2018 IL App (1st) 180282-U

FIFTH DIVISION
Order filed: September 7, 2018

No. 1-18-0282

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 DISTRICT

ROBERT J. PORADA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 17 CH 14242
	)	
	)	
ROBERT J. GNIECH and JOAN M. GNIECH,	)	Honorable
	)	Freddrenna M. Lyle,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justice Connors and Presiding Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Where the plaintiff failed to provide a sufficient record to show that the circuit court abused its discretion, we affirm its order that granted the defendants' motion to disqualify the plaintiff from representing himself in the litigation.

¶ 2 The plaintiff, Robert J. Porada, appeals from an interlocutory order of the circuit court of Cook County that granted the motion of the defendants, Robert J. Gniech and Joan M. Gniech, to disqualify Porada from representing himself in the underlying foreclosure action. For the following reasons, we affirm.

¶ 3 The following factual and procedural history is derived from the pleadings and exhibits of record.

¶ 4 On February 19, 2011, the defendants executed a $102,000 promissory note payable to Porada, which was secured by a mortgage on the defendants' property, commonly known as 10 South Wille Street, Unit 609, Mount Prospect, Illinois. On October 25, 2017, Porada filed a verified complaint pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.* (West 2016)), seeking to foreclose on the property by reason of the defendants' alleged failure to make payments on the promissory note. The verified complaint lists two attorneys for Porada, Jeffrey S. Vollen and Porada Law Offices, Ltd. (Porada Law Offices), and bears the signatures of both Vollen and Porada. The cover sheet attached to the verified complaint identifies Vollen as Porada's counsel, but Porada Law Offices filed an "additional appearance" for Porada on November 8, 2017.

¶ 5 On December 8, 2017, the defendants filed a "Motion to Disqualify Robert J. Porada" from acting as his own attorney pursuant to Rule 3.7(a) of the Rules of Professional Conduct (Ill. R. Prof'l Conduct R. 3.7(a) (eff. Jan. 1, 2010)). The defendants argued that Porada, a licensed attorney, was the mortgagee, "collect[ed] payments and maintain[ed] records related to the subject mortgage loan," and therefore, was "a necessary witness." Noting that Vollen also represented Porada, the defendants asked the circuit court to disqualify Porada "from acting as an attorney in this matter."

¶ 6 Following a hearing on February 1, 2018, the circuit court entered a written order stating, in relevant part, that the "defendants' motion to disqualify *** Porada individually *** is allowed but not [as to] Porada Law Offices." The court did not set forth its reasons for disqualifying Porada, but stated that it entered the order "having heard the argument of counsel."

On February 5, 2018, Porada filed an affidavit wherein he attested that for "necessary financial reasons," he had chosen to "represent [him]self" with "co-counsel *** Vollen acting as *** advocate at any trial," and that he had advised the court of the same at the hearing. On February 8, 2018, Porada filed a petition for leave to appeal under Supreme Court Rule 306(a)(7) (eff. Nov. 1, 2017)), which this court allowed.

¶ 7 Before addressing this appeal, we must admonish Porada for his failure to comply with Supreme Court Rule 342 (eff. July 1, 2017). Rule 342 requires an appellant to include in his brief an appendix with, among other things, a copy of the judgment appealed from, any findings of fact or memorandum opinions issued by the circuit court, any relevant pleadings, and a complete table of contents of the record on appeal. *Id.* Here, Porada's brief includes only a copy of this court's order granting his petition for leave to appeal and a table of contents to the record. We remind Porada that our Supreme Court Rules "are not advisory suggestions, but, rather, rules to be followed," and it is within this court's discretion to dismiss an appeal for an appellant's failure to follow those rules. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57.

¶ 8 On appeal, Porada raises numerous arguments as to why the circuit court abused its discretion by granting the defendants' motion to disqualify and why the defendants waived their arguments on appeal in support of the court's ruling. We are unable to reach the merits of Porada's contention, however, as he did not provide us with a sufficient record on appeal to review the court's exercise of discretion.

¶ 9 It is well-established that "[t]he determination of whether counsel should be disqualified is directed to the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997). In deciding whether the circuit court abused its discretion, "the court of review must have before it the record to review

in order to determine whether there was the error claimed by the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). The appellant bears the burden of presenting "a sufficiently complete record of the proceedings;" when the record on appeal is insufficient, "it [is] presumed that the order entered by the trial court [is] in conformity with law and had a sufficient factual basis." *Id.* at 391-92. In such cases, the reviewing court must "indulge in every presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly." (Internal quotation marks omitted.) *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006). Consequently, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392.

¶ 10 In this case, the record on appeal does not contain a transcript for the February 1, 2017 hearing on the defendants' motion to disqualify. The record also lacks a bystander's report or an agreed statement of facts filed pursuant to Supreme Court Rules 323(c) and (d). Ill. S. Ct. R. 323(c), (d) (eff. July 1, 2017). And, although Porada's affidavit purports to set forth the arguments he raised before the circuit court in opposition to the defendants' motion to disqualify, the court's written order does not state its reasons for granting the defendants' motion. Without a sufficient record, we have no means of knowing why the court entered the order at issue and, as a consequence, we are unable to meaningfully review its exercise of discretion. See *Illinois Founders Insurance Co. v. Williams*, 2015 IL App (1st) 122481, ¶ 56 (where the record does not reveal the circuit court's reasoning, a reviewing court cannot "determine whether [a] decision constituted an abuse of discretion"). We presume, therefore, that the court's order was in conformity with the law, and we reject Porada's assertion that the court abused its discretion.

¶ 11 In so holding, we find the present case distinguishable from *Muellman-Cohen v. Brak*, 361 Ill. App. 3d 52, 54 (2005), where, notwithstanding the appellant's failure to provide a

sufficient record on appeal, we vacated the circuit court's order that disqualified her attorney and remanded for the court to enter a new written order stating its reasons for the disqualification. In *Brak*, "[t]he substantive issue" on appeal was whether a previous version of Rule 3.7(a) of the Rules of Professional Conduct applied under the particular facts of the case, and due to the incomplete record, we had "no way of knowing whether the [circuit] court relied on Rule 3.7(a)" at all. *Id.* In the case at bar, the question is not whether Rule 3.7(a) applies, but whether the circuit court abused its discretion in applying it. As we have explained, the record does not allow for our review of that issue.

¶ 12 Even if we were to consider the merits of Porada's argument, however, the outcome would not be different. The well-established principle that "a criminal defendant does not have the right to serve as co-counsel on his case with an attorney[ ] *** is equally applicable in civil matters." *Commonwealth Eastern Mortgage Co. v. Vaughn*, 179 Ill. App. 3d 129, 134 (1989); see also *In re Sean N.*, 391 Ill. App. 3d 1104, 1106 (2009) (holding that a respondent at a proceeding to involuntarily administer treatment "is not entitled to hybrid representation" and the trial court therefore correctly disregarded his *pro se* motion while he was represented by counsel); *Talley v. Director of Wexford Medical Health Sources*, No. 15-CV-1073-SMY-RJD, slip. op. at 1 (S.D. Ill., Aug. 22, 2017) (declining to consider a motion filed *pro se* by a civil litigant who was represented by counsel). As nothing in the record suggests that Vollen withdrew from representation at any point during the circuit court proceedings, Porada was not entitled to represent himself. Consequently, the court's order granting the defendants' motion to disqualify Porada was not improper.

¶ 13 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 14 Affirmed.