

2019 IL App (2d) 180585-U
No. 2-18-0585
Order filed May 21, 2019

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

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> PARENTAGE OF C.P., a Minor,)	Appeal from the Circuit Court
)	of Du Page County.
)	
)	No. 2008-F-0277
)	
(Kirsten Book, Petitioner v. James Eric)	Honorable
Pittman, Respondent-Appellee; Law Office)	Thomas A. Else,
of Anthony Abear, P.C., Appellant).)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* On appeal from dismissal of petition for contribution to attorney fees, the appeal must be dismissed for noncompliance with supreme court rules.
- ¶ 2 The Law Office of Anthony Abear, P.C. (Abear), represented petitioner, Kirsten Book, against respondent, James Eric Pittman (Eric), in a protracted dispute over child support and custody. At the conclusion of the case, Abear withdrew as counsel and petitioned for attorney fees from his former client and for contribution from Eric.
- ¶ 3 Kirsten filed a voluntary petition for Chapter 7 bankruptcy protection (see 11 U.S.C. § 701 *et seq.* (2012)), which resulted in the discharge of her debt to Abear. Abear pursued his claim for contribution from Eric.

¶ 4 The trial court ultimately granted Eric’s motion to dismiss the fee petition. The court concluded that, because Kirsten’s debt to Abear had been discharged, there was no debt for attorney fees to which to contribute. We strike Abear’s brief and dismiss this most recent appeal for his noncompliance with supreme court rules governing appellate briefs and the record on appeal.

¶ 5 I. BACKGROUND

¶ 6 Abear filed a notice of appeal on July 23, 2018. The notice asserted appellate jurisdiction pursuant to a written order of appealability purportedly entered on June 22, 2018, under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 7 On August 15, 2018, Abear filed in this court a motion to limit the record, with the aim of avoiding the cost of preparing a full record after already doing so in prior appeals. The motion asserted that our review of the narrow issue of Eric’s obligation to contribute to Kirsten’s attorney fees “does not require [that] the entire trial court file be submitted or prepared for this appeal.” The motion requested that we limit the common law record and transcripts to entries between May 1, 2016, and September 30, 2016, and we entered an order to that effect.

¶ 8 Abear’s record consists of his memorandum in support of his motion for contribution, various discovery motions filed between May 1, 2016, and September 30, 2016, and the trial court’s memorandum and order in which the court dismissed Abear’s petition. Besides the notice of appeal, the record does not contain any entries outside the date range specified in Abear’s motion, such as the Rule 304(a) written finding of appealability.

¶ 9 Due to the incompleteness of the record, a thorough recitation of the procedural history, the evidence, and the arguments presented in the trial court is impossible. That said, the trial court’s order dismissing the petition affords a summary. The court recounted that Abear

represented Kirsten in a custody dispute that spanned several years. During that time, Abear generated significant attorney fees of about \$48,000. Abear withdrew as Kirsten's attorney at the conclusion of the case. Kirsten petitioned for and obtained Chapter 7 bankruptcy protection, which resulted in the discharge of her debt to Abear. Thereafter, Abear pursued his claim for contribution from Eric, including filing a motion against Eric to compel discovery of certain financial information and for sanctions for failing to comply with discovery requests.

¶ 10 Eric took the position that the discharge of Kirsten's debt for attorney fees meant that there are no attorney fees to which to contribute. Abear admitted that Kirsten no longer owed the fees but argued that the obligation for payment is a joint-and-several debt, making Eric a co-debtor who should not benefit from Kirsten's bankruptcy protection. The trial court disagreed, ruling that "the fees of Abear are based on a written fee agreement with [Kirsten]. [Eric] had no contractual obligation to Abear and did not guarantee the fees." The court concluded that section 508(a) of the Illinois Marriage and Dissolution of Marriage Act merely allows for fee shifting when a debt for fees exists; the statute does not make former spouses co-debtors to their attorneys. The court dismissed the petition for contribution.

¶ 11

II. ANALYSIS

¶ 12 Eric argues that Abear has violated Illinois Supreme Court Rules 341 (eff. Feb. 26, 2013) and 321 (eff. Feb. 1, 1994), which govern briefs and the record on appeal, respectively. He asks us to strike Abear's brief and then dismiss the appeal or summarily affirm the dismissal of the petition for contribution. Abear has not submitted a reply brief, and therefore does not respond.

¶ 13 Rules 321 and 324 require an appellant to provide a complete record on appeal, consisting of the judgment appealed from, the notice of appeal, and the entire original common

law record, unless the parties stipulate for, or the trial court or reviewing court orders less. See Ill. S. Ct. R. 321 (eff. Feb. 1, 1994); Ill. S. Ct. R. 324 (eff. July 1, 2017).

¶ 14 We granted Abear's request to truncate the record to entries made between May 1, 2016, and September 30, 2016. But the result is an incomplete record. The record is missing the petition for contribution itself, Eric's response to the petition, Eric's motion to dismiss, a transcript of the hearing, and the June 22, 2018, written finding of appealability under Rule 304(a). Moreover, where, as here, a verbatim transcript is unavailable, the appellant may file a substitute in the form of a bystander's report or an agreed statement of facts, as prescribed by Rule 323. See Ill. S. Ct. R. 323 (eff. July 1, 2017). Abear has not remedied the absence of a transcript.

¶ 15 In his motion to limit the record, Abear alternatively requested that we allow reference to the record submitted for appeal No. 2-17-0855, which had been previously dismissed. Our order does not grant leave to cite that record, but even if it had, Abear did not cite to it. Citing to the record in appeal No. 2-17-0855, even without leave to do so, would have assisted us in finding some of the relevant materials that are necessary to assess the trial court's ruling.

¶ 16 The burden of providing a sufficient record on appeal rests with Abear, the appellant. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we must presume the trial court acted in conformity with the law and with a sufficient factual basis for its findings. *Foutch*, 99 Ill. 2d at 392. Furthermore, any doubts arising from an incomplete record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 17 However, the doubts arising from the incomplete record provided by Abear are mitigated by our familiarity with the case. Abear previously attempted to appeal the September 22, 2016,

order dismissing the petition for contribution—the same order he appeals now. On October 12, 2016, Abear filed a notice of appeal from the order, but at the time, his motion to compel discovery and for sanctions was pending. This court dismissed the appeal for lack of jurisdiction because a final order had not been entered. *In re Parentage of C.P.*, 2017 IL App (2d) 160856-U, ¶ 14.

¶ 18 In light of the parties’ procedural history in this court, we might be inclined to overlook the incompleteness of this appellate record. However, the record’s deficiency results in Abear’s noncompliance with the briefing requirements set forth in Illinois Supreme Court Rules 341 (eff. Feb. 6, 2013) and 342 (eff. Jan. 1, 2005).

¶ 19 Rule 341(h)(6) requires the appellant to include a “Statement of Facts” outlining the pertinent facts “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. Feb. 6, 2013). Abear has violated this rule by not citing to the record for any factual assertions. Rule 341(h)(7) also requires that the “Argument” section include “citation of the authorities and the pages of the record relied on” (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)), but Abear’s brief cites to its appendix, not to the record. Rules 341(h)(9) and 342 require an appendix with materials from the record only, but Abear violates these rules by repeatedly referring to documents in the appendix that never were made part of the record in this appeal. Ill. S. Ct. R. 341(h)(9) (eff. Feb. 6, 2013); Ill. S. Ct. R. 342 (eff. Jan. 1, 2005). Abear has not filed a reply brief and does not respond to these allegations.

¶ 20 Abear has left it to this court to assist him by going back and forth among the records in prior appeals or take at face value his appendix, which contains many documents that are not part of the record. The Illinois Supreme Court Rules are not suggestions; they have the force of law

and must be followed. *People v. Campbell*, 224 Ill. 2d 80, 87 (2006). When a brief violates the rules, we may strike portions of the brief or dismiss the appeal should the circumstances warrant. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9.

¶ 21 Abear's violations hinder our review to the point that dismissal of the appeal is appropriate. We also strongly admonish counsel to follow carefully the requirements of the supreme court rules in future submissions.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, Abear's brief is stricken, and the appeal is dismissed for noncompliance with supreme court rules.

¶ 24 Appeal dismissed.