

NOTICE
Decision filed 12/15/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160070-U

NO. 5-16-0070

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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|----------------------------------|---|------------------------|
| COMPETITION AUTO SALES & TOWING, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Marion County. |
| |) | |
| v. |) | No. 15-SC-125 |
| |) | |
| ALFRED CROSS, |) | Honorable |
| |) | Stanley M. Brandmeyer, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Barberis and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* Due process was not violated in this small claims action, and therefore the default judgment against the defendant-appellant must be affirmed.

¶ 2 The defendant in this small claims action, Alfred Cross (Cross), appeals from a default judgment that the circuit court entered in favor of the plaintiff, Competition Auto Sales & Towing (Competition), and against him. Cross represents himself before this court and has filed an appellant's brief. Competition has not filed an appellee's brief, but this court will proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) ("if the record is simple and the

claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal"). This court affirms the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 The record on appeal consists solely of a 67-page common law record. This factual summary is derived exclusively from the record.

¶ 5 In March 2015, Competition filed a one-count complaint against Cross. The complaint alleged that Cross had purchased a vehicle from Competition but failed to make timely payments under a financing agreement. Competition sought compensatory damages of \$5780.24 plus costs and attorney fees.

¶ 6 Docket entries and written orders show that on May 6, 2015, Competition appeared in court by counsel and Cross appeared *pro se*, and the parties agreed to continue the matter to June 17, 2015, at 9 a.m. On June 17, 2015, Competition appeared in court by counsel and Cross appeared *pro se*, and the cause was "reset for status" on July 15, 2015, at 9 a.m. On July 15, 2015, Competition appeared in court by counsel and Cross appeared *pro se*, and the hearing was "reset by agreement" to July 29, 2015, at 9 a.m. A written order entered on July 15, 2015, included this admonition, written in boldface: "Failure to appear may result in default judgment." The order was signed by the presiding judge and, at the bottom, by Competition's attorney and by Cross.

¶ 7 The docket entry for July 29, 2015, shows that on that date, Competition's attorney appeared in court and stated that the parties had not reached an agreement. The court scheduled a bench trial for September 2, 2015, at 10 a.m., and entered a written order to

that effect. The written order indicated that Competition's attorney, but not Cross, had appeared at the July 29, 2015, hearing. The written order also included the boldfaced admonition, "Failure to appear may result in default judgment." However, the record does not include any explicit indication that Cross was served with notice of the September 2, 2015, bench trial.

¶ 8 On September 1, 2015, Cross filed a *pro se* motion for a 30-day continuance of the September 2, 2015, bench trial, on the ground that he needed additional time in order to obtain documents helpful to his case. In his motion, Cross stated that he had not contacted Competition's attorney, but he believed that a continuance "would not be prejudicial." Cross did not assert that he had not received notice of the September 2, 2015, bench trial.

¶ 9 The common law record does not include any answer to Competition's complaint against Cross. The docket sheets do not include any indication that Cross ever filed an answer to the complaint.

¶ 10 The docket entry for September 2, 2015, shows that on that date, the court called the case for hearing at 10:35 a.m. Competition was present by counsel, but Cross failed to appear, "even though court deputy indicates he has checked in and left the courthouse." The court denied Cross's motion to continue the bench trial, explaining that it denied the motion without a hearing due to Cross's failure to appear. The court then entered judgment by default in favor of Competition and against Cross. A written judgment, entered that same date, showed that judgment was entered in the amount of \$5780 plus

costs and \$1900 in attorney fees. The written judgment stated that Cross had been served with notice of the setting and had been defaulted "for failure to appear or answer."

¶ 11 On September 16, 2015, Cross filed a *pro se* motion for a "rehearing" on the default judgment. In the motion, Cross averred that he had filed a motion for continuance in order to obtain documents and that he had answered the complaint against him, and he speculated that the court had not received his motion or his answer "due to slow mail." He asserted that the default judgment was improper. The docket entry for September 16, 2015, states that Cross was given a written notice of a hearing set for November 25, 2015, at 9 a.m. The record includes a notice of hearing, signed by Cross and file-stamped September 16, 2015, by the clerk of the circuit court, wherein Cross notified Competition's attorney of the November 25, 2015, hearing on Cross's motion for rehearing.

¶ 12 On November 2, 2015, Competition filed an answer to Cross's September 16, 2015, motion for rehearing on the default judgment, wherein it described the motion as "frivolous" and asked the court to deny the motion.

¶ 13 On November 18, 2015, Cross filed a "notice of hearing date change," wherein he stated that he was changing the date of the hearing on his motion for rehearing on default judgment from November 25, 2015, to January 11, 2016, because he needed additional time to locate documents. This "notice of hearing date change" was not styled a motion to continue. Cross did not file a motion asking the court to continue the November 25, 2015, hearing.

¶ 14 The docket entry for November 25, 2015, shows that on that date, Competition's attorney appeared, and Cross failed to appear. The court denied Cross's motion for a rehearing on the default judgment. The docket entry does not include any mention of Cross's "notice of hearing date change." Cross now appeals.

¶ 15 ANALYSIS

¶ 16 In his *pro se* appellant's brief, Cross presents three contentions. First, Cross contends that the order entered by the circuit court on November 25, 2015, wherein the court denied Cross's motion for rehearing on the default judgment, violated his right to due process because he did not have notice of the hearing at which the order was entered. Without doubt, notice is key to due process. "The fundamental requirement of due process is the opportunity to be heard, and that right has little reality or worth unless one is informed that the matter is pending. [Citation.]" (Internal quotation marks omitted.) *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 28. The record in the instant case makes clear that Cross had notice of the hearing held on November 25, 2015. Indeed, Cross apparently arranged for the hearing on that date. The common law record includes a copy of a notice of hearing, signed by Cross and file-stamped September 16, 2015, wherein Cross notified Competition's attorney that Cross's motion for rehearing was set for hearing on November 25, 2015. In other words, Cross not only knew about the hearing set for November 25, 2015, he actually informed opposing counsel of the hearing. The docket entry for September 16, 2015, states that Cross was provided with a copy of the notice. The record flatly contradicts the contention that Cross did not have

notice of the November 25, 2015, hearing, or that the order entered on that date violated Cross's due-process rights.

¶ 17 On November 18, 2015, Cross filed a "notice of hearing date change," wherein he purported to change the date of the hearing from November 25, 2015, to January 11, 2016. However, Cross did not file a motion to continue the hearing, and the court never entered an order continuing it. The circuit court, not the parties, controls its docket and calendar. See, e.g., *Nicholson v. Chicago Bar Ass'n*, 233 Ill. App. 3d 1040, 1045 (1992). Cross did not have the authority to continue the hearing unilaterally.

¶ 18 Second, Cross contends that he was deprived of due process when the clerk of the circuit court prepared a record on appeal that was "incomplete" due to the omission of "[o]rders" and to the "scratch[ing] out" of documents. In his argument, which consists of a single paragraph of ordinary length, Cross does not specify or describe the orders that are allegedly "missing" from the record or the documents that allegedly have been "scratched out." This court is entitled to a clear definition of issues and cohesive arguments. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). In regard to his second contention, Cross has failed to define the issue clearly or to present a cohesive argument. By failing to develop his second contention, he has forfeited it. At any rate, it is the appellant who has the burden of presenting a sufficiently complete record of the proceedings that occurred in the circuit court. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Cross may not fail to meet his burden and then attempt to shift blame onto the circuit clerk. Meanwhile, the clerk of the Marion County circuit court certified the record on appeal in April 2016 (see

Ill. S. Ct. R. 324 (eff. Jan. 1, 2016)), and this court, having examined the record, has no reason to suspect that the record is missing any orders or other documents.

¶ 19 Cross's third and final contention is that he was deprived of due process when the circuit court denied his motion for "rehearing" on the default judgment that was entered on September 2, 2015. The record does not support this contention. Cross did not file an answer to Competition's complaint. In his motion for rehearing, Cross averred that he did answer the complaint, and he speculated that "slow mail" was responsible for the answer not reaching the court, but no answer appears in the common law record and no docket entry indicates that an answer was ever filed. Furthermore, Cross failed to appear at the bench trial scheduled for September 2, 2015, even though he clearly knew about it. Cross had been warned in writing that a failure to appear could result in a default judgment, and it was due to Cross's "failure to appear or answer" that the circuit court entered the default judgment on September 2, 2015. The default judgment was clearly in accord with due process. Also, the circuit court's November 25, 2015, order denying Cross's motion for "rehearing" on the default judgment was also in accord with due process. The court denied the motion after Cross failed to appear for a hearing on the motion, a hearing about which Cross had received notice.

¶ 20 **CONCLUSION**

¶ 21 As explained above, the record belies Cross's contentions that he was deprived of the due process of law in this small claims action. Therefore, the default judgment against him must be affirmed.

¶ 22 Affirmed.