2017 IL App (1st) 151593-U

FOURTH DIVISION
March 31, 2017

No. 1-15-1593

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

SHARON PERIK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 20229
	)	
JP MORGAN CHASE BANK, N.A.,	)	Honorable
	)	Peter Flynn,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Denial of petition to vacate arbitration award affirmed. Arbitration Act was not unconstitutional for infringing on trial court's subject matter jurisdiction. Trial court did not err in dismissing counts of plaintiff's complaint seeking declaratory relief or denying motion to take arbitrator's deposition. Plaintiff failed to establish any basis to vacate arbitration award.

¶ 2 Plaintiff Sharon Perik appeals from the trial court's denial of her motion to vacate an arbitration award. Perik pursued arbitration of a claim that defendant J.P. Morgan Chase, N.A. (Chase) made libelous statements when it transmitted information stating that Perik was suspected of passing fraudulent checks to a database on which banks shared information about their customers. The arbitrator denied Perik's libel claim. Perik then filed a motion to vacate the arbitration award in the circuit court of Cook County. The trial court denied Perik's motion.

¶ 3 On appeal, Perik raises numerous challenges to both the arbitration and trial court proceedings. None of these arguments approaches the high bar necessary to justify the vacatur of an arbitration award. Our review of the record shows no basis to vacate the arbitrator's decision. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Due to the limited nature of our review of an arbitration award, which we discuss more fully below, a detailed recitation of the arbitration and circuit court proceedings is unnecessary. We will recount those proceedings only to the extent necessary to understand Perik's arguments in this appeal.[1]

¶ 6 In February 2008, two blank checks were stolen from Perik and used to purchase items. The checks were from an account she held at Chase. Perik reported the stolen checks to the police and to Chase. Chase reimbursed Perik.

¶ 7 Soon after the theft, Chase sent a fraud alert to a database operated by Early Warning Systems, LLC (Early Warning) saying that Perik had participated in fraudulent activity involving the checks. Two other banks, Washington Mutual Bank (Washington Mutual) and TCF Bank (TCF), requested information about Perik from Early Warning and received a copy of the alert. There is no dispute that the alert falsely claimed that Perik had committed fraud.

¶ 8 Perik filed a complaint against Chase, Early Warning, and TCF alleging that the transmission constituted libel *per se*. Chase moved to stay the circuit court proceedings and compel arbitration pursuant to the arbitration clause in Perik's account agreement. The trial court

[1] We also note that some of the underlying facts may be found in this court's previous order in this case, *Perik v. JP Morgan Chase Bank* (*Perik I*), *N.A.*, 2011 IL App (1st) 093088-U.

granted Chase's motion, and this court affirmed that judgment. *Perik I*, 2011 IL App (1st) 093088-U, ¶¶ 35-40.

¶ 9 The arbitrator appointed to the case disclosed that she had "two small accounts" at Chase and that her husband may have also had an account. Neither party sought to replace the arbitrator.

¶ 10 Before the arbitration hearing commenced, Chase moved to compel Perik "to identify all therapists that provided her treatment from 2008 to May 2012 or, in the alternative, to bar her from presenting testimony or other such evidence at the hearing." Chase said that Perik had provided it with five health care providers who had purportedly treated her for emotional distress but that, after being subpoenaed by Chase, none of those health care providers disclosed any records of Perik being treated before June 2012.

¶ 11 Perik responded that she had given Chase the names of her health care providers, and that Chase declined to take any evidence depositions of the providers. Perik argued that Chase's motion was a veiled attempt to present its case to the arbitrator and have her prejudge the case.

¶ 12 Due to Perik's failure to disclose her mental health treatment information, the arbitrator barred Perik from presenting any evidence on "any <u>treatment</u> or <u>therapy</u> for mental or emotional distress (or about any expenses for such treatment or therapy)." (Emphasis in original.)

¶ 13 Perik then moved to terminate the arbitration proceedings based on the arbitrator's exclusion of the evidence relating to her mental health treatment. Perik argued that, because she had been precluded from proving her case, Chase in effect made it impossible for her to assert her contractual right to arbitration under the contract, which entitled Perik to terminate the contract.

¶ 14 Perik added that the arbitration agreement had been breached because the arbitration was governed by Illinois law, the agreement said that it could be terminated to the extent necessary to comply with any applicable law, and, under section 20-5 of the International Commercial Arbitration Act (710 ILCS 30/20-5 (West 2012)) parties to an arbitration "shall be treated with equality, and each party shall be given a full opportunity of presenting his or her case."[2]

¶ 15 The arbitrator clarified that Perik could testify about how she felt between 2008 and 2012, including her mental distress, and that she could present evidence regarding her visits with any physician whose records had been produced during discovery. The arbitrator said that her order simply barred Perik from presenting evidence of treatment that had not been disclosed during discovery. The arbitrator denied Perik's motion to terminate the proceedings.

¶ 16 On the first day of the arbitration hearing, Perik objected to Chase's pretrial memorandum on the basis that the statement of facts in the memorandum contained facts that could not be proved. Perik claimed that the arbitrator's review of the memorandum compromised the arbitration proceedings. The arbitrator said that she would give the parties an opportunity to file a post-hearing brief, in which Perik could raise any specific objections to Chase's prehearing memorandum. The arbitrator also noted that Perik had an opportunity to file her own prehearing memorandum but declined that opportunity.

¶ 17 At the arbitration hearing, Perik testified to the mental issues she had as a result of Chase's transmission to Early Warning. She also presented evidence that she began therapy in 2012 with Dina Yurchanka, who testified that Perik suffered from major depressive disorder and

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[2] Section 5(b) of the Uniform Arbitration Act (710 ILCS 5/5(b) (West 2012)) also provides that "[t]he parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing."

generalized anxiety disorder. Yurchanka opined that Perik's mental health problems arose as a result of her being accused of a crime.

¶ 18 Douglas Hodge, Chase's head of consumer banking risk policy at the time of the alleged libel, testified at the arbitration hearing. During Perik's counsel's cross-examination of Hodge, the arbitrator ordered a break in the proceedings. When the hearing resumed, the arbitrator said that Perik's counsel would have nine more minutes to cross-examine Hodge because another witness was waiting to testify. After additional warnings concerning the time, the arbitrator cut off counsel's cross-examination.

¶ 19 Doreen Fritchen, a team manager at Chase, testified to substantially similar information as Hodge. After Fritchen testified, the arbitrator allowed Perik's counsel to resume his cross-examination of Hodge. Counsel asked Hodge several more questions before the arbitrator again cut off his cross-examination.

¶ 20 Following counsel's continued cross-examination of Hodge, the arbitrator concluded the hearing for the day. The arbitrator indicated that, at that time, she would take a binder containing Chase's exhibits with her. At the time, neither party objected to the arbitrator removing the binder from the hearing room. Several months later, the parties reconvened and Perik raised numerous objections to the conduct of the arbitration, including that the removal of the binder was improper. The arbitrator overruled those objections.

¶ 21 The arbitrator issued a written award denying Perik's claim. In the award, the arbitrator found that Chase had transmitted information that Perik "was a fraud 'suspect,' instead of a 'victim' of fraud," due to "a computer programming error." The arbitrator noted that this court, in *Perik I*, 2011 IL App (1st) 093088-U, had found Perik's claim to be arbitrable (see *id.* ¶¶ 35-40, 59) and that Early Warning was protected by a qualified privilege (see *id.* ¶¶ 55-56).

¶ 22 The arbitrator found that the dispute was arbitrable, that it was arbitrated in accordance with AAA rules, and that neither party had a right to terminate the arbitration. With respect to the merits of Perik's claim, the arbitrator found:

> "That the incorrect statement by [Chase] to [Early Warning] that [Perik] was a fraud 'suspect' was made as a result of a computer error, that a common law qualified privilege existed with respect to the statement at issue, that the erroneous statement was covered by [Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 *et seq.* (2006))], that [Chase] did not act with malice toward [Perik] at any time, including: a) when [Chase] made the erroneous statement to [Early Warning]; b) when [Chase] discovered that inaccurate information had been communicated to [Early Warning]; or c) when [Chase] caused the erroneous information to be corrected."

¶ 23 Perik filed a complaint in the circuit court of Cook County challenging the arbitration award. Part A of the complaint, which included four counts, sought various forms of declaratory relief. Part B, which included two counts, sought to vacate the arbitration award for several reasons. Chase filed a counterclaim seeking confirmation of the arbitration award.

¶ 24 Chase moved to dismiss Part A of Perik's complaint, alleging that Perik could not state a claim for declaratory relief. The trial court granted Chase's motion, finding that Perik's only recourse was to seek vacatur of the award under the Arbitration Act, not to seek declaratory relief regarding the validity of the parties' arbitration agreement.

¶ 25 Perik moved to take the arbitrator's discovery deposition because "the Arbitrator had a concern that a prior professional or social relationship caused a potential conflict or bias in the appointment" and Perik had alleged that the arbitrator was biased against her. The court denied the request because Perik had "not shown a sound basis" for deposing the arbitrator.

¶ 26 The trial court denied Perik's motion to vacate and confirmed the arbitration award. Perik filed this appeal.

¶ 27 II. ANALYSIS

¶ 28 A. Constitutionality of Arbitration Act

¶ 29 Perik's first argument is that section 12(a) of the Uniform Arbitration Act (the Arbitration Act) (710 ILCS 5/12(a) (West 2014)) violates the Illinois Constitution because it limits the reasons for which a circuit court may vacate an arbitration award. According to Perik, because the Illinois Constitution vests circuit courts with "original jurisdiction of all justiciable matters" (Ill. Const., art. VI, § 9), including judicial review of arbitration awards, section 12(a) impermissibly infringes on the circuit court's authority by limiting the circumstances in which an award may be vacated. She also argues that it violates the separation of powers in the Illinois Constitution (Ill. Const. 1970, art. II, § 1) by encroaching on the judiciary's authority.

¶ 30 We reject Perik's argument. Section 12(a) does not restrict a circuit court's power to review arbitration awards. In fact, it specifically states that a circuit court "shall" vacate an arbitration award in one of five circumstances. 710 ILCS 5/12(a) (West 2014). Thus, section 12(a) does not strip circuit courts of the authority to vacate arbitration awards; to the contrary, it *directs* the court to do so in certain circumstances.

¶ 31 The fact that the legislature prescribed *standards* guiding the exercise of the court's authority to vacate arbitration awards is not the same as stripping the legislature of its authority to review arbitration awards. The General Assembly has the power to enact laws governing judicial practice so long as those laws "do not unduly infringe upon the inherent powers of the judiciary." (Internal quotation marks omitted.) *Strukoff v. Strukoff*, 76 Ill. 2d 53, 59 (1979). The legislature may prescribe rules of evidence (*People v. Wells*, 380 Ill. 347, 354 (1942)), state what

facts must be shown to establish a *prima facie* cause of action (*Schireson v. Walsh*, 354 Ill. 40, 48 (1933)), or limit the remedies available to a party (*Sigall v. Solomon*, 19 Ill. 2d 145, 150-51 (1960)). Section 12(a) is nothing more than an exercise of the legislature's authority to provide standards guiding a circuit court's judgment—it does not infringe on a court's authority to decide whether to vacate an arbitration award.

¶ 32 Perik notes that, at common law, courts would vacate arbitration awards for reasons beyond those listed in section 12(a). Perik appears to be implying that, since arbitration awards could be vacated for certain reasons under the common law, the legislature could not eliminate those reasons when it enacted section 12(a). But "the General Assembly's authority to 'alter the common law and change or limit available remedies * * * is well grounded in the jurisprudence of this state.' " *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 245 (2010) (quoting *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 408 (2010)). The fact that courts had the common-law authority to vacate arbitration awards—an authority that they still possess under section 12(a)—does not mean that the legislature could not alter the bases for vacating an arbitration award.

¶ 33 Nor does the Arbitration Act infringe on the judiciary's authority by recognizing the validity and irrevocability of an agreement to submit a dispute to arbitration. In *White Eagle Laundry Co. v. Slawek*, 296 Ill. 240, 245 (1921), the Illinois Supreme Court rejected the notion that, by making the decision to submit a case to arbitration irrevocable, a prior version of the Arbitration Act was "an attempt to oust the courts appointed by the Constitution of their jurisdiction." The court noted that nothing in the Illinois Constitution prohibited parties from agreeing to settle a dispute or voluntarily agree to let an arbitrator resolve a dispute between them. *Id.*[3]

[3] We acknowledge that *White Eagle Laundry* is no longer good law to the extent that it

¶ 34 The principal flaw in plaintiff's argument is her failure to recognize that she and Chase chose the avenue of arbitration by contract. The reason that courts, via the Arbitration Act, are reluctant to interfere with arbitrations, absent the limited reasons in section 12, is precisely because the parties did not bargain for a judicial determination in the first instance. *Garver v. Ferguson*, 76 Ill. 2d 1, 7 (1979). We have reasoned that "the parties have chosen in their contract how their dispute is to be decided, and judicial modification of an arbitrator's decision deprives the parties of that choice." *Hawrelak v. Marine Bank, Springfield*, 316 Ill. App. 3d 175, 179 (2000). To encroach on that private agreement any more than permitted by the Arbitration Act " 'would be a substitution of the judgment of the Chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation.' " *Garver*, 76 Ill. 2d at 9 (quoting *Burchell v. Marsh*, 58 U.S. 344, 349 (1854).

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held that agreements to arbitrate future disputes are invalid. See *White Eagle Laundry*, 296 Ill. at 245. An updated version of the Uniform Arbitration Act has long since provided that "[a] written agreement to submit any existing controversy to arbitration *or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties* is valid, enforceable and irrevocable ***." (Emphasis added.) 710 ILCS 5/1 (1977). The supreme court has explained that this updated version "has thus removed the public policy considerations upon which the common law rule [enunciated in *White Eagle Laundry*] was based." *Interstate Bakeries Corp. v. Bakery, Cracker, Pie & Yeast Wagon Drivers Union, Local 734, International Brotherhood of Teamsters*, 31 Ill. 2d 317, 320 (1964); see also *Allstate Insurance Co. v. Fisher*, 212 Ill. App. 3d 712, 714-15 (1991) (noting that *White Eagle Laundry* had held that agreements to submit future disputes to arbitration were unenforceable, but that updated version of Arbitration Act allowed for submission of future disputes to arbitration). But the broader point embodied by *White Eagle Laundry*—that the Illinois Constitution does not prohibit the legislature from recognizing that parties may agree to arbitrate their disputes—is still valid.

¶ 35 Perik cannot show that the Arbitration Act infringes on the courts' judicial powers simply by holding her to her agreement to arbitrate her dispute with Chase. We reject Perik's claims that the Arbitration Act violates the separation of powers in the Illinois Constitution.

¶ 36 B. Claims Relating to Circuit Court Proceedings

¶ 37 Defendant's next two claims allege that the circuit court erred in conducting its review of the arbitrator's award under section 12(a).

¶ 38 1. Dismissal of Declaratory Judgment Counts

¶ 39 First, Perik claims that the circuit court erred in dismissing the counts of her motion to vacate the arbitration award that sought a declaration that Chase had materially breached the contract and that Perik could thus terminate the arbitration agreement. The circuit court found that Perik's declaratory-judgment counts were simply an attempt to circumvent section 12(a) of the Arbitration Act by voiding the arbitration agreement itself.

¶ 40 The circuit court dismissed Perik's declaratory judgment counts pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). A motion to dismiss under section 2-615 tests the legal sufficiency of the complaint. *Kean v. WalMart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). When reviewing the dismissal of a complaint under section 2-615, we view all well-pleaded facts in the complaint as true and interpret the allegations of the complaint in the light most favorable to the plaintiff. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 384 (2008). We apply *de novo* review. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 29.

¶ 41 We agree with the trial court's analysis of Perik's declaratory-judgment counts. The declaratory-judgment counts of the complaint alleged, for various reasons, that Chase materially breached the arbitration agreement, meaning that the arbitration agreement could be terminated

at Perik's election. See *Jespersen v. Minnesota Mining and Manufacturing Co.*, 183 Ill. 2d 290, 294 (1998) (party may terminate contract where other party to contract commits material breach). But the bases for each of those allegations of breach were that, in some way, the arbitrator exceeded her authority or otherwise erred. Count A.I alleged that Chase breached the agreement by obtaining an order from the arbitrator limiting Perik's ability to present evidence of her mental-health treatment from 2008 to 2012. Count A.II alleged that "[t]he Arbitrator, on behalf of Chase," incorrectly found that the arbitration agreement did not give Perik the right to terminate the arbitration proceedings. Count A.III alleged that the arbitrator made several misstatements in the award and decided issues that were not before her. Count A.IV alleged that the arbitrator breached the agreement by refusing to let Perik cross-examine Hodge. Each of these counts deals with the scope of the arbitrator's authority and/or the arbitrator's possible bias in Chase's favor, not the validity of the arbitration agreement.

¶ 42 The scope of an arbitrator's authority, her possible bias, and any error in conducting the hearing are matters explicitly addressed by section 12(a) of the Arbitration Act. See 710 ILCS 5/12(a)(2)-(4) (West 2012) (court may vacate arbitration award where arbitrator displayed "evident partiality" that prejudiced one party, "exceeded [her] powers," or conducted arbitration hearing in violation of other Arbitration Act provisions). Perik cannot escape her burden of establishing those alleged errors under section 12(a) by simply reframing her complaint as one for declaratory judgment. To allow her to do so would undermine the "extremely limited" nature of judicial review of arbitration awards. *American Federation of State, County and Municipal Employees, AFL-CIO v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996) (*AFSCME II*). The legislature intended to restrict judicial review of arbitration awards

pursuant to section 12(a) of the Arbitration Act, not to expose arbitration awards to declaratory relief.

¶ 43 Perik cites *Klehr v. Illinois Farmers Insurance Co.*, 2013 IL App (1st) 121843, in support of her claim that the circuit court erred in dismissing the declaratory-judgment counts, but *Klehr* actually undermines Perik's argument. In *Klehr*, one of the parties to an arbitration agreement filed a declaratory-judgment action while the arbitration was still pending, seeking review of one of the arbitrators' discovery orders. *Id.* ¶ 3. This court held that the circuit court had subject-matter jurisdiction over the declaratory-judgment complaint (*id.* ¶ 7) but also that there was "no legal basis for judicial review of interlocutory decisions by an arbitration panel prior to a final arbitration award." *Id.* ¶ 8. The court noted that the plaintiff's claim was essentially that the arbitrators exceeded their authority when regulating arbitration, which was the type of order that could be "reviewed by the circuit court as part of *an application to vacate the award* at the conclusion of the arbitration process." (Emphasis added.) *Id.* ¶ 13. The court added, "[T]his is precisely the type of dispute that the drafters [of the Arbitration Act] intended to be reviewed by the courts only at the conclusion of arbitration *as part of a motion to vacate the award* ***." (Emphasis added.) *Id.* ¶ 20. The court concluded by noting that the plaintiff was "free to pursue that [arbitration discovery] issue *as part of a motion to vacate the arbitration award* *** but not before arbitration [was] complete *and not in the guise of a declaratory judgment action.*" (Emphasis added.) *Id.* ¶ 21.

¶ 44 Thus, while Perik cites *Klehr* in support of her claim that a declaratory-judgment suit is appropriate once the arbitration process has concluded, *Klehr* stands for a different proposition: that a declaratory judgment action cannot be used as a means to circumvent the judicial review of arbitration awards provided for by the Arbitration Act. Where, as in this case, the bases for

seeking declaratory judgment are claims that are more aptly brought pursuant to section 12(a) of the Arbitration Act, then a party should not be permitted to bring a declaratory judgment action. We affirm the circuit court's dismissal of Perik's declaratory-judgment counts.

¶ 45 Perik also briefly argues that the circuit court erred in striking the paragraphs of her motion to vacate that referred to the International Commercial Arbitration Act (710 ILCS 30/1-1 *et seq.* (West 2012)). The court struck those paragraphs because "no party [contended] that the International Commercial Arbitration Act applie[d] to the arbitration at issue" and granted Perik permission "to replead [those] paragraphs *** with appropriate references to the [Arbitration Act]."

¶ 46 The entirety of Perik's argument regarding the International Commercial Arbitration Act is as follows:

> "The second part of the circuit court's grant of the motion to dismiss is premature in its belief that the statutory standard of the International Arbitration Act [*sic*] applies to a stand alone [*sic*] enactment, rather than their [*sic*] central standards incorporated by reference in the Arbitration Clause of Chase's agreement. ***. The section of the International Commercial Arbitration [*sic*] (710 ILCS 30/1-5(a), (c)) is not part of the Arbitration Agreement. The circuit court committed reversible error."

¶ 47 Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) requires a party's brief before this court to "contain the contentions of the [party] and the reasons therefor." Under this rule, "a court of review is entitled to have the issues on appeal clearly defined with pertinent authority cited and reasoned, cohesive legal argument." *Cwik v. Giannoulias*, 237 Ill. 2d 409, 423 (2010). A failure to adequately argue a claim of error results in forfeiture of that claim. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("Points not argued are waived ***."); *Wilson v. County of Cook*,

2012 IL 112026, ¶ 25 (claims supported by "little or no argument" forfeited under Rule 341(h)(7)).

¶ 48 Perik's argument regarding the International Commercial Arbitration Act fails to meet the standard of argument required in this court. We cannot determine how Perik claims the trial court erred. We do not know what "stand alone [*sic*] enactment" she refers to, and her claim that the International Commercial Arbitration Act is not part of the arbitration agreement appears to cut against her claim that that statute was somehow relevant to the arbitration proceedings. Because we cannot make out Perik's claim of error, we find that Perik has forfeited her claims regarding the International Commercial Arbitration Act.

¶ 49 2. Deposition of Arbitrator

¶ 50 Second, Perik claims that the circuit court erred in rejecting her request to depose the arbitrator. Perik moved to depose the arbitrator on the basis that her disclosure statement "indicate[d] that the Arbitrator had a concern that a prior professional or social relationship caused a potential conflict or bias in the appointment." That concern was the arbitrator's having a small bank account with Chase, which she disclosed to the parties at the beginning of the arbitration proceedings.

¶ 51 The trial court denied Perik's request because Perik had not offered "a sound basis for the unusual practice of deposing the arbitrator." The court noted that most of Perik's arguments could be supported by reference to the record of the arbitration proceedings, and that a bare allegation of bias or prejudice was insufficient to justify deposing the arbitrator.

¶ 52 At the outset, we find that Perik has forfeited this argument by failing to cite any authority to support the notion that she should have been allowed to depose the arbitrator or that parties have any right at all to depose arbitrators in proceedings challenging an arbitration award.

In the absence of any citation to relevant authority, Perik's argument does not merit consideration. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument in brief must contain "citation of the authorities *** relied on"); *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19 (argument unsupported by any supporting authority was forfeited).

¶ 53 We also note that Perik's main basis for deposing the arbitrator—her supposed conflict of interest—was disclosed to her prior to the arbitration hearing. Yet Perik raised no objection to the appointment of the arbitrator or to the extent of her disclosure. Thus, Perik forfeited any challenge to the arbitrator's alleged financial conflict. See *First Health Group Corp. v. Ruddick*, 393 Ill. App. 3d 40, 49 (2009) ("[T]he appellate court has not hesitated to find that a party [forfeited] an issue for judicial review by failing to raise it to the arbitrator.").

¶ 54 Forfeiture aside, this court has expressed its hesitation to allow a party to conduct discovery into the arbitration process after the arbitration has concluded. See *Hawrelak*, 316 Ill. App. 3d at 182 ("[C]ourts should hesitate to allow any discovery of arbitral processes."). Other courts are similarly skeptical of allowing parties to depose arbitrators after the fact. See, *e.g.*, *T. McGann Plumbing, Inc. v. Chicago Journeymen Plumbers' Local 130, U.A.*, 522 F. Supp. 2d 1009, 1014 (N.D. Ill. 2007) ("[A] party may not depose an arbitrator in order to inquire into the basis, reasoning or thought processes that led to the decision."); *Carolina-Virginia Fashion Exhibitors, Inc. v. Gunter*, 230 S.E.2d 380, 388 (N.C. 1976) (party may only depose arbitrator where "an objective basis exists for a reasonable belief that misconduct has occurred"). We see no basis in the record by which Perik could have justified her request to depose the arbitrator. Thus, even if Perik had not forfeited this issue, her claim is without merit.

¶ 55 C. Claims Related to Arbitration Proceedings

¶ 56 Defendant's final set of claims relate to errors that occurred during the arbitration proceedings.

¶ 57 As we noted above, judicial review of an arbitration award is "extremely limited." *AFSCME II*, 173 Ill. 2d at 304 (1996). Our review of an arbitration award "is 'nothing like the scope' of our review of a trial court decision." *Advocate Financial Group v. Poulos*, 2014 IL app (2d) 130670, ¶ 49 (quoting *International Ass'n of Firefighters, Local No. 37 v. City of Springfield*, 378 Ill. App. 3d 1078, 1080-81 (2008)). Whenever possible, we must construe arbitration awards to uphold their validity. *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 37. Where, as in this case, the trial court decides whether to vacate an arbitration award based on documentary evidence rather than courtroom testimony, we review the trial court's decision *de novo*. *Rosenthal-Collins Group, L.P. v. Reiff*, 321 Ill. App. 3d 683, 687 (2001).

¶ 58 Under section 12(a) of the Arbitration Act, a court should vacate an arbitration award when any of the following five circumstances is present:

> "(1) the award was procured by corruption, fraud or other undue means;
>
> (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;
>
> (3) the arbitrators exceeded their powers;
>
> (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by the circuit court is not ground for vacating or refusing to confirm the award." 710 ILCS 5/12(a) (West 2012).

¶ 59 As we explain more fully below, Perik does not link her claims of error to one of the subsections of section 12(a) or clearly organize her arguments. But Perik's claims of error, while difficult to discern, generally fall into seven categories: (1) that the arbitrator erred in relying on Chase's prehearing memorandum; (2) that the arbitrator erred in finding that Chase's comments were protected by a qualified privilege; (3) that the arbitrator improperly excluded Perik's testimony regarding her lost wages; (4) that the arbitrator exceeded her authority in finding that Perik could not terminate the arbitration; (5) that the arbitrator improperly limited Perik's right to cross-examine Hodge; (6) that the arbitrator improperly considered this court's prior order in the case (*Perik I*, 2011 IL App (1st) 093088-U); and (7) that the arbitrator improperly removed Chase's exhibits from the hearing room at the end of the first day of the hearing. We address each of these claims in turn.

¶ 60 1. Prehearing Memorandum

¶ 61 First, Perik claims that the arbitrator improperly considered Chase's prehearing memorandum. Perik claims that the memorandum contained "incorrect legal arguments and unsupported facts" that the arbitrator relied on in reaching her decision.

¶ 62 Perik does not articulate how the arbitrator's review of the prehearing memorandum fits within the rubric of section 12(a). But Perik claims that the arbitrator's decision was "compromised and corrupted" by her reliance on Chase's prehearing memorandum, which

appears to refer to section 12(a)(2), under which an arbitration award may be vacated if "there was evidence partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party." 710 ILCS 5/12(a)(2) (West 2012).

¶ 63 We see no partiality, corruption, or misconduct in the arbitrator's consideration of the prehearing memorandum. The arbitrator permitted both parties to submit prehearing memoranda outlining the facts and legal issues in the case. Chase elected to file a memorandum, Perik did not. Perik cannot complain of the arbitrator considering Chase's memorandum alone when she did not avail herself of the opportunity to file a memorandum.

¶ 64 While Perik claims that the memorandum contained unsupported facts and incorrect arguments, she offers no specifics regarding those unsupported facts or improper arguments. Nor did she levy any complaints against the memorandum prior to the hearing by moving to strike any portions of the memorandum.

¶ 65 Nor do we see any prejudice to Perik from the arbitrator's consideration of Chase's memorandum. Mere allegations of prejudice will not justify vacatur of an arbitration award based on an arbitrator's alleged partiality. *Christian Dior, Inc. v. Hart Schaffner & Marx*, 265 Ill. App. 3d 427, 436 (1994). Rather, "[t]o vacate an award based on partiality, it is necessary to show a direct, definite and demonstrable interest, on the part of the arbitrator, in the outcome of the arbitration." *Edward Electric Co. v. Automation, Inc.*, 229 Ill. App. 3d 89, 101 (1992).

¶ 66 Perik has failed to identify any possible interest on the arbitrator's part, let alone any evidence to support such a notion. We see no partiality in the arbitrator's consideration of Chase's prehearing memorandum, particularly where Perik chose not to file any prehearing memorandum herself.

¶ 67 2. Qualified Privilege and FCRA Preemption

¶ 68 Next, Perik contends that the arbitrator erred in considering the doctrine of qualified privilege and in finding that Chase's statements were protected by a qualified privilege.

¶ 69 Perik claims that the arbitrator should not have even considered the issue of qualified privilege, because Chase failed to plead it as an affirmative defense. Perik cites section 2-613(d) of the Code of Civil Procedure (735 ILCS 5/2-613(d) (West 2012)) in support of that argument, which requires a party to plead an affirmative defense.

¶ 70 But the Illinois Code of Civil Procedure did not govern the arbitration. Rather, pursuant to the arbitration agreement between Chase and Perik, the arbitration organization—in this case, the American Arbitration Association (AAA)—was to "apply its code or procedures in effect at the time the arbitration claim is filed." Perik cites no rules of the AAA requiring a party to plead a qualified privilege or else forfeit it. And the AAA's rules do not say that affirmative defenses must be pleaded in order to avoid forfeiture. They say that a party "may file an answering statement" but that, if the respondent does not file an answer, "the respondent will be deemed to deny the claim." American Arbitration Association, Commercial Arbitration Rules and Mediation Procedures, R-4 (eff. June 1, 2009) (hereinafter, AAA Rules). They also state that a party may change his or her claim or counterclaim "with the arbitrator's consent." AAA Rules, R-6 (eff. June 1, 2009).

¶ 71 In this case, Chase's answer to Perik's notice of arbitration did not include a claim that its communications to Early Warning were protected by a qualified privilege. But Chase did raise the issue of qualified privilege in its prehearing memorandum. As we noted above, Perik elected not to file a prehearing memorandum of her own. Perik cannot credibly assert that she was taken by surprise or otherwise prejudiced by Chase's assertion of privilege prior to the hearing. This is especially true considering plaintiff contested the existence of a qualified privilege as to the same

statements (albeit with respect to Early Warning, not Chase) in *Perik I*, 2011 IL App (1st) 093088-U, ¶ 50, which was entered more than a year before Chase filed its memorandum.

¶ 72 We fail to see how the arbitrator violated any rules of procedure by permitting Chase to add a new claim in its prehearing memorandum. Nor does Perik cite any authority for the notion that an arbitrator may not permit a party to raise a defense for the first time in a prehearing memorandum.

¶ 73 Moreover, any error by the arbitrator in misinterpreting the doctrine of qualified privilege would be insufficient to justify vacatur of the award. It is true that section 12(a)(3) of the Uniform Arbitration Act (the Act) (710 ILCS 5/12(a)(3) (West 2012)) provides that a party may seek to vacate an arbitration award where "the arbitrators exceeded their powers," which courts have interpreted to include gross mistakes of law as a reason for vacating an award. See, *e.g.*, *Advocate Financial Group v. Poulos*, 2014 IL App (2d) 130670, ¶¶ 49-50. Our supreme court has explained the gross-mistake-of-law doctrine as follows:

> "Errors of judgment in law are not grounds for vacating an arbitrator's award when the interpretation of law is entrusted to the arbitrator. [(Citation.)] Only where it appears on the face of the award (and not in the arbitrator's opinion) that the arbitrator was so mistaken as to the law that, if apprised of the mistake, the award would be different may a court review the legal reasoning used to reach the decision. [(Citation.)] An example would be if the arbitrator in this case considered an old version of the workers' compensation statutes that had since been amended, unbeknownst to the arbitrator." *Board of Education of City of Chicago v. Chicago Teachers Union, Local No. 1*, 86 Ill. 2d 469, 477 (1981).

¶ 74 A misinterpretation of the doctrine of qualified privilege would not constitute a gross mistake of law. Nothing on the face of the award suggests that the arbitrator made any mistake of law, such as misstating the doctrine of qualified privilege or applying an out-of-date standard.

¶ 75 Despite Perik's attempt to frame her argument as a reason for vacating the arbitrators' award, Perik's argument is essentially that the arbitrators erred in concluding that a qualified privilege protected Chase's statement to Early Warning. But whether Chase's statements constituted libel or not, which necessarily includes a question of possible privilege, was precisely the dispute that Perik and Chase agreed to let the arbitrator resolve. We may not render our own opinion on the merits of that issue where the parties agreed to be bound by the arbitrators' decision on the same issue. We reject Perik's claim that the arbitrator exceeded her authority simply by resolving an issue in an unfavorable manner toward Perik.

¶ 76 For example, in *Kalish v. Illinois Education Association*, 166 Ill. App. 3d 406, 409 (1988) the court rejected the notion that an arbitrator had exceeded his authority where the plaintiff claimed that the defendant had breached his employment agreement, thereby "empowering the arbitrator to determine whether a breach had occurred and, if so, by which party." By submitting the question of breach to the arbitrator, "the parties unreservedly submitted all questions of fact and law relating to [that] issue to the arbitrator." *Id.* at 409-10. Thus, the court held, the arbitrator's resolution of that question could not have exceeded his authority. *Id.* at 410.

¶ 77 Similarly, in this case, the parties agreed to let the arbitrator resolve the legal and factual questions surrounding Chase's alleged libel. Any questions of law or fact relating to that dispute, including whether the statements were protected by a privilege, were left to the arbitrator to resolve. Even if the arbitrator's resolution of that question was erroneous, it is not our function to correct any such error.

¶ 78 Perik also argues that the arbitrator erred in concluding that the federal Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 *et seq.* (2006)) preempted her state libel claim.

¶ 79 FCRA generally preempts defamation claims brought under state law against persons who furnish information to consumer reporting agencies. *Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45, 47 (2d Cir. 2011) (citing 15 U.S.C. § 1681t(b)(1)(F) (2006)). The arbitrator found that, in this case, "the erroneous statement was covered by FCRA," preempting Perik's libel claim.

¶ 80 Just as with Perik's qualified privilege argument, her FCRA argument is unavailing because the issue of FCRA preemption was submitted to the arbitrator. Chase raised FCRA in its answer to Perik's notice of arbitration, presenting the legal question of preemption to the arbitrator. See *Drake v. Laboratory Corp. of America Holdings*, 458 F.3d 48, 56 (2d Cir. 2006); *People v. Williams*, 235 Ill. 2d 178, 186 (2009) (federal preemption of state law is question of law). Even if we disagreed with the arbitrator's interpretation of FCRA, we would not second-guess it.

¶ 81 Again, nothing on the *face* of the award shows that the arbitrator made a gross error of law in finding that FCRA preempted Perik's claim. The arbitrator did not apply an incorrect or out-of-date provision or misstate the law in any way. We will not delve into the record to determine whether the arbitrator misapplied FCRA or federal preemption. See, *e.g.*, *Beatty v. Doctors' Co.*, 374 Ill. App. 3d 558, 564 (2007) (there could be no gross error of fact or law in resolving insurer's duty to defend where "court would have to undertake an independent analysis of the underlying complaint and insurance policy in order to determine whether the arbitrators erred").

¶ 82 3. Lost Wages Testimony

¶ 83 Perik also contends that the arbitrator erred in excluding her testimony regarding her lost wages. Perik contends that she was qualified to testify regarding her lost wages under Illinois Rules of Evidence 701 and 702 (eff. Jan. 1, 2011).

¶ 84 Perik makes no effort to explain what provision of section 12(a) applies to this alleged error falls under or why Rules 701 or 702 would govern this proceeding. We find that Perik has forfeited her claim that the exclusion of her testimony regarding her lost wages justifies vacatur of the arbitration award under section 12(a). See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Wilson*, 2012 IL 112026, ¶ 25.

¶ 85 Even absent forfeiture, Perik's claim lacks merit. Under section 12(a)(4) of the Arbitration Act, an award may be vacated if an arbitrator "refused to hear evidence material to the controversy." 710 ILCS 5/12(a)(4) (West 2012). But the arbitrator concluded that Chase was not liable for the alleged libel, rendering the question of damages irrelevant. See, *e.g.*, *Schwartz v. Alton & Southern Ry. Co.*, 38 Ill. App. 3d 528, 531 (1976) ("[A]llegations of error concerning the extent of plaintiff's damages are irrelevant in view of the fact that the jury found the defendants not liable."). While Perik's damages may have been material at the time the hearing was being conducted—before the arbitrator had ruled on Chase's liability—there can be no question that damages are no longer material now that the arbitrator has concluded that Chase is not liable. In fact, the arbitration award—the focus of our limited review—makes no mention of damages. The exclusion of Perik's testimony would not justify vacating the award at this point.

¶ 86 4. Right to Terminate Arbitration

¶ 87 Perik also contends that the arbitrator exceeded her authority by entering the award at all, because Perik had a right to terminate the arbitration proceedings, which she exercised. In other words, Perik claims that, when she terminated the agreement, there was no arbitration agreement

in existence anymore. See 710 ILCS 5/12(a)(5) (West 2012) (award may be vacated when there is no arbitration agreement).

¶ 88 Specifically, Perik argues that, by ruling that evidence of her treatment for emotional distress from 2008 to 2012 was inadmissible, the arbitrator precluded her from effectively pursuing arbitration, causing a material breach of the arbitration agreement between Chase and Perik. According to Perik, the existence of a material breach permitted her to terminate the arbitration agreement.

¶ 89 First, we fail to see how the arbitrator's ruling could be said to breach a contract to which she was not a party. Certainly, Perik offers no authority to support the notion that an arbitrator's discovery or evidentiary ruling—like the ruling in this case—may breach an agreement to arbitrate a dispute.

¶ 90 Moreover, the terms of the arbitration agreement do not support Perik's claim of a material breach. The arbitration agreement states that the AAA's "code or procedures in effect at the time the arbitration claim is filed" govern the conduct of the arbitration proceedings. Under the AAA rules of arbitration in effect at the time Perik filed her notice of arbitration, the arbitrator was "authorized to resolve any disputes concerning the exchange of information." AAA Rules, R-21(c) (eff. June 1, 2009).

¶ 91 Here, the arbitrator excluded evidence of Perik's mental-health treatments from 2008 to 2012 because Perik had failed to produce documents during discovery substantiating such treatment. The arbitrator's evidentiary decision was thus predicated on a discovery dispute, *i.e.*, a "dispute concerning the exchange of information" between the parties. *Id.* Thus, the arbitrator properly exercised her discretion within the bounds of the AAA's rules and did not breach the arbitration agreement.

¶ 92 Furthermore, the AAA rules provided that "[t]he arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant." AAA Rules, R-31(b) (eff. June 1, 2009). Thus, to the extent the arbitrator's exclusion of the mental-health-treatment evidence constituted an evidentiary ruling, that ruling would also comply with the AAA's "code or procedures in effect at the time the arbitration claim is filed" and would not constitute a material breach of the arbitration agreement.

¶ 93 Perik also claims that the arbitrator violated the AAA rule permitting her to make written record objections when the arbitrator considered Perik's record objections to be a motion to reconsider her ruling on the admissibility of the mental-health-treatment evidence and denied the motion. Perik reasons that, because the arbitrator violated the AAA rules, her re-characterization of Perik's record objections constituted a material breach.

¶ 94 The arbitrator violated no rules in considering Perik's objections as a motion to reconsider. The AAA rules require a party to file written objections in order to avoid waiving those objections. See AAA Rules, R-37 (eff. June 1, 2009) ("Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object."). While the arbitrator recharacterized Perik's record objections, she never considered those objections to be waived. To the contrary, the award states, "[Perik] has participated in the proceedings *without waiver of her objections*." (Emphasis added.) Nor did the trial court consider Perik's arguments concerning the 2008 to 2012 treatment evidence to be waived during the proceedings on Perik's motion to vacate the award.

¶ 95 The arbitrator neither precluded Perik from making record objections nor improperly concluded that Perik waived any objections. Perik has suffered no detriment due to the arbitrator's consideration of her objections as a motion to reconsider.

¶ 96 5. Limitation of Cross-Examination

¶ 97 Perik also argues that the arbitrator's award should be vacated under section 12(a)(4) of the Arbitration Act, because the arbitrator curtailed Perik's right to cross-examine Hodge during the arbitration hearing. Section 12(a)(4) provides for vacatur when the arbitrator "refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5 [of the Arbitration Act], as to prejudice substantially the rights of a party." 710 ILCS 5/12(a)(4) (West 2012). Section 5 of the Arbitration Act provides, in part, that a party to an arbitration is "entitled to *** cross-examine witnesses appearing at the hearing." 710 ILCS 5/5(b) (West 2012).

¶ 98 We disagree with Perik's contention. The arbitrator's limits on Perik's cross-examination were reasonable attempts to expedite the proceedings. Under AAA rules, an arbitrator, "exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct parties to focus their presentations on issues the decision of which could dispose of all or part of the case." AAA Rules, R-30(b) (eff. June 1, 2009). Pursuant to this authority, the arbitrator set a hearing schedule of one day, with another day reserved for any additional proceedings.

¶ 99 The record contains numerous instances where the arbitrator stressed the time limits to Perik's counsel, but counsel persisted in asking repetitive questions on points that had already been established. For example, after Hodge conceded that Perik did not commit the conduct alleged in the Early Warning report, the following colloquy occurred:

"Q [Perik's counsel]. I'm going to move to strike your answer, Mr. Hodge. Please answer my question.

THE ARBITRATOR: Overruled. The witness has answered Mr. Dore. Everybody in this room knows now that that document incorrectly states certain conduct by [Perik], am I right? It's wrong.

MR. DORE [Perik's counsel]: I don't know. He never testified to it.

THE ARBITRATOR: Well, he did testify just minutes ago, so I'd ask you to move on. You may continue to cross-examine.

MR. DORE: I am not finished with the inquiry on this.

THE ARBITRATOR: Then keep going.

MR. DORE: Okay."

Perik's counsel then began to ask whether every activity in the Early Warning report constituted criminal activity, in Hodge's opinion. The arbitrator interjected:

"THE ARBITRATOR: All right. Mr. Dore, what [Chase's counsel] is saying is that there are a list of things there. If you want to ask Mr. Hodge whether each and every one of them is a crime, you can take up everyone's time to do that, but it's really not a good use of anyone's time because everyone understands your point, that those activities that are stated there are stated there, but they are incorrect.

[Perik] did not forge checks, did not kite checks, et cetera, so it's a waste of time—

MR. DORE: It's not a waste of time.

THE ARBITRATOR: Wait, wait, wait. If you want to waste our time, I guess we have to do it, because I did promise to follow the rules of the Court and the Rules of

> Evidence, so here we are, so go ahead, but I'm going to sustain the objection to questions that you've already asked."

Perik's counsel then asked Hodge, in several separate questions, whether each of the activities in the Early Warning report constituted crimes.

¶ 100 Later, counsel repeatedly asked Hodge whether Chase had engaged in "false reporting," even though Hodge had already conceded that the reports sent to Early Warning were "inaccurate." The arbitrator urged counsel to move on, stating, "the fact that I understand that that report is not accurate is fairly important, and that's why I'm saying 'move on,' because there may be other important things you want me to understand." Counsel continued to ask whether the information in the report was false. Soon thereafter, the arbitrator cut off counsel's cross-examination.

¶ 101 But the arbitrator then gave counsel more time to cross-examine Hodge after Fritchen testified. Counsel asked numerous questions before his cross-examination was cut off again. And counsel was only cut off after the arbitrator again warned him of the time constraints. On the third day of the arbitration hearing, which exceeded the initial limits set by the arbitrator, the arbitrator proposed that counsel could continue his cross-examination via telephone. Counsel rejected that proposal. The record thus shows that counsel had sufficient opportunity to cross-examine Hodge.

¶ 102 Notably, Perik has identified no evidence that would have been uncovered through further cross-examination that would have helped her case. In fact, the arbitrator asked Perik's counsel what additional topics he wanted to cover, and he replied:

> "Subject of the knowledge as a result of the reporting of this information, subject of the knowledge as to whether or not they made other reports pertaining to [Perik], the

> subject of the knowledge that the records-keeping process that was available, that [Hodge] just testified to, was never used in connection with the report that was sent to Early Warning ***, the subject of the knowledge of Mr. Hodge as—in an advisory position to Early Warning *** whether or not there was correct [*sic*], the subject of the knowledge of his representation that he had to comply with the federal statutes and what—what those compliance requirements were."

While admittedly difficult to decipher, this statement reveals no material evidence that, with further cross-examination, would have been uncovered. Thus, Perik cannot show that the limits on her cross examination resulted in substantial prejudice to her rights. See 710 ILCS 5/12(a)(4) (West 2012) (arbitration award may be vacated where violation of right to cross-examine "prejudice[d] substantially the rights of a party").

¶ 103 Clearly, the arbitrator gave counsel ample opportunity to cross-examine Hodge, but counsel elected to persist in areas where further cross-examination was not necessary. In fact, counsel's cross-examination of Hodge spans 63 total pages of transcript. We see no improper curtailment of Perik's right to cross-examine Hodge. At most, we see repeated attempts by the arbitrator to hold Perik's counsel to the time limits imposed on the hearing and to guide counsel when his cross-examination became repetitive.

¶ 104 Even during a criminal trial, where a defendant possesses a constitutional right to confront the witnesses against him, a court has discretion to impose reasonable limits on cross-examination, including limits to avoid "repetitive and irrelevant questioning." *People v. Blue*, 205 Ill. 2d 1, 13 (2001). Our review of an arbitration is far more deferential than our review of a trial. See *Advocate Financial Group*, 2014 IL App (2d) 130670, ¶ 49 (review of arbitration award "is nothing like the scope of our review of a trial court decision" (internal quotation marks

omitted)). In this case, we see no abuse of discretion under either standard, as the trial court afforded Perik's counsel an opportunity to conduct an extensive cross-examination and even advised counsel to avoid certain repetitive lines of questioning. Perik has failed to establish any limitation of cross-examination that would justify vacatur of the award under section 12(a)(4).

¶ 105 6. Consideration of *Perik I*

¶ 106 Perik also claims that the arbitrator erred in relying on this court's decision in *Perik I*, 2011 IL App (1st) 093088-U. Perik's argument on this point consists of two conclusory paragraphs—on separate pages of her brief under different headings—that contain no citations to authority. Perik claims that the arbitrator's consideration of *Perik I*, when it had not been admitted into evidence, "constitutes reversible error under Illinois law." Yet Perik cites no Illinois law to support that contention. And she fails to cite any authority supporting the notion that an arbitrator may not consider a prior order of a court relating to the same dispute.

¶ 107 As we have found repeatedly above, Perik has forfeited this argument. See, *e.g.*, *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶¶ 12-13 (party forfeited two arguments, one consisting of "two conclusory paragraphs" and other consisting of "one conclusory paragraph unsupported by any citations to authority"). Perik's conclusory, unsupported argument merits no consideration.

¶ 108 We also note that the arbitrator's award shows that she did not base her findings of fact or conclusions of law on the analysis in *Perik I*. Instead, she cited *Perik I* for its conclusion that this court found the dispute to be arbitrable and noted that this court had discussed the legal issues of qualified privilege and FCRA preemption "*as they related to [Early Warning]*." (Emphasis added.) The arbitrator thus recognized that the only discussion of liability in *Perik I* related to

Early Warning, not Chase. And the award does not show that the arbitrator extended our discussion of privilege and FCRA preemption to Chase.

¶ 109 Moreover, the record of the arbitration proceeding shows that the arbitrator did not improperly consider *Perik I*. The arbitrator accepted a copy of the order, noting that it was "a decision that was rendered between these two parties that are parties to this arbitration," meaning that, while it did not have "precedential value," it had "value that wouldn't occur if it was between *** other parties." Thus, the arbitrator expressly recognized that, because *Perik I* was an unpublished order under Illinois Supreme Court Rule 23 (eff. July 1, 2011), it could not be cited as precedent but could be used "to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case." Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011). The arbitrator properly construed the effect of *Perik I*, and Perik cannot show that the arbitrator's consideration of *Perik I* had any prejudicial impact on the outcome of the arbitration.

¶ 110 7. Removal of Chase Exhibits

¶ 111 Finally, Perik claims that the arbitrator "corrupted the arbitration by the exercise of undue means" when she removed a binder containing Chase's exhibits at the conclusion of the second day of the arbitration hearing.

¶ 112 Yet again, Perik's argument is unsupported and conclusory, and consists of a few disjointed sentences. Perik has forfeited this claim. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Hall*, 2012 IL App (2d) 111151, ¶¶ 12-13.

¶ 113 And even if Perik had not forfeited this argument, she cannot establish any corruption, bias, or other impropriety by the arbitrator in removing the exhibits. The arbitrator explained that she did not review the exhibits when she took them out of the hearing room. She only looked "at [her] own personal notes." Consequently, Perik cannot establish that the arbitrator saw any

evidence that she otherwise should not have seen or in any other way prejudiced her right to a fair hearing.

¶ 114 Perik's claim of arbitrator bias, like so many of her other claims, boils down to a speculative attempt to undo arbitration proceedings that did not resolve in her favor. Perik cannot vacate an arbitration award simply by casting unsupported aspersions at the arbitrator. See, *e.g.*, *Edward Electric Co.*, 229 Ill. App. 3d at 101 ("To vacate an award based on partiality, it is necessary to show a direct, definite and demonstrable interest, on the part of the arbitrator, in the outcome of the arbitration."). We affirm the trial court's judgment denying Perik's motion to vacate the arbitration award and confirming the arbitration award.

¶ 115 III. CONCLUSION

¶ 116 For the reasons stated, we affirm the trial court's judgment.

¶ 117 Affirmed.