

No. 1-13-3093

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

WILLIAM B. POLICH,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 D 5518
)	
BEERMAN PRITIKIN MIRABELLI SWERDLOVE LLP,)	Honorable
)	Raul Vega,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.
Justices LAVIN and MASON concurred in the judgment.

O R D E R

¶ 1 *Held:* Presumption that judgment entered was in conformity with the law and supported by a sufficient factual basis invoked where plaintiff failed to provide the record necessary to review his claims; trial court did not abuse its discretion in denying plaintiff's motion to compel discovery.

¶ 2 This case arises from a child custody and support dispute between plaintiff William Polich, and his former wife. Plaintiff retained defendant, Beerman, Pritikin, Mirabelli, Swerdlove LLP, to represent him, and although extensive preparations were undertaken for trial, no trial ensued. Defendant filed a motion for attorney fees and costs from plaintiff, and in the

proceedings that followed, plaintiff sought to compel discovery from defendant. The court denied the motion, and also entered judgment against plaintiff in the amount of \$12,000.

¶ 3 Plaintiff, *pro se*, now appeals from the orders entered by the circuit court of Cook County denying his motion to compel his request for discovery, granting defendant attorney fees and costs, and denying his motion for reconsideration of the monetary judgment entered against him. He maintains that the circuit court's factual findings were clearly against the manifest weight of the evidence and should be rejected.

¶ 4 The record shows that the dispute between plaintiff and his former wife over custody and child support started in June 2008. Throughout the proceedings which followed, plaintiff was represented by different law firms, and also acted *pro se*. Plaintiff ultimately retained defendant, and counsel filed her appearance on October 9, 2012. Defendant then sought written and oral discovery from respondent, and the matter was set for trial on November 7 and 8, 2012; however, on November 7, 2012, a parenting coordinator was appointed.

¶ 5 On January 16, 2013, defendant filed a motion to withdraw as plaintiff's counsel, and requested leave to file a petition to set final fees and costs in this matter. The circuit court allowed defendant to withdraw as counsel, and to file her petition.

¶ 6 In March 2013, defendant filed a petition for attorney fees and costs, alleging that the total amounted to \$57,717, that plaintiff had paid \$33,800 of it, and a balance of \$23,917 remains. Defendant alleged that the primary counsel on the case was Karen Conti, a partner at the law firm, and that itemized statements for services rendered and costs incurred were sent to plaintiff on a monthly basis. In those statements, defendant set forth the nature of the service

performed, who performed it, the time associated with the performance, and how the investment of time translates to attorney fees. Defendant also itemized the nature and extent of costs incurred during the applicable billing period, and noted that copies of these statements were available for *in camera* review.

¶ 7 In support of the petition, defendant attached the affidavit of Conti who averred that she has been assisted in this matter by her associate attorney, paralegal and law clerk. Her fee was \$400 per hour, time spent by other associates and partners was billed between \$175 to \$500 per hour, and work done by the paralegal and law clerk at \$125 per hour. She further averred that the fees incurred as a result of the services provided were reasonable and necessary, and that the total amount of fees and costs incurred by plaintiff between the filing of the suit and entry of judgment against respondent was \$57,717.

¶ 8 In further support of the petition, defendant attached a two-page engagement agreement, signed by plaintiff, which listed the hourly rates of the attorneys and paralegals, and provided that the retainer fee was \$30,000. Defendant also attached its statement of client's rights and responsibilities.

¶ 9 Plaintiff filed a response to defendant's petition, alleging that Conti told him that if the \$30,000 retainer fee did not cover the costs of the trial, the firm would absorb the remaining costs. He further alleged that the only work product he received was an email attaching the digital deposition of respondent and her husband, and that defendant failed to facilitate timely depositions of them, but he admitted that he had received some monthly statements from defendant. Plaintiff asserted, contrary to defendant's contention, that there was no judgment

against his former wife as a result of Conti's work or that of her law firm. He maintained that defendant claimed over \$50,000 of work in less than six weeks, without any motions or trial time and minimal witness preparation, and that the trial scheduled for the November 2012 dates, was "stricken in favor of the appointment of a parental coordinator." Plaintiff requested that defendant's petition for attorney fees and costs be denied with prejudice because no evidence of work was presented in the petition.

¶ 10 In April 2013, plaintiff filed a request for the production of documents and data, requesting any and all petitions, motions or other legal documents generated by defendant in his matter with respondent. Plaintiff also requested a complete and detailed list of the work provided, by whom, the time expended, the reason for the work, and when it was done. He also requested a copy of all communications generated in this matter.

¶ 11 Defendant filed objections to plaintiff's request for production of documents and data, alleging that to the extent plaintiff asks it to create documents not now in existence, the request exceeds the scope of Supreme Court Rule 214 (eff. July 1, 2014). Defendant made no objection to the request for production of client billing statements.

¶ 12 On May 17, 2013, plaintiff filed a notice to produce Karen Conti, Karen Beverly and Enrico Mirabelli, at the hearing on the petition for attorney fees and costs scheduled for June 17, 2013. Plaintiff also filed a motion to compel responses to his request for production of documents and data. On May 24, 2013, the circuit court, after "being fully advised," entered a written order denying plaintiff's motion to compel.

¶ 13 On June 17, 2013, a hearing was held on defendant's petition for attorney fees and costs. The court issued a written order, entering judgment against plaintiff in the amount of \$12,000, after "hearing evidence and argument." The court further stated that there is no just reason to delay enforcement of this order, and that the matter is appealable pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 14 Plaintiff filed a motion to reconsider the order entered, and on August 5, 2013, defendant filed a motion to strike, or, in the alternative, a response to plaintiff's motion to reconsider. Defendant alleged that plaintiff had not stated under what statute or authority the motion was brought, failed to seek any relief other than stating that the order of June 17, 2013, should be reconsidered, and that it is "virtually impossible" for defendant to respond to plaintiff's motion based on his failure to follow the procedural requirements of motions to reconsider. Defendant further alleged that plaintiff's motion does not state a specific legal or factual reason as to why the order should be vacated or modified.

¶ 15 In response to the motion to reconsider, defendant alleged that Karen Beverly and Enrico Mirabelli were present in court at the proceedings on June 17, 2013, and that plaintiff chose not to call them as witnesses, but that he did examine Karen Conti. Defendant also noted that on May 24, 2013, the court, heard oral argument, then denied plaintiff's motion to compel defendant's response to his request for production of documents and data. Defendant explained that the motion was denied after the court found that plaintiff's file had been returned to him and additional requests were unnecessary for plaintiff to defend the fee petition against him. Defendant noted that although documents were referred to and discussed at the June 17, 2013,

hearing, none were offered into or accepted into evidence. Defendant further alleged that plaintiff has proved to be a demanding, time-consuming, and unreasonable client, and that his demanding nature is one of the reasons that his fee bills accrued so quickly. Plaintiff refused to settle, causing defendant to prepare for a full-blown custody trial, including the conduct of full discovery.

¶ 16 On August 7, 2013, plaintiff filed a response to the motion to strike, alleging that he did not see or get copies of the paper evidence that defendant gave to the trial court on June 17, 2013, and that he could not defend himself against or respond to evidence that he did not see. Plaintiff further asserted that he was not allowed to finish his examination of Conti, call other witnesses, or present evidence. In addition, plaintiff claimed that defendant produced documents and gave them to the court, but that these documents were not included in the file that defendant provided to him, and that he was never allowed to examine them.

¶ 17 On August 29, 2013, the court denied plaintiff's motion to reconsider. In doing so, the court noted that the motion does not meet the statutory requirements, and that there is no new evidence or law or misapplication of the law.

¶ 18 In this appeal, plaintiff challenges the orders denying his motion to compel his request for discovery, the June 17, 2013, order granting judgment for defendant in the amount of \$12,000, and the order denying his motion to reconsider the June 17, 2013, order.

¶ 19 As an initial matter, we observe that plaintiff has failed to set forth a cogent argument in his brief as required by Supreme Court Rule 341 (eff. July 1, 2008). Plaintiff's mere listing of

vague, conclusory and confusing allegations of error is not argument, and does not satisfy the requirements of Rule 341(h)(7). *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010).

¶ 20 Furthermore, and as noted by defendant, plaintiff has failed to provide an adequate record for review. We observe that on June 17, 2013, a hearing was held at which witnesses testified. Plaintiff, as the appellant, has the responsibility of providing a transcript of the hearing, or an acceptable substitute. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). In the absence of such, the reviewing court must presume that the trier of fact had ample grounds to support its judgment. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993).

¶ 21 Based on defendant's failure to provide an adequate record on appeal, we are unable to review those of his claims which are fact-sensitive and depend upon review of the evidence presented at the hearing. Under these circumstances, we invoke the presumption that the judgment entered after the hearing on June 17, 2013, was in conformity with the law and supported by a sufficient factual basis (*Foutch*, 99 Ill. 2d at 392), and reach the same conclusion with regard to the denial of his motion to reconsider that judgment.

¶ 22 Plaintiff also contends that the trial court erred in denying his motion to compel responses to his request for production of documents and data. He contends that defendant only produced two documents, an engagement letter and a statement of clients rights and responsibilities, which offer no evidence to support the petition for attorney fees and costs.

¶ 23 The trial court's discretionary powers regarding pretrial discovery are extremely broad, and the pretrial discovery rulings of the circuit court will not be interfered with on appeal absent

a manifest abuse of discretion. *Hayward v. C.H. Robinson Co.*, 2014 IL App (3d) 130530, ¶45. A court abuses its discretion when its discovery ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court, a standard that is highly deferential to the trial court. *Hayward v. C.H. Robinson Co.*, 2014 IL App (3d) 130530, ¶45.

¶ 24 In discovery, the threshold relevance requirement is whether the items requested are relevant to issues in the case. *Mei Pang v. Farmers Ins. Group*, 2014 IL App (1st) 123204, ¶17. Here, defendant was challenging the amount of attorney fees and costs being billed by defendant for the work performed on his case. The record shows that defendant sent plaintiff itemized statements for services rendered and costs incurred on a monthly basis and included an accounting of who performed what services, the time expended and the rate charged. His further request for all communications concerning his case and any and all petitions, motions or other legal documents generated by defendant in these proceedings with respondent was onerous and would result in the imposition of an unnecessary burden and expense to defendant. *In re Marriage of Zummo*, 167 Ill. App. 3d 566, 577 (1988). Without any showing as to the relevance of this additional documentation to the issue of attorney fees and costs (*Mei Pang*, 2014 IL App (1st) 123204, ¶17), we find no abuse of discretion on the part of the trial court in denying his motion to compel further discovery.

¶ 25 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.