

2011 Ill. App. (2d) 101278-U  
No. 2-10-1278  
Order filed September 9, 2011

**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  
SECOND DISTRICT

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STATE FARM MUTUAL AUTOMOBILE	)	Appeal from the Circuit Court
INSURANCE COMPANY a/s/o LESLIE	)	of Winnebago County.
AND NINA WOODSON,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 09-SC-2650
	)	
CITY OF ROCKFORD, ROCKFORD	)	
BLACKTOP CONSTRUCTION COMPANY, and	)	
SANCO SERVICES, INC., d/b/a SANCO	)	
TRAFFIC CONTROL,	)	Honorable
	)	Lisa R. Fabiano,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

ORDER

*Held:* The trial court did not abuse its discretion in proceeding to trial where neither plaintiff nor plaintiff's counsel appeared, and the trial court's denial of plaintiff's motion to vacate the judgment was also not an abuse of discretion.

¶ 1 Plaintiff, State Farm Mutual Automobile Insurance Company, appeals an order of the circuit court of Winnebago County denying its motion to vacate a judgment entered against it and in favor

of defendants, the City of Rockford, Rockford Blacktop Construction Company, and Sanco Services, Inc., d/b/a Sanco Traffic Control. Plaintiff did not appear at the trial in this case due to a purported scheduling error (no one disputes that plaintiff missed the trial due to its own inadvertence). The trial proceeded in plaintiff's absence, and defendants prevailed. Judgment was entered against plaintiff. Subsequently, the trial court denied plaintiff's motion to vacate the judgment. For the reasons that follow, we affirm.

¶ 2 The facts relevant to this appeal are few. Plaintiff's insured was involved in a one-car accident, in which she and a passenger were injured. Plaintiff, as subrogee, sued defendants. Trial was scheduled for September 21, 2010, at 10:30 a.m. Plaintiff neither appeared nor filed a motion for a continuance. Plaintiff asserts in its statement of facts that "[a]ll previous court appearances in this matter occurred at 1:30 p.m." Further, plaintiff acknowledges that the order setting the matter for trial did indicate that trial was to be held at 10:30 a.m., but "[p]laintiff's counsels' office diaried [*sic*] the matter for 1:30 p.m." Plaintiff then states that no one contacted it to inquire about its absence. The trial proceeded, and judgment was entered against plaintiff. Plaintiff's counsel appeared shortly before 1:30 p.m on September 21, 2010. Plaintiff does not provide citations to the record for the majority of its assertions in violation of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) (A statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal.").

¶ 3 Before proceeding further, we note that the record on appeal does not contain a transcript of the proceeding on plaintiff's motion to vacate. Plaintiff asserts, without citation to authority that "the absence of a transcript does not automatically end [p]laintiff's appeal" and that "courts have been

hearing cases and appeals in the absence of transcripts for their entire existence.” While there may be circumstances in which this is true, it is not the general rule. Rather, it is well established that the appellant bears the burden of providing a sufficiently complete record to facilitate review of a case. *People v. 1996 Honda Accord, VIN 1HGCE6671TA029089*, 404 Ill. App. 3d 174, 175 (2010). Further, any doubts arising from an incomplete record will be resolved against the appellant. *Cutler v. Northwest Suburban Community Hospital, Inc.*, 405 Ill. App. 3d 1052, 1062 (2010). The absence of a transcript is particularly problematic in a case like this one where we are reviewing an exercise of the trial court’s discretion and the missing transcript may contain material that explains the trial court’s rationale. As was noted in, *LaSalle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 788 (2001), “Because the record on appeal is incomplete, we would be within our discretion to affirm the circuit court's order without further discussion, under the presumption that the circuit court followed the law.” While there are exceptions to these rules, plaintiff makes no attempt to explain why such an exception should apply in this case. Accordingly, it would be within our authority to affirm the circuit court’s judgment on this basis alone.

¶ 4 Moreover, we find no error in the trial court’s actions in any event. Section 2-1203 of the Civil Practice Law (735 ILCS 5/2-1203 (West 2010)) governs motions to vacate judgments that follow bench trials. That statute states, in pertinent part: “In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.” 735 ILCS 5/2-1203 (West 2010). The decision regarding whether to grant such a motion lies within the sound discretion of the trial court. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009).

Thus, we will not disturb such a decision unless the trial court abused its discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007). An abuse of discretion occurs only where no reasonable person could agree with the position taken by the trial court. *Slovinski v. Elliot*, 237 Ill. 2d 51, 66 (2010).

¶ 5 In deciding whether to vacate a judgment, the following factors are relevant: the diligence, or lack thereof, of the party seeking to set aside the judgment; the existence of a meritorious issue; the magnitude of the penalty resulting from the judgment; and the relative hardships to the parties. See *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715 (2010). A judgment should not be vacated merely to absolve a party from the consequences of its own negligence. See *Sakun v. Taffer*, 68 Ill. App. 3d 343, 353 (1994); *Collins v. Prestige Casualty Co.*, 54 Ill. App. 3d 762, 765 (1977). However, where an order denying a motion to vacate violates a party's fundamental right to justice, the order must be reversed. *Zanzig v. H.P.M. Corp.*, 134 Ill. App. 3d 617, 625 (1985).

¶ 6 Here, plaintiff essentially admits that it missed the trial due to its own inadvertence, or, more specifically, the inadvertence of its attorney. Plaintiff represents that the reason it missed the trial was that plaintiff's counsel's office staff erroneously "diaried [*sic*] the trial for" 1:30 p.m. While this is unfortunate for plaintiff, at the same time, the fault clearly lies with plaintiff. Moreover, all defendants were present at the appointed time, as were three witnesses. Further, defendant Rockford Blacktop Construction Company, had flown a company representative in from South Carolina to be present for the trial. Plaintiff complains that Rockford Blacktop flew a person in from such a distance for a small-claims case. While we do not know what prompted Rockford Blacktop to take such a step, we certainly cannot say that it was unreasonable for a party to wish to be present at a trial. Indeed, it appears to us that a reasonable person could conclude that the judgment in this case

should not be vacated given the hardship that would accrue to defendants and the fact that plaintiff's absence was the direct result of plaintiff's counsel's staff's failure to properly record the time of the trial. In other words, we cannot find an abuse of discretion on the part of the trial court. See *In re Marriage of Garde*, 118 Ill. App. 3d 303, 308-09 (1983); cf. *Solomon v. Arlington Park/Washington Park Race Track Corp.*, 78 Ill. App. 3d 389, 399 (1979) (holding, where the defendant sought to vacate a default judgment, that "[i]n the absence of any showing of fraud, unconscionable behavior, or unfair advantage on the part of plaintiff or the court, and in view of the fact that defendant's failure to appear resulted from the negligence of its own agent, we are compelled to find that the trial court abused its discretion in granting defendant's petition").

¶ 7 Plaintiff relies on *Robinson v. Thompson*, 58 Ill. App. 3d 269 (1978), and *Kessling v. United States Cheerleaders Ass'n*, 215 Ill. App. 3d 582 (1991), in arguing otherwise. In both cases, the attorneys for the parties that did not appear had conflicting trials scheduled, of which both attorneys attempted to inform the court. *Robinson*, 58 Ill. App. 3d at 270, and *Kessling*, 215 Ill. App. 3d at 582. Thus, neither party was responsible for its failure to appear. Here, plaintiff's failure to attend the trial was due to a breakdown of communication on the plaintiff's side. Thus, these two cases are distinguishable.

¶ 8 Plaintiff also argues that the trial court should have simply dismissed the case for want of prosecution rather than proceeding to trial on the merits. Plaintiff provides no supporting legal authority, thus waiving the issue. *Novakovic v. Samutin*, 354 Ill. App. 3d 660, 667 (2004). Moreover, we note that the mere fact that the trial court might have chosen a different course does not mean the course it chose was an abuse of discretion.

¶ 9 Finally, we note that defendants seek sanctions for plaintiff's filing of an allegedly frivolous appeal in accordance with Illinois Supreme Court Rule 375 (eff. February 1, 1994). We deny this request. While plaintiff's arguments on appeal were not so compelling as to warrant the relief requested, they were not so lacking in support to be deemed frivolous.

¶ 10 In sum, we are unable to find that no reasonable person could agree with the actions of the trial court in proceeding to trial and in denying plaintiff's motion to vacate the judgment. As such, the trial court did not abuse its discretion, and its decision is therefore affirmed.

¶ 11 Affirmed.