

SECOND DIVISION
February 24, 2015

No. 1-13-3237

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

| | | |
|---|---|-------------------|
| EvANGEL YHWHNEWBN, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County. |
| |) | |
| v. |) | No. 10 L 5150 |
| |) | |
| ARCHIETTA SHANNON and SPENCER LEAK |) | |
| and SONS FUNERAL HOME LTD., <i>et al.</i> , |) | Honorable |
| |) | Diane M. Shelley, |
| Defendants-Appellees. |) | Judge Presiding. |

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction.

¶ 2 Plaintiff, EvAngel Yhwhnewbn, filed a negligence complaint against the defendants, Shannon Archietta and Spencer Leak and Sons Funeral Home, Ltd. She appeals, *pro se*, from the September 29, 2013, order denying her motion for substitution of judge for cause, and from the October 11, 2013, order denying her motion for reconsideration.

¶ 3 Our review of the pleadings contained in the record filed on appeal reveals that plaintiff filed a complaint against defendants for injuries that were allegedly caused by one of defendants' employees.¹ On June 19, 2012, the cause was assigned to mandatory arbitration, and on July 17, 2012, the matter came before the court on defendants' motion to compel discovery. The court's July 17, 2012, order stated that plaintiff's failure to respond to defendants' interrogatories by July 31, 2012, and to defendants' request to produce by August 14, 2012, would result in plaintiff being barred from testifying and presenting evidence at an arbitration hearing or trial.

¶ 4 Plaintiff did not comply with the court's order, and on August 5, 2013, an arbitration award was entered in favor of defendants.

¶ 5 Plaintiff filed a notice of rejection of the award, and on August 7, 2013, she filed an untimely motion to vacate the order entered on July 17, 2012. She alleged that until the arbitration hearing, she was unaware that the barring order was still in effect and that no ruling of her failure to comply was ever made. The trial court denied plaintiff's motion to vacate on September 4, 2013.

¶ 6 Defendants subsequently filed an emergency motion to bar plaintiff from rejecting the arbitration award, alleging that she was barred from presenting any evidence at the arbitration hearing based on her failure to comply with discovery. Defendants also asserted that plaintiff was barred from presenting evidence at the arbitration hearing because of her "failure to take any action to vacate the July 2012 order." Defendants further maintained that plaintiff failed to meaningfully participate at the arbitration hearing in good faith, and asked that their emergency

¹ A copy of the complaint was not included in the record filed on appeal.

motion be heard on September 5, 2013, or soon thereafter. In response, plaintiff filed an objection asking the court to strike defendants' motion, and asserting good cause for medical hardship unavailability. She alleged that she had two medical appointments previously scheduled for September 5, 2013.

¶ 7 On September 5, 2013, plaintiff failed to appear before the court, and the court granted defendants' emergency motion to bar plaintiff's rejection of the arbitration award. The court also entered judgment in favor of defendants.²

¶ 8 On September 9, 2013, plaintiff filed a motion to vacate the September 5, 2013, order, alleging that on September 4, 2013, the judge disclosed for the first time that he had "business dealings" with defendants. She further alleged that she was prejudiced by the September 5, 2013, order being entered in her absence, after she had shown good faith for her absence.

¶ 8 On September 16, 2013, plaintiff filed a motion for substitution of judge for cause against Judge James E. Snyder, alleging that the judge was biased in favor of defendants where he closed discovery for plaintiff, but allowed it to remain open for defendants' attorney, and had a "personal business dealing" with defendants.

¶ 9 On September 18, 2013, the case was transferred to Judge Diane Shelley, and on September 19, 2013, the parties appeared before Judge Shelley for a hearing on the motion for substitution of judge, the matter was taken under advisement, and plaintiff was ordered to provide a copy of the transcript from September 4, 2013, by September 27, 2013.

²On August 5, 2013, plaintiff also filed a notice of appeal from orders entered on July 18, and 30, 2013. *Yhwhnewbn v. Archietta Shannon and Leak and Sons Funeral Chapels*, No. 1-13-2493 (appeal pending). Those orders are not contested by plaintiff in the instant appeal.

¶ 10 Plaintiff subsequently filed an affidavit in which she averred that there is no transcript from September 4, 2013, because there was no court reporter present. She further averred that purchasing a transcript, if it was available, would cause her financial hardship.

¶ 11 On September 29, 2013, the court denied plaintiff's motion for substitution of judge for cause.

¶ 12 On October 3, 2013, plaintiff filed a motion to reconsider and vacate that order, alleging that the trial court admitted that it had not read her motion for substitution of judge and asked her to explain it orally, then ruled on it. She asserted that if the trial court had read her motion and reviewed her exhibits, it might have ruled differently. Plaintiff further alleged that the trial judge should be substituted because he had business dealings with defendants, which constitutes a conflict of interest.

¶ 13 The court denied the motion on October 11, 2013, and plaintiff filed a notice of an interlocutory appeal from that order.

¶ 14 On appeal, plaintiff contends that the court erred in denying her motion for substitution of judge for cause because it failed to include her argument in its order. She further contends that the trial court abused its discretion when it ordered the parties to enter a settlement conference, and in continuing the matter for a transcript, which imposed a financial hardship on her. Plaintiff asserts that the judge showed bias in believing everything defendants had to say, and in having business ties with defendants which he did not disclose until 17 months after the case was assigned to him. Lastly, plaintiff asserts that the trial court showed bias and failed to provide a fair and impartial hearing where it did not read her motion for substitution of judge for cause.

¶ 15 Defendants initially respond that plaintiff's appeal should be dismissed for lack of jurisdiction, and plaintiff's failure to comply with the Supreme Court Rules governing appellate procedure. Notwithstanding the deficiencies in her brief, we agree that the appeal must be dismissed for lack of jurisdiction.

¶ 16 Illinois Supreme court Rule 301 allows appeals from final judgments in civil cases as a matter of right. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). "An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof." *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008), quoting *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998).

¶ 17 The denial of a motion for substitution of judge for cause is an interlocutory order, and is not final for purposes of appeal. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969 (2004). Rather, it is a preliminary order in a pending lawsuit, and is appealable on review from a final order. *Marriage of Nettleton*, 348 Ill. App. 3d at 969.

¶ 18 In this case, plaintiff's September 9, 2013, motion to vacate the September 5, 2013 judgment entered in favor of the defendants on the arbitration award had not been ruled upon at the time she filed her notice of appeal, and therefore, there was no final order to appeal from, and the trial court still retained jurisdiction to deny her motion to vacate the September 5, 2013 judgment. *Clark v. Country Mutual Insurance Co.*, 131 Ill. App. 3d 633, 635-36 (1985). Furthermore, the orders denying the motion for substitution for cause did not include a Rule 304(a) finding: that there is no just reason for delaying enforcement or appeal or both. Ill. S. Ct.

Rule 304(a) (eff. Feb. 26, 2010). Moreover, even if the orders contained such language, they would not have vested this court with jurisdiction to review the interlocutory orders because the orders were not final orders. *Marriage of Nettleton*, 348 Ill. App. 3d at 969.

¶ 19 Notwithstanding, plaintiff asserts that this court has jurisdiction pursuant to Illinois Supreme Court Rules 307(b) (eff. Feb. 26, 2010), 63 (eff. April 1, 2007), and 60(b) (eff. Dec. 1, 2007), and 28 USC § 455 (2012). The only authority cited by plaintiff that is relevant to the appellate court's jurisdiction is Rule 307, which allows for appeals from certain specified interlocutory orders. However, an order denying a motion for substitution of judge for cause is not one of the interlocutory orders specified in Rule 307. Ill. Sup. Ct. R. 307 (eff. Feb 26, 2010). Therefore, we hold that the appellate court does not have jurisdiction to consider her claim, and we dismiss her appeal.

¶ 20 Appeal dismissed.