2015 IL App (1st) 153291-U

FOURTH DIVISION
September 30, 2016

No. 1-15-3291

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KATHY PERKINS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	
	)	
RANDALL A. NOBLE, and All Unknown Occupants,	)	2015 M1 713673
	)	
Defendants,	)	
	)	
(RANDALL A. NOBLE,	)	Honorable
	)	David A. Skryd
Defendant-Appellant).	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment affirmed where defendant failed to comply with the Illinois Supreme Court Rules governing appellate procedure, and failed to provide a sufficiently complete record to support his claims of error.

¶ 2 Defendant, Randall A. Noble, appeals from the circuit court's order denying his motion to vacate in an action for eviction brought by plaintiff, Kathy Perkins, the purchaser of the property located at 2094 Tyler Drive in Lynwood (the subject property) after its foreclosure.

¶ 3 The pleadings in the common law record show that this action arose on July 16, 2015, when plaintiff filed a complaint for forcible entry and detainer against defendant, alleging that defendant, the prior owner of the subject property, was remaining in possession of the subject property without legal right. On August 7, 2015, defendant appeared through counsel, and filed a motion to quash service, which was granted on August 21, 2015. On the same day, the trial court appointed a special process server to effectuate service on defendant

¶ 4 In his brief before this court, defendant acknowledges that "[t]here was apparently substitute service on [defendant] at his principal place of abode in Lansing" but contends that "[t]he affidavit of service was not included in the record prepared by the clerk."

¶ 5 On September 11, 2015, plaintiff obtained an *ex parte* order for possession of the subject property. Thereafter, defendant filed a motion to "vacate order," apparently acting *pro se*. Defendant's motion was two sentences long and did not specify what order he was seeking to "vacate." Defendant's motion stated, in total: "My motion to quash was granted and I was not served with the alias summons so I did not appear. There is also a 1203 motion pending regarding the order to approve sale."

¶ 6 On October 1, 2015, defendant's counsel filed another appearance. Defendant's motion to "vacate order" was continued for hearing, and thereafter, the trial court filed a written order ordering that "Defendant's motion is denied."

¶ 7 Defendant filed a motion to reconsider on October 26, 2015, requesting that the court reconsider the denial of his "motion to vacate the *ex parte* judgment." Defendant alleged that there was a "motion to strike [defendant's] motion for reconsideration of the denial of his motion to vacate the order approving sale" which had been scheduled for hearing in the foreclosure case on October 9, 2015. He contended that plaintiff's "right to possession is based on the order

entered in the foreclosure case which is still pending and undetermined." Defendant attached an order from the foreclosure case, which set a briefing schedule on a "motion to strike," but the order did not indicate to what the motion was in reference. Defendant further alleged that he did not live in Lansing and the person served was not a member of his family, and thus, neither he nor his counsel appeared on September 11, 2015. On November 5, 2015, the circuit court ordered that "Defendant's motion is denied because the other court has not changed its order."

¶ 8 Defendant filed a notice of appeal on November 18, 2015, in which he appealed from the order entered on November 5, 2015, denying his motion to reconsider the *ex parte* order of possession entered by the court on September 11, 2015.

¶ 9 In defendant's brief before this court, he asks us to "reverse the order of the trial court granting an order of possession and either dismiss the cause or remand for full consideration due to the irregularities of the sale and the conduct of plaintiff." He contends that he has four reasons "that substantial justice was being denied." First, plaintiff "had already removed him from possession without a valid court order or the use of the Cook County Sheriff" Second, there "was no valid service after the motion to quash was granted." Third, "the complaint alleged facts in the future." And fourth, "there was a pending Chancery Court motion," namely, "a motion for reconsideration under Section 1203 which includes an automatic stay of enforcement."

¶ 10 Plaintiff has not filed a brief in response, and we will consider this appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 11 After reviewing defendant's brief, we find that it fails to conform with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013), which governs the form and content of appellate briefs. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Compliance with this rule is mandatory, and this court

has the discretion to strike a brief and dismiss an appeal based on the failure to comply with the applicable rules of appellate procedure. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77.

¶ 12 Defendant's entire brief is five pages long and his argument section consists of less than two and one-half pages. Other than citations supporting the standards of review, defendant cites only two cases in the entirety of his argument, and we do not find those cases pertinent to the issues on appeal. Defendant's arguments are not cohesive, coherent, or developed, such that that this court can meaningfully review his claims. Supreme Court Rule 341(h)(7) requires an appellant's brief to include "Argument, 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. *** Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). This court not simply a repository into which the appellant may dump the burden of argument and research. *Lake County Grading Co., LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36. This court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented. Ill. S. Ct. R. 341(h)(7) (eff. Feb 6, 2013). It is not this court's function or obligation to act as an advocate or to comb the record to uncover possible errors. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)

¶ 13 Supreme court rules pertaining to the content of briefs are mandatory, and failure to abide by them can result in dismissal of an appeal. *Northbrook Bank & Trust Co. v. 300 Level, Inc.*, 2015 IL App (1st) 142288, ¶ 13. Specifically, the failure to elaborate on an argument, cite persuasive authority, or present a well-reasoned argument violates Rule 341(h)(7) and results in waiver of that argument. *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009). The rules of procedure for appellate briefs are not mere suggestions or annoyances to be neglected at will. *In re Estate of DeMarzo*, 2015 IL App (1st) 141766, ¶ 16; *Parkway Bank & Trust Co. v. Korzen*,

2013 IL App (1st) 130380, ¶ 10. The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7.

¶ 14 In this case, we find that defendant's brief does not cite relevant authority, or present a coherent argument with reasons for his position, in violation of the applicable rules of appellate practice. Accordingly, we have the authority to exercise our discretion and strike his brief and dismiss his appeal. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 20; see also *Holzrichter*, 2013 IL App (1st) 110287, ¶¶ 77, 80. Nonetheless, we will attempt to address defendant's arguments, to the extent we understand them.

¶ 15 As stated previously, defendant first contends that "substantial justice [i]s being denied" because plaintiff "had already removed him from possession without a valid court order or the use of the Cook County Sheriff." Defendant contends that this was "not proper since the Forcible act is the lone remedy for regaining permission to enter land." Defendant's argument on this point is two sentences long, and does not present a clearly defined issue for this court to review. Because this court cannot properly ascertain defendant's claim on this issue, we consider it forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Hall*, 2012 IL App (2d) 111151 at ¶ 7.

¶ 16 Defendant also contends that there "was no valid service after the motion to quash was granted." Presumably, defendant is contesting the trial court's jurisdiction over him. We note, however, that defendant acknowledged in his brief that "[t]here was apparently substitute service on [defendant] at his principal place of abode in Lansing." There is no record of this service in the record on appeal, and defendant contends that "[t]he affidavit of service was not included in the record prepared by the clerk." Although defendant attempts to place blame upon the court clerk, it is defendant's duty, as the appellant, to ensure that the appellate record is complete. *In re*

Marriage of Sharp, 369 Ill. App. 3d 271, 274 (2006). The appellant has the burden to present a sufficiently complete record to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts that may arise from the incompleteness of the record will be resolved against the appellant. *Id.* at 392. In this case, we do not know what evidence of service was before the circuit court, and accordingly, we must presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis, and resolve this issue against defendant. *Id*. at 391-92.

¶ 17 Defendant next contends that the trial court's judgment should be reversed because "the complaint alleged facts in the future." Presumably, defendant is referring to a passage in the plaintiff's complaint for forcible entry and detainer, which indicates that the order approving sale and distribution in the foreclosure case granted possession against defendant 30 days after the order was entered on August 18, 2014. The complaint then states that defendant no longer had a legal right to remain in possession the premises, and had remained in possession improperly, since "September 18, 2015." Defendant contends that the date in September 2015 is erroneous since the complaint was filed in July 2015. However, it is clear to this court that the reference to 2015 was merely a typographical error and that the date referenced should have been September 18, 2014. Defendant does not contend that he was prejudiced by the typographical error, and has presented no authority to support a contention that the order of possession may not stand where the underlying complaint contained a typographical error. We thus reject defendant's third argument.

¶ 18 Finally, defendant alleges that the trial court's order should be reversed because "[t]he matter pending before the Chancery Court was a motion for reconsideration under Section 1203

which includes an automatic stay of enforcement." He points out that the order denying defendant's motion to reconsider stated that the motion was denied "because the other court has not changed its order," and contends that the "chancery matter was not decided until after October 26, 2015, when the motion to reconsider was filed." He thus argues that the "basis for the order is *** an abuse of discretion, since the matter should have waited until after the 1203(b) stay was lifted."

¶ 19 Presumably, defendant is contending that the chancery court is the "other court" referred to in the order. Although defendant attempts to rely on proceedings that were occurring before the chancery court, he has not included pertinent documentation from the chancery matter in the record in this appeal. The only order from the chancery court which is included in the record on appeal, other than the August 2014 order approving sale and distribution, references a pending "motion to strike," but does not indicate to what the motion was in reference. In these circumstances, this court has no way of knowing whether there was a "motion for reconsideration under Section 1203" pending in the chancery court, and, if there was, when it was resolved. We thus presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis, and resolve this issue against defendant. *Foutch*, 99 Ill. 2d at 391-92.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 21 Affirmed.