

April 2013 bench trial, the court entered judgment in favor of defendant and against plaintiff.

¶ 3 Plaintiff appeals, asserting the trial court's denial of its motion for substitution of judge as of right was a fatal error in the disposition of this case and thus a new trial is warranted.

We reverse in part, vacate in part, and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff's motion for substitution of judge as of right was brought under section 2-1001(a)(2) of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1001(a)(2) (West 2012)) and was filed the same day as the small claims complaint. The motion asserted the cause was set before "Judge Chase Leonhard" and noted the judge had not ruled on any substantial issues in the case. On October 3, 2012, the cause was assigned to Judge John Kennedy for an October 22, 2012, hearing on plaintiff's motion for substitution of judge.

¶ 6 The October 22, 2012, hearing addressed motions for substitution of judge as of right filed by plaintiff in this case and 18 other Champaign County cases (Nos. 12-SC-941 through 12-SC-944, 12-SC-1113 through 12-SC-1116, 12-SC-1226 through 12-SC-1230, and 12-SC-1361 through 12-SC-1365). Defendant appeared *pro se* at the hearing but did not have a position on the motion. Plaintiff's attorney rested on the written motions. The trial court found the "blanket" filing of the motion raises issues of separation of powers and the constitutional authority of the courts to assign cases. It noted the granting of the motion would require a substantial reassignment of case loads. Moreover, the court explained the "blanket" motions, instead of protecting individual litigants, were being used to thwart the presiding judge's independent authority to assign cases. In other words, the motions were telling the presiding judge these small claims cases cannot be assigned to Judge Leonhard. The court stated the

"blanket fashion" of the motions makes them fall into an exception of the general rule allowing for substitution of judge as of right. The court noted the plaintiff would need to articulate a specific basis for cause or prejudice in these cases.

¶ 7 In November 2012, plaintiff filed a motion to reconsider its denial of the motions to substitute the judge as a matter of right, noting the trial court's ruling was unexpected and thus plaintiff's attorney failed to bring supporting case law to the hearing. The motion also requested leave to file a brief in support of the motion. In December 2012, Judge Kennedy held a hearing on plaintiff's motion to reconsider. At the hearing, plaintiff cited *Cincinnati Insurance Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 23, 975 N.E.2d 203, which held the court has no discretion to deny a motion for substitution of judge as of right. Plaintiff also cited the language of *Behringer v. Hardee's Food Systems, Inc.*, 282 Ill. App. 3d 600, 601, 668 N.E.2d 614, 615 (1996), that stated "[t]he statute's provisions are to be liberally construed in order to effect rather than defeat the right of substitution." Plaintiff referred to some additional case law that cannot be clearly identified. After reading plaintiff's case authority, the court denied the motion to reconsider. The court noted the "blanket" use of the right of substitution directly contradicts the authority of the circuit court to assign cases contained in Illinois Supreme Court "Rule 21(b)" (which is currently set forth in Rule 21(c) (eff. Dec. 1, 2008)). It again reiterated its belief the motions were being used to interfere with the court's authority to independently assign cases and not to protect litigant rights. Judge Kennedy also referred the cause to Judge Thomas Difanis for assignment to Judge Leonhard. On December 17, 2012, Judge Difanis entered a docket entry, stating the case remained assigned to Judge Leonhard.

¶ 8 On April 29, 2013, Judge Leonhard held a bench trial on the merits of plaintiff's

small claims complaint. Plaintiff presented the testimony of defendant, who admitted taking out a loan with Tower Loans but insisted he paid the loan off when an employee of Tower Loans came to defendant's place of employment. Defendant did not get a receipt for his payment because he stormed off angry after paying the money. Plaintiff also presented the promissory note that defendant signed with Tower Loans, but the copy on appeal is, for the most part, too faded to read. Defendant also testified on his own behalf and presented a copy of his credit report that did not mention Tower Loans or plaintiff. Defendant also again stated he recalled paying off the loan. The court found in favor of defendant, noting plaintiff had failed to prove both its standing to enforce the contract of Tower Loans and that defendant's obligation still exists.

¶ 9 On May 28, 2013, plaintiff filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). Thus, this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 10

II. ANALYSIS

¶ 11

A. Lack of Appellee Brief

We begin by noting defendant has not filed a brief on appeal. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment. However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court should decide the merits of the appeal. On the other hand, if the appellant's brief demonstrates *prima facie* reversible error and the contentions in the brief find support in the record, the trial court's judgment may be reversed. *First Capitol Mortgage Corp. v. Talandis*

Construction Corp., 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976).

¶ 12 B. Substitution of Judge as of Right

¶ 13 Here, plaintiff challenges the trial court's denial of her motion for substitution of judge as of right. We review the denial of such motions *de novo*. *In re Estate of Gay*, 353 Ill. App. 3d 341, 343, 818 N.E.2d 860, 863 (2004).

¶ 14 Section 2-1001(a)(2) of the Procedure Code (735 ILCS 5/2-1001(a)(2) (West 2012)) provides a litigant with one substitution of judge without cause as of right. When properly made, the right to substitution of judge is absolute, and the trial "court has no discretion to deny the motion." *Cincinnati Insurance Co.*, 2012 IL App (1st) 111792, ¶ 23, 975 N.E.2d 203. However, to prohibit "judge shopping," a litigant must file a motion for substitution of judge as of right at the earliest practical moment before the assigned trial judge has ruled upon a substantial issue in the case. *Cincinnati Insurance Co.*, 2012 IL App (1st) 111792, ¶ 23, 975 N.E.2d 203. Additionally, the trial court can deny the motion if it was shown the party filed the motion simply to delay or avoid trial. *Aussieker v. City of Bloomington*, 355 Ill. App. 3d 498, 500, 822 N.E.2d 927, 929 (2005). Courts are to liberally construe section 2-1001(a)(2) provisions to effectuate rather than destroy the right of substitution. *Cincinnati Insurance Co.*, 2012 IL App (1st) 111792, ¶ 23, 975 N.E.2d 203. Last, any order entered after a motion for substitution of judge was improperly denied is void. *Aussieker*, 355 Ill. App. 3d at 500, 822 N.E.2d at 929.

¶ 15 As stated, defendant failed to file a brief with this court. When properly made, the right to substitution of judge under section 2-1001(a)(2) of the Procedure Code (735 ILCS 5/2-1001(a)(2) (West 2012)) is absolute, except for a few narrowly defined exceptions. Here, the

record suggests Judge Leonhard was automatically assigned to all small claims complaints, and plaintiff filed the motion for substitution of judge right after the complaint. Therefore, Judge Leonhard could not have made any substantive rulings. Thus, the record indicates plaintiff's motion was properly made and should have been granted unless an exception existed. Accordingly, plaintiff's claimed error is not of the type that can easily be decided without the aid of an appellee's brief to argue an exception to the general rule exists in this case.

¶ 16 On these facts, we find plaintiff has established a *prima facie* case of reversible error, and we reverse the trial court's denial of plaintiff's motion for substitution of judge as of right in this case only. See *First Capitol Mortgage Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495. Accordingly, all orders entered after the denial of the motion for substitution are void and thus are vacated. See *Aussieker*, 355 Ill. App. 3d at 500, 822 N.E.2d at 929. We remand the cause for a new trial before a different judge.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we reverse the trial court's denial of plaintiff's motion for substitution of judge, vacate the court's judgment, and remand the cause to the Champaign County circuit court for a new bench trial before a different judge.

¶ 19 Reversed in part and vacated in part; cause remanded with directions.