2012 IL App (2d) 110615-U
No. 2-11-0615
Order filed April 23, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CAROL MORSE,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-SC-2378
	)	
KUHN, MITCHELL, MOSS, MORK &	)	
LECHOWICZ, LLC,	)	Honorable
	)	Paul M. Fullerton,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: The trial court's judgment for defendant on plaintiff's complaint for breach of contract was not against the manifest weight of the evidence: the evidence showed that defendant discussed its litigation strategy with plaintiff before proceeding and did not bill for work that had not been done. We affirmed the trial court's judgment.

¶ 1 Plaintiff, Carol Morse, filed a *pro se* small-claims complaint against defendant, Kuhn, Mitchell, Moss, Mork & Lechowicz, LLC, seeking $10,000 for breach of contract. Following a hearing, the trial court found in favor of defendant. The trial court denied plaintiff's motion for

reconsideration, and plaintiff timely appealed. Plaintiff now argues that the court's ruling is against the manifest weight of the evidence. We affirm.

¶ 2 Plaintiff alleged in her complaint that she hired Ryan Harrington, an associate of defendant, to represent her in a legal action against certain realtors and that she paid a $10,000 retainer. She alleged that Harrington billed her for work that was never done. She also alleged that, on the day the case was set for trial, Harrington "non-suited the case" without her permission. She further maintained that Harrington "took no steps to preserve the statute of limitations."

¶ 3 Defendant filed a counterclaim against plaintiff, seeking an alleged balance due of $8,737.50. Defendant attached to its counterclaim a copy of its engagement agreement with plaintiff and a detailed billing statement.

¶ 4 Following a bench trial, at which plaintiff and Harrington each testified, the trial court found in favor of defendant. At the hearing, plaintiff testified that she had filed a *pro se* small-claims case against her realtor and that she subsequently hired Harrington to represent her in that matter. The matter went to arbitration. The ruling was against plaintiff, and she rejected it. The matter was set for a jury trial. Shortly before the jury trial was to begin, Harrington filed a motion to voluntarily dismiss the matter. Plaintiff testified that this was done without her knowledge. Harrington testified that he had met with plaintiff to discuss the voluntary dismissal. Harrington testified that, as he was preparing for trial, he recognized the need for expert witnesses, so he told plaintiff that they would voluntarily dismiss the case and then refile it after obtaining the necessary experts. Plaintiff later terminated defendant and hired a different attorney to refile the case. That relationship also dissolved, and plaintiff hired a third attorney. Ultimately, the matter with the realtor was resolved by settlement.

¶ 5 During the trial, plaintiff submitted a letter she received from the Attorney Registration and Disciplinary Commission (ARDC) in response to a complaint that she had filed against Harrington. Plaintiff complained to the ARDC that Harrington had voluntarily dismissed the action against the realtor without her knowledge. The ARDC investigated the complaint. In its letter, the ARDC noted that Harrington did discuss the dismissal strategy with plaintiff. The ARDC also noted that Harrington "expressed regret for his failure to fully communicate" with plaintiff. Harrington acknowledged that "misunderstandings may have resulted from his insufficient communication regarding this complex matter of litigation strategy." The ARDC also noted that Harrington agreed to waive all outstanding fees.

¶ 6 Following the trial, the court held:

> "The plaintiff did not meet her burden to provide sufficient evidence that the defendant breached its contract of legal representation on behalf of the plaintiff. Plaintiff did not object to the defendant's hourly rate and there was no evidence that the hourly rate exceeds standards for the work that was performed. The plaintiff did not provide sufficient evidence that any billing was generated for work that was not performed. While it is clear that plaintiff became unhappy with defendant's representation, the evidence was not sufficient to establish that the defendant overcharged for actual work performed. Finally, there was no evidence that the defendant failed to fully protect the plaintiff's case by failing to file an action within a certain limitations time period."

The court also dismissed defendant's counterclaim, as defendant had indicated its desire to abandon the claim.

¶ 7 Plaintiff moved for reconsideration, and defendant filed a response. The trial court denied the motion, and plaintiff timely appealed.

¶ 8 Plaintiff's main contention is that defendant breached the contract with plaintiff when defendant voluntarily dismissed plaintiff's action against the realtor without her knowledge and thereby subsequently caused certain claims to be barred by the statute of limitations. Plaintiff also argues that defendant breached the agreement by billing for work that it did not do. The trial court found that these contentions were not supported by the evidence. We agree with the trial court's findings.

¶ 9 To establish breach of contract, a plaintiff must show: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) resulting damage to the plaintiff. *Catania v. Local 4250/5050 of the Communications Workers of America*, 359 Ill. App. 3d 718, 724 (2005). We review a trial court's decision following a bench trial to determine if the judgment was against the manifest weight of the evidence. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 51 (2009). "A judgment is not against the manifest weight of the evidence unless the opposite conclusion is clearly evident." *Gambino*, 398 Ill. App. 3d at 51. "For a judgment to be against the manifest weight of the evidence, the appellant must present evidence that is so strong and convincing as to overcome, completely, the evidence and presumptions, if any, existing in the appellee's favor." *Raclaw v. Fay, Conmy & Co.*, 282 Ill. App. 3d 764, 767 (1996).

¶ 10 Plaintiff's statement of facts consists primarily of conclusory allegations that are unsupported by any record citation. Under Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008), a statement of facts is to be without argument or comment. Statements of facts should tell the

reviewing court what the record contains and on what pages the statements are located. To state allegations and contentions as fact is argumentative. Worse, it is misleading. Plaintiff also fails to provide adequate record citation in the argument section of her brief. Under Rule 341(h)(7), the appellant's brief must contain "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). This rule is not a guideline. *Kerger v. Board of Trustees of Community College District No. 502,* 295 Ill. App. 3d 272, 275 (1997). Thus, when submitting briefs to this court, appellants must clearly define the issues raised and cite *relevant* authority, as this court is not a repository into which an appellant may dump the burden of researching and articulating arguments. *Obert v. Saville,* 253 Ill. App. 3d 677, 682 (1993). An appellant, whether proceeding *pro se* or with counsel, who fails to present cogent arguments supported by authority forfeits those contentions on appeal. *People v. Ward,* 215 Ill. 2d 317, 332 (2005); *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 11 Here, in support of her argument that defendant voluntarily dismissed her action against the realtor without her knowledge and caused a subsequent action to be barred by the statute of limitations, plaintiff cites to just three portions of the record: the representation agreement, which was attached to defendant's counterclaim; two pages from what appears to be the motion to dismiss; and a trial court order from another case setting a motion for a hearing. Plaintiff provides no citations to the report of proceedings. The evidence cited by plaintiff does not establish that the court's ruling was against the manifest weight of the evidence. Rather, the record shows that Harrington testified that he did discuss the voluntary dismissal with plaintiff. Although plaintiff claims that "the ARDC letter *** states that Defendant did not communicate the voluntary dismissal

to plaintiff," that is not entirely accurate. The ARDC letter states that Harrington regretted that he failed to "fully communicate" with plaintiff concerning the "complex matter of litigation strategy." Even if it is evident that plaintiff did not understand the strategy, it is not similarly evident that defendant dismissed the action without her knowledge. Nevertheless, regardless of Harrington's communication of the strategy to plaintiff, the evidence does not establish that defendant's voluntary dismissal of the action against the realtor caused certain claims against the realtor to be barred by the statute of limitations. Section 13-217 of the Illinois Code of Civil Procedure grants a plaintiff who voluntarily dismisses a complaint the right to refile within "one year or within the remaining period of limitation, whichever is greater." 735 ILCS 5/13-217 (West 2010). Thus, plaintiff had one year to refile her complaint. She does not attribute any failure to do so to defendant.

¶ 12 Plaintiff also complains that defendant billed her for work performed after the case was voluntarily dismissed but that there was no evidence that any work had been done. Plaintiff maintains that she had paid in full as of May 1, 2008, and that subsequently defendant sent her a bill for more than $8,000 for work done following the voluntary dismissal. The trial court found that there was no evidence that any billing was generated for work that was not performed. Plaintiff cites no evidence to establish that the court's ruling was against the manifest weight of the evidence. We will not act as plaintiff's advocate and search the record on her behalf. See *Robert*, 253 Ill. App. 3d at 682. We do note, however, that, before plaintiff filed the present action, defendant had already agreed to waive its outstanding fees.

¶ 13 In light of the foregoing, we conclude that plaintiff has failed to establish that the trial court's ruling was against the manifest weight of the evidence, and we affirm.

¶ 14 Affirmed.