2021 IL App (2d) 200115-U
No. 2-20-0115
Order filed September 20, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CHRISTOPHER STOLLER, Plaintiff-Appellant, v. JAMS; ALLEN S. GOLDBERG; HIROTO SAIKAWA, Chief Executive Officer of Nissan Motor Company, Ltd.; CARLOS GHOSN, Chief Executive Officer of Nissan North America, Inc.; NOBAO ARAKI, President of Nissan Infiniti, Ltd.; ROLAND KRUEGER, President of Highland Park Motor Cars, Inc.; MUELLER NISSAN; MICHAEL MUELLER, Chief Executive Officer of Mueller Auto Group; MARK MUELLER, President of Mueller Auto Group; RAFAL CHUDOBA; MARK KACZYNSKI, President of Nissan Motor Acceptance Corporation; SWANSON, MARTIN and BELL, LTD.; VIRGINIA TERLEP, Special Administrator of the Estate of Bruce Terlep; ROBERT McNAMARA; ROSS BARTOLOTTA; CHRISTIAN A. SULLIVAN; BURKE, WARREN, MacKAY and SERRITELLA, P.C.; IRA LEVIN; KENT BOWERSOCK; MICHAEL McCANTS; JEFFERY HARRIS; BIANCA ROBERTS, IRMA GUITERREZ; AGENTS, ASSIGNS, ATTORNEYS and JOHN DOES 1-10,	)	Appeal from the Circuit Court of Du Page County. No. 17-L-1177

Defendants	)	Honorable
	)	David E. Schwartz,
(Allen S. Goldberg, Defendant-Appellee).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Bridges and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The dismissal of plaintiff's complaint was affirmed because his contentions on appeal were neither supported by an adequate record nor developed into arguments.

¶ 2 Plaintiff, Christopher Stoller, appeals *pro se* from the trial court's dismissal with prejudice of his claims against defendant, Allen S. Goldberg. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 8, 2017, plaintiff filed an "Amended Complaint to Vacate Arbitration Award and for Declaratory Judgment Against the Defendants." The complaint's claims stemmed from an arbitration proceeding at which defendant was the arbitrator. The arbitration proceeding itself arose from plaintiff's lease of a vehicle from an auto dealership. Count I sought to vacate the arbitration award. Count II alleged negligent hiring and supervision as to "JAMS." Count III alleged aiding, abetting, and conspiracy. Count IV alleged elder abuse and neglect.

¶ 5 On July 17, 2019, defendant filed a motion to dismiss with prejudice the claims against him. First, he sought dismissal under Supreme Court Rule 103(b) (eff. July 1, 2007), arguing that plaintiff had failed to exercise reasonable diligence to obtain service on him within the 90-day limitation period under section 12 of the Uniform Arbitration Act (710 ILCS 5/12(b) (West 2018)). Second, he sought dismissal under section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2018)), asserting that plaintiff's claims were barred by the doctrine of arbitral immunity.

¶ 6 In response, plaintiff first requested that defendant be sanctioned under Supreme Court Rule 137 (eff. January 1, 2018) for filing a "frivolous, fraudulent, and contemptuous" motion. On the merits, plaintiff argued that (1) he made reasonable efforts to serve defendant, who was "dodging service," (2) defendant "waived all objections to the Court's Jurisdiction" by filing his motion to dismiss, and (3) arbitral immunity did not apply, because plaintiff alleged fraud.

¶ 7 On January 9, 2020, the trial court heard the motion to dismiss. The record does not contain a report of proceedings from the hearing. An order entered on that date indicated that the court made findings and issued its oral ruling. The court continued the matter to February 4, 2020, for entry of the order on its ruling.

¶ 8 On February 4, 2020, the trial court entered an order stating, in relevant part, as follows:

> "(1) For the reasons stated on the record on January 9, 2020, [defendant's] motion to dismiss in granted, with prejudice; [defendant] is hereby dismissed pursuant to [Illinois] Supreme Court Rule 103(b);
>
> (2) Also for the reasons stated on the record on January 9, 2020, [p]laintiff's motion for sanctions as to [defendant] is denied;
>
> (3) The court finds that there is no just reason to delay enforcement or appeal of the dismissal identified in (1) above, and the denial of plaintiff's motion for sanctions in (2) above, pursuant to [Illinois] Supreme Court Rule 304(a) [(eff. Mar. 8, 2016)]."

¶ 9 Plaintiff timely appealed.

¶ 10 II. ANALYSIS

¶ 11 Plaintiff's brief is hardly a model of clarity. We note that it violates several provisions of Supreme Court Rule 341(h) (eff. Oct. 1, 2020), which governs the content of an appellant's brief. For instance, plaintiff fails to include a proper statement of facts with citations to the record (*id.*

§ 341(h)(6)) or proper argument with citations to the record and relevant authority (*id.* § 341(h)(7)), or an appendix per Rule 342 (*id.* § 341(h)(9)). We note too that this is not the first time that plaintiff has filed a brief in this court that failed to comply with our supreme court rules. In *Stoller v. JAMS*, 2020 IL App (2d) 190741-U, ¶¶ 14-16, a case involving the Rule 103(b) dismissal of another defendant in this same action, we admonished plaintiff for his failure to comply with various requirements of Rule 341. Plaintiff has also been admonished by the First District for his failure to comply with our supreme court rules. See *Stoller v. Premier Capital, L.L.C.*, 2018 IL App (1st) 170290-U, ¶¶ 20-22 (finding that appellant forfeited the sole issue on appeal because his brief "does not contain anything even resembling a well-reasoned argument in support of reversal"); *Stoller v. Wesley Court Condominium*, 2018 IL App (1st) 161451-U, ¶ 16 (dismissing the appeal based on appellant's failure to comply with Rules 341 and 342); *Stoller v. Johnson*, 2017 IL App (1st) 161613-U, ¶ 19 (finding that appellant forfeited all issues on appeal by failing to comply with Rule 341(h)(7)).

¶ 12 "The rules of procedure concerning appellate briefs are rules and not mere suggestions." *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). Failure to comply with the rules for appellate briefs is not an inconsequential matter. *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 478 (2005). The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 292 (1991). Plaintiff's *pro se* status does not relieve him of the obligation to follow the supreme court rules for appellate briefing. *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and cohesive legal arguments presented. *Id.* This court is not a depository into

which an appellant may dump the burden of argument and research. *Id.*; *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Contentions that are inadequately presented on appeal, such as by the failure to provide coherent arguments or cite pertinent authority, do not merit consideration. *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991).

¶ 13 With the foregoing in mind, we turn first to our standard of review. The trial court's order based the dismissal on Rule 103(b) alone and did not mention section 2-619(a)(9), the alternative ground cited by defendant. Accordingly, we confine our analysis to whether the dismissal was proper under Rule 103(b). Citing *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009), plaintiff asks for *de novo* review of the dismissal. *Green* is inapplicable because it concerned a dismissal under section 2-615 of the Code (735 ILCS 5/2-615 (West 2018)). A court's ruling on a motion to dismiss under Rule 103(b) will not be disturbed absent an abuse of discretion. *Case v. Galesburg Cottage Hospital*, 227 Ill. 2d 207, 213 (2007). "A trial court abuses its discretion when its decision is arbitrary, fanciful, or unreasonable or where no reasonable person would adopt the court's view." (Internal quotation marks omitted.) *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 14.

¶ 14 We now turn to plaintiff's arguments. First, plaintiff argues generally that the trial court erred in dismissing with prejudice his claims against defendant. According to plaintiff, the court "did not properly consider and understand the evidence, did not reached [*sic*] a 'balanced and objective' conclusion, based upon any legal authority, which is evidence [*sic*] by an examination of [the court's] orders [citation] in an attempt to thwart Appellate Court review." Plaintiff asserts that, in granting the motion, the court committed "clear error, fatal error, foolish error, reversible error."

¶ 15 Plaintiff has failed to establish that the trial court abused its discretion in dismissing his claims. Rule 103(b) (eff. July 1, 2007) provides that an action may be dismissed with prejudice if

the plaintiff fails to exercise reasonable diligence in obtaining service on the defendant after the expiration of the applicable statute of limitations. The rule "aims to protect a defendant from unnecessary delay in the service of process and to prevent the plaintiff from circumventing the applicable statute of limitations *** by filing suit before the expiration of the limitations period but taking no action to have the defendants served until the plaintiff is ready to proceed with the litigation." *Kole v. Brubaker*, 325 Ill. App. 3d 944, 949 (2001). In moving for dismissal under Rule 103(b), the defendant must make a *prima facie* showing that the plaintiff failed to exercise reasonable diligence in effecting service after filing the complaint. *Emrikson*, 2012 IL App (1st) 111687, ¶ 17. Then, the burden shifts to the plaintiff to explain, by way of affidavit or other competent evidentiary materials, that the delay in service was reasonable and justified under the circumstances. *Kole*, 325 Ill. App. 3d at 949-950. In the absence of a satisfactory explanation, the trial court is justified in granting a dismissal under Rule 103(b). *Emrikson*, 2012 IL App (1st) 111687, ¶ 17.

¶ 16 Plaintiff has failed to provide a report of proceedings of the January 9, 2020, hearing where the trial court granted defendant's motion to dismiss. The court's order entered on that date indicated that the court made findings on the record and issued its oral ruling. In the order entered on February 4, 2020, the court granted defendant's motion to dismiss "[f]or the reasons stated on the record on January 9, 2020." Although plaintiff's appendix includes a copy of the transcript from the January 9, 2020, hearing, we disregard it because plaintiff has failed to move to supplement the record. See Ill. S. Ct. R. 341(h)(9) (eff. Oct. 1, 2020); Ill. S. Ct. R. 342 (eff. Oct. 1, 2019) (requiring an appendix with materials furnished from the *record* only). Moreover, plaintiff could have filed a bystander's report under Supreme Court Rule 323(c) (eff. July 1, 2017) or an

agreed statement of facts under Rule 323(d) (eff. July 1, 2017). Any of these three could have provided the reasons for the court's ruling.

¶ 17 Under *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984), plaintiff, as appellant, had the burden to present a sufficiently complete record of the proceedings at the hearing to support his claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court conformed with the law and had a sufficient factual basis. Any doubts arising from the incompleteness of the record will be resolved against plaintiff. *Id.* at 392. Accordingly, without a proper record of the court's reasoning, we presume that the court's order conformed with the law and had a sufficient factual basis.

¶ 18 Aside from plaintiff's failure to include in the record a report of proceedings of the January 9, 2020, hearing, plaintiff has forfeited his challenge to the dismissal by failing to advance a cogent argument supported by relevant authority and proper citation to the record. Rule 341(h)(7) (eff. Oct. 1, 2020) provides that an appellate brief must include a section of "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." " 'A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue.' " *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19 (quoting *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23).

¶ 19 Plaintiff cites a single case, *Aranda v. Hobart Manufacturing Co.*, 66 Ill. 2d 616, 619 (1977), to support his contention that the trial court erred in dismissing with prejudice his claims against defendant. *Aranda* stands for the proposition that, when a case is refiled after dismissal for want of prosecution, the trial court, in assessing diligence for purposes of Rule 103(b), may consider the overall time frame between the filing of the first complaint and the service of summons in the second case, but the plaintiff must be afforded sufficient time after refiling to

effect service. *Id.* at 620. Plaintiff does not attempt to explain how *Aranda* applies, and we see no relevance to the case in this context.

¶ 20 In addition, plaintiff's brief is devoid of any citation to the record to support his claim of error. Consideration of a party's diligence, or lack thereof, under Rule 103(b) is fact-intensive. *McRoberts v. Bridgestone Americas Holding, Inc.*, 365 Ill. App. 3d 1039, 1042 (2004). The court considers many factors in ruling on a Rule 103(b) motion. *Case v. Galesburg Cottage Hospital*, 227 Ill. 2d 207, 212 (2007). Plaintiff's argument does not discuss these factors. Although plaintiff asserts that defendant "was serviced [*sic*] with summons by pleadings filed into [*sic*] the case" and that defendant "hid out in Florida for nine (9) months to avoid service of process," plaintiff does not direct us to any evidence in the record to support these assertions or explain why they matter. Plaintiff merely states that the court's "decision(s) were based on erroneous interpretations of the facts and incorrect applications of law, as it applies to the facts." When arguments are not supported by facts in the record, they are nothing more than bare contentions that may be deemed forfeited. *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 29.

¶ 21 Plaintiff also argues that defendant "waived his right to a dismissal under [R]ule 103(b) by actively participating in the defense of the action on the merits." In support, plaintiff cites *Montero v. University of Illinois Hospital*, 57 Ill. App. 3d 206 (1978). In *Montero*, the plaintiff argued that the defendants had waived their rights to dismissal under Rule 103(b) by participating in discovery before filing the motion to dismiss. *Id.* at 211. The appellate court found that the plaintiff failed to establish that the defendants participated in discovery and, thus, plaintiff failed to show waiver. *Id.* Here, plaintiff cites nothing in the record to suggest that defendant engaged in discovery before filing his motion to dismiss. Thus, plaintiff's argument fails.

¶ 22 Plaintiff's final argument is that defendant failed to support his motion to dismiss with an affidavit. This argument also fails. In support, plaintiff cites *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). *Kedzie* does not address motions to dismiss under Rule 103(b); instead, it addresses the evidentiary support necessary when bringing a motion to dismiss based on "affirmative matter" under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)). *Id.* Here, the trial court based the dismissal on Rule 103(b). Plaintiff has not directed us to any case holding that a motion to dismiss under Rule 103(b) must be supported by an affidavit.

¶ 23 Based on the foregoing, we hold that the trial court did not abuse its discretion in granting defendant's motion to dismiss the complaint with prejudice.

¶ 24 We note that defendant asks that we strike plaintiff's brief and impose sanctions for his willful failure to comply with our supreme court rules. To be sure, "[a] brief that lacks any substantial conformity to the pertinent supreme court rules may justifiably be stricken." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. However, given our resolution above, we decline defendant's request. Nevertheless, we caution plaintiff that, should he take another appeal to this court, his failure to comply in that appeal with the applicable rules—despite *multiple* prior admonishments—may result in sanctions beyond our dismissing that appeal.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 27 Affirmed.