2017 IL App (4th) 170026-U

NOS. 4-17-0026, 4-17-0033 cons.

FILED
August 18, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CHARLOTTE HARRISON HUGGINS; CYNTHIA H. PETERS; and SHIRLEY H. COOPER, Formerly Known as Shirley A. Huggins, Plaintiffs-Appellees, v. ROGER LYLE HARRISON, JR., as Administrator of the Estate of Roger Lyle Harrison, Sr., Deceased; ROGER LYLE HARRISON, JR., LYLE ROGER HARRISON, LUX HARRY HARRISON, ANDREW LUX HARRISON, and PETER ANDREW HARRISON, as Trustees of the Roger Lyle Harrison Senior Revocable Trust, dated July 10, 2012; JOY CLAIRE HARRISON; CLARA HARRISON KARBINE; JANET HARRISON CROME; ROGER LYLE HARRISON, JR.; JOHANNA HARRISON FICKETT; LYLE ROGER HARRISON; LUX HARRY HARRISON; ANDREW LUX HARRISON; BETH JOHANNA HARRISON; PETER ANDREW HARRISON; HARRISON FARM MANAGEMENT, LLC, an Illinois Limited Liability Company; and UNKNOWN OWNERS, If Any, Defendants (Roger Lyle Harrison, Jr. (No. 4-17-0026), and Lyle Roger Harrison (No. 4-17-0033), Defendants-Appellants).	)	Appeal from Circuit Court of Moultrie County No. 11CH27 Honorable Dan L. Flannell, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by denying defendants' motion to vacate a default.

¶ 2 With permission from the trial court, plaintiffs, Charlotte Harrison Huggins, Cynthia H. Peters, and Shirley A. Huggins, filed a second amended complaint. The court ordered defendants, Roger Lyle Harrison, Jr., and Lyle Roger Harrison, to answer it within 45 days. Forty-five days passed, and then several months passed, but still defendants did not answer the second amended complaint or move to dismiss it. Plaintiffs filed a motion for an order of default, and the court granted the motion, declaring the allegations of the second amended complaint to be admitted. Defendants moved to vacate the default, and the court declined to do so; the court decided that, given defendants' dilatory behavior throughout the litigation, the default should stand. Finally, after an evidentiary hearing on damages and other remaining issues, which defendants did not attend, the court entered a judgment against defendants and in plaintiffs' favor. Defendants appeal the denial of their motion to vacate the default. We find no abuse of discretion in the denial, and, therefore, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Plaintiffs' Allegations

¶ 5 On July 18, 2011, plaintiffs filed a verified complaint, in which they requested (1) a partition of nine tracts of land in Moultrie County and (2) a partnership accounting. The complaint named Roger Lyle Harrison, Sr., and unknown owners as defendants. On August 4, 2012, the trial court entered a default order against Roger Lyle Harrison, Sr.

¶ 6 On January 13, 2012, plaintiffs amended their complaint so as to add the children of Roger Lyle Harrison, Sr., as defendants, namely, Clara Harrison Karbine; Janet Harrison Crome; Roger Lyle Harrison, Jr.; Johanna Harrison Fickett; Lyle Roger Harrison; Lux Harry Harrison; Andrew Lux Harrison; Beth Johanna Harrison; and Peter Andrew Harrison.

¶ 7 On August 27, 2014, after Roger Lyle Harrison, Sr., died, plaintiffs filed a second amended complaint, substituting, for the decedent, Roger Lyle Harrison, Jr., as the administrator of the decedent's estate. Plaintiffs also added Harrison Farm Management, LLC, as a defendant. Otherwise, the defendants were the same as in the first amended complaint.

¶ 8 The second amended complaint had five counts.

¶ 9 1. *Count I: An Action for Partition*

¶ 10 Count I was an action for a partition of the nine tracts of farmland, which, as we said, were all located in Moultrie County. This count was directed against all of the defendants except Harrison Farm Management, LLC, and it described the history of the ownership of those tracts as follows.

¶ 11 a. Tracts 1 and 2,
Property Identification Nos.
02-02-16-000-300 and 02-02-23-000-300

¶ 12 Lyle Lux Harrison and Alta Bowers Harrison executed two warranty deeds pertaining to tracts 1 and 2. One warranty deed was dated November 23, 1964, and the other was dated January 7, 1965. Both warranty deeds made Harry Howard Harrison and Alta Bowers Harrison life tenants of tracts 1 and 2. The warranty deed of November 23, 1964, conveyed a three-fourths remainder interest in tracts 1 and 2 to Charlotte Harrison Huggins and the heirs of her body and to Roger Lyle Harrison, Sr., and the heirs of his body. The warranty deed of January 7, 1965, conveyed a one-fourth remainder interest in tracts 1 and 2 to Charlotte Harrison Huggins and the heirs of her body and to Roger Lyle Harrison, Sr., and the heirs of his body. Harry Howard Harrison, Alta Bowers Harrison, and Roger Lyle Harrison, Sr., are deceased. Therefore, Charlotte Harrison Huggins has an undivided one-half life estate in tracts 1 and 2, with vested remainders in her children, Cynthia H. Peters and Shirley H. Cooper, and the

children of Roger Lyle Harrison, Sr.—namely, Clara Harrison Karbine, Janet Harrison Crome, Roger Lyle Harrison, Jr., Johanna Harrison Fickett, Lyle Roger Harrison, Lux Harry Harrison, Andrew Lux Harrison, Beth Johanna Harrison, and Peter Andrew Harrison—have an undivided one-half interest in tracts 1 and 2.

¶ 13 b. Tracts 3 and 4,
Property Identification Nos.
02-02-23-000-100 and 02-02-22-000-201

¶ 14 By virtue of two conveyances, Charlotte Harrison Huggins owns an undivided one-half interest in tracts 3 and 4, and the heirs or legatees of Roger Lyle Harrison, Sr., own the other undivided one-half interest in those tracts. On May 27, 1980, Roger Lyle Harrison, Sr., as the trustee under a trust agreement dated December 6, 1976, executed a trustee's deed conveying one-half of the ownership interest. On December 15, 2003, U.S. Bank, N.A., as the trustee under a trust created by the will of Harry Howard Harrison, executed a trustee's deed conveying the other half.

¶ 15 c. Tract 5, Property Identification No. 02-02-22-000-102

¶ 16 On August 13, 1920, Peter Lux and Mary E. Lux executed a deed, in which they reserved for themselves a life estate in tract 5, conveyed life estates to Susan Myrtle Harrison and Lyle Lux Harrison, and conveyed the remainder to Lyle Lux Harrison's children by blood (or to their descendants *per stirpes*). Lyle Lux Harrison was the father of Charlotte Harrison Huggins and Roger Lyle Harrison, Sr. Peter Lux, Mary E. Lux, Susan Myrtle Harrison, Lyle Lux Harrison, and Roger Lyle Harrison, Sr., are deceased. On December 6, 1982, Charlotte Harrison Huggins and Rollin C. Huggins, Jr., executed a warranty deed conveying an undivided one-half interest in tract 5 to Cynthia H. Peters and Shirley H. Cooper. Therefore, Cynthia H. Peters owns an undivided one-fourth interest in tract 5, Shirley H. Cooper owns an undivided one-fourth

interest, and the heirs or legatees of Roger Lyle Harrison, Sr., own the remaining undivided one-half interest.

¶ 17 d. Tracts 6 and 7,
Property Identification Nos.
02-02-22-000-401 and 02-02-22-000-402

¶ 18 On August 13, 1920, Peter Lux and Mary E. Lux executed a deed, in which they conveyed life estates in tracts 6 and 7 to Susan Myrtle Harrison and Lyle Lux Harrison and the remainder to the bodily heirs of Lyle Lux Harrison (or to their descendants *per stirpes*). Lyle Lux Harrison was the father of Charlotte Harrison Huggins and Roger Lyle Harrison, Sr. Peter Lux, Mary E. Lux, Susan Myrtle Harrison, Lyle Lux Harrison, and Roger Lyle Harrison, Sr., are deceased. It follows that Charlotte Harrison Huggins owns an undivided one-half interest in tracts 6 and 7 and the heirs or legatees of Roger Lyle Harrison, Sr., own the other undivided one-half interest.

¶ 19 e. Tracts 8 and 9,
Property Identification Nos.
02-02-22-000-202 and 02-02-22-000-400

¶ 20 On December 19, 1976, Lyle Lux Harrison executed a warranty deed, in which he conveyed an undivided one-half interest in tracts 8 and 9 to Charlotte Harrison Huggins and Roger Lyle Harrison, Sr. In the second article of her will, Alta Bowers Harrison conveyed her undivided one-half interest in tracts 8 and 9 to her husband, Lyle Lux Harrison, for his lifetime and the remainder to her children living at the time of her death. Alta Bowers Harrison was the mother of Charlotte Harrison Huggins and Roger Lyle Harrison, Sr. Alta Bowers Harrison and Lyle Lux Harrison are deceased. By a warranty deed dated August 4, 2012, Roger Lyle Harrison, Sr., conveyed his undivided one-half interest in tracts 8 and 9 to the Roger Lyle Harrison Senior Revocable Trust, dated July 19, 2012. Consequently, Charlotte Harrison Huggins owns an

undivided one-half interest in tracts 8 and 9, and the Roger Lyle Harrison Senior Revocable Trust, dated July 19, 2012, owns the other undivided one-half interest in tracts 8 and 9.

¶ 21 On February 7, 2011, Charlotte Harrison Huggins sent a letter to Roger Lyle Harrison, Sr., in which she referenced his lack of response to a request she made eight months earlier to "divide Harrison Farms." She complained that he had appointed Lyle Roger Harrison as the farm manager without conferring with her. She announced her decision to "terminate Harrison Farms Partnership," and she demanded that Roger Lyle Harrison, Sr., "turn over one-half of the cash on hand to [her] family and [her]." She had a "plan for dividing the land on the basis of acreage[,] eliminating the expense and delay of appraisals." She planned to bring an action in Moultrie County if this matter was not resolved before the year's crop was planted.

¶ 22 2. *Count II: An Action for an Accounting*

¶ 23 Count II was an action for an accounting, and it was directed against all the defendants. This count alleged as follows. (We omit the allegations plaintiffs made on information and belief, since those allegations are not deemed to be admitted by a default. See *Terminal-Hudson of Illinois, Inc. v. Goldblatt Brothers, Inc.*, 51 Ill. App. 3d 199, 204 (1977).)

¶ 24 In January 1983, plaintiffs and Roger Lyle Harrison, Sr., entered into a written partnership agreement, creating the Harrison Farms Partnership to manage and operate the farmland described in count I. For many years, Roger Lyle Harrison, Sr., acted as the managing partner of the partnership, and it was his custom to consult with Charlotte Harrison Huggins before making any major decisions. In approximately 1994, when Roger Lyle Harrison, Sr., wished to retire, he conferred with Charlotte Harrison Huggins, and they agreed to hire a professional farm manager, Hertz Farm Management. In approximately September 2010, without notifying plaintiffs, Roger Lyle Harrison, Sr., replaced Hertz Farm Management with Harrison

Farm Management, LLC, a limited liability company wholly owned by his son, Lyle Roger Harrison. Roger Lyle Harrison, Sr., entered into a written five-year farm management contract with Harrison Farm Management, LLC, and on October 30, 2011, the contract was amended so as to provide: " 'If this five[-]year contract is cancelled any time prior to January 2017, Harrison Farm Management LLC will immediately be awarded a cancellation penalty payment of twice the bin management fee of $1.00 per bushel which equals two times the 56,400 bushel bin capacity of $112,800.' " Plaintiffs never were consulted ahead of time about replacing Hertz Farm Management or about entering into this five-year contract with Harrison Farm Management, LLC. Plaintiffs regarded the new contractual arrangements as detrimental to them.

¶ 25 On February 7, 2011, Charlotte Harrison Huggins terminated the partnership by written notice to Roger Lyle Harrison, Sr. Plaintiffs made repeated requests for an accounting, but Roger Lyle Harrison, Sr., Lyle Roger Harrison, and Harrison Farm Management, LLC, refused these requests. Those three defendants had been controlling and operating the farmland to the exclusion of plaintiffs—and without making an adequate accounting to plaintiffs of the income or disbursements or net profits and losses of the partnership. They continued this exclusive dominion even after the termination of the partnership.

¶ 26 Plaintiffs requested the entry of a default judgment against Roger Lyle Harrison, Sr., to conform with the default judgment entered against him on April 27, 2012, and they requested a full accounting of the partnership from January 1, 2010, until the date of its termination, February 7, 2011.

¶ 27 3. *Count III: An Action To Quiet Title*

¶ 28 Count III was an action to quiet title, and it was directed against the estate of Roger Lyle Harrison, Sr.; the Roger Lyle Harrison Senior Revocable Trust, dated July 10, 2012

(Roger Lyle Harrison Senior Revocable Trust); Roger Lyle Harrison, Jr.; Lyle Roger Harrison; Lux Harry Harrison; Andrew Lux Harrison; and Peter Andrew Harrison. This count alleged substantially as follows.

¶ 29 Roger Lyle Harrison, Sr., executed two instruments and caused them to be recorded in the office of the Moultrie County clerk and recorder: (1) a warranty deed in trust dated July 25, 2012, and recorded as document No. 295703 and (2) a warranty deed in trust dated August 13, 2012, and recorded as document No. 295848.

¶ 30 On September 9, 2013, Roger Lyle Harrison, Jr., Lyle Roger Harrison, Lux Harry Harrison, and Andrew Lux Harrison and Peter Andrew Harrison, individually and as cotrustees of the Roger Lyle Harrison Senior Revocable Trust, executed and caused three warranty deeds in trust to be recorded in the office of the Moultrie County clerk as document Nos. 298597, 298598, and 298599.

¶ 31 Plaintiffs alleged that although those five instruments were "invalid and inoperative," they created a cloud on plaintiffs' title to the farmland. Plaintiffs requested an order removing those five instruments from the public records of Moultrie County and declaring those instruments to be null and void and to be no cloud on plaintiffs' title.

¶ 32 4. *Count IV: An Action for Slander of Title*

¶ 33 Count IV was directed against Roger Lyle Harrison, Jr., Lyle Roger Harrison, Lux Harry Harrison, and Andrew Lux Harrison and Peter Andrew Harrison, individually and as cotrustees of the Roger Lyle Harrison Senior Revocable Trust. It alleged that by recording document Nos. 298597, 298598, and 298599 (referenced in the preceding count), those defendants had intentionally and maliciously slandered plaintiffs' title to their undivided share of the farmland.

¶ 34 5. *Count V: An Action for Waste*

¶ 35 Count V was directed against the estate of Roger Lyle Harrison, Sr., the Roger Lyle Harrison Senior Revocable Trust, Lyle Roger Harrison, and Harrison Farm Management, LLC. This count alleged that during the time when those defendants had exclusive control of the farm operation, the soil became depleted due to the failure to follow reasonable standards of husbandry and, consequently, the "court-appointed farm manager[,] Hardware State Bank[,] [was] requesting that potash be applied to the Property's soil at an estimated cost of $30,000.00."

¶ 36 B. The Court-Ordered Deadline for Answering the Second Amended Complaint

¶ 37 On October 7, 2014, by agreement of the parties, the trial court ordered defendants to answer, or otherwise plead to, the second amended complaint within 45 days.

¶ 38 C. The Default Order

¶ 39 On August 11, 2015, plaintiffs moved for a default order because defendants had not answered the second amended complaint, even though plaintiffs had given them an extension until December 3, 2014, to answer or to otherwise plead.

¶ 40 On October 26, 2015, the trial court granted plaintiffs' motion for a default order, holding the allegations of the second amended complaint to be admitted by defendants.

¶ 41 D. Refusal To Vacate the Default

¶ 42 On November 25, 2015, defendants, through their attorney, Alon Stein, moved to set aside the default, appending to their motion a proposed answer to the second amended complaint, along with affirmative defenses.

¶ 43 On January 13, 2016, the trial court declined to vacate the default. The court explained:

"THE COURT: Thank you, gentlemen. The record should be clear on this, part of the reason why the Court granted the Order of Default is the fact that these Defendants have repeatedly, through the course of this litigation, done any and everything they can to delay resolution and finality of this case, and the Court's taken that into account in considering your motion to vacate, Mr. Stein. I understand and recognize the position counsel's put in, but the Court will not and cannot ignore the misconduct of these Defendants throughout this litigation from day one, from day one with their approach, and I've said it many times, that's the strangest Appellate opinion [(*Huggins v. Harrison*, 2013 IL App (4th) 120956-U)], albeit order of Rule 23, that I've ever read, where the Appellate Court is saying: Settle this case because it's going to be costly and painful. I can't speak to the cost, but I can certainly speak to the pain. It's been painful for everybody, counsel included and the Court. This case—these Defendants have had ample opportunity to advance this litigation and have chosen not to before you got in it and since you've gotten into this case. When counsel enters a case where there have been three previous lawyers that have been in and have gotten out, you come burdened into the case with the conduct of the clients before you got in it. That's what—the position you're in and have been in from the get-go. So the request to vacate is denied. No written order thereto required."

¶ 44 The trial court then took up a motion by Stein to withdraw from representing defendants. The court gave Stein permission to withdraw.

¶ 45 E. The Evidentiary Hearing

¶ 46 On October 20, 2016, the trial court held a hearing on various pending motions, including plaintiffs' fifth motion to extend a farm management agreement. (On September 17, 2012, on plaintiffs' motion, the trial court appointed Hardware State Bank, in Lovington, Illinois, as a receiver, to manage the farmland in dispute.) Defendants did not appear. The court extended the farm management agreement until June 20, 2017, and made other rulings, including the denial of defendants' second and third motions for recusal of the judge. The docket entry for that date concludes:

> "Cause allotted for hearing on the Motion for Issuance of Partition Deeds, Determination of Monetary Damages, and Award of Attorneys' Fees and Expense[s] with the supporting memorandum on December 7, 2016, 9:30 a.m. Defendant Lyle Harrison ordered to appear. Mr. Runyon [(plaintiffs' attorney)] to send notice[,] including language that failure to appear will result in the issuance of an order of body attachment."

¶ 47 On December 7, 2016, the trial court held the scheduled evidentiary hearing, at which defendants failed to appear.

¶ 48 F. The Judgment Order

¶ 49 On December 9, 2016, the trial court entered a "Judgment Order," which partitioned the farmland and awarded plaintiffs a money judgment against defendants in the total amount of $608,891.69, "inclusive of the partition owelty payment, the Judicial Deed recording fees, the proven damages [on counts II and V], prejudgment interest, attorneys' fees, court costs, and other legal expenses." The court stated: "The equities of this case are with Plaintiffs who, due to the blatant dilatory tactics of Defendants, were caused to engage in long and costly litigation to defeat baseless claims and assertions completely devoid of factual or legal merit."

¶ 50 This appeal followed.

¶ 51 II. ANALYSIS

¶ 52 A. The Claim of Judicial Bias

¶ 53 In this appeal, defendants challenge three orders: (1) the order appointing Hardware State Bank as a receiver, which the trial court entered on September 17, 2012; (2) the default order, which the court entered on October 26, 2015; and (3) the judgment order, which the court entered on December 9, 2016. Defendants argue we should overturn those orders because the trial judge, Dan L. Flannell, owned stock in Hardware State Bank and thus was under a conflict of interest, and also because Judge Flannell communicated *ex parte* with Hardware State Bank before appointing it as a receiver.

¶ 54 We considered and rejected both of those arguments in the first appeal in this case. *Huggins*, 2013 IL App (4th) 120956-U ¶¶ 75-80. We held that, "[a]bsent contrary evidence, the judge's five shares [in Hardware State Bank were] a *de minimis* economic interest" and, thus, were not cause for disqualification under Rule 63(C)(1)(d) of the Code of Judicial Conduct (Ill. S. Ct. R. 63(C)(1)(d) (eff. Apr. 16, 2007). *Huggins*, 2013 IL App (4th) 120956-U, ¶77. We quoted a remark Judge Flannell made in a hearing on September 7, 2012: " 'I don't know how many shares there are in the Hardware State Bank, but I can assure you that five of them does not put me in much of a position of power.' " *Id.* ¶ 46. As for the *ex parte* communication, all Judge Flannell had done was telephone Hardware State Bank to inquire if it still did farm management. *Id.* ¶ 48. We held that because (1) this "communication was an effort to determine if [Hardware State Bank's] appointment was a legal impossibility and did not concern any substantive matter of the motion" and (2) Judge Flannell disclosed the communication to the parties, this was an *ex parte* communication that Rules 63(A)(4)(a)(i) and (ii) (Ill. S. Ct. Rs. 63(A)(4)(a)(i), (ii) (eff.

Apr. 16, 2007)) permitted. *Huggins*, 2013 IL App (4th) 120956-U, ¶ 80. We decide, *de novo*, that those holdings are the law of the case and that defendants may not relitigate them. See *Rommel v. Illinois State Toll Highway Authority*, 2013 IL App (2d) 120273, ¶¶ 14-15.

¶ 55 B. Defendants' Admission of the Second Amended Complaint by Default (Except the Allegations of Damages) and the Justice of Refusing To Vacate the Default

¶ 56 Because the Code of Civil Procedure does not specify how long a party has to answer an amended pleading, that deadline is left up to the trial court's discretion. See *In re Detention of Duke*, 2013 IL App (1st) 121722 ¶ 24 ("The procedure to follow when answering an amended pleading is not covered by the Illinois Code of Civil Procedure, but left to the discretion of the circuit court."). On October 7, 2014, in an agreed-upon order, the court directed defendants to answer the second amended complaint within 45 days. Defendants failed to do so. Therefore, defendants were deemed to have admitted all the allegations in the second amended complaint except the allegations of damages. See 735 ILCS 5/2-610(b) (West 2014). "Every allegation, except allegations of damages, not explicitly denied is admitted, unless the party states in his or her pleading that he or she has no knowledge thereof sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny." *Id.*

¶ 57 "The court may in its discretion, before final order or judgment, set aside any default ***." 735 ILCS 5/2-1301(e) (West 2014). Before the final judgment, defendants' attorney moved to set aside the default, and the trial court denied the motion. We review this denial for an abuse of discretion. See *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925 ¶ 32. This is a deferential standard of review. A trial court abuses its discretion if it

makes an arbitrary decision, without using conscientious judgment, or if its decision exceeds the bounds of reason and ignores principles of law, thereby inflicting substantial prejudice. *Id.*

¶ 58 Using its conscientious judgment, the trial court had to decide whether vacating the default would accomplish substantial justice between the parties. See *In re Haley D.*, 2011 IL 110886 ¶ 69. "In making this assessment, a court should consider all events leading up to the judgment. What is just and proper must be determined by the facts of each case, not by a hard and fast rule applicable to all situations regardless of the outcome." (Internal quotation marks omitted.) *Id.*

¶ 59 When we review the record before us, we see some basis for the trial court's assessment that defendants had been dilatory in the conduct of this litigation. They went through four attorneys. In addition to the aforementioned unsuccessful appeal from the appointment of a receiver and Judge Flannell's refusal to recuse himself (*Huggins*, 2013 IL App (4th) 120956-U), defendants appealed a second time, from an order of indirect civil contempt, and some four months later, we dismissed that appeal because defendants had failed to file a brief (*Huggins v. Harrison*, No. 4-13-0327 (Sept. 9, 2013)). (The contempt order was dated April 25, 2013. The trial court had held Lyle Roger Harrison in indirect civil contempt for violating an order requiring (1) prior court approval of any proposed sale of crops and (2) the delivery of farm accounts and records and the 2012 crop, in whatever form it existed, to the receiver.) Defendants did not appear at the hearing of October 26, 2015, when the court granted plaintiffs' motion for an order of default, and as of that date, the deadline for answering the second amended complaint had expired 339 days ago. (On October 7, 2014, the court ordered defendants to answer the second amended complaint within 45 days, that is, by November 21, 2014. On October 26, 2015, which was 339 days later, the court granted plaintiffs' motion for an order of default.)

¶ 60 In sum, the record supports the trial court's finding that "these Defendants have repeatedly, through the course of this litigation, done any and everything they can to delay resolution and finality of this case." Therefore, the court did not make an arbitrary or unreasonable decision by concluding that substantial justice called for the denial of defendants' motion to vacate the default. See *Wells Fargo*, 2015 IL App (1st) 142925 ¶ 32. Finding no abuse of discretion, we leave the default order undisturbed. See *id.*

¶ 61 C. Defendants' Motion To File the Same Joint Brief for Both Appeals

¶ 62 There are two appeals in this case, one by Roger Lyle Harrison, Jr. (case No. 4-17-0026), and the other by Lyle Roger Harrison (case No. 4-17-0033). On March 28, 2017, we granted a motion by defendants to consolidate the two appeals. On May 23, 2017, defendants filed a motion that we consider their joint brief as applying to both appeals. We grant the motion, both as to defendants' initial brief and their reply brief. In other words, defendants together have filed one brief, which we will regard as applying to both appeals, and they together have filed one reply brief, which we likewise will regard as applying to both appeals.

¶ 63 D. Plaintiffs' Motion for Sanctions

¶ 64 Pursuant to Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994), plaintiffs have filed a motion for the imposition of sanctions against defendants. In their reply brief, defendants argue against the motion.

¶ 65 Plaintiffs give two reasons for the proposed imposition of sanctions: (1) defendants' brief is in noncompliance with Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016), and (2) defendants' consolidated appeals are frivolous, and in their appeals, they take positions lacking any basis in fact or law.

¶ 66 Those two reasons correspond to the two paragraphs of Rule 375:

"(a) Failure to Comply With Appeals Rules. If after reasonable notice and an opportunity to respond, a party or an attorney for a party or parties is determined to have wilfully failed to comply with the appeal rules, appropriate sanctions may be imposed upon such a party or attorney for the failure to comply with these rules. Appropriate sanctions for violations of this section may include an order that a party be barred from presenting a claim or defense relating to any issue to which refusal or failure to comply with the rules relates, or that judgment be entered on that issue as to the other party, or that a dismissal of a party's appeal as to that issue be entered, or that any portion of a party's brief relating to that issue be stricken. Additionally, sanctions involving an order to pay a fine, where appropriate, may also be ordered against any party or attorney for a party or parties.

(b) Appeal or Other Action Not Taken in Good Faith; Frivolous Appeals or Other Actions. 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.

Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees.

A reviewing court may impose a sanction upon a party or an attorney for a party upon the motion of another party or parties, or on the reviewing court's own initiative where the court deems it appropriate. If the reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction. Where a sanction is imposed, the reviewing court will set forth the reasons and basis for the sanction in its opinion or in a separate written order." Ill. S. Ct. R. 375 (eff. Feb. 1, 1994).

¶ 67 Let us first consider paragraph (a). We agree that defendants' brief is pervasively noncompliant with Rule 341, but we cannot reasonably infer that the noncompliance is *willful*, that is, obstinate and intentional. See Ill. S. Ct. R. 375(a) (eff. Feb. 1, 1994) ("wilfully failed to comply with the appeal rules"); Merriam-Webster's Collegiate Dictionary 1349 (10th ed. 2000) (defining "willful" as "1. obstinately and often perversely self-willed" and "2. done deliberately: INTENTIONAL"). Defendants are *pro se* appellants, who have made *some* effort to comply with Rule 341. Their brief is divided into sections, as Rule 341 requires (points and authorities, the nature of the case, issues presented for review, a jurisdictional statement, a statement of facts, the standard of review on appeal, an argument, a conclusion, and an appendix). Granted, the contents

of those sections often are in noncompliance with Rule 341, *e.g.*, defendants do not state the facts necessary to an understanding of the case (Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016)); their argument is more a series of assertions than a reasoned argument backed up by the citation of authorities (see Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016)); and in the relatively rare instances when defendants cite the record, the page they cite typically does not support the factual representation they are making (see Ill. S. Ct. Rs. 341(h)(6), (7) (eff. Jan. 1, 2016)). Considering, however, that these defendants are not attorneys, it would be more reasonable to infer that instead of being obstinate and intentional violators of Rule 341, they simply are unskilled at writing an appellate brief. To be sure, the Illinois Supreme Court Rules apply to *pro se* litigants just as they apply to everyone else (*Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010)), but Rule 375(a), by its terms, requires willfulness as a condition of imposing sanctions, and we are unconvinced we could justifiably draw an inference of willfulness. Therefore, we decline to impose any sanction under Rule 375(a).

¶ 68 Next, we consider paragraph (b) of Rule 375 (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)). Under paragraph (b), we may impose sanctions in either of three circumstances: (1) the appeal or other action itself is frivolous; (2) the appeal or other action was not taken in good faith, or it was taken for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; or (3) the manner of prosecuting or defending the appeal or other action is for such a purpose. *Id.*

¶ 69 Because there are no hard and fast rules when it comes to deciding whether to vacate a default, and because the law abhors a default, we are unconvinced that defendants' appeal is, in itself, frivolous or in bad faith. As the supreme court says, "entry of default is a drastic remedy that should be used only as a last resort. [Citation.] The law prefers that

controversies be determined according to the substantive rights of the parties. [Citation.] The provisions of the Code of Civil Procedure governing relief from defaults are to be liberally construed toward that end." *Haley D.*, 2011 IL 110886 ¶ 69. "Where a litigant seeks to set aside a default under section 2-1301(e), which governs before final judgment has been entered or within 30 days thereafter, the litigant *need not necessarily* show the existence of a meritorious defense and a reasonable excuse for not having timely asserted such defense." (Emphasis added.) *Id.* ¶ 57. Given those pronouncements by the supreme court in *Haley D.*, we do not find this appeal to be, in and of itself, frivolous or in bad faith. In other words, from an objective point of view, we do not find that the filing of a notice of appeal, by either defendant, was a frivolous act.

¶ 70 Even though an appeal, in and of itself, is objectively defensible, the factual representations and the arguments an appellant makes within the appeal can be indefensible. The *conduct* of a reasonable appeal can be frivolous. "The determination that the appeal is frivolous *or* the conduct is improper is based on an objective standard of conduct, *viz.*, an appeal will be found to be frivolous if a reasonable prudent attorney would not in good faith have brought such an appeal, *or* the appeal conduct will be found to be improper if a reasonable prudent attorney would not have engaged in such conduct." (Emphases added.) Ill. S. Ct. R. 375, Committee Comments of Aug. 1, 1989 (eff. Feb. 1, 1994).

¶ 71 A reasonable, prudent attorney would not have resurrected the claim of judicial bias unless he or she could honestly argue a recognized exception to the law of the case. There are two exceptions to that doctrine. *Alwin v. Village of Wheeling*, 371 Ill. App. 3d 898, 911 (2007). The first exception is that after the lower court issued its decision, a higher court issued a contrary decision on the same issue. *Id.* The first exception is inapplicable to this case because a higher court has not issued a decision that is contrary to the appellate court's decision in the first

appeal. The second exception "allows the reviewing court to depart from the doctrine of the law of the case if the court finds that its prior decision was palpably erroneous, but only when the court remanded the case for a new trial on all issues." (Internal quotation marks omitted.) *Id.* The second exception is inapplicable because we never remanded this case for a new trial on all issues. Not only do defendants in this case fail to argue either exception (indeed, it would be untenable for them to do so), but they do not even acknowledge our holdings in the first appeal.

¶ 72 Further, no reasonable, prudent attorney would have made the scandalous, unsubstantiated allegations against Judge Flannell that defendants make in their brief.

¶ 73 For example, defendants state, without any citation to the record: "Throughout the case, Judge Dan L. Flannell was constantly threatening [defendants]. Judge Dan Flannell verbally assaulted Roger L. Harrison Sr. during the March 27, 2012[,] hearing, because Roger Sr. was the sole Trustee and he refused to take the Trust Assets from his children and give them to Judge Dan Flannell or Charlotte Huggins." The transcript of that hearing is in the record. According to the transcript, two attorneys appeared for plaintiffs, and "[d]efendant Harrison appear[ed] pro se." We are not sure which Harrison this was. Maybe it was Roger Lyle Harrison, Sr. In any event, we do not see anywhere in that transcript where Judge Flannell ordered Roger Lyle Harrison, Sr., to turn over trust assets to him or to Charlotte Huggins, and defendants do not cite the page of the transcript where he allegedly did so. Nor do we see where Judge Flannell was verbally abusive toward Harrison. Instead, quite civilly, Judge Flannell cautioned Harrison against making defamatory or factually baseless allegations in his filings—an admonition that Harrison evidently needed, considering the excerpts that came up for discussion in that hearing.

¶ 74 Defendants would have done well to heed that admonition. We find, for example, the following representation in their brief: "The Order of Default on October 26, 2015 [citation,]

occurred because Judge Dan L. Flannell had previously incarcerated (December 19, 2014—July 17, 2015) Lyle R. Harrison for 211 days and told him in open court, 'You are not allowed to file a counterclaim against my bank, Hardware State Bank, and I will hold you in contempt of court to make you serve a LIFE-SENTENCE until you sign over your farmland to my bank or you sign withdrawing your counterclaims against my bank.' " In support of that representation, they cite no transcript in this case. Instead, they cite a document in their appendix, an "Order of Adjudication of Direct Criminal Contempt," which Judge Flannell entered on March 3, 2014, in a different case, *In re Estate of Harrison*, No. 2013-P-26 (Cir. Ct. Moultrie Cty.). According to that order, Judge Flannell found Roger Lyle Harrison, Jr., to be in direct criminal contempt because on February 28, 2014, after accepting a nomination for appointment as the administrator of the estate of his father, Roger Lyle Harrison, Sr., he refused, in open court, to sign an oath of office and bond. Not only that, but he refused to give any explanation for his refusal. Defendants appear to be fabricating facts while hoping we do not check the pages they cite.

¶ 75 This is hardly an isolated instance. As another example, defendants tell us that Hardware State Bank was Judge Flannell's "largest investment defined as a Class E investment with a value of $100,000 - $250,000." When we look at the pages of their appendix that defendants cite, we find statements, filed with the supreme court, indicating that Judge Flannell does indeed own accounts and common stock at Hardware State Bank (the stock is held in an individual retirement account), but, as far as we can see, these statements say nothing about the value of the accounts and stock. It appears the only thing labeled "E" is Judge Flannell's *debt* to Hardware State Bank ("Creditors to whom amounts in excess of $500 are owed").

¶ 76 Also, defendants represent to us: "Judge Dan L. Flannell immediately began to pay himself, as a common stockholder in Hardware State Bank, from the orders he was signing!"

Again defendants cite their appendix, and the cited document is merely the order of September 17, 2012, in which Judge Flannell appointed Hardware State Bank as the farm manager. Although the order expressly contemplates that Hardware State Bank will be compensated for its services ("[c]ompensation of the Bank for its services must be approved by this Court upon proper petition"), the order, standing alone, does not prove that Judge Flannell personally received any funds as a result of fees paid to Hardware State Bank for its services as the farm manager. No reasonable person would simplistically assume that just because Hardware State Bank was compensated for its services, the compensation automatically flowed through to the stockholders.

¶ 77 To take a final example, defendants represent to us: "Judge Dan L. Flannell rejected Lyle's motion to vacate the default judgment Sua Sponte, because it contained a counterclaim and [third-]party claim against the Bank he owns common stock in, Hardware State Bank." Then, in a footnote to "Sua Sponte," defendants state: "Dan Flannell rejected the Motion to vacate the default judgment without any filing from the Plaintiff's [*sic*][,] because Judge Dan Flannell had already made up his mind that he would decide the outcome of the case regardless of the filings, and He stated this in open Court March 27, 2012 (R4735)." When we turn to that cited page of the record, Judge Flannell does not say anything remotely resembling what defendants claim he said. Instead, he told the parties that if they could not agree on the ownership of the farmland, it probably would be he deciding that question, as opposed to his merely acceding to "some kind of document that comes in from a lawyer that says, here's what Robert V. Elder or anybody else thinks is the title." In this context, Judge Flannell was responding to a question by "MR. HARRISON" as to whether a legal opinion of title would suffice as proof of ownership. He told Harrison: "I can assure there is no animal, such as a letter

from a lawyer that says, 'Here's who I believe owns this property,' that will carry any weight in this or any other courtroom. It will be up to the Plaintiffs to prove the ownership interest of their client, clients with credible evidence." Not only do defendants distort these remarks beyond recognition, but they make another false representation to us when they say that Judge Flannell acted *sua sponte* when denying their motion to vacate the default judgment. Actually, on January 11, 2016, plaintiffs filed an 11-page memorandum entitled "Plaintiffs' Response to Motion To Set Aside and Vacate Order of Default," and on January 13, 2016, plaintiffs' attorney appeared at the hearing on the motion to vacate the default and argued against the motion. After hearing arguments from both sides, Judge Flannell said, "Thank you, gentlemen," and then denied the motion, explaining why. We quoted his explanation earlier in this order.

¶ 78 In sum, defendants' brief is the antithesis of what a reasonable, prudent attorney would file, and we grant plaintiffs' motion for sanctions on the ground that defendants' conduct of this appeal has been frivolous. We order plaintiffs to file a fee affidavit within 30 days.

¶ 79 III. CONCLUSION

¶ 80 For the foregoing reasons, we affirm the trial court's judgment.

¶ 81 Affirmed.