SECOND DIVISION
March 29, 2024

No. 1-23-1130

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LIGHTHOUSE CASUALTY COMPANY, LLC, Plaintiff-Appellee, v. LITTLETON RUSH and PERCY ROSS, Defendants-Appellants (Tyshika Cooks, Defendant).	)	Appeal from the Circuit Court of Cook County. No. 19 CH 13396 Honorable Allen P. Walker, Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the judgment of the circuit court. Although appellant's brief on appeal violates the Supreme Court Rules governing briefs filed in this court in several ways, the record contains sufficient information for us to decide the case

on the merits; we affirm because the circuit court's findings following a bench trial were not against the manifest weight of the evidence.

¶ 2 Plaintiff–Appellee, Lighthouse Casualty Company, filed a declaratory judgment action against their insured, Tyshika Cooks, alleging they have no duty to defend or indemnify Cooks because of a lack of cooperation. Appellants were the plaintiffs in a personal injury case seeking damages from Cooks for injuries they suffered in an underlying automobile accident case. Defendants secured a judgment against Cooks following her failure to appear at a mandatory arbitration hearing. After the judgment was entered, the insurer filed this declaratory judgment action seeking a declaration that it has no duty to provide coverage to the insured in this case based on the insured's breach of the clause in the insurance policy requiring her to cooperate in the defense of claims arising under the policy. Defendants objected to plaintiff trying to avoid liability by invoking the cooperation clause. They filed a motion to dismiss this case and a motion for summary judgment, both of which were denied. The case proceeded to trial.

¶ 3 Following a bench trial, the circuit court concluded that the insured had breached the cooperation clause thereby relieving plaintiff of its obligation to provide coverage. Defendants now appeal the trial court's judgment. We affirm.

¶ 4 BACKGROUND

¶ 5 On March 9, 2016, defendant Tyshika Cooks secured automobile insurance coverage from plaintiff Lighthouse Casualty Company, LLC. A week after the policy took effect, on March 16, 2016, Cooks was involved in a motor vehicle accident with defendants Littleton Rush and Percy Ross. Rush and Ross sustained injuries that required medical treatment. Rush and Ross filed a claim with Lighthouse Casualty. Cooks gave a written statement to Lighthouse Casualty in which she denied liability, stating that she had a green light while the other vehicle entered the intersection and struck her vehicle. Lighthouse Casualty denied the claim filed by

Rush and Ross, essentially asserting that it was a he said-she said situation where each driver was claiming that the other driver was at fault for going through a red light. Rush and Ross filed suit against Cooks to recover damages (*Rush v. Cooks*, 2018 M1 300447 (Cir. Ct. Cook County)). The case proceeded to mandatory arbitration.

¶ 6 Cooks failed to appear for the arbitration hearing, despite being cooperative and participating with Lighthouse Casualty in the case up to that point. At the close of the arbitration hearing, the arbitrator entered awards in favor of Rush and Ross for $25,000 and $30,000 respectively. Cooks filed a rejection of the arbitration award in the circuit court. Rush and Ross filed a motion to bar Cooks from rejecting the arbitration award based on Cooks' failure to appear at the arbitration hearing. Lighthouse Casualty sent a letter to Cooks asking for information about why she did not show up for the arbitration, but the letter went unanswered. The circuit court entered judgment on the arbitration awards against Cooks and in favor of Rush and Ross.

¶ 7 After the judgment against Cooks was entered, Lighthouse Casualty filed this case seeking a declaration that it has no obligation to pay the judgment entered against Cooks. In particular, Lighthouse Casualty alleges that Cooks willfully failed to cooperate in the underlying litigation as was required under the policy.

¶ 8 Cooks' policy with Lighthouse Casualty provides that Cooks, as the insured, must "[c]ooperate with [Lighthouse Casualty] and upon [Lighthouse Casualty]'s request or through attorneys selected by the company" the insured must "assist in *** giving evidence *** in the conduct of any legal proceedings and attending hearings and trials as the company requires in connection with the subject matter of this insurance." The policy further provides that

Lighthouse Casualty "has no duty to provide coverage under this policy unless there has been full compliance with these responsibilities."

¶ 9 Rush and Ross appeared in this declaratory judgment action and filed a motion to dismiss. The motion to dismiss was denied. Cooks filed a *pro se* appearance in the case, but she was excused from participating until she was notified that her presence in the case was required. Rush and Ross answered the complaint and, subsequently, filed a motion for summary judgment.

¶ 10 In the motion for summary judgment, Rush and Ross argued that Lighthouse Casualty fails to meet the legal threshold for asserting a violation of the cooperation clause in the insurance policy. They argued that Lighthouse Casualty did not exercise sufficient diligence to secure Cooks' appearance at the arbitration and that there was insufficient evidence to show Cooks "refused" to cooperate. Following full briefing on the motion for summary judgment, the trial court denied the motion.

¶ 11 The case proceeded to trial. At trial, Lighthouse Casualty called four witnesses. The attorney who was set to represent Cooks at the arbitration hearing testified that Rush and Ross were not good witnesses at the arbitration but that, due to Cooks' absence, he lacked any evidence to mount a defense. Another attorney, who worked for the firm that was defending Cooks in the underlying case, testified that her firm sent a questionnaire to Cooks by mail, which Cooks filled out and returned. The attorney further testified that the firm sent an arbitration letter notifying Cooks about the hearing and that the firm's clerk made a confirmation call about the arbitration hearing in which Cooks confirmed to the firm that she would attend the arbitration. Lighthouse Casualty moved into evidence a call log that showed a call from the firm to Cooks in advance of the arbitration hearing. Cooks did not object to this evidence being entered and does not argue on appeal that any of the evidence admitted at trial was wrongly admitted. The attorney

testified that the firm also sent a letter to Cooks to find out why she did not appear at the arbitration because the firm needed such information to defeat the motion to bar Lighthouse from rejecting the arbitration award, but that Cooks never responded.

¶ 12 Lighthouse Casualty also called Cooks to testify. Cooks confirmed her address and confirmed that a Lighthouse Casualty investigator reached her at her home. She denied receiving some of the letters Lighthouse claimed to have sent to her, and she testified she was not sure about receiving some others. She confirmed that she received the letter asking for information about why she did not appear at the arbitration. Cooks confirmed that liability in the underlying case was contested, and she reiterated during her testimony that she entered the intersection on a green light and was "t-boned" by the other vehicle containing Rush and Ross. Cooks testified that she did not receive a call seeking to confirm her attendance at the arbitration hearing.

¶ 13 Rush and Ross called as a witness an attorney who has handled many cases involving mandatory arbitration. The attorney testified that his firm ordinarily sends *two* letters notifying a witness about an upcoming arbitration. The attorney further testified that a confirmation call must be made because getting confirmation of the witness's attendance at the arbitration was crucial. Without confirmation, the attorney testified, the firm would need to seek a continuance of the arbitration hearing. However, if confirmation was secured, there would be no reason to file a motion to continue the arbitration hearing.

¶ 14 Following the live testimony, the court directed the parties to submit proposed findings of fact and law. The parties submitted their proposals to the trial court. Thereafter, the trial court issued a seven-page written order disposing of the case. The trial court concluded that no coverage was owed to Cooks based on her failure to cooperate as required by her policy.

¶ 15 In its written findings following trial, the trial court found that Cooks gave Lighthouse Casualty a statement contesting her liability for the car accident. Cooks filled out a client interrogatory form supplied by the law firm representing her where she gave the firm her current mailing address, among other information. The trial court found that the law firm sent Cooks an arbitration notice at the address she received other correspondence from the firm, and the court noted that the letter was not returned to the sender. The trial court found that the law firm contacted Cooks on the phone ten days before the arbitration hearing and Cooks confirmed to the firm that she would appear. The trial court discussed the material effect Cooks' absence at the arbitration had on her defense against the claims by Rush and Ross. The trial court noted Cooks' admission to receiving the letter about her failure to appear and found that the court in the underlying case granted Rush and Ross's motion to bar rejection of the arbitration award because Cooks did not provide an explanation for her absence at the arbitration hearing. The trial court rejected "Cooks' testimony that she never received any letters or calls from [the law firm]," finding the testimony to not be credible. The court, however, found the attorney witnesses called by Lighthouse Casualty to have been credible witnesses.

¶ 16 Ultimately, the trial court concluded that, "given [the law firm's] direct contact with Ms. Cooks and her confirmation that she would attend the arbitration, [the] Court finds that Lighthouse exercised reasonable diligence to secure Ms. Cooks' attendance." The trial court also concluded that Cooks breached the cooperation clause in the insurance policy by "refusing to cooperate" and that Lighthouse was "substantially prejudiced" by Cooks' failure to cooperate in the underlying case. Thus, the trial court held that Lighthouse Casualty was not required to pay under the policy as the court found that it has no coverage obligation in this case.

¶ 17 Rush and Ross filed a posttrial motion urging the trial court to reconsider its judgment. The trial court denied the posttrial motion, and Rush and Ross now appeal the trial court's judgment.

¶ 18 ANALYSIS

¶ 19 Inadequacy of Defendants'[1] Brief on Appeal

¶ 20 Initially we note that defendants' brief on appeal in numerous ways fails to comply with some of the most basic requirements for a brief filed in this court. In violation of Supreme Court Rule 341, defendants do not explain the nature of the judgment appealed from or whether any issue is raised on the pleadings, despite the Rule requiring such clarifying information. Ill. S. Ct. R. 341(h)(2)(i-ii) (eff. Oct. 1, 2020) (West 2022). The jurisdictional statement in the brief fails to state that the appeal is from a final judgment, and it fails to indicate the date on which the order being appealed from was entered or any of the other facts needed to demonstrate that the appeal is timely. Ill. S. Ct. R. 341(h)(4)(ii) (eff. Oct. 1, 2020) (West 2022). The jurisdictional statement is not supported by *any* page references to the record on appeal as the Rule requires. *Id.*

¶ 21 The statement of facts section in defendants' brief fails to provide the facts necessary to understand the case. Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020) (West 2022). The statement of facts section additionally: contains supposed factual statements that lack record citations; fails to accurately characterize the testimony and the other evidence in the record; and is replete with improper argument and comment. All of these failures violate Rule 341. *Id.*

¶ 22 In violation of Supreme Court Rule 342, defendants brief has no appendix. Rule 342 requires an appellant's brief to include as part of the appendix "the judgment appealed from

[1] For clarity and to avoid repeated reference to the appellants Rush and Ross, those individuals are hereinafter referred to as "defendants." While Cooks was also a defendant in this case, she has not joined this appeal.

[and] any opinion, memorandum, or findings of fact filed or entered by the trial judge." Ill. S. Ct. R. 342 (eff. Oct. 1, 2019) (West 2022). The trial court's opinion in the case is not included, and defendants further failed to submit with their brief the required notice of appeal and the required table of contents, with page references, of the record on appeal. *Id.*

¶ 23 When an appellate brief or appendix fails to comply with the Supreme Court Rules, we are entitled to, among other actions, dismiss the appeal or summarily affirm. *Prawdzik v. Board of Trustees of Homer Township Fire Protection District Pension Fund*, 2019 IL App (3d) 170024, ¶ 34; *Vancura v. Katris*, 238 Ill. 2d 352, 373 (2010). Compliance with the Rules governing the form and contents of appellate briefs is mandatory. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. Supreme Court Rules "are not aspirational," they "are not suggestions," they "have the force of law," and the presumption must be that they will be obeyed and enforced as written. *Rodriguez v. Sheriff's Merit Commission*, 218 Ill. 2d 342, 353 (2006). In this case, we could strike defendants' brief and dismiss their appeal or affirm the trial court's judgment on the sole basis that defendants' brief totally fails to comply with the applicable Supreme Court Rules. *Vancura*, 238 Ill. 2d at 373. However, because there is enough information in the record and in what we can obtain from plaintiff's brief, we address the merits. See *North Community Bank v. 17011 S. Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 14 (even when there are significant violations of the Supreme Court Rules governing briefs, the reviewing court can choose to reach the merits of the appeal where appropriate).

¶ 24 Lighthouse Casualty asks us to impose sanctions on defendants for their "hopelessly insufficient" appellate brief (citing Ill. S. Ct. R. 375(a-b) (eff. Feb. 1, 1994) (West 2022)). While we agree with Lighthouse about the severe deficiencies in defendants' appellate brief, we find that we need not impose sanctions on defendants.

¶ 25 The Merits of Defendants' Appeal

¶ 26 The trial court in this case made crucial findings of fact following a bench trial which completely undermine defendants' arguments on appeal. Defendants argue that one phone call and one letter by an insurer seeking the cooperation of its insured has never been found to be sufficient to establish the level of diligence required of an insurer to prevail on a claim of breach of a cooperation clause in an insurance policy. Defendants rely upon decisions from this court in which we have found that insurers failed to exercise reasonable diligence in seeking cooperation from an insured. See, *e.g.*, *Mazzuca v. Eatmon*, 45 Ill. App. 3d 929, 932 (1977); *American Access Casualty Co. v. Alassouli*, 2015 IL App (1st) 141413, ¶ 17; *Lappo v. Thompson*, 87 Ill. App. 3d 253, 254-55 (1980).

¶ 27 The problem with defendants' arguments is that none of these cases apply because, in this case, the trial court made findings of fact that specifically led the court to find Lighthouse Casualty exercised reasonable diligence. The trial court expressly found that the law firm defending Cooks sent a letter to her notifying her about the arbitration hearing, that Cooks received the letter, that the law firm called Cooks to confirm her appearance at the arbitration hearing, and that Cooks confirmed with the law firm she would appear at the arbitration but then failed to appear. None of the cases relied upon by defendants feature an insured who knew about a hearing, confirmed she would appear, and then failed to appear without explanation. Instead, unlike the cases cited by defendants, the attorneys here had no reason to suspect any problem in communicating with Cooks or any reason to question whether she received adequate notice about her obligations to cooperate. The attorneys had secured confirmation from Cooks by

directly communicating with her, and she had confirmed to them she was aware of the arbitration hearing and would be present.

¶ 28 If defendants adequately appreciated the findings contained in the trial court's opinion, they would see that the trial court explained that "Ms. Cooks' failure was not a failure to answer a phone call—she answered [the law firm's] phone call—it was a failure to appear at arbitration *despite confirming her attendance* (emphasis added)." The trial court specifically distinguished *Alassouli* and *Mazzuca* and explained that there is a "very different context" in this case because the law firm here made direct contact with Cooks and secured her confirmation that she would attend the arbitration. Based on that distinguishing finding, the trial court was justified in thereafter concluding that Lighthouse Casualty exercised reasonable diligence to secure Cooks' attendance and participation in the underlying case.

¶ 29 To establish a breach of the cooperation clause, the insurance company must show: (1) that it exercised a reasonable degree of diligence in seeking the insured's participation; and (2) that the insured's failure to participate was due to a refusal to cooperate. *Alassouli*, 2015 IL App (1st) 141413, ¶ 17 (citing *Mazzuca*, 45 Ill. App. 3d at 932). Whether a reasonable degree of diligence was exercised and whether an insured's failure to appear could reasonably be attributed to a refusal to cooperate are determined by an examination of the facts and circumstances of each case. *Mazzuca*, 45 Ill. App. 3d at 932. Despite defendants' unsupported protestations to the contrary, those factual determinations will be upheld unless they are against the manifest weight of the evidence. *Alassouli*, 2015 IL App (1st) 141413, ¶ 25 ("An insurer's exercise of reasonable diligence and the insured's failure to participate by refusing to cooperate *both involve questions of fact* that must be shown by a preponderance of the evidence (emphasis added)."); *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884, 890 (2010) ("On review of a bench trial,

we will not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence (emphasis added)."); see also *Battaglia v. 736 N. Clark Corp.*, 2015 IL App (1st) 142437, ¶ 23 (the manifest weight of evidence standard is used to review a judgment after a bench trial). Defendants do not argue that those findings were against the manifest weight of the evidence.

¶ 30 After finding that Cooks was adequately apprised of the arbitration hearing and that she confirmed she would appear, the trial court concluded that Lighthouse Casualty exercised a reasonable degree of diligence in seeking the insured's participation. The trial court made specific credibility determinations in support of its findings of fact on this question, finding the attorney witnesses for Lighthouse to be credible in testifying about their efforts to secure Cooks' cooperation while also finding Cooks to not be credible in her denials of receiving the notice or confirming she would appear. We cannot say that the trial court's findings on this question were against the manifest weight of the evidence.

¶ 31 On the factual question of whether Cooks' failure to participate was due to a "refusal" to cooperate, the trial court based its findings on the circumstantial acts and omissions of Cooks before and after the arbitration hearing (citing *Founders Insurance Co. v. Shaikh*, 405 Ill. App. 3d 367, 376-78 (2010)). The trial court explained that Cooks confirmed her attendance at the arbitration hearing with the law firm and then failed to appear without explanation. The trial court noted that Cooks admitted receiving a letter asking about her reasons for not appearing at the arbitration, but Cooks failed to respond to the letter and never provided any explanation for her failure to appear. The trial court made a reasonable inference that Cooks' failure to appear at the arbitration, followed by her refusing to respond to Lighthouse's inquiry regarding the missed arbitration hearing, evidenced a willful refusal to cooperate. The trial court made specific

credibility determinations in support of its findings of fact on this question, finding Cooks' testimony not to be credible. The trial court was in the best position to observe the witnesses and make a determination about the basis for Cooks' noncompliance. See *Battaglia*, 2015 IL App (1st) 142437, ¶ 23 (the manifest weight of evidence standard is used to review a judgment after a bench trial because the trial judge is in a superior position, in comparison to this court, to observe witnesses, judge their credibility, and determine the weight their testimony should receive). A decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident or where it is unreasonable, arbitrary, and not based on the evidence. *In re Marriage of Enders & Baker*, 2015 IL App (1st) 142435, ¶ 103. The trial court weighed the evidence presented and came to a reasoned and thoughtful conclusion. We cannot say that the trial court's findings were against the manifest weight of the evidence.

¶ 32 As a final requirement for an insurer to prevail in a breach of a cooperation clause case, the insurer must establish that the breach of the cooperation clause by the insured substantially prejudiced the insurer in its investigation or in defending an underlying action. *M.F.A. Mutual Insurance Co. v. Cheek*, 66 Ill. 2d 492, 498-99 (1977). Thus, an insurer must demonstrate that it was "actually hampered" in its investigation or defense of an underlying claim by the insured's violation of the cooperation clause. *Id.*

¶ 33 Here, the case against Cooks by Rush and Ross was a case of disputed liability. It was a he said-she said case where the credibility and believability of a party's recollection was likely to be the deciding issue. Cooks gave a statement to Lighthouse Casualty that the accident was not her fault. She sat for a deposition and reiterated her denial of liability. Cooks herself testified at trial that the only witnesses to the accident were herself and defendants (and perhaps one other unknown individual who was on scene after the crash). She was the only possible witness who

could pose a defense to Rush and Ross's claim against her. Lighthouse Casualty was relying on Cooks' testimony of what occurred as its basis for denying Rush and Ross's insurance claim. However, by failing to continue her initial cooperation in the case and failing to appear at the arbitration hearing without explanation, she, and by extension Lighthouse Casualty, was left without an adequate defense in the underlying case. A judgment on the arbitration award was entered soon after. As the result of Cooks not appearing at the arbitration, Lighthouse Casualty was "actually hampered" in defending against the claim.

¶ 34 According to the trial witnesses, the adverse arbitration award was a direct result of Cooks' failure to appear at the hearing. There was testimony from two attorneys at trial that Cooks' failure to appear effectively prevented her from prevailing in the arbitration. The attorney who handled the arbitration in Cooks' defense testified that Rush and Ross were not particularly strong witnesses. The trial court here credited the two attorneys' testimony that the defense in this case "was almost entirely dependent upon Cooks testifying at the mandatory arbitration." The trial court found our decision in *Shaikh*, 405 Ill. App. 3d at 379 to be applicable in its analysis of this issue, explaining that, like in *Shaikh*, the insurer, Lighthouse Casualty, was plainly and substantially prejudiced by the absence in the proceedings of the insured, Cooks, who was the only witness to the car accident besides the underlying plaintiffs. See *id.* Because Cooks did not appear at the arbitration hearing, causing an arbitration award to be entered in the underlying plaintiffs' favor, the trial court concluded that Lighthouse Casualty "met its burden to show it was substantially prejudiced by Ms. Cooks' absence at the mandatory arbitration." Despite calling a witness at trial and having a full opportunity to present evidence that Lighthouse Casualty was not prejudiced, defendants offered no evidence on that subject and the

trial court found in Lighthouse's favor. We cannot say that the trial court's findings were against the manifest weight of the evidence.

¶ 35 CONCLUSION

¶ 36 Accordingly, we affirm.

¶ 37 Affirmed.