

2018 IL App (2d) 160935-U
No. 2-16-0935, 2-17-0189, cons.
Order entered November 30, 2018

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
SECOND DISTRICT

ANTHONY PELLICO,)	Appeal from the Circuit Court
)	of DuPage County.
Plaintiff and Counterdefendant-)	
Appellee,)	
)	
v.)	No. 12-MR-381
)	
GREGORY PELLICO,)	
)	Honorable
Defendant and Counterplaintiff-)	Bonnie M. Wheaton,
Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant’s argument that trial judge was biased because she relied on matters outside the record had no merit where defendant invited the alleged error by referring to the alleged extrajudicial sources in his pleadings; the trial court properly assessed fees and costs against defendant’s share of the trust due to defendant’s frivolous, unilateral, and unauthorized conduct; trial court affirmed.
- ¶ 2 In this consolidated appeal, defendant and counterplaintiff, Gregory Pellico (hereinafter, Gregory), appeals the trial court’s orders denying his motion for substitution of judge, granting plaintiff and counterdefendant, Anthony Pellico (hereinafter, Anthony) summary judgment, and surcharging attorney’s fees and costs to Gregory. For the following reasons we affirm.

¶ 3

I. BACKGROUND

¶ 4 The parties, Anthony and Gregory, are the sole surviving children of Peter and Evelyn Pellico. Peter died in 1997, and Evelyn died in 2006. Before his death, Peter executed the Peter M. Pellico Family Trust dated January 23, 1997 (the Trust). The Trust provided that upon Peter's death, Anthony and Gregory "shall be successor co-trustees." In the summer of 2006 Evelyn became gravely ill. On July 31, 2006, against the wishes of Gregory the trial court appointed the public guardian for DuPage County as guardian of Evelyn¹ As a result of the guardianship, the Public Guardian effectively displaced Anthony and Gregory as the trustee of the Trust. Upon Evelyn's death in November 2006, Gregory and Anthony became the sole beneficiaries of the Trust. However, no distributions were made due to the trial court's prior orders which kept the Trust's assets frozen.

¶ 5 Through litigation, Gregory challenged the powers of the guardian as the effective trustee and the trial court's limitation on Gregory regarding the Trust.² Gregory also appealed the trial court's decisions regarding the guardianship case (See, e.g., *In re Estate of Evelyn Pellico*, 394 Ill. App. 3d 1052 (2009)) and the trial court's decision dismissing Gregory's complaint against the executor of the estate of the former Public Guardian, Robert Mork (*Pellico v. Mork*, 2018 IL App (2d) 170468).

¶ 6 The Public Guardian effectively served as trustee of the Trust until January 2012. From January 2012 until December 2014 Anthony and Gregory served as co-trustees of the Trust. The Declaration of Trust provided that, after Evelyn's death the Trust's assets were to be split in equal shares for the benefit of Gregory and Anthony. As of 2015, the Trust held approximately

¹ Case No. 2006 P 725.

² DuPage County Circuit Court case Nos. 2013 L 333, 2012 P 957, 2006 P 1225, 2006 P 725, and Illinois Court of Claims case No. 2014 CC 169.

\$900,000 in assets, consisting of half of a home located in Elmhurst and securities. Gregory resided in the Elmhurst home and paid no rent to the Trust to live there.

¶ 7 On August 4, 2014, Anthony, “individually and as Trustee of [the Trust],” filed a two-count amended complaint (complaint) (1) seeking a finding and declaration that Anthony never authorized the legal fees incurred by Gregory in case No. 2006 P 725 and subsequent appeals (hereinafter, “the Guardianship case”), therefore, these fees were not owed by the Trust, and; (2) seeking a finding and declaration that the co-trustees, Anthony and Gregory are deadlocked, an appointment of a successor trustee, and an award of attorney’s fees for bringing the claim.

¶ 8 On September 3, 2014, Gregory filed a two-count counterclaim, seeking, *inter alia*, (1) reimbursement from the Trust for legal fees incurred “in connection with the guardianship case and related litigation in furtherance of Gregory’s fiduciary duties and obligations as a trustee of the Peter Pellico Trust,” and (2) the removal of Anthony as trustee of the Peter Pellico Trust, a finding that Anthony breached his fiduciary duty to the trust, and an award of attorney’s fees for bringing this claim.

¶ 9 On November 20, 2014, Anthony filed a motion to remove Gregory as trustee, *instanter*, alleging that Gregory withdrew over \$30,000 in assets of the Trust without Anthony’s knowledge or permission. Anthony sought removal of Gregory leaving Anthony as the sole trustee, or, in the alternative, “the appointment of a third-party to serve as independent Trustee.”

¶ 10 On December 22, 2014, the trial court held a hearing on Anthony’s motion to remove Gregory at which time Gregory admitted to unilaterally withdrawing more than \$32,000 from the Trust’s T. Rowe Price account. After hearing argument the trial court removed Gregory and Anthony as co-trustees of the Trust and appointed First Midwest Bank (FMB) as successor trustee. The trial court’s written order stated, in part the following:

“2. [Anthony] and [Gregory] have been involved in litigation between themselves for a period in excess of eight (8) years.

3. [Anthony] and [Gregory] are totally unable to agree on the management and distribution of the assets of the Peter M. Pellico Trust ***.

* * *

4. It is the obligation of the Court to ensure that the terms of the [Trust] are carried out expeditiously.

5. It is in the best interest of the Trust and the parties, as the sole beneficiaries of the [Trust], that an independent corporate Successor Trustee be appointed to marshal the assets of the [T]rust and distribute them in accordance with applicable law.

6. The Court finds that Defendant Gregory Pellico has withdrawn \$32,133.24 from a certain T. Rowe Price account titled in the [Trust], without consultation with or approval of Plaintiff Anthony Pellico.”

In addition to removing both parties as co-trustees of the Trust, the trial court enjoined the parties from “holding themselves out to any person, court or entity as Trustees of the [Trust].”

¶ 11 Gregory timely appealed the trial court’s December 22, 2014, order and this court affirmed the trial court’s judgment. *Pellico v. Pellico*, No. 2-15-0070 (2016) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 12 On February 24, 2016, Gregory filed a petition for a substitution of judge for cause. Gregory alleged that “[e]very ruling and decision made in this matter has been adverse to [his] interest.” Gregory also alleged that the trial judge was “not capable of ruling impartially and without bias” and that on December 22, 2014, the trial judge spoke to Gregory “in a hostile manner that expressed a deep-seeded antagonism for” him. On February 25, 2016, the trial court denied Gregory’s petition “for the reasons stated on the record.”

¶ 13 On July 29, 2016, Anthony moved for summary judgment as to count I of his complaint and the only remaining count of Gregory's counterclaim (count I).³ Anthony argued that summary judgment should be granted for the following reasons. Gregory did not bring the guardianship case on behalf of the Trust. Even if Gregory had hired counsel on behalf of the Trust, he did so unilaterally and in violation of the terms of the trust. Anthony was a co-trustee of the Trust but he did not sign any engagement agreement with any of Gregory's attorneys and Anthony had no input in the direction of Gregory's counsel.

¶ 14 Anthony supported his motion with several attachments including, eight appearances filed by attorneys in the guardianship case (2006 P 725) on behalf of Gregory; Gregory, individually; Gregory, as trustee; and Gregory, individually, and as trustee of the Evelyn Pellico Declaration of Trust. Anthony also attached his affidavit stating the following. Anthony "never retained counsel to represent [the Trust in the Guardianship Case]." Anthony "never signed any engagement agreement to have any law firm represent [the Trust] in the Guardianship Case or any other legal matter." Anthony "retained personal counsel *** to represent [him] individually in the Guardianship Case." When, in 2006, Anthony "was contacted via phone by an attorney from the law firm of Fischel & Kahn, a firm that represented Greg in the guardianship case *** [Anthony] expressly declined to be represented by [that law firm], both individually and as co-trustee of [the Trust]." Anthony has "never authorized any lawyer to file a pleading in the Guardianship [case] on behalf of [the Trust]." "Greg's individual representation in the Guardianship case [does not] represent [or] reflect the joint agreement of both co-trustees of [the Trust]."

³ Although Anthony's motion stated that it sought summary judgment on count II of Gregory's counterclaim, the only remaining count was count I.

¶ 15 On September 16, 2016, Gregory filed his response to Anthony's motion for summary judgment. In Gregory's response he denied "that Anthony never authorized any lawyer to file a pleading in the Guardianship case on behalf of the Trust." Gregory alleged that "Anthony joined with [him] *** on several occasions [and] even threatened to sue the Public Guardian over his mismanagement of the Trust." To support these allegations Gregory attached the following pleadings: (1) Gregory and Anthony's "Motion for Relief of Stay" of the trial court's order of January 30, 2008, to release the assets of the Trust, alleging, in part, that Gregory and Anthony are beneficiaries and co-trustees of the Trust; (2) "Gregory and Anthony Pellico's Response to the Public Guardian's Motion to Strike and Dismiss Pellico's Motion for Relief From Stay"; (3) the Public Guardian's "Reply in Support of Public Guardian's Motions for Accounting, to Terminate Guardianship, and to Surrender Assets," indicating that Anthony had joined Gregory's motion for an accounting, to terminate guardianship, and to surrender assets and that Anthony had filed a separate response to the public guardian's "overall motion to strike"; (4) Anthony's Response to the Public Guardian's Motion to Strike," asking the court to order the Public Guardian to repay him for the property insurance premium he paid for real estate held in the Trust; and (5) the Public Guardian's statement indicating \$90 incurred for preparing "correspondence to attorney for Anthony in response to his correspondence setting forth demands to sue." Further, Gregory argued in his response, that (1) Anthony initiated the litigation over the Trust, (2) Anthony did not oppose Gregory's efforts to protect the Trust, because:

"The Public Guardian had usurped the position of Trustee, and Gregory and Anthony were powerless to do anything but protest. However, their inability to exercise their duties as trustees did not mean that they had no right to try to protect the Trust assets and to assert their rights as beneficiaries."

(3) Gregory's opposition to the Public Guardian was justified by his fiduciary duty to the Trust, and (4) Gregory's efforts were not futile.

¶ 16 Anthony's reply to Gregory's response alleged and argued the following. Regarding Gregory's second argument, nothing in the trial court's orders in the guardianship case prevented the Trust from obtaining legal counsel. Further, the eight appearances and three appeals were filed on behalf of Gregory and/or on behalf of the Evelyn Pellico Trust, and/or as trustee of such trust. Also, Gregory failed to establish that that an attorney-client relationship existed between Gregory's attorney's and Anthony or any communication between them. Therefore, there was no basis for legal fees against the Trust. Further, the joint pleadings attached to Gregory's response showed that Gregory and Anthony had separate counsel and Gregory presented no evidence that they had agreed to impose attorney's fees on the Trust.

¶ 17 On October 6, 2016, after hearing argument, the trial court stated in its written order that Anthony's "Motion for Summary Judgment is granted for the reasons stated on the record as to Count I of the amended complaint and Count I of [Gregory's] counterclaim." The trial court stated the following in court:

"[Gregory] was a co-trustee. He had no right, as the appellate court has affirmed, to conduct litigation or transact any business solely by himself.

[Gregory] had a duty not only to the [T]rust but to his brother [Anthony] as the co-trustee. It is absolutely crystal clear that this litigation was carried on without the consent, and in some ways, without the knowledge of Anthony Pellico.

It is also absolutely crystal clear that the [Trust] had no attorney-client relationship with any of the attorneys who filed appearances in the case of the Estate of Evelyn Pellico or in any other litigation for which [Gregory] is seeking remuneration.

It is also clear that there was no benefit to the [Trust] from any of the litigation. The only benefit was to the Evelyn Pellico Trust, and to the Estate of Evelyn Pellico, of which Mr. Gregory Pellico was the sole beneficiary and the sole trustee.

I believe there is no genuine issue of material fact, and that as a matter of law, [the Trust] is not responsible for any of the litigation expenses incurred by Gregory Pellico in any of the litigation, whether it's in this court, in federal court or in the court of claims, on behalf of himself, individually, as a beneficiary or the purported trustee of the [Trust]. That will be the declaration.”

¶ 18 The trial court also stated in its written order that “Count II of the amended complaint and Count II of the counterclaim are moot. *** This is a final and appealable order and there is no just cause to stay enforcement or appeal of this order under Supreme Court Rule 304(a).”

¶ 19 On November 4, 2016, Anthony filed a “Plaintiff’s Motion for Surcharge of Legal Fees and to Apportion Costs of Trust Administration” alleging and arguing the following. Anthony was entitled to his legal fees in defense of the Trust as a trustee, as a fiduciary, and as a beneficiary of the Trust. Anthony’s attorney’s fees and FMB’s attorney’s fees and costs should be surcharged against Gregory’s share of the Trust or Gregory because Gregory’s claims in this case were groundless. Gregory had breached his fiduciary duty as a co-trustee of the Trust by insisting that the Trust pay his legal fees incurred in the guardianship case and Gregory had unilaterally withdrew over \$31,000 from the trust. Anthony filed this lawsuit seeking to remove Gregory as co-trustee. When the trial court removed both Anthony and Gregory as co-trustees and appointed FMB and successor trustee, Gregory fruitlessly appealed, exacerbating the costs of litigation. Anthony’s attorney’s fees, an itemized time schedule attached, were reasonable, and the trial court had already approved FMB’s attorney’s fees.

¶ 20 On November 7, 2016, Gregory filed a notice of appeal as to the trial court's summary judgment and certain prior orders (appeal No. 2-16-0935).

¶ 21 On December 15, 2016, Gregory filed his response to Anthony's motion for attorney's fees alleging and arguing the following. Anthony did not bring his claim to defend the Trust. Anthony did not defend the Trust against a groundless suit. Anthony's claim that Gregory removed \$32,000 from the Trust is groundless. Anthony did not incur fees by reason of Gregory's alleged breach of fiduciary duties. Anthony's motion is a flawed Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Jan. 1, 2018)) motion.

¶ 22 On February 7, 2017, after a hearing on Anthony's motion regarding attorney's fees and costs, the trial court stated the following:

“We are now in 2017, approximately 10 and a half years after the death of Evelyn Pellico, and still we have not had a complete distribution of the Trust. ***

If [Gregory] had in the least cooperated with his brother [Anthony] or with the [successor] corporate trustee [FMB], this could have been done years ago, and there could have been a savings of hundreds of thousands of dollars in fees and costs. I believe this litigation was necessitated by Gregory Pellico in every single aspect. This case is governed by the cases that [Anthony's attorney] cited. I have never seen a case which cries out for the imposition of the attorney's fees and the trustee's fees to a beneficiary who has continuously thwarted the efforts of his first co-trustee, and second, the [successor] corporate trustee [FMB].

I will grant [Anthony's] motion. All of the fess of the [successor] trustee [FMB] and the attorney's fees of Anthony Pellico will come out of the share of Gregory Pellico. And that will be a final order.”

¶ 23 On February 7, 2017, the trial court issued a written order ordering the “Trustee [FMB] to surcharge Anthony Pellico’s attorneys’ fees of \$142,595.24 and \$178,587.75 in First Midwest Bank’s fees plus those fees approved by the court today against Gregory Pellico’s share of the [Trust].”

¶ 24 On March 8, 2017, Gregory filed a notice of appeal as to the trial court’s February 7, 2017, order and numerous prior orders (appeal No. 2-17-0189), including the trial court’s denial of Gregory’s motion for substitution of judge and its order granting Anthony summary judgment. On Gregory’s motion, this court consolidated the two appeals.

¶ 25 **II. ANALYSIS**

¶ 26 **A. Substitution of Judge**

¶ 27 Gregory argues that the trial court erred by denying his motion for substitution of judge for cause without referring the matter to another judge for a hearing. Gregory contends that the trial judge was biased and prejudiced because she relied on matters outside the record; in particular, the pleadings, motions, orders, and published appellate court opinions regarding the five other cases involving Gregory and the Trust. However, Gregory’s motion for substitution does not contain these allegations. It is axiomatic that “an issue not presented to or considered by the trial court cannot be raised for the first time on review.” *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) (quoting *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994)). “Generally, arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal.” *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15. Accordingly, Gregory has forfeited his argument that the trial court erred by denying his motion for substitution of judge for cause due to the trial court’s alleged reliance on matters outside the record.

¶ 28 Further, absent forfeiture, Gregory’s argument is without merit. Gregory’s sole alleged “cause” as grounds for substitution is that the trial judge relied on other cases involving him and

the Trust. However, Gregory invited this alleged extrajudicial conduct by filing a counterclaim against Anthony seeking attorney's fees for "the Guardianship case and related litigation." Gregory based his claim on his "heroic efforts to wrest control of the [Trust] from the Public Guardian" through litigation from 2007 through 2012 until the Public Guardian was "finally" discharged. Gregory also alleged that he was entitled to attorney's fees because the Trust benefitted from his work and that of his counsel. Thus, Gregory invited the trial court to examine the same cases that he now argues are "extrajudicial." For this reason, Gregory's argument is disingenuous as he invited this alleged error. See *In re Marriage of Samuel*, 394 Ill. App. 3d 398, 401 (2009) ("A party who argues that the trial court erred by acceding to the party's own suggestion cannot be heard to complain of the invited error").

¶ 29 Beyond Gregory inviting the alleged error, his request for substitution came too late. Section 2-1001(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(3) (West 2016)) does not contain a specific time within which a request for substitution of judge must be filed. However, motions for substitution based on cause must be asserted at the "earliest practical moment" after the cause for the request has been discovered. *In re Estate of Wilson*, 238 Ill. 2d 519, 556 (2010). Here, the hearing and other matters that were the bases of Gregory's petition for substitution began in 2014 when the trial judge found that Gregory improperly withdrew \$32,000 from the Trust. Thereafter, numerous matters were filed, hearings were held, and orders were entered. Gregory waited until February 2016, more than 14 months later, to file his petition for substitution. Finally, trial judges are permitted to assess whether a motion for substitution for cause meets threshold procedural and substantive requirements before referring the matter to another judge for hearing. *Wilson*, 238 Ill. 2d at 564 (2010). In this case, the trial judge's decision not to refer the matter to another judge was proper.

¶ 30

B. Summary Judgment

¶ 31 Next, Gregory contends that the trial court erred by granting summary judgment in Anthony's favor on count I of his complaint and count I of Gregory's countercomplaint.

¶ 32 Summary judgment is proper when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Pielet v. Pielet*, 2012 IL 112064, ¶ 29; 735 ILCS 5/2-1005 (West 2016). We review *de novo* summary judgment rulings. *Seymour v. Collins*, 2015 IL 118432, ¶ 42.

¶ 33 Count I of Anthony's complaint sought a declaration and finding that Anthony had not authorized the legal fees incurred by Gregory in the "Guardianship case," these fees were not owed by the Trust, and that the court should award the Trust attorney's fees for bringing the claim. Count I of Gregory's complaint essentially sought the opposite of Anthony's claim. Gregory sought reimbursement from the Trust for legal fees incurred "in connection with the Guardianship case and related litigation in furtherance of Gregory's fiduciary duties and obligations as a trustee of the [Trust]."

¶ 34 The limits of a trustee's powers are determined by the instrument that creates the trust. *Stuart v. Continental Illinois National Bank & Trust of Chicago*, 68 Ill. 2d 502, 523 (1977) (citing Restatement (Second) of Trusts § 164). Further, a co-trustee cannot exercise a joint power individually. *Id.* (citing Restatement (Second) of Trusts §§ 194, 383). See also *Sheets v. Security First Mortgage Co.*, 293 Ill. App. 222, 223 (1937) ("In law there is no such person as an acting trustee apart from his co-trustees"). The right to sue on behalf of a trust is one such joint power. *Madden v. University Club of Evanston*, 97 Ill. App. 3d 330, 332 (1981).

¶ 35 Gregory argues that the trial court erred by granting summary judgment because the trial court stated, "[Gregory] was a co-trustee. He had no right, as the appellate court has affirmed, to conduct litigation or transact any business solely by himself." Gregory contends that the trial

court was referring to this court's summary order affirming the trial court's order removing Gregory and Anthony as trustees and appointing FMB as successor trustee of the Trust. See *Pellico v. Pellico*, 2016 IL App (2d) 150070-U (June 13, 2016) (Summary Order). Gregory argues that this case is unlike *Pellico*, wherein we stated that there was evidence in the record that Gregory exercised "a joint power unilaterally." *Id.* ¶13. Gregory contends that in this case he was unable to act on behalf of the Trust once the Public Guardian seized control of the Trust.

¶ 36 However, Gregory's contention is belied by his complaint wherein he sought reimbursement from the Trust for legal fees incurred "in connection with the guardianship case and related litigation in furtherance of Gregory's fiduciary duties and obligations as a trustee of the [Trust.]" Further, the record indicates that the attorneys appearing on Gregory's behalf did not represent the Trust, Anthony, or Anthony as trustee of the Trust. Indeed, Gregory failed to produce any document establishing that Gregory and Anthony together retained any attorney to represent the Trust. Accordingly, the trial court properly granted Anthony summary judgment on count I of his complaint and count I of Gregory's counterclaim.

¶ 37 Gregory makes several additional arguments regarding this issue. Because we have determined that the trial court properly granted summary judgment in Anthony's favor due to the pleadings and documents contained in the record, we need not address Gregory's additional arguments.

¶ 38 C. Attorney's Fees and Costs

¶ 39 Next, Gregory argues that the trial court erred by granting Anthony's motion for attorney's fees and costs and those of the successor trustee FMB to be charged against Gregory's share of the Trust. Gregory asserts that absent a contractual or statutory provision or Supreme Court Rule, there is no authority that provides an exception to the "American Rule" that attorney's fees are not taxable to an opponent.

¶ 40 Whether the court has authority to grant attorney fees is a question of law we review *de novo*, whereas a court's decision to award authorized fees is reviewed for an abuse of discretion. *Spencer v. Di Cola*, 2014 IL App (1st) 121585, ¶ 35. Generally, Illinois adheres to the "American Rule" whereby each party to litigation bears its own attorney fees, absent a specific fee-shifting statute or contractual agreement. *Taylor v. Pekin Insurance Co.*, 231 Ill. 2d 390, 398-99 (2008) (citing *Scholtens v. Schneider*, 173 Ill. 2d 375, 384 (1996)). As such, a successful litigant is not entitled to an award of fees from a trust beneficiary "absent a statutory provision or contractual agreement to the contrary" (*Hillenbrand v. Meyer Medical Group, S.C.*, 308 Ill. App. 3d 381, 389 (1999)) unless the beneficiary's complaint is groundless or frivolous. *Patterson v. Northern Trust Co.*, 286 Ill. 564, 567 (1919).

¶ 41 In *Webbe v. First National Bank & Trust Co.*, 139 Ill. App. 3d 806 (1985), this court cited *Patterson* to affirm an award of the trustee's fees and costs in defending against a beneficiary's share of the trust. We explained:

"[W]hen one of several beneficiaries brings essentially groundless and unsuccessful litigation against a trustee the purpose of which was to benefit only himself, no reason suggests itself why the other beneficiaries, who did not join with him, sought no relief and had no voice in the conduct of the case, should share the expense with the initiating beneficiary. If such were not the case, a beneficiary could assault will and trust provisions attempting to increase his individual shares secure in the knowledge that, if he was unsuccessful, the costs would be borne by the other beneficiaries equally and not recovered solely out of the share of the party seeking to further his own ends. This would not seem to be just." *Id.* at 810-11.

¶ 42 Here, Gregory filed numerous frivolous pleadings and appeals, disobeyed trial court orders, and continued this litigation for over ten years after the death of the parties' mother,

Evelyn. Because Gregory was acting individually, without authority to bind the Trust and without authority to act on the Trust's behalf without the agreement of Anthony, the trial court's order is not so much an assessment of fees, but a reimbursement for the expenses that Gregory incurred and attempted to foist on the Trust. With this record of abuse, we agree with the trial court's finding that this case "cries out for the imposition of the attorney's fees and the trustee's fees to a beneficiary who has continuously thwarted the efforts of his first co-trustee, and second, the [successor] corporate trustee [FMB]." Thus, the trial court did not abuse its discretion by granting Anthony's motion to charge Gregory's share of the Trust with attorneys' fees and costs of this litigation. See *Patterson*, 286 Ill. at 567.

¶ 43 Gregory also argues that the trial court "improperly applied Judicial Notice" in granting Anthony's motion for attorney fees by stating the following,

"The Court will take judicial notice of the estate case regarding Evelyn Pellico. It is my understanding that that case was filed in December 2006, and that Mrs. Pellico was deceased shortly before that time. *** The trustee of the [Trust] then became co-trustees, [Gregory and Anthony]. The sole duty of the trustee or co-trustees is to marshal the assets and to distribute them according to the terms of the trust. That should have been undertaken in 2006. This case was filed in 2012, six years later. Nothing, and I mean nothing, had been accomplished by the time [Anthony] filed this case."

¶ 44 Gregory contends that the trial court failed to understand that he was "powerless to perform his duties as a co-trustee [between 2006 and 2012] because the Public Guardian wrongfully retained [control over] the trust." Gregory's argument fails to recognize that this case was necessitated by Gregory's insistence that the Trust must pay his legal fees for his continued and relentless alleged defense of the Trust against the Public Guardian. Gregory relentlessly pursued the guardianship case, by disobeying the trial court's orders to turn over Trust documents and

improperly removing assets belonging to the Trust. Further, a full review of the record indicates that the trial court was well aware of the facts regarding this case as well as the guardianship case and, its remark cited by Gregory, taken in full context, was immaterial to the trial court's findings and ruling.

¶ 45 Gregory's final argument is that the trial court improperly charged him for the replacement cost of lost stock certificates. Gregory contends that the trial court improperly applied the law of the case doctrine. However, in violation of Rule 341(h)(7), Gregory fails to properly cite to the record to support his contention. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). Gregory's failure to properly cite to pages of the record relied upon results in forfeiture of his contention on appeal. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 211 (2007)

¶ 46 Notwithstanding forfeiture, Gregory's argument fails. The trial court previously ordered Gregory to produce "all stock certificates [and in] the event that such stock certificates are not produced, [FMB] shall obtain reissued certificates at the expense of [Gregory]." Consistent with this prior ruling the trial court surcharged Gregory the cost of reissuing the "lost" stock certificates. As such, the trial court did not err by enforcing its prior order.

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, the trial court's judgments are affirmed.

¶ 49 Appeal No. 16-0935, judgment affirmed.

¶ 50 Appeal No. 17-0189, Judgment affirmed.