

No. 1-10-2032

**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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NOE LIMON and ROBERTO RESENDIZ,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Cook County.
	)	
v.	)	No. 07 M1 302671
	)	
MARCO ONOFRE and ANTONIO ONOFRE,	)	Honorable
	)	Mary R. Minella,
Defendants-Appellants.	)	Judge Presiding.

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JUSTICE MURPHY delivered the judgment of the court.  
Justices Neville and Salone concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in barring defendant from rejecting an arbitration award for plaintiff or in entering judgment on the award, when defendants did not attend the mandatory arbitration hearing either in person or through counsel. Defendant's counsel received written notice of the arbitration hearing date over 60 days beforehand, and the court in vacating a dismissal for want of prosecution did not set a new arbitration hearing date but merely reinstated the previous properly-noticed date.

¶ 2 Defendant Marco Onofre appeals from a judgment for \$12,645.20 plus costs in favor of plaintiff Noe Limon entered upon an arbitration award in a negligence action for personal injury and property damage arising from a vehicular collision. Defendant contends on appeal that the trial court erred in granting plaintiff's motion to bar him from rejecting the award and entering judgment on the award because he did not have proper notice of the arbitration hearing.

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¶ 3 In August 2007, plaintiffs Limon and Roberto Resendiz filed a complaint for personal injury and property damage arising from an April 2007 collision with plaintiffs' vehicle allegedly caused by defendant Marco's negligent operation of a vehicle owned by defendant Antonio Onofre. Defendants' answer admitted that the collision occurred but denied negligence, claimed contributory negligence by Limon, and contested damages. Defendants also filed a counterclaim alleging negligence by Limon.

¶ 4 In October 2007, the court assigned the case to mandatory arbitration. Upon plaintiffs' motion that Limon's damages had already exceeded the arbitration threshold, the court on May 30, 2008, transferred the case to the law division of the circuit court and "the arbitration date of June 10, 2008" was stricken. However, defendants' insurer tendered the policy limits, the parties settled the personal injury claims, and thus an agreed order was entered on July 31, 2009, transferring the case back to the court's municipal division for trial of the property damage claim. The case was reassigned to mandatory arbitration in September 2009.

¶ 5 On September 22, 2009, the court dismissed the case for want of prosecution (DWP) due to plaintiffs' failure to attend a session of court, striking the arbitration hearing of November 24, 2009. In plaintiffs' motion to vacate the dismissal, they noted in relevant part that the arbitration hearing of November 24 had been set on September 9. Plaintiffs' motion to vacate the DWP "and reinstate the mandatory arbitration date of Nov. 24, 2009, at 8:30 a.m." was granted on October 14, 2009. However, while the order expressly vacated the DWP, it did not expressly reinstate the arbitration hearing.

¶ 6 The arbitration hearing was held on November 24. The arbitrators entered an award for plaintiff Limon against defendant Marco in the sum of \$12,645.20. The award noted that defendants did not appear either in person or through counsel and that the hearing began at 8:45 a.m. and ended at 9:10 a.m.

¶ 7 Defendants filed a motion to vacate the arbitration award, arguing that the case had been dismissed and the arbitration hearing stricken on September 22. Plaintiff Limon responded to

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defendants' motion and filed a motion to bar defendants from rejecting the award, alleging that defendants had notice of his motion to vacate the DWP and noting that said motion was granted on October 14. Attached to plaintiff's motion and response were copies of a postcard notice dated September 9 setting the arbitration hearing date of November 24. Defendants responded to plaintiff's motion to bar rejection and replied in support of their motion to vacate the award, noting that the order vacating the DWP did not expressly reinstate the arbitration hearing date. Plaintiff replied in support of his motion to bar rejection, claiming that defendants' counsel was in court for the DWP vacatur and was thus aware that the arbitration hearing had been reinstated, and noting that defendants' counsel would have received both a copy of the DWP vacatur order and a reminder telephone call from the arbitration center on the day before the hearing.

¶ 8 On March 9, 2010, the court vacated the arbitration award, granting defendants' vacatur motion and denying plaintiff's motion to bar rejection.

¶ 9 Plaintiff filed a motion to reconsider the March 9 order, arguing that the court disposed of his motion without oral argument. Defendants responded, arguing that the motions were decided after the court "considered the briefs and oral arguments." Defendants also sought sanctions for plaintiff's allegedly groundless motion to reconsider.

¶ 10 The court heard plaintiff's reconsideration motion and defendants' sanctions motion on May 14, 2010. The court had found for defendants on March 9 based upon the representation by defendant's counsel that it did not receive notice of the November 24 arbitration hearing. However, after the March 9 motion hearing, the court received confirmation from the arbitration center that it had phoned counsel for all parties on November 23, and in particular that "Judy" answered the call to defendant's counsel at 10 a.m. and was told of the arbitration hearing the next day. Defendant's counsel admitted that there was a "Judy" in their firm who could have answered the telephone. The court granted plaintiff's motion to reconsider and underlying motion to bar rejection, denied defendants' sanctions motion, and vacated its March 9 order. The court barred defendants from rejecting the arbitration award and entered judgment on the

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arbitration award in the sum of \$12,645.20 plus costs to plaintiff Limon from defendant Marco.

¶ 11 Defendant filed a motion to reconsider the May 14 order, arguing that plaintiff's motion to reconsider the March 9 order presented no new evidence and raised no new arguments. The court denied the motion on June 21, 2010, and this appeal timely followed.

¶ 12 We note before proceeding to the merits of this appeal that plaintiff has not filed an appellee's brief. We may consider the appeal on defendant's brief alone. *Village of Richmond v. Magee*, 407 Ill. App. 3d 560, 565 (2011), citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 On appeal, defendant contends that the trial court erred in barring him from rejecting the arbitration award and entering judgment thereon, arguing that he did not have 60 days' written notice of the arbitration hearing as required by Supreme Court Rule 88.

¶ 14 Supreme Court Rule 88 governs the scheduling of mandatory arbitration hearings and provides that:

"The procedure for fixing the date, time and place of a hearing before a panel of arbitrators shall be prescribed by circuit rule provided that not less than 60 days' notice in writing shall be given to the parties or their attorneys of record. The hearing shall be held on the scheduled date and within one year of the date of filing of the action, unless continued by the court upon good cause shown."

Ill. S. Ct. R. 88 (eff. June 1, 1987).

¶ 15 Supreme Court Rule 91(a) governs the absence of a party from a mandatory arbitration hearing and provides that:

"The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. \*\*\* The failure of a party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and

a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the vacation of judgments by default, sections 2-1301 and 2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief." Ill. S. Ct. R. 91(a) (eff. June 1, 1993), citing 735 ILCS 5/2-1301, 2-1401 (West 2010).

Rule 91(a) is mandatory, so that a party who fails to appear at an arbitration hearing either in person or through counsel is automatically barred from rejecting the arbitration award without further action by the circuit court. *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548 (2008). The barred party's recourse is to file a motion to vacate as provided in Rule 91(a), and a party absent from an arbitration hearing has the burden of showing that his absence was reasonable or the result of extenuating circumstances. *Jackson*, 384 Ill. App. 3d at 549.

¶ 16 The supreme court rules regarding mandatory arbitration should be read in conjunction with each other and in harmony with the rest of the law. *Jackson*, 384 Ill. App. 3d at 549. Thus, a motion seeking relief from Rule 91(a) is governed by Rule 91(a), under which vacatur is appropriate only where the party's failure to attend arbitration was inadvertent, as well as by section 2-1301 or 2-1401. *Jackson*, 384 Ill. App. 3d at 549. The decision to grant or deny a motion to vacate under section 2-1301 is within the sound discretion of the trial court and thus will not be reversed absent an abuse of discretion or a denial of substantial justice. *Jackson*, 384 Ill. App. 3d at 548.

¶ 17 Because attorneys have a duty to act with reasonable diligence in representing their client's interests, including tracking cases and learning the date upon which a hearing is to occur,

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a party's lack of notice of the date of a hearing does not necessarily excuse the party's failure to appear at the hearing. *Jackson*, 384 Ill. App. 3d at 549. In *Jackson*, we affirmed the denial of vacatur for a party that was absent from an arbitration hearing because it did not receive postcard notice of the date of the hearing from the clerk of the court, where the clerk sent such a card to the party's old address and the party had not informed the clerk of its present address. *Jackson*, 384 Ill. App. 3d at 549-50.

¶ 18 Here, defendant had to show the trial court that his absence, either in person or through counsel, from the arbitration hearing was reasonable and due to extenuating circumstances. The court found that defendant's absence was not excused because his counsel had proper notice of the arbitration hearing. The record establishes that postcard notice was sent on September 9 for the November 24 hearing, that someone at the law firm representing defendant received a telephoned reminder the day before the hearing, and the hearing was indeed held on November 24. Thus, the weight of the law and facts amply supports the trial court's conclusion. Defendant was sent written notice of the arbitration hearing date over 60 days before the hearing date on the notice, which in turn was the date that the hearing was actually held.

¶ 19 Against such a conclusion, defendant argues that the court set a new arbitration hearing date on October 14 (when it vacated the DWP) that required a new written notice 60 days ahead of the new hearing date. We disagree. In vacating the DWP, the court did not set a new arbitration hearing date but merely reinstated the previous properly-noticed November 24 hearing date – as plaintiffs had requested. The only remaining basis for claiming extenuating circumstances is that the October 14 order did not expressly reinstate the November 24 hearing. However, a reasonably diligent attorney who was aware of both the order dismissing the case for want of prosecution and striking the arbitration date and of plaintiffs' motion to vacate the DWP would have taken concrete steps to learn the outcome of the motion including whether the arbitration date had been reinstated or reset. Defendant's counsel had well over a month between the DWP vacatur of October 14 and the November 24 scheduled arbitration hearing to do so.

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The telephone reminder of November 23 merely emphasizes the absence of reasonable diligence on defendant's part.

¶ 20 We conclude that the trial court did not err by barring defendant from rejecting the award or in entering judgment for plaintiff upon the award. Accordingly, the judgment of the circuit court is affirmed.

¶ 21 Affirmed.