

2024 IL App (1st) 231308-U

No. 1-23-1308

June 28, 2024

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE <i>ex rel.</i> KIMBERLY M. FOXX, State's)	Appeal from the
Attorney of Cook County, Illinois,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 22 COF 767
)	
\$3700 United States Currency,)	
)	
Defendant)	Honorable
)	Marcia O'Brien Conway,
(Leticia Villalobos, Claimant-Appellant).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* We affirm the judgment of the trial court declaring \$3700 forfeited, where claimant-appellant failed to state a claim or provide a sufficiently complete record on appeal to show that the court's judgment was erroneous.

¶ 2 In this civil asset forfeiture case, claimant Leticia Villalobos appeals the trial court's order adjudging her claimed property of \$3700 in United States Currency to be forfeited pursuant to section 505 of the Illinois Controlled Substances Act (Act) (720 ILCS 570/505 (West 2022)).

¶ 3 The record on appeal includes only one volume of the common law record and does not contain a report of proceedings or an acceptable substitute under Illinois Supreme Court Rule 323 (eff. Jul. 1, 2017). The following background is gleaned from the common law record.

¶ 4 On January 6, 2022, Chicago police officers responded to reports of gunfire and found Jorge Aguilar unconscious in a vehicle with its engine running in a parking lot on the 2500 block of South Troy Street. When Aguilar exited the vehicle, the officers observed a black firearm on the floor behind the center console. They handcuffed Aguilar, recovered the firearm, determined the firearm was loaded, learned Aguilar did not have a Firearm Owners Identification card, and arrested Aguilar. The officers searched the vehicle. They found, in plain view on the front passenger seat of the vehicle, a clear plastic container with 31 small, tied plastic bags containing approximately 50 grams of cocaine in total. They also seized \$3700 found in the glove compartment.

¶ 5 On May 11, 2022, the State filed a complaint initiating forfeiture proceedings against the \$3700 seized from the vehicle pursuant to the Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 *et seq.* (West 2022)). The State alleged the recovered currency was presumed to be used or intended to be used to facilitate the violation of one or more statutes regarding controlled substances and money laundering. The State attached claimant's *pro se* verified claim, in which claimant alleged she was the owner of the \$3700. Claimant explained that she received \$4000 from

MZN Express Inc. as rent payment for property that she owned at 2500 South Troy and leased to that company.¹

¶ 6 Claimant filed a *pro se* appearance and an answer, denying the State’s claim that the \$3700 was subject to forfeiture. She attached an administrative review order entered by the trial court, ordering the City of Chicago to refund claimant for the amount paid to retrieve “the vehicle.” Further, she attached a purported short-term commercial lease, signed by MZN Express Inc. on January 5, 2022, stating that claimant was to lease the property at 2500 South Troy to MZN Express Inc. from January 5 to March 5, 2022, in exchange for a \$2000 security deposit and \$2000 monthly rent. The lease reflects that the intended use of the premises was a “COVID collection center.” Claimant also attached a copy of receipts documenting two cash payments from MZN Express Inc. to claimant, both made on January 4, 2022, and each in the amount of \$2000. A trial on the matter was set for July 18, 2023.

¶ 7 On July 18, 2023, the trial court entered an order adjudging the \$3700 forfeited in accordance with section 505 of the Act and terminated Aguilar and claimant’s rights, title, or interest in the forfeited property. The court’s order noted that it had heard the sworn testimony of witnesses and examined proofs and exhibits offered and received.

¶ 8 On July 20, 2023, claimant filed with the trial court a *pro se* notice of appeal.² On February 22, 2024, this court, on its own motion, took the appeal on the record and claimant’s brief only. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (we

¹ Claimant’s form does not explain how her property came to be in the vehicle.

² Claimant’s notice of appeal does not contain a proof of service. The proof of service filed with her brief reflects that she mailed the document to “Jim Lynch Assistant States” at 50 West Washington Street, Room 300.

may consider an appeal on an appellant's brief only where the record is simple and the claimed error can be easily decided without the aid of an appellee's brief). Our records show that this court emailed the parties on the date the order was entered.

¶ 9 On appeal, claimant asserts she does not agree with the trial court's decision and wants to "review the evidence" that proves she is the owner of the \$3700. She asserts that police towed her vehicle from private property. She also has a lease made to a "Company" to perform COVID testing, as well as receipts showing she was paid "two months rent for the total of 4,000."

¶ 10 As an initial matter, the record does not show that plaintiff served her notice of appeal on the opposing party, the State, as the "proof of service" section of her notice of appeal is blank and no notice of filing has been filed with this court. Illinois Supreme Court Rule 303(c) (eff. July 1, 2017) provides that the party filing the notice of appeal "shall, within 7 days, file a notice of filing with the reviewing court and serve the notice of appeal upon every other party and upon any other person or officer entitled by law to notice. Proof of service *** shall be filed with the notice." *Id.*

¶ 11 If the appellant fails to serve a copy of the notice of appeal on an opposing party, this court is not deprived of jurisdiction, as the filing of the notice of appeal is the "only jurisdictional step" in appealing from a circuit court decision. *Wells Fargo Bank, N.A. v. Zwolinski*, 2013 IL App (1st) 120612, ¶ 14. We will not dismiss an appeal for failure to serve the opposing party with a copy of the notice of appeal if there was no evidence of prejudice to the party. *Id.* A party is not prejudiced by the failure to serve a copy of the notice of appeal if the party could file appellate briefs and argue orally. *Id.* However, "failure to serve a copy of the notice of appeal on parties who may be adversely affected by the appellate court's decision *may* result in dismissal of the appeal." (Emphasis added.) *Id.*

¶ 12 Here, there is no indication that claimant properly served the State with a copy of the notice of appeal in compliance with Rule 303(c), as claimant provided no proof of service as required. Ill. S. Ct. R. 303(c) (eff. July 1, 2017). *Zwolinski*, 2013 IL App (1st) 120612, ¶ 17. Our records indicate that the State has not filed an appearance and has not filed an appellate brief.

¶ 13 Nevertheless, regardless of whether the State was prejudiced by claimant's failure to serve it with a copy of the notice of appeal, claimant has forfeited a review of the trial court's decision on the merits as she has failed to comply with Illinois Supreme Court Rule 341(h) (eff. Oct. 1, 2020), which provides mandatory procedural rules that govern the content of appellate briefs. Claimant's brief in its entirety consists of one page of a handwritten "statement of facts" and fails to comply with most of the requirements of Rule 341(h). For example, it does not contain a statement of this court's jurisdiction, a statement of facts stated accurately and without argument or comment and with citations to record, and a conclusion stating the precise relief claimant seeks. See Ill. S. Ct. R. 341(h)(4), (6), (8) (eff. Oct. 1, 2020).

¶ 14 Of particular note is claimant's failure to comply with Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020), which requires a brief to "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." *Id.* The rule further provides that "[p]oints not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." *Id.* "Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone." *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 43.

¶ 15 Here, claimant argues that she does "not agree" with the trial court's decision but does not set forth any substantive argument supported by relevant authority addressing the court's decision

adjudging forfeited the \$3700. Therefore, she has forfeited any challenge to the trial court's decision. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020).

¶ 16 Deficiencies in claimant's brief aside, our review of this appeal is further hindered by an incomplete record. Claimant, as the appellant, has the duty "to present a sufficiently complete record of the proceedings at trial to support a claim of error." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). In the absence of such a record, we must presume "that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id.* at 392. Any doubts arising from an incomplete record will be resolved against the appellant. *Id.*

¶ 17 Illinois Supreme Court Rule 321 (eff. Oct. 1, 2021) provides that the record on appeal shall include the common law record and any report of proceedings prepared in accordance with Rule 323. Under Rule 323, the report of proceedings may be a transcript of the proceedings, or in lieu of a transcript, an appellant may file a bystander's report or an agreed statement of facts. Ill. S. Ct. R. 323(a), (c), (d) (eff. Jul. 1, 2017).

¶ 18 As stated, the record before this court consists of one volume of common law record. The trial court's written final judgment order in the common law record indicates that the court conducted a trial on the matter on appeal, heard witnesses, and examined proofs and exhibits. However, claimant has failed to provide this court with a report of proceedings or a suitable substitute such as a bystander's report or agreed statement of facts. See Ill. S. Ct. R. 323(a), (c), (d) (eff. Jul. 1, 2017). Without a record of the forfeiture proceedings, we have no basis to review the trial court's judgment. We cannot know what evidence and argument the trial court heard or what explanations the court may have given for its decision, and we therefore cannot determine whether the court committed any error. See *Foutch*, 99 Ill. 2d at 391 ("From the very nature of an

appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.”). Accordingly, we must presume that the trial court’s decision adjudging the \$3700 forfeited, and terminating any and all right, title, or interest of claimant in that property, conformed with the law and was supported by the evidence before it. *Id.* at 391-92; *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005).

¶ 19 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 20 Affirmed.