2016 IL App (1st) 152267-U

No. 1-15-2267

Fifth Division
March 31, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

KENDRICK ROBINSON,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	No. 2013 M1 147904
v.	)	The Honorable Dennis McGuire, Judge Presiding.
CLASS COURIER MESSENGER COMPANY,	)	
Defendant-Appellee.	)	

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment is affirmed where the trial judge did not abuse its discretion in failing to *sua sponte* recuse himself after plaintiff filed a complaint with the Judicial Inquiry Board against him

¶ 2 The instant appeal arises from the trial court's grant of defendant Class Courier Messenger Company's motion for a directed finding after *pro se* plaintiff Kendrick Robinson had presented his case-in-chief at a bench trial. Plaintiff appeals, arguing that the trial judge

should have recused himself after becoming aware that plaintiff had filed a complaint with the Judicial Inquiry Board against the judge. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On August 28, 2013, plaintiff filed a *pro se* complaint against defendant, alleging that defendant had not paid plaintiff all the wages he was due. On September 3, 2013, defendant filed a motion to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), arguing that plaintiff had not alleged sufficient facts to state a cause of action for breach of contract.

¶ 5 Plaintiff retained counsel, who filed an appearance on September 16, 2013, and the trial court granted plaintiff leave to file an amended complaint.

¶ 6 On September 26, 2013, defendant filed a motion for sanctions, seeking to sanction plaintiff for filing duplicative and frivolous claims. Defendant claimed that plaintiff had filed an identical lawsuit in the Sixth Municipal District, which was dismissed with prejudice. Defendant further claimed that over the past 18 months, plaintiff had filed over 30 complaints against various defendants in both the First Municipal District and the Sixth Municipal District.

¶ 7 On September 30, 2013, plaintiff filed his first amended complaint, in which he alleged that he and defendant had entered into an agreement for defendant to pay plaintiff scheduled rates for lease of his truck and delivery services. However, even though plaintiff performed according to the agreement, defendant failed to pay plaintiff the agreed-upon wages. Plaintiff alleged that defendant's breach of its agreement caused plaintiff to incur damages in the amount of $20,192 in loss of compensation for deliveries. On October 21, 2013, defendant filed a motion to dismiss the first amended complaint under section 2-615 of the Code, again

arguing that the complaint did not allege sufficient facts to state a cause of action for breach of contract. The identical motion to dismiss was refiled on November 13, 2013.

¶ 8 On October 31, 3013, plaintiff's counsel filed a motion to withdraw, citing plaintiff's lack of cooperation, and the trial court granted counsel's motion on November 14, 2013. On December 11, 2013, the trial court granted defendant's motion to dismiss but gave plaintiff leave to file a second amended complaint.

¶ 9 Plaintiff retained new counsel, who filed an appearance on December 23, 2013. On January 27, 2014, plaintiff filed a second amended complaint, in which plaintiff provided further detail about the wages he alleged he was owed, as well as attaching a copy of the agreement at issue. On February 6, 2014, defendant filed a motion to dismiss plaintiff's second amended complaint pursuant to section 2-615 of the Code, again alleging that plaintiff had failed to allege sufficient facts to state a cause of action for breach of contract and did not provide detail as to his damages.

¶ 10 On May 15, 2014, plaintiff's counsel filed a motion to withdraw, which the trial court granted on May 30, 2014. Plaintiff retained new counsel, who filed an appearance on July 7, 2014. Counsel subsequently filed a motion to withdraw, citing several comments plaintiff had made to the trial judge and a lawsuit filed against counsel's law firm by plaintiff, and the trial court granted the motion to withdraw on September 17, 2014.

¶ 11 On October 14, 2014, plaintiff filed a *pro se* third amended complaint, providing additional details about the alleged agreement between plaintiff and defendant, as well as plaintiff's calculations concerning his damages. On October 28, 2014, defendant filed a motion to dismiss the third amended complaint under section 2-615 of the Code, in which defendant again argued that plaintiff had failed to allege sufficient facts to state a cause of

action for breach of contract. On November 13, 2014, the trial court granted the motion to dismiss, but gave plaintiff leave to file a fourth amended complaint.

¶ 12 Although it is not contained in the record on appeal, plaintiff apparently filed a fourth amended complaint, which was answered by defendant on January 26, 2015, and the case proceeded to trial.

¶ 13 On June 17, 2015, plaintiff filed a *pro se* complaint in federal district court against the Judicial Inquiry Board for "violation of plaintiff['s] civil rights," alleging that he had filed complaints against four circuit court judges, including a judge previously assigned to the instant case, and the Judicial Inquiry Board had taken no action on his complaints.

¶ 14 On July 20, 2015, the case proceeded to trial.[1] Prior to beginning, the parties and the trial court engaged in the following colloquy:

> "THE COURT: Just so everyone is aware, it looks, it appears Mr. Robinson filed a JIB, Judicial Inquiry Board complaint against me. It appears that he thinks that somehow I disrespected him, because I was assigned to the second courtroom that date and informed him that *** I informed him that I cannot talk to parties in litigation that is in front of me regarding that litigation.
>
> ***
>
> Mr. Robinson, I'm more than happy to go forward with this.
>
> And it also appears Mr. Robinson filed a civil action—civil rights case against the Judicial Inquiry Board on June 17 of 2005 [*sic*] in Federal Court.

[1] We note the record is missing the first two pages of the report of proceedings, with the report of proceedings containing a cover page followed immediately by page 4 of the transcript, which begins in the midst of a discussion between the parties and the court.

> The last court date, July 5th, Mr. Robinson had filed a motion to disqualify the defendant attorney/owner for Class Courier. He did not appear. That was struck off the call.
>
> I am ready to proceed. If you want to talk, you are more than welcome. I'll pass it for a few minutes; otherwise, we will start the trial.
>
> DEFENSE COUNSEL: Your Honor, how can there not be a conflict now at this point when he filed a judicial—
>
> THE COURT: If he's going to try to take my job away, that's fine.
>
> PLAINTIFF: I just want to get it over with. It's been 22 months."

¶ 15 Plaintiff called Mark Chandler as a witness, who plaintiff stated "was riding with me in the truck." During his examination of Chandler, plaintiff attempted to present the court with documents, which the court would not accept because plaintiff had not laid a foundation. The court remarked that "[y]ou cannot simply throw papers at me, sir," and "[y]ou have to lay a proper foundation. You have not done that. I cannot look at whatever you are trying to give me." The court also sustained several objections based on hearsay and legal conclusions.

¶ 16 Plaintiff continued trying to present his documents to the trial court, which continually refused to accept them because plaintiff had not laid a foundation. Plaintiff then testified on his own behalf, explaining why he felt defendant owed him money, and the trial court sustained an objection based on hearsay. After plaintiff testified, he again attempted to submit his documents to the court, but the court refused to accept them based on lack of foundation. Plaintiff then rested, and defendant made a motion for a directed finding. The trial court granted defendant's motion, finding that plaintiff "failed to articulate any of the elements of a contract, mainly, offer, acceptance, consideration, breach and damages.

Therefore, I have no other recourse but to grant the motion." On the same day, the trial court entered judgment in favor of defendant.

¶ 17 Plaintiff filed a motion to reconsider, which was denied, and on August 7, 2015, plaintiff filed a *pro se* notice of appeal of the July 20, 2015, judgment, stating that the relief sought was a "new trial [because he] did not get [a] chance to present [evidence]."

¶ 18 ANALYSIS

¶ 19 On appeal, plaintiff's sole argument is that the trial judge should have *sua sponte* recused himself from plaintiff's case after learning that plaintiff had filed a complaint with the Judicial Inquiry Board against the judge. As an initial matter, defendant argues that this court lacks jurisdiction to consider plaintiff's appeal because plaintiff did not raise the issue of bias in his notice of appeal. We do not find this argument persuasive.

¶ 20 Illinois Supreme Court Rule 303(b)(2) (eff. Jan. 1, 2015) requires that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." "Illinois courts have held that a notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *People v. Smith*, 228 Ill. 2d 95, 104 (2008); *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011).

¶ 21 "[W]hile a notice of appeal is jurisdictional, it is generally accepted that such a notice is to be construed liberally." *Smith*, 228 Ill. 2d at 104. "The purpose of a notice of appeal is to inform the prevailing party in the trial court that the other party seeks review of the judgment." *Smith*, 228 Ill. 2d at 104. " 'Accordingly, notice should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the

successful litigant of the nature of the appeal. [Citation.] Where the deficiency in notice is one of form, rather than substance, and the appellee is not prejudiced, the failure to comply strictly with the form of notice is not fatal.' " *Smith*, 228 Ill. 2d at 105 (quoting *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 229-30 (1991)). Furthermore, "[i]n addition to the exception for form defects, there is also an exception for rulings that were necessary steps to the judgment named in the notice [of appeal]." *Filliung v. Adams*, 387 Ill. App. 3d 40, 49 (2008) (citing *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 436 (1979)). "In *Burtell*, our supreme court held that an unspecified judgment was reviewable if the specified judgment 'directly relates back to [it].' " *Filliung*, 387 Ill. App. 3d at 49 (quoting *Burtell*, 76 Ill. 2d at 434).

¶ 22 In the case at bar, plaintiff's notice of appeal indicates that he is seeking reversal of the trial court's July 20, 2015, judgment and is seeking a new trial. Similarly, on appeal, plaintiff is arguing that the trial court's July 20, 2015, judgment should be reversed and the matter remanded for a new trial because the trial judge violated plaintiff's rights by not recusing himself when he became aware that plaintiff had filed a complaint with the Judicial Inquiry Board against him. We find the notice of appeal sufficiently sets out the order being appealed and the relief sought and, accordingly, find that we have appellate jurisdiction to consider plaintiff's claims.

¶ 23 Defendant takes issue with the fact that plaintiff indicated in the notice of appeal that he would be arguing that the court's evidentiary rulings were in error and did not raise the issue of bias. However, "[n]owhere in [Rule 303(b)(2)] is there a requirement that an appellant specifically set forth in the notice of appeal each and every issue he wishes to appeal." *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 243 (2006) (further noting that, "[o]n the contrary,

our supreme court has determined that the briefs, and not the notice of appeal itself, specify the precise issues to be relied upon for reversal" (citing *Burtell*, 76 Ill. 2d at 433)). Additionally, as noted, the notice of appeal should be construed liberally and, in the case at bar, defendant was provided adequate notice through the notice of appeal that plaintiff would be urging the reversal of the July 20, 2015, order. See *Mountain States Mortgage Center, Inc. v. Allen*, 257 Ill. App. 3d 372, 376 (1993) (finding appellate jurisdiction even though argument on appeal was not included in notice of appeal). This is not a case such as *Long v. Soderquist*, 126 Ill. App. 3d 1059, 1062 (1984), a case defendant cites in support of its argument, in which the notice of appeal specified that certain counts were being appealed and did not include the counts actually at issue on appeal. Instead, the notice of appeal in the instant case accurately set forth the order being appealed but simply specified a different basis for reversal. We cannot find that this deprives us of jurisdiction to consider plaintiff's arguments on appeal.

¶ 24 Defendant further asks us to dismiss plaintiff's appeal for lack of compliance with Supreme Court Rules concerning the contents and form of plaintiff's appellate brief. A *pro se* litigant is not excused from following the rules that dictate the form and content of appellate briefs. *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5; *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008). See also *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001) ("*Pro se* litigants are presumed to have full knowledge of applicable court rules and procedures[.]"). In the case at bar, defendant is correct that plaintiff's brief fails to comply with the Supreme Court Rules governing appellate briefs, and we may, within our discretion, dismiss his appeal for that reason. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. However, "our jurisdiction to entertain the appeal of a *pro se* plaintiff is

unaffected by the insufficiency of his brief, especially where the court has the benefit of a cogent brief of the other party." *Bielecki v. Painting Plus, Inc.*, 264 Ill. App. 3d 344, 354 (1994) (citing *Tannenbaum v. Lincoln National Bank*, 143 Ill. App. 3d 572, 575 (1986)). Here, we understand the issues raised in plaintiff's brief and are assisted by defendant's cogent brief, so we choose not to dismiss plaintiff's appeal. See *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008) ("Although petitioner's brief is clearly deficient and we certainly could strike his brief for his failure to comply with the rules [citation], we choose not to do so, as we understand the issues raised and we have the benefit of respondent's cogent brief [citation].").

¶ 25 Turning to the merits of plaintiff's argument on appeal, plaintiff claims that the trial judge should have *sua sponte* recused himself after learning that plaintiff had filed a complaint with the Judicial Inquiry Board against him. Under Illinois Supreme Court Rule 63(C)(1)(a) (eff. July 1, 2013), "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer[.]" "[T]he trial judge is in the best position to determine whether he or she is prejudiced against the defendant." *People v. Kliner*, 185 Ill. 2d 81, 169 (1998). Accordingly, decisions regarding the recusal of judges are reviewed under an abuse of discretion standard. *People v. Saltzman*, 342 Ill. App. 3d 929, 931 (2003); *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 175 (2008).

¶ 26 Courts have previously considered whether the filing of a complaint against a judge with the Judicial Inquiry Board demonstrates prejudice to a litigant and have concluded that it does not. For instance, in *In re Marriage of Hartian*, 222 Ill. App. 3d 566, 569 (1991), cited

with approval by our supreme court in *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002), the appellate court found that a Judicial Inquiry Board complaint filed by the plaintiff against the trial judge was not sufficient evidence of "personal bias stemming from an extrajudicial source" to necessitate a finding of actual prejudice that would entitle the plaintiff to a change of venue. See also *People v. Musso*, 518 (finding no error when trial judge refused to recuse himself despite, *inter alia*, a complaint filed by the defendant with the Judicial Inquiry Board). In fact, courts have noted that in filing a complaint with the Judicial Inquiry Board, the complainant "was directly responsible for creating any alleged prejudice." *People v. Smeathers*, 297 Ill. App. 3d 711, 716 (1998). In finding that the complainant had failed to demonstrate the judge was prejudiced against him merely due to the filing of a complaint with the Judicial Inquiry Board, the *Smeathers* court noted that "[t]o hold otherwise would thwart the administration of justice, as it would allow one to escape prosecution by filing frivolous complaints against his trial judges in order to force an endless stream of recusals." *Smeathers*, 297 Ill. App. 3d at 716. See also *Hartian*, 222 Ill. App. 3d at 569 ("To allow a change of venue under these circumstances would create a dangerous precedent whereby those seeking venue changes need only file charges with the Judicial Inquiry Board to achieve that purpose. [The respondent's] argument for recusal on this ground is meritless.").

¶ 27 In the case at bar, we cannot find that the trial court abused its discretion when the judge did not *sua sponte* recuse himself after plaintiff had filed a Judicial Inquiry Board complaint against him. As other courts have found, a decision otherwise would permit a party to force a recusal any time even a frivolous complaint with the Judicial Inquiry Board was filed. We further note that plaintiff in the case at bar is well versed in our civil justice system having filed over 30 lawsuits in the circuit court of Cook County.

¶ 28 CONCLUSION

¶ 29 The trial court's judgment is affirmed where the trial judge did not abuse its discretion in failing to *sua sponte* recuse himself after plaintiff filed a complaint with the Judicial Inquiry Board against him.

¶ 30 Affirmed.