2016 IL App (2d) 151184-U
No. 2-15-1184
Order filed September 28, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GLOBAL RECRUITERS NETWORK, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 15-CH-1399
	)	
DUCK BITES HOLDINGS, LLC, and	)	
XCENTRIC VENTURES, LLC,	)	
	)	
Respondents	)	Honorable
	)	Terence M. Sheen,
(John Doe, Intervenor-Appellant.)	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Doe's briefs and appendix violated supreme court rules; (2) Doe obtained the relief he requested when petitioner issued a subpoena to respondents in Arizona, rendering this appeal moot.

¶ 2 Petitioner, Global Recruiters Network, Inc., filed a petition pursuant to Illinois Supreme Court Rule 224 (eff. May 30, 2008) against respondents, Duck Bites Holdings, LLC, and Xcentric Ventures, LLC, to discover the identity of the individual or individuals who posted an

allegedly defamatory report about petitioner on a website that was operated by respondents. "John Doe," the author of the alleged defamatory post, intervened and moved to quash the petition for discovery. The trial court denied the motion to quash, and "John Doe" appeals. We dismiss the appeal as moot.

¶ 3 I. BACKGROUND

¶ 4 On August 11, 2015, petitioner filed a verified petition for discovery pursuant to Rule 224 and alleged the following. Petitioner is a franchisor of executive search offices in the United States, Canada, and Europe. Its registered agent is located in Du Page County. Respondents, Arizona companies, operated a website called "RipoffReport.com" on which users published articles and blogs. Beginning in July 2015, an anonymous ex-franchisee posted false statements on RipoffReport.com accusing petitioner of business mismanagement and theft of software. Petitioner further alleged that its reputation had been damaged and that it suffered monetary losses. Petitioner sought to discover the identity of the author who posted the allegedly defamatory material. Both respondents were served with the petition and summons for discovery, but neither appeared. On August 31, 2015, the court entered an order permitting petitioner to serve interrogatories and document requests on both respondents. The order also provided that respondents were to answer the discovery requests within seven business days.

¶ 5 Respondents did not comply with the order. Instead, they notified the report's author of the discovery requests. On October 15, 2015, "John Doe"[1] filed a motion to "quash" petitioner's discovery petition on the grounds that (1) respondents were amenable only to an Arizona subpoena, and (2) the statements that petitioner claimed were defamatory did not meet Arizona's or Illinois' standards for issuing a discovery order. On October 28, 2015, Doe filed an amended

[1] John Doe was allowed to intervene and to use a fictitious name.

motion to quash that made the same general allegations as his original motion. After a hearing, the court denied the motion on November 5, 2015. The court ruled that the Illinois standard, rather than the Arizona standard, applied, and that petitioner met the Illinois standard.

¶ 6 On November 9, 2015, Doe filed a motion to "reconsider, vacate, and sanction." The basis for the motion was that, unbeknownst to Doe, petitioner had actually served an Arizona subpoena on respondents requesting John Doe's identity. Doe argued that the subpoena rendered the Illinois controversy moot and that sanctions were appropriate because he was forced to litigate the motion to quash in Illinois. On March 10, 2016, the court denied the motion to reconsider without considering the mootness argument, and Doe filed a timely appeal.[2]

¶ 7 II. ANALYSIS

¶ 8 Preliminarily, we must address the state of Doe's brief. Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016) governs the appearance and contents of appellate briefs. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. Specifically, Rule 341(d) (eff. Jan. 1, 2016) provides that the cover shall contain the name of the case as it appeared in the trial court, except that the status of each party in the reviewing court (*i.e*, plaintiff-*appellant*) shall also be indicated. The name of the instant case as it appeared in the trial court was "Global Recruiters Network, Inc., petitioner, v. Duck Bites Holdings LLC, an Arizona limited liability company; Xcentric Ventures, LLC, an Arizona limited liability company, respondents." Doe was then given leave to intervene. In violation of Rule 341(d), Doe captioned the appeal as follows: "John Doe, Third-Party-Appellant

[2] Doe filed the notice of appeal before the disposition of his motion to reconsider. This court granted Doe's motion to hold the appeal in abeyance pending the ruling on the motion to reconsider. Under Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015), the notice of appeal became effective upon the denial of the motion to reconsider

v. Global Recruiters Network, Inc., Petitioner-Appellee." Doe similarly incorrectly captioned the reply brief. While respondents committed the same error in captioning the appellees' brief, they were following the format used by Doe. We remind all counsel that Rule 341's mandates concerning the format and content of appellate briefs are compulsory. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18.

¶ 9 Next, we must comment on Doe's appendix. Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2015) provides that the appendix to the appellant's brief shall contain pleadings and other materials *from the record* that are the basis of the appeal or are pertinent to it. Materials not taken from the record may not be placed before this court by way of an appendix. *Hubeny v. Chairse*, 305 Ill. App. 3d 1038, 1042 (1999). In violation of the rule, Doe has inserted into his appendix transcripts of trial court proceedings and copies of pleadings that are not contained in the record. Accordingly, on the court's own motion, we strike those the portions of the appendix that are not part of the record. See *Hubeny*, 305 Ill. App. 3d at 1042 (striking the materials in the appellant's appendix that were not part of the record). We admonish Doe's counsel that supreme court rules are not suggestions, nor are they merely aspirational. *Keefe v. Freedom Graphic Systems, Inc.*, 348 Ill. App. 3d 591, 593 (2004). Supreme court rules have the force of law. *Keefe*, 348 Ill. App. 3d at 593.

¶ 10 Turning to the merits, Doe argues that (1) Rule 224's requirement that a "summons" be served on named respondents essentially is the equivalent of requiring a subpoena; (2) because respondents are Arizona residents, the Uniform Interstate Depositions and Discovery Act (UIDDA) (735 ILCS 35/1 *et seq.* (West 2016)) required petitioner to obtain a subpoena from an Arizona court; and (3) Arizona law applies to the question of whether discovery should be allowed.

¶ 11 Rule 224(a)(1) (eff. May 30, 2008) provides that a person or entity who wishes to engage in presuit discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages can file an "independent action" for such discovery. The action for discovery shall be initiated by the filing of a verified petition in the circuit court and shall name as respondents the persons or entities from whom discovery is sought. Ill. S. Ct. R. 224(a)(1)(ii). The petition shall set forth the reason the proposed discovery is necessary, the nature of the discovery sought, and shall request an order authorizing the petitioner to obtain such discovery. Ill. S. Ct. R. 224(a)(1)(ii). The order allowing the petition will limit discovery to the identification of responsible persons and entities. Ill. S. Ct. R. 224(a)(1)(ii). Rule 224(a)(2) (eff. May 30, 2008) provides that the petitioner "shall serve upon the respondent or respondents a copy of the petition together with a summons." The rule prescribes a form summons. Ill. S. Ct. R. 224(a)(2).

¶ 12 Under Rule 224, the petitioner has the burden to show that his or her proposed petition supports a cause of action, even if the unidentified individual or entity does not challenge the request. *Doe v. Catholic Diocese of Rockford*, 2015 IL App (2d) 140618, ¶ 16. In a defamation case, the petitioner must demonstrate that a potential defamation claim against the unidentified individual or entity would survive a section 2-615 (735 ILCS 5/2-615 (West 2014)) motion to dismiss. *Catholic Diocese*, 2015 IL App (2d) 140618, ¶ 17; *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 711 (2010). In *Maxon*, the court held that the section 2-615 standard was appropriate, because "courts routinely address section 2-615 motions in defamation litigation where a plaintiff must overcome first-amendment protections as part of the *prima facie* case." *Maxon*, 402 Ill. App. 3d at 712.

¶ 13 In *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386 the plaintiff sought to discover the identity of one "John Doe," who posted allegedly defamatory comments about her son in an online chat room. *Stone*, 2011 IL App (1st) 093386, ¶ 1. Doe intervened and proposed the standard espoused by the Arizona court of appeals in *Mobilisa, Inc. v. Doe*, 170 P.3d 712 (Ariz. Ct. App. 2007), requiring a petitioner seeking the identity of an anonymous individual to demonstrate that he or she would survive a motion for summary judgment filed by the anonymous speaker. *Stone*, 2011 IL App (1st) 093386, ¶ 19. The court in *Stone* rejected the summary judgment standard as inharmonious with the procedural posture of a Rule 224 petition. *Stone*, 2011 IL App (1st) 093386, ¶ 20. The court explained that Arizona's procedure allowed a petitioner to discover the identity of an anonymous individual after the lawsuit was filed and the plaintiff had the benefit of discovery. *Stone*, 2011 IL App (1st) 093386, ¶ 20. The court noted that in Illinois, presuit petitioners seeking redress for meritorious claims could be denied relief because they lack the evidence to overcome a motion for summary judgment. *Stone*, 2011 IL App (1st) 093386, ¶ 20. Also, the *Stone* court noted that, unlike Arizona, Illinois is a fact-pleading jurisdiction, requiring a plaintiff to allege specific facts, rather than mere conclusions, sufficient to withstand a motion to dismiss. *Stone*, 2011 IL App (1st) 093386, ¶ 21. The court in *Stone* held that the section 2-615 motion to dismiss standard "best balances the need to protect the anonymous party's rights and the interests of the party seeking redress." *Stone*, 2011 IL App (1st) 093386, ¶ 21.[3]

¶ 14 Generally, the appellate court reviews a trial court's ruling on a Rule 224 petition for abuse of discretion. *Maxon*, 402 Ill. App. 3d at 709. Doe argues that the correct standard in this

[3] Our supreme court cited both *Maxon* and *Stone* with approval in *Hadley v. Doe*, 2015 IL 118000, ¶¶ 26-27.

case is *de novo*, because the facts are uncontroverted and because the court applied the wrong state's law in finding that the Rule 224 petition was sufficient. A choice-of-law analysis is separate from the determination of whether the petition is sufficient to require discovery. However, the court's decision whether to apply the section 2-615 standard or the summary judgment standard presents a question of law that is reviewed *de novo*. See *Stone*, 2011 IL App (1st) 093386, ¶ 12.

¶ 15 The crux of Doe's argument is that "[a] Rule 224 petition effectively represents a variation of the subpoena power." From this statement, unsupported by authority, Doe concludes that (1) the UIDDA required petitioner to have a subpoena issued by an Arizona court, and (2) Arizona law determines whether discovery could be compelled. In effect, Doe maintains that the summons prescribed by Rule 224 is inefficacious where the respondents are foreign entities. He then asserts that Arizona law governs both the issuance of the subpoena and the determination of the sufficiency of the petition. Because the two issues are linked in Doe's analysis, petitioner's service of the Arizona subpoena renders the entire controversy moot, as Doe acknowledged in his motion to reconsider before the trial court. Further, petitioner acknowledged at oral argument that it will argue the merits of its petition to an Arizona court applying Arizona law.

¶ 16 Because Doe has already secured the relief that he sought, the issue is moot. See *People ex rel. Newdelman v. Weaver*, 50 Ill. 2d 237, 241 (1972) (where plaintiffs obtained the relief they requested during the pendency of the appeal, the issue was moot). Nevertheless, Doe suggested at oral argument that a controversy still exists, because petitioner served the Arizona subpoena as a matter of convenience rather than out of recognition that the law required it. Consequently, Doe asks us to render an advisory opinion. Generally, courts do not decide moot questions, issue advisory opinions, or consider matters where the result will not be affected regardless of how the

issues are decided. *In re Alfred H. H.*, 233 Ill. 2d 345, 351 (2009). The reason that petitioner issued the Arizona subpoena and is willing to do battle in Arizona on Arizona's terms is of no concern to us, because the result will not be affected. Doe prays for the relief that he has already obtained. Accordingly, we dismiss the appeal.

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, the appeal is dismissed as moot.

¶ 19 Dismissed.