2013 IL App (1st) 121705-U

SECOND DIVISION
September 17, 2013

No. 1-12-1705

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIANNE KAMPINEN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	No. 08 L 9029
PHIL STEFANI SIGNATURE EVENTS, LLC,	)	
MAX TAYLOR AND COMPANY, INC., d/b/a	)	
KSM STAFFING,	)	The Honorable
	)	Thomas More Donnelly,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE Harris delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in granting plaintiff's attorney's motion to withdraw from the case, or in denying her motion to amend the pleadings to add a party. The trial court also did not err in refusing to tender plaintiff's instructions on defamation and false light to the jury where those allegations were not contained in plaintiff's fourth amended complaint. Plaintiff did not show that counsel's remarks during opening statements were improper, and she waived review of her discovery violations issue where the record does not show she requested a continuance prior to trial. We affirm the judgment of the trial court.

¶ 2 *Pro se* plaintiff, Dianne Kampinen, appeals the judgment entered after a jury trial in favor of defendant, Max Taylor and Company, Inc., d/b/a KSM Staffing (KSM), on plaintiff's complaint alleging assault and battery.[1] On appeal, plaintiff contends she was denied a fair trial because the trial court erred in (1) granting her attorney's motion to withdraw; (2) refusing her jury instructions on defamation; (3) denying her motion to amend her complaint to add a defendant; and (4) failing to comply with Illinois Supreme Court Rules. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 On April 23, 2012, the jury rendered a verdict in favor of KSM and the trial court entered judgment on the verdict. On May 4, 2012, plaintiff filed a posttrial motion for a new trial which the trial court denied on May 24, 2012. Plaintiff filed her notice of appeal on June 15, 2012. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

BACKGROUND

¶ 5 Initially, we note that the record contains no transcripts of the trial or any of the proceedings before the trial court. The following facts are taken from plaintiff's fourth amended complaint and the briefs filed on appeal.

¶ 6 Plaintiff was employed as a catering server. On August 11, 2007, plaintiff worked for

[1]Plaintiff and defendant Phil Stefani Signature Events, LLC (Stefani's), reached a settlement before trial and the trial court dismissed the claims against Stefani's with prejudice. Stefani's is not a party to this appeal.

Hospitality One, a staffing company. That evening Hospitality One assigned plaintiff to work at a Stefani's event in Chicago, Illinois. The event was a wedding and plaintiff reported to her captain, Leona. Leona instructed plaintiff to pass hors d'oeuvres. According to the facts set forth in plaintiff's fourth amended complaint, plaintiff began busing tables and cleaning up around 9 p.m. She observed other servers picking up wine and water glasses so she did the same. Suddenly, Leona approached plaintiff and loudly asked why plaintiff was picking up a water glass. Plaintiff was embarrassed, but replied that she was following what the other servers were doing. Leona abruptly informed plaintiff that she was sending her home. Plaintiff took her satchel and went to the ladies' room to change clothes. While in the ladies' room, Leona "burst into the washroom and demanded [plaintiff] 'leave the building.' " Soon after, Leona returned to the washroom with a male chef and plaintiff, feeling intimidated, asked the male chef to leave the ladies' room. Plaintiff then left the building.

¶ 7 When plaintiff subsequently called Hospitality One to inquire about further work and her pay for the Stefani's event, she learned that Hospitality One received a complaint that plaintiff "had tried to light a torch or start a fire" at the event. Based on this complaint, Hospitality One terminated plaintiff.

¶ 8 KSM hired plaintiff in 2008. Plaintiff worked two assignments for KSM. On April 26, 2008, KSM assigned plaintiff to an event in Winnetka. Just before the day of the event, plaintiff learned that it was a Stefani's function and she informed Jake Concannon, the KSM manager, of her negative experience with Stefani's. A short time after arriving at the event, a captain for KSM, Lamar, informed plaintiff that she would not work the event and she should go home. Another KSM

employee stated that they had a problem with plaintiff last year. Plaintiff, however, wanted to work and questioned why she was being sent home. Lamar and another male employee then grabbed plaintiff by each arm and took her out of the tent in front of other KSM employees. They took plaintiff to the Metra station so she could return home, but after arriving there plaintiff instead went to a nearby store to call 911.

¶ 9 The police arrived and went to the Winnetka event to investigate. According to plaintiff, they ceased their investigation and when plaintiff went to the police station, they refused to file a report. Plaintiff alleged that KSM refused to offer her more work. She spoke with Concannon who told her KSM had learned that plaintiff tried to light a fire at an earlier Stefani's event. Stefani's and KSM denied plaintiff's allegations.

¶ 10 Plaintiff filed a complaint *pro se* on August 15, 2008. The trial court struck her original complaint and her first amended complaint. On June 2, 2009, the trial court dismissed plaintiff's second amended complaint but granted her leave to file a third amended complaint. On July 10, 2009, the court granted Robert A. Langendorf leave to file an appearance in substitution of the *pro se* plaintiff and on September 19, 2009, plaintiff with the help of counsel filed a third amended complaint alleging nine causes of action. The trial court subsequently struck six of the nine counts and ordered plaintiff to replead the remaining three counts. Plaintiff's fourth amended complaint alleged one count of defamation against Stefani's, and one count of assault and one count of battery against KSM.

¶ 11 Langendorf filed a motion to withdraw as counsel on July 16, 2010, citing an "irretrievable breakdown in the attorney-client relationship." Plaintiff filed a response, stating that she felt she was

"walk[ing] on eggs" when communicating with her attorney and that she sensed he could not be bothered discussing her case. Instead, they agreed to communicate by e-mail but "[e]ven then, he would ignore [plaintiff's] e-mails or not address whatever [she] asked in the e-mail." Plaintiff stated that Langendorf responded to her in a negative manner and discouraged her from coming to court. She did not challenge his motion to withdraw and the trial court granted the motion.

¶ 12 On September 7, 2012, Michael Leonard of Meckler Bulger Tilson Marick & Pearson, LLP (MBT) filed a substitute appearance on behalf of plaintiff. The trial court scheduled a settlement conference and on January 5, 2011, plaintiff and Stefani's reached a settlement agreement. The trial court dismissed plaintiff's claim against Stefani's and the cause continued as to her claims against KSM.

¶ 13 On January 31, 2011, Leonard and MBT filed their motion to withdraw as plaintiff's counsel, citing "irreconcilable differences" as the basis of their motion. The trial court granted the motion and gave plaintiff 21 days to file a substitute appearance. Plaintiff timely filed her *pro se* appearance on March 1, 2011.

¶ 14 Plaintiff's case was transferred to the municipal division and on January 10, 2012, the parties engaged in mandatory arbitration. An award of $1,000 was entered in favor of plaintiff but she rejected the award. The trial court set the matter for trial on April 18, 2012. On April 9, 2012, plaintiff filed an emergency motion to amend her complaint to add Concannon as a defendant which the trial court denied. The trial was continued to April 23, 2012. The trial was held before a jury which rendered a verdict in favor of KSM. Plaintiff filed a posttrial motion for a new trial. On May 24, 2012, the trial court denied the motion and plaintiff filed this timely appeal.

¶ 15 ANALYSIS

¶ 16 Plaintiff is proceeding *pro se* with this appeal. Her *pro se* status, however, does not relieve her from compliance with the supreme court rules governing appellate procedure. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). Failure to comply with the supreme court rules alone is sufficient to dismiss an appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). Notwithstanding, our jurisdiction to consider this appeal is unaffected by the sufficiency of a *pro se* plaintiff's brief if we understand the issues plaintiff intends to raise. *Twardowski*, 321 Ill. App. 3d at 511. Our review here is hindered, however, by plaintiff's failure to include a transcript of the proceedings before the trial court, or a bystanders report, or agreed statement of facts as required by Supreme Court Rule 323 (eff. Dec. 13, 2005). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). Without a record of the proceeding, we must presume that the court below had a sufficient factual basis for its determination and that it conforms with the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Therefore, we address plaintiff's contentions on appeal under this limitation.

¶ 17 Plaintiff first contends the trial court erred in allowing her *pro bono* attorney, Michael Leonard, to withdraw from her case. A motion to withdraw is governed by Illinois Supreme Court Rule 13(c)(3) (Ill. S. Ct. R. 13(c)(3) (eff. Jan. 4, 2013)). Rule 13(c)(3) allows courts to deny a motion to withdraw as counsel only if granting the motion "would delay the trial of the case, or would otherwise be inequitable." Ill. S. Ct. R. 13(c)(3). Courts have interpreted this rule to mean that "an attorney may end the attorney-client relationship with or without cause so long as the client

is not left in a position where he is prejudiced." *In re Rose Lee Ann L.*, 307 Ill. App. 3d 907, 912 (1999). If a party receives notice, was present at the hearing on the motion to withdraw, and is granted a continuance of at least 21 days after entry of the order granting withdrawal to retain other counsel or enter his own appearance, granting of the motion is generally not an abuse of the trial court's discretion. See *In re Marriage of Ehgartner-Shachter*, 366 Ill. App. 3d 278, 289 (2006).

¶ 18 Plaintiff's arguments on this issue are not fully contained in her appellant brief, but are found in her opposition to Mr. Leonard's motion to withdraw contained in a separate appendix. In her opposition, plaintiff contends that she was prejudiced by counsel's withdrawal and she cites to three cases. These cases, however, are inapposite. In *In re J.D.*, 332 Ill. App. 3d 395, 405 (2002), the attorney sought to withdraw in the middle of trial and this court determined that the trial court's denial of the motion to withdraw at that juncture of the case was proper. In *Safety-Kleen Corporation v. Canadian Universal Insurance Company, Ltd.*, 258 Ill. App. 3d 298, 304 (1994), the withdrawing attorney failed to give his client proper notice and a default judgment was entered against the client. In *Ali v. Jones*, 239 Ill. App. 3d 844, 849 (1993), the client asked for more time to prepare his case or find an attorney. The trial court denied the request and the cause was subsequently dismissed with prejudice. *Id*.

¶ 19 Here, plaintiff received notice of Mr. Leonard's motion to withdraw and attended the hearing on the motion. The trial court's order granting Mr. Leonard's and MBT's motion to withdraw indicates that plaintiff received a 21-day continuance to file an appearance with substitute counsel. Plaintiff filed an appearance *pro se* and her case was never dismissed. The cause eventually proceeded to a jury trial. The trial court's grant of the motion to withdraw complied with Rule

13(c)(3). Furthermore, the record does not contain the hearing on the motion. We therefore presume that the trial court's determination conforms with the law. *Foutch*, 99 Ill. 2d at 391-92. The trial court did not abuse its discretion in granting Mr. Leonard's motion to withdraw as counsel.

¶ 20 Plaintiff next contends that the trial court erred in refusing her jury instructions, primarily on defamation. The provision of instructions to the jury lies within the sound discretion of the trial court and this court will not overturn the trial court's determination absent an abuse of discretion. *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 203 (2006). The trial court does not abuse its discretion if the instructions given to the jury fairly, and comprehensively apprise the jury of relevant legal principles. *Id*. at 203. However, on appeal we consider only those objections to instructions raised at trial. Objections raised for the first time on appeal are forfeited. *Kirkham v. Will*, 311 Ill. App. 3d 787, 796 (2000). We cannot ascertain whether plaintiff raised any objections at trial because she did not include the jury instructions conference in the record. Additionally, issues presented on appeal that relate to what occurred in a proceeding is not subject to review absent a record or report of that proceeding. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). In any event, plaintiff argues that the trial court should have given instructions on defamation. We note that such an instruction would not have been proper given the fact that plaintiff had settled with Stefani's prior to trial, and the defamation count applied only to defendant Stefani's and not to remaining defendant KSM.[2]

[2]Plaintiff also argues that the trial court should have given an instruction on the tort of false light. She claims she alleged false light in her original complaint and never abandoned the issue. However, plaintiff's fourth amended complaint contained only allegations of defamation, assault and battery. "[A]n amendment that is complete in itself, which does not refer to or adopt

¶ 21 Plaintiff also filed an emergency motion to add Concannon as a party nine days before the scheduled trial date, which the trial court denied. She contends that the trial court erred in denying her motion to amend her pleadings. As support, plaintiff claims violations of various supreme court rules by the trial court and defendants but her arguments on this issue are difficult to ascertain. Although plaintiff is *pro se*, this court is entitled to have arguments presented in an organized and cohesive manner in accordance with the supreme court rules. *Twardowski*, 321 Ill. App. 3d at 511. Plaintiff also failed to attach a proposed fifth amended complaint which in itself waives review of the issue. *Kirk v. Michael Reese Hospital and Medical Center*, 117 Ill. 2d 507, 521-22 (1987). Furthermore, since the record contains no transcript of the proceedings on plaintiff's motion to amend, we cannot review the trial court's findings to determine whether error occurred. Again, this court must presume that the trial court's determination had a sufficient factual basis and that it conforms with the law. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009).

¶ 22 Plaintiff's final contentions of error are that the trial court improperly allowed KSM's counsel to tell the jury during opening statements that 30 or 40 witnesses observed the events of the case when counsel did not present those witnesses at trial, and that KSM committed various discovery violations. Plaintiff did not include the opening statements in the record, effectively waiving review of the issue. Nonetheless, counsel's failure to provide testimony promised during opening statements is not, in itself, improper. See *People v. Manning*, 334 Ill. App. 3d 882, 892 (2002) (counsel's failure

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a prior pleading, supercedes it, and the original pleading ceases to be a part of the record, being in effect abandoned or withdrawn." *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 926 (2007).

to provide testimony promised during opening remarks is not ineffective assistance *per se*). To prevail on her argument, plaintiff must show that counsel's actions were unreasonable and the errors had an effect on the outcome of the proceedings. *Id*. Plaintiff makes no such arguments here.

¶ 23 Plaintiff also alleges that KSM committed various discovery violations. However, there is no transcript of the proceedings and we cannot ascertain whether plaintiff sought any relief from the court below prior to trial. "While compliance with the discovery requirements is mandatory, the failure to comply with these requirements does not require a reversal absent a showing of surprise or undue prejudice. The burden of showing surprise or prejudice is upon the [plaintiff here], and the failure to request a continuance is a relevant factor to consider in determining whether" plaintiff was actually surprised or prejudiced. *People v. Robinson*, 157 Ill. 2d 68, 78 (1993). Where a party "failed to request a continuance and elected to proceed with the trial, the claimed error, if any, was waived." *Id*. at 79. Since we have no indication that plaintiff requested a continuance or other more moderate measures to deal with KSM's purported discovery violations prior to trial, the issue is waived on appeal.

¶ 24 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 25 Affirmed.