

¶ 4

I. BACKGROUND

¶ 5 On February 25, 2013, plaintiff, Stark Excavating, Inc., filed a two-count complaint against defendant claiming money damages. Plaintiff sought damages in the amount of \$6,342. On March 28, 2013, the trial court entered a default judgment against defendant in the amount of \$6,342 plus costs.

¶ 6 According to the circuit court's record sheet, on July 30, 2013, an "Agreed Order To Vacate Judgment" was "filed." The agreed order appears to have been prepared by defendant's counsel and set the matter for an October 23, 2013, arbitration hearing. The signatures of both parties' counsel appear on the agreed order. The trial court entered the agreed order on August 1, 2013.

¶ 7 Defendant failed to appear at the October 23, 2013, arbitration hearing and the arbitration panel entered a default judgment against it in the amount of \$6,462 plus costs. On October 24, 2013, the trial court set the matter for "post-hearing status" on November 14, 2013, at 9 a.m.

¶ 8 On November 14, 2013, the trial court entered its judgment on the arbitration award. In its order, the court noted defendant was precluded from rejecting the award because defendant neither appeared at the arbitration hearing nor paid the rejection fee. The record contains a "notice of rejection of the arbitration award" file stamped on November 14, 2013, and a receipt voucher (bearing the time of 12:23 p.m.) showing payment of a \$200 arbitration-rejection fee on the same date.

¶ 9 On November 21, 2013, defendant filed a motion to vacate the trial court's judgment on the arbitration award. Defendant asserted that the rejection of the arbitration award was filed by 8:30 a.m. on November 14, 2013; that a copy of the rejection was placed in the

court file prior to 9 a.m. that morning, with a note from defendant's counsel stating he waited in court until 9:15 a.m. but had to leave for another obligation; and that at the time defendant's counsel left the courtroom, plaintiff's attorney was not present. In a January 3, 2014, response to defendant's motion, plaintiff asserted defendant was barred from rejecting the arbitration award due to his failure to attend the arbitration hearing. In a January 9, 2014, affidavit in support of defendant's motion to vacate, defendant's counsel asserted that he "did not receive a Court Order setting the matter for arbitration on October 23, 2013," and that he filed the rejection notice and paid the rejection fee prior to the court's entry of judgment on the arbitration award.

¶ 10 Following a January 10, 2014, hearing, the trial court denied defendant's motion to vacate the November 14, 2013, judgment, noting that defendant's counsel failed to attend the arbitration hearing despite having notice of such.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant asserts the trial court erred in failing to grant its motion to vacate the November 14, 2013, judgment because (1) it was not given proper notice of the arbitration date and (2) it paid the rejection fee and filed its notice of rejection prior to the time that the court entered its order.

¶ 14 Before proceeding to the merits of this case, we note that the record before us does not include a transcript or bystander's report of any proceedings herein, including the November 14, 2013, hearing during which the trial court entered judgment on the arbitration award or the January 10, 2014, hearing during which the court denied defendant's motion to vacate the judgment. The appellant has the burden of providing a sufficiently complete record to allow meaningful review of the issues on appeal. *In re Marriage of Gulla & Kanaval*, 234 Ill. 2d

414, 422, 917 N.E.2d 392, 397 (2009). A reviewing court cannot review a trial court's factual findings or basis for its legal conclusion without a record of the proceeding. *Id.* In the absence of an adequate record, we "must presume the [trial] court's order had a sufficient factual basis and that it conforms with the law." *Id.*

¶ 15 A trial court's denial of a motion to vacate judgment will not be disturbed absent an abuse of discretion. *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548, 893 N.E.2d 280, 283 (2008).

¶ 16 Defendant first argues that the trial court erred in denying its motion to vacate the judgment because it did not receive "proper notice" of the scheduled date for arbitration. Plaintiff contends defendant had notice of the arbitration date because defendant's counsel prepared the "Agreed Order To Vacate" the original judgment and the parties agreed to the date of arbitration during a teleconference.

¶ 17 Initially we note that defendant cites *Ratkovich v. Hamilton*, 267 Ill. App. 3d 908, 914, 642 N.E.2d 834, 838 (1994), for the proposition that the failure to provide adequate notice of an arbitration hearing renders a subsequent arbitration award void. However, this proposition has since been rejected as contrary to Illinois Supreme Court precedent which holds " 'a judgment or order is void [only] where it is entered by a court or agency lacking personal jurisdiction, subject-matter jurisdiction, or the inherent power to enter the particular judgment or order, or where the judgment or order is procured by fraud.' " *Jordan v. Bangloria*, 2011 IL App (1st) 103506, ¶ 10, 966 N.E.2d 986 (quoting *Juszczuk v. Flores*, 334 Ill. App. 3d 122, 125, 777 N.E.2d 454, 456 (2002), citing *Johnston v. City of Bloomington*, 77 Ill. 2d 108, 112, 395 N.E.2d 549, 550 (1979); *People v. Davis*, 156 Ill. 2d 149, 155, 619 N.E.2d 750, 754 (1993); *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174-75, 692 N.E.2d 281, 284 (1998); *Steinbrecher v.*

Steinbrecher, 197 Ill. 2d 514, 530-31, 759 N.E.2d 509, 519 (2001); and *LaSalle National Trust, N.A. v. Lamet*, 328 Ill. App. 3d 729, 731-32, 767 N.E.2d 464, 467 (2002)). Thus, contrary to defendant's assertion, a lack of notice renders a subsequent arbitration award voidable, not void. *Bangloria*, 2011 IL App (1st) 103506, ¶ 10, 966 N.E.2d 986.

¶ 18 Illinois Supreme Court Rule 91(a) (eff. June 1, 1993) provides in part, "[t]he arbitration hearing shall proceed in the absence of any party who, *after due notice*, fails to be present." (Emphasis added.) While defendant asserts it did not receive "proper notice" of the arbitration date, it fails to elaborate on what form the notice must take to be considered proper.

¶ 19 In this case, the trial court's January 10, 2014, order states in relevant part, "[t]he [d]efendant's motion to vacate judgment on the [a]rbitration [a]ward is denied due to [d]efendant['s] counsel not attending the hearing and having notice of the hearing." As mentioned above, the record does not contain a transcript or bystander's report of the hearing conducted on January 10, 2014. Nonetheless, the record before us establishes that defendant had due notice of the October 23, 2013, arbitration hearing where the agreed order to vacate judgment entered on July 30, 2013—which set forth the date and time for arbitration—was prepared by defendant's counsel and his signature clearly appears on its face.

¶ 20 On appeal, and for the first time, defendant argues that even if it had notice of the arbitration hearing, its failure to appear was inadvertent, and thus, it "has the right to move to vacate the award or judgment [pursuant to Rule 91(a) by filing a motion under sections] 2-1301 or 2-1401 of the Illinois Code of Civil Procedure." Given that defendant failed to assert in the trial court that its failure to appear at the arbitration hearing was inadvertent, it has forfeited this argument on appeal. *McKinney v. Castleman*, 2012 IL App (4th) 110098, ¶ 20, 968 N.E.2d 185 (citing *Western Casualty & Surety Co. v. Brochu*, 105 Ill. 2d 486, 500, 475 N.E.2d 872, 879

(1985) ("It is axiomatic that questions not raised in the trial court are deemed waived and may not be raised for the first time on appeal.")).

¶ 21 Defendant next argues that the trial court erred in denying its motion to vacate the judgment because it "mistakenly assumed" defendant had not filed its notice of rejection or paid the required fee to perfect its rejection of the arbitration award. Plaintiff counters arguing that defendant was barred from rejecting the arbitration award due to its failure to attend the arbitration hearing.

¶ 22 Rule 91(a) further provides, in part, "[t]he 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." Ill. S. Ct. R. 91(a) (eff. June 1, 1993). "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 of the circuit court." *Jackson*, 384 Ill. App. 3d at 548, 893 N.E.2d at 283. Additionally, Illinois Supreme Court Rule 93(a) (eff. Jan. 1, 1007) provides, in part, "*any party who was present at the arbitration hearing*, either in person or by counsel, may file with the clerk a written notice of rejection of the award [upon payment of the rejection fee] and request to proceed to trial." (Emphasis added.)

¶ 23 In this case, defendant had notice of the arbitration hearing. Pursuant to Rules 91(a) and 93(a), defendant's failure to appear at the arbitration hearing precluded it from rejecting the arbitration award. Thus, whether defendant timely filed a notice of rejection of the arbitration award and paid the rejection fee is irrelevant.

¶ 24 Accordingly, we cannot conclude that the trial court abused its discretion in denying defendant's motion to vacate the judgment.

¶ 25

III. CONCLUSION

¶ 26

For the reasons stated, we affirm the trial court's judgment.

¶ 27

Affirmed.