

No. 1-11-3502

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

CROWN CARS & LIMOUSINES, INC.,)	Appeal from the
MATHIAS PAUL and MARY PAUL,)	Circuit Court of
)	Cook County
Plaintiffs-Appellees,)	
)	No. 11 CH 15004
v.)	
)	Honorable
MATTHEW GONZALEZ,)	LeRoy K. Martin, Jr.,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

Held: Defendant's procedural due process rights were not violated when the trial court entered a default judgment against him after providing him with notice and an opportunity to be heard.

¶ 1 Defendant-appellant Matthew Gonzalez appeals a judgment of default entered against him and in favor of plaintiffs-appellees Crown Cars & Limousines, Inc., Mathias Paul, and Mary

1-11-3502

Paul (collectively, plaintiffs) granting injunctive and monetary relief in the amount of \$30,000 on the grounds that the judgment violated his right to procedural due process of law. For the reasons that follow, we affirm the judgment of the trial court.

¶ 2

BACKGROUND

¶ 3 On April 21, 2011, plaintiffs filed a six-count complaint against defendant seeking injunctive relief and alleging defamation, intentional infliction of emotional distress, tortious interference with prospective economic advantage, invasion of privacy and breach of contract. These allegations arose following the termination of the business relationship between defendant's corporation, Innisfree Ventures, Inc., and plaintiffs.

¶ 4 Specifically, plaintiffs alleged that defendant provided limousine-driving services to Crown Cars & Limousines, Inc. (Crown Cars) from June 2008 until January 2011, when they terminated their relationship with defendant. At the time of termination, plaintiffs advised defendant that he could collect his check for services rendered to date during the week of February 15th. Defendant collected his check on February 25th, which, according to plaintiffs, represented payment in full for his services. Shortly thereafter, defendant began sending harassing and threatening emails to plaintiffs and their attorney. Between April 11 and April 19, 2011, plaintiffs alleged defendant sent emails accusing Mary Paul of making racist and homophobic statements; demanding amounts of money ranging from \$50,000 to \$100,000; and threatening to post disparaging and false information regarding plaintiffs on LinkedIn if his demands were not satisfied. He also threatened to contact plaintiffs' clients directly to communicate his defamatory statements and expressed his intention to seek a restraining order

1-11-3502

against Mary.

¶ 5 After receiving these emails, plaintiffs made an emergency motion for a preliminary injunction requesting that defendant be ordered to cease communicating with or otherwise contacting plaintiffs, and to refrain from contacting plaintiffs' clients with the intent to defame and disparage plaintiffs. On April 28, 2011, an agreed order was entered granting the motion for injunctive relief in its entirety.

¶ 6 One month later, on May 27, 2011, defendant, proceeding *pro se*, filed a response to plaintiffs' complaint, which plaintiffs moved to strike as non-responsive. After receiving defendant's response to plaintiffs' motion to strike on July 28th, the court granted the motion in defendant's absence on August 12, 2011. The court further ordered defendant to file a responsive pleading by September 2, 2011, and set a status date of September 9th. When that date passed with no response from defendant, plaintiffs moved for default judgment. A copy of the motion, set to be heard by the court on September 23rd, was sent to defendant directly on September 13th. When defendant did not appear in court on September 23rd, the court entered an order of default against him, noting specifically that defendant had failed to file an answer to the complaint or enter an appearance. The order, which was sent via certified mail to defendant, set the matter for prove-up and entry of default judgment on October 25th.

¶ 7 Approximately 10 days prior to the prove-up hearing, plaintiffs sent defendant their motion for entry of default judgment with supporting exhibits. At the hearing, which defendant attended *pro se*, the court heard testimony from Matthias and Mary, and found that plaintiffs had sustained their burden of proof as to the counts alleging intentional infliction of emotional

1-11-3502

distress and defamation. The court entered judgment against defendant in the amount of \$15,000 on each of these counts. Further, the court found that plaintiffs had sustained their burden of proof as to the count seeking injunctive relief and enjoined defendant from publishing disparaging comments regarding plaintiffs and from contacting plaintiffs' clients with the intent to disparage plaintiffs' business practices. This appeal follows.

¶ 8

ANALYSIS

¶ 9 As a preliminary matter, we note that defendant's opening brief fails to comply with Supreme Court Rule 341(h) (eff. July 1, 2008). First, in lieu of the introductory paragraph mandated by Supreme Court Rule 341(h)(2)(i), requiring appellants to state only the "nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury," defendant includes a nine page 'nature of the case,' which recounts numerous events that are not part of the record. These include conversations defendant had with plaintiffs' counsel, defendant's failed efforts to obtain counsel of his own, and detailed descriptions of criminal proceedings pending against defendant in Des Plaines. Moreover, in violation of Supreme Court Rules 341(h)(6) and (h)(7), defendant fails to provide sufficient citations to the record on appeal in both his statement of facts and argument section. Instead, defendant cites sporadically to orders entered by the trial court and continues to refer to events that are not part of the record.

¶ 10 Plaintiffs aptly note that where an appellant's brief relies on matters that are outside of the record to support its position on appeal, a court of review may strike the brief in its entirety, or simply disregard the inappropriate material. *Keener v. City of Herrin*, 235 Ill. 2d 338, 346

1-11-3502

(2009). We opt for the latter course here and proceed to the merits of defendant's claim while disregarding all inappropriate and unsupported material in defendant's brief.

¶ 11 Defendant's sole contention on appeal is that his procedural due process rights were violated when the trial court entered a default judgment of \$30,000 against him after he failed to file an answer or otherwise plead in response to plaintiffs' complaint. Due process claims present legal questions subject to *de novo* review. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009).

¶ 12 A claim concerning procedural due process challenges the constitutionality of the specific procedures used to deny a person's life, liberty or property. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill.2d 218, 244 (2006). Fundamentally, due process requires "notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 432 (1990). Other requirements of due process include orderly proceedings before an impartial and disinterested tribunal. *Village of Kildeer v. Munyer*, 384 Ill. App. 3d 251, 260 (2008) (citing *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)).

¶ 13 In the instant case, defendant does not contend that he was not afforded notice of the civil proceedings pending against him.¹ Instead, defendant argues that he did not have the benefit of an impartial adjudication when the trial judge failed to take into account his *pro se* status in

¹ Indeed, defendant attended court dates from the time the complaint was filed until July 29, 2011. After that date, he was provided with notice of court orders entered in his absence, and was also sent a copy of plaintiffs' motion for default over 10 days in advance of the date the trial court was set to rule on the motion.

1-11-3502

ruling on plaintiffs' complaint. For this proposition, defendant cites *People v. Hodges*, 234 Ill. 2d 1 (2009). It is sufficient to note that *Hodges* addressed the need to liberally construe post-conviction petitions prepared by *pro se* criminal defendants (*Id.* at 9) and is wholly inapplicable to the case at bar. We have consistently rejected the argument that civil litigants appearing *pro se* are entitled to special consideration, and we decline to revisit this issue today. See, e.g., *Athens v. Prousis*, 190 Ill. App. 3d 349, 356 (1989) ("a *pro se* appellant, is bound by the rules to the same extent as any other litigant represented by counsel, in the trial court as well as in this court"); *Biggs v. Spader*, 411 Ill. 42, 46 (1951); *Bilecki v. Painting Plus, Inc.*, 264 Ill. App. 3d 344, 354 (1994).

¶ 14 Next, defendant lists what he describes as arbitrary "procedurally-related choices" made by the lower court that he argues are also indicative of the court's bias against him. Specifically, he complains that the court: (1) disbelieved his assertion that he was told by a judge in the concurrent criminal proceedings that the civil litigation would be held in abeyance pending the outcome of the criminal case; (2) failed to take into account his belief that he was prohibited from responding to plaintiffs' complaint between July 2011 and October 2011 prior to finding him in default; (3) erred in prohibiting him from contacting plaintiffs' clients, which included law firms, for the purpose of disparaging plaintiffs' business activities; and (4) prohibited him from rebutting Mathias and Mary's testimony at the prove-up hearing. We do not reach the merits of these claims, as defendant has not provided us with a transcript of the proceedings below.

¶ 15 It is the appellant's burden to support his claims of error with a sufficiently complete record of the trial court proceedings. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the

1-11-3502

absence of such a record, we will presume that the trial court's findings were in conformity with the law. *Id.* Stated differently, any doubts arising from the incompleteness of the record will be resolved against appellant. *Id.* at 392.

¶ 16 Notwithstanding these well settled principles of law, defendant suggests his failure to provide a complete record should be excused, as he was unable to obtain a copy of the transcript of proceedings despite requesting the same from both the court and plaintiffs' counsel. However, where a transcript is unavailable, an appellant may prepare a bystander's report pursuant to Supreme Court Rule 323(c) (eff. Dec. 13, 2005). Defendant's characterization of his "Nature of the Case" as a bystander's report is erroneous. Pursuant to Rule 323(c), only a report that is certified by the trial court can be considered as part of the record on appeal. Defendant's failure to produce such a report or provide a transcript of proceedings requires us to presume the trial court's decision conformed to the law. See *Landeros v. Equity Property and Development*, 321 Ill. App. 3d 57, 63 (2001).

¶ 17 Finally, defendant argues that he was entitled to court-appointed counsel where his physical liberty was threatened as a result of his arrest on July 14, 2011. See *Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981) (an indigent's right to appointed counsel exists where the litigant may lose his physical liberty if he loses the litigation). This argument fails not only because, just as the argument relating to the trial court's bias, it relies entirely on matters outside the record, but also because it is legally meritless. Assuming *arguendo* that the record supported defendant's claims regarding his arrest and potential loss of physical liberty, defendant admits this arrest occurred as a result of criminal proceedings that were initiated

1-11-3502

following a complaint made by Mathias. As such, his physical liberty was in jeopardy not as a result of the civil litigation at issue here, but due to the criminal charges filed against him.

Accordingly, there is no basis for us to conclude that defendant was entitled to appointed counsel in the civil proceedings below.

¶ 18

CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court.

¶ 20 Affirmed.