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2013 IL App (4th) 120113-U

NO. 4-12-0113

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 7, 2013

Carla Bender

4th District Appellate
Court, IL

PRO COM SERVICES OF ILLINOIS, INC., as)	Appeal from
Assignee for WILLIAMSVILLE STATE BANK AND)	Circuit Court of
TRUST,)	Sangamon County
Plaintiff-Appellee,)	No. 11SC3957
v.)	
SHERYLE L. HENRY,)	Honorable
Defendant-Appellant.)	April Troemper,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Where the record fails to show defendant called her motion to dismiss to the trial court's attention, we cannot address the merits of her claim.

¶ 2 Where the record fails to indicate the trial court erred in denying defendant's motion to vacate, we find no abuse of discretion.

¶ 3 In August 2011, plaintiff, Pro Com Services of Illinois, Inc., filed a small-claims complaint seeking money damages against defendant, Sheryle L. Henry. In October 2011, the trial court entered judgment in plaintiff's favor. In November 2011, defendant filed a *pro se* motion to vacate the judgment, which the court denied.

¶ 4 On appeal, defendant argues the trial court erred in (1) not dismissing plaintiff's complaint and (2) not granting her motion to vacate the judgment. We affirm.

5 I. BACKGROUND

¶ 6 On August 2, 2011, plaintiff filed a small-claims complaint against defendant to collect on an account from Williamsville State Bank and Trust for \$3,947.75. On August 24, 2011, defendant filed a *pro se* motion to dismiss. Defendant claimed no written instruments on which the complaint was premised were attached and no affidavit had been filed as to the unavailability of those instruments. See 735 ILCS 5/2-606 (West 2010). Defendant argued the written instruments were essential for her to ascertain whether the amount claimed by plaintiff is a valid debt for which she was liable.

¶ 7 On October 26, 2011, the trial court entered a docket entry indicating defendant appeared in person and plaintiff appeared by counsel. By agreement, the court entered judgment for plaintiff in the amount of \$3,947.75 plus costs with payment set at \$400 per month.

¶ 8 On November 23, 2011, plaintiff filed a motion to vacate the payment order, claiming defendant failed to comply. Plaintiff asked to be allowed to pursue other remedies. The trial court entered an order vacating the payment order.

¶ 9 Also on November 23, 2011, defendant filed a *pro se* motion for leave to file a motion to vacate the October 2011 judgment. Defendant claimed her alleged admission that she owed money to plaintiff "was the product of threats, intimidation, coercion, and implicit and explicit misrepresentations," which were in violation of the Fair Debt Collection Practices Act. See 15 U.S.C. §§ 1692-1692p (2006). Defendant asked the trial court to vacate the judgment and set a hearing on the motion to dismiss.

¶ 10 In an accompanying affidavit, defendant stated she arrived at the October 26, 2011, hearing prepared for a hearing on her motion to dismiss, not a trial. Prior to the hearing, an employee of Pro Com asked defendant and two bank representatives to meet in the hall.

Defendant stated her desire to have the case dismissed, but the Pro Com representative indicated that would not happen and the matter would proceed to trial. Back in the courtroom, defendant claimed plaintiff's attorney, James Elmore, talked to the judge out of defendant's earshot. Elmore then asked defendant and two bank employees to go out into the hallway. Once outside the courtroom, Elmore asked defendant what she wanted to do with the case. Defendant stated she was only prepared for a hearing on the motion to dismiss and wanted her case dismissed. Elmore responded that there would be a trial. Elmore then purportedly told defendant she had committed a crime and that charges could be brought against her. When Elmore asked how much she could pay per month, defendant stated \$50 per month. Bank employees would accept no less than \$400 per month and would garnish her wages if she did not pay that amount. Once back in the courtroom, the trial court called the parties to the front and attorney Elmore stated a payment plan of \$400 per month had been accepted. Defendant stated she was not permitted to address the trial court. She also stated she never admitted to owing anything to plaintiff.

¶ 11 In December 2011, plaintiff filed a reply, stating defendant agreed to the judgment freely and voluntarily and no threats or coercions were placed on her. Moreover, attorney Elmore denied threatening criminal prosecution in this case.

¶ 12 In January 2012, defendant appeared in court with counsel. The docket entry indicates the trial court denied the motion to vacate the judgment and upheld the judgment for plaintiff. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Motion To Dismiss

¶ 15 Defendant argues the trial court erred in not dismissing plaintiff's complaint for

failure to comply with Illinois Supreme Court Rule 282(a) (eff. July 1, 1997) and section 2-606 of the Code of Civil Procedure (735 ILCS 5/2-606 (West 2010)), which require the attachment of written instruments to the complaint or an affidavit as to why the instruments are inaccessible.

¶ 16 In a small-claims case, the trial "court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing." Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992).

"Except as provided in sections 2-619 and 2-1001 of the Code of Civil Procedure, no motion shall be filed in small claims cases, without prior leave of court." Ill. S. Ct. R. 287(b) (eff. Aug. 1, 1992).

¶ 17 In the case *sub judice*, plaintiff filed a small-claims complaint against defendant on August 2, 2011. Plaintiff issued a summons for a hearing on August 26, 2011. On August 24, 2011, defendant filed a motion to dismiss. On August 26, 2011, a bench trial was set for October 26, 2011.

¶ 18 Initially, we note defendant did not seek leave to file her motion to dismiss. However, if we consider the motion filed under section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2010)), then such a motion was proper. Still, it was defendant's responsibility to call her motion to dismiss to the trial court's attention. On this record, we are unable to determine whether defendant did so.

¶ 19 "It is incumbent upon [defendant], as appellant, to present a record of the proceedings showing the errors of which [she] complains." *Gilkey v. Scholl*, 229 Ill. App. 3d 989, 994, 595 N.E.2d 183, 187 (1992). Here, there is no transcript of the October 2011 bench trial or a bystanders' report. The only record memorializing the hearing is the trial court's docket entry, which notes judgment was entered for plaintiff by agreement and defendant was to pay

\$3,947.75 plus costs with payment of \$400 per month. Without more, we are left to the conclusion that defendant did not bring her motion to the trial court's attention but instead agreed to the judgment. "When a party has abandoned a motion by failing to ever call it to the trial court's attention for a ruling, we fail to see why we should address the motion for the first time on appeal." *Jackson v. Alvarez*, 358 Ill. App. 3d 555, 564, 831 N.E.2d 1159, 1167 (2005).

Accordingly, we cannot address the merits of defendant's claim.

¶ 20 B. Motion To Vacate Judgment

¶ 21 Defendant argues the trial court should have granted her motion to vacate the judgment because the purported settlement was the product of threats and coercion. A trial court's decision denying a motion to vacate is reviewed under an abuse-of-discretion standard. *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 5, 861 N.E.2d 1075, 1080 (2006).

¶ 22 In November 2011, defendant sought leave to file a motion to vacate the judgment, alleging her admission that she owed money to plaintiff was the product of threats, intimidation, and coercion. Defendant also attached to her motion an affidavit detailing the events of October 26, 2011, inside and outside the courtroom. Plaintiff responded, stating defendant agreed to the judgment and payment plan freely and voluntarily and without threats or coercions placed on her. Further, plaintiff's counsel denied threatening defendant with criminal prosecution. At the January 2012 hearing on the motion to vacate, defendant appeared with counsel. The docket entry indicates arguments were heard, and the trial court denied the motion.

¶ 23 "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a

sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). Moreover, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959. Based on the record, we find no basis for holding the trial court abused its discretion in denying the motion.

¶ 24 In this case, we have no transcript from the hearing on the motion to vacate. No bystanders' report was filed either. See Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). The docket entry indicates plaintiff appeared by attorney Elmore and defendant appeared with her attorney. We can assume the trial court had the benefit of the affidavit filed by defendant and attorney Elmore's response, as both were in the record. Arguments were heard, and the trial court denied the motion. Without more, we must presume the denial of the motion to vacate was in conformity with the law and was supported by the evidence. See *Foutch*, 99 Ill. 2d at 393, 459 N.E.2d at 960. Accordingly, we find no abuse of discretion.

¶ 25 III. CONCLUSION

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

¶ 27 Affirmed.