FOURTH DIVISION
June 22, 2017

No. 1-15-3520

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JENNIFER MARTIN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 13 M6 1593
	)	
WELLS FARGO DEALER SERVICES, a division of WELLS FARGO BANK, N.A.,	)	Honorable
	)	Robert J. Clifford
Defendant-Appellee.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: Affirmed. As appellant failed to provide report of proceedings, this court cannot conclude that trial court abused its discretion in denying motion to vacate judgment on arbitration award and allow late filing of rejection of arbitration award.

¶ 2 A judgment on an arbitration award was entered in favor of defendant, Wells Fargo Dealer Services, a division of Wells Fargo Bank, N.A. (Wells Fargo). Plaintiff, Jennifer Martin, *pro se*, appeals, seeking to vacate the order of the circuit court approving the arbitration award and seeking leave to reject the arbitration award. We affirm the circuit court's order denying plaintiff's motion to vacate the judgment on the arbitration award.

¶ 3 I. MOTION TO STRIKE APPELLANT BRIEF

¶ 4 We first consider Wells Fargo's motion to strike the appellate brief filed by plaintiff, which we took with the case. Wells Fargo correctly notes that plaintiff's brief fails to comply with the procedural requirements contained in Illinois Supreme Court Rule 341 (Ill. S. Ct. R. 341 (eff. Jan. 1, 2016)) and Illinois Supreme Court Rule 342 (Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005)).

¶ 5 Supreme court rules pertaining to the content of briefs are mandatory, and failure to abide by them can result in dismissal of an appeal. *Northbrook Bank & Trust Co. v. 300 Level, Inc.*, 2015 IL App (1st) 142288, ¶ 13. Plaintiff is a *pro se* litigant, but she is not excused from complying with the appellate practice rules that dictate the form and content of appellate briefs. *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. The purpose of the rules is to require parties before a reviewing court, which includes *pro se* litigants, to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7.

¶ 6 But this court has chosen to consider the merits of the appeal even when an appellant brief does not comply with Supreme Court Rule 341 if, as here, a record is short and the issues are simple. *People v. Johnson*, 192 Ill. 2d 202, 206 (2000); *Marzano v. Department of Employment Security*, 339 Ill. App. 3d 858, 861 (2003). Thus, although we could justifiably strike plaintiff's brief or dismiss her appeal based on these supreme court rule violations, we choose to address the issues. See *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 19 (reviewing court has discretion to review appeal despite multiple Rule 341 violations); *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 14 (although this court has discretion to strike brief and dismiss appeal where party fails to comply with Rule 341, doing

so is harsh sanction and appropriate only when procedural violations interfere with our review). Wells Fargo's motion to strike plaintiff's brief is denied.

¶ 7 II. BACKGROUND

¶ 8 On May 10, 2013, plaintiff, *pro se*, filed a complaint against Wells Fargo, claiming that her car had been wrongfully repossessed. After several rounds of pleading, plaintiff filed a fourth amended complaint (complaint) on October 28, 2014, which the court ruled was legally sufficient.

¶ 9 Wells Fargo answered the complaint and filed an affirmative defense for breach of contract by plaintiff. Wells Fargo claimed, among other things, that plaintiff failed to purchase the required motor vehicle insurance required by the agreement between the parties, failed to produce documentation to Wells Fargo of an insurance policy covering the period of March 20, 2011 through August 5, 2011, failed to pay the automobile insurance premiums for the policy purchased by Wells Fargo, and failed to make the monthly installments due under the retail installment contract.

¶ 10 The case was assigned to mandatory arbitration. The arbitration hearing proceeded on May 1, 2015, from 10:30 a.m. to 11:38 a.m. Both parties participated. The arbitration award was filed with the clerk of the court and entered into the record on May 1, 2015. The arbitrators found in favor of Wells Fargo.[1]

¶ 11 On May 6, 2015, the clerk of the court mailed a copy of the notice of the award to the parties, but plaintiff claims she never received it. The arbitration award also stated that it was "[p]laced on judgment on award or assignment call on June 12, 2015, 9:00 AM, in Room 207 at the Markham Courthouse."

[1] The award was not unanimous; one of the three arbitrators dissented.

¶ 12 Under Illinois Supreme Court Rule 93(a) (eff. Jan.1, 1997), within 30 days after the filing of an arbitration award, any party present at the arbitration hearing may file a written notice of rejection of the award and request to proceed to trial. See *Stemple v. Pickerill*, 377 Ill. App. 3d 788, 791 (2007) ("[T]o protect the constitutional right to a trial by jury, Rule 93 grants litigants who have been ordered to arbitration the right to reject the arbitrators' award. Thus, no party that has participated in good faith in the arbitration can be forced to accept an arbitration award.")

¶ 13 But plaintiff did not file a written notice of rejection of the award within the 30-day time period.

¶ 14 Under Illinois Supreme Court Rule 92(c) (eff. Jan. 1, 1994), if "none of the parties files a notice of rejection of the award and requests to proceed to trial within the time required herein, any party thereafter may move the court to enter judgment on the award." On June 12, 2015, the circuit court, on Wells Fargo's motion, entered judgment on the arbitration award in favor of Wells Fargo, after finding that "[a] notice of rejection has not been filed with the Clerk of the Circuit Court of Cook County." The order also notes that plaintiff was not present in court. Wells Fargo mailed a copy of the circuit court's judgment on the arbitration award to plaintiff.

¶ 15 On July 13, 2015, plaintiff filed a notice of rejection of the award and requested a trial before the court. She also paid the required $200 rejection fee. Plaintiff also filed a motion to vacate the judgment on the arbitration award entered on June 12, 2015, and further requested that the court grant her leave to reject the arbitration award.[2]

¶ 16 In support of her motion to vacate, plaintiff stated that she appeared before the arbitrators on May 1, 2015, and that "at the end of the arbitration, the arbitrators could not make a ruling

[2] Plaintiff incorrectly titled the motion to vacate as an "Amended Complaint." But "[a] motion is defined by its substance rather than its heading." *Langone v. Schad, Diamond & Shedden, P.C.*, 406 Ill. App. 3d 820, 829 (2010).

and they informed [us] that the case would be handed/given back to Judge R.J. Clifford." Plaintiff claimed she "never received notice of the arbitration award until after June 16, 2015 when the defendant[']s] attorney sent [her] a notice." Thus, it appears that plaintiff also contends she did not receive notice of the June 12, 2015 date (*i.e.*, the "Judgment on Award Call") during which the court granted Wells Fargo's motion to enter judgment on the award.

¶ 17 No briefing schedule was set on plaintiff's motion to vacate. Wells Fargo notes that there is no evidence in the record that plaintiff served this motion to vacate on Wells Fargo. And it is unclear whether plaintiff served the notice of rejection of the award, either.

¶ 18 In any event, on November 23, 2015, plaintiff filed a one-page, one-sentence "motion to request a court date for notice of rejection of award and amended complaint filed July 13, 2015 [t]o vacate the judgment on award entered June 12th 2015." There is no copy of this motion in the record, but Wells Fargo attached a copy to its motion to strike plaintiff's appellate brief. Plaintiff served notice of the motion to Wells Fargo, which noted the hearing date of December 7, 2015.

¶ 19 The December 7, 2015 court order states that the matter came before the court "on plaintiff's motion to request a court date for notice of rejection of award [and] amended complaint." According to Wells Fargo, both parties appeared in court on that date. The court denied plaintiff relief in that order.

¶ 20 Since no briefing schedule was set, it appears the court heard oral argument from the parties. Unfortunately, the record contains no report of the proceedings. We have no way of knowing what transpired or the basis for the court's decision denying plaintiff relief.

¶ 21 After finding the record on appeal incomplete, we gave plaintiff an opportunity to supplement the record. On the court's own motion, pursuant to Supreme Court Rules 323, 329,

and 366(a)(3), we allowed plaintiff to file a supplemental record containing the transcript of the December 7, 2015 proceedings in the trial court, if any, or a bystander's report.

¶ 22 Unfortunately, plaintiff failed to supply this court with the missing information. Although plaintiff filed a supplemental record that contained a document filed in the circuit court entitled "Bystander's Report," the document was a one-page summary of the arguments already made on appeal and did not consist of a proposed report of the proceedings. So we still do not know what happened at the hearing on December 7, 2015.

¶ 23 We only know how the court ruled on December 7: "1) Plaintiff's motion is denied in its entirety. 2) The judgment entered in favor of defendant Wells Fargo + against plaintiff Martin on 6/12/15 shall stand." (Emphases in original.) This appeal followed.

¶ 24 III. ANALYSIS

¶ 25 Initially, Wells Fargo challenges our jurisdiction, noting that the record on appeal lacks both the notice of appeal and the challenged court order. But this court's file contains a copy of the timely-filed notice of appeal from the order of December 7, 2015. We may judicially notice other proceedings in the same case before us and the facts established therein. *In re Brown*, 71 Ill. 2d 151, 155 (1978); accord *People v. Davis*, 65 Ill. 2d 157, 161 (1976) (quoting McCormick on Evidence, section 330, at 766 (2d ed. 1972)) ("it is said to be 'settled, of course, that the courts, trial and appellate, take notice of their own respective records in the present litigation, both as to matters occurring in the immediate trial, and in previous trials or hearings' "); *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 3 n.1.

¶ 26 As for the order itself, we judicially notice the electronic case docket on the official website of the clerk of the circuit court of Cook County, on which the order of December 7, denying plaintiff's motion to vacate, appears. See *TCF National Bank v. Richards*, 2016 IL App

(1st) 152083, ¶ 50 (this court can take judicial notice of electronic docket of circuit court); *In re F.P.*, 2014 IL App (4th) 140360, ¶ 39 (same). And Wells Fargo also attached a certified copy of the December 7 order in its motion to strike plaintiff's brief in this court.

¶ 27 We have jurisdiction over this appeal. So now we turn to the substantive issue—plaintiff's argument that the trial court abused its discretion in denying her motion to vacate the judgment on the arbitration award and not allowing her to file a late notice of rejection of the award, based on the failure of the circuit court clerk to mail her notice of the arbitration award.

¶ 28 Section 2-1203 of the Code of Civil Procedure provides that "[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203 (West 2012). As Wells Fargo notes, plaintiff's motion was filed on July 13, technically 31 days after the June 12 hearing it challenged, but because the thirtieth day was a Sunday, her filing on July 13 was timely. See 5 ILCS 70/1.11 (West 2014) ("The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday *** and then it shall also be excluded."); *City of Chicago v. Greene*, 47 Ill. 2d 30, 33 (1970) (post-trial motion filed 31 days after judgment, when thirtieth day was Sunday, was timely).

¶ 29 It is true that there was a separate motion filed on November 23, 2015, the previously-mentioned one-sentence "motion to request a court date for notice of rejection of award and amended complaint filed July 13, 2015 [t]o vacate the judgment on award entered June 12th 2015." That November filing, of course, came long after 30 days from the judgment, leading Wells Fargo to suggest in the alternative that the applicable statute would be section 2-1401 of

the Code of Civil Procedure, which provides for collateral attacks on a judgment more than 30 days after that judgment. See 735 ILCS 5/2-1401 (West 2014); *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 36. But that November filing was not a substantive motion. It was nothing more than plaintiff's request to be heard on her previous, timely-filed motion to vacate. So section 2-1401 is not applicable. Plaintiff's motion was a section 2-1203 motion.[3]

¶ 30 The purpose of a section 2-1203 motion is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009); see also *In re Marriage of King*, 336 Ill. App. 3d 83, 87 (2002) (purpose of section 2-1203 motion to vacate is to alert trial court to errors it made and afford opportunity for correction). The party seeking to vacate a judgment bears the burden of establishing that sufficient grounds exist for doing so. *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 517 (1992).

¶ 31 The decision to grant or deny a section 2-1203 motion is within the sound discretion of the circuit court and will be reversed only for an abuse of that discretion. *Cable America*, 396 Ill. App. 3d at 24. " 'Abuse of discretion' " is a versatile standard of review in that, depending on what the underlying issue is, it can lead to other standards of review." *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 22. A court can abuse its discretion by committing an error of law. *Cable America*, 396 Ill. App. 3d at 24. It can abuse its discretion "by making, or adhering to, factual findings that are against the manifest weight of the evidence ***." *Shulte*, 2013 IL App (4th) 120132, ¶ 22.

[3] As we will see, in light of our disposition of this matter, it would make no difference whether plaintiff sought relief under section 2-1203 or 2-1401.

¶ 32 As noted, under Illinois Supreme Court Rule 93(a), plaintiff was required to file a written notice of rejection of the award *within 30 days* after the May 1, 2015 filing of the arbitration award. Plaintiff filed her notice of rejection 73 days after May 1, 2015.

¶ 33 Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011) provides that "[t]he court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time."

¶ 34 Even after the filing deadline has passed, a trial court has the authority under Rule 183 to extend the time for filing a rejection of an arbitration decision for good cause. See, *e.g.*, *Stemple v. Pickerill*, 377 Ill. App. 3d 788, 794 (2007); *Gellert v. Jackson*, 373 Ill. App. 3d 149, 151 (2007) ("we see no insurmountable barrier, such as a lack of jurisdiction, to a court's allowing a case to proceed despite a technically untimely rejection of an arbitration decision"); *Ianotti v. Chicago Park District*, 250 Ill. App. 3d 628, 630-31 (1993). The circuit court may consider "all objective, relevant evidence presented by the delinquent party with respect to why there is good cause for its failure to comply with the original deadline and why an extension of time should now be granted. The circuit court may receive evidence with respect to whether the party's original delinquency was caused by mistake, inadvertence, or attorney neglect ***." *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007).

¶ 35 Plaintiff's explanation for her tardiness is relatively straightforward: She did not receive notice of the arbitration award. Generally, there is a presumption that a letter was received by the addressee, if the letter is properly stamped and properly addressed. *Thompson v. Bernardi*, 112 Ill. App. 3d 721, 723-24 (1983). Nonetheless, this presumption can be rebutted if the addressee denies receipt of the letter, in which case receipt of the mailing becomes a question to be

resolved by the trier of fact. *Id*. at 724. We have recognized that, in many instances, a plaintiff's only means of proving that she did not receive notice is her own testimony, which the trial court may either believe or disbelieve. *Id*.

¶ 36 The problem, however, is that we have no transcript of the hearing on December 7, when the motion to vacate was heard and denied. As we explained earlier, we went so far as to issue an order, on our own motion, to provide plaintiff an opportunity to supplement the record, but she failed to provide this court with a transcript of proceedings or a proper bystander's report from that hearing.

¶ 37 Without a report of proceedings, it is impossible to know the basis for the trial court's decision, or even if plaintiff presented any evidence. It is possible that the court made a credibility determination and a factual finding that plaintiff failed to prove that she never received notice of the arbitration award. Wells Fargo has pointed out on appeal that this would not have been the first time in this litigation that plaintiff claimed not to have received a legal document—the same thing happened during discovery, leading ultimately to a sanction from the trial court—and perhaps the trial court simply did not believe plaintiff's claimed lack of notice.

¶ 38 Or, on the other hand, the court may have determined that it was without authority, at this late stage, to upset the arbitration award, regardless of whether it believed plaintiff.

¶ 39 Those decisions would be reviewable under different legal criteria, based on different factors. Without knowing either the reasoning underlying the court's decision or the form of evidence or argument presented to the court, we are left to guess. That is something we simply cannot do.

¶ 40 Instead, under well-settled law, in the absence of an adequate record, we must presume that the trial court's judgment conformed to the law and had a sufficient factual basis. *Foutch v.*

O'Bryant, 99 Ill. 2d 389, 392 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id*. Even where "*pro se* litigants are held to a lesser standard in complying with the rules for appealing to the appellate court, there is a minimum which even they must meet before the appellate court can adequately review the lower court's decision." *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). The appellant has the duty to provide a record of the trial court proceedings sufficient for reviewing the issues raised on appeal. *Id*. She has not fulfilled that obligation.

¶ 41 Because plaintiff failed to provide a report of the proceedings or a proper bystander's report, we have no basis on which to conclude that the trial court abused its discretion in denying her motion to vacate the judgment on the arbitration award and allow a late filing of rejection of that award. We must affirm the trial court's decision.

¶ 42 IV. CONCLUSION

¶ 43 For the reasons stated, we affirm the decision of the circuit court of Cook County denying plaintiff's motion to vacate the trial court's judgment on the arbitration award.

¶ 44 Affirmed; motion denied.