2013 IL App (2d) 130153-U
No. 2-13-0153
Order filed November 26, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GLORIA RHOADS and WAYNE JOHNSON, Assignees of Paul Rhodes, Plaintiffs-Appellants, v. HAROLD M. SAALFELD and SAMUEL A. SMITH, Claimants-Appellees.	))))))))))))	Appeal from the Circuit Court of Du Page County. No. 10-CH-442 Honorable Terence M. Sheen, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Appellants' arguments forfeited for failing to comply with Illinois Supreme Court Rule 341(h). In any event, appellants' arguments fail.

¶ 2 In this estate action, which was resolved via arbitration, appellants, Gloria Rhoads and Wayne Johnson, appeal the trial court's grant of fees to their former attorney, Harold M. Saalfeld, and the court-appointed receiver, Samuel A. Smith. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 As will be discussed later in this decision, much of the relevant background for this case is omitted from the briefs on appeal. Indeed, most of the following summary derives from this court's independent review of the record.

¶ 5 In short, this case originated as an estate contest, whereby appellants, by virtue of assignments of interest, pursued an action against the trustee of the estate of Bertha A. Rhoads, who died in 1997. Apparently, appellee Saalfeld represented appellants in several actions, including a 2005 action (case No. 2005-CH-1248) filed before the circuit court. The representation agreement in the record provides that Saalfeld would represent appellants' interests in the litigation pending in case No. 2005-CH-1248, and appellants agreed to assign him, as compensation for his services, 1/3 of any sum recovered from trial or 1/4 of any sum recovered by summary judgment or settlement. The agreement further provided a lien to Saalfeld "on this cause of action" and on "any proceed and any judgments recovered in connection with this cause of action." In a January 14, 2013, hearing, appellant Johnson agreed that appellants' entered into the aforementioned representation agreement with Saalfeld.

¶ 6 The 2005 case went to trial before Judge Kenneth Popejoy in 2009 and, on approximately the third day of trial, the parties entered an agreement whereby the case would be dismissed with leave to re-file the action such that it could proceed before binding arbitration. The trial court in this matter read the dismissal order, dated September 10, 2009, into the record as follows:

> "The court being fully advised in the premises and having jurisdiction of the subject matter[,] it is hereby ordered by agreement, one, plaintiff is granted leave to voluntarily nonsuit the above case with leave to refile under a new case number. Not the same case number.

Two, the parties stipulate that all evidence heard in this matter will be admissible as evidence deposition in any other proceedings.

Three, defendant stipulates that none of the prior suits for accounting and other cases shall be a bar for relitigating within one year.

Four, defendant shall preserve all evidence[,] including the ledger of the Bertha Rhoads account."

¶ 7 Accordingly, and apparently in compliance with Judge Popejoy's order, less than four months later, on January 26, 2010, appellants, with Saalfeld as counsel, continued their action against the estate by filing a new complaint, which was assigned the current number, 2010-CH-442. On September 27, 2010, Judge Terence Sheen appointed appellee Smith as receiver for the Bertha Rhoads estate. In accordance with the parties' prior agreement, in September 2010, an arbitration was held, with Saalfeld acting as appellants' counsel. On May 23, 2012, the arbitrator awarded appellants $70,000. On June 13, 2012, the arbitration judgment was entered by the trial court.

¶ 8 Two days later, on June 15, 2012, Saalfeld apparently served receiver Smith with an attorney fee lien against the proceeds due to appellants from the arbitration award. On July 12, 2012, (within 30 days after entry of the judgment) Saalfeld filed a "motion to extend time to file petition to adjudicate attorney's lien and fees," wherein he noted that the defendant trustee had filed before the arbitrator (within 30 days of the arbitration decision) motions to reconsider and to vacate the judgment. Saalfeld asked to extend the time to file his petition to adjudicate attorneys fees until the arbitrator ruled on defendant's motions, as the ultimate judgment might change depending on the arbitrator's rulings on those motions. On October 18, 2012, the trial court, rejecting appellants'

jurisdictional argument, invoked Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011)[1] and granted Saalfeld's motion for an extension. In addition, the court rejected appellants' arguments that the lien was improperly served because it was not served on the parties and was instead served on receiver Smith, who was not a party. The court found that the lien had also been served on appellants' counsel, who confirmed for the court that they had, in fact, accepted service on behalf of their clients.

¶ 9 On January 14, 2013, the court held a hearing on Saalfeld's fee petition. In sum, Saalfeld recounted his representation history to the court, explaining that the 2010 case was a continuation of the 2005 case and that the representation agreement remained controlling. Johnson, in contrast, testified that he recalled a conversation wherein, in exchange for allowing Saalfeld to represent appellants in the 2010 case, Saalfeld asked only for 1/10 of any recovery and for Johnson's assistance in understanding the ins-and-outs of social security practice (which he allegedly learned from another attorney). Johnson confirmed that he is not an attorney, has never represented any client in a social security hearing, and that he has previously been convicted of perjury.

¶ 10 The trial court ruled in Saalfeld's favor, noting that it had reviewed the assignments, agreements, orders, and complaints at issue, and finding that the 2010 case was, in fact, a continuation of the 2005 case. The court noted that "it was impossible for this case to continue under 05-CH-1248 pursuant to the agreement of the parties, pursuant to Judge Popejoy's order." The court found that Saalfeld was entitled to 1/3 of the $70,000 judgment, plus costs. The court noted that appellants never filed a response to Saalfeld's petition, never raised any defenses to the petition,

[1]Rule 183 provides: "The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time."

nor filed any discovery with respect thereto. The court also found that Johnson was "not credible at all. *** I think it's clear on the record he didn't really testify truthfully. Just looking at the court file shows that most of his testimony was in fact not accurate or correct."

¶ 11 Appellants' various motions to reconsider were denied and, on February 13, 2013, they appealed.

¶ 12 II. ANALYSIS

¶ 13 First, we note that, while appellee Smith filed a response brief, appellee Saalfeld did not. Nevertheless, we are able to decide the issues on appeal without the aid of Saalfeld's brief. See *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 14 Second, appellants' brief is woefully deficient and in numerous ways violates Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). Despite the record containing almost 300 pages of hearing transcripts and over 1,000 pages of common law record, virtually none of the detail presented above in the background section appears in appellants' approximately two-page statement of facts, which instead consists of a brief timeline of the case, is argumentative, and omits any summary of relevant testimony or the trial court's rationale for its rulings. Ill. S. Ct. R. 341(h)(6). Further, appellant raises three issues on appeal, but provides a standard of review for only one.[2] Ill.

[2]An incorrect one, at that. Under the "points and authorities" section, appellants state that the standard of review for attorney fee awards is the manifest-weight-of-the-evidence standard. They cite, however, a workers' compensation case noting that whether to award attorney fees for vexatious behavior under the Workers' Compensation Act (820 ILCS 306 *et seq.* (2006)) is a question of fact for the Commission subject to the manifest-weight standard of review. *Dye v. Illinois Workers's Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 15. Here, appellants argue that Saalfeld's

S. Ct. R. 341(h)(3). Finally, appellants' presentation of their three arguments is deficient. At various times, it is undeveloped, cites no authority (or authority that is not pertinent), and provides either no appropriate record citation or citation to virtually the entire record of proceedings (for example, when arguing that the court erred in awarding Saalfeld fees, appellants repeatedly cite in broad strokes pages 77-222 of the record). Ill. S. Ct. R. 341(h)(7).

¶ 15 This court is not a "repository in to which an appellant may foist the burden of argument and research;" we are "entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Rule 341's requirements are not merely guidelines (*Kerger v. Board of Trustees of Community College District No. 502*, 295 Ill. App. 3d 272, 275 (1997)), and the failure to comply with Rule 341 can result in forfeiture of the issues (see *Nelson v. County of Kendall*, 2013 IL App (2d) 120635, ¶ 9; *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶¶ 38-39). Based on the numerous violations of Rule 341(h) here, we find the issues on appeal forfeited.

¶ 16 We note that, despite not being obligated to do so, this court's review of the record made clear not only the magnitude of the deficiencies in appellants' brief, but also that appellants' arguments are meritless. For example, appellants argue first that, because Saalfeld did not file his actual fee petition within 30 days of the June 13, 2012, judgment (as opposed to the motion for an extension), and the trial court did not, within 30 days of the judgment, grant Saalfeld's motion for an extension of time, the trial court lacked jurisdiction to disturb the judgment and award fees to Saalfeld and Smith. They assert that Rule 183, relied on by the trial court to grant Saalfeld's

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evidence failed to prove entitlement to fees, and our review would be for an abuse of the court's discretion. See, *e.g.*, *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314 (2007).

extension, cannot extend "a statutory time limit." However, appellants do not identify which statutory time limit the trial court improperly extended. Further, although they reference generally that a postjudgment motion must be filed, or extension of time to do so must be granted, within 30 days of the judgment, they ignore that Saalfeld's motion was not a motion attacking the judgment. Rather, as the trial court noted, Saalfeld was not a party attacking the judgment; he is a former attorney seeking fees. Thus, where Saalfeld filed his motion for an extension within 30 days of the judgment, the trial court's jurisdiction was not implicated and its use of Rule 183 was not improper.

¶ 17 Next, appellants argue that, because Saalfeld did not properly serve his lien or otherwise establish his entitlement to fees, the trial court erred where it entered a fee award on Saalfeld's behalf. Here, appellants do not present a single citation to any legal authority. Further, they ignore that their attorneys expressly admitted to having accepted service of the lien on appellants' behalf, as well as the trial court's rejection of their inadequate-service argument on this very basis. Moreover, at the hearing on attorney fees, Saalfeld testified in detail about the assignments that gave rise to his representation and the contingency fee agreement that entitled him to fees, and the trial court made detailed findings as to why those assignments were adequate proof of Saalfeld's agreement with appellants. Appellants omit that the trial court found Johnson, who admitted under oath that he has previously been convicted of perjury, "not credible at all. *** I think it's clear on the record he didn't really testify truthfully. Just looking at the court file shows that most of his testimony was in fact not accurate or correct."

¶ 18 Finally, appellants argue that the court committed error where it found that receiver Smith was a proper "adverse party" upon whom a lien may be served. Of course, appellants do not point to where in the record the court actually made such a finding. Indeed, as this court has noted, the

trial court agreed that the lien needed to be served upon the parties, but rejected the improper-service argument because appellants' attorneys acknowledged that they accepted service on their clients' behalf. Thus, appellants' improper-service argument was not rejected based on a finding that the receiver was an appropriate party to receive service of the lien. Rather, it was rejected because the parties themselves were, in fact, served.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 21 Affirmed.