2012 IL App (1st) 110120-U

FIFTH DIVISION
December 7, 2012

No. 1-11-0120

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

NADERH ELRABADI,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	No. 09 M1 204553
	)	
KEVIN LAMONT BRYANT,	)	Honorable
	)	Pamela E. Hill-Veal,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

O R D E R

¶ 1 ***Held:*** The trial court's orders dismissing plaintiff's complaint for want of prosecution, entering default judgment in favor of defendant on his counterclaim, and denying plaintiff's motion to vacate the default judgment were affirmed where plaintiff failed to appear in court for the conclusion of trial despite having notice of the trial date and where the trial court took sworn testimony from defendant on his counterclaim.

¶ 2 *Pro se* plaintiff, Naderh Elrabadi, appeals from an order of the circuit court of Cook County dismissing her complaint for want of prosecution and entering an "[e]x[ ]parte default

judgment" in favor of defendant on his counterclaim. Defendant has not filed a brief in response. We consider the appeal on plaintiff's brief only, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). For the reasons that follow, we affirm.

¶ 3 Plaintiff filed a *pro se* complaint against defendant asserting claims for breach of contract, "breach of payment of personal loan" and "punitive damages." Plaintiff alleged the following facts in her complaint. From March 2003 to January 2008, plaintiff loaned defendant "several large sums of money" that exceeded $20,000 based upon an oral agreement that defendant would repay the loan "monthly in the amount of $100 per week" plus interest. Defendant borrowed the money to pay living expenses and school costs. Defendant also borrowed money from a bank "for the purchase of a new vehicle and stated that he would transfer title to [plaintiff] but in turn transferred title to a family member." Defendant made two $50 payments in December 2008 but refused to make any further payments despite plaintiff's demand that he do so. Plaintiff alleged that defendant had records of this debt in the form of "evidence of cancelled [checks], bank statements, receipts spreadsheets and documents which reflect said loans." In addition to the money owed to her under the contract, plaintiff sought punitive damages to prevent defendant from engaging in "such conduct in the future" and to "make an example" of defendant. Plaintiff attached her own affidavit to the complaint in which she reiterated the allegations in her complaint.

¶ 4 Defendant filed a *pro se* amended answer denying the existence of an oral agreement between himself and plaintiff. Instead, defendant claimed, he and plaintiff had been in a romantic relationship from 2003 to 2008 during which they exchanged several sums of money

with no agreement to repay that money. Defendant also filed a counterclaim asserting that plaintiff owed him money for improvements he made to plaintiff's residence and for items defendant purchased for their residence such as a sofa and a bed frame.

¶ 5 Plaintiff replied with a *pro se* "motion to dismiss defendant's answer pursuant to §5/2-615[,] motion [to] strike defendant's answer and motion for default judgment and motion for sanctions." Plaintiff claimed that defendant did not entitle his answer "amended," as required by statute, and that his amended answer was "flooded with inappropriate, improper, irrelevant, superfluous, narrative, hearsay and non-responsive language." Plaintiff also claimed that defendant improperly added a counterclaim to his answer and moved for sanctions against her because defendant perjured himself by denying that he promised to repay the loans. The trial court denied plaintiff's motion.

¶ 6 On June 29, 2010, the trial court entered an order setting the case for trial on November 1, 2010. The record does not contain a transcript of the proceedings before the court on November 1. However, on November 2, the court entered an order "following a partial trial and by agreement of the parties on Monday, November 1, 2010, due notice having been given and the court being fully apprised in the premises." The court ordered plaintiff's bank to produce and authenticate front side photocopies of eight specific checks. On November 3, 2010, the court entered an order requiring the parties to appear in court at 9:30 a.m. on November 10, 2010.

¶ 7 On November 9, 2010, plaintiff filed a *pro se* "motion to quash court order [and] continue [*sic*] trial." The motion asserted that on November 2, 2010, "the court unilaterally ordered plaintiff's bank records without agreement of the parties *** with a pending bank charge directed

to plaintiff of $30 - $50.00, against my wishes and without proper forum." Plaintiff further alleged that the court continued the trial and "unilaterally" set the time for that trial at 9:30, which was not "conducive" to plaintiff's schedule. Finally, plaintiff alleged that the "court clerk walked court order via hand delivery, court called my banker and your honor improperly held phone calls and investigation as judicial arbiter. Court did not pursue defendant's bank records at all." Along with the motion to quash, plaintiff filed a *pro se* notice stating she would present the motion to the court at 2 p.m. on November 10.

¶ 8 On November 10, the court entered an order denying plaintiff's motion to quash and setting the case for continued trial on December 10, 2010, at 9:30 a.m. The order indicates that plaintiff and defendant were present in court when the order was entered. However, the record does not contain a transcript of the proceedings from this date.

¶ 9 On November 10, plaintiff filed a *pro se* "emergency motion for leave to file additional attorney appearance, to stay court order of November 2, 2010 and voluntary nonsuit." Plaintiff claimed that the court's November 2 order "sua sponte to retrieve my bank records" was "wrought with error" and that plaintiff was seeking the advice of counsel in light of the court's order. Plaintiff asked the court to strike the December 10 continued trial date or, in the alternative, to voluntarily nonsuit the case with leave to refile it at a later date.

¶ 10 On November 10, plaintiff also filed a *pro se* "emergency motion to reconsider the court's order denying plaintiff's motion to quash and for substitution of judge for cause." Plaintiff asserted that although trial was to begin on November 1, 2010, at 9:30 a.m., it did not begin until 3:30 p.m. because the judge had to "attend a party." Although "some semblance of a trial" took

place that day, it was held "without proper decorum." For example, plaintiff had a witness in court who took the day off to testify but the court did not swear the witness in because it "knew what the witness was going to say." The court also decided *sua sponte* that plaintiff's evidence in the form of returned checks had been "altered" and was "suspect." The court would not consider other evidence that plaintiff had available but, instead, *sua sponte* ordered plaintiff's bank records but did not order the same from defendant. On November 4, 2010, plaintiff learned that the trial court's clerk delivered that order to plaintiff's bank. On that same date, plaintiff received a copy of the order requesting her bank records and setting the case for a continued trial on November 10 "without consideration to [sic] my already scheduled hearings or work schedule." At the hearing on November 10, the court did not allow plaintiff to argue her motion to quash and denied the motion without considering its substance. Specifically, although the court told plaintiff that her notice of that motion was improper, plaintiff followed all notice requirements in the circuit court rules and set the motion for hearing at 2 p.m. on November 10. However, the court denied plaintiff "any convenience" by setting the hearing on the motion for 9:30 a.m. when the court's call was in fact at 2 p.m. During the November 10 hearing, plaintiff "was maliciously threatened to be taken in handcuffs to lock up if [she] spoke anymore" during court and she was falsely accused by the court of altering checks, harassing the court staff and disregarding the rules of the court. The court also granted "unfettered deference" to defendant, who alleged he was a law student but who in fact "was a terminated law student" on academic probation. Plaintiff, on the other hand, had been a licensed attorney since 2004 who was in good standing. For all of these reasons, plaintiff requested that the court reconsider its denial of plaintiff's motion to quash

and that the court grant plaintiff a substitution of judge for cause.

¶ 11 On November 11, 2010, attorney Raul Serrato appeared before the court to argue plaintiff's *pro se* "emergency motion to reconsider the court's order denying plaintiff's motion to quash and for substitution of judge for cause." Defendant appeared *pro se* at the hearing. The court began by asking Serrato if he knew the case was in the middle of trial, and counsel responded that he was under the impression that the case was in the course of discovery. The court explained:

> "We started a trial, and in the middle of the trial when your client had presented some checks and her opponent was disputing them because of some writing that was on the checks and she said that - - so I asked for - - I needed the checks to be authenticated and she said it was going to take four or five months if she went over to the bank, and Mr. Bryant wanted those checks authenticated so I said that if I did it, it would not take four or five months. And so she asked me to do it. So all I asked for was copies of the front part of these checks, and she agreed to that. Then she agreed to that, and then when I prepared an order, just asking for the front part of certain checks, she came in, I hadn't issued the order yet because we hadn't finished it, then she said she was confused. She didn't want me to get information and give it to [defendant]; and I said, no, you asked that I only get the front part of the checks to verify that you had not altered them. And so she said, Oh, Okay, and she left. And then she was calling my clerk and she accused me of investigating."

Counsel asked the court if it intended to deny plaintiff's motion for a substitution of a judge, and the court responded that the case was in the middle of trial and that plaintiff had not yet rested her case. The court stated that during trial plaintiff provided the court with checks to prove that defendant owed her money. The court then explained:

> "And we couldn't finish that day and she wanted me, since I said that I probably could get the documents faster than her, she wrote on a sheet of paper - she wrote the gentleman's name she wanted me to call. I didn't call him, the clerk did it. She wrote down the gentleman's phone number, and so I had the clerk call over there and that's kind of where we are and she said that when she wrote the checks out and gave them - some of them to [defendant] that she did not add anything on these checks when they came back to her. She said everything that was written at the bottom in the memo was the same as when she gave them to [defendant] or any other entity when she indicated that she had loaned him the money *** and that was the issue."

Counsel asked the court for a ruling on plaintiff's emergency motion, and the court stated that it had not been provided with a copy of that motion. The court asked counsel if he was requesting a substitution of judge and counsel responded that he was. The court asked counsel if he filed an appearance in the case, and counsel responded that he intended to request leave to do so. The court stated that it should not have allowed counsel to speak if he had not filed an appearance and counsel told the court that he would file an appearance. The court told counsel that it was continuing the case for the conclusion of trial at 9:30 a.m. on December 10, 2010. Counsel asked

if the case could be withdrawn and the court responded that the case was in the middle of trial and that plaintiff had asked the court to look at the checks that came directly from the bank to show that she had not altered them. The court told counsel that if he filed an appearance in the case plaintiff should cease filing duplicative motions because defendant had raised concerns about losing his job due to having to take off work to come to court and respond to all of plaintiff's motions. The court denied the motion for a substitution of judge and continued the case to December 10 for the conclusion of trial.

¶ 12 On November 15, 2010, plaintiff filed a *pro se* "motion to quash the court's *sua sponte* order, substitution or disqualification of judge for cause and voluntary non-suit." In that motion, plaintiff reiterated all of the allegations she made in her November 10 *pro se* "emergency motion to reconsider the court's order denying plaintiff's motion to quash and for substitution of judge for cause." Plaintiff made the following additional allegations. By *sua sponte* raising the issue of plaintiff's evidence being altered, the court acted in direct violation of a judicial cannon requiring a judge to perform his or her duties "impartially and diligently." On November 2, after receiving calls from the "court clerks" who spoke in a "dialect" that plaintiff could not understand, plaintiff appeared in court and was accused by the court of harassing its clerks. On November 3, the trial judge held an ex parte conversation with plaintiff about her bank records during which plaintiff objected to the court conducting its own investigation. On November 12, plaintiff had additional counsel appear on her emergency motion because she feared the court would make additional threats to have her arrested and held in contempt. During the November 12 hearing, the court "misrepresented" the facts when it stated that the order directed at plaintiff's bank was an "agreed

order."

¶ 13 In addition to the above allegations, plaintiff included in her motion a section entitled "relevant judicial canons." Plaintiff cited to specific judicial canons governing the conduct of a judge and then explained how the various actions taken by the trial court violated those canons. These included that the trial judge acted as "defense counsel" for defendant and "created a defense" of "alteration" for him, that the judge "un-impartially investigated plaintiff's bank records," that the judge "should disqualify herself because she has ceased to act independently as a judge," and that the judge ignored plaintiff's motions to quash the court's order. Finally, plaintiff included in her motion a section requesting that she be allowed to voluntarily non-suit the case. Plaintiff alleged that trial had not yet begun, that the judge was conducting discovery on her own, and that the judge's "prejudicial demeanor" was "wholly improper." Plaintiff requested that the November 1, 2010, proceedings be stricken and that the case be assigned to a new judge for trial.

¶ 14 On November 24, 2010, attorney Cannon Lambert appeared before the court to argue plaintiff's *pro se* "motion to quash the court's *sua sponte* order, substitution or disqualification of judge for cause and voluntary non-suit." Defendant appeared at the hearing *pro se*. The court began the hearing by instructing counsel to file his appearance because Serrato had appeared before the court but never filed an appearance on plaintiff's behalf. The court continued the case and the hearing resumed after a recess during which counsel filed an appearance on plaintiff's

behalf.[1] The court stated that plaintiff's motion was the same as her "emergency motion" and warned counsel about defendant possibly losing his job because of having to take off work to respond to duplicative motions. The court then denied plaintiff's motion to quash for the same reasons that it denied her "emergency motion." The court added that after agreeing to assist plaintiff authenticate the checks, it "realized that [plaintiff] went and told the bank or someone that she didn't [agree to the release of information], so I halted that proceeding." The court then ordered counsel for plaintiff to have the checks authenticated and brought to court on December 10 for the conclusion of trial. The court also stated that at the conclusion of the first day of trial on November 1, plaintiff told the court that she was finished with her case except for the authentication of the checks. Counsel responded that he would be out of town on December 10 and that the court was "ordering [counsel] to do things that [he] cannot do if the case is going to be continued to the 10th." The court responded that plaintiff was present in court on November 10 when the case was continued to December 10 for the conclusion of trial "by agreement." The court also noted that plaintiff specifically asked for the December 10 date because she did not want the case to continue into the new year and that it was defendant who objected to the date of December 10. The court then instructed counsel to prepare an order stating that he would provide the court with the authenticated checks on December 10. Counsel responded, "I can't do that," and the court stated that counsel would "face the consequences" if he did not. Defendant then informed the court that plaintiff had sent a facsimile to his office to put his employer on

[1]The record contains a copy of counsel's appearance that was filed on November 24, 2010.

notice of the proceedings. The court again asked plaintiff's counsel to prepare the order and counsel responded that he "was not going to be able to prepare that order" because he was leaving for Cleveland after the hearing and then going to "Africa" and he had his "whole family in the car." The court asked counsel if he wanted to withdraw his appearance because he was unaware of the December 10 court date, to which counsel responded that he never said he was unaware of the continued trial date and that he had the order "that says it's up on the 10th." Counsel then said he would prepare the order if he could include language that it was over objection because counsel had not been able to present the motion to quash. The court denied the request and reiterated that plaintiff's motion to quash was denied.

¶ 15 The court entered a written order on November 24, 2010. The court found that plaintiff's *pro se* motion that was filed on November 24 was in essence the same as the "emergency motion" presented to the court on November 15. The court further found that Lambert told the court he was unavailable for the December 10 court date but that he informed the court that plaintiff was aware of his unavailability and that the court stated the case would proceed on December 10. The court ordered plaintiff to present the authenticated checks to the court on December 10 and to prepare to have alternative counsel if Mr. Lambert was unavailable on that date. Finally, the court ordered plaintiff to "refrain from filing any further duplicative motions" and continued the case for trial at 9:30 a.m. on December 10, 2010.

¶ 16 The record does not contain a transcript of the proceedings from December 10. The record does contain a written order entered by the court on that date. The order indicates that only defendant was present before the court. The order states that plaintiff's complaint is

dismissed with prejudice for want of prosecution and that plaintiff was "subject to Rule 137 sanctions." The order also entered an "[e]x[ ]parte default judgment" for defendant on his counterclaim in the amount of $6,684. The order further states that defendant presented evidence and testimony on the counterclaim after being sworn in and that plaintiff failed to appear for the completion of trial or to comply with the court's order of November 24, 2010.

¶ 17 On December 23, 2010, plaintiff filed a *pro se* "motion to vacate the court's December 10, 2010[,] order and set aside default judgment, dismissal with prejudice, monetary award on counterclaim and motion for sanctions against plaintiff." In that motion, plaintiff reiterated all of the allegations she made in her motions that were filed on November 9, 10 and 15. Plaintiff also alleged that she did not receive the court's November 24, 2010, order that trial would resume on December 10 at 9:30 a.m. Additionally, "the clerk online record did not show the time nor date *** of the 12/10/10 trial, until on or around December 20, 2010" and "the court hard copy file is not in the clerk's office available for public view." Nevertheless, plaintiff appeared in court on December 10 at 2 p.m. with a court reporter and "Judge Veal asked my court reporter to step down and [said] that my case would not be called." Plaintiff approached the court's clerk one hour later and was told that the case had been called at 9:30 a.m. that day. Plaintiff also appeared in court at 1 p.m. on December 10, but the court would not call her case. Plaintiff claimed that a bill from a court reporter attached to her motion to vacate evidenced her appearance at 1 p.m. In the remainder of the motion to vacate, plaintiff argued that the trial court lacked the authority to dismiss her case for want of prosecution with prejudice because she had an absolute right to refile the action against the same party and to reallege the same cause of action. She further

argued that the "ex[ ]parte default judgment" against her was unsupported by the evidence and that the Rule 137 sanctions against her were improper because her pleadings had merit and were not baseless.

¶ 18 The court entered a written order on December 30, 2010. The court denied plaintiff's motion to vacate and barred plaintiff from "filing any additional [C}ook [C]ounty [C]ircuit [C]ourt pleadings in this matter." This appeal followed

¶ 19 We begin by observing that plaintiff's brief fails to comply with the Illinois Supreme Court rules governing appellate briefs. Initially, plaintiff's statement of facts violates Supreme Court Rule 341(h)(6) (eff. July 1, 2008). Rule 341(h)(6) requires that the statement of facts in the appellant's brief "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal *** or to the pages of the abstract." Here, plaintiff's statement of facts contains no citations to the record and consists entirely of improper argument as to what the facts should have been or to the alleged errors committed by the trial court.

¶ 20 Moreover, many of the arguments advanced by plaintiff on appeal are inadequately presented and unsupported by citation to the record and to relevant authority and are therefore in violation Supreme Court Rule 341(h)(7). Supreme Court Rule 341(h)(7) requires appellants' brief to include " '[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.' " *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 1074 (2005); IL. S. Ct. R. 341(h)(7) (eff. July 1, 2008). As this court has previously noted, " '[a] reviewing court is entitled to have the issues on appeal

clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' " *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994) (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)).

¶ 21 Compliance with Rule 341 is not an inconsequential matter. Where an appellant's brief fails to comply with the supreme court rules, this court has the inherent authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005); *McCarthy v. Denkovski*, 301 Ill. App. 3d 69, 75 (1998). Moreover, although plaintiff appeared *pro se* for a majority of the proceedings in this case, by her own admission she is a licensed attorney and her *pro se* status does not relieve her of the burden of complying with the format for appeals mandated by the supreme court rules. *Epstein*, 362 Ill. App. 3d at 39. However, violation of the supreme court rules does not divest this court of jurisdiction, and it is within our discretion to consider the merits of the appeal, which we do here, in the interest of judicial economy and where the facts necessary to understand the issues are simple. *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 292-93 (1991). Accordingly, the arguments contained in plaintiff's brief will be considered to the extent that they are properly presented.

¶ 22 Plaintiff first contends that the trial court committed reversible error on November 1, 2010, when it "treated trial as a fact finding hearing" and *sua sponte* accused plaintiff of altering the checks she submitted into evidence.

¶ 23 We are unable to evaluate this claim because plaintiff has failed to include a copy of the transcript of proceedings from November 1, 2010, or a copy of the checks she submitted into

evidence. As the appellant, plaintiff has the burden of providing a sufficiently complete record to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Absent such a record, a reviewing court will presume that the trial court's ruling was in conformity with the law and had a sufficient factual basis, and any doubts arising from the incompleteness of the record will be resolved against the appellant. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005).

¶ 24 In this case, it is evident that the trial court believed that plaintiff added information to the returned checks before she submitted them into evidence and that the court therefore wanted authenticated copies of those checks. In this regard, we note that as the trier of fact, it was the trial court's responsibility to evaluate the evidence presented. See *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 507 (2005); *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 248 (2004). Nevertheless, without a sufficient record, we are unable to evaluate plaintiff's claims that the trial court improperly questioned the authenticity of those checks and we must presume that the trial court's actions were in conformity with the law and had a sufficient factual basis.

¶ 25 Plaintiff next claims that the trial court erred during the first day of trial when it prevented her from calling witnesses and presenting evidence on her behalf. It is well established that the admission of evidence is within the sound discretion of the trial court and a reviewing court will not reverse the trial court unless that discretion was clearly abused. *Gill v. Foster*, 157 Ill. 2d 304, 312-13 (1993). In this case, however, we are unable to evaluate whether the court abused its discretion because plaintiff has failed to provide a record of the proceedings from November 1.

Therefore, we must again presume that the trial court's actions were in conformity with the law and had a sufficient factual basis.

¶ 26 Plaintiff next claims that the trial court erred when it contacted plaintiff's bank on November 2 and ordered it to verify the authenticity of the checks plaintiff submitted into evidence. Plaintiff claims that the court lacked jurisdiction to order her bank to produce plaintiff's financial records and that the court's action was an improper "ex[ ]parte investigation[]."

¶ 27 We initially note that according to comments made by the trial court during hearings on November 11 and 24, 2010, it was plaintiff who asked the court to assist her in having the checks authenticated by plaintiff's bank, and that the court had its clerk contact the bank. Under the doctrine of invited error, a party cannot request to proceed in one manner and then later claim on appeal that the course of action was error. *LaSalle Bank, N.A. v. C/HCA Development Corp.*, 384 Ill. App. 3d 806, 820 (2008). Although plaintiff later denied making such a request, this is precisely the type of ambiguity that must be resolved against plaintiff where she has failed to provide a sufficient record on appeal.

¶ 28 Regardless, this issue is essentially moot. See *Midwest Central Education Ass'n v. Illinois Educational Labor Relations Board*, 277 Ill. App. 3d 440, 448 (1995) (stating that when no relief can be granted on the claimed controversy, the issue is considered moot and that "an issue is 'moot' where its resolution could not have any practical effect on the existing controversy"). The trial court in this case initially entered an order requiring plaintiff's bank to produce and authenticate copies of certain checks plaintiff submitted into evidence. However, at

the hearing on November 24, 2010, the trial court told plaintiff's counsel that it had "halted that proceeding" after realizing that plaintiff told her bank that she did not ask for the court's assistance. The court then ordered plaintiff's counsel to contact the bank or otherwise ensure that authenticated copies of those checks were brought to court on December 10, 2010, for the conclusion of trial. Ultimately, plaintiff did not appear in court on December 10 for the conclusion of trial and therefore the court was never provided with authenticated copies of the checks.

¶ 29 In light of above, neither the court's order that the bank produce authenticated copies of the checks nor any contact of plaintiff's bank by the court's clerk had any practical effect. Therefore, we have no reasons to review this issue.

¶ 30 Plaintiff next claims that the trial court abused its discretion when it "arbitrarily and ex[ ]parte dismissed motions without hearing." Although it is unclear from plaintiff's brief, it appears that she is challenging the trial court's ruling on her motions to quash, for substitution of judge for cause and to voluntarily non-suit the case.

¶ 31 We find that these claims are waived under Rule 341(h)(7). See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 208 (2007). In this case, plaintiff makes only the general assertions that her motions should have been granted because there had been no substantive rulings and only "something other than a trial" had been held when the motions were filed and that the court "arbitrarily" declined to hear "properly filed procedural motions" that the court labeled as frivolous. Plaintiff offers no reasoned analysis addressing the substance of the trial court's rulings on her motions nor does she cite any relevant authority in support of her

general assertions.

¶ 32 We also find no merit to plaintiff's claims. Regarding the motion to voluntarily dismiss the case, we note that upon meeting certain statutory requirements, a party "has the nearly unfettered right to voluntarily dismiss his or her case any time *prior to the commencement of trial*." (Emphasis added.) *McWilliams v. Dettore*, 387 Ill. App. 3d 833, 852 (2009). In this case, however, trial had already begun when plaintiff sought to voluntarily nonsuit her case. Moreover, it is evident that the trial court believed plaintiff wanted to voluntarily dismiss her case in order to avoid complying with the court's order that she produce authenticated copies of the checks she submitted into evidence or to avoid the court's order that trial would be completed on December 10. Under Rule 219(e), "[a] party shall not be permitted to avoid compliance with discovery deadlines, orders or applicable rules by voluntarily dismissing a lawsuit." IL. S. Ct. R. 219(e) (eff. July 1, 2002)).

¶ 33 Regarding plaintiff's motions for a substitution of judge for cause, those motions were filed pursuant to section 2-1001(a)(3) of the Code, which in relevant part provides:

> "(3) Substitution for cause. When cause exists.
>
> (I) Each party shall be entitled to a substitution or substitutions of judge for cause.
>
> (ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.

> (iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition. The judge named in the petition need not testify but may submit an affidavit if the judge wishes. If the petition is allowed, the case shall be assigned to a judge not named in the petition. If the petition is denied, the case shall be assigned back to the judge named in the petition." 735 ILCS 5/2-1001(a)(3) (West 2010).

¶ 34 This court has made the following observations regarding a motion for substitution of judge for cause:

> "In construing this section, our supreme court has stated that the provisions of this statute:
>
> > 'are to be liberally construed to promote rather than defeat the right of substitution, particularly where the "cause" claimed by the petitioner is that the trial judge is prejudiced against him. [Citations.] The courts have also recognized, however, that a party's right to have a petition for substitution heard by another judge is not automatic. [Citations.] Principles of liberal construction do not excuse the obligation of parties to adhere to express statutory requirements. [Citation.] Trial courts are required to refer a petition to another judge for a hearing on whether cause for substitution exists only if the party seeking that relief is able to bring

himself or herself within the provisions of the law. [Citation.]

In order to trigger the right to a hearing before another judge on the question of whether substitution for cause is warranted in a civil case pursuant to section 2-1001(a)(3), the request must be made by petition, the petition must set forth the specific cause for substitution, and the petition must be verified by affidavit. ***

***

To meet the statute's threshold requirements, a petition for substitution must allege grounds that, if true, would justify granting substitution for cause. [Citation.] Where bias or prejudice is invoked as the basis for seeking substitution, it must normally stem from an extrajudicial source, *i.e.*, from a source other than from what the judge learned from her participation in the case before her. A judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality.' "

Shachter v. City of Chicago, 2011 IL App (1st) 103582, ¶ 24 (quoting *In re Estate of Wilson*, 238 Ill. 2d 519, 553-54 (2010)).

¶ 35 Our supreme court recently reiterated that actual prejudice must be established in a petition seeking a substitution of judge for cause. See *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 30. Moreover, opinions " 'formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not

constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.' " *Eychaner v. Gross*, 202 Ill. 2d 228, 281 (2002) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¶ 36 In this case, plaintiff's motion for substitution did not meet the threshold requirements. Plaintiff asked for substitution in two nearly identical motions filed on November 10 and 15. Contrary to the rule's requirement, neither motion was verified by plaintiff's affidavit. Moreover, the allegations in these motions do not set forth a case of "actual prejudice" sufficient to meet the rule's threshold requirements. Much of the conduct plaintiff complains of allegedly took place during the first day of trial on November 1, 2010. For example, plaintiff complains of the trial court's conduct in "*sua sponte*" ordering her bank records. We again emphasize that our review of this issue is hindered by plaintiff's failure to provide a transcript of the proceedings from that date. The other conduct plaintiff alleged as grounds for her motion consist of rulings that do not suggest actual prejudice. These include the court's alleged ruling that plaintiff failed to properly notice her motion to quash, the court setting a hearing on November 10 without considering plaintiff's "schedule" and the court setting that hearing at 9:30 a.m. when, according to plaintiff, the court's call was actually at 2 p.m. Because these allegations are insufficient to satisfy even the threshold requirements of a petition for substitution of judge for cause, we find that the court did not err in either refusing to transfer plaintiff's motion to another judge for consideration or in denying the motion on the merits. See *Shachter*, 2011 IL App (1st) 103582, ¶¶ 29-30.

¶ 37 Finally, we need not consider plaintiff's argument regarding the court's denial of her motion to quash the court's order regarding the authenticated checks because, as set forth above,

there is no actual controversy to decide.

¶ 38 Plaintiff next contends that the default judgment entered against her is void and in violation of due process requirements because "it was entered *sua sponte*, ex[ ]parte and without valid notice."

¶ 39 We find that the trial court had legal authority to enter judgment in favor of defendant on his counterclaim and to dismiss plaintiff's complaint for want of prosecution. We begin by noting that although the court referred to the judgment it entered in defendant's favor on his counterclaim as an "[ex parte] default judgment," this type of judgment has been characterized as a "judgment on the merits entered after an ex parte hearing." *In re Marriage of Garde*, 118 Ill. App. 3d 303, 307 (1983). In either case, it is recognized that once a defendant has appeared and placed in issue the allegations in the complaint, a default judgment cannot be entered merely because the defendant failed to appear at trial. Instead, the party present at trial must proceed to prove his or her claim as if the opposing party were present. *People ex rel. Hartigan v. Organization Services Corp.*, 147 Ill. App. 3d 826, 831 (1986); *In re Marriage of Garde*, 118 Ill. App. 3d at 307. However, the failure to appear for trial in conjunction with other improper conduct may constitute sufficient grounds for a default judgment, such as where the failure to appear is part of an attempt to delay the proceedings and constitutes a disregard for the authority of the court. *Hub Airlines, Inc. v. Bouska*, 29 Ill. App. 3d 565, 567-68 (1975).

¶ 40 In this case, trial began on November 1, 2010, and was continued to December 10, 2010, for the conclusion of plaintiff's case and for defendant to present evidence on his counterclaim against plaintiff. Plaintiff did not appear in court for the conclusion of trial and the court took

sworn testimony from defendant on his counterclaim. Under these circumstances, the court had the authority to enter judgment in defendant's favor on his counterclaim.

¶ 41 We also find that the trial court had the authority to dismiss plaintiff's complaint for want of prosecution. A plaintiff owes a duty to prosecute his or her action with due diligence and a party's failure to take an action ordered by the court, such as failing to go to trial when ordered or failing to appear when a case is called for trial, evidences a want of prosecution and provides grounds for the court to dismiss the case for failure of the complainant to prosecute it with due diligence. *Kling v. Landry*, 292 Ill. App. 3d 329, 339 (1997); *Hogan v. Braudon*, 40 Ill. App. 3d 352, 354 (1976); *Jones v. Sullivan*, 34 Ill. App. 3d 786, 789-90 (1976). Therefore, because plaintiff failed to appear on December 10 for the conclusion of trial, the court had the authority to dismiss her complaint for want of prosecution.

¶ 42 Plaintiff attempts to excuse her absence from trial on the ground that she did not receive notice that trial would be continued at 9:30 a.m. on December 10, 2010. Plaintiff claims that given her lack of notice, the trial court should have granted her motion to vacate the default judgment.

¶ 43 Plaintiff's motion to vacate was brought pursuant to section 2-1301(e) of the Code of Civil Procedure. That section provides: "The court *** may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2010). The primary concern is whether substantial justice has been done between the parties and whether it is unreasonable to force the other party to trial on the merits. *Jones v. Unknown Heirs or Legatees of Fox*, 313 Ill. App. 3d 249, 255

(2000). Among the factors to be considered are the severity of the consequences to the plaintiff and the consequences of forcing the defendant to go to trial. *Jones*, 313 Ill. App. 3d at 255.

¶ 44 Plaintiff does not address any of these factors but instead claims only that she lacked notice of the continued trial date and time. This claim is belied by the record. First, the trial court entered a written order on November 10, 2010, stating that trial was continued to "December 10, 2010," at "*9:30 a.m.*" (Emphasis added.) That order also indicates that plaintiff was present in court when the order was entered. This alone is sufficient to constitute notice. Second, at the hearing on November 24, plaintiff's counsel was told that trial was to continue on December 10, 2010, at 9:30 a.m. This also constitutes notice to plaintiff. See *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 64 (2011) ("an attorney's knowledge is imputed to his client"); *Segal v. Department of Insurance*, 404 Ill. App. 3d 998, 1002 (2010) ("notice to an attorney constitutes notice to the client and knowledge of an attorney is knowledge of, or imputed to the client, notwithstanding whether the attorney has actually communicated such knowledge to the client"). We further note that although plaintiff claims not to have received notice, she appeared in court at 1 p.m. and at 2 p.m. on December 10 for the continuation of trial but was told that her case had already been called.

¶ 45 A consideration of the relevant factors also reveals no basis to overturn the trial court's denial of plaintiff's motion to vacate. Throughout the proceedings, the trial court reminded plaintiff that she should not file duplicative motions and that defendant had indicated he risked losing his job because he had to repeatedly take off of work to come to court to respond to those motions. The record reveals a pattern of plaintiff filing duplicative motions and generally

delaying the proceedings and showing disregard for the authority of the court. As we previously found, because of an absence of an adequate record, we must presume that plaintiff asked the court to help her obtain authenticated copies of the checks she submitted into evidence. Nevertheless, plaintiff filed three consecutive motions attacking that order. Two of those motions, filed on November 10 and 15, were lengthy, nearly identical and replete with baseless allegations against the court and the judicial process. Although the court ordered plaintiff to cease filing duplicative motions on November 24, plaintiff filed a *pro se* motion to vacate the default judgment that, aside from her argument regarding a lack of notice, was a lengthy reiteration of all the allegations she made in her previous motions filed on November 9, 10 and 15. The court also noted that plaintiff filed motions and set them to be heard at a different time than that of the court's call. For example, despite having been ordered to appear in court at 9:30 a.m. on November 10, plaintiff noticed her motion to quash for presentation at 2 p.m. that day. Plaintiff repeatedly disputed the actual time of the court's call in her motions and then claimed that the court set motions for hearing without considering plaintiff's schedule. Finally, the court stated that at the conclusion of the first day of trial, plaintiff indicated that she was finished presenting her case except for the authenticated copies of the checks that she planned to submit to the court. Nevertheless, despite clearly having notice of the time and date when trial was to be continued, plaintiff failed to appear in court and failed to follow the court's order and present authenticated copies of the checks. Under all of these circumstances, we find no error in the trial court's denial of plaintiff's motion to vacate.

¶ 46 Plaintiff next claims that the damages entered by the trial court on defendant's

counterclaim are against the manifest weight of the evidence. However, because we have no transcript of the proceedings from either day of trial, we must presume that the damages awarded by the court were in conformity with the law and had a sufficient factual basis. See *Corral*, 217 Ill. 2d at 157.

¶ 47 Plaintiff's next claims are that the court erred by sanctioning her pursuant to Rule 137 and that the court abused its discretion by threatening to find her in contempt of court. We find no reason to address either of these claims. First, we have no record of the proceedings when the court allegedly threatened plaintiff with contempt or imposed sanctions against plaintiff. Second, the court did not actually find plaintiff in contempt and therefore there is no issue for this court to address. The same is true for the alleged sanctions imposed by the court. Although the court's judgment order states that plaintiff was subject to Rule 137 sanctions, there is nothing in the record to indicate that the court actually sanctioned plaintiff under this rule. Although plaintiff claims otherwise, we cannot evaluate this claim without a sufficient record.

¶ 48 Plaintiff's final claim is that the court's online docket initially showed that her motion to vacate was granted and that the court later improperly changed that record to reflect that the motion was denied. We find it sufficient to note the language at the end of the online docket that plaintiff included in the record, which states:

> "Please note: Neither the Circuit Court of Cook County nor the Clerk of the Circuit Court of Cook County warrants the accuracy, completeness, or the currency of this data. This data is not an official record of the Court or the Clerk and may not be represented as an official court record."

Aside from this warning, it is evident from the order actually entered by the trial court that plaintiff's motion to vacate was denied.

¶ 49 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 50 Affirmed.