

No. 1-18-2452

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 JUDICIAL DISTRICT

EMAD FOROOHAR,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
SUBURBAN EMERGENCY PHYSICIANS GROUP,)	
S.C., GEORGE J. MILLER III, SHARON C. SMITH, and)	No. 17 CH 12294
JAMES A. RICHARDSON,)	
)	
Defendants)	
)	
(George J. Miller III, Sharon C. Smith, and James A.)	Honorable
Richardson,)	Diane M. Shelley,
Defendants-Appellees).)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appeal is dismissed due to the appellant’s failure to file a brief in compliance with Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017).

¶ 2 Plaintiff-appellant Emad Foroohar, who is *pro se*, appeals from the order of the circuit court of Cook County granting summary judgment in favor of defendants-appellees George J. Miller III, Sharon C. Smith, and James A. Richardson. We dismiss the appeal for plaintiff's serious and extensive violations of the Illinois Supreme Court Rules regarding appellate briefs.

¶ 3 **BACKGROUND**

¶ 4 Although the plaintiff's brief is deficient, the following appears to be undisputed from the record. From 2003 to 2011, plaintiff was a shareholder of Suburban Emergency Physicians Group (SEPG)¹. Miller, Smith, and Richardson (the individual defendants), were also shareholders in SEPG. The three individual defendants also formed a separate entity, Physicians Prompt Care Centers, LLC (PPCC) in February 2003.

¶ 5 In March 2011, SEPG ceased operations. Plaintiff learned that SEPG had a negative net worth of \$53,000. Plaintiff came to believe that SEPG's negative net worth resulted from improper financial transactions by the individual defendants, including payments from SEPG to PPCC.

¶ 6 In November 2011, plaintiff initiated case no. 11-CH-40898 (the 2011 case) by filing a complaint in the chancery division of the circuit court of Cook County, seeking an accounting from SEPG and the individual defendants.² After several years, in 2016, plaintiff moved to voluntarily dismiss the 2011 case under section 2-1009 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1009 (West 2016).

¹The record reflects that SEPG was named as a defendant in the underlying actions initiated by plaintiff, but there is no indication that SEPG filed an appearance in the circuit court.

²The complaint initiating the 2011 case is not included in the record on appeal.

¶ 7 On August 23, 2016, the trial court overseeing the 2011 case (Hon. Peter Flynn) granted plaintiff's motion for voluntary dismissal. That order specified: "the instant proceeding is dismissed without prejudice *** and with the right to refile within one year pursuant to Code [sections] 2-1009 and 13-217."

¶ 8 Nearly one year later, on August 21, 2017, plaintiff filed a "Motion to Refil[e]" (the motion to refile), but he filed that motion under the same case number as the 2011 case, rather than initiating a new action with a new case number, as he should have done. The motion to refile attached a copy of a purported complaint.³ The individual defendants filed a response, in which they argued that it was too late for plaintiff to seek to reinstate the lawsuit under the original 2011 case number. The individual defendants acknowledged that, under section 13-217 of the Code, plaintiff could commence a new action within one year of the August 23, 2016 voluntary dismissal, or within the remaining period of limitation. However, they argued that plaintiff had not yet commenced a new action because he had not filed a new complaint under a new case number.

¶ 9 On September 5, 2017, the trial court (Judge Flynn) entered an order acknowledging that plaintiff had made a procedural error, but nonetheless granted him leave to refile under a new case number. The trial court recognized that "instead of commencing a new proceeding with a new case number, plaintiff refiled his Complaint in *this* proceeding, with the same case number as the voluntarily-dismissed case." The court noted that this was not correct "as a procedural matter" but remarked that plaintiff's mistake was "understandable." The order found that plaintiff had "in substance" refiled a new action, but that "[t]o comply precisely with the proper

³According to the trial court's subsequent September 5, 2017 order, the complaint attached to the motion to refile was substantially identical to that in the voluntarily-dismissed 2011 case.

procedure, he needs only to renumber that complaint as a new action (and issue summons and obtain service, as for a new action.)” Thus, the trial court’s September 5, 2017 order directed plaintiff to “promptly refile[] the Complaint attached to his [motion to refile] as a new action (with a new filing fee),” obtain a new case number, and serve the summons and complaint.

¶ 10 On September 11, 2017, plaintiff initiated the instant case (the 2017 case) by filing a complaint under a new case number. Like the earlier complaint attached to the motion to refile, this complaint contained a single count seeking an “equitable accounting.”

¶ 11 On February 13, 2018, the individual defendants⁴ filed an answer and several affirmative defenses. Among other defenses, they asserted that the 2017 case was barred by section 13-217 of the Code (735 ILCS 5/13-217 (West 2016)) because it had been “filed more than one year after the voluntary dismissal of a complaint alleging the same cause of action.”

¶ 12 On February 15, 2018, the 2017 case was transferred by the judge to whom it was assigned to the presiding judge of the division in which it was filed. In April 2018, plaintiff filed a response to the affirmative defenses. In June 2018, plaintiff filed an unopposed motion to transfer the case to the law division of the circuit court of Cook County. The case was transferred and assigned to a judge in the law division.

¶ 13 On September 18, 2018, the individual defendants filed a motion for involuntary dismissal, or in the alternative, for summary judgment the (summary judgment motion). Among other arguments, the summary judgment motion contended that section 13-217 of the Code barred the action, as more than one year passed between the August 2016 voluntary dismissal of the 2011 case, and the filing of the complaint that commenced the 2017 case. The individual defendants’ motion acknowledged plaintiff’s prior motion to refile under the 2011 case number,

⁴The record does not indicate whether SEPG filed an answer or appearance in the 2017 action.

and that Judge Flynn’s September 5, 2017 order had directed plaintiff to “promptly refile[] the Complaint *** as a new action.” However, the summary judgment motion argued that the September 5, 2017 order was not binding, as it was entered “over two weeks after the one year statute of limitations [under section 13-217] had expired.” The summary judgment motion otherwise argued that the September 5, 2017 order was a “nullity” because “the circuit court had lost jurisdiction over the 2011 proceeding *** because more than 30 days had elapsed from the entry of a final order dismissing the case.”

¶ 14 On September 26, 2018, plaintiff filed his response to the summary judgment motion. That submission (like the brief in this appeal) contained no citations to legal authorities, but largely consisted of factual allegations about improper financial transactions by the individual defendants.

¶ 15 On October 24, 2018, the trial court (Judge Shelley) entered an order granting summary judgment to the individual defendants. The court agreed that plaintiff’s claim was time-barred under section 13-217 of the Code, because plaintiff failed to file a complaint commencing a new action within one year after the August 2016 voluntary dismissal of the 2011 case. The court acknowledged plaintiff’s motion to refile, but found that it was insufficient to toll the one-year limitation period:

“The defendants are entitled to rely on the certainty that the statute of limitations provides: If a complaint is not filed, then an action is not commenced. Because Plaintiff’s [motion to refile] was a motion that attached a complaint to it, the motion ‘by its very nature’ admitted that the complaint was not filed, and an action was not commenced. It follows, then that the statute of limitations

was not tolled, and Plaintiff's claim was barred as of August 23, 2017 under section 13-217 of the Code of Civil Procedure."

The trial court's October 24, 2018 order thus granted summary judgment to the individual defendants, finding that "[t]his case has not been reinstated."

¶ 16 On November 13, 2018, plaintiff filed a timely notice of appeal using a preprinted form provided by the Clerk of the Circuit Court of Cook County. That notice of appeal did not include any response under the form's heading requesting specification of the "Relief sought from Reviewing Court." On November 17, 2018, plaintiff filed an amended notice of appeal, which stated that he sought review of the "Memorandum Order and Opinion by Judge Shelley on 10/25/2018 Rejection of Memorandum Order by Honorable Judge Flynn on 9/5/2017." Plaintiff's notice of appeal was timely filed, and thus we have jurisdiction.

¶ 17 On April 30, 2019, while this appeal was pending, plaintiff filed a motion in our court on a preprinted form. Under the portion of the form asking him to "State what you want the court to do for you," plaintiff wrote "to review my appeal and suggest opinion." The form includes a section asking the movant to "State the reasons why the court should do what you have asked it to do." In that section, plaintiff wrote: "For lack of my knowledge I was waiting for court opinion and I did not know that I have [to] Write Second Brief. My Brief will be same First Brief that I gave." That motion was taken with the case and will be addressed in this order.

¶ 18 ANALYSIS

¶ 19 Plaintiff's appellate brief, like his submissions in the circuit court, is extremely disjointed, largely incoherent, and fails to make any cogent legal argument. Indeed, it fails to cite to the record or to any legal authorities. The individual defendants' response brief does not

mention the deficiencies of plaintiff's brief but argues on the merits that summary judgment was proper.

¶ 20 However, we are compelled to address the plaintiff's numerous, glaring violations of Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017), which governs the contents of an appellant's brief. "[R]eviewing courts are entitled to have briefs submitted that present an organized and cohesive legal argument in accordance with the Supreme Court Rules. [Citation.]" *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 450 (1983). "The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. [Citation.] A brief that lacks any substantial conformity to the pertinent supreme court rules may justifiably be stricken. [Citation.]" *Hall v. Naper Gold Hospitality LLC*, 2012 IL App 2d 111151, ¶ 7. " 'Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal for noncompliance.' " *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 14 (quoting *Epstein v. Galuska*, 362 Ill. App. 2d 36, 42 (2005)).

¶ 21 Plaintiff's brief makes no effort to follow the organizational requirements of Supreme Court Rule 341(h), which plainly instructs that an "appellant's brief *shall contain* the following parts in the order named," followed by several discrete subparts. (Emphasis added.) Ill. S. Ct. R. 341(h) (eff. Nov. 1, 2017). First, Rule 341(h)(1) requires a "summary statement, entitled 'Points and Authorities,' of the points argued and the authorities cited in the Argument." Ill. S. Ct. R. 341(h)(1) (eff. Nov. 1, 2017). Plaintiff's brief contains nothing resembling a "Points and Authorities" section. Indeed, the brief contains no legal citations whatsoever.

¶ 22 Plaintiff similarly ignores Rule 341(h)(2), which requires an “introductory paragraph” stating the “nature of the action and of the judgment appealed from,” and Rule 341(h)(3), which requires “[a] statement of the issue or issues presented for review.” Ill. S. Ct. R. 341(h)(2),(3) (eff. Nov. 1, 2017).

¶ 23 Plaintiff’s brief contains a section entitled “Introduction,” but it does not present any coherent description of the nature of the case. The “Introduction” begins with statements (riddled with numerous grammatical errors) attempting to explain the history of the 2011 case. That section begins:

“After 6 years that most of these years I did not have a counsel, I was managing my case Pro se, that was very hard for me. I decided to Voluntar[il]y dismiss my case. and Making decision to refile or dismiss completely, prior to one year. I did so. by commencing with another motion. Defendants made motion, that this case should be dismiss[ed]. Honorable Judge Flynn eloquently explained and describe[d] with, support and references, and Overruled their motion. On Sep., 5, 2017 Honorable Judge Flynn issued MEMORANDUM ORDER.”

¶ 24 The “Introduction” later references Judge Shelley’s order granting summary judgment, stating: “Honorable Judge Shelley and Honorable Judge Flynn they have different judgment[s] and both they have several example[s] to support for their opinion.” Plaintiff’s “Introduction” does not articulate any legal issues, but poses confusing questions. For example, plaintiff states:

“I have following concern and question regarding dates between these two motion[s:]

1-My question is time lapse is one year and 13- 23 days or almost 13 month, is this acceptable time for court to accept this motion regarding dismissal?

2-On 2/13/2018 defendant filed RESPON[SES] AND AFFIRMATI[V]E DEFENSES TO MY COMPLAINT, THIS DO[ES] NOT MEAN ACCEPTING COMPLAINT?

Defendants and their counsel *** had twice with Honorable Judge Flynn and once with Honorable Judge Gamrath to file motion or may be to file appeal but they did not do, why?

But they file motion, prior to even having first session in court with Honorable Judge Shell[e]y?"

Clearly, such a presentation does not aid our court in identifying the issues and resolving the dispute. Rather, it hinders our attempt to review the trial court's judgment.

¶ 25 The remainder of plaintiff's brief is similarly deficient. It includes a section entitled "Factual and procedural background," that essentially recites plaintiff's allegations of improper payments by the individual defendants, including various transfers to "secret accounts," and is largely incoherent. Most importantly, plaintiff's brief ignores the fundamental requirement of "Argument, 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." Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). Quite simply, plaintiff's brief makes no cogent argument which this court is able to review and assess.

¶ 26 Finally, plaintiff fails to include the requisite "short conclusion stating the precise relief sought." Ill. S. Ct. R. 341(h)(8) (eff. July 1, 2017). Inexplicably, plaintiff's brief concludes with

several paragraphs describing difficulties he encountered with his lawyers, before he elected to proceed *pro se*.

¶ 27 We note that it is evident from the record that the trial court was lenient with plaintiff, to the extent possible, in recognition of his *pro se* status. Plaintiff was clearly aware that the litigation process included procedural rules. Yet, he seems to have made no attempt to follow them. In sum, plaintiff's brief makes no effort to comply with Rule 341, and simply does not set forth any coherent legal argument to challenge the trial court's dismissal of his case. We are mindful of the plaintiff's *pro se* status, which obviously contributed to his failure to meet Rule 341(h)'s requirements and provide this court with a brief which would allow us to review his appeal. Nonetheless, that fact does not excuse his complete failure to comply with the Supreme Court Rules. See *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78 ("A *pro se* litigant *** is not entitled to more lenient treatment than attorneys. In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys."). In light of the complete absence of any structure resembling an attempt to comply with Rule 341(h), we exercise our discretion to dismiss the appeal.

¶ 28 Our conclusion that the appeal should be dismissed renders moot plaintiff's April 30 motion, which was taken for resolution with the case. Thus, that motion is denied. In any event, that motion merely indicated that plaintiff sought to file a second brief that would be the "same" as the deficient brief discussed herein.

¶ 29 For the foregoing reasons, we dismiss the appeal.

¶ 30 Appeal dismissed; motion denied as moot.