

No. 1-09-2963

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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NICOLE WILLIAMS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 08 M 473
	)	
ELIZABETH CHRISTENSEN,	)	Honorable
	)	James J. Gavin,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.  
Justices Joseph Gordon and McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not abuse its discretion in denying plaintiff's motion to vacate the judgment on an arbitration award when the record contained no explanation for plaintiff's absence from the arbitration hearing.

¶ 2 Plaintiff Nicole Williams appeals from a decision of the circuit court denying her motion to vacate a judgment in favor of defendant Elizabeth Christensen entered on an arbitration award.<sup>1</sup> She contends that she was denied substantial justice by the denial because her attorney was absent from the arbitration due to a "recurring" medical condition. We affirm.

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<sup>1</sup> Williams is also referred to as Nicole Wilson in the record.

¶ 3 In May 2008, Williams sued Christensen for personal injuries allegedly arising from Christensen's negligence in operating a vehicle that hit Williams' vehicle in May 2006.

Christensen appeared through counsel and the matter was assigned to mandatory arbitration.

¶ 4 On December 9, 2008, an arbitration hearing was held and an award was issued in Christensen's favor. The award stated that Williams did not participate in good faith because she did not attend the arbitration hearing, either in person or through counsel. The award was subsequently filed with the court and assigned a judgment on award date of January 20, 2009.

¶ 5 In January 2009, counsel for Williams filed a motion to voluntarily dismiss the case. The motion admitted that neither Williams nor her counsel appeared at the arbitration hearing and alleged that counsel had difficulties contacting Williams because she resided out of state. The motion further alleged that counsel was physically unable to appear at the arbitration. Attached to the motion was counsel's affidavit averring that she suffered from chronic sciatica due to a 2005 fall, and was unable to attend the arbitration due to a recurrence of the condition caused by a fall on December 7, 2008.

¶ 6 After the circuit court denied the motion to dismiss and entered judgment in favor of Christensen, Williams filed a motion to vacate the judgment pursuant to section 2-1301 of the Code of Civil Procedure (the Code) (see 735 ILCS 5/2-1301 (2008)). The motion alleged Williams had pursued her claims with due diligence and that Williams' failure to appear at the arbitration hearing was not because of negligence, but due to counsel's medical condition. Attached to the motion in support was a 2006 letter from counsel's physician indicating the

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counsel was under treatment for "an acute medical condition" and that her work activities would need to be restricted "for an indefinite period."

¶ 7 Christensen responded to the vacatur motion, arguing that Williams and her counsel had not complied with discovery, Williams had not appeared at her properly noticed deposition even after it had been continued to a mutually agreeable date, and neither Williams nor her counsel appeared at the arbitration hearing. The motion further argued that the vacatur motion did not address due diligence and highlighted the facts that Williams' counsel did not contact the court to inform it of her medical condition and failed to explain how her medical condition prevented Williams from attending the arbitration hearing. The circuit court denied the motion.

¶ 8 On appeal, Williams contends that she was denied substantial justice by the circuit court's denial of the vacatur motion.

¶ 9 Pursuant to Supreme Court Rule 91(a) (eff. June 1, 1993), an arbitration hearing shall proceed in the absence of any party, who after receiving due notice, fails to attend. The failure of a party to attend an arbitration hearing, either in person or through counsel, constitutes a waiver of that party's right to reject the arbitration award and a consent to the court's entry of a judgment on the award. Rule 91(a) (eff. June 1, 1993); see also *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548 (2008) (the party who failed to appear at an arbitration hearing, either in person or through counsel, is automatically barred from rejecting the arbitration award). The absent party's only remedy is to file a motion or petition to vacate the judgment pursuant to section 2-1301

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(735 ILCS 5/2-1301 (West 2008)), or 2-1401 (735 ILCS 5/2-1401 (West 2008)) of the Code.

See Rule 91(a) (eff. June 1, 1993).

¶ 10 The grant or denial of a section 2-1301 motion lies within the circuit court's sound discretion and the court's decision will not be reversed absent an abuse of discretion or a denial of substantial justice. *Jackson*, 384 Ill. App. 3d at 548. Although there is no precise definition of substantial justice, relevant considerations include diligence or the lack thereof, the existence of a meritorious defense, the severity of the penalty resulting from the judgment, and the relative hardship upon the parties created by the grant or denial of the vacatur. *Jackson*, 384 Ill. App. 3d at 549.

¶ 11 When a party was required to attend an arbitration but did not, that party has the burden to show that her noncompliance was reasonable or the result of extenuating circumstances. *Jackson*, 384 Ill. App. 3d at 549. Here, Williams has failed to make that showing.

¶ 12 Although counsel contends that she suffers from chronic sciatica and that a recurrence of this condition necessitated bed rest and medication upon the day of the arbitration hearing, the record does not contain an explanation for counsel's apparent failure to inform anyone that she and her client would not attend the arbitration hearing. Even accepting that Williams' counsel was so incapacitated that she could not attend the arbitration, it is unclear why Williams herself did not attend. Although Williams' motion to voluntarily dismiss the case indicated that she lived out of state and counsel had "difficulties" contacting her, on appeal Williams offers no explanation for her absence at the arbitration hearing. Based on these facts, this court finds a

lack of reasonable compliance or extenuating circumstance for Williams' absence, either in person or through counsel, from the arbitration hearing. See *Jackson*, 384 Ill. App. 3d at 549.

¶ 13 This court is unpersuaded by Williams' reliance on *Biscan v. Village of Melrose Park Board of Fire and Police Commissioners*, 277 Ill. App. 3d 844, 848 (1996), as in that case, the issue was whether the trial court abused its discretion in denying a motion to vacate a default judgment and did not concern mandatory arbitration. Although the *Biscan* court was concerned that a default judgment prevented the parties from having their day in court, in the case at bar, the arbitration hearing was Williams' day in court. See *Jackson*, 384 Ill. App. 3d at 550 (the mandatory arbitration system is an alternative to trial; at the hearing all issues raised by the parties are decided by the panel). It was the absence of Williams and her counsel from the arbitration hearing that prevented a hearing on the merits of this case. *Jackson*, 384 Ill. App. 3d at 550.

¶ 14 Accordingly, this court concludes that the circuit court did not abuse its discretion in denying Williams' motion for vacatur of the judgment for Christensen on the arbitration award.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County

¶ 16 Affirmed.