2019 IL App (1st) 180371-U

FOURTH DIVISION
March 14, 2019

No. 1-18-0371

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STANISLAW LUMER,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	
	)	17 L 1290
WOLFE LAW, P.C., an Illinois Professional Corporation, and	)	
KENNETH B. WOLFE, JR.,	)	Honorable
	)	Moira S. Johnson,
Defendants-Appellees.	)	Judge Presiding

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment was properly granted for defendants, law firm and lawyer, in legal malpractice action where plaintiff failed to produce facts that would arguably entitle him to a favorable judgment, and where there were no factual issues for the court to decide.

¶ 2 This appeal arises from a legal malpractice action brought by *pro se* plaintiff, Stanislaw Lumer, against his former counsel, defendants, Wolfe Law, P.C. (Wolfe Law) and Kenneth B. Wolfe, Jr. (Mr. Wolfe).

¶ 3 The record shows that plaintiff sustained abdominal injuries on July 14, 2006, while working at Orient Welding Corporation (Orient), when he was struck in the chest by a piece of metal while operating a metalworking machine called a "lathe."

¶ 4 Approximately one month later, on August 22, 2006, plaintiff retained defendants to pursue a worker's compensation claim against Orient. The retention agreement stated that defendants would "prosecute and/or settle any disputed claims for benefits under the Illinois Workers' Compensation Act or Occupational Diseases Act." It also indicated that defendants explained the terms of the agreement to plaintiff and that plaintiff read and understood those terms.

¶ 5 That same day, defendants filed an application for adjustment of claim with the Illinois Workers' Compensation Commission. In plaintiff's petition for an immediate hearing under the Workers' Compensation Act, plaintiff stated that the accident caused him abdominal trauma, bilateral shoulder and low back injuries, and that he was unable to return to work. In pursuing plaintiff's case over the next two years, Mr. Wolfe obtained plaintiff's medical records, took depositions, and secured temporary total disability payments from Orient's insurer.

¶ 6 On November 19, 2008, Mr. Wolfe wrote to plaintiff to explain that defendants would not be continuing as plaintiff's counsel and that he planned to file a motion to withdraw with the Workers' Compensation Commission. Mr. Wolfe enclosed a copy of his motion to withdraw and instructed plaintiff to "find a new attorney and have that person contact [defendants]." Thereafter, the arbitrator presiding over the case granted defendants leave to withdraw on November 25, 2008.

¶ 7 On July 28, 2009, the arbitrator held a hearing on plaintiff's workers' compensation claim. Timothy Takash, plaintiff's new attorney, appeared on his behalf, and an interpreter was

present for plaintiff, whose primary language is Polish. The arbitrator noted that she had discussed a settlement with the parties off the record and that the parties had agreed to a $225,000 settlement which, after deducting attorneys' fees and expenses, would result in plaintiff receiving $169,553. The arbitrator indicated that plaintiff would receive an advance of $25,000 to pay off a litigation loan that plaintiff had taken out, and plaintiff affirmed that he understood these terms. The following exchange occurred:

> ARBITRATOR: Okay, Mr. Lumer. So just so we understand, you've understood what everybody has said here today, correct?
>
> THE WITNESS: I understand. I understand. I understand.

¶ 8 On the same day, plaintiff and Takash signed a settlement contract describing the terms of the agreement. The settlement agreement stated, "Attention, petitioner. Do not sign this contract unless you understand all of the following statements. I have read this document, understand its terms, and sign this contract voluntarily. I believe it is in my best interests for the Commission to approve this contract."

¶ 9 Approximately 16 months thereafter, on November 22, 2010, plaintiff filed a one-count complaint against defendants under trial court number 10 L 13327, asserting that they committed legal malpractice by failing to timely file a products liability action against the manufacturer of the lathe that injured plaintiff. Over three years later, on February 5, 2014, plaintiff requested leave to file a three-count amended complaint. It appears that plaintiff was granted leave to file his amended complaint, although a copy of that order does not appear in the record on appeal.

¶ 10 In Count I of the amended complaint, plaintiff alleged that defendants failed to pursue actions for negligence, products liability, or medical malpractice arising out of his injuries, thus allowing the statute of limitations to expire on those claims. In Count II, plaintiff alleged that

defendants failed to "adequately prosecute" his workers' compensation claim—specifically, that defendants did not keep him informed of the status of his case, failed to investigate his case, failed to provide him information during settlement discussions, failed to provide him with competent interpreters, and failed to "disclose the true nature of the loan" that defendants "arranged for [him]." In Count III, plaintiff alleged that defendants committed fraud by making false statements about a loan plaintiff obtained, forged a document granting defendants power of attorney over plaintiff, used an incorrect social security number for plaintiff, and forged evidence that plaintiff had met with other attorneys about his potential negligence and products liability claims. Plaintiff alleged that this fraud caused him "significant loss and pain," but did not further elaborate on these damages.

¶ 11 Defendants moved for summary judgment on plaintiff's amended complaint on January 21, 2016. As to Count I, defendants argued that they owed plaintiff no duty to pursue any cause of action other than his workers' compensation claim. Defendants attached a copy of defendants' retention agreement with plaintiff, which explicitly stated that defendants were only representing plaintiff as to his workers' compensation case. Defendants further noted that Sebastian Gad, plaintiff's nephew and interpreter during plaintiff's meetings with Mr. Wolfe, testified that Mr. Wolfe never told plaintiff he would pursue any cause of action other than the workers' compensation claim. Defendants also attached an affidavit from one of their experts, John McAndrews, who opined that the retention agreement and defendants' limitations on the scope of their representation were reasonable. McAndrews specifically noted that Mr. Wolfe acted reasonably in referring plaintiff to another attorney, Paul Fina, to consult with plaintiff about a possible product liability case, and to a third attorney, Gil Ross, to consult with plaintiff about a possible medical malpractice case.

¶ 12 Defendants also presented evidence showing that plaintiff would never have succeeded on his purported product liability or personal injury claims. Defendants attached the deposition of Andrezj Plewa, Orient's owner, in which he testified that, if plaintiff had been standing behind a safety shield called a "tool post"— a device designed to shield the lathe operator from a piece of metal called a "bushing" that is expelled from the machine—at the time of the accident, plaintiff would not have been hit with the bushing. Plewa noted that he purchased the lathe that plaintiff had been working on at auction, so he had no idea if there were any defects in the machine when it left the manufacturer.

¶ 13 Defendants also attached the deposition of Paul Fina, the personal injury lawyer who consulted with plaintiff about a possible products liability or personal injury case. Fina testified that Mr. Wolfe asked him to look at plaintiff's case because Mr. Wolfe "focuses entirely on workers' compensation and does not do third-party cases." Fina said that plaintiff came to his office with Gad, who acted as plaintiff's interpreter. Plaintiff told Fina that he was hit by the bushing after a coworker made a faulty weld on the bushing that caused it to break in half. Fina said that the coworker's faulty welding was "death to [plaintiff's] case" because an injury caused by a coworker's negligence is "covered strictly by the Workers' Compensation Act." Fina said that the negligence by plaintiff's coworker "destroy[ed] completely the viability of the case." Fina added that if plaintiff said that the faulty weld caused the bushing to break during a deposition, that testimony alone would support an award of summary judgment against plaintiff.

¶ 14 Fina verbally advised plaintiff of the statute of limitations, but informed him that he had no viable cause of action for products liability or any other personal injury action. Accordingly, Fina told plaintiff that he would not be filing suit on plaintiff's behalf. Fina followed up in a written letter on June 20, 2008, informing plaintiff that he would not be pursuing any "personal

injury matter" for plaintiff, that Fina was closing his file, and that, if plaintiff wanted to file suit, he had to do so within two years of the date he was injured. Fina testified that whenever he declined to take a case, he sent a similar letter to the prospective client. Fina sent the letter to the address that plaintiff had given him during their initial meeting.

¶ 15 As to Count II, defendants cited several pieces of evidence establishing that defendants did not breach the standard of care in representing plaintiff in his workers' compensation claim. First, defendants cited McAndrews' affidavit, which stated that defendants acted diligently in pursuing plaintiff's workers' compensation case, which contributed to plaintiff's ability to obtain the $225,000 settlement offer from his employer. McAndrews noted that defendants obtained plaintiff's medical records, deposed witnesses, and made demands to Orient's insurance company regarding plaintiff's temporary total disability payments. McAndrews stated that plaintiff's case "was fully investigated and worked up" at the time defendants withdrew in November 2008. McAndrews also opined that allowing plaintiff to use friends and family members as interpreters during meetings was reasonable and customary.

¶ 16 Second, defendants presented the deposition of Robert Harrington, the lawyer who defended Orient against plaintiff's workers' compensation claim. Harrington had 30 years' experience defending workers' compensation claims. In his opinion, defendants' work on the case directly led to his client's $225,000 settlement offer. Harrington also testified that the $225,000 settlement was "more than fair and reasonable." Harrington said that defendants' work on plaintiff's case enhanced the value of the case, especially the medical depositions taken by Mr. Wolfe.

¶ 17 Harrington testified that Orient paid plaintiff the $25,000 settlement advance discussed at the July 28, 2009 hearing. Harrington knew that plaintiff received the money because the check

was cashed. Harrington said that, after Orient paid the advance, plaintiff rejected the $225,000 settlement offer and proceeded to trial on his claims. After going to trial, plaintiff received less than one-third of the amount Orient had offered—approximately $66,000.

¶ 18 Third, defendants attached the deposition of Takash, the attorney who represented plaintiff in his workers' compensation case after defendants withdrew. Takash, who had been pursuing workers' compensation claims for 20 years, testified that he "didn't have a single criticism" of Mr. Wolfe's work regarding the workers' compensation case. Takash said that when he inherited the file from defendants, defendants had already taken all of the evidence depositions and that the file contained "lots and lots of medical records and medical bills." Takash believed that Mr. Wolfe had sufficiently developed the case, and no other evidence was necessary to take the workers' compensation claim to trial.

¶ 19 Takash testified that he was able to negotiate the $225,000 settlement offer because of the work defendants had done on the case. Takash believed that $225,000 was a reasonable settlement in light of plaintiff's injuries and that nothing defendants did diminished plaintiff's ability to receive that sum. Takash testified that plaintiff signed the settlement agreement in the presence of the arbitrator. Takash affirmed that an interpreter was present when plaintiff told the arbitrator that he wanted to accept the settlement. Takash also secured a partial settlement of temporary total disability benefits for plaintiff, which plaintiff signed in his office on July 8, 2009. Takash noted that plaintiff received a $25,000 advance of the settlement, which Takash used to pay off a loan that defendants had arranged for plaintiff at the beginning of his workers' compensation case. Takash testified that, shortly after plaintiff received the $25,000 advance, he emailed Takash saying he did not want to accept the $225,000 settlement anymore. Takash said that he received a letter from plaintiff accusing Takash of forcing him to accept the settlement.

When Takash received the letter, he decided to withdraw as plaintiff's counsel. Takash testified that plaintiff ultimately took his workers' compensation claim to trial and received less than the $225,000 settlement amount.

¶ 20 Finally, as to Count III, defendants argued that plaintiff could not establish any fraud in taking out the litigation loan because McAndrews testified that there was no evidence that Mr. Wolfe breached the applicable standard of care by directing plaintiff to take out a litigation loan. Defendants also argued that plaintiff could not establish any damages as a result of his taking out the loan, as Takash testified that the loan had been paid off with the $25,000 settlement advance plaintiff received from Orient. Defendants further argued that plaintiff had no evidence to establish that any problem with his social security number caused him any damages.

¶ 21 In opposition to defendants' motion for summary judgment, plaintiff denied meeting with Fina to discuss his case and stated that Fina's testimony was false. Plaintiff also said that he told Plewa that the foot brake on the lathe was broken two weeks before he was injured, but that Plewa did not fix it. Plaintiff did not deny that his coworker's negligence caused the bushing to break, or deny any of the facts recounted by Harrington or Takash regarding the settlement negotiations in the workers' compensation case. Plaintiff also did not submit any affidavits or depositions to support his fraud claims in Count III of the amended complaint.

¶ 22 On March 4, 2016, while defendants' motion for summary judgment was still pending, plaintiff voluntarily dismissed his case because he did not comply with a discovery order. During discovery, plaintiff had disclosed several witnesses, but did not disclose any expert witness who would testify as to the applicable standard of care for his legal malpractice claims. Instead, plaintiff disclosed an expert named John Lauhoff who would testify as to the safety problems at plaintiff's workplace. While defendants' summary judgment motion was pending, the trial court

ordered plaintiff to turn over Lauhoff's file by February 26, 2016, and ordered Lauhoff's deposition to proceed by either February 29, 2016, or March 1, 2016. Plaintiff never turned over the file or presented Lauhoff for his deposition by the court-ordered deadlines, choosing to dismiss his case instead.

¶ 23 Plaintiff then refiled his complaint in this case on February 6, 2017, asserting the same three counts that were in his amended complaint in case number 10 L 13327.

¶ 24 On May 25, 2017, defendants filed a combined motion to dismiss or, alternatively, for summary judgment. Because plaintiff's claims in the 2017 complaint were identical to those in his 2010 complaint, defendants incorporated their original summary judgment motion and its exhibits into their 2017 motion for summary judgment.

¶ 25 On December 13, 2017, plaintiff filed a six-part response to defendants' combined motion. In part 1, plaintiff alleged that defendants had filed a workers' compensation claim for plaintiff without his permission, that defendants withdrew from his workers' compensation case "spontaneously," that defendants conspired with Orient to create a fake social security number for plaintiff to which his workers' compensation settlement was paid, and that he had never met Fina. Plaintiff requested a judgment of $4.8 million against Fina.

¶ 26 In part 2, plaintiff's allegations focused on alleged misconduct by Takash. Plaintiff acknowledged that Takash had negotiated a $225,000 settlement of his workers' compensation case, but claimed that he did not receive any of the settlement. Plaintiff said that he "suspect[ed] the money was stolen." Plaintiff added that the settlement agreement he signed in his workers' compensation case had been forged and that Takash authorized himself to cash checks written to plaintiff. Plaintiff did not, however, allege that Takash took any of these actions in conjunction

with defendants or at defendants' direction. Plaintiff asked the court to enter a $4.85 million judgment against Takash.

¶ 27 In parts 3 and 4, plaintiff alleged that the lathe he was working on when he was injured "did not have shields and [did not have a] left emergency break [*sic*] pedal." He claimed that Mr. Wolfe "changed the name on [his] correct social security number" and, along with Andrezj Plewa, "introduced a fake social security number." Plaintiff claimed that, without an accurate social security number, "[i]t was impossible to file a law suit [*sic*] for medical malpractice." Without specifying further, plaintiff alleged that Plewa "conspired with Kenneth Wolfe against [plaintiff]." Plaintiff asked the court to enter a $4 million judgment against Mr. Wolfe and an $8.85 million judgment against Plewa.

¶ 28 Part 5 outlined plaintiff's various expenses and claimed that one of his doctors "forged the dates of the office visits." Plaintiff asked the court to enter a $1.5 million judgment against his doctor.

¶ 29 Finally, in part 6, plaintiff stated that defendants "gave [him] a loan" of $19,200 "with 45% interest." Plaintiff alleged that, after defendants withdrew from his workers' compensation case, he hired a new attorney named "Mechetinni." According to plaintiff, Mr. Wolfe "fired attorney Mechetinni and took over the case without [plaintiff's] knowledge and permission." Plaintiff also alleged that Mr. Wolfe hired attorneys Fina and Takash "to defend him." Plaintiff asked the court to enter a $10 million judgment against Mr. Wolfe.

¶ 30 Plaintiff attached to his response hundreds of pages of medical records and documents relating to his underlying workers' compensation claim. He offered no explanation for these documents or how they supported the assertions in his response. Instead, he simply asserted that

the attached documents proved that defendants conspired with Orient, proved that Fina and defendants had committed fraud, and proved that his social security number had been changed.

¶ 31 Plaintiff also submitted three affidavits he had executed in February 2010, October 2011, and April 2012. The 2010 affidavit stated that plaintiff understood "very little English" and that defendants did not explain that they "would only be handling [his] Workers' Compensation case." Plaintiff also asserted that he never received the June 20, 2008, letter from Fina informing him of the statute of limitations on his personal injury claim. The October 2011 and April 2012 affidavits stated that plaintiff did not know Fina, that he had never met Fina, and that his signature on the certified mail receipt for Fina's letter had been forged.

¶ 32 Finally, plaintiff attached the deposition of Chris Plewa, the son of Orient's owner, who was at the plant when plaintiff was injured. Chris testified that he heard a loud noise and, after approaching the lathe, saw plaintiff lying on the ground with the bushing next to him. Plaintiff told Chris that he dropped the bushing on himself while he was carrying it, but Chris testified that it was "[n]ot possible" that plaintiff could have sustained his injuries just by dropping the 20-pound bushing on himself. After plaintiff was discharged from the hospital, his story changed: he told Chris that the bushing had flown out of the machine and hit him in the chest.

¶ 33 Chris said that plaintiff was operating a Kingston 3000 lathe when he was injured in July 2006. At the time of Chris's deposition, plaintiff was the only person who had ever been injured operating that lathe. After inspecting the lathe, Chris concluded that there was nothing wrong with it. Orient did not make any repairs to the lathe and continued using the lathe "every single day" after plaintiff's accident without incident. Chris said that there was nothing unreasonably dangerous about the design of the lathe and that it had appropriate safety devices.

¶ 34 Chris said that Orient had a rule requiring anyone operating the lathe to stand behind the tool post. Chris testified that, if plaintiff had been standing behind the tool post when he was operating the lathe, it would have been impossible for the bushing to hit him in the chest. Chris said that there was never any reason for an operator to step out from behind the tool post.

¶ 35 The court held a hearing on defendants' combined motion on January 31, 2018. Plaintiff appeared *pro se*, with the assistance of a Polish interpreter.

¶ 36 With respect to plaintiff's claim that defendants were negligent in failing to file a products liability action, defendants noted that plaintiff had no expert witness to testify as to the likelihood that any products liability claim would have prevailed. By contrast, defendants had presented Plewa's testimony, which established that the machinery that had injured plaintiff was purchased second-hand and was not unreasonably dangerous.

¶ 37 Defendants also noted that the scope of their representation was limited to pursuing the workers' compensation claim, not a products liability claim. Specifically, defendants' engagement letter informed plaintiff that defendants only would pursue his workers' compensation claim, that he could have other causes of action, and that he should consult another lawyer about those causes of action.

¶ 38 With respect to plaintiff's claim that defendants were negligent in pursuing his workers' compensation claim, defendants argued that plaintiff had failed to disclose any witness who would testify as to the applicable standard of care. Defendants noted that they had three witnesses who testified that defendants complied with the standard of care, while plaintiff had none. Defendants also noted that plaintiff had successor counsel, Takash, who could have, and did, prosecute plaintiff's workers' compensation claim. Consequently, plaintiff could not

establish any causal connection between any alleged negligence by the defendants and any damage he suffered.

¶ 39 In response, plaintiff argued that he had witnesses "but they were never examined." He claimed he was not receiving medical treatment because he did not have a social security number. He also claimed that he had not received "a cent" from his workers' compensation case. He claimed that "[s]omebody took" the $225,000 settlement he had been offered. Finally, he claimed that Takash had forged documents and "authorized himself to cash my checks and everything else since the day of the accident."

¶ 40 After hearing argument from the parties on defendants' joint motion to dismiss and for summary judgment, the court granted defendants' motion for summary judgment based upon the absence of any expert testimony. The court did not rule on defendants' motion to dismiss.

¶ 41 Thereafter, the court entered a written order, granting defendants' motion for summary judgment "for the reasons stated on the record," and dismissing plaintiff's cause of action "with prejudice in its entirety." Plaintiff filed a timely notice of appeal from that order on February 21, 2018.

¶ 42 In this court, plaintiff contends that the trial court erred by "not allowing the trial with jury." He asserts that the trial judge "did not analyze the documents/records, and didn't familiarize herself with the case." He requests that this court reverse the trial court's judgment, and find defendants "guilty of legal malpractice (Count 1); *** guilty of legal malpractice worker's comp (Count 2); [and] *** guilty of common law fraud (Count 3)." He "seeks compensation of $15,000,000 (fifteen million dollars)" as well as "the money that was stolen from Worker's Comp–about $900,000 plus interest."

¶ 43 As an initial matter, defendants ask this court to strike plaintiff's appellant's brief and dismiss his appeal for his failure to comply with Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016). Defendants point out that plaintiff's brief is "a list of conclusory, unsubstantiated allegations of misconduct" and that his brief "contains no statement of facts, no clearly defined arguments, no citations to the record, and no citation or discussion of any applicable statutes or case law."

¶ 44 In plaintiff's reply brief, he asks this court to recognize that he is representing himself *pro se*, and that he "is not an expert in common law rules, he is only factory machining worker, and he cannot speak, write and read in English." Plaintiff further contends, without citing authority, that the "Illinois Supreme Court system allows plaintiff to file Appellant's Reply Brief, which can be also considered as [a] corrected brief."

¶ 45 We agree with defendants that plaintiff failed to comply with the mandatory procedures for the preparation of appellate briefs in violation of Rule 341. Ill. S. Ct. R. 341 (eff. July 1, 2008). Rule 341(h) governs the contents of an appellant's opening brief and its provisions are not mere suggestions, but requirements. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. The purpose of the rules governing the contents of briefs is to require the parties before the appellate court to present orderly and clear arguments so that this court can properly identify and dispose of the issues raised. *Id.* Compliance with Rule 341 is mandatory, and this court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77.

¶ 46 Illinois Supreme Court Rule 341(h)(6) requires that an appellant's brief include a "Statement of Facts, which 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." Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Defendant's brief does not contain any section labeled as a statement of facts. Instead, he includes sections labeled "complaint at law" and "brief," which appear to set out plaintiff's purported timeline of events and allegations of wrongdoing by defendants. However, there is no citation to the record on appeal in these sections, or indeed, anywhere in plaintiff's appellant brief. Moreover, plaintiff's recitation of the purported "facts" in these sections is mainly comprised of various conclusory and argumentative statements, including that Mr. Wolfe "authorized himself to represent" plaintiff, and that it "is a lie that [plaintiff] authorized [defendants] to represent him in anything." Plaintiff further asserts that during his visits to Mr. Wolfe's office, Mr. Wolfe "treat[ed] [plaintiff] as a criminal," and "took advantage of [plaintiff], his condition and his suffering." He claims all documents defendants have with his signature "are forged," and that "Chris Plewa is [an] unreliable witness with [a] criminal record."

¶ 47 Illinois Supreme Court Rule 341(h)(7) requires that an appellant's brief contain "[a]rgument, 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. * * * Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). As stated above, defendant's brief does not contain a single reference to the record on appeal. We have repeatedly explained the importance of this rule, noting that our review of a case starts with the presumption that the circuit court's ruling was in conformity with the law and the facts, and that the appellant bears the burden of overcoming this presumption. See *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15.

¶ 48 Plaintiff's brief also does not contain a single citation to pertinent legal authority to support his arguments on appeal. See *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010);

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."). 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). "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).

¶ 49 In addition to the above deficiencies, plaintiff's brief also does not contain a "Points and Authorities" section, a statement of the issues, a statement of jurisdiction, or an appendix, as required by Rule 341. Ill. S. Ct. R. 341(h)(1); (3); (4); (8) (eff. Jan. 1, 2016).

¶ 50 We note that it is not the duty of the appellate court to search the record to find reasons to reverse the circuit court's judgment. *Calloway v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 112746, ¶ 115. Nor is it the role of this court to comb the record to uncover possible errors, or to develop arguments on a party's behalf. *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, ¶ 30.

¶ 51 While we acknowledge plaintiff's *pro se* status, a party's status as a *pro se* litigant does not relieve him of his obligation to comply with the appellate practice rules. *Holzrichter*, 2013 IL App (1st) 110287, ¶ 78; *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010). "[*P*]*ro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

¶ 52 Though we would be well within our authority to strike plaintiff's brief or dismiss his appeal, we will do our best to address the issues on the merits, despite the substantial foregoing deficiencies. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004) (reviewing court has choice to review merits, even in light of multiple Rule 341 mistakes).

¶ 53 In this appeal, plaintiff contends that the trial court erred by "not allowing the trial with [a] jury." Presumably, plaintiff takes issue with the trial court's granting of defendants' motion for summary judgment.

¶ 54 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2–1005(c) (West 2010). Summary judgment is a drastic measure and should only be granted when the moving party's right to judgment is "clear and free from doubt." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). "Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied." *Id*. However, "summary judgment requires the responding party to come forward with the evidence that it has—it is the put up or shut up moment in a lawsuit." (citations omitted) *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 14.

¶ 55 While the movant always has the burden of persuasion on a motion for summary judgment, the burden of production can shift to the nonmovant. *Helfers-Beitz v. Degelman*, 406 Ill. App. 3d 264, 267 (2010). "A defendant who moves for summary judgment may meet its initial burden of production in at least two ways: (1) by affirmatively disproving the plaintiff's case by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law ***, or (2) by establishing that the nonmovant lacks sufficient evidence to prove an

essential element of the cause of action." (citations omitted) *Id*. In either instance, once the defendant-movant has met its initial burden of production, the burden shifts to the nonmovant, and at this point, the nonmovant cannot rest on his pleadings to raise genuine issues of material fact. *Id*. at 267-68. While the nonmovant need not prove his case at this stage, he must produce facts that would arguably entitle him to a favorable judgment. *Id*. at 268. Mere allegations cannot prevail over the uncontradicted facts set forth in affidavits submitted by the movant. *Getman v. Indiana Harbor Belt Railroad Co.*, 172 Ill. App. 3d 297, 300 (1988).

¶ 56 We review a circuit court's entry of summary judgment *de novo*. *Outboard Marine Corp.*, 154 Ill. 2d at 102. When *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43. A trial court's grant of summary judgment may be affirmed on any basis supported by the record. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004).

¶ 57 As noted above, plaintiff's amended complaint against defendants alleged three counts. The first two counts of plaintiff's complaint alleged that defendants committed legal malpractice: Count I specifically alleged that defendants failed to pursue a negligence or products liability claim arising out of his injuries, thus allowing the statute of limitations to expire on those claims, and Count II alleged that defendants failed to adequately pursue his workers' compensation claim. Count III of plaintiff's amended complaint alleged that defendants committed fraud. We will analyze each count in turn.

¶ 58 To succeed in a claim for legal malpractice, a plaintiff must plead and prove the following elements: (1) the defendant attorney owed the client a duty of due care arising from the attorney-client relationship, (2) the defendant breached that duty, and (3) as a proximate result,

the client suffered injury. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 225-26 (2006).

¶ 59 Defendants first contend that they were entitled to summary judgment on plaintiff's legal malpractice claims because plaintiff failed to establish the standard of care through expert testimony. We agree.

¶ 60 Generally, a plaintiff must establish the standard of care against which the defendant-attorney's conduct must be measured through expert testimony, and the failure to present expert testimony is typically fatal to the plaintiff's cause of action. *Barth v. Reagan*, 139 Ill. 2d 399, 407 (1990). In rare cases, judgment may be entered for a plaintiff as a matter of law without expert testimony regarding the standard of care—cases in which "the common knowledge or experience of lay persons is extensive enough to recognize or infer negligence from the facts, or where an attorney's negligence is so grossly apparent that a lay person would have no difficulty in appraising it." *Id*. at 407-08. We have found the common knowledge exception to apply in cases where, for example, the attorney fails to comply with the statute of limitations (*House v. Maddox*, 46 Ill. App. 3d 68, 73 (1977)) or where the attorney fails to take any action whatsoever in regard to the matters entrusted to him by a client (*Sorenson v. Fio Rito*, 90 Ill. App. 3d 368, 374 (1980)).

¶ 61 In this case, it is uncontroverted that plaintiff did not present expert testimony regarding the standard of care. Moreover, in his appellant's brief, plaintiff did not contend that his allegations of malpractice fell within the "common knowledge exception"—it was only in plaintiff's reply brief that he contended that the exception applied. Accordingly, any such argument is waived. See Ill. Sup. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Points not argued [in the appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on

petition for rehearing."); see also *People v. English*, 2011 IL App (3d) 100764, ¶ 22 (quoting *Holliday v. Shepherd*, 269 Ill. 429, 436 (1915)) ("Almost a century ago, our supreme court noted, 'Under the rules of this court and its long[-]settled practice, questions not raised * * * in the original brief cannot be raised in the reply brief. A contrary practice would permit [movants] to argue questions in their reply briefs as to which counsel for [their opponents] would have no opportunity to reply. Th[ese] question[s] therefore need not be considered.' ").

¶ 62 Nonetheless, even if we were to consider this argument, we do not find plaintiff's allegations of malpractice—specifically that defendants failed to pursue certain other claims arising out of his injuries, and that defendants failed to adequately pursue his workers' compensation claim—to rise to the level of such obvious negligence that no expert testimony is required.

¶ 63 On this issue, we find this case analogous to *Schmidt v. Hinshaw, Culbertson, Moelmann, Hoban & Fuller*, 75 Ill. App. 3d 516 (1979). In *Schmidt*, the plaintiff brought an action against the law firm defendant for legal malpractice related to the sale of the plaintiff's business "in negligently drafting the repurchase and guarantee agreements, in advising settlement rather than filing or advising a lawsuit, and in representing conflicting interests." *Id*. at 521. The defendant law firm moved for summary judgment on the ground that the plaintiff's cause of action required expert testimony as to the applicable standard of care, and the plaintiff had not presented any such expert testimony. The court noted that the motion was also supported by the affidavit of an attorney with vast experience in the sales of corporations, who averred that the record did not disclose any negligence on the part of the defendant law firm, and that the defendant law firm's conduct "met the standard of care customarily exercised by attorneys practicing corporate and tax law in the area." *Id*. The court further noted that the plaintiff's response "did not contain

opposing affidavits from an expert or anyone else" and instead, the plaintiff chose to stand on the pleadings and depositions on file. *Id*.

¶ 64 The trial court granted summary judgment, and the appellate court affirmed. In rejecting the plaintiff's attempt to bring his case within the "common knowledge exception" to the general rule that expert testimony is required, the appellate court stated that the plaintiff's failure to obtain an expert witness supported the entry of summary judgment in the defendant law firm's favor. "The common sense of laymen could hardly be relied upon to provide the requisite standard of care for the drafting of the relatively complex, multidocument transaction involved in this case." *Id*. at 523.

¶ 65 The court also relied on the fact that the defendant law firm had supplied an expert opinion establishing that it met the standard of care, finding that summary judgment was "particularly appropriate where, as here, the defendant's motion is supported by experts' affidavits or depositions which do establish a standard of care and which state that the defendant's conduct has met that standard. Plaintiff had the opportunity to present opposing affidavits or other countervailing material in an attempt to create an issue of fact, yet he failed to do so." *Id*. at 523-24.

¶ 66 Like in *Schmidt*, plaintiff here alleged legal malpractice against defendants, but presented no expert testimony regarding the applicable standard of care. Also like in *Schmidt*, defendants here provided their own expert opinion establishing both the standard of care, and that they met that standard. Plaintiff "had the opportunity to present opposing affidavits or other countervailing material in an attempt to create an issue of fact, yet he failed to do so." *Id*. Accordingly, summary judgment was appropriate in these circumstances.

¶ 67 Defendants further contend that summary judgment was appropriate on plaintiff's claim of legal malpractice regarding their handling of his workers' compensation case, since plaintiff cannot establish that any alleged malpractice caused any damages where plaintiff's successor counsel secured a favorable settlement for plaintiff.

¶ 68 As stated above, to succeed in a claim for legal malpractice, a plaintiff must plead and prove the following elements: (1) the defendant attorney owed the client a duty of due care arising from the attorney-client relationship, (2) the defendant breached that duty, and (3) as a proximate result, the client suffered injury. *Tri-G, Inc.*, 222 Ill. 2d at 225-26.

¶ 69 This court has generally found that a plaintiff cannot show that an attorney's breach proximately caused damages to a plaintiff, where a successor counsel was able to successfully negotiate a reasonable settlement of the plaintiff's claim. See *Webb v. Damisch*, 362 Ill. App. 3d 1032, 1042 (2005) (the plaintiffs could not "establish that they were damaged" by the defendant attorneys where plaintiffs were able to pursue, and settle, their claim for a "fair and reasonable" amount). However, settlement by successor counsel does not necessarily bar a malpractice action against prior counsel. *Id*., citing *McCarthy v. Pederson & Houpt*, 250 Ill. App. 3d 166, 172 (1993). An attorney malpractice action should be allowed where the plaintiff can show that he settled for a lesser amount than he could reasonably expect without the malpractice. *Id*., citing *Brooks v. Brennan*, 255 Ill. App. 3d 260, 270 (1994).

¶ 70 Plaintiff here cannot establish that he was damaged by defendants, where the evidence showed that plaintiff's successor counsel, Takash, was able to negotiate a settlement of $225,000 in his workers' compensation claim. Moreover, Takash testified that he was able to negotiate that sum because of the work defendants had previously done on the case, and that the amount was a reasonable settlement in light of plaintiff's injuries. Counsel for Orient also confirmed that

it was defendants' work on the case that ultimately led to Orient's settlement offer, which counsel characterized as "more than fair and reasonable." Additionally, the record shows that it was plaintiff's choice to reject the settlement and proceed to a hearing, at which he received a judgment substantially less than the settlement offer. Plaintiff failed to present any evidence to show that, without the alleged malpractice of defendants, he would have received a more substantial settlement offer.

¶ 71 Defendants also contend that they were entitled to summary judgment on plaintiff's legal malpractice claim regarding their failure to bring actions for products liability or medical malpractice, because plaintiff cannot establish that such claims would have been successful.

¶ 72 In bringing a suit for legal malpractice, the plaintiff client is often called upon to litigate a case within a case—to establish that the plaintiff client would have been compensated for an injury caused by a third party if the negligence of the plaintiff's attorney would not have occurred. See *Tri-G, Inc.*, 222 Ill. 2d at 226. When the alleged negligence of the plaintiff's attorney involves litigation, no actionable claim for legal malpractice exists unless the alleged negligence resulted in the loss of an underlying cause of action. *Id*. More specifically as to the facts of the instant case, if an underlying action never reached trial because of the alleged negligence of the plaintiff's attorney, the plaintiff must prove that, but for his attorney's negligence, he would have been successful in the underlying action. *Id*.

¶ 73 In the present case, the pleadings and supporting documents presented in the summary judgment proceeding established that any alleged legal malpractice could not have harmed plaintiff's ability to recover in actions for products liability or medical malpractice because plaintiff had no chance of success on the merits of such actions.

¶ 74 The elements of a claim of strict products liability are: (1) a condition of the product as a result of the manufacturing or design; (2) that made the product unreasonably dangerous; (3) and that existed at the time the product left the defendant's control; and (4) an injury to the plaintiff; (5) that was proximately caused by the condition. *Mikolajczyk v. Ford Motor Co.*, 231 Ill. 2d 516, 543 (2008). The plaintiff bears the burden of proving each element. *Id.*

¶ 75 Plaintiff presented no evidence to prove that the lathe was defective. Plaintiff claimed that the lathe did not have "shields" or a "left emergency [brake] pedal," and that he informed his employer that the "right emergency [brake] pedal broke." However, even assuming this were true, plaintiff did not present any evidence that the missing shields and brake pedals were a result of the lathe's manufacturing or design, or that they were missing when they left the control of the manufacturer.

¶ 76 To the contrary, defendants presented evidence that plaintiff's injuries were not caused by a defect in the lathe. Paul Fina testified that plaintiff told him his injury was caused by his coworker's faulty weld on the bushing. *See* Ill. R. Evid. 801(d)(2) (eff. Oct. 15, 2015) (statement by party opponent is not hearsay). Fina said that the coworker's negligence was "death" to any common-law claims plaintiff may have had because the Workers' Compensation Act provided the exclusive remedy for co-worker negligence. See *Peng v. Nardi*, 2017 IL App (1st) 170155, ¶ 25 ("[R]egardless of [the plaintiff's] preference for civil litigation against her allegedly negligent coworker, the workers' compensation system is the exclusive source of compensation from her employer and co-employee for an injury that occurred during the course of her employment."). Andrezj and Chris Plewa also supported the notion that the lathe was not defective. They testified that the lathe was not defective and that, even after plaintiff's accident, Orient continued to use it "every single day" without incident.

¶ 77 Moreover, in connection with his first legal malpractice complaint, plaintiff disclosed an expert named John Lauhoff who would testify regarding the safety problems at plaintiff's workplace. Lauhoff's expert report stated that "the foot brake, a safety device, was ordered removed by the employer/owner and [plaintiff] was directed to operate the machine without the benefit of the foot brake." Lauhoff added that Orient's removal of the foot brake was "intentional" and violated several Occupational Safety and Health Administration (OSHA) standards applicable to employers and prohibiting the "willful[ ] disabl[ing]" of a safety device.

¶ 78 This evidence from plaintiff's expert showed that that it was plaintiff's employer who caused the defect in the lathe, not the manufacturer, and that the employer intentionally removed the safety devices from the product in violation of the law. Accordingly, plaintiff would be unable to prove that the dangerous condition was "a result of the manufacturing or design" or that it "existed at the time the product left the defendant's control" to succeed in a claim for products liability. *Mikolajczyk*, 231 Ill. 2d at 543.

¶ 79 Plaintiff also would not be able to show that he would have been successful in an action for medical malpractice. To prove a medical malpractice case within a case, the plaintiff must present "a medical expert to testify as to evidence regarding the medical defendants breaching their duty of care." *Prather*, 261 Ill. App. 3d at 890. Absent such evidence, the plaintiff cannot prove his case within a case, and summary judgment is appropriate. *Id.*

¶ 80 The record is devoid of any expert testimony establishing that any of plaintiff's doctors breached the applicable standard of care in treating him. In his response to defendants' motion for summary judgment, plaintiff failed to identify any way in which his doctors mistreated him. He simply said that his injuries were very painful and that he could not file a claim for medical malpractice because he had been admitted to the hospital under a "fake social security number."

Absent any expert opinion that plaintiff's doctors breached the applicable standard of care, plaintiff cannot prove that a medical malpractice claim would have been successful.

¶ 81 The final count in plaintiff's complaint against defendants alleged that defendants committed common law fraud by forging a document granting defendants power of attorney over plaintiff, using an incorrect social security number for plaintiff, forging evidence that plaintiff had met with other attorneys about his potential negligence and products liability claims, and making false statements about a loan plaintiff obtained.

¶ 82 To state a cause of action for common-law fraud, a plaintiff must plead (1) a false statement of material fact; (2) knowledge or belief by the maker that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance. *Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 17 (1995).

¶ 83 Fraud claims must be pleaded with sufficient specificity, particularity, and certainty to apprise the opposing party of what he is called upon to answer. *Illinois Non-Profit Risk Management Ass'n v. Human Service Center of Southern Metro-East*, 378 Ill. App. 3d 713, 722 (2008). Therefore, a plaintiff must at least plead with sufficient particularity facts which establish the elements of fraud, including what misrepresentations were made, when they were made, who made the misrepresentations, and to whom they were made. *Id*.

¶ 84 Generally, the damages necessary to support a cause of action for fraud must be pecuniary in nature. See *Michigan Beach Housing Cooperative*, 297 Ill. App. 3d at 323 ("fraud primarily addresses the invasion of economic interests"); *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 761-62 (1994). Although some cases have extended this rule to include those things "which the law recognizes as of pecuniary value," a plaintiff's damages to support a claim of

fraud must nevertheless be "material," and may not consist solely of emotional harm. *Id*. at 762. "In an action for fraud, damages may not be predicated on mere speculation and must be a proximate consequence of the fraud." *Leahy Realty Corp. v. American Snack Foods Corp.*, 253 Ill. App. 3d 233, 254 (1993).

¶ 85 In Count III of plaintiff's complaint, plaintiff contended that defendants forged a document giving themselves power of attorney and used the document to sign other documents on his behalf and cash his checks. However, in a February 10, 2010, affidavit, plaintiff admitted that he signed the power of attorney, but contended that he was not provided with an interpreter, and that he believed that he was engaging defendants to represent him in his workers' compensation claim, as well as other claims. Specifically, plaintiff averred that:

> "On July 23, 2006, at the time I signed the 'Power of Attorney' document attached to Defendants' Motion to Dismiss, Defendants did not provide me with a Polish interpreter. *** I understood the 'Power of Attorney' document as engaging Defendants to represent me under the claims available to me under the Illinois Workers' Compensation Act as well as any third party personal injury claims."

Although plaintiff contends that defendants "*did not provide* [*him*] *with* an interpreter" (emphasis added), he did not state that he did not have the benefit of an interpreter at that time. In fact, the deposition testimony of Sebastian Gad showed that Gad accompanied plaintiff on July 23, 2006, to act as his interpreter.

¶ 86 In plaintiff's reply brief, he continues to maintain that he "never signed" the power of attorney, and that the signature on that document was forged by defendants. He provides no explanation, however, for his affidavit in which he admitted that he did sign that document.

¶ 87 Plaintiff's claim also fails because he did not present any evidence showing that defendants used the power of attorney to cause him any damages. Plaintiff's complaint alleged that defendants used the purportedly forged power of attorney to sign other unspecified documents and cash unspecified checks. As stated above, however, fraud claims must be pleaded with sufficient specificity, particularity, and certainty to apprise the opposing party of what he is called upon to answer. *Illinois Non-Profit Risk Management Ass'n*, 378 Ill. App. 3d at 722. Plaintiff presented no evidence to demonstrate that defendants used the power of attorney to his detriment or that he was deprived of any pecuniary interest because of the power of attorney. Thus, plaintiff failed to create a genuine issue of material fact that defendants proximately caused him any damages.

¶ 88 Plaintiff also contended that defendants committed common law fraud by using a "false social security number" in "all [p]laintiff's documents like hospital accounts, doctors' visits, etc." In plaintiff's response to defendants' motion for summary judgment, plaintiff stated that the "compensation for the accident was paid for" under the "fake social security number." He also claimed that the fake social security number prevented him from filing a lawsuit for medical malpractice because he "did not exist anywhere under his correct social security number for 3 years." Plaintiff, however, cited no authority to support the contention that an accurate social security number was necessary to file a medical malpractice lawsuit.

¶ 89 Plaintiff's mere allegations are insufficient to create a genuine issue of material fact to preclude summary judgment. See *Opalka v. Yellen*, 31 Ill. App. 3d 359, 362 (1975) (summary judgment was proper where the plaintiff "supported his motion [for summary judgment] with numerous affidavits and other pertinent papers" and the defendant "rested on mere allegations and denials in his pleadings").

¶ 90 Plaintiff also asserted that defendants committed fraud by "creating evidence" that he met with other attorneys "to evaluate his potential third party claims." Specifically, he contends that defendants and Fina falsified evidence that plaintiff came to Fina's office and discussed his potential third party claims, and that Fina advised plaintiff that his claims were not viable. Plaintiff asserted that he "never met," or discussed his claims, with Fina. Plaintiff contended that these actions were undertaken to "defeat [p]laintiff's claims" and to induce plaintiff to "give up his legal malpractice claim against Defendants."

¶ 91 Even assuming that plaintiff never met with Fina, despite Fina's deposition testimony to the contrary, we have already determined that plaintiff did not have a viable claim for products liability or medical malpractice. Accordingly, there can be no genuine issue of material fact that defendants' alleged false statements proximately caused him any damages.

¶ 92 Finally, plaintiff stated that defendants made arrangements to secure a loan on plaintiff's behalf, "without informing the Plaintiff about the true terms of the loan and without obtaining necessary authorization from Plaintiff to enter into this arrangement and or to disburse the proceeds of the loan." However, plaintiff does not specifically contend what misrepresentations were made, or what the "true terms of the loan" were, upon which he reasonably relied. Accordingly, we conclude that summary judgment was properly granted.

¶ 93 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 94 Affirmed.