 Ill. 2d 342, 353 (2006). "A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010) (quoting *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995)). We will not sift through the record or complete legal research looking for reasons to reverse. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007). Issues that are ill-defined and insufficiently presented do not satisfy the supreme court rules and are considered waived. *Id.* In fact, for these violations, this court may

not only strike portions of the brief or consider arguments waived, but strike a brief in its entirety and dismiss the matter. *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 692 (1992).

¶ 21 Here, Jerry's statement of facts fails to comply with Rule 341(h)(6) as it does not present a concise recitation of the facts, procedural background, or history of the litigation. The statement of facts in Jerry's 62-page brief consists of five paragraphs and contains rambling, disjointed, and incomprehensible statements. For example, paragraph 2 states, in its entirety, as follows:

"2. All three groups in [the Evelyn Bremen/ Glenn Gutnayer residential real estate] office and people aligned with them are engaged in making unauthorized uses of other people's assets, resources and talents and are engaged in mathematics-based, structure-based activities and approaches, e.g., the pigeonhole principle and initial conditions set up, as an activity/ common course of conduct, as a choice that adversaries made, and as people doing their part measured in terms of central substances, functionalities, coalition formation, permutations, reverse confusion, platform ecosystems, orchestrated and strategic behavior, lock-in, path dependence and knowing who is in their group and who is excluded."

As the above quote illustrates, Jerry's statement of facts consists primarily of incoherent statements that are argumentative and conclusory. And, any factual allegations that do appear in his statement of facts are unsupported by references to pages in the record on appeal. In short, the statement of facts does not acquaint this court with the facts of this case, the procedural history, or the issues involved.

¶ 22 The argument section of the brief similarly fails to comply with Rule 341(h)(7) by failing

to include any citation to the pages of the record relied on. Furthermore, Jerry's 56-page argument, like other sections of his brief, presents rambling, unintelligible, and disjointed conclusions and arguments, none of which address the propriety of the circuit court's December 10, 2015, order. Rather, his argument refers to matters *de hors* the record by representing generalities about antitrust law, intellectual property rights, trade secrets misappropriation, conspiracy and fraud. In essence, he is attempting to relitigate an issue he has litigated many times before in state and federal courts. See *e.g.*, *Gutnayer v. Glenn Gutnayer Construction, LLC*, No. 1-02-1613 (2003) (unpublished order under Supreme Court Rule 23) (affirming the dismissal of Jerry's complaint alleging violations of state and federal antitrust law); *Gutnayer v. Cendant Corporation*, 11 Fed. Appx. 758 (7th Cir. 2004) (noting that Jerry filed two suits in the circuit court of Cook County, alleging that his business's failure was the result of a broad conspiracy); *Gutnayer v. Gutnayer*, No. 2-04-0878 (2005) (unpublished order under Supreme Court Rule 23) (affirming the dismissal of Jerry's complaint, filed in Lake County, where it was barred by *res judicata*). The scope of our consideration in this appeal is limited to the propriety of the circuit court's order, which granted Schaffer's petition and denied Jerry's request for a continuance, and nothing more. Jerry's brief presents no clearly defined arguments supported by pertinent authority, and we refrain from perusing the record to find validation for a reversal. *Express Valet*, 373 Ill. App. 3d at 855.

¶ 23 In addition to his failure to comply with Rules 341(h)(6) and (h)(7), Jerry also violates Rules 341(a), which discourages the use of footnotes, and Rule 342(b), which limits the length of briefs to 50 pages. Ill. S. Ct. R. 341(a), (b) (eff. Jan. 1, 2016). Here, Jerry's brief is 62 pages and includes 87 footnotes, many of which contain multiple, single-spaced paragraphs. Nor does Jerry's brief contain a proper statement of the issues presented for review, the applicable standard

of review for each issue, or a short conclusion stating the precise relief sought as required by Rules 341(h)(3) and (h)(8). Ill. S. Ct. R. 341(h)(3), (h)(8) (eff. Jan. 1, 2016).

¶ 24 We understand that Jerry, a formerly licensed attorney, has proceeded *pro se* throughout this litigation and here on appeal. However, *pro se* litigants must comply with the applicable court rules. See *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) ("*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 sum, Jerry's failure to comply with Supreme Court Rule 341 prevents our review of the issues raised in this appeal and results in forfeiture of his argument on appeal. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 211 (2007).

¶ 25 As outlined above, the deficiencies of Jerry's brief are so pervasive and substantial that it precludes any meaningful review of the circuit court's December 10, 2015, order. Jerry has also failed to provide a sufficient record on appeal which further supports our conclusion that we cannot review the merits of this appeal. We conclude, therefore, that Jerry has failed to preserve any issues for appellate review.

¶ 26 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.