NOTICE
Decision filed 11/13/17. The text of this decision may be changed or corrected prior to the filing of a Peti ion for Rehearing or the disposition of the same.

2017 IL App (5th) 160142-U

NO. 5-16-0142

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).

ROBERT BRANDKAMP,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Clinton County.
	)	
v.	)	No. 15-P-10
	)	
ESTATE OF PAUL BERNDSEN,	)	Honorable
	)	Michael D. McHaney,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: Due to the inadequacy of the appellant's brief, which actually hinders appellate review, this appeal is dismissed.

¶ 2 The plaintiff, Robert Brandkamp, appeals from an order denying his claim against the defendant, the Estate of Paul Berndsen, deceased. The claim arose from Brandkamp's purchase of residential real property from Berndsen a few months before Berndsen's death. For the following reasons, this court dismisses the appeal.

¶ 3 In this court, Brandkamp has proceeded *pro se*. He has filed an appellant's brief, but it is woefully inadequate. The content of an appellant's brief is governed by Supreme Court Rule 341(h) (eff. Feb. 6, 2013). Every appellant, even a *pro se* appellant, must

comply with the requirements of Rule 341(h). *Biggs v. Spader*, 411 Ill. 42, 44-46 (1951) (*per curiam*). Brandkamp's brief fails to comply. Most egregiously, it lacks anything that may properly be called a statement of facts. Under Rule 341(h)(6) (eff. Feb. 6, 2013), a statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Brandkamp's statement of facts, in its entirety, reads as follows: "Plaintiff purchased real estate located at 550 N. Plum St. Breese, Ill 62230 from Defendant Paul Berndsen on July 9, 2014. (C31,32) [¶] Found out about property flooding preparing for garage sale.(C202 L4-10)(Exhibits 4, 5 & 6)" This two-sentence statement of facts does not contribute anything to an understanding of this case.

¶ 4 This court notes that the statement of facts included in the appellee's brief, though written by a licensed attorney, also fails to comply with Rule 341(h)(6). The appellee's statement of facts runs approximately one and one-quarter pages in length. Though the record in this case is far from voluminous—274 pages, including a 112-page trial transcript—so short a statement of facts cannot convey the information necessary for an understanding of this case. To make matters worse, the appellee's statement of facts does not include even a single reference to pages of the record.

¶ 5 Brandkamp's statement of facts is far worse than the statement of facts in, *e.g.*, *McMackin v. Weberpal Roofing, Inc.*, 2011 IL App (2d) 100461. In *McMackin*, the appellant's statement of facts consisted of proper material interspersed with improper "arguments and unsupported statements." *Id.* ¶ 3. The appellee asked the court to strike

the appellant's statement of facts due to the presence of the improper material. The appellate court denied the request to strike, choosing instead to simply "disregard" the improper material. *Id.* The appellate court explained that it chose the latter approach because the appellant's statement of facts did not actually hinder appellate review of the case. *Id.*

¶ 6 In the instant case, this court does not have the option of simply disregarding improper material and relying on proper material. Brandkamp's statement of facts is not a mixture of proper and improper material. His statement of facts is essentially nonexistent. Given that Brandkamp's statement of facts flagrantly violates Rule 341(h)(6) and actually hinders appellate review, this court is fully justified in dismissing this appeal. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9 (appellate court may dismiss an appeal due to appellant's failure to provide a complete statement of facts). Accordingly, this appeal is hereby dismissed.

¶ 7 Even if this court were to consider the merits of this appeal, the circuit court's order would need to be affirmed, for the order is definitely not against the manifest weight of the evidence. See *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 25 (appellate court will not disturb a judgment entered by the circuit court after a bench trial unless the judgment is against the manifest weight of the evidence).

¶ 8 In his claim against the Berndsen estate, Brandkamp alleged a violation of the Residential Real Property Disclosure Act (Disclosure Act) (765 ILCS 77/1 *et seq.* (West 2014)). The purpose of the Disclosure Act is to provide a prospective home buyer with information about material defects in the home that are actually known to the seller,

through the use of a disclosure report form that the seller delivers to the buyer. See 765 ILCS 77/25, 35 (West 2014). The gravamen of the claim was that Berndsen had failed to disclose his awareness of mine subsidence at the residential real property that he sold to Brandkamp, and this condition resulted in flooding in the crawlspace or basement of the mobile home that was part of the property. See 765 ILCS 77/25, 35 (West 2014).

¶ 9 However, at the January 2016 bench trial on Brandkamp's estate claim, Brandkamp did not offer any competent evidence that Berndsen was aware of any mine subsidence or any flooding; he offered only speculation, as the circuit court noted in its February 17, 2016, written order denying Brandkamp's claim. There was no competent evidence of mine subsidence at the property, as Brandkamp's trial attorney acknowledged at the end of the trial. There was no evidence of flooding in the mobile home's crawlspace. Indeed, Brandkamp testified that prior to his purchase of the property, he crawled underneath the mobile home in order to search for evidence of flooding and did not find anything amiss. Flooding in the mobile home's basement was not even mentioned at the trial. There was evidence that the yard had flooded on approximately six occasions during a 20-year period and that a detached garage, which was at a lower elevation than the mobile home, had experienced some measure of water damage. However, given the paucity of evidence in support of Brandkamp's specific claim, the circuit court had no real choice but to deny Brandkamp's claim.

¶ 10 For the foregoing reasons, this appeal is dismissed.

¶ 11 Appeal dismissed.