

**NOTICE**  
Decision filed 01/25/23. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2023 IL App (5th) 220397-U

NO. 5-22-0397

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

CRAIG S. FRENCH, NICOLE FRENCH PERRY,	)	Appeal from the
ZACHARY D. NIEWOLD, and JACOB D. NEIWOLD,	)	Circuit Court of
	)	De Witt County.
Plaintiffs-Appellees,	)	
	)	
v.	)	No. 02-CH-35
	)	
MICHAEL T. CYRULIK,	)	Honorable
	)	Karle E. Koritz,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.  
Justices Welch and McHaney concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant’s failure to comply with the requirements set forth in Illinois Supreme Court Rules 341 and 342 requires dismissal of the appeal.

¶ 2 The instant appeal arises from proceedings related to a dispute over a 597-acre farm in Texas Township, De Witt County, Illinois (Texas Township Farm), between plaintiffs, Craig S. French, Nicole French Perry, Zachary D. Niewold, and Jacob D. Niewold (plaintiffs), and defendant, Michael Cyrulik.<sup>1</sup> Plaintiffs sought rescission of a farm lease between defendant and Marian Swigart, the owner of the Texas Township Farm, dated August 1, 1998. Following

<sup>1</sup>The original complaint was filed by Craig S. French against defendant. On July 27, 2007, however, plaintiff petitioned the circuit court for leave to file a fourth amended complaint to add his five siblings to the lawsuit against defendant, which the court granted on October 10, 2007. Three siblings of plaintiff French are listed above; however, two of his siblings are not parties to this appeal.

Swigart's death on June 8, 1999, defendant claimed he and Swigart entered into a 99-year farm lease, and plaintiffs discovered that Swigart, who was in her mid-90s, approved almost \$890,995 worth of improvements to the Texas Township Farm shortly before her death.

¶ 3 Following a three-day trial, the circuit court entered an order in favor of plaintiffs, rescinding, among other things, the August 1, 1998, Texas Township Farm lease. Defendant appeals, arguing the court erred by finding defendant was a fiduciary, that defendant exerted undue influence over Swigart, and that the court's judgment was against the manifest weight of the evidence. For the following reasons, we dismiss defendant's appeal.

¶ 4 I. Background

¶ 5 Given the lengthy litigation history between the parties, complexity of the multiple issues involved, and defendant's lack of clarity of the pertinent facts of the history of the case, we limit our recitation to those facts relevant to our disposition of this appeal.

¶ 6 On August 22, 2002, plaintiff filed a complaint against defendant alleging that the Texas Township Farm was conveyed to him with fee simple title by virtue of an executor's deed, dated April 26, 2002. Plaintiff alleged, however, that defendant, a tenant farmer for the Texas Township Farm, erroneously claimed that he had a valid lease, dated August 1, 1998, purportedly signed by Swigart for a tenancy period of 99 years from August 1, 1998, to March 1, 2097. Plaintiff contended that Swigart, who was 93 years old at the time the lease was allegedly signed, lacked the mental capacity to contract, given she was confined to a nursing home and suffered mental and physical limitations. As such, plaintiff requested that the circuit court find the lease void, invalid, and deemed unconscionable. In response, defendant denied the allegations against him, requesting that the court determine the lease valid, allowing defendant to continue to farm the premises for the full term of the lease.

¶ 7 Following nearly 18 years of litigation, the circuit court held a three-day trial in December 2020. Following the bench trial, the court allowed the parties to submit written arguments, and the matter was later taken under advisement.

¶ 8 On June 2, 2022, the circuit court entered an order rescinding the lease between defendant and Swigart finding, *inter alia*, that ample evidence showed there was a fiduciary relationship between defendant and Swigart, and that defendant exercised undue influence over Swigart. In reaching this conclusion, the court found the evidence demonstrated that defendant, as Swigart's farmer tenant and power of attorney as it related to an aspect of Swigart's farm business, signed various purchase, change, and improvement orders for the Texas Township Farm on behalf of Swigart while she remained confined to the nursing home. In addition, the court found it important that defendant spent personal time with Swigart at the nursing home at least once a week, and the court relied on testimony adduced at trial that defendant was "one of only two people \*\*\* in Marian's 'bubble of trust' while she was in the nursing home." Additionally, in finding that defendant exercised undue influence over Swigart, the court determined that defendant was able to secure the lease with Swigart because he concealed material facts from her, and Swigart lacked the mental capacity to contract. The court entered a judgment against defendant in favor of plaintiffs in the amount of \$1,345,169.42 for compensatory and punitive damages and prejudgment interest.

¶ 9 On June 22, 2022, defendant filed a notice of appeal and a motion to stay the circuit court's June 2, 2022, monetary judgment.

¶ 10 On June 30, 2022, defendant filed a motion to reconsider and vacate judgment, which the court denied on August 1, 2022. Shortly thereafter, on August 11, 2022, plaintiffs moved to dismiss

plaintiffs' claims for attorney fees and costs to expedite appeal, which the circuit court granted on August 23, 2022. That same day, the court granted defendant's motion to stay.

¶ 11

## II. Analysis

¶ 12 On appeal, defendant, represented by counsel, argues the circuit court erred by finding defendant had a fiduciary relationship with Swigart and that he exerted undue influence over her at the time the lease was executed. Defendant also argues the court's order was against the manifest weight of the evidence. For the reasons that follow, we dismiss defendant's appeal.

¶ 13 As a threshold matter, we observe that defendant's opening brief does not comply with many of the mandatory supreme court rules governing appellate review. The purpose of the appellate rules of procedure is to require the parties before the reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues presented. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. The procedural rules governing the content and format of appellate briefs are not suggestions, they are mandatory. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18. Only where the violations preclude or interfere with our review is dismissal of the appeal appropriate. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). This court has the discretion, however, to strike an appellant's brief and dismiss an appeal for failure to comply with the applicable rules of appellate procedure. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. With these principles in mind, we turn to defendant's opening brief.

¶ 14 Illinois Supreme Court Rule 341(h)(6) (eff. Nov. 1, 2017) provides that all briefs should provide the reviewing court with "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate references to the pages of the record on appeal." Defendant's brief contains a statement of facts that fails to provide this

court with an understanding of the case. Rather, defendant's statement of facts provides mostly one sentence statements of witness testimony and evidence that was adduced at each of the three days of trial without the proper citation format required. The statement of facts is hard to follow and extremely undeveloped to provide an adequate understanding of a case that has spanned 18 years of litigation.

¶ 15 Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) provides that the appellant's opening brief must set forth an argument "which shall contain the contentions of the appellant and the reasons therefor." The failure to elaborate on an argument, cite persuasive authority, or present a well-reasoned argument violates Rule 341(h)(7) and results in waiver of that argument. *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009). Defendant's argument section is barely developed and fails to provide a coherent legal argument in support of the issues defendant raises on appeal. Aside from two citations to general propositions of law, defendant fails to cite a single citation to legal authority in support of his arguments. Rather, the argument section states several facts without legal argument and reasoning for this court to review. This court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive legal arguments, and it is neither the function nor obligation of this court to act as an advocate or search the record for error. *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009).

¶ 16 In addition, defendant's brief violates several more mandatory supreme court rules governing appellate review. In particular, defendant's brief fails to: (1) provide a proper table of contents, containing the headings of the points and subpoints in the argument section (Ill. S. Ct. R. 341(h)(1)); (2) include an adequate introductory paragraph stating the nature of the action appealed from and whether any question is raised on the pleadings (Ill. S. Ct. R. 341(h)(2)(i), (ii)); (3) provide this court with a concise statement of the applicable standard of review for each issue,

with citation to authority (Ill. S. Ct. R. 341(h)(3)); and (4) include an adequate appendix that contains the notice of appeal and judgment appealed from, as required by Rule 342 (Ill. S. Ct. R. 341(h)(9); R. 342 (eff. Oct. 1, 2019)).

¶ 17 The dismissal of an appeal is such a severe sanction that we hesitate to impose it. However, defendant's brief contains multiple violations of our appellate procedural rules, which we find precludes our ability to review the issues he raises on appeal. In view of these inadequacies, we exercise our discretion and dismiss defendant's appeal.

¶ 18 III. Conclusion

¶ 19 For these reasons, we dismiss defendant's appeal.

¶ 20 Appeal dismissed.