

No. 1-18-1989

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

EMILIA RITCHIE,)
) Appeal from the
) Circuit Court of
) Cook County
)
 Plaintiff-Appellant,)
)
)
 v.)
) No. 18 M3 6057
)
 LAKELAND BUILDING SERVICES, LLC,)
)
)
)
 Defendant-Appellee.)
) Honorable
) Martin C. Kelley,
) Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County where plaintiff failed to satisfy the requirements of Illinois Supreme Court Rule 341 and failed to present a sufficient record on appeal.
- ¶ 2 Plaintiff Emilia Ritchie, *pro se*, appeals from the dismissal of her complaint against defendant, Lakeland Building Services, LLC, for property damage pursuant to section 2-

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619(a)(6) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(6) (West 2018)).

Plaintiff's complaint alleged defendant failed to properly repair damage to the interior of her condominium unit. Defendant moved to dismiss the complaint, arguing plaintiff agreed to settle and release her claims against defendant in a prior litigation. The circuit court agreed and dismissed plaintiff's complaint based on the settlement and release. On appeal, plaintiff contends the circuit court improperly relied on the release in dismissing her complaint because it pertained to a separate lawsuit. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 This matter arises out of a dispute over repairs made by defendant to the interior of plaintiff's condominium unit. To address the damage caused by a leaking roof, plaintiff's condominium association hired a roofer to repair the area of the roof where the leak occurred and hired defendant to repair the damage to the inside of plaintiff's unit. Unsatisfied with the actions taken by the condominium association and the roofing company to address the leak, plaintiff filed a lawsuit against both of them. The parties to that lawsuit settled and, as part of the settlement, plaintiff signed a "property damage release" wherein she released the defendants in that action and any of their agents from any claims resulting from the leaking roof.

¶ 5 Thereafter, plaintiff filed the instant action alleging defendant failed to properly repair the damage to the interior of her condominium unit. Defendant appeared and orally moved to dismiss the complaint pursuant to section 2-619(a)(6) of the Code (735 ILCS 5/2-619(a)(6) (West 2018)) based on the settlement agreement. While we do not have the benefit of a report of proceedings on appeal, the record demonstrates that plaintiff had an opportunity to address the court and argue in opposition to defendant's motion. Following argument, the circuit court granted the motion, finding that the matter had previously been resolved by settlement and that

defendant had been released from plaintiff's claim.¹ This appeal followed.

¶ 6

ANALYSIS

¶ 7 On appeal, plaintiff contends the circuit court erred in relying on her prior settlement and release in granting defendant's motion to dismiss pursuant to section 2-619(a)(6) of the Code. 735 ILCS 5/2-619(a)(6) (West 2018). We review section 2-619 motions *de novo*. *Schacht v. Lome*, 2016 IL App (1st) 141931, ¶ 33. *De novo* review means we perform the same analysis the circuit court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 8 Defendant maintains plaintiff's appeal should be dismissed for failure to comply with several Illinois Supreme Court Rules. Specifically, defendant maintains plaintiff (1) included in her appendix several documents that were not contained in the record, in violation of Illinois Supreme Court Rule 342 (Ill. S. Ct. R. 342 (eff. July 1, 2017)), (2) failed to support her argument with any authority or with citations to the record, in violation of Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018)), and (3) failed to serve defendant with her notice of appeal or any additional filings on appeal until two days prior to filing her opening brief, in violation of Rule 303(c) (Ill. S. Ct. R. 303(c) (eff. July 1, 2017)). Defendant further argues that even if we consider plaintiff's claims, we should affirm the circuit court's order because plaintiff failed to present a sufficient record on appeal and, in any event, her complaint was properly dismissed.

¶ 9 Prior to addressing the merits of this appeal, we find it prudent to discuss the state of plaintiff's brief. Plaintiff's entire argument consists of six sentences and contains no citations to the record or to any authority in support of her position; accordingly, she fails to "present reasoned argument." See *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15 ("Rule 341(h)(7) requires the appellant to present reasoned argument and citation to legal authority and to specific

¹ The circuit court's dismissal order expressly stated that plaintiff "had an opportunity to address the court and argue in opposition to defendant's motion."

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portions of the record in support of his claim of error”); Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). As our supreme court “has repeatedly held[,] *** the failure to argue a point in the appellant’s opening brief results in forfeiture of the issue.” *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010).

¶ 10 We recognize that plaintiff is a *pro se* appellant. However, “[t]he fact that a party appears *pro se* does not relieve that party from complying as nearly as possible to the Illinois Supreme Court Rules for practice before this court.” *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. “This court is not a depository in which the burden of argument and research may be dumped.” *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80. “Although we seldom enter an order dismissing an appeal for failure to comply with supreme court rules, our sound discretion permits us to do so.” *McCann*, 2015 IL App (1st) 141291, ¶ 20; *Holzrichter*, 2013 IL App (1st) 110287, ¶ 77 (stating that “[t]his court has the discretion to strike an appellant’s brief and dismiss an appeal for failure to comply with Rule 341”); *Voris*, 2011 IL App (1st) 103814, ¶ 8 (noting that “[b]ased upon *** noncompliance, his appeal is subject to dismissal”). As plaintiff’s argument fails to present any coherent legal argument supported by citations to any authority or to the record, we find her claim to be forfeited. *Vancura*, 238 Ill. 2d at 369; *McCann*, 2015 IL App (1st) 141291, ¶ 15.

¶ 11 Even if we were to consider plaintiff’s argument regarding the dismissal of her complaint, we cannot do so because the record is severely deficient. Plaintiff, as the appellant, has the burden to present a sufficiently complete record of the proceedings in the circuit court to support a claim of error; in the absence of such a record on appeal, it will be presumed that the order entered by the circuit court was in conformity with the law. See *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Any doubts which may arise from the incompleteness of the record will

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be resolved against the appellant.” *Id.* at 392. Notwithstanding *Foutch*, a record of the proceedings in the lower court may be unnecessary when an appeal raises solely a question of law, which we review *de novo*. *Watkins v. Office of the State Appellate Defender*, 2012 IL App (1st) 111756, ¶ 19.

¶ 12 Here, plaintiff, as the appellant, failed to present a sufficiently complete record by failing to include a transcript or bystander’s report of defendant’s oral motion to dismiss and the hearing on the motion. Defendant maintains that during argument before the circuit court, plaintiff admitted all of the facts necessary for the circuit court to find the prior release barred the instant claim. Plaintiff failed to deny this allegation. The record demonstrates that plaintiff did, in fact, have an opportunity to address the circuit court during the hearing on the motion to dismiss, and without some record of this proceeding we cannot say the circuit court erred in its judgment. Without the benefit of defendant’s arguments, plaintiff’s response, or the circuit court’s reasoning before us, we have no basis for determining whether or not the motion to dismiss should have been granted. *Foutch*, 99 Ill. 2d at 391-92; see also *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 445-46 (2007) (“When there is a gap in the record that could have a material impact on the outcome of the case, the reviewing court will presume that the missing evidence supported the judgment of the trial court and resolve any doubts against the appellant”). We must therefore presume the information the circuit court learned from the parties supported its finding and that the court acted in conformity with the standards applicable for a motion to dismiss. *Foutch*, 99 Ill. 2d at 391-94. Accordingly, we affirm the trial court’s order dismissing plaintiff’s complaint.

¶ 13

CONCLUSION

¶ 14 For the reasons stated above, we affirm the judgment of the circuit court of Cook County

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dismissing plaintiff's complaint.

¶ 15 Affirmed.