

2019 IL App (1st) 181032-U

No. 1-18-1032

Order filed May 16, 2019

Fourth 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

ANTHONY STELMOKAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 14 M1 103727
)	
ALGIRDAS KUPCIUNAS,)	Honorable
)	Leon Wool,
Defendant-Appellee.)	Judge, presiding.

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

ORDER

¶ 1 *Held:* Circuit court's judgment dismissing plaintiff's case with prejudice and denying plaintiff's motion to reconsider that ruling affirmed where the record is insufficient to review for any possible error, and we presume the court ruled in conformity with the law.

¶ 2 In this case, filed as a breach of contract action based upon an unpaid check, plaintiff Anthony Stelmokas appeals *pro se* from an order of the circuit court of Cook County denying his motion to reconsider the court's prior order dismissing his case with prejudice. On appeal,

plaintiff contends that the circuit court erred when it dismissed his case because the court misinterpreted the applicable statute of limitations for enforcing the check. Plaintiff also argues that defendant, Algirdas Kupciunas, failed to provide any evidence in support of his argument that the underlying debt was discharged in bankruptcy. We affirm.

¶ 3 Plaintiff has represented himself *pro se* throughout all of the proceedings in this case. Documents in the record show that on January 24, 2014, plaintiff filed a complaint for breach of contract against defendant. Plaintiff alleged that defendant issued him a check payable for \$1080, and the “check had not been paid.” Plaintiff asserted that as holder of the negotiated instrument, he was entitled to enforce it against defendant pursuant to the Uniform Commercial Code—Negotiable Instruments (Code) (810 ILCS 5/3-101 *et seq.* (West 2012)). Plaintiff further asserted that he was seeking interest and costs pursuant to section 3-806 of the Code (810 ILCS 5/3-806 (West 2012)). Plaintiff also requested treble damages of \$1500 for “civil liability for deceptive practices” pursuant to section 17-1(a) of the Criminal Code of 2012 (720 ILCS 5/17-1(a) (West 2012)). Plaintiff attached to his complaint a copy of a check payable to him for \$1080 drawn on a checking account in defendant’s name, which appears to be signed by defendant. The check is dated April 4, 2007.

¶ 4 Defendant entered his appearance in this case through an attorney on March 7, 2014. The record shows no activity in this case for more than 3½ years. The record indicates that on December 12, 2017, the parties were notified by the circuit court that the case was set on the court’s status call for February 2, 2018. The notifications stated that the case may be dismissed without prejudice due to lack of activity.

¶ 5 On February 2, 2018, the circuit court entered an order dismissing the case with prejudice. The order is a pre-printed form that provides various possible case dispositions with lines that can be checked. The order indicates that the cause was “heard on Special Status.” The line checked on the order states “IT IS HEREBY ORDERED this case dismissed X with prejudice.” There is no indication as to why the court dismissed the case. The record does not contain a report of proceedings.

¶ 6 On March 6, 2018, plaintiff filed a timely motion to reconsider and vacate the court’s order dismissing the case pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2016)).¹ Plaintiff stated in his motion that on February 2, he and defense counsel appeared in court. The circuit court allowed defense counsel to argue that enforcement of the subject check was barred by the statute of limitations, and that defendant’s debt to plaintiff was previously discharged in a bankruptcy action. Plaintiff stated in his motion that defense counsel argued that under section 3-118(c) of the Code (810 ILCS 5/3-118 (West 2012)), plaintiff was required to file his action within three years of April 4, 2007, the date of the check. Instead, plaintiff filed his complaint in 2014, nearly seven years after the date of the check, and thus, his action was time-barred. Plaintiff stated that he argued in response that the statute further provided that an action to enforce a check must be commenced within 10 years after the date of the draft, and therefore, his action was not time-barred. Plaintiff also stated in his motion that on February 2, defense counsel failed to provide a copy of the bankruptcy discharge showing that defendant’s debt to plaintiff had been discharged. Plaintiff asserted that defense counsel declined

¹ In 2018, 30 days from February 2 was March 4, a Sunday, and Monday, March 5 was a court holiday in honor of Pulaski Day. Consequently, plaintiff’s motion to reconsider filed on Tuesday, March 6, was timely filed within 30 days of the circuit court’s final judgment. 5 ILCS 70/1.11 (West 2016).

to show plaintiff the bankruptcy documents, and instead, counsel suggested that plaintiff reopen the bankruptcy case in federal court.

¶ 7 Plaintiff further argued in his motion to reconsider that he was surprised and unprepared when the status date turned into a hearing, and therefore, he was prejudiced. Plaintiff argued that defense counsel misled the court into believing that the three-year statute of limitations applied. Plaintiff argued that the check had not been endorsed, presented to the bank, or dishonored, and thus, the 10-year statute of limitations applied. Plaintiff further argued that defense counsel could have filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)), but did not do so.

¶ 8 Plaintiff's motion further stated that the circuit court sat silently listening to the arguments, then summarily granted defense counsel's motion to dismiss with prejudice, even though no motion had been presented. Plaintiff asserted that the court's judgment was entered without any evidence, and without providing any reasons therefore. Plaintiff argued that due to the conditions of "surprise" and lack of evidence, the circuit court lacked subject matter jurisdiction because the case involved application of the Uniform Commercial Code and bankruptcy law.

¶ 9 Defendant, through counsel, filed a written response to plaintiff's motion to reconsider. Defendant argued that section 3-118(c) of the Code provides that an action to enforce payment for an unaccepted draft must be commenced within 3 years after the draft is dishonored, or 10 years after the date of the draft, whichever period expires first. Defendant argued that plaintiff was attempting to get around the statute of limitations by reframing his complaint as one for breach of contract, although a check is not a contract. Defendant asserted that plaintiff's claims

that the check had not been endorsed, presented to the bank, or dishonored, were not credible where plaintiff had requested damages for a dishonored check. Defendant further argued that on February 2, counsel tendered to the circuit court a file-stamped notice of bankruptcy showing that defendant had filed for bankruptcy in October 2007, and a bankruptcy discharge order dated January 22, 2008. Defendant stated that it was discussed in court on February 2 that a pre-bankruptcy debt is discharged, whether or not it is listed in the bankruptcy schedules, unless it falls under an exception. Defendant asserted that any alleged claim plaintiff had against defendant was discharged in his bankruptcy. Defendant argued that the circuit court properly analyzed the arguments presented on February 2, that plaintiff's motion misstated the law and facts, and that the motion provided nothing new to warrant the court's reconsideration of its judgment dismissing the case.

¶ 10 In a written reply, plaintiff argued that when a check is not presented for payment, the statute of limitations period expires 10 years after the date of the check. Plaintiff asserted that the subject check showed no evidence that it was dishonored. Consequently, plaintiff's complaint filed approximately 7 years from the date of the check was within the 10-year statute of limitations. Plaintiff further argued that he had not been shown any document indicating that the debt defendant owed him had been discharged in bankruptcy. Plaintiff denied that defense counsel tendered a copy of a bankruptcy document to the court on February 2.

¶ 11 On April 18, 2018, the circuit court entered a "Motion Call Order" which indicated that plaintiff and defense counsel were present in court. The order states "Plaintiff's Motion to Reconsider and Vacate Order of February 2nd, 2018 is denied after hearing." The record does not contain a report of proceedings from the hearing.

¶ 12 On appeal, plaintiff contends that the circuit court erred when it dismissed his case because the court misinterpreted the applicable statute of limitations for enforcing the check. Plaintiff maintains that the check was never dishonored, and therefore, the 10-year statute of limitations applies rather than the 3-year limit. Accordingly, plaintiff argues that his complaint filed approximately 7 years after the date of the check was timely filed within the 10-year statute of limitations. Plaintiff also argues that defendant failed to provide any evidence in support of his argument that the underlying debt was discharged in bankruptcy. Plaintiff requests that this court reverse the circuit court's dismissal of his complaint, and remand his case for trial.

¶ 13 Defendant has not filed a responsive appellee's brief. This court, however, has elected to consider this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 14 We find that our review of this appeal is hampered by an incomplete record. An appellant has the burden of presenting a sufficiently complete record of the circuit court proceedings to support any claims of error, and in the absence of such a record, this court will presume that the circuit court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from an incomplete record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 391-92.

¶ 15 Pursuant to Illinois Supreme Court Rule 323 (eff. July 1, 2017), in lieu of a circuit court transcript, an appellant may file a bystander's report (Rule 323(c)) or an agreed statement of facts (Rule 323(d)). Here, the record does not contain a report of the circuit court proceedings, specifically, the February 2 hearing dismissing plaintiff's complaint with prejudice and the April 18 hearing denying his motion to reconsider, in any format.

¶ 16 The record before this court consists of one 41-page volume of common law documents containing plaintiff's complaint, his motion to reconsider, defendant's response to the motion and plaintiff's reply, and the two orders entered by the circuit court. From the court's February 2 order and the parties' filings related to the motion to reconsider, we know that the court held a hearing on February 2 during which it heard arguments from both parties prior to dismissing the case. The court's April 18 order also indicates that it held a hearing after which it denied plaintiff's motion to reconsider. However, without a report of proceedings, this court has no knowledge of what arguments the parties made before the court, or what evidence, if any, was presented. Most importantly, we do not know whether the check was ever presented for payment or whether defendant's discharge in bankruptcy was in evidence. Nor do we know what findings the court made, or the reasoning and rationale that provided the basis for the circuit court's ruling. Under these circumstances, this court must presume that the circuit court acted in conformity with the law and ruled properly after considering the evidence before it. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005); *Foutch*, 99 Ill. 2d at 391-92.

¶ 17 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.