2018 IL App (1st) 170290-U

FOURTH DIVISION
June 28, 2018

Nos. 1-17-0290 & 1-17-0481, cons.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHRISTOPHER STOLLER, as Special Administrator of the Estate of Bernice Stoller, Deceased, Plaintiff-Appellant, v. PREMIER CAPITAL, LLC, STEVEN B. ADAMS, RICHARD J. TARULIS, DAVID G. WENTZ, DAVID N. SCHAFFER, Individually and d/b/a BROOKS, ADAMS & TARULIS, and TIMOTHY J. HOPPA, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 16 L 8969 Honorable Kathy M. Flanagan, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: In Appeal No. 1-17-0290, the circuit court correctly entered summary judgment in favor of five defendants because they were immune from suit under the absolute attorney litigation privilege. Appeal No. 1-17-0481 is dismissed for want of prosecution.

¶ 2 After Bernice Stoller committed suicide, her husband, plaintiff-appellant Christopher Stoller, filed this wrongful death claim against defendants-appellees Premier Capital, LLC, Steven B. Adams, Richard J. Tarulis, David G. Wentz, David N. Schaffer—all of whom were attorneys—as well as their law firm, Brooks, Adams & Tarulis, and Timothy J. Hoppa. The crux

of Stoller's complaint was that the defendants, by attempting to enforce a money judgment against Bernice that had been vacated, "murdered" Bernice—that is, they caused her to commit suicide. The circuit court granted summary judgment to Tarulis, Wentz, Hoppa, Schaffer, and the law firm Brooks, Adams & Tarulis. Later, the court granted judgment on the pleadings to Adams. We affirm in part and dismiss in part.

¶ 3 BACKGROUND

¶ 4 This case formally began on June 1, 2009, when Christopher filed the instant wrongful death complaint against defendants. But this case begins in March 2002, when American National Bank (ANB) sued Bernice and a company named S.T.R. Industries, Inc., in the circuit court of Cook County. ANB's complaint alleged that S.T.R. had breached a one-year promissory note for which Bernice had provided a personal guarantee.

¶ 5 On July 31, 2002, the circuit court entered a default judgment against Bernice for $418,080.25. A month later, the default was set aside by an agreed order, and the litigation resumed. In December 2002, the circuit court granted summary judgment in favor of ANB and against Bernice and S.T.R. Both parties filed motions to reconsider.

¶ 6 The court denied S.T.R.'s motion to reconsider. But in June 2003, the court granted Bernice's motion to reconsider summary judgment. So with the default judgment vacated and summary judgment against Bernice now denied, ANB had no judgment against Bernice.

¶ 7 S.T.R. then appealed to this court, but in December 2003 we dismissed the appeal for want of prosecution. While S.T.R.'s appeal was pending, in September 2003, Premier purchased the promissory note and personal guaranty from ANB.

¶ 8 In December 2005, the law firm and attorney defendants, acting on behalf of the new plaintiff Premier, mistakenly began collection proceedings against Bernice. They issued a

citation to discover assets to Bernice, returnable January 17, 2006, alleging that she owed $538,208.47 for the July 31, 2002 judgment. Defendants attempted to serve the citation on Bernice via substitute service on "John Doe/Son" at a home in Northbrook, Illinois on January 10, 2006.

¶ 9 Bernice failed to appear in court on January 17, so a rule to show cause was issued, ordering her to appear on February 2, 2006. Service of the rule to show cause was attempted at a residence in Lake in the Hills, Illinois, but was unsuccessful. On February 2, defendants, having thus far failed to obtain personal service on Bernice, withdrew the December 2005 citation. Then, on February 26, an alias citation was issued to Bernice, returnable April 6, 2006. Defendants attempted to serve the alias citation via substitute service on "Jane Doe Refused Name/Occupant" at 28303 West Savanna Taril in Lake Barrington, Illinois.

¶ 10 Bernice failed to appear in court on April 6, so a new rule to show cause issued commanding her to appear in court on May 9, 2006. Service was attempted via substitute service on "John Doe (Refused Name)/Occupant" at the Lake Barrington residence.

¶ 11 On May 1, 2006, defendants filed a notice of motion and motion to issue a writ of body attachment against Bernice. The motion was noticed for May 19, 2006. The notice of motion was addressed to Bernice at *28302* West Savanna Trail in Lake Barrington, Illinois. However, that address did not exist, so the postal service returned the notice of motion and motion to issue a writ of body attachment as undeliverable.

¶ 12 On May 9, an attorney representing Bernice appeared in the case and filed a motion to quash the citation to discover assets and rule to show cause, alleging that: (1) Bernice did not live at 28303 West Savanna Trail, Lake Barrington, Illinois; and (2) that the July 31, 2002 judgment upon which defendants were attempting to collect had been vacated. The same day, defendants

agreed to investigate whether the July 31, 2002 judgment was valid, and the proceedings were continued to June 14, 2006. On that day, defendants dismissed the citation, and the court discharged the rule to show cause. Defendants never presented the motion for a writ of body attachment to the court. From there, the case then preceded as a typical pre-judgment lawsuit.

¶ 13 About a year later, on June 2, 2007, Bernice committed suicide. Christopher responded by filing this lawsuit on June 1, 2009. In March 2010, Christopher obtained a default judgment against Premier. Then, on April 12, 2011, Christopher filed a first amended complaint. Count I was a wrongful death claim predicated on intentional infliction of emotional distress. As relevant here, count I alleged that (1) defendants "knew that their attempts to place [Bernice] in jail on a vacated judgment would cause [Bernice] severe emotional distress, or that there was a high probability that their conduct would cause severe emotional distress, and that the defendants *** knew that they were improperly using their position of power over [Bernice,]" (2) Bernice, as a result of defendants' "extreme and outrageous conduct *** to have her arrested and put in jail for failure to appear on a Rule to Show Cause that was not served upon her regarding a judgment that was vacated,*** sustained severe emotional distress leading to psychiatric care, and (3) that as a "direct and proximate result" of defendants' "extreme and outrageous conduct," Bernice "sustained an injury to her head causing her to become bereft of reason, and while in this condition, [Bernice] took her own life." Count II was a claim for malicious prosecution which was largely a duplication of count I.

¶ 14 On October 3, 2016, defendants Tarulis, Wentz, Schaffer, individually and d/b/a Brooks, Adams & Tarulis, as well as Hoppa, filed a motion for summary judgment. On February 1, 2017, the circuit court granted the motion. The court's order contained a finding pursuant to Supreme

Court Rule 304(a). On March 10, 2017, Adams filed a motion for judgment on the pleadings. The court granted the motion on March 13. That order, too, contained a 304(a) finding.

¶ 15 On February 3, 2017, Christopher filed a notice of appeal with respect to the summary judgment order. That appeal was docketed in this court as case no. 1-17-0290. On February 28, 2017, Christopher filed a notice of appeal with respect to the order granting Adams judgment on the pleadings. That appeal was docketed in this court as case no. 1-17-0481. The cases were consolidated for disposition.

¶ 16 ANALYSIS

¶ 17 We begin with Appeal No. 1-17-0481, Christopher's appeal of the order awarding Adams judgment on the pleadings. Christopher never filed the record in this case, nor did he file an appellate brief or a motion to adopt his brief in appeal no. 1-17-0290; he has utterly failed to prosecute this case. Accordingly, we dismiss appeal no.1-17-0481 for want of prosecution.

¶ 18 We next consider Christopher's appeal from the court order awarding summary judgment to Tarulis, Wentz, Hoppa and Schaffer, and the law firm of Brook, Adams, & Tarulis. "Summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34. We review an order granting summary judgment *de novo*. *Id*.

¶ 19 In the court below, defendants moved for summary judgment on the basis that they were immune from suit under the "absolute attorney litigation privilege." The circuit court found that argument persuasive, explaining:

> "The absolute attorney litigation privilege, while originally limited to instances of defamation and attorney communications related to litigation, applies to attorney conduct taken during litigation and to claims other than defamation. O'Callaghan v. Satherlie & Kopka, 2015 IL App (1st) 142152, P26-P27. The privilege applies if the acts relate to the litigation and are done in furtherance of the representation of the client. Id., at P25. Furthermore, it applies regardless of the attorney's motives, whether or not the attorney investigated the sufficiency of the claims, and even if harm results to the plaintiff. Id.
>
> Here, there is no dispute that the actions, attempting to serve citations to discover assets, rules to show cause, and motions for body attachments, were actions performed related to the litigation and in furtherance of the Defendant's representation of Premier. While it is alleged that the Defendant's knew or should have known that the original judgment had been vacated and, thus, should not have taken these actions, such issues are irrelevant to the application of the privilege. Accordingly, the privilege applies here and the Defendants are entitled to summary judgment in their favor."

¶ 20 The circuit court's opinion is succinct and well-reasoned, and we cannot improve upon it. Moreover, Christopher's appellate brief does not contain anything even resembling a well-reasoned argument in support of reversal. Other than re-stating the trial court's ruling and expressing general outrage over it, his brief merely concludes with "urging the Court to adopt a new legal standard for the attorney litigation privilege in Illinois, a limit on the absolute attorney

litigation privilege, that would exclude egregious circumstances," including acts that "lead to death." He does not explain how that new standard should be framed or why we should craft it, nor does he cite any case law to support this vague contention.

¶ 21 We are sympathetic to Christopher's situation, but we are in no position to craft a new limitation or exception to a settled legal doctrine without even a hint from counsel as to how to frame it or a policy reason why we should do so. And we cannot make his argument for him. *People v. Givens*, 237 Ill. 2d 311, 328 (2010) (reviewing court should refrain from role as advocate for one party); *In re Estate of Hanley*, 2013 IL App (3d) 110264, ¶ 100 (burden of presenting argument and supporting case law is on appellant, not reviewing court; failure to carry that burden is forfeiture of argument on appeal); Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (failure to provide legal support constitutes forfeiture of argument on appeal).

¶ 22 As Christopher has forfeited the sole issue on appeal, we affirm the trial court's judgment.

¶ 23 Appeal No. 1-17-0290 affirmed. Appeal No. 1-17-0481 dismissed.