

2011 IL App (1st) 102963-U
No. 1-10-2963

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

INTERSTATE BANKERS CASUALTY)	
COMPANY a/s/o MICHAEL PORTER,)	Appeal from the Circuit
)	Court of Cook County, Illinois.
Plaintiff-Appellee,)	
)	
v.)	No. 09 M1 018525
)	
FERLESIA WAITES,)	Honorable Laurence J. Dunford,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE MURPHY delivered the judgment of the court.
Neville and Steele, JJ., concurred in the judgment.

ORDER

HELD: The circuit court did not abuse its discretion in (1) denying defendant's motion, presented one day prior to the arbitration hearing, to admit negligence and to excuse her from attending the arbitration hearing based on her admission of negligence, and in (2) granting plaintiff's motion to debar defendant from rejecting the arbitration award in favor of plaintiff.

¶ 1 Plaintiff Interstate Bankers Casualty Company, as subrogee of Michael Porter, brought this property damage action against defendant Ferlesia Waites after a motor vehicle accident, and filed a Rule 237 notice requiring defendant's appearance at trial and at arbitration. On the day

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before the arbitration hearing, defendant presented a motion to admit negligence and to be excused from appearing at the arbitration hearing based on her admission of negligence. The circuit court denied the motion because that was its "standard practice" and because defendant had violated the Rule 237 notice. On the next day, defendant did not appear at the arbitration hearing. The arbitrators entered an award in favor of plaintiff and against defendant in the amount of \$3,912. Defendant rejected the arbitration award. The circuit court subsequently barred defendant from rejecting the award and entered judgment on the award in favor of plaintiff.

¶ 2 Defendant appeals, contending that the circuit court failed to exercise discretion, or, alternatively, abused its discretion, in denying her motion to admit negligence and to be excused from attending the mandatory arbitration hearing. Defendant further contends that the circuit court abused its discretion by barring her from rejecting the arbitration award in favor of plaintiff.

¶ 3 The relevant facts are the following. On March 4, 2010, plaintiff filed an Illinois Supreme Court Rule 237 (eff. July 1, 2005) notice to produce defendant "for cross-examination at the opening of Plaintiff's case-in-chief at such time as the case is tried, or at any arbitration hearing in this cause."

¶ 4 On May 7, 2010, plaintiff's attorney filed a petition to change the July 14, 2010, arbitration hearing date. Plaintiff's attorney filed his own affidavit in support of the petition. He indicated that he had "just" received a postcard notice of the date and that he needed to change it because he was scheduled to be on trial during the week of July 12, 2010, in an accounting malpractice case.

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¶ 5 On May 18, 2010, the circuit court entered a written order rescheduling the date of the arbitration hearing from July 14, 2010, to July 20, 2010.

¶ 6 At 1:15 p.m. on July 19, 2010,¹ the day before the arbitration hearing, defendant presented the circuit court with an emergency motion to admit negligence and to excuse her from appearing at the arbitration hearing because she was admitting negligence. Defendant alleged that she intended to defend the case on the issues of proximate cause and damages, in that she would be unduly prejudiced if the court denied her motion, and that plaintiff would not be unduly prejudiced if the court granted the motion.

¶ 7 Plaintiff objected to the motion, and the circuit court entered a written order denying the motion. The mandatory arbitration hearing then proceeded as scheduled on the next day.

¶ 8 At that hearing, as previously indicated, an award was entered in plaintiff's favor and against defendant in the amount of \$3,912. The arbitrators found that all parties had participated in good faith, and that plaintiff had served a Rule 237 notice to produce defendant, who was not present²

¶ 9 Defendant subsequently rejected the arbitration award. Plaintiff then filed a motion to debar defendant from rejecting the award. Plaintiff alleged that a Rule 237 notice had been filed demanding defendant's presence at the arbitration hearing, which defendant did not object, and that she also did not appear at the arbitration hearing. Plaintiff further alleged that no court

¹ Defendant provided this information in her response to plaintiff's motion to bar her from rejecting the arbitration award.

² The award further reflected that all parties had stipulated to two arbitrators.

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reporter was present at the arbitration hearing and that Illinois Supreme Court Rules 237 (eff. July 1, 2005) and 90(g) (eff. July 1, 2008) authorized the court to sanction defendant and enter judgment in favor of plaintiff.

¶ 10 The circuit court held a hearing on plaintiff's motion to debar defendant. A transcript of the hearing discloses that defense counsel informed the circuit court:

"The defendant's counsel knew that [defendant] was not going to be able to appear at the arbitration proceeding. We don't have a reason because we never had communication with [defendant]."

¶ 11 Plaintiff's attorney then argued:

"The gravamen of what counsel said is they never were able to find their client. If there would have been a reason, sick, had an accident coming to the arb, last minute day-care problems, they never reached her.

The motion to excuse was never done with the defendant's consent. They never spoke to her. She wasn't there. Give us a reason why you weren't there and I could consider it. Ask for a phone arb. I would consider it, but it's no different than me saying to you the day before an arb, Judge, I represent plaintiff. I will admit ten percent negligence on my part. I want to have a hearing without my plaintiff, but I'm fighting for 90 percent. You would throw me out of Court.

The fact that they're admitting negligence was a ruse only to see if they could perhaps get away with it and the Court caught exactly what they were trying to do. The defendant did not admit anything. They never spoke to her. No reason

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has been given why she should have the right not to be at the arb hearing under a 237 notice because her location could not be found by defendant. She wasn't there. I had my adjustor there. I had my client there."

¶ 12 The circuit court entered an order which debarred defendant from rejecting the arbitration award and which entered judgment in favor of plaintiff³ and against defendant in the amount of \$3,912. The court explained:

"Rule 237 creates a duty upon the party to appear. *** [W]hen a plaintiff does object to the admission of negligence at arbitration and trial, I deny the motion, as I did in this case. That's been my standard practice."

¶ 13 Defendant appeals, contending that the circuit court abused its discretion in denying her motion to admit negligence and to be excused from appearing at the arbitration hearing, or that the circuit court abused its discretion by failing to exercise discretion as to that motion and by relying instead on its own arbitrary "standard practice" of denying such motions, regardless of the facts, when the plaintiff objects to the admission of negligence at arbitration. Defendant claims that this is an issue of first impression. Defendant also seeks review of the order debarring her from rejecting the arbitration award and entering judgment on that award.

¶ 14 Illinois Supreme Court Rule 90(g) (eff. July 1, 2008) provides that a party's presence at an arbitration hearing may be excused "by court order for good cause shown not less than seven days prior to the hearing."

³ The order entered judgment in favor of Interstate as subrogee of defendant [*sic*]. The parties have not raised any issue concerning this error.

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¶ 15 In the present case, defendant's motion was presented the day before the arbitration hearing, in violation of the requirement in Rule 90(g) that, to be excused, she must secure the court order excusing her at least seven days in advance of the arbitration hearing. Defense counsel could have presented a motion to be excused seven days in advance of the July 20, 2010, arbitration hearing, because the record reflects that the July 20 date was set on May 18, 2010, when the court granted plaintiff's motion to reschedule the July 14 arbitration date. In fact, defense counsel had almost two months to file the motion to be excused, but chose to wait until July 19, the day before the arbitration hearing, to file the motion. This did not comply with Rule 90(g). Nor did the motion state any reason for defendant to be excused from appearing at the arbitration hearing other than that she was admitting negligence. Her attorney later disclosed that he had never communicated with her. Defendant did not sign the untimely motion or support it with an affidavit or a certification. On review, we consider the correctness of the circuit court's ruling without regard to the validity of its rationale. See *Morris v. Harvey Cycle and Camper, Inc.*, 392 Ill. App. 3d 399, 403-04 (2009). We may affirm for any reason that the record warrants without regard to the reasons relied on by the circuit court. See *Rodgers v. Peoples Gas, Light and Coke Company*, 315 Ill. App. 3d 340, 348 (2000). Therefore, it is irrelevant that the circuit court relied in part on a so-called standard practice that arguably may be construed as arbitrary and an abuse of discretion (see *People v. Patrick*, 233 Ill. 2d 62, 74-75 (2009)), because the court properly denied the motion, without regard to its reliance on a standard practice. The circuit court also explicitly observed that plaintiff had served defendant with a Rule 237 notice requiring her appearance at the arbitration hearing. Because defendant did not comply with the Rule 237

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notice, did not file a timely motion to excuse herself from appearing at the arbitration hearing, did not present any extenuating circumstances, and prevented plaintiff from calling her as an adverse witness, we affirm the circuit court's denial of defendant's motion to admit negligence and to excuse her from appearing at the arbitration hearing, without regard to its reliance on a so-called standard practice.

¶ 16 Next, pursuant to Illinois Supreme Rule 90(g) (eff. July 1, 2008), the circuit court also properly debarred defendant from rejecting the arbitration award because she failed to comply with the Rule 237 (eff. July 1, 2005) notice.

¶ 17 A court of review will not reverse a circuit court's imposition of sanctions or decision to debar a party from rejecting an arbitration award unless the circuit court's decision was an abuse of discretion (*Campuzano v. Peritz*, 376 Ill. App. 3d 485, 490 (2007)), that is, arbitrary, fanciful, or unreasonable (*Glover v. Barbosa*, 344 Ill. App. 3d 58, 61 (2003)).

¶ 18 Pursuant to Rule 90(g), a party whose absence is not waived by stipulation or excused by the trial court may be debarred from rejecting the arbitration award.

¶ 19 Defendant failed to appear at the arbitration hearing in violation of a Rule 237 notice requiring her appearance. Her attorney explained at a subsequent court hearing that he never had communication with her. We cannot overlook defendant's violation of Rule 237 or her failure to communicate with counsel.

¶ 20 Defendant has not shown that her failure to comply with the Rule 237 notice to appear at the arbitration hearing was attributable to any extenuating circumstances. Therefore, the circuit court did not abuse its discretion in debarring her from rejecting the arbitration award based on

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her unexcused absence in violation of Rule 237 even though her attorney was present at the arbitration hearing (*Bachmann v. Kent*, 293 Ill. App. 3d 1078, 1082-83 (1997) (counsel's attendance at an arbitration hearing does not preclude entry of a debarment order for litigant's failure to comply with a Rule 237 notice requiring his attendance at an arbitration hearing)), and even though the arbitrators found that the parties had acted in good faith (see *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 827 (2010) (debarment order was a discovery sanction)).

¶ 21 The judgment of the circuit court is affirmed.

¶ 22 Affirmed.