

2018 IL App (1st) 161451-U  
Nos. 1-16-1451 & 1-16-2460 (Consolidated)  
Order filed May 11, 2018

Fifth Division

**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 DISTRICT

---

CHRISTOPHER STOLLER, LEO STOLLER, and	)	Appeal from the
MICHAEL STOLLER,	)	Circuit Court of
	)	Cook County.
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	
WESLEY COURT CONDOMINIUM, AARON	)	
STIGGER, YU FAN, RAJEEV KUMAR, BRENNEN	)	
KEEFE, AUDREY DILL, OWEN DOWLING	)	
APARTMENTS, INC., OWEN DOWLING, DONALD	)	
FUMO, RELIABLE REALTY MANAGEMENT, LTD.,	)	No. 16 L 2135
KOVITZ SHIFRIN NESBIT, MICHAEL J. SHIFRIN,	)	
ROBERT P. NESBIT, NICHOLAS MITCHELL, DIANE	)	
J. SILVERBERG, ALLEN KOVITZ, RONALD J.	)	
KAPUSTKA, WENDY DURBIN, KELLY C. ELMORE,	)	
KERRY T. BARTELL, JESSICA RYAN, PAMELA J.	)	
PARK, KATHERINE W. GRIFFITH, BORIS	)	
SAMOVALOU, CASSIDAY SCHADE LLP,	)	
BRADFORD D. ROTH, JEAN M. GOLDEN, JOSEPH	)	
A. GIANNELLE, TRISHA TESMER, ALL AMERICAN	)	
ATTORNEY SERVICES, MANUEL CARRASCO, and	)	
JACK KUBLY,	)	Honorable
	)	Sanjay T. Taylor,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* We dismiss the appeal due to plaintiffs' failure to comply with the rules of appellate procedure governing the requirements for appellate briefs.

¶ 2 In this consolidated appeal, plaintiffs Christopher Stoller and Leo Stoller, *pro se*, along with Michael Stoller, appeal from two orders of the circuit court 1) denying their motion for a temporary restraining order and preliminary injunction to stay an eviction proceeding against them (No. 1-16-1451), and 2) awarding fees to several defendants as a condition for voluntarily dismissing their complaint (No. 1-16-2460). On appeal, plaintiffs argue that the circuit court erred in denying their motion to enjoin the eviction proceeding because the eviction suit was fraudulent, retaliatory, and discriminatory. They also argue that the court erred in awarding fees to defendants. We dismiss plaintiffs' appeal for their failure to comply with the rules governing appellate briefs.

¶ 3 To the extent that this court can glean from the record, this consolidated appeal has its origins in a landlord-tenant dispute between Wesley Terrace Condominium Association (Wesley Terrace) and Christopher Stoller. On February 23, 2016, Wesley Terrace filed a complaint for forcible entry and detainer (the eviction proceeding) against Christopher Stoller in municipal court alleging past due rents in the amount of \$2,252.28. Christopher's defense in the eviction proceeding was that the lease he had signed was between himself and Wesley Court Condominium (Wesley Court), but was later modified, without his knowledge, to substitute

Wesley Terrace, a separate legal entity, for Wesley Court. He argued that this modification rendered the lease void.

¶ 4 Six days later, on February 29, 2016, Christopher filed a *pro se* complaint in the law division on behalf of himself and his nephew, Michael Stoller, alleging that the eviction proceeding was initiated in retaliation for him having filed a complaint with the Village of Oak Park regarding building code violations. Plaintiffs' complaint named as defendants: Wesley Court; Wesley Court's officers; Reliable Management Realty, LTD. and its president; Dowling Apartments, Inc. and its president; Kovitz Shifrin Nesbit, the law firm representing Wesley Terrace in the eviction proceeding; several of the firm's attorneys; and 10 "Does," which included unknown contractors, lawyers, law firms, building developers, process servers, and realtors.

¶ 5 On March 24, 2016, Trisha Tesmer of the law firm Cassiday Schade LLP filed an appearance on behalf of Wesley Terrace and Reliable Management Realty, LTD. According to Tesmer's filings, Wesley Terrace is the proper party and was incorrectly named in this suit as Wesley Court. Tesmer later filed a second appearance, this time on behalf of the named individual officers of Wesley Terrace, and Donald Fumo, the president of Reliable Management Realty, LTD.

¶ 6 On April 21, 2016, plaintiffs filed an amended complaint, which added Christopher's brother, Leo Stoller, as a plaintiff. Their amended complaint also added as defendants: Cassiday Schade LLP; several of its attorneys, including Tesmer; All American Attorney Services, which was the company that employed the process server for Wesley Terrace's eviction notice; the individual process server who signed the eviction notice; and the notary who signed the eviction

notice. Plaintiffs' first amended complaint is 54 pages long and alleges 22 total counts against the defendants in relation to plaintiffs' eviction.

¶ 7 On April 27, 2016, plaintiffs filed a motion for a temporary restraining order and preliminary injunction to stay the eviction proceeding initiated by Wesley Terrace in municipal court. Plaintiffs argued that the eviction proceeding was in retaliation for Christopher having filed a complaint with the Village of Oak Park alleging building code violations and that they would suffer irreparable harm if that proceeding were to continue. The circuit court denied plaintiffs' motion because they had an adequate remedy at law. Plaintiffs appealed (No. 1-16-1451).

¶ 8 On August 4, 2016, plaintiffs moved to voluntarily dismiss their complaint pursuant to section 2-1009 of the Code of Civil Procedure (735 ILCS 5/2-1009 (West 2016)). The circuit court granted the motion over defendants' objection. Defendants then moved, pursuant to section 2-1009(a) (735 ILCS 5/2-1009(a) (West 2016)), to be reimbursed for costs. Specifically, the following defendants moved for costs: Wesley Terrace, the Wesley Terrace directors, Reliable Management Realty, LTD., and its president (the Wesley defendants); Cassidy Schade LLP and its named attorneys (the Cassidy defendants); Owen Dowling Apartments, Inc. and its president (the Dowling defendants); and Kovitz Shifrin Nesbit and its named attorneys (the Kovitz defendants). Following a hearing, at which plaintiffs failed to appear, the circuit court granted the defendants' motion for costs.

¶ 9 Plaintiffs then moved to set aside the "default judgment" (costs order) on the basis that Christopher was not able to attend the hearing because he had been involved in a car accident. In the interim, the Dowling defendants settled with plaintiffs. Following argument on plaintiffs'

motion to set aside the costs order, the court awarded the Wesley defendants \$686, the Cassidy defendants \$458, and the Kovitz defendants \$239.74. Plaintiffs appealed the order granting costs to defendants (No. 1-16-2460) and also filed a motion to consolidate their two appeals, which this court granted.

¶ 10 On February 16, 2018, we entered an order taking the case for consideration on the record and plaintiffs' brief only based on defendants' failure to file a brief within the time prescribed by Illinois Supreme Court Rule 343(a). Ill. S. Ct. R. 343(a) (eff. July 1, 2008). Thus, we consider plaintiffs' appeal without the benefit of defendants' brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976) (setting forth the principles for the disposition of appeals in cases where the appellees have not filed their briefs).

¶ 11 We note that plaintiffs' brief fails to comply with Illinois Supreme Court Rules 341(h)(7) and 342. "Rule 341 governs the form and content of appellate briefs." *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. The rule's provisions are requirements and not mere suggestions. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7; *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). Under Rule 341(h)(7), a reviewing court is entitled to have issues clearly defined with "cohesive arguments" presented and pertinent authority cited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). To this end, the rule requires that all briefs shall include a statement of "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment" and an argument section "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." Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). "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.” *Sakellanadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009). “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*, 2012 IL App (2d) 111151, ¶ 7.

¶ 12 Here, without outlining all the shortcomings of plaintiffs’ brief, we point out that their argument section, which can best be described as cursory, fails to constitute a “reasoned argument” and contains no citations to any authority in support of their positions. See *McCann*, 2015 IL App (1st) 141291, ¶ 15. With respect to their first argument, that the court erred in denying their motion for a temporary restraining order, plaintiffs offer only that the circuit court erred “for all of the reasons stated in the Appellant’s Motion for TRO, incorporated herein by reference, re-plead, re asserted paragraph by paragraph in support of this appeal.” Plaintiffs’ assertion that the record contains documents and pleadings that support their arguments is virtually a concession that they have improperly treated this court as a repository into which they are dumping the burden of argument and research. See *Wilson v. Department of Professional Regulation*, 344 Ill. App. 3d 897, 907 n. 4 (2003); see also *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991) (“A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research.”). Moreover, it is not proper to “re-plead, re assert[.]” or incorporate by reference and then require this court to sift through the record simply to ascertain the nature of plaintiffs’ arguments on appeal.

¶ 13 With respect to plaintiffs’ argument that the court erred in awarding costs to defendants, plaintiffs again, without reference to authority, make only conclusory statements. Plaintiffs argue

that the court's award of costs to defendants was erroneous because the Cassidy defendants did not represent a named party in the suit and the Kovitz defendants perpetrated a "fraud upon the court." In setting forth this argument, plaintiffs direct this court to review the order in the eviction proceeding to ascertain the details of the Kovitz defendants' alleged fraud. As mentioned, this court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80; *Hood*, 210 Ill. App. 3d at 746. More importantly, the order from the eviction proceeding is not included in the record on appeal. It has been "long held that in order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 14 Furthermore, plaintiffs have failed to comply with Supreme Court Rule 342(a), which provides that the appendix of an appellant's brief must contain "pleadings or other materials from the record which are the basis of the appeal." Ill. S. Ct. R. 342(a) (eff. Jan 1, 2005). Under Rule 342(a), an appellant's brief must attach an appendix, which includes: "[T]he judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge \*\*\*, any pleadings or other materials from the record that are the basis of the appeal or pertinent to it, *the notice of appeal, and a complete table of contents, with page references, of the record on appeal.*" Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005) (emphasis added).

¶ 15 The appendix to plaintiffs' brief does not include a table of contents with page references to the record, nor does it include plaintiffs' notice of appeal, both of which are required by Rule 342(a). Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). Rather, plaintiffs' appendix includes three orders

from the circuit court, the order entered in the eviction proceeding, and the transcript of the hearing where defendants' costs were awarded. However, a party may generally not rely on matters outside the record to support its position on appeal. *Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009). As mentioned, the order from the municipal court that plaintiff is relying on is not a part of the record on appeal. Thus, if the materials are not taken from the record, they may not generally be placed before the appellate court in an appendix and will be disregarded. *Hubeny v. Chairse*, 305 Ill. App. 3d 1038, 1042 (1999).

¶ 16 We recognize that plaintiffs are *pro se* appellants. However, “[t]he fact that a party appears *pro se* does not relieve that party from complying as nearly as possible to the Illinois Supreme Court Rules for practice before this court.” *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Compliance with these procedural rules is mandatory and this court may, in its discretion, strike a brief and dismiss the appeal for failure to comply with Rule 341. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12; *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001). “Although we seldom enter an order dismissing an appeal for failure to comply with supreme court rules, our sound discretion permits us to do so.” *McCann*, 2015 IL App (1st) 141291, ¶ 20; *Holzrichter*, 2013 IL App (1st) 110287, ¶ 77 (stating that “[t]his court has the discretion to strike an appellant’s brief and dismiss an appeal for failure to comply with Rule 341”); *Voris*, 2011 IL App (1st) 103814, ¶ 8 (noting that “[b]ased upon \* \* \* noncompliance, his appeal is subject to dismissal”); *Oruta v. B.E.W. & Cont’l*, 2016 IL App (1st) 152735, ¶ 33 (“Since plaintiff’s appellate brief fails to follow the provisions set forth in Supreme Court Rule 342(a), we may, within our discretion, dismiss his appeal for failure to do so.”). Here, we exercise that discretion and dismiss plaintiffs’ appeal for failing to comply with Rules 341 and 342.



Nos. 1-16-1451 & 1-16-2460 (Consolidated)

¶ 17 Due to the plaintiffs' failure to comply with the rules governing appellate briefs, we dismiss the appeal.

¶ 18 Appeal dismissed.