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FIFTH DIVISION
February 2, 2018

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GENEVA RENEE BAXTER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 2015 M1 301341
)	
MV TRANSPORTATION, INC.,)	The Honorable
)	Jerry A. Esrig,
Defendant-Appellee.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶1 *HELD:* The circuit court did not err in denying plaintiff’s motion to reconsider its order debarring plaintiff from rejecting an arbitration award and judgment. The circuit court additionally did not abuse its discretion in denying plaintiff’s motion to stay.

¶2 Plaintiff, Geneva Renee Baxter, was injured while attempting to board a Pace bus operated by defendant, MV Transportation, Inc. Plaintiff’s subsequent negligence complaint proceeded to arbitration wherein an award was entered in favor of defendant. Plaintiff moved to reject the award and defendant moved to strike that rejection. Plaintiff now appeals the circuit

court's order denying her motion to reconsider its ruling granting defendant's motion to strike her rejection of the arbitration award. Plaintiff contends the circuit court erred in denying her motion to reconsider where the court applied the wrong standard in granting defendant's motion to strike. Plaintiff additionally contends the circuit court erred in denying her oral motion to stay its ruling on the motion to reconsider in order for plaintiff to file a future section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2016)) based on the doctrine of *res judicata*. Based on the following, we affirm.

¶3

FACTS

¶4 Plaintiff suffers from cerebral palsy. Defendant operates a bus service providing disabled passengers with transportation. On May 14, 2010, plaintiff arranged for defendant to pick her up and transport her to a designated location. While using the bus's ramp in an attempt to board, the driver allegedly blocked plaintiff's means of ingress. Plaintiff fell and was injured. At the time of the incident, Patricia Baxter, plaintiff's mother, was present. Patricia also suffers from cerebral palsy. Plaintiff refused treatment from an ambulance on the scene, but was treated and released from the hospital two days after the incident.

¶5 On May 9, 2012, plaintiff filed a negligence complaint against defendant. The case proceeded to arbitration and, following a July 10, 2013, hearing, an arbitration award was entered in favor of defendant. Plaintiff rejected the arbitration award. As a result, the case was set for trial. On June 4, 2014, however, the case was voluntarily dismissed without prejudice.

¶6 Then, on June 2, 2015, plaintiff refiled her negligence complaint against defendant. In response, defendant filed a motion to dismiss for failure to name the proper defendant where plaintiff listed defendant as "MVC Transportation Inc., d/b/a MV Public Transportation, Inc., a foreign corporation." The circuit court denied defendant's motion to dismiss. Plaintiff was

granted leave to file an amended complaint, which she did with the proper named defendant. The case was set for mandatory arbitration on June 7, 2016. The parties subsequently exchanged discovery packets pursuant to Illinois Supreme Court Rule 90(c) (Ill. S. Ct. R. 90(c) (eff. July 1, 2017)).

¶7 The arbitration hearing proceeded on the scheduled date. Plaintiff's attorney appeared, along with defendant's attorney and defendant's witnesses. Plaintiff and Patricia, however, were not present. According to plaintiff, there was a miscommunication between plaintiff's attorney and Patricia regarding the date and time of the arbitration, which led to their absence.

Notwithstanding, the arbitration panel requested that plaintiff's counsel present evidence. Plaintiff's counsel refused to do so in plaintiff's absence. The arbitrators unanimously found plaintiff's counsel did not participate in good faith due to her refusal to present any evidence, including presenting the evidence contained in her Rule 90(c) package or cross-examining defendant's witnesses, despite the arbitration chair's express request. As a result, on June 7, 2016, the arbitrators entered an award in favor of defendant and against plaintiff. In response, on June 28, 2016, plaintiff filed a rejection of the award. Defendant then filed a motion to strike plaintiff's rejection of the award and to enter judgment for defendant. The circuit court reviewed the parties' briefs and entertained counsels' arguments in consideration of defendant's motion on September 6, 2016. The court ultimately granted defendant's motion to strike. In doing so, the circuit court addressed plaintiff's attorney, stating:

“The fact that your clients weren't there, while of concern, is not the problem here. The problem here is your unwillingness to go forward as reported to me by the Arbitrators. That's the problem. I'll tell you what I've written out.

The plaintiff's failure to appear in the absence of a Rule 237 notice does not by itself establish bad faith. Moreover, the plaintiff herself may have been able to establish a sufficient explanation for her failure to appear, although no affidavit is attesting to the miscommunication reported in the briefs. Leaving that aside, there is no explanation for counsel's failure to even attempt to establish her case either by offering the 90(c) Package or by calling the witnesses who were present.

Hence, the Arbitrators' expressed finding of bad faith which under Rule 91[b] is prima facie evidence of a failure to participate in good faith and in a meaningful manner stands entirely unrebutted."

The circuit court entered judgment on the award in favor of defendant and against plaintiff.

¶8 On October 5, 2016, plaintiff filed a motion to reconsider the court's September 6, 2016, judgment. In her motion to reconsider, plaintiff alleged the circuit court applied the wrong standard in granting defendant's motion to strike her rejection of the June 7, 2016, arbitration award. According to plaintiff, the circuit court based its ruling on plaintiff's counsel's failure to prosecute the case at the arbitration hearing, which, she argued, did not rise to the level of the requisite standard of bad faith and lack of meaningful participation necessary for debarring a party from rejecting an award. Plaintiff insists she did not show a deliberate and pronounced disregard of the rules of the court. Instead, her counsel did not participate in the arbitration hearing due to her concerns about her disabled client. Plaintiff attached an affidavit authored by Patricia explaining the miscommunication that resulted in her and Geneva's absence from the arbitration hearing.

¶9 On December 14, 2016, the circuit court considered arguments on the motion to reconsider. The transcript of the proceeding reveals that plaintiff presented an oral motion, for

the first time, requesting the circuit court to stay its ruling on the motion to reconsider “on the basis of *res judicata* and lack of subject matter jurisdiction.” Plaintiff’s counsel explained she had just learned that the case had previously been litigated through the arbitration process and, therefore, should not have proceeded to arbitration again. Plaintiff’s counsel conceded that her law firm had represented plaintiff in the initial arbitration, but she, herself, was unaware of the prior arbitration proceeding. Plaintiff’s counsel further explained:

“Basically, the case has already been, again, litigated through the arbitration process once, and then they’re trying to proceed on the second arbitration, and we’re saying that the first arbitration award was—the rejection was timely filed, and we should have proceeded directly to trial instead of receiving another arbitration date.”

Plaintiff’s counsel requested an opportunity to file a section 2-1401 petition for relief from judgment based on *res judicata* and lack of subject matter jurisdiction. The circuit court denied plaintiff’s motion to stay and, after considering her motion to reconsider the order granting defendant’s motion to strike plaintiff’s rejection of the arbitration award and subsequent entry of judgment in favor of defendant and against plaintiff, denied that motion as well. This appeal followed.

¶10

ANALYSIS

¶11 Plaintiff first contends the circuit court erred in denying her motion to reconsider where it applied the incorrect legal standard in granting defendant’s motion to strike her rejection of the arbitration award.

¶12 The purpose of a motion to reconsider is to bring to the circuit court’s attention:

- (1) newly discovered evidence not available at the time of the hearing;
- (2) changes in the law; or
- (3) errors in the court’s prior application of existing law. *Stringer v. Packaging Corp. of*

America, 351 Ill. App. 3d 1135, 1140 (2004). The decision whether to grant or deny a motion to reconsider is within the circuit court's discretion, and we will not disturb the court's ruling on appeal absent an abuse of that discretion. *Id.*

¶13 “The supreme court rules regarding mandatory arbitration are designed to prevent abuse in, and to uphold the integrity of, the arbitration process.” *State Farm Mutual Insurance Co. v. Koscelnik*, 342 Ill. App. 3d 808, 810 (2003). Supreme Court Rule 91 governs the rejection of an arbitration award. Ill. S. Ct. R. 91 (eff. June 1, 1993). Specifically, Rule 91 provides two grounds for barring a party from rejecting an arbitration award: (1) a failure to appear at the arbitration hearing; and (2) a lack of good faith and meaningful participation in the hearing. Ill. S. Ct. R. 91(a), (b) (eff. June 1, 1993). Rule 91(b) states, in part:

“If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis therefor shall be stated on the award. Such award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner and a court, when presented with a petition for sanctions or remedy therefor, may order sanctions as provided in Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award.” Ill. S. Ct. R. 91(b) (eff. June 1, 1993).

“A party participates in good faith and in a meaningful manner under Rule 91(b) by subjecting the case to the type of adversarial testing that would be expected at trial.” *Nationwide Mutual Insurance Co. v. Kogut*, 354 Ill. App. 3d 1, 4 (2004). Our courts have instructed that “the standard to be applied in determining whether to bar a party from rejecting an arbitration award is whether the party's conduct amounted to a deliberate and pronounced disregard for the rules of the court.” *Id.* at 4-5. The decision whether to bar a party from rejecting an arbitration award is

within the sound discretion of the circuit court and will not be disturbed on appeal absent an abuse of that discretion. *Zietara v. DaimlerChrysler Corp.*, 361 Ill. App. 3d 819, 822 (2005).

¶14 We find the circuit court did not abuse its discretion in determining plaintiff failed to participate in the arbitration hearing in good faith and in a meaningful manner. Plaintiff's counsel admittedly presented no evidence, *i.e.*, no testimony and did not examine defendant's witnesses. Accordingly, similar to the plaintiff in *Koscelnik*, without presenting plaintiff, her witness Patricia, or any of the 90(c) packet evidence, plaintiff could not prove its negligence claim to the arbitrators where defendant contested liability for the accident. *Koscelnik*, 342 Ill. App. 3d at 812-13; see also *Martinez v. Gaimari*, 271 Ill. App. 3d 879, 883 (1995) (granting the plaintiff's request to debar the defendant from rejecting the arbitrators' award despite the defendant's absence due to a family medical emergency where the defendant's participation in the hearing was essential to establishing liability in the contested accident); *cf. Kogut*, 354 Ill. App. 3d at 7 (the record did not support a finding of bad faith and intentional disregard for the arbitration process where the plaintiff presented testimony *vis a vis* his agent and counsel and through the defendant as an adverse witness, along with evidence of damages through a Rule 90(c) package). Simply stated, plaintiff did not subject her case to the type of adversarial testing that would have been expected at trial. See *Kogut*, 354 Ill. App. 3d at 4.

¶15 Moreover, in her motion to reconsider, plaintiff did not present sufficient evidence to overcome the *prima facie* evidence established by the arbitrators' unanimous award that she had not participated in the arbitration hearing in good faith and in a meaningful manner. In other words, even excusing plaintiff and Patricia's absence from the arbitration hearing, plaintiff's counsel failed to participate in good faith and in a meaningful manner where she failed to put

forth any other evidence, including the evidence in the Rule 90(c) evidence packet, cross-examining defendant's witnesses, or calling defendant's witnesses as adverse witnesses.

¶16 Based on the foregoing, we conclude the circuit court did not err in finding plaintiff failed to participate in the arbitration hearing in good faith and in a meaningful manner. We additionally find the court applied the correct standard for establishing a violation of Rule 91(b). Accordingly, we conclude the circuit court did not abuse its discretion in denying plaintiff's motion to reconsider its order debaring plaintiff from rejecting the September 6, 2016, arbitration award and judgment.

¶17 Plaintiff next contends the circuit court erred in denying her motion to stay consideration of her motion to reconsider on the basis of *res judicata*.

¶18 A court may stay proceedings as part of its inherent authority to control the disposition of the cases before it. *Cullinan v. Fehrenbacher*, 2012 IL App (3d) 120005, ¶ 10. In determining whether to issue a stay, a circuit court may consider the orderly administration of justice and judicial economy. *Id.* On review, this court will not disturb a circuit court's decision on a motion to stay absent an abuse of discretion. *Id.*

¶19 We conclude the circuit court did not abuse its discretion in denying plaintiff's motion to stay her motion to reconsider. This case had repeatedly been before the circuit court after its refiling. The motion to reconsider was fully briefed and the court was prepared to entertain arguments when plaintiff presented, for the first time, her intent to file a future section 2-1401 petition for relief from judgment based on *res judicata* and lack of subject matter jurisdiction. Plaintiff did not have her petition prepared. In fact, the transcript reveals her expressed intent to file the petition within the next 7 days. According to plaintiff's counsel, she only just learned of the prior 2013 arbitration proceeding while reviewing her client's file, which admittedly had

been within her law firm's control since 2012 when the initial complaint was filed and proceeded to arbitration. Considering the procedural posture of the case, we find the circuit court properly exercised its discretion in denying the motion to stay.

¶20 Moreover, we find that, even if the circuit court had considered the substance of a future filed section 2-1401 petition on *res judicata* grounds, the petition would have been denied. Pursuant to the doctrine of *res judicata*, where there has been a final judgment on the merits rendered by a court of competent jurisdiction, any subsequent actions between the same parties or their privies on the same cause of action are barred. *Stolfo v. Kindercare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 24. In order for the doctrine of *res judicata* to apply, there must be: (1) a final judgment on the merits by a court of competent jurisdiction; (2) the existence of an identity of causes of action; and (3) the existence of the same parties or their privies. *Id.*

¶21 Here, there was no final judgment in the matter. An arbitration panel entered an award in favor of defendant and against plaintiff on July 20, 2013; however, that award was rejected by plaintiff and the case was set for trial. Thereafter, plaintiff voluntarily dismissed her complaint. As a result, no final judgment was entered on the award. See Ill. S. Ct. R. 92(c) (eff. Jan. 1, 1994)). Without a final judgment on the matter, the doctrine of *res judicata* does not apply to this case.

¶22 CONCLUSION

¶23 We conclude the circuit court did not err in denying plaintiff's motion to reconsider its order debaring plaintiff from rejecting the September 6, 2016, arbitration award and judgment. We further conclude the circuit court did not abuse its discretion in denying plaintiff's motion to stay.

¶24 Affirmed.