

No. 1-15-3081

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

CLARINDA DEVEAUX,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 M1 017868
)	
ONIE KIESHA RILEY and GABRIELLA NAOMI)	
COBURN-EL,)	Honorable
)	Daniel P. Duffy,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 Held: We dismissed plaintiff’s appeal for lack of jurisdiction and for her failure to comply with Supreme Court Rule 341(h)(7).

¶ 2 In this suit seeking damages for personal injuries, plaintiff, Clarinda Deveaux, appeals *pro se* from the circuit court’s denial of her motion to vacate judgment in favor of defendant, Onie Kiesha Riley. We dismiss plaintiff’s appeal for lack of jurisdiction and for plaintiff’s failure to comply with Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 3 Although defendants have not filed a brief in this cause, we may consider the appeal based on plaintiff’s brief alone. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

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¶ 4 On November 23, 2011, plaintiff filed a complaint against defendants, Onie Kiesha Riley and her minor daughter, Gabriella Naomi Coburn-El, alleging that, on November 26, 2009, Ms. Coburn-El intentionally stomped on her "left toe two to three times." Plaintiff claims she suffered emotional distress and physical injury requiring medical treatment.

¶ 5 On September 16, 2013, plaintiff filed an amended complaint in which she clarified that Ms. Coburn-El had harmed her at the direction of her mother, Ms. Riley, and that plaintiff was permanently disabled as a result having received medical treatment in excess of \$10,000.

¶ 6 On January 26, 2015, in a trial call order, the circuit court dismissed the case for want of prosecution (DWP).

¶ 7 On February 3, 2015, plaintiff filed a motion to vacate the DWP and to enter default judgment against defendants.

¶ 8 On February 19, 2015, the circuit court granted plaintiff's motion to vacate the DWP and subsequently set a trial date for June 19, 2015.

¶ 9 On June 4, 2015, the circuit court granted plaintiff's motion for substitution of judge and scheduled a status hearing for July 30, 2015.

¶ 10 On June 19, 2015, the circuit court issued an order which: noted that none of the parties were present; granted judgment for defendant Onie Kiesha Riley; and struck the July 30, 2015, status date.

¶ 11 On August 31, 2015, plaintiff filed a motion to vacate the June 19, 2015, order pursuant to sections 2-1203 and 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1203 (West 2012); 735 ILCS 5/2-1401 (West 2012) (Code)), arguing that, "[o]n June 4, 2015, it was understood in court that the June 19, 2015 trial date would be continued."

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¶ 12 On October 14, 2015, the circuit court issued an order which indicated that all parties were present and denied plaintiff's motion to vacate. Plaintiff filed her notice of appeal on October 23, 2015.

¶ 13 On appeal, plaintiff, *pro se*, argues that the circuit court erred by denying her motion to vacate its June 19, 2015, order in favor of defendant Ms. Riley. The entirety of her argument is as follows:

"This case features an *ex parte* judgment which the Appellant attempted to have vacated. Plaintiff has not had her opportunity to present her case in court with judgment being entered for Defendant. Appellant brought this motion on finding out that the court had issued judgment for the Defendant.

Entering judgment on behalf of Defendant without the plaintiff was inappropriate[.] Entering judgment on behalf of Defendant is grossly one-sided and unconscionable. Appellant brought her motion to vacate the judgment less than 2 years after the date of the entry of the judgment."

¶ 14 Initially, we note that Supreme Court Rule 341(h)(4) provides that the appellant's brief "shall contain *** a brief, but precise statement or explanation under the heading 'Jurisdiction' of the basis for appeal including the supreme court rule or other law which confers jurisdiction upon the reviewing court; the facts of the case which bring it within this rule or other law; and the date that the order being appealed was entered and any other facts which are necessary to demonstrate that the appeal is timely. In appeals from a judgment as to all the claims and all the parties, the statement shall demonstrate the disposition of all claims and all parties. All facts recited in this statement shall be supported by page references to the record on appeal." Ill. S. Ct. R. 341(h)(4) (eff. Jan. 1, 2016).

¶ 15 Plaintiff's statement of jurisdiction states only: "This appeal is brought as a matter of right as to an appeal of a final judgment pursuant to IL Supreme Court Rule 303." The notice of appeal, and the remainder of her brief, makes clear that she is appealing the October 14, 2015, order denying her motion to vacate the June 19, 2015, order granting judgment for Ms. Riley. The June 19, 2015, order did not expressly dispose of plaintiff's claim against the remaining defendant, Ms. Coburn-El and, as such, a finding by the circuit court under Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. March 8, 2016)), that there is no just reason for delaying appeal, is necessary for us to have jurisdiction over plaintiff's appeal. Supreme Court Rule 304(a) states:

"If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." *Id.*

¶ 16 In the absence of a Rule 304(a) finding, or any explanation by plaintiff in her statement of jurisdiction as to why a Rule 304(a) finding is unnecessary, we lack jurisdiction to consider her appeal. Accordingly, plaintiff's appeal is dismissed. See *In re Estate of York*, 2015 IL App (1st) 132830, ¶ 19 (the appellate court must dismiss plaintiff's appeal where jurisdiction is lacking).

¶ 17 Even if the June 19 order could be construed as entering final judgment against both defendants, dismissal of plaintiff's appeal is further warranted here under Supreme Court Rule 341(h)(7), which states that the appellant's brief "shall contain *** [an] [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. *** Points not argued are waived ***." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 18 Rule 341(h)(7) requires the appellant to present clear and cohesive legal arguments with supporting citation of authorities and pages of the record relied on so that this court may identify and dispose of the issues raised on appeal. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010).

¶ 19 Plaintiff's *pro se* appellant's brief fails to provide, in violation of Rule 341(h)(7), a clear, cohesive legal argument with respect to her claim that the circuit court erred by denying her motion to vacate the court's June 19, 2015, order pursuant to sections 2-1203 and 2-1401 of the Code. Section 2-1203 provides:

“In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.” 735 ILCS 5/2-1203 (West 2012).

Plaintiff's *pro se* appellant's brief makes absolutely no argument as to how her motion to vacate, which was filed more than 30 days after the June 19 order, was timely under section 2-1203.

¶ 20 Section 2-1401 sets forth a statutory procedure by which final judgments and orders may be challenged more than 30 days after entry. To prevail under section 2-1401, plaintiff must affirmatively set forth specific factual allegations showing: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition. *R&J Construction Supply Co., Inc. v. Adamusik*, 2017 IL App (1st) 160778, ¶ 12 (citing *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986)). Plaintiff's *pro se* appellant's brief makes no argument that she acted with the requisite due diligence in the prosecution of her lawsuit as required under section 2-1401.

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¶ 21 Also, as required under Rule 341(h)(7), plaintiff does not cite any authority in her *pro se* appellant's brief to support her claim that the circuit court erred by denying her motion to vacate the June 19 order.

¶ 22 “The rules of procedure concerning appellate briefs are rules and not mere suggestions.” *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7 (quoting *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999)). A plaintiff's *pro se* status does not relieve her of the burden of complying with the supreme court rules. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). This court will dismiss an appeal where a party's failure to comply with Rule 341(h)(7) interferes with our review. *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 14.

¶ 23 In her *pro se* appellant's brief, plaintiff's failure to provide any argument showing how her motion to vacate complied with sections 2-1203 and 2-1401 of the Code, and her failure to provide any citation to any relevant authority or pages of the record, constitute violations of Rule 341(h)(7) that interfere with our review and necessitate dismissal of the appeal. *Id.*

¶ 24 Additionally, we note that even if we *did* have jurisdiction over this appeal, and even if plaintiff's *pro se* appellant's brief otherwise complied with Rule 341(h)(7), the record on appeal does not contain a transcript or bystander's report of any of the hearings conducted in the circuit court, including those in connection with its October 14, 2015, denial of plaintiff's motion to vacate. On appeal, "the appellant *** has the burden of showing error; any doubt arising from incompleteness of the record will be resolved against the appellant." *People v. Kirkpatrick*, 240 Ill. App. 3d 401, 406 (1992). If the appellant does not provide us with a complete record, we must presume that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

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¶ 25 Because plaintiff has not provided us with a sufficient record to support her claim of error, we must presume that the October 14, 2015, order denying plaintiff's motion to vacate the June 19, 2015, order was in conformance with the law and had a sufficient factual basis.

¶ 26 For all the foregoing reasons, we dismiss plaintiff's appeal from the October 14, 2015, order of the circuit court denying plaintiff's motion to vacate the June 19, 2015, order granting judgment for Ms. Riley.

¶ 27 Dismissed.