2016 IL App (1st) 150269-U

THIRD DIVISION
July 27, 2016

No. 1-15-0269

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KIMBERLY WILLIAMS	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 13 M1 1302938
	)	
MARKHAM ROLLER RINK,	)	Honorable
	)	Sheryl A. Pethers,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff properly barred from rejecting arbitration award in favor of defendant where plaintiff failed to appear for arbitration hearing. Trial court also properly precluded plaintiff from voluntarily dismissing her case after defendant filed motion to bar rejection of arbitration award.

¶ 2 Plaintiff-appellant, Kimberly Williams appeals from an order entered by the circuit court granting defendant-appellee, Markham Roller Rink's, motion to bar Williams from rejecting an arbitration award in its favor. Williams claims she had the right to voluntarily dismiss her case notwithstanding the pending motion to bar and that the trial court also abused its discretion in denying a prior motion Williams filed to transfer her case to the

Law Division. Finding no error, we affirm.

¶ 3 The crux of Williams' arguments on appeal share a common theme: her lawyer was unaware of the status of the case and did not deliberately fail to comply with discovery requests or appear at the arbitration hearing. But the record demonstrates otherwise.

¶ 4 Williams filed this case in the First Municipal Division of the Circuit Court of Cook County on November 4, 2013, claiming damages for injuries she sustained when she fell at Markham Roller Rink exactly two years earlier on November 4, 2011. The summons directed to defendant indicated that Williams' counsel agreed to accept service via facsimile at (855) 817-9338. Defendant was served on November 18, 2013 and filed an appearance through counsel on December 17, 2013. On December 30, 2013, defendant filed a motion to extend the time to respond to the complaint. Defendant ultimately withdrew that motion and filed an answer to the complaint on January 2, 2014. The certificate of service filed with the answer reflects that it was served via facsimile on Williams' counsel at the same fax number listed on the summons and on his brief on appeal.

¶ 5 Defendant propounded discovery on Williams on January 20, 2014. On March 17, 2014, when Williams failed to respond, defendant filed a motion to compel. Defendant's motion recited that on March 6, 2014, counsel had sent a letter to Williams' counsel pursuant to Illinois Supreme Court Rule 201(k) (eff. July 1, 2014), requesting responses to outstanding discovery by March 13, 2014, and that, as of the date the motion was filed, Williams had not responded to the discovery. The record does not contain a certificate of service of the motion. On March 27, 2014, defendant's motion was granted and the court

directed Williams to respond to outstanding discovery by April 3, 2014.

¶ 6 In the meantime, on March 6, 2014, a computer-generated notice advised the parties that a mandatory arbitration hearing was scheduled for May 19, 2014. See 735 ILCS 5/2-1001A (West 2012) (providing for mandatory arbitration of cases in which a party asserts a claim not exceeding $50,000).

¶ 7 On April 15, 2014, Williams filed an unopposed motion to vacate the order granting the motion to compel and requesting that discovery deadlines be extended and the arbitration hearing be continued. Williams' counsel represented in the motion that he had not received notice of any of the pleadings or discovery filed by defendant. Counsel's affidavit did not address any steps he had taken to ascertain the status of his client's case since the date it was filed. Although the court vacated the order on the motion to compel and extended the discovery deadlines, it did not reschedule the arbitration hearing. The court directed Williams to respond to written discovery by April 29, 2014, and appear for a deposition by May 13.

¶ 8 After Williams again failed to comply with outstanding written discovery, defendant filed a second motion to compel on May 5, 2014. In response to this motion, Williams filed a motion for leave to file an amended complaint increasing her *ad damnum* to an amount in excess of $50,000 and requested transfer to the Law Division. This motion, without any support, claimed that Williams' injuries were more extensive than first alleged.

¶ 9 The following day, defendant filed a motion to bar Williams from calling any witnesses or presenting any evidence at the May 19 arbitration hearing. In her response filed on May 14, Williams represented that she had tendered answers to written discovery on May 9 (which defendant later represented to the court were unsworn), but that documents

including medical records and tax returns had yet to be produced. The response also represented that Williams had not presented herself for deposition because during the week her lawyer was attempting to schedule the deposition, "she would be out of state visiting an ailing relative." The response again requested that the arbitration hearing be rescheduled.

¶ 10 On May 15, 2014, the trial court (i) denied Williams' motion to amend her complaint and transfer the case to the Law Division, (ii) granted the motion to reschedule the arbitration hearing and reset that hearing to July 1, 2014, at 8:30 a.m., and (iii) extended the time for Williams to respond to written discovery and present herself for deposition.

¶ 11 On July 1, 2014, Williams failed to appear for the arbitration hearing and an award in favor of defendant was entered. On July 31, 2014, the last day under the rules for doing so (Illinois Supreme Court Rule 93(a) (eff. Jan. 1, 1997)), Williams purported to reject the arbitration award.

¶ 12 Attached to Williams' rejection of the award was the affidavit of her lawyer claiming that on June 30, 2014, he contacted the circuit court's mandatory arbitration center to "confirm" that the hearing was going forward the following day. According to counsel's affidavit, he spoke with, "on information and belief," a female employee who told him "the case was not on the docket." For unexplained reasons, counsel called a second time and spoke with, again "on information and belief," a male employee who told him the case would not proceed the following day. Counsel's affidavit did not explain why, when there was a court order setting the hearing for July 1, he called to "confirm" the hearing or why, when he was allegedly told by the female employee that the hearing was not on the docket, he called a second time.

¶ 13 On August 29, 2014, defendant filed a motion to bar Williams' rejection of the arbitration award. After defendant noticed this motion for hearing on September 3, 2014, Williams filed a motion to voluntarily dismiss her case. On December 1, 2014, the trial court denied Williams' motion to voluntarily dismiss, granted defendant's motion to bar Williams' rejection of the award and entered judgment in favor of defendant.

¶ 14 Defendant has failed to file a brief on appeal and we have taken this case under advisement on Williams' brief only. Even though defendant has not filed a brief, we may nevertheless decide the issues presented. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); *State Farm Mutual Insurance Co. v. Ellison*, 354 Ill. App. 3d 357, 388 (2004) (where the record is not complex and the claimed errors can be decided without the aid of an appellee's brief, reviewing court can decide the merits of an appeal on appellant's brief alone).

¶ 15 On appeal, Williams first claims that the trial court erred in denying her motion for leave to amend her complaint and transfer this case to the Law Division. We review an order denying leave to file an amended pleading for an abuse of discretion. *Richter v. Prairie Farms Dairy,* 2016 IL 119518, ¶ 35 (citing *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992)). We first note that the record does not contain a transcript or bystander's report of any of the hearings conducted in the trial court, including those during which the court exercised its discretion in a manner Williams challenges here.

> "The appellant has the burden to present a complete record on appeal to support its claims of error. *Balough v. Northeast Illinois Regional Commuter R.R. Corp.*, 409 Ill. App. 3d 750, 770 (2011) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 393

(1984)). Absent an adequate record, there is no basis upon which to determine whether the trial court abused its discretion in its rulings. *In re Marriage of Blinderman*, 283 Ill. App. 3d 26, 34 (1996). If we are not provided with a complete record, we must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92; see also *Corral v. Mervis Industries*, 217 Ill. 2d 144, 157 (2005) ('Without an adequate record preserving the claimed error, the reviewing court must presume that the circuit court had a sufficient factual basis for its holding and that its order conforms to the law.')." *Young v. Alden Gardens of Waterford*, 2015 IL App (1st) 131887, ¶ 67.

Thus, without more, we could properly elect to affirm the rulings from which Williams appeals as we have no basis to conclude that the trial court abused its discretion.

¶ 16 But wholly apart from the inadequacy of the record, it is apparent that the trial court acted properly in refusing to allow Williams to sidestep her obligation to respond to discovery by belatedly seeking leave to amend her complaint and send it to another division of the court. Williams did not seek leave to amend her complaint until after defendant filed its second motion to compel. By that time, she had twice failed to comply with discovery deadlines and was facing a motion to bar her from presenting any evidence at the impending arbitration hearing. Williams' motion to amend was unsupported by any evidence that the amendment was warranted by medical conditions not apparent at the time the original complaint was filed. The trial court was not required to indulge such a transparent effort by Williams to avoid the consequences of her repeated failure to comply with discovery deadlines and, therefore, did not err in denying leave to amend.

¶ 17 Williams also contends that the trial court erroneously denied her the right to voluntarily dismiss her complaint prior to granting defendant's motion to bar her rejection of the arbitration award. We review a trial court's decision to bar rejection of an arbitration award for an abuse of discretion. *State Farm Insurance Co. v. Jacquez*, 322 Ill. App. 3d 652, 655 (2001).

¶ 18 Williams invokes section 2-1009 of the Code of Civil Procedure, which permits a plaintiff, "at any time before trial or hearing begins," to dismiss her action. 735 ILCS 5/2-1009(a) (West 2012). Williams contends that because she timely filed a rejection of the arbitration award, she should have been permitted to dismiss her action prior to the hearing on defendant's motion to bar.

¶ 19 We first consider whether Williams was entitled to reject the arbitration award. Under Illinois Supreme Court Rule 91 (eff. June 1, 1993), Williams' failure to appear at the arbitration hearing constituted "a waiver of the right to reject the award and consent to the entry by the court of a judgment on the award." Further, Supreme Court Rule 93 (eff. Jan. 1, 1997), permits rejection of an arbitration award only by "a party who was present at the arbitration hearing, either in person or by counsel." Having failed to appear at the arbitration hearing, Williams was not entitled to reject the award.

¶ 20 Williams, citing *Jacquez*, nevertheless argues that a party's failure to appear at a mandatory arbitration hearing does not necessarily prohibit rejection of an award. In *Jacquez*, State Farm, as subrogee of its insured, filed an action against Jacquez to recover sums paid as a result of an accident involving its insured allegedly caused by Jacquez. *Jacquez*, 322 Ill. App. 3d at 654. State Farm served Jacquez with a notice to appear at the mandatory arbitration hearing. *Id.* After Jacquez failed to appear, the arbitration panel's

award in favor of State Farm noted his absence, but found there was no prejudice to State Farm as a result. *Id.* Jacquez was represented by counsel at the hearing. *Id.* The trial court granted State Farm's motion to bar Jacquez' rejection of the award. *Id*.

¶ 21 This court considered the particular circumstances of the case as well as "the purpose of the supreme court rules on the arbitration process, which is to prevent abuse and uphold the integrity of the process." *Id.* at 655. Also relevant was whether there was a "'deliberate and pronounced disregard' for the rules or the court." *Id.* (quoting *Gore v. Martino*, 312 Ill. App. 3d 701, 704 (2000)). *Jacquez* noted that where a party's failure to appear in person at an arbitration hearing was reasonable and not intended to "make a mockery of the arbitration proceedings," the sanction of debarment may constitute an abuse of discretion. *Id*. Based on the arbitration panel's specific finding that Jacquez' failure to appear resulted in no prejudice to State Farm, the court found that the trial court abused its discretion in precluding Jacquez from rejecting the award. *Id.* at 656.

¶ 22 Measured against the circumstances of this case, *Jacquez* provides no support for Williams' position. Since this case was filed, Williams and her counsel repeatedly failed to comply with orders to participate meaningfully in discovery, attempted to avoid the consequences of that failure by requesting to transfer the case to a different division and ultimately failed to participate at all in mandatory arbitration. Although counsel claims to have called the arbitration center the day before the hearing, he did not explain to the trial court and does not explain on appeal why, in the face of a court order setting the date and time for the hearing, he elected to rely on an oral representation that the case was "not on the docket." Finally, Williams waited until 5:03 p.m. on the last possible day to reject the award, conduct we find inconsistent with counsel's claimed surprise to learn that the

hearing proceeded as scheduled a month earlier. Excusing such deliberate and pronounced disregard for both the rules and the court by permitting Williams to reject the award would undermine the purpose of the rules to provide an "early, economical and fair resolution of monetary disputes." Illinois Supreme Court Mandatory Arbitration Rules, Introductory Comments (adopted May 20, 1987).

¶ 23 The fact that Williams sought to voluntarily dismiss her case prior to the hearing on defendant's motion to bar does not change the outcome. The interplay between Supreme Court Rule 91 and section 2-1009 of the Code of Civil Procedure was considered in *Arnett v. Young*, 269 Ill. App. 3d 858 (1995). In *Arnett*, a plaintiff who failed to appear at an arbitration hearing sought to voluntarily dismiss her case. *Id.* at 859. Finding that the "irrevocable consent granted by the absent party to the court to award judgment [under Rule 91] is incompatible with the right of a party to voluntarily dismiss her case before judgment is rendered," *Arnett* found that Rule 91 "permanently bars those absent from an arbitration hearing from pursuing voluntary dismissal." *Id.* at 860-61.

¶ 24 It makes no difference, as Williams argues here, that she filed a rejection of the arbitration award, while the plaintiff in *Arnett* did not. As discussed above, because Williams and her attorney failed to appear at the arbitration hearing, she was precluded under Rule 91 from rejecting the award. And because we conclude that the circuit court did not abuse its discretion in barring rejection of the award, it likewise did not err in entering judgment in favor of defendant. Therefore, we affirm the judgment of the circuit court.

¶ 25 Affirmed.