

2013 IL App (1st) 120185-U

SIXTH DIVISION
May 17, 2013

No. 1-12-0185

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

KATHERINE J. KIM,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 M1 100738
)	
MICHELE K. KOEWLER,)	Honorable
)	Pamela E. Hill-Veal,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff failed to establish that trial court acted with bias toward her.

¶ 2 Plaintiff Katherine J. Kim (Kim), an attorney, brought this *pro se* action against defendant Michele K. Koewler (Koewler), alleging that Koewler had breached an oral agreement to rent a room from Kim at a reduced rate in return for performing administrative services for Kim. After a bench trial, the trial court entered judgment for Koewler. Kim now appeals, alleging that the trial court displayed bias against her and therefore judgment should be entered for her or a new trial ordered.

¶ 3 Kim's complaint alleged that Koewler breached an oral agreement entered into by the parties on February 1, 2010, in which Koewler would pay \$600 in rent, reduced from \$1000, in return for performing administrative services for Kim on a part-time basis. Koewler was not required to pay rent for the months of February and April. Koewler also agreed that she would obtain a paying job. The complaint alleged that Koewler did not complete her administrative tasks for Kim, and did not begin looking for a job until July. Kim alleged that on September 14, 2010, Koewler vacated the apartment, having failed to pay arrearages owed on it. Kim sought \$7,260 in damages for this count. A second count alleged that Koewler had used supplies valued at \$100 without reimbursing Kim and had also borrowed \$300 without paying back that loan. In this count, Kim sought \$400 in damages.

¶ 4 At trial, Scott Feigen testified for Kim that Koewler used to be his roommate. He also had contact with her while she lived with Kim, in 2010. Kim was unable to elicit any additional testimony from Feigen because of relevancy objections.

¶ 5 Kim next called Koewler as an adverse witness. Koewler denied that Kim had told her that rent would be \$1000 per month. She admitted that she had agreed to do administrative work, but said she did this because they were friends and Kim was eventually supposed to pay her. She denied agreeing to look for a job while living at Kim's apartment, but did admit that Kim gave her a job referral. Koewler also denied that she failed to pay rent for the first five months she stayed at Kim's apartment. She testified that, except for April, she paid \$600 per month from March through September in 2010.

¶ 6 Kim testified that she had an oral agreement with Koewler that Koewler would pay \$600 per month in rent, which was a reduction from the \$1000 in monthly rent Kim had received from a previous tenant. In return, Koewler would perform administrative services for Kim on a part-time basis. Koewler also agreed that she would look for a job. According to Kim, Koewler did

not complete many of the administrative services as agreed. For instance, she failed to post a job notice within a three-week period, as Kim had requested. Kim testified that because Koewler had failed to complete these tasks, Koewler owed her the full amount of rent at \$1000 per month. On cross-examination, Kim testified that Koewler had failed to pay rent from February to July, except for two payments of \$300 each. Kim admitted that in an October 28, 2010, email she told Koewler that Koewler owed her \$1800. Kim explained that this was the amount which Koewler admitted to owing her, before Kim did further investigation. At the conclusion of Kim's case in chief, the trial court granted Koewler's motion for a directed finding in Koewler's favor. This appeal ensued.

¶ 7 The appellee, Koewler, has failed to file a responsive brief, but we find that we may consider this appeal on Kim's brief alone. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008); *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 It is Kim's contention that the trial judge's "remarks and actions" during pretrial proceedings and at trial reveal such bias that Kim is entitled to a judgment in her favor or a remand for a new trial. We find no evidence of bias by the trial court in the record before us. Although hearings were held before the pretrial rulings to which Kim objects, Kim has failed to file a transcript of those proceedings, a bystanders' report, or an agreed statement of facts as provided by paragraphs (a), (c), and (d) of Supreme Court Rule 323 (eff. December 13, 2005). Without any knowledge of what occurred at these proceedings, we are unable to evaluate Kim's contention that the trial court displayed bias towards her. Appellants are required to provide the reviewing court with a record which is sufficient to support their claims of error, and doubts and deficiencies arising from an insufficient record will be construed against them. *People v. Hunt*, 234 Ill. 2d 49, 58 (2009). Accordingly, when no transcript or appropriate substitute has been

filed, we will presume that the trial court's orders conformed to the law and had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009).

¶ 9 Kim contends that the trial court displayed bias when it granted Koewler's motion to vacate an order granting Kim leave to file a motion for summary judgment. The basis for Koewler's motion was that Kim had agreed to postpone her motion because Koewler's attorney notified Kim that he was going to be out of town when that hearing occurred. Koewler alleged that instead, Kim proceeded with her motion and the trial court entered an order granting Kim leave to file her motion for summary judgment. On September 20, 2011, the trial court granted Koewler's motion, vacated its order of August 25, 2011, which allowed Kim to file a motion for summary judgment, and set the cause for trial. Kim has failed to file a transcript, bystander's report, or agreed statement of facts concerning this hearing. Accordingly, we will presume that the trial court's orders conformed to the law and were based on sufficient facts. *Id.*

¶ 10 Kim makes additional contentions of bias allegedly displayed by the trial court against her in subsequent hearings on motions. Kim alleges that at a November 29, 2011, hearing, the trial court was "visibly upset" at Kim's allegation that the trial court had called the hearing early, before Kim arrived. Kim also alleges that it was "improper and unfair" for the trial court to hear argument at that hearing on two motions which were originally scheduled for December 1, 2011. Kim alleges that the trial court threatened to impose sanctions against her if she did not withdraw her amended motion for summary judgment. Kim also alleges that the trial court showed bias when it denied her motion for sanctions against Koewler for allegedly intimidating witnesses from whom Kim had obtained affidavits. Kim asserts that the trial judge became "visibly frustrated" and raised her voice against Kim. Again, there is no transcript or other record of what occurred at this hearing, other than the court order. Nor has Kim cited any part of the record

which supports her claims of witness intimidation by Koewler. We therefore must presume that the trial court acted properly and without the bias which Kim attributes to her. *Id.*

¶ 11 Kim's final contention is that comments and actions of the trial court at the December 14, 2011, trial establish a "high degree of antagonism" against Kim. Kim alleges that the trial court berated her, raised her voice, mumbled, and rolled her eyes and held up her hands when Kim spoke. Although the record contains a transcript of this trial, Kim never sought to make a record of these alleged actions by the trial court. Kim also alleges that the trial court interrupted her in "at least seven instances" and did not allow her to finish what she was saying, as well as allowing Koewler's counsel to make blanket objections to which the trial court made "blanket sustains." We have reviewed the record and find that the trial court dealt courteously and fairly with Kim, an attorney who admittedly had no trial experience.

¶ 12 Kim's lack of experience led her to elicit hearsay from her witnesses as well as to attempt to elicit responses which were not relevant to her allegations of a breach of contract. The trial court's rulings were a proper means of controlling the course of the trial (*People v. Jackson*, 250 Ill. App. 3d 192, 204 (1993)) and ensuring the prompt conduct of court business (*People v. Thigpen*, 306 Ill. App. 3d 29, 40 (1999)). For all of these reasons, we find no support for Kim's claim that the trial court was biased against her. Accordingly, we affirm the entry of judgment for Koewler.

¶ 13 Affirmed.