2019 IL App (1st) 172558-U

No. 1-17-2558

Order filed June 25, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WALTER J. BRZOWSKI,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 CH 52291
	)	
MICHAEL T. TRISTANO and	)	Honorable
LAURA A. BRZOWSKI,	)	Naomi H. Schuster,
	)	Judge, presiding.
Defendants-Appellees.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment is affirmed where the appellant did not sufficiently comply with Illinois Supreme Court Rule 341 and the record on appeal is insufficient to review his assertions of error.

¶ 2 This appeal arises from the trial court's October 24, 2017, order denying plaintiff Walter J. Brzowski's motion entitled "Legal Notice to Revive All Open Filed Documents by

Respondent," and ordering the matter off call. Defendant now appeals that order *pro se*. We affirm.

¶ 3 The record on appeal contains only the common law record. The record does not include reports of proceedings, bystander's reports, or agreed statements of facts. The common law record shows that this action arose out of case No. 01 D 14335 in the domestic relations division of the circuit court in which the court entered various orders of protection against plaintiff, the respondent in that case, and granted, on May 20, 2003, the petitioner, Laura A. Brzowski (Petitioner), a judgment for dissolution of marriage. Plaintiff appealed, arguing, *inter alia*, that the circuit court lacked subject matter jurisdiction to enter certain orders, including the judgment for dissolution of marriage, because he properly filed for removal to federal court on April 30, 2002, and April 22, 2003. See *Brzowski v. Brzowski*, Nos. 1-03-2575 & 1-04-0217 (cons.) (2004) (unpublished summary order under Illinois Supreme Court Rule 23). On December 27, 2004, we affirmed the circuit court's judgment. *Id.*

¶ 4 The common law record shows that, on December 29, 2009, plaintiff filed in case No. 09 CH 52291 a complaint entitled "Cause of Action to Compel Defendant for Undisputed Proof." He named Michael T. Tristano, the petitioner's counsel in case No. 01 D 14355, as the defendant. Plaintiff asserted, *inter alia*, that the circuit court did not have jurisdiction to enter the May 20, 2003, judgment for dissolution of marriage in case No. 01 D 14355 because he filed notices of removal to federal court when that case was pending. He asserted that the judgment of dissolution was void.

¶ 5 On February 8, 2011, the circuit court entered a case management order on the court's own motion. In that order, the court noted that, from the time this court affirmed the circuit court's dissolution judgment to the time our supreme court denied him leave to appeal, plaintiff continued to "take the position in numerous motions, pleadings, and other filings that the dissolution is void as a matter of law." Citing the law of the case doctrine, the court stated that "any motion, pleading or argument that depends on the voidness of the dissolution judgment for its success necessary fails," as plaintiff "litigated and directly appealed the question of law as to whether the dissolution judgment was void and the Illinois courts decided against him." The court barred plaintiff from submitting any pleadings, motions, or other documents that depend on the success of the alleged voidness or invalidity of the dissolution judgment and ordered him to file a motion seeking leave before filing any further documents.

¶ 6 On December 14, 2011, the circuit court entered an order stating that plaintiff's initial pleading entitled "Cause of Action to Compel Defendant for Undisputed Proof" and all subsequent pleadings relating to this pleading were stricken with prejudice, and it ordered the matter off call. In the caption of that order, it states case No. "01 D 14355 consolidated with 09 CH 52291."[1]

¶ 7 On October 11, 2017, plaintiff filed a document with case No. 01 D 14335 listed in the header and the caption provided as "IN RE: THE (Intact) MARRIAGE OF: LAURA BRZOWSKI, Petitioner/(legal wife) and Walter J. Brzowski, (legal Husband)." The motion is entitled "Legal Notice to Revive All Opened Filed Documents by Respondent." He asserted,

[1] It is not clear from the common law record when case No. 01 D 14355 was consolidated with case No. 09 CH 52291.

inter alia, that there were "fatal defects" to the judgment of dissolution of marriage entered on May 20, 2003. He claimed that, because he filed notices of removal to the federal court, the circuit court lacked subject matter jurisdiction to enter the May 20, 2003, judgment of dissolution as well as the orders of protections that were entered between May 20, 2003, and April 29, 2005. He asserted that petitioner "employed the unwarranted usage" of the Illinois Domestic Violence Act "to wrongfully circumvent the more stringent measures with the correct Illinois Marriage and Dissolution of Marriage Act."

¶ 8 On October 24, 2017, the circuit court denied plaintiff's motion, finding that his filing "Legal Notice to Revive All Opened Filed Documents by Respondent" was insufficient as a matter of law and ordered the matter off call. Plaintiff now appeals.

¶ 9 On appeal, plaintiff contends that the circuit court in "collateral" case No. 01 D 14355 lacked jurisdiction from April 22, 2003 to June 23, 2005, because he removed the case from the circuit court to the federal court two times. He asserts the judgment of dissolution entered on May 20, 2003, and the subsequently entered orders of protection, are void. Plaintiff claims that the "collateral petitioner," Laura Brzowski, failed to prove her grounds for divorce on the "collateral" case and used the Illinois Domestic Violence Act to gain an advantage over him.

¶ 10 Initially, we note that, as will be discussed below, plaintiff's argument that the judgment of dissolution and certain orders of protection entered in case No. 01 D 14355 are void because the circuit court lacked jurisdiction fails, as this court has already decided this issue on plaintiff's direct appeal from the circuit court's judgment of dissolution order. See *Brzowski v. Brzowski*,

Nos. 1-03-2575 & 1-04-0217 (cons.) (2004) (unpublished summary order under Illinois Supreme Court Rule 23).

¶ 11 As a reviewing court, we are "entitled to the benefit of clearly defined issues with pertinent authority cited and a cohesive legal argument." *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 11. The content and format of appellate briefs are governed by Illinois Supreme Court Rule 341(h) (eff. Mar. 25, 2018). *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. These rules are mandatory. *Voris*, 2011 IL App (1st) 103814, ¶ 8. A *pro se* litigant is not absolved from this burden on appeal. *Teton, Tack & Feed, LLC v. Jimenez*, 2016 IL App (1st) 150584, ¶ 19. This court may strike a brief and dismiss an appeal based on a party's failure to comply with the applicable rules of appellate procedure. *McCann v. Dart*, 2015 IL App (1st), ¶ 12.

¶ 12 Plaintiff's brief does not comply with Rule 341(h). Rule 341(h)(6) requires the appellant state "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. Mar. 25, 2018). However, plaintiff's statement of facts does not set forth the facts necessary to an understanding of the case, does not contain citations to pages of the record, and asserts improper comment and argument. For example, in plaintiff's statement of facts, he asserts that the judgment of dissolution entered on May 20, 2003, and two orders of protection entered on May 20, 2003 and April 29, 2005, in case No. 01 D 14355 are null and void and that the petitioner "apparently used the easy and inexpensive route within the IL.

Domestic Violence Act between December 21, 2001 to April 27, 2007 to circumvent the more lengthy and stringent applications of the IL. Marriage and Dissolution of Marriage Act."

¶ 13 Further, Rule 341(h)(7) "requires the appellant to present reasoned argument and citation to legal authority and to specific portions of the record in support of his claim of error." *McCann*, 2015 IL App (1st), ¶ 15 (citing Ill. S. Ct. R. 341(h)(7)). We may decline to address any arguments that plaintiff made that do not contain appropriate citation. *Enadeghe v. Dahms*, 2017 IL App (1st) 162170, ¶ 23. Further, under Rule 341(h)(7), "[c]itation of numerous authorities in support of the same point is not favored" (Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Mar. 25, 2018)) and the failure to cite relevant and persuasive authority, elaborate on argument, or assert a well-reasoned argument supported by legal authority violates the rule (*Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009)). Plaintiff's arguments do not contain citations to pages of the record in support of his claims of error, recites numerous authorities in support of the same point, and does not assert well-reasoned argument supported by relevant and persuasive legal authority. See Ill. S. Ct. R. 341(h)(7) (eff. Mar. 25, 2018). Accordingly, plaintiff's brief does not adequately comply with Rule 341(h)(7) and we may dismiss his appeal on this basis. See *McCann*, 2015 IL App (1st), ¶ 12. We note that this court is not a repository into which an appellant may foist the burden of argument and research. *Dahms*, 2017 IL App (1st) 162170, ¶ 23.

¶ 14 Even though plaintiff's brief does not comply with Rule 341(h), we will not dismiss the appeal based solely on the deficiencies of his brief. See *In re Det. of Powell*, 217 Ill. 2d 123, 132 (2005) ("[T]he striking of an appellate brief, in whole or in part, is a harsh sanction and is

appropriate only when the alleged violations of procedural rules interfere with or preclude review.") (quoting *Moomaw v. Mentor H/S, Inc.*, 313 Ill. App. 3d 1031, 1035 (2000))). Even if we would find that plaintiff's brief adequately complied with Rule 341, we would affirm the circuit court's judgment.

¶ 15 Plaintiff asserts that the judgment of dissolution and certain orders of protection entered in case No. 01 D 14355 are void because the court lacked jurisdiction, as he filed notices of removal to federal court two times when that case was pending. Plaintiff also claims "collateral petitioner," Laura Brzowski, failed to prove her grounds for divorce on the "collateral" case and asserts she used the Illinois Domestic Violence Act to gain an advantage over him.

¶ 16 Plaintiff, as the appellant, has "the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error." *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). When the record is incomplete on appeal, we presume that the trial court's order was entered "in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). If we have any doubts based on the ambiguity within the record, we must resolve those issues against the appellant, plaintiff here. *Teton, Tack & Feed, LLC*, 2016 IL App (1st) 150584, ¶ 19.

¶ 17 Although the record on appeal contains the common law record, plaintiff did not file any transcripts of the hearings or proceedings that took place in the trial court. Plaintiff did not file any substitutes such as a bystander's report or agreed statements of facts under Illinois Supreme Court Rule 323(c), (d) (eff. July 1, 2017). Because we do not have any transcripts of the trial court's proceedings, we do not know what evidence or arguments plaintiff submitted to the court

during the proceedings. Accordingly, because we do not have an adequate record, we must presume the trial court's October 24, 2017, order was entered in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 392.

¶ 18 Moreover, a judgment for dissolution order is "afforded the same degree of finality as judgments in any other proceeding." *In re Marriage of Lyman*, 2015 IL App (1st) 132832, ¶ 55. To challenge the validity of a final judgment beyond 30 days after it was entered, as relevant here where plaintiff is challenging the judgment for dissolution of marriage entered in case No. 01 D 14355 more than 30 days after it was entered, the party must bring a petition under section 2-1401, or under another method of postjudgment relief. *Id.* "The purpose of a section 2-1401 petition is to bring before the court facts not appearing in the record, which, if known at the time of the entry of judgment, would have prevented its rendition." *Id.*

¶ 19 In plaintiff's October 2017 motion entitled "Legal Notice to Revive All Open Filed Documents by Respondent," he is challenging the court's judgment for dissolution of marriage entered on May 20, 2003, about 14 years earlier. Plaintiff however did not bring his motion under section 2-1401 or identify any other method of postjudgment relief in which he could have properly filed his motion, which challenges the judgment of dissolution more than 30 days after it was entered.

¶ 20 Even if plaintiff had filed his motion under section 2-1401, the motion would not have been meritorious. Generally, a section 2-1401 petition must be filed no later than two years after entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2016). However, when a party attacks a judgment on the sole basis that it is void for lack of jurisdiction, the time limitation in

section 2-1401 does not apply. *In re Estate of Barth*, 339 Ill. App. 3d 651, 663 (2003). As previously discussed, although plaintiff argues that the judgment of dissolution and certain orders of protection entered in case No. 01 D 14355 are void because the circuit court lacked jurisdiction, this argument fails, as this court has already decided this issue on plaintiff's direct appeal from the circuit court's judgment of dissolution order. See *Brzowski v. Brzowski*, Nos. 1-03-2575 & 1-04-0217 (cons.) (2004) (unpublished summary order under Illinois Supreme Court Rule 23).

¶ 21 Under the law of the case doctrine, questions of law decided on a previous appeal are not only binding on the trial court on remand but also on the appellate court on a subsequent appeal. *Norris v. National Union Fire Insurance Co. of Pittsburgh, Pennsylvania*, 368 Ill. App. 3d 576, 580 (2006). The purpose of the doctrine "is to protect settled expectations of the parties, ensure uniformity of decisions, maintain consistency during the course of a single case, effectuate proper administration of justice, and bring litigation to an end." *Petre v. Kucich*, 356 Ill. App. 3d 57, 63 (2005).

¶ 22 As previously discussed, in 2004, plaintiff appealed various circuit court orders entered in case No. 01 D 14355 that resulted in the dissolution of marriage between plaintiff and petitioner. In his appeal he argued, *inter alia*, that the circuit court lacked subject matter jurisdiction to enter certain orders, including the May 20, 2003, judgment of dissolution of marriage. See *Brzowski v. Brzowski*, Nos. 1-03-2575 & 1-04-0217 (cons.) (2004) (unpublished summary order under Illinois Supreme Court Rule 23). In this court's order entered on December 27, 2004, we noted that, "to determine whether an action was removed to federal court, thereby depriving the state

court of jurisdiction, there must be some evidence that the proper procedures were followed." *Id.* We stated that we could not "determine from the record provided whether removal was effected" and concluded that we would presume the trial court's orders were entered in conformity with the law and had a sufficient factual basis. *Id.* We affirmed the circuit court's judgment. *Id.* Accordingly, because the question as to whether the judgment of dissolution was void for lack of subject matter jurisdiction was already decided on a previous appeal, the circuit court and this court are bound by that previous decision and may not review it. Thus, plaintiff's argument that the judgment of dissolution entered on May 20, 2003, is void for lack of jurisdiction fails. The two-year limitations period provided in section 2-1401 therefore applies to plaintiff's challenge.

¶ 23 Even if we assumed that the two-year limitations period in section 2-1401 did not apply, we would find that plaintiff cannot meet the other requirements of filing a petition under section 2-1401. For a party to be entitled to relief under section 2-1401, he must "set forth specific factual allegations showing the existence of a meritorious claim, demonstrate due diligence in presenting the claim to the circuit court in the original action, and act with due diligence in filing the section 2-1401 petition." *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, ¶ 15. Here, plaintiff did not set forth any specific factual allegations setting forth the existence of a meritorious claim, due diligence in presenting his claim to the circuit court in the original action in 2003, or show that he acted with diligence in filing his motion in 2017.

¶ 24 Finally, plaintiff's challenges to the judgment of dissolution are also barred by the doctrine of *res judicata*. Under this doctrine, "a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies

on the same cause of action." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). The doctrine of *res judicata* "bars not only what was actually decided in the first action but also whatever could have been decided." *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). For *res judicata* to apply, three requirements must be met: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) the cause of action is identical; and (3) the parties or their privies are identical in both actions. *Id.* Here, *res judicata* applies to plaintiff's challenges to the judgment of dissolution of marriage because the May 20 2003, judgment of dissolution of marriage order entered was a final judgment on the merits rendered by a court of competent jurisdiction, the cause of action was the same, and the parties were identical.

¶ 25 In sum, for the foregoing reasons, we affirm the judgment of the circuit court.

¶ 26 Affirmed.