2012 IL App (1st) 110686-U

THIRD DIVISION
June 29, 2012

No. 1-11-0686

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JNA'ISHATRYIYAH GRAY, a minor, by and through her Mother and Next Friend, ANNATTE THOMAS,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant	)	
v.	)	
WAL-MART STORES, INC.	)	No. 01 M1 302361
Defendant-Appellee.	)	Honorable James E. Snyder, Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Neville concurred in the judgment.

ORDER

HELD: The minor plaintiff filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) in August 2010 to vacate a judgment on an award of arbitration entered November 16, 2001. The

circuit court of Cook County dismissed plaintiff's petition with prejudice. The trial court correctly dismissed plaintiff's 2-1401 petition on the basis that plaintiff failed to state a claim upon which relief could be granted.

¶ 1 Plaintiff, Jna'Ishatryiyah Gray, a minor, by and through her mother and next friend, Annatte Thomas (Thomas), filed a petition in August 2010, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), requesting that the circuit court of Cook County vacate the judgment on an award of arbitration entered November 16, 2001. The circuit court dismissed plaintiff's petition with prejudice. Plaintiff now appeals this dismissal. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 2 BACKGROUND

¶ 3 On December 4, 1998, plaintiff, who was four years old at that time, suffered injuries when a display at a Wal-Mart store fell and struck her in the head. In May 2001, a small claims complaint was filed in the circuit court of Cook County on behalf of the minor plaintiff by and through her mother and next friend, Thomas. At the time of the filing of the complaint, plaintiff was represented by the law firm of Schaffner, Rabinowitz and Feinartz, P.C. The complaint alleged that defendant Wal-Mart had been negligent and that this negligence resulted in plaintiff's injuries. The complaint prayed for a judgment against Wal-Mart and requested damages be awarded in the amount of $5,000.00.

¶ 4 On July 5, 2001, the court entered an order, prepared by plaintiff's counsel, assigning the case to mandatory arbitration. The arbitration took place on September 24, 2001, and an award was made

in favor of plaintiff in the amount of $750.[1] The next day, a "Notice of Award" was sent to plaintiff's counsel. On November 16, 2001, the circuit court entered judgment on this arbitration award. The record reflects that this judgment order was prepared by plaintiff's counsel. Finally, on April 17, 2002, a document titled "Release (Satisfaction) of Judgment" was signed by plaintiff's counsel, stating that in light of the $750 arbitration judgment, counsel had approved the release of all claims against Wal-Mart "on behalf of plaintiff."

¶ 5 In 2002, the minor plaintiff, again by and through Thomas, filed an action for legal malpractice against the Schaffner, Rabinowitz and Feinartz law firm in the circuit court of Cook County, alleging that the firm mishandled plaintiff's personal injury action against Wal-Mart. That case was voluntarily dismissed and re-filed in the United States District Court for the Northern District of Illinois in 2006.[2] Plaintiff alleged in the legal malpractice action that counsel breached their duty to exercise reasonable care and skill in representing her in the personal injury action against Wal-Mart, resulting in her not receiving adequate compensation for the injuries she sustained. Specifically, plaintiff asserted that counsel negligently prosecuted the case in several respects, including by filing her case as a small claims action which was subject to arbitration; by failing to present and develop medical evidence with respect to the minor plaintiff's injuries; by failing to ascertain the true extent of the minor's injury; and by failing to advise the plaintiff or her

[1]The award notes that the "[p]arties stipulated and agreed to two arbitrators," rather than the customary panel of three. See Ill. Sup. Ct. R. 87(b)("The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties.")

[2]According to that filing, the jurisdiction of the federal court is premised upon diversity of citizenship, in that plaintiff and her mother reside in Georgia and defendant attorneys are citizens of Illinois.

mother of the right to reject the arbitration award. That complaint further alleged that plaintiff's mother would have rejected the arbitration award as insufficient if she had been timely advised by counsel that she had the right to do so.

¶ 6 The legal malpractice case was set for trial in federal court on June 2, 2009. However, an order entered by that court on May 19, 2009 cancelled the trial date. The court noted that in preparing for the final pretrial conference, it had occasion to review prior pleadings filed by the defendant attorneys, including a motion filed in the earlier state legal malpractice action seeking the appointment of a guardian ad litem for the minor plaintiff. Based upon these documents, the court expressed its concern that the interests of the minor plaintiff "may not have been properly and independently represented" in the underlying state court action because plaintiff's mother had filed suit in the personal injury case as plaintiff's "next friend," and no minor's estate had been opened. The District Court thus questioned whether the 2001 arbitration award was binding on the parties "because no court had found that the award was in the minor's best interests."

¶ 7 On July 8, 2009, the District Court appointed a guardian ad litem for the minor plaintiff and directed the GAL to open a minor's estate in the Probate Division of the circuit court of Cook County. Nearly one year later, on June 28, 2010, the circuit court entered an order appointing Thomas as guardian of the estate of the minor plaintiff and authorized her to file a petition to vacate the November 16, 2001 order which entered judgment on the arbitration award.

¶ 8 On August 10, 2011, plaintiff filed the action which is at issue in this appeal: a petition brought pursuant to section 2-1401 of the Code of Civil Procedure to vacate the circuit court's judgment on the arbitration award, entered on November 16, 2001. The petition set forth the

following grounds as a basis to vacate the judgment on the arbitration award and reinstate plaintiff's personal injury action against Wal-Mart:

> "(1) *** no court approval was sought to compromise the claim of the minor; (2) at the time of the entry of the judgment, plaintiff was a minor and disabled; (3) the mother and next friend of the minor was never informed of the arbitration award within 30 days of the award and therefore never had the opportunity to accept or reject the award on the minor's behalf; (4) the award of arbitration was never approved by the probate court or found to be in the best interest of the minor; (5) the court entering the judgment was not informed that the minor plaintiff was still receiving medical treatment and that the extent of her injuries had not been fully diagnosed; (6) the arbitration award was insignificant and insufficient to compensate the minor plaintiff for the significant neurological impairment she suffered as a result of the injur[ies] at Wal-Mart which have negatively impacted most aspects of her life and the court entering the judgment did not know of the extent of the injuries suffered by the minor plaintiff; [and] (7) the award of arbitration was not even sufficient to cover the medical expenses which had been accumulated at the time of the arbitration, let alone the significant medical injuries which she suffered."

¶ 9 The petition further alleged that "[w]ithout the knowledge or consent of Annatte Thomas or the minor, [counsel] executed a release and satisfaction of the judgment to Wal-Mart on behalf of the plaintiff," and stated that Thomas would have rejected the award had she been informed by counsel of her option to do so. The petition concluded that, based upon the totality of the circumstances alleged, the judgment on the arbitration award should be vacated.

¶ 10 Defendant Wal-Mart moved to dismiss plaintiff's petition pursuant to sections 2-615, 2-619(a)(5) and/or 2-615(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619(a)(5), 2-619(a)(9)(West 2010)). Wal-Mart argued, *inter alia*, that plaintiff failed to state a claim upon which relief could be granted. On February 1, 2011, the circuit court entered an order granting Wal-Mart's motion to dismiss plaintiff's 2-1401 petition with prejudice. This appeal followed.

¶ 11 DISCUSSION

¶ 12 Plaintiff seeks to vacate a judgment that is over ten years old, which is related to an injury that occurred in 1998. In order to accomplish this, plaintiff relies upon section 2-1401 of the Code of Civil Procedure.

¶ 13 Section 2-1401 establishes a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007).[3] Although section 2-1401 requires that the petition be filed in the same proceeding in which the order or judgment was entered (*Id.*), a section 2-1401 petition is the initial pleading in a new cause of action, and is not a

[3]The statute provides that petitions must be filed not later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c)(West 2010); *Vincent*, 226 Ill. 2d at 7. The statute further provides for an exception to this time limitation where the plaintiff is under a legal disability or duress, or if the ground for relief is fraudulently concealed. *Id.*

continuation of the original action. *Hanson v. DeKalb County State's Attorney's Office*, 391 Ill. App. 3d 902, 906 (2009). Relief under section 2-1401 is predicated upon proof, by a preponderance of the evidence, of a defense or claim that would have precluded entry of the judgment in the original action and due diligence in both discovering the defense or claim and presenting the petition. *Vincent*, 226 Ill. 2d at 7-8, citing, *Smith v. Airoom*, 114 Ill. 2d 209, 220-21 (1986).

¶ 14 When a party files a motion to dismiss challenging a petition for relief under section 2-1401, the motion admits all well-pleaded facts, but attacks the legal sufficiency of the petition. *In re Hoppe*, 220 Ill. App. 3d 271, 283 (1991). A court should dismiss a section 2-1401 petition if it is clear on its face that the petitioner is not entitled to relief. *Smith v. National Carriers, Inc.*, 188 Ill. App. 3d 119, 122-23 (1989). A *de novo* standard of review applies to dispositions of section 2-1401 petitions, where a court rules based on the pleadings alone. *Vincent*, 226 Ill. 2d at 18.

¶ 15 Plaintiff maintains that the circuit court erred in dismissing her section 2-1401 petition to vacate the judgment entered on the arbitration award on November 16, 2001. In support of her contention, plaintiff points to the fact that prior to entering judgment on the arbitration award, the court did not determine whether that award was reasonable, fair and in the minor's best interests. Plaintiff relies exclusively upon a general public policy argument that because our courts have historically protected the interests of minors, the circuit court should have reviewed the arbitration award and refused to enter judgment on that award. Plaintiff also readily acknowledges, however, that "[t]here is no specific rule or other authority mandating that the trial court look at the arbitration award and find whether it is fair and reasonable and in the best interest of the minor prior to the entry of judgment on the award." Nevertheless, plaintiff urges us to, in effect, create and retroactively

apply a new procedure requiring judicial review and approval of arbitration awards on minors' claims before judgment is entered on these awards. This we cannot do.

¶ 16 Illinois Supreme Court Rules 86 through 99 set forth our mandatory arbitration system and procedures. Ill. S. Ct. R. 86-99. The arbitration process is an alternative to costly and lengthy litigation and provides a means of obtaining an expedited hearing and decision in appropriate cases. See, J. Lerner, *Mandatory Arbitration: Welcome to Illinois*, 76 Ill. B.J. 418 (1988). The General Assembly, in 1986, passed enabling legislation for a mandatory arbitration system in our circuit courts (see 735 ILCS 5/2-1001A *et. seq.* (West 2010)) and our Supreme Court implemented this system by promulgating Rules 86 through 99. In *Cruz v. Northwestern Chrysler Plymouth Sales, Inc.*, 179 Ill. 2d 271, 279 (1997), our Supreme Court described the operation of the mandatory arbitration process it created:

> "Where *** a case is subject to mandatory arbitration and submitted to a panel of arbitrators for hearing, the responsibility for administering oaths, ruling on the admissibility of evidence, and, most importantly, deciding the law and the facts of the case is expressly vested in the arbitrators. 166 Ill. 2d R. 90(a). The circuit court plays no role in adjudicating the merits of the case. Authority for making a determination in favor of one party or the other rests exclusively with the arbitrators, and Rule 92(b) expressly states that the arbitration panel's award 'shall dispose of all claims for relief.' 155 Ill. 2d R. 92(b).

> Once the arbitration panel has made its award, the parties must accept or reject the award in its entirety. If none of the parties file a notice of rejection of the award and request to proceed to trial within the time specified under the Rules, the circuit court has no real function beyond entering judgment on the award. 155 Ill. 2d R. 92©. Although the court can correct an 'obvious and unambiguous error in mathematics or language' (155 Ill. 2d R. 92(d)), it cannot modify the substantive provisions of the award or grant any monetary relief in addition to the sums awarded by the arbitrators."

¶ 17 Thus, our Supreme Court has made it clear that the arbitrators "determine the admissibility of evidence and *** decide the law and the facts of the case," (Ill. Sup. Ct. R. 90(a)), and that such award "dispose[s] of all claims for relief." Ill. Sup. Ct. R. 92(b). Once the arbitration panel has made its award, the award is deemed an all-or-nothing proposition and the parties must accept or reject the award in its entirety. *Cruz*, 179 Ill. 2d at 279; *Magee v. Garreau*, 332 Ill. App. 3d 1070, 1075 (2002). If none of the parties files a notice of rejection, any party may move the court to enter judgment on the award. Ill. Sup. Ct. R. 92(b),©. Our Supreme Court has also established a single procedure for challenging an arbitration award: a party must file a notice of rejection of the award and request a trial. Ill. Sup. Ct. R. 93(a); *Magee*, 332 Ill. App. 3d at 1074-75; *Akpan v. Sharma*, 293 Ill. App. 3d 100, 103 (1997). A very narrow exception is allowed where a party is inadvertently absent from the arbitration proceeding: under this limited circumstance, a party may file a petition to vacate the judgment under sections 2-1301 and 2-

1401 of the Code of Civil Procedure (735 ILCS 5/2-1301, 2-1401(West 2010)). Ill. Sup. Ct. R. Rule 91(a); *Magee*, 332 Ill. App. 3d at 1075; *Mrugala v. Fairfield Ford, Inc.*, 325 Ill. App. 3d 484, 490 (2001); *Akpan*, 293 Ill. App. 3d at 103-04. In other words, if both parties are present at the arbitration hearing, neither party may avail itself of section 2-1401 relief to vacate the award. See Ill. Sup. Ct. R. 91 (a) Committee Comments ("A party who knowingly fails to attend the scheduled hearing, either in person or by counsel, must be deemed to have done so with full knowledge of the consequences that inhere with this rule. Where the failure to attend was inadvertent, relief may be available to the party under the Code of Civil Procedure, sections 2-1301 or 2-1401, upon such terms and conditions as shall be reasonable.")

¶ 18 Thus, the framework created by our Supreme Court for the operation of the mandatory arbitration system - as well as the case law interpreting the rules governing that system - establishes that the circuit court's scope of review of an arbitration award is strictly limited. Section 2-1401 is not available to vacate judgments entered on arbitration awards except where a party was inadvertently absent from the proceedings. Here, the record establishes that plaintiff - through counsel - fully participated in the arbitration proceedings. It is undisputed that plaintiff's counsel drafted the order which assigned the case to mandatory arbitration, appeared at the arbitration and participated in those proceedings, and also drafted the order upon which the circuit court entered judgment on the arbitration award. Accordingly, under the specific facts of this case, plaintiff has failed to state a claim for which relief can be granted under section 2-1401.

¶ 19 Plaintiff nevertheless urges us to ignore this binding precedent and hold that, because she is a minor, the circuit court should have reviewed the arbitration proceedings to determine

whether the award was fair, reasonable and in her best interests. As plaintiff herself admits, this argument is not supported under existing law. No authority allows judicial evaluation of the sufficiency of arbitration awards before judgment can be entered on a minor's claims, and the circuit court is vested with no discretion to review a party's decision to accept such an award.

¶ 20 In addition, our careful review of the allegations in plaintiff's section 2-1401 petition reveals that they largely mirror the allegations set forth in her currently-pending legal malpractice action against the attorneys who represented her in the personal injury matter. In both pleadings, plaintiff and Thomas maintain that they would have rejected the arbitration award, had they been informed of that award by counsel. It is based upon these allegations that we hold that plaintiff's attempt to analogize the entry of judgment on her arbitration award to a settlement fails. Plaintiff is correct that a court has an obligation to a minor to approve or reject any settlement agreement proposed on the minor's behalf (See 755 ILCS 5/19-8 (West 2010); *Villalobos v. Cicero School District*, 362 Ill. App. 3d 704, 712 (2005)), and that because "a parent has no legal right by virtue of the parental relationship to settle a minor's cause of action," the "court['s] review and approval of a settlement reached by a parent *** is mandatory." *Ott v. Little Company of Mary* Hosp., 273 Ill. App. 3d 563, 571 (1995); *Villalobos*, 362 Ill. App. 2d at 712. However, in this case, plaintiff has taken the position that it was her attorneys' failure, either to notify her and her mother of the award or to reject it at their instruction, that resulted in entry of the judgment - *not* a considered decision by her or her mother to accept it. Thus, under the specific facts here, the entry of the judgment on the arbitration award is not factually analogous to reaching a settlement agreement with a defendant. Accordingly, we find plaintiff's reliance on

those cases to be factually inapposite.

¶ 21 While plaintiff may believe that the Illinois Supreme Court Rules should require court approval of arbitration awards on minors' claims before judgment can be entered on them, that is an issue for our Supreme Court to consider and rule upon, pursuant to its rulemaking procedures contained in Rule 3. Ill. Sup. Ct. R. 3. While we are not unsympathetic to plaintiff, we have no authority to alter or expand the Rules which our Supreme Court has set into place to govern the mandatory arbitration process, and we are governed by binding case law which has interpreted these Rules and held that in virtually all instances, arbitration awards are not subject to judicial review. It is a matter for our Supreme Court - not this court - to determine whether our mandatory arbitration rules should provide additional protection to minors.

¶ 22 Because we hold that plaintiff's section 2-1401 petition was properly dismissed because it failed to state a claim upon which relief can be granted, we need not address plaintiff’s additional arguments.

¶ 23 CONCLUSION

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

¶ 25 Circuit Court judgment affirmed.