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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PHOENIX CAPITAL, LLC,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 2008 M2 002608
)	
ABAYOMI TABITI,)	The Honorable
)	Christopher Lawler,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court order denying defendant's motion to vacate judgment and granting plaintiff's motion for Rule 137 sanctions affirmed where defendant failed to cite authority or evidence to support arguments.

¶ 2 This case derives from a credit card debt Abayomi Tabiti incurred at Home Depot nearly 10 years ago. The trial court entered a default judgment against Tabiti in April 2009 and between 2011 and 2015, the creditor, (which is now Phoenix Capital, LLC), filed multiple citations to discover assets. When one of the citation recipients, Taxi Affiliation Services, LLC (TAS) failed to reply, the trial court entered a conditional judgment against TAS, which the trial court later

vacated. Before the judgment was vacated, TAS issued a check for \$1,847.06 to the creditor's attorney.

¶ 3 After a hearing, the trial court entered an order directing TAS to account for and pay to the creditor's attorney all receipts passing through all of Tabiti's accounts, whether in Tabiti's name or his company's name, until the judgment was satisfied. Tabiti filed a motion to vacate the judgment and obtain an accounting. The trial court denied Tabiti's motion but granted Phoenix's motion for sanctions against Tabiti under Supreme Court Rule 137 (eff. July 1, 2013). Tabiti appealed, but we dismissed the appeal as premature because the issue of the amount of the Rule 137 sanctions remained pending. *Phoenix Capital, LLC v. Abayomi Tabiti*, 2016 IL App (1st) 162686.

¶ 4 After the trial court entered an order awarding attorney's fees to Phoenix and TAS and detailing the payment schedule Tabiti's attorney agreed to on behalf of his client, Tabiti appealed arguing (i) he is entitled to an accounting, (ii) TAS should not have given a check for \$1,847.06 to the creditor's attorney without a court order, and (iii) Rule 137 sanctions were not warranted. We affirm. Tabiti forfeited his first and third arguments by failing to cite any authority to support them and as to TAS having made an improper payment, he has failed to provide any evidence to support his contention.

¶ 5 **Background**

¶ 6 On October 7, 2008, IDT Carmel, Inc. filed a complaint seeking to recover \$7,848.47 Tabiti owed on a Home Depot credit card. On April 15, 2009, the trial court entered a default judgment in favor of IDT and against Tabiti for \$8,521.15, plus costs and interest. Between 2011 and 2015, IDT filed multiple citations to discover assets but was unable to obtain satisfaction on the judgment. In September 2015, IDT successfully petitioned to revive the judgment and served

a citation to discover assets on TAS, a company that provides accounting and administrative services to taxi cab companies. (Tabiti and his company, Tabiti Express, Inc., own a taxi medallion and use TAS's services.) When TAS failed to reply to the citation, the trial court entered a conditional judgment for \$13,026.87 against TAS. Then, TAS issued a check for \$1,847.06 to The Rooney Law Firm, which represented IDT, and a few days later, the trial court vacated the conditional judgment against TAS and continued the case for a hearing.

¶ 7 On March 9, 2016, after IDT had assigned the judgment to Phoenix Capital, LLC, the trial court entered an order stating that “a continuing turnover order, pursuant to 735 ILCS 5/2-1402 is imposed on the assets of defendant.” The court ordered TAS to account for and pay to Phoenix's attorney all receipts passing through any and all of Tabiti's accounts, whether in Tabiti's name or his company's name, until the judgment was satisfied.

¶ 8 Both parties filed post-judgment motions. Tabiti moved to vacate the March 9, 2016 judgment and for an accounting. Phoenix moved for sanctions under Supreme Court Rule 137 (eff. July 1, 2013) against Tabiti and his attorney. On September 9, 2016, the trial court denied Tabiti's motion to vacate and for an accounting and granted Phoenix's motion for sanctions as to Tabiti only, not his attorney. The court gave Phoenix until October 14, 2016, to prepare and present a fee petition.

¶ 9 On September 12, 2016, Tabiti filed a notice of appeal seeking review of the trial court's September 9, 2016 order. We dismissed the appeal, finding that because the issue of the amount of the Rule 137 sanctions was part of the underlying action and was still pending, we lacked a final, appealable order to review, absent language stating otherwise. *Phoenix Capital, LLC v. Abayomi Tabiti*, 2016 IL App (1st) 162686.

¶ 10 On January 25, 2017, after a hearing, the trial court granted Phoenix’s and TAS’s fee petitions and denied Phoenix’s motion to reconsider sanctions on Tabiti’s attorney. As for the money judgment, the trial court stated that Tabiti, through counsel, agreed to pay \$3,400 to Phoenix on or before February 15, 2017, and \$400 per month after that until the judgment was paid in full. Tabiti filed a notice of appeal from the January 25 order.

¶ 11 Analysis

¶ 12 Accounting

¶ 13 Tabiti first contends he is entitled to an accounting under section 2-1303 of the Code of Civil Procedure 735 ILCS 5/2-1303 (West 2014). Section 2-1303 explains how interest on a judgment is to be calculated and provides, in part, that “[i]nterest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time. The judgment debtor may by tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment.” 735 ILCS 5/2-1303 (West 2014).

¶ 14 Tabiti asserts that although he does not dispute the April 15, 2009 default judgment or the amount owed, he has made payments that were applied to the judgment and an accounting would determine the proper amount of interest, which, under section 2-1303, can only be charged on the unsatisfied portion of the judgment. We agree that section 2-1303 provides that interest can only be charged on the unsatisfied portion of the judgment but it does not, contrary to Tabiti’s assertion, support his contention that he is entitled to an accounting. The plain language of the statute does not mention a party’s right to an accounting.

¶ 15 Moreover, Tabiti cites no cases to support his argument that an accounting is warranted. Supreme Court Rule 341(e)(7) states, “[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.” 177 Ill. 2d R. 341(e)(7). “This court has often stated the failure to cite legal authority in the argument section of a party’s brief forfeits the issue for review.” *In re Marriage of Parr*, 345 Ill. App. 3d 371, 380 (2003). Tabiti does cite one case, *Halloran v. Dickerson*, 287 Ill. App. 3d 857 (1997), however, it does not support his contention that he was entitled to an accounting. (The word “accounting” does not even appear in the text of the opinion.) Tabiti has, therefore, forfeited this issue.

¶ 16 Even if we were to consider Tabiti’s argument, nothing in the record suggests the trial court erred in denying his motion for an accounting. An appellant has the burden to present a sufficiently complete record to support a claim of error. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Indeed, “[f]rom the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.” *Foutch*, 99 Ill. 2d at 391. Where the issue relates to the conduct of a hearing or proceeding, review requires a report or record of the proceeding. *Webster*, 195 Ill. 2d at 432. Without that record, we presume that the ruling entered by the trial court conforms to the law and has a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392. Absent the transcript, there is nothing to determine whether the trial court abused its discretion. See *id.*

¶ 17 After hearing, the trial court denied Tabiti’s motion for an accounting. But, Tabiti submitted no report of proceedings or a bystander’s report. Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) (setting forth process for providing report of proceeding when no court

at 391-92. “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392.

¶ 22 Moreover, Tabiti raises this issue regarding TAS’s conduct without naming TAS as a party to the appeal. Thus, we are left only with the record, which does not support Tabiti’s contention that TAS made an improper payment. The record includes a copy of a \$1,847.06 check from TAS to Phoenix’s attorneys, The Rooney Law Firm. Tabiti claims the check was issued from the Tabiti Express checking account, but the name of the payor on the check is “Tax Affiliation Services, LLC,” which, though not definitive, does support Phoenix’s contention that the check was drawn on TAS’s own funds. Tabiti asks this court to make a factual determination without our knowing the testimony presented. Absent a sufficiently complete record of the trial court proceedings to support a claim of error, we presume that the trial court’s order conformed with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. Thus, we affirm the trial court’s denial of Tabiti’s motion to vacate.

¶ 23 Sanctions

¶ 24 Lastly, Tabiti argues the trial court erred in awarding sanctions against him under Supreme Court Rule 137 (eff. July 1, 2013). Specifically, he asserts that (i) the motion that served as the basis for the sanctions order, his June 22, 2016 motion to modify the judgment, was never considered by the trial court and cannot be grounds for sanctions, (ii) his response to Phoenix’s motion for sanctions was not part of the record, raising a question as to whether the trial court considered it before awarding sanctions, and (iii) TAS was not a party to the motion and should not have been awarded sanctions.

¶ 25 Tabiti’s first two contentions are belied by the trial court’s January 25, 2017 order. The court stated it imposed sanctions based on Phoenix’s having to reply to two of Tabiti’s motions,

which means it sanctions were not based on the June 22, 2016 alone. Further, the order states that the court considered Phoenix's "motion for sanctions, response & reply, and TAS' response to the motions," which suggests it did consider Tabiti's response. And if, as Tabiti contends, the trial court did not consider his response, it was incumbent on him, as the appellant, to provide us with a complete record of the trial court proceedings to support that assertion, which he failed to do. Without that record, we presume that the ruling entered by the trial court conforms to the law and has a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92.

¶ 26 Lastly, Tabiti asserts that TAS should not have been awarded attorney fees because it was not a party to Phoenix's motion. Tabiti fails to develop this argument or cite any relevant authority. His briefs are devoid of cases or other authority to support his contention that Rule 137 sanctions were not warranted. He has thus forfeited this claim. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 27 Even if he had not forfeited this claim, the September 9 order states that TAS, Phoenix, and Tabiti were present when the court ordered Phoenix and TAS to present fee petitions. This suggests Tabiti had the opportunity to argue against awarding TAS attorney's fees, and absent the record of proceedings in the trial court we must, as noted, presume the ruling entered by the trial court conforms to the law and has a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. Moreover, we again note that TAS has not been given the opportunity to reply because Tabiti failed to name TAS as a party to the appeal or serve it a copy of the notice of appeal, as required by Supreme Court Rule 303(b)(1)(ii) and (2) (effective Jan. 1, 2015).

¶ 28 Affirmed.