

No. 1-11-1982

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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RODGER A. BOGUSE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 M1 300327
	)	
EUN KYONG ROH,	)	Honorable
	)	Laurence J. Dunford,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE STEELE delivered the judgment of the court.  
Presiding Justice Neville and Justice Sterba concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Circuit court's order barring plaintiff from rejecting arbitration award for defendant and entering judgment for defendant is affirmed where record on appeal fails to establish that plaintiff's counsel's failure to appear at the arbitration hearing was reasonable and due to extenuating circumstances.
- ¶ 2 Plaintiff Rodger A. Boguse appeals from an order of the circuit court of Cook County barring him from rejecting an arbitration award for defendant Eun Kyong Roh and entering judgment on that award. Plaintiff contends that his attorneys' failure to appear at the arbitration hearing was due to extenuating circumstances and that his attorneys acted in good faith.

¶ 3 On February 3, 2010, plaintiff filed the underlying personal injury suit after his car was struck by a car driven by defendant on February 6, 2008. Plaintiff was initially represented by attorney William R. Welch, but Welch withdrew and the law firm of Gordon and Centracchio, LLC, took on plaintiff's representation in April 2010. On October 15, 2010, the case was assigned to mandatory arbitration in an order prepared by plaintiff's attorneys. The order also specified that all discovery was to be completed by January 7, 2011. Plaintiff alleges that the clerk of the circuit court sent out a postcard notice on January 6, 2011, setting the matter for arbitration on March 25, 2011. But plaintiff alleges that his attorneys did not receive this postcard because plaintiff's original attorney, Welch, had failed to file a motion to withdraw as counsel, and therefore remained as attorney of record on the clerk's docket. Plaintiff alleges that it was Welch who received the notice of an arbitration date, but that Welch failed to notify plaintiff's attorneys of that date.

¶ 4 Arbitration was held as scheduled on March 25, 2011, but neither plaintiff nor his attorneys appeared. An award was entered for defendant.<sup>1</sup> The award stated that plaintiff had not participated in good faith because neither plaintiff nor his attorneys appeared at the arbitration hearing. However, the notice of award in the record reflects that notice was sent to Welch, plaintiff's original attorney. Plaintiff alleges that his attorneys did not learn of the arbitration award until April 20, 2011, when they checked the clerk's electronic docket. Plaintiff filed a notice of rejection of the award. Defendant then filed a motion to bar plaintiff from rejecting the award on the ground that plaintiff had failed to give good reason for not appearing at the arbitration hearing. A hearing was held on June 15, 2011. Following that hearing, the circuit court entered an order granting defendant's motion to bar plaintiff from rejecting the arbitration

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<sup>1</sup>The arbitration order fails to specify the amount of the award, although it does state that defendant was awarded \$433 as costs.

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award and entering judgment for defendant on that award. Plaintiff has failed to include a transcript of that hearing in the record on appeal.

¶ 5 Defendant did not file a responsive brief in this cause, but we find that we can resolve the issues on the basis of the record and plaintiff's brief. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008); *First Capitol Mortgage. Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 6 Attorneys have a duty, both ethical and legal, to exercise reasonable diligence in representing the interests of their client. *Jackson v. Bailey*, 384 Ill. App. 3d 546, 549 (2008). Such diligence is required in tracking their clients' cases, including ascertaining the date of hearings in those cases. *Jackson*, 384 Ill. App. 3d at 549; *Tiller v. Semonis*, 263 Ill. App. 3d 653, 657 (1994). A lack of notice of a hearing does not necessarily excuse a party's failure to appear at that hearing. *Tiller*, 263 Ill. App. 3d at 657.

¶ 7 Here, plaintiff's attorneys were aware that an arbitration hearing would be scheduled; they prepared the order entered by the circuit court which assigned their case to mandatory arbitration. That order was entered on October 15, 2010. The order also specified that all discovery was to be completed by January 7, 2011. Yet, by their own admission, plaintiff's attorneys did not check the court's docket for over three months after discovery was completed in the case. When they did search the court's docket, on April 20, 2011, they discovered that the arbitration award had been entered almost one month earlier, on March 25, 2011. According to plaintiff, notice of the arbitration hearing was sent out by postcard on January 6, 2011. Thus, if plaintiff's attorneys had exercised diligence and checked the court docket at any time in the ensuing seven weeks, they would have been alerted to the scheduled arbitration. As the party who did not meet his obligation to attend the arbitration hearing, plaintiff had the burden of establishing that his failure to do so was reasonable or that it was caused by extenuating circumstances. *Jackson*, 384 Ill.

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App. 3d at 549. We find that plaintiff has failed to meet this burden. Therefore, the circuit court did not err when it barred plaintiff from rejecting the arbitration award and entered judgment for defendant on that award.

¶ 8 In arguing that the failure to attend the hearing was reasonable, plaintiff cites to *Schmidt v. Joseph*, 315 Ill. App. 3d 77 (2000). In *Schmidt*, the court did find that the failure of the plaintiff to attend an arbitration hearing was reasonable where the plaintiff had written down the wrong date and there was evidence that this was an inadvertent error because the plaintiff's employer stated in an affidavit that the plaintiff had requested time off for the erroneous date. *Schmidt*, 315 Ill. App. 3d at 82-83. But those facts are distinguishable from this case because the plaintiff in *Schmidt* was found to have made a good faith effort to keep track of the hearing date. *Id.* Here, plaintiff's attorneys failed to take the elemental step of checking the court docket in a timely fashion. They also could have asked defendant's attorney whether a date for the hearing had been set. In failing to take these steps, plaintiff's attorneys failed to meet their duty of exercising reasonable diligence in their representation of their client. *Jackson*, 384 Ill. App. 3d at 549. We also note that the court in *Schmidt* went on to affirm the trial court's finding that the plaintiff's counsel, although participating in the arbitration hearing, had not participated in good faith and in a meaningful manner. *Schmidt*, 315 Ill. App. 3d at 83-84. In so holding, the reviewing court noted that the record on appeal did not include transcripts of the arbitration hearing or the hearing at which the trial court barred the plaintiff from rejecting the award. *Schmidt*, 315 Ill. App. 3d at 84. The plaintiff in the case before us has also neglected to include in the record a transcript of the hearing at which the circuit court barred plaintiff from rejecting the award and entered judgment for defendant. In the absence of a record which is sufficiently complete to support the appellant's claims of error, we will presume that the circuit court's orders

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conformed to the law and had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009).

¶ 9 For the reasons set forth in this order, we affirm the judgment of the circuit court of Cook County.

¶ 10 Affirmed.