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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|--|---|--|
| WILLOW SHORES CONDOMINIUM ASSOCIATION, |) | Appeal from the Circuit Court of Du Page County. |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 12-LM-1000 |
| |) | |
| XIAOWEN ZHU, |) | Honorable |
| |) | James D. Orel, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's judgment was not inconsistent with the record or with its oral rulings; the court did not unduly hinder defendant's ability to challenge plaintiff's case and present her own; and the court thus did not abuse its discretion in denying defendant a closing argument; (2) the trial court did not abuse its discretion in awarding plaintiff the entirety of its requested attorney fees: the court did not need to articulate its rationale, and the court was entitled to credit plaintiff's substantial evidence of reasonableness over defendant's contrary evidence.

¶ 2 Defendant, Xiaowen Zhu, appeals *pro se* from a judgment of the circuit court of Du Page County awarding plaintiff, Willow Shores Condominium Association, possession of defendant's condominium and \$7,808.56 for unpaid assessments, late fees, attorney fees, and costs. Defendant

contends that she was denied due process in several respects during the bench trial and asserts that the attorney fees related to plaintiff's attempt to serve her were unreasonable. Because we conclude that defendant was not denied due process during the bench trial and that the trial court did not abuse its discretion in awarding the attorney fees, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Plaintiff filed a verified complaint for forcible entry and detainer and other relief, alleging that defendant failed to pay monthly assessments she owed related to a condominium she owned. Plaintiff sought possession of the condominium, a money judgment in the amount of the unpaid assessments and related late fees, attorney fees, and costs.

¶ 5 On October 4, 2012, the trial court conducted a bench trial. Before the start of the trial, defendant, who proceeded *pro se*, told the court that she was not contesting the claim for assessments and late fees but only the attorney fees. Also, before being sworn in as a witness, defendant stated that she did not reside in the condominium and that she rented it to a third party.

¶ 6 At the trial, Chris Saurwein, plaintiff's property manager, stated that defendant owned a condominium governed by a written declaration. According to Saurwein, the declaration, among other things, obligated each owner to pay monthly assessments. It also authorized a legal proceeding to obtain possession of the unit and to collect any unpaid assessments, late fees, attorney fees, and costs. Defendant had not paid the assessments due on her condominium since October 1, 2011, and also owed resulting late fees.

¶ 7 After Saurwein's direct examination, defendant cross-examined him. She asked whether he had an address she had given him when she attended an association meeting at the beginning of 2012. Saurwein responded, "Not with me, no." He could not remember that address. He

acknowledged that she also gave him an address in March or April of 2012, but that he did not “have [that] address with [him].” He added that during the meeting in March or April he had explained to defendant that she needed to contact plaintiff’s attorney regarding her account.

¶ 8 Plaintiff called defendant as a witness. She agreed that she had not paid any of the assessments due since October 2011.

¶ 9 After plaintiff rested, the trial court told defendant that it was her “chance to tell her side” and asked if she had “anything else to add[.]” Defendant testified that she thought that the “attorney fees [were] too much.” She added that she had given plaintiff her address “two times,” but that plaintiff always sent notices and summonses to the “wrong address.” Although somewhat unclear, defendant essentially argued that the attorney fees related to attempting to serve her were unreasonable because plaintiff did not try to serve her at the current address that she had provided.

¶ 10 After defendant rested, the trial court entered judgment for plaintiff on its claim for assessments and late fees for \$4,243,47. The trial court then allowed plaintiff’s attorney to offer evidence on the issue of attorney fees.

¶ 11 Plaintiff’s attorney submitted an affidavit and billing records in support of his claim for attorney fees. According to the attorney, he had “already given” the affidavit to defendant. When the trial court asked defendant if she had any questions of the attorney regarding the affidavit, she asked several questions about his contract with plaintiff. As for the fees related to serving her, she asked him where he had sent the summons. The attorney answered that he originally tried to serve defendant at the condominium address but was unsuccessful. He received information through a foreclosure proceeding involving defendant that she was residing in Georgia. Therefore, he attempted to serve her there also. He was informed by the sheriff in Georgia that defendant “no

longer” lived there. Thus, because the process server could not locate defendant in Illinois or Georgia, the attorney obtained court permission to serve defendant by posting and publication. The attorney added that he thought this was “the sixth court hearing [he] had to attend because [he had been] unable to locate [defendant],” despite his having tried to serve her twice and having had a process server unsuccessfully “try to track [her] down.” When the trial court asked defendant if she had any other questions regarding the claim for attorney fees, she responded that she did not.

¶ 12 Plaintiff’s attorney’s affidavit in support of the claim for attorney fees stated, in pertinent part, that during the course of the proceedings the attorney “performed a variety of services in connection with the amounts owed by [defendant] to the [plaintiff]” and that such amounts were set forth specifically in the attached billing records. A portion of the billing records reflects work related to serving defendant.

¶ 13 The trial court ruled that the attorney fees were reasonable and awarded plaintiff the entire amount requested, \$3,565.09. The written order, entered on October 4, 2012, stated, among other things, that plaintiff could take immediate possession of the condominium, but that the order was stayed until December 3, 2012.

¶ 14

II. ANALYSIS

¶ 15 On appeal, defendant contends that she was denied due process during the bench trial in the following respects: (1) the trial court entered a “contradictory” order that stated that there was a service return indicating that defendant was not found when there was no returned summons in the record; (2) the trial court entered a “contradictory” final order that did not grant a 60-day stay even though the trial court orally said that it was doing so; (3) the trial court “cut [her] off,” whereas it did not do so to plaintiff’s attorney; (4) the trial court did not give her an opportunity to argue at the end

of the case; and (5) the trial court did not explain its decision. Defendant further maintains that that portion of the attorney fees related to plaintiff's attempts to serve her was unreasonable because plaintiff had her "primary address" but persisted in looking for her "from state to state," plaintiff failed to execute the order for publication, and plaintiff had no proper basis to believe that she resided in Georgia.

¶ 16 Preliminarily, we address plaintiff's request to strike defendant's brief because it fails to comply with Illinois Supreme Court Rules 341(h)(6) and (h)(7) (eff. July 1, 2008), and also because defendant did not include four trial exhibits as part of the record on appeal. Our rules of procedure are rules and not merely suggestions. *Ryan v. Katz*, 234 Ill. App. 3d 536, 537 (1992). Thus, Rule 341's requirements pertaining to the format and content of an appellate brief are compulsory. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. We have discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341. *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001).

¶ 17 In our case, defendant acknowledges that she has not complied in all respects with Rule 341 and that she did not submit the four exhibits. Nonetheless, we conclude that the violations of Rule 341 are not so egregious as to hinder our review, and we decline to strike her brief. In doing so, we will disregard any offending aspects of the brief.

¶ 18 Having said that, we are compelled to comment regarding plaintiff's inclusion of the four missing trial exhibits in the appendix to its brief. Attachments to briefs that are not included in the record are not properly before this court and cannot be used to supplement the record. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000). Accordingly, we will not rely on any of those materials. See *McGee*, 315 Ill. App. 3d at 679. However, we note that it is the

appellant who has the burden of providing a sufficient record of the trial proceedings to support her contentions of error. *Foutch v. O'Bryant*, 91 Ill. 2d 389, 391-92 (1984). Any doubts arising from an incomplete record will be resolved against the appellant. *Foutch*, 91 Ill. 2d at 392.

¶ 19 Turning to the merits of the appeal, we initially note that defendant did not challenge the claims for assessments and late fees in the trial court. Indeed, she admitted that she owed the assessments and late fees. Rather, she contested only the attorney fees, and only to the extent they were based on plaintiff's attempts to serve her. Thus, she forfeited any argument related to the judgment based on the assessments and late fees, as well as the award of attorney fees not related to serving her. See *Bohne v. La Salle National Bank*, 399 Ill. App. 3d 485, 504 (2010). Therefore, we consider her contentions only in the context of that part of the judgment awarding attorney fees based on plaintiff's efforts at serving her.

¶ 20 First, we consider defendant's contention that the trial court entered a contradictory order stating that the return of service indicated "not found" when there was no return of summons in the court record. This argument is forfeited because it was never raised in the trial court. See *Bohne*, 399 Ill. App. 3d at 504. In any event, defendant does not identify how she was harmed by the order. Finally, were we to consider the contention on its merits, it would fail because the record contains a "sheriff's return" indicating, consistent with the order, that defendant was not found at the address on the summons.

¶ 21 Second, defendant asserts that the trial court entered a contradictory final order because it orally granted a 60-day stay but its written order granted "immediate possession" of the condominium. This assertion fails because the final order belies its factual premise. Although the October 4, 2012, order provides for immediate possession of defendant's condominium, it also

provides that the order is stayed until December 3, 2012. Thus, it is entirely consistent with the trial court's oral grant of a 60-day stay. We reject this contention as meritless.

¶ 22 Third, defendant maintains that she was denied due process when the trial court cut her off during the trial although it did not do so to plaintiff's attorney. Our review of the trial transcript does not support this contention. Moreover, the record reflects that the trial court gave defendant ample opportunity to challenge plaintiff's case, including thorough cross-examination, as well as to present her defense. See *6334 North Sheridan Condominium Ass'n. v. Ruehle*, 157 Ill. App. 3d 829, 834 (1987) (party sought to be charged with attorney fees should be afforded an evidentiary hearing, an ample opportunity to cross-examine, and a chance to present rebuttal evidence). Defendant was not denied due process in that regard.

¶ 23 Fourth, we reject defendant's claim that she was denied due process when the trial court refused her the opportunity to make a final argument. A party is not entitled to a final argument in a bench trial, and it is a matter of discretion as to whether to allow one. *Korbelik v. Staschke*, 232 Ill. App. 3d 114, 118-19 (1992). No abuse of discretion occurred here, as defendant was given plenty of opportunity to present her case and to challenge plaintiff's case prior to the trial court's ruling. Nor has defendant explained how a closing argument would have benefitted her case. Thus, there was no denial of due process in not allowing a final argument.

¶ 24 Finally, defendant contends that she had a due process right to an explanation of the trial court's decision. Again, we consider this argument only in the context of the attorney fees awarded. A trial court need not make specific findings as to the various considerations in awarding attorney fees. *In re Marriage of Powers*, 252 Ill. App. 3d 506, 510 (1993). All reasonable presumptions are in favor of the action of the trial court, and absent an affirmative showing to the contrary, we assume

that the trial court understood and applied the law correctly. *In re Marriage of Powers*, 252 Ill. App. 3d at 510. If a trial court awards less than the amount of attorney fees requested, however, it should include in its ruling the reasons supporting such a reduction. *McHenry Savings Bank v. Autoworks of Wauconda, Inc.*, 399 Ill. App. 3d 104, 113 (2010).

¶ 25 In our case, the trial court was not required to specify its reasons for awarding the full amount of the attorney fees. In any event, it is apparent from the record that the trial court had reviewed the materials submitted in support of the fees, heard the testimony related thereto, and considered defendant's objections. Defendant has not shown a denial of due process.

¶ 26 That leaves the issue of whether the trial court abused its discretion in awarding the attorney fees in this case. Whether, and in what amount, a trial court awards attorney fees is a matter of sound discretion, and we review any fee award for an abuse of discretion. *McHenry Savings Bank*, 399 Ill. App. 3d at 113. A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the view adopted by the trial court. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 22. An attorney-fee award should consist only of those fees that are reasonable, consisting of reasonable charges for reasonable services. *McHenry Savings Bank*, 399 Ill. App. 3d at 113. The party seeking attorney fees must provide sufficient information, including detailed time records maintained throughout the proceeding. *McHenry Savings Bank*, 399 Ill. App. 3d at 113. The trial court should scrutinize the records for their reasonableness relative to the context of the case. *McHenry Savings Bank*, 399 Ill. App. 3d at 113.

¶ 27 When determining the reasonableness of the fees, the trial court may consider a number of factors, including the nature of the case, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges in the community for similar work, and the

connection between the case and the fees charged. *McHenry Savings Bank*, 399 Ill. App. 3d at 113.

The trial court should rely on its own knowledge and experience when determining the reasonableness of the fees sought. *McHenry Savings Bank*, 399 Ill. App. 3d at 113.

¶ 28 In our case, the trial court did not abuse its discretion in awarding the attorney fees. As discussed above, the trial court had before it a comprehensive affidavit, as well as detailed billing statements, related to the various services rendered, including those connected with the attempts to serve defendant. Additionally, the trial court heard the testimony of plaintiff's attorney, including defendant's cross-examination of the attorney, and defendant's testimony regarding the reasonableness of the fees related to the attempts to serve defendant. Defendant did not offer any other evidence to refute the claim for attorney fees or to otherwise show that the fees were unreasonable. The trial court was entitled to credit the attorney's evidence over defendant's and to award the entire amount of the fees sought. See *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001) (trial court's province to resolve conflicts in the evidence). Defendant has failed to establish any abuse of discretion.

¶ 29

III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Du Page County in its entirety.

¶ 31 Affirmed.