

NOTICE
Decision filed 01/10/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (5th) 230393-U

NO. 5-23-0393

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

FIRST NATIONAL BANK OF WATERLOO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Effingham County.
)	
v.)	No. 23-LA-3
)	
JAMES A. WALKER,)	Honorable
)	Chad M. Miller,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BOIE delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by holding a final hearing and entering judgment against the defendant where he placed a telephone call to inform the court that he was in the hospital on the date of the hearing but did not explicitly request a continuance or provide the necessary medical evidence concerning his condition. The court correctly found that the defendant was in default for failing to file an answer to the complaint within the time allowed. The court also correctly found that summary judgment was appropriate where the pleadings and affidavit on file showed that the plaintiff was entitled to judgment as a matter of law and where the defendant did not file any counteraffidavits or provide other evidence to contradict them.

¶ 2 The defendant, James A. Walker, appeals the court’s order granting summary judgment against him and in favor of the plaintiff, First National Bank of Waterloo (FNB). Walker called the court on the morning of the hearing to inform the court that he was in the hospital. The court held the hearing in his absence and found that summary judgment was appropriate and that a

default judgment was also appropriate due to Walker’s failure to file an answer to the complaint. On appeal, Walker argues that (1) the court erred in entering judgment against him while he was in the hospital and (2) the court erred in allowing agents of FNB to lie in a supporting affidavit. Before this court, FNB filed a motion to strike Walker’s brief, and Walker filed a motion to strike FNB’s motion and brief and a motion titled “Motion for Judgment.” We deny all three motions and affirm the judgment.

¶ 3

I. BACKGROUND

¶ 4 This lawsuit involves a promissory note and commercial security agreement entered into in June 2022. The original loan was for \$70,326. Pursuant to the agreement, the loan was secured by a vehicle.

¶ 5 On January 31, 2023, FNB filed a two-count complaint against Walker. In the complaint, FNB alleged that Walker was in default due to his failure to make monthly payments when due. It further alleged that, because of Walker’s default, FNB accelerated the amount due and made a demand for payment in full, and that Walker did not make this payment. In count I of the complaint, FNB sought a money judgment for the remaining principal due on the loan—\$59,684.35—along with accrued interest and late fees. FNB also requested attorney fees and court costs, pursuant to a provision of the commercial security agreement. In count II, FNB requested a judgment of replevin for possession of the vehicle. The promissory note and commercial loan agreement were attached to the complaint as exhibits.

¶ 6 On March 16, 2023, Walker filed a *pro se* motion to dismiss, stating, “This Note is Unconstitutional because it is my right to a jury and if I want to appeal this case and First National Bank cannot tell me who I can and can’t talk to.” Attached to the motion was a copy of a letter

dated January 13, 2023, informing Walker that his FNB account had been closed and that he was barred from all FNB properties and from contacting any FNB employees.

¶ 7 The court denied Walker's motion to dismiss after a hearing on April 3, 2023. The court allowed Walker 14 days to file an answer to FNB's complaint and set the matter for a May 15, 2023, status hearing. Walker did not file an answer to the complaint within 14 days or at any other time.

¶ 8 On April 5, 2023, Walker filed a motion to continue which stated, in its entirety, "My lawyer will be making the next Court date." A docket entry indicates that the court clerk asked Walker whether he had retained an attorney, and Walker indicated he had not done so. The clerk advised Walker that if he did not have an attorney by the time of the May 15 hearing, he should inform the court. The clerk further advised Walker to have his attorney file the proper forms to request a continuance.

¶ 9 On May 8, 2023, FNB filed a motion for summary judgment and a supporting affidavit signed by its senior vice president, Debra Curtis. The allegations of the motion and the statements in Curtis's affidavit were essentially identical to those in the complaint. FNB also filed a notice of a hearing on the motion to take place at the scheduled May 15, 2023, hearing.

¶ 10 On May 11, 2023, Walker filed with the court a copy of a letter, dated that same day, and signed by Bobbie J. Miller, P.A., of St. Anthony's Memorial Hospital Convenient Care Unit. The letter stated that Walker had been seen and treated that day and that he could return to work on May 26, 2023. The letter did not indicate whether Walker was admitted to the hospital or received care on an outpatient basis. However, a docket entry indicates that the letter was "brought in by the defendant." Another docket entry indicates that on May 15, the day of the scheduled hearing, Walker called the court and informed the clerk that he was in the hospital at that time. The docket

entry indicates that the clerk advised Walker to contact FNB's attorney and to obtain a note from the hospital.

¶ 11 The court held the scheduled hearing that same day and then entered a written order granting summary judgment in favor of FNB. The court expressly found that Walker was in default for failing to file a responsive pleading. The court further found that there were no genuine issues of material fact and that FNB was entitled to judgment as a matter of law. Noting that the commercial loan agreement included a provision for FNB to recover attorney fees, the court also found that the fees charged by attorney Deborah Volmert, as outlined in an affidavit provided to the court that day, were reasonable. The court entered judgment for \$66,609.23 in damages and possession of the vehicle. Walker did not file a motion to reconsider or vacate the court's judgment. Instead, he filed a notice of appeal on June 7, 2023.

¶ 12 **II. ANALYSIS**

¶ 13 Before addressing the parties' contentions, we must consider three motions the parties filed with this court. The first two were filed during briefing. Walker filed his opening brief on September 5, 2023. On October 10, FNB filed a motion to strike Walker's brief, arguing that it failed to comply with Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020) in multiple respects and that, due to these deficiencies, FNB was "unable to respond to this brief." On October 17, FNB filed its own brief. On October 31, Walker filed his reply brief along with a motion to strike both FNB's brief and its motion. In his motion to strike, Walker argued that FNB's motion should be struck because "the bank[']s affidavit is false [and] untrue because Deborah Volmert is using a different name as Debra Curtis, Senior Vice President of [the] bank." In support of his request to strike FNB's brief, Walker argued that FNB's assertion that it could not respond to his brief was

contradicted by the fact that it in fact did respond by filing a brief. For the following reasons, we now deny both parties' motions to strike.

¶ 14 We agree that Walker's *pro se* brief falls far short of what is required under Rule 341. His statement of facts contains no references to pages in the record, as required by the rule (see Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020)), and he presents only conclusory arguments with almost no citation to supporting authority and no explanation of the reasons for his contentions (see Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020)). This court has the authority to strike an appellant's brief for failure to comply with the requirements of Rule 341 and to dismiss the appeal. See *Draves v. Thomas*, 2023 IL App (5th) 220653, ¶ 16; *Freedman v. Muller*, 2015 IL App (1st) 141410, ¶ 22. However, this is a harsh sanction. *Draves*, 2023 IL App (5th) 220653, ¶ 17. In the exercise of our discretion, we decline to strike Walker's brief. Accordingly, we deny FNB's motion.

¶ 15 We likewise deny Walker's motion to strike. Our decision to deny FNB's motion to strike Walker's brief renders moot his request that we strike that motion, and we find no merit to his request that we strike FNB's brief. Although he questions the veracity of the supporting affidavit FNB filed with the trial court—an argument we will address later—he does not point to any flaws in FNB's appellate brief that would warrant striking it.

¶ 16 On December 20, 2023, Walker filed with this court a motion titled "Motion for Judgment." In it, he alleged that someone in this court "tampered" with a brief he sent us before September 5 by throwing it away and that FNB sold his vehicle at auction for \$65,000, which also constitutes tampering with evidence. As relief, he "demand[ed] the court doing [*sic*] something NOW" and "make" FNB to return his vehicle. To the extent that Walker's motion was asking this court to issue its ruling immediately, our decision today renders the motion moot. To the extent he was asking us to enter an order directing FNB to return his vehicle, that is not appropriate relief to

request from a court of review. For these reasons, we deny Walker’s “Motion for Judgment.” We turn now to the merits of the parties’ contentions.

¶ 17 Walker essentially argues that the court’s judgment should be reversed because (1) FNB presented an affidavit that contained lies and (2) the trial court erred by ruling against him while he was in the hospital. We are not persuaded.

¶ 18 In support of his contentions, Walker alleges that (1) the trial judge “let Deborah Volmert lie[] in a[n] affidavit”; (2) Deborah Volmert is not Debra Curtis; (3) FNB breached the terms of the promissory note because Walker did not “get to use all the loan”; (4) a loan officer stole money from his account and the bank stole tools from him; (5) he was in the hospital on May 15, 2023, and that was the only court date he got; and (6) he initially sent a brief to this court on August 7, 2023, but that brief was thrown away. In an appendix to the brief, Walker includes a copy of FNB’s response to a motion to dismiss filed in federal court in another matter involving the same parties. In it, FNB indicates that Walker appeared to have confused Debra Curtis, a senior vice president at FNB who signed an affidavit in this matter, with Deborah Volmert, an attorney who represents FNB in multiple matters.

¶ 19 We note that the federal court filing is not part of the record on appeal in this case. Although we may take judicial notice of public records that are part of the records of proceedings in other courts (see *Primax Recoveries, Inc. v. Atherton*, 365 Ill. App. 3d 1007, 1012 (2006)), Walker crossed out the federal court case number on the document. Nevertheless, it is apparent from his arguments before the trial court and this court that Walker’s challenge to the veracity of the affidavit filed by FNB relates to his confusion over the identities of these two women. As FNB correctly points out in its brief, Walker does not identify any specific factual allegations in the affidavit he believes to be untrue; he merely asserts that attorney Deborah Volmert dishonestly

used the name Debra Curtis. We further note that although the record does support Walker's claim that he informed the court he was in the hospital on May 15, the date of the final hearing in this matter, there is no support in the record for his remaining allegations. As such, we need only consider his argument concerning the propriety of the court's decision to enter a final judgment on that date.

¶ 20 Walker argues that there is no authority for a trial court to enter a judgment against a party who is in the hospital and unable to attend court. Contrary to his contention, however, parties do not have an absolute right to a continuance. Rather, the decision of whether to grant a continuance is a matter within the trial court's discretion. *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996). A party requesting a continuance for medical reasons must support his request with competent medical evidence concerning the nature of his medical condition and the reasons he cannot attend the trial as scheduled. *Id.* at 431. We will not reverse the trial court's decision to allow or refuse a continuance absent a manifest abuse of discretion. *Parker v. Newman*, 10 Ill. App. 3d 1019, 1021 (1973).

¶ 21 Here, Walker called to inform the court that he was in the hospital on the date of the hearing. Although the record contains a letter from the physician's assistant who treated him four days earlier, it does not contain any medical evidence concerning the nature of his condition, nor does it contain any evidence from a medical provider that Walker was hospitalized and unable to attend the hearing.

¶ 22 Moreover, there is no indication in the record that he even explicitly requested a continuance of the May 15 hearing. Walker points out that the court never ruled on the motion for a continuance he filed previously. However, that motion simply asserted that Walker's attorney would request a hearing date. As such, the motion did not provide the type of evidence necessary

to allow it to determine whether a continuance was warranted under circumstances that arose later. In addition, the earlier motion did not specify “a definite and reasonable time for the continuance,” which is also a relevant consideration. See *Ward*, 282 Ill. App. 3d at 431 (citing *Bethany Reformed Church of Lynwood v. Hager*, 68 Ill. App. 3d 509, 511 (1979)). Under these circumstances, we can find no manifest abuse of the trial court’s discretion.

¶ 23 In response to Walker’s arguments, FNB argues that the trial court’s decision was correct, either as a default judgment or a summary judgment. FNB further notes that Walker provides no argument to the contrary and does not otherwise contend that the court would have reached a different conclusion had it continued the hearing to allow Walker to be present. We agree.

¶ 24 Under section 2-1301(d) of the Code of Civil Procedure, a court may enter a default judgment “for want of an appearance, or for failure to plead.” 735 ILCS 5/2-1301(d) (West 2022). The court may require proof of the allegations upon which relief is to be granted. *Id.* Here, when the court denied Walker’s motion to dismiss, it allowed him 14 days until April 17, 2023, in which to file an answer to FNB’s complaint. Walker has not alleged, even on appeal, that he was unable to file his answer during this period. This failure to plead provides a basis for a default judgment.

¶ 25 We emphasize, however, that “a default judgment is a drastic remedy that should be used only as a last resort.” *Godfrey Healthcare & Rehabilitation Center, LLC v. Toigo*, 2019 IL App (5th) 170473, ¶ 39. To that end, the potentially harsh consequences of a default judgment are mitigated by the fact that trial courts also have the discretion to set aside any finding of default prior to entering a final judgment and to set aside “any final order or judgment” upon a motion filed within 30 days after the judgment. 735 ILCS 5/2-1301(e) (West 2022). This provision is to be liberally construed, and a party requesting that a court vacate a default judgment is not required to assert either a reasonable excuse for failing to assert a defense earlier or even the existence of a

meritorious defense. *Godfrey Healthcare*, 2019 IL App (5th) 170473, ¶ 39. As noted earlier, however, Walker did not file a motion asking the court to reconsider or vacate its judgment or the finding of default. We find no error in the court’s decision to enter a default judgment.

¶ 26 We likewise find no error in the court’s conclusion that summary judgment was appropriate. The purpose of summary judgment is to determine whether a question of fact exists for trial. *Performance Food Group Co. v. ARBA Care Center of Bloomington, LLC*, 2017 IL App (3d) 160348, ¶ 14. Summary judgment is considered a drastic remedy, and it should only be granted if the moving party’s right to judgment is clear and free from doubt. *Morgan v. Richardson*, 343 Ill. App. 3d 733, 739 (2003).

¶ 27 To survive a motion for summary judgment, the nonmoving party is not required to prove his case, “but he must present a factual basis that would arguably entitle him to a judgment.” *Morris v. Union Pacific R.R. Co.*, 2015 IL App (5th) 140622, ¶ 23. To do so, the nonmoving party may file counteraffidavits prior to or at the time of the hearing set for the summary judgment motion. 735 ILCS 5/2-1005(c) (West 2022). An extension of time may be granted for “good cause shown.” *Id.* § 2-1007.

¶ 28 In ruling on a motion for summary judgment, courts construe all pleadings and affidavits strictly against the moving party and liberally in favor of the nonmoving party. On appeal, we conduct a *de novo* review of the trial court’s decision to grant summary judgment. *Morgan*, 343 Ill. App. 3d at 739.

¶ 29 Here, the allegations in the pleadings, the statements in Debra Curtis’s affidavit, and the provisions of the contract attached to the complaint as an exhibit demonstrate that FNB was entitled to judgment. Because Walker did not file an answer or a counteraffidavit or provide any

evidence to contradict FNB's allegations and evidence, there was no genuine issue of material fact to preclude summary judgment.

¶ 30 We recognize that FNB filed its motion for summary judgment one week before the hearing, giving a *pro se* litigant such as Walker little time to respond. However, in Illinois, litigants who choose to represent themselves must comply with all applicable rules of procedure and are held to the same standards as attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Walker did not request additional time to prepare a response, as he could have done. We find no error in the trial court's decision to grant summary judgment.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we deny FNB's motion to strike Walker's brief; we deny Walker's motion to strike FNB's motion and its brief; we deny Walker's motion for judgment; and we affirm the judgment of the trial court.

¶ 33 Motions denied; judgment affirmed.