

2019 IL App (1st) 180803-U

No. 1-18-0803

Order filed February 15, 2019

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ARIANNE KELLY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 17 M1 40584
)	
WILLIAM WALLACE,)	Honorable
)	Leon Wool,
Defendant-Appellee.)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The plaintiff is not entitled to an automatic award of her court costs pursuant to section 5-108 of the Code of Civil Procedure (735 ILCS 5/5-108 (West 2016)) because a judgment was not entered in her favor against the defendant; rather, the parties settled the case and the circuit court dismissed the plaintiff's complaint.

¶ 2 Plaintiff Arianne Kelly appeals *pro se* from the circuit court's order dismissing her complaint against defendant William Wallace. Kelly's complaint sought damages for veterinary bills that she incurred following a 2017 incident between the parties' dogs. The circuit court

dismissed the complaint with prejudice on April 18, 2018, after the parties agreed to a monetary settlement to be paid by Wallace. On appeal, Kelly contends the trial court should have awarded her court costs from this action pursuant to section 5-108 of the Code of Civil Procedure (the Code) (735 ILCS 5/5-108 (West 2016)). We affirm.¹

¶ 3 On December 12, 2017, Kelly filed a *pro se* complaint in the circuit court against Wallace asserting her dog was injured by Wallace's dog at a dog park in Chicago. In that complaint, Kelly sought \$990 in compensation for the veterinary expenses she incurred in treating her dog "plus other related expenses." On February 27, 2018, Kelly filed another *pro se* complaint substantially similar to her initial complaint. Wallace was served with notice of the action and filed a *pro se* appearance in the circuit court on April 3, 2018.

¶ 4 On April 18, 2018, the circuit court entered an order dismissing the case, by agreement of the parties, with prejudice. The order indicates both Kelly and Wallace were present. The record on appeal does not contain a report of the circuit court proceedings.

¶ 5 That same day, Kelly filed a notice of appeal from the circuit court's order. Under the heading of "Relief sought from Reviewing Court," Kelly wrote: "Recovering court cost of \$579.99. Judge Wool ordered defendant to pay medical bills of original case (which the defendant did not pay) but did not order court costs."

¶ 6 On appeal, Kelly contends the circuit court should have awarded her court costs upon the acceptance of Wallace's settlement offer and the dismissal of her complaint. Kelly notes that in her complaint, she sought court costs along with her monetary damages.

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 7 Illinois generally follows the “American rule,” under which each party to a lawsuit must normally bear its own expenses of litigation, regardless of who has won. *State ex rel. Schad, Diamond & Shedden, P.C. v. My Pillow, Inc.*, 2018 IL 122487 (2018). Kelly relies on section 5-108 of the Code, which states:

“If any person sues in any court of this state in any action for damages personal to the plaintiff, and recovers in such action, then judgment shall be entered in favor of the plaintiff to recover costs against the defendant, to be taxed, and the same shall be recovered and enforced as other judgments for the payment of money, except in the cases hereinafter provided.” 735 ILCS 5/5-108 (West 2016).

¶ 8 This court has previously held that, pursuant to section 5-108, an award of the plaintiff’s costs is allowed only if a judgment was entered in the plaintiff’s favor or if the parties negotiated for the payment of those costs. *Gebelein v. Blumfield*, 231 Ill. App. 3d 1011, 1013-14 (1992) (finding section 5-108 pertains to a plaintiff’s recovery through a formal judgment of the court, but not where a settlement of the case has been reached by the parties); see also *Holtz v. Waggoner*, 377 Ill. App 3d 598, 600-01 (2007) (trial court exceeded its authority in awarding filing costs to inmate in a *mandamus* action where inmate’s *mandamus* complaint was dismissed and no judgment was entered in the plaintiff’s favor).

¶ 9 Here, the parties entered into a settlement and Kelly does not contend she and Wallace agreed that their settlement should include payment of Kelly’s court costs. Moreover, the record on appeal does not include a report of proceedings in the trial court or an appropriate substitute such as: a bystander’s report; an agreed statement of facts pursuant to Supreme Court Rule 323 (eff. July 1, 2017); or a written order explaining the court’s ruling. See *Foutch v. O’Bryant*,

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99 Ill. 2d 389, 391-92 (1984) (appellant must present a sufficiently complete record of proceedings at trial to support a claim of error). Therefore, there is no basis to award costs to Kelly.

¶ 10 Accordingly, the judgment of the circuit court is affirmed.

¶ 11 Affirmed.