2017 IL App (2d) 160430-U
No. 2-16-0430
Order filed January 31, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

TARANEH VESSAL,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 15-MR-239
	)	
CITIBANK SOUTH DAKOTA N.A. and	)	
BLATT, HASENMILLER, LEIBSKER AND	)	
MOORE LLC and IYRINA	)	
MARTYNIV-NIRO, Individually and as	)	
Agents of Citibank South Dakota N.A.,	)	Honorable
	)	Paul M. Fullerton,
Respondents-Appellees.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly reinstated a case previously dismissed for want of prosecution: as the dismissal was entered while the case was removed to federal court, the dismissal was void; (2) the trial court properly confirmed an arbitration award, as the parties' agreement provided for review by the court, not by an arbitrator, and respondent timely sought confirmation; (3) the trial court erred by dismissing a pending arbitration proceeding under res judicata: as the asserted bar was a prior arbitration award, not a prior court judgment, the arbitrator had to determine the issue.

¶ 2 In this appeal in an arbitration case that was previously dismissed for want of prosecution, petitioner, Taraneh Vessal, appearing *pro se*, appeals the trial court's order granting respondent Citibank South Dakota N.A.'s (respondent's) motion to reinstate the action, confirm the award, and dismiss another arbitration proceeding. She contends that the court wrongly reinstated the case and confirmed the award, and that an issue of claim preclusion regarding the other arbitration proceeding could be decided only by the arbitrator. We affirm in part, reverse in part, and remand.

¶ 3 I. BACKGROUND

¶ 4 In April 2010, respondent filed suit against petitioner, seeking to recover $23,659.65 owed on petitioner's closed credit card account. Petitioner sought arbitration based on an arbitration clause in the card agreement and moved to dismiss. The court denied the motion, but respondent later agreed to arbitration.

¶ 5 On July 2, 2012, petitioner filed an arbitration complaint with JAMS (f/k/a Judicial Arbitration and Mediation Services, Inc.), asserting that respondent and its then-counsel violated various federal statutes. Respondent filed a counterclaim seeking to collect the amount owned on the account. An arbitration hearing was held, and an award was entered in favor of respondent and its counsel.

¶ 6 Petitioner appealed to a panel of three arbitrators, which was to consider all factual and legal issues anew. The panel held a hearing, but there is no transcript or substitute for a transcript of the hearing. The panel's written order shows that it denied a motion to recuse itself based on an argument that the initial arbitration decision had been forwarded to it, but it granted petitioner's motion to bar *ex parte* communications with JAMS administrative offices. The panel also denied motions to use a JAMS optional arbitration appeal procedure in lieu of the

procedure contained in the card agreement, and to strike respondent's counterclaim because it was not refiled in the second arbitration proceeding. The panel found that some of petitioner's claims were time-barred and nevertheless lacked merit. It also found in favor of respondent and its counsel on the remaining claims, but reduced the award by $5000.

¶ 7 The arbitration agreement provided in part that an award by the panel was "subject to judicial review and enforcement." On February 19, 2015, petitioner filed a petition to vacate in the trial court, arguing that the award was void. Her petition was somewhat unclear but was generally based on three grounds: (1) the statute of limitations for the counterclaim, (2) the panel's failure to consider the action anew, and (3) improper bias against her. On March 13, 2015, respondent removed the action to federal court and, on April 8, 2015, it filed a motion to confirm the award.

¶ 8 On May 11, 2015, while the case was pending in federal court, petitioner filed a new arbitration demand with JAMS based on the same credit card account. On September 23, 2015, she filed a new arbitration complaint. Meanwhile, on May 19, 2015, the trial court sent petitioner a notice that a status hearing was set for June 18, 2015. The notice does not show that it was sent to respondent, and respondent contends that it did not receive it. On June 18, 2015, the case was dismissed for want of prosecution.

¶ 9 On February 8, 2016, the federal court dismissed the case for lack of subject matter jurisdiction and remanded it to the trial court. On February 19, 2016, respondent moved to vacate the dismissal for want of prosecution, filed an answer, and moved for confirmation of the arbitration award. Respondent also filed a motion to stay, enjoin, or dismiss the pending arbitration proceeding. Petitioner moved to compel arbitration.

¶ 10 The trial court granted the motion to vacate the dismissal for want of prosecution and, on May 24, 2016, it found in favor of respondent. The court noted that its ability to review an arbitration award was very limited and found that most of petitioner's allegations were rambling and conclusory with no evidence to support them. The court confirmed the award and dismissed the pending arbitration proceeding. Petitioner appeals.

¶ 11 II. ANALYSIS

¶ 12 Petitioner contends that the trial court erred by reinstating the action, confirming the award, and dismissing the pending arbitration.

¶ 13 Petitioner first contends that the trial court erred when it reinstated the action, because the reinstatement was untimely. Respondent argues that the dismissal order was void because it was entered when the trial court was without jurisdiction and that the matter was timely reinstated.

¶ 14 Section 1441(a) of the Judiciary and Judicial Procedure Act (28 U.S.C. § 1441(a) (2016)) makes any case involving a federal question removable. Upon removal, the state court shall proceed no further until the case is remanded. 28 U.S.C. § 1446(d) (2016). Indeed, the state court loses jurisdiction to proceed further until the case is remanded. *Eastern v. Canty*, 75 Ill. 2d 566, 571 (1979). "Even if the basis of the district court's remand is that the case was not removable, no action taken by the State court in the interim can stand." *Id*. Accordingly, a judgment entered by the trial court while the action was removed is null and void and has no legal effect. See *Illinois Licensed Beverage Ass'n, Inc. v. Advanta Leasing Services*, 333 Ill. App. 3d 927, 933 (2002) (citing *Siddens v. Industrial Comm'n*, 304 Ill. App. 3d 506, 511 (1999)). "We review issues of jurisdiction *de novo*." *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412 (2003).

¶ 15 Here, the dismissal for want of prosecution was made while the action was removed to federal court. Thus, the trial court was without jurisdiction to enter it, making it void. The court reacquired jurisdiction when the matter was remanded, and respondent promptly filed its motions. Accordingly, the trial court had jurisdiction to hear those motions, and, given that the dismissal for want of prosecution was void, the reinstatement could not have been untimely.

¶ 16 Petitioner next contends that the trial court erred by confirming the arbitration award. She presents a number of rambling and unclear allegations in multiple sections of her brief, but her contentions appear to be primarily based on the statute of limitations for confirmation of the award and an argument that only an arbitration panel can decide the appeal of the award.

¶ 17 "[I]t is well established that courts encourage the settlement of disputes by arbitration." *TruServ Corp. v. Ernst & Young LLP*, 376 Ill. App. 3d 218, 224 (2007). When the parties' dispute falls within the scope of a valid arbitration agreement, arbitration is mandatory, and the trial court must compel it. *Brown v. Delfre*, 2012 IL App (2d) 111086, ¶ 14. "Arbitration contracts are interpreted in the same manner and according to the same rules as are all other contracts." *J&K Cement Construction, Inc. v. Montalbano Builders, Inc.*, 119 Ill. App. 3d 663, 669 (1983).

¶ 18 "[J]udicial review of arbitration awards is far more restricted than appellate review of a trial court's decision." *TruServ Corp.*, 376 Ill. App. 3d at 224. "This limited review is warranted because the parties have agreed to have their dispute finally settled by an arbitrator without an appeal." *Id*. "If the award resolves a matter submitted by the parties for arbitration and contains the honest decision of the arbitrators after a full and fair hearing, a court will not set it aside for errors of fact or law." *Id*. "Even where an arbitrator commits gross errors of judgment in law or a gross mistake of fact, a court should not vacate an arbitration award unless the mistakes or

errors are apparent on the face of the arbitration award." *Id.* "To vacate an award based on a gross error of law, a reviewing court must be able to conclude from the face of the award that the arbitrators were so mistaken as to the law that, if apprised of the mistake, they would have ruled differently." *Id.* at 224-25. "Alternatively, an arbitration award may be subject to vacatur for misapplication of the law where it is shown that the arbitrators deliberately disregarded what they knew to be the law." *Id.* at 225.

¶ 19 Petitioner contends that only an arbitrator could confirm the award. However, the parties' agreement clearly stated that the award was subject to judicial review and enforcement. Indeed, petitioner sought that method of review herself. Nothing in the contract provided that review of the award would be done through additional arbitration. The court had the ability under the agreement to confirm the award.

¶ 20 As to the statute of limitations for the counterclaim, petitioner contends that respondent failed to timely seek confirmation under section 9 of the Federal Arbitration Act (9 U.S.C. § 9 (2016)). That section provides:

> "If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award ***. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made." *Id.*

¶ 21 Here, the agreement did not specify a court, and respondent applied to the federal court within one year. It then promptly renewed that request in the trial court when the matter was remanded. More important, the one-year provision has been held to be permissive instead of

mandatory. *Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148, 156 (4th Cir. 1993); *Kentucky River Mills v. Jackson*, 206 F.2d 111, 120 (6th Cir. 1953). Thus, petitioner's argument is without merit.

¶ 22 Petitioner makes passing reference to various other issues throughout her brief. In her initial petition to the trial court, she argued that the panel failed to consider the action anew and was improperly biased against her. Similar arguments are scattered throughout her brief but are not clearly defined or argued. Bare contentions, in the absence of argument or citation of authority, are deemed forfeited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented. *Id*. It is not a repository into which an appellant may foist the burden of argument and research, and it is not the court's function or the obligation to act as an advocate or search the record for error. *Id*. Accordingly, petitioner's remaining contentions about the confirmation of the award are forfeited.

¶ 23 In any event, as the trial court noted, petitioner's allegations were not supported by the panel's written order. Further, a transcript or substitute of the hearing is not in the record. Without a complete record, we cannot review petitioner's claims of error, and we must assume that the panel had a sufficient factual basis for the award and that the award conforms with the law. *Foutch v. O'Bryant*, 99 Ill.2d 389, 391-92 (1984); see *TruServ Corp.*, 376 Ill. App. 3d at 225) (applying *Foutch* to review of an arbitration award).

¶ 24 Finally, petitioner contends that the trial court erred by dismissing the pending arbitration proceeding. She contends that issues of preclusion must be decided by the arbitrator, not the court. Respondent suggests that petitioner forfeited this argument by not including it in the "issues presented" section of her brief. But petitioner included the denial of her motion to

compel arbitration in her issues presented and, while she lumped her argument concerning it together with her argument that review of the arbitration award must also be done by an arbitrator, she clearly argued the matter of preclusion in her brief. Thus, it is not forfeited.

¶ 25 The trial court essentially dismissed the new arbitration proceeding on the basis that it was duplicative of the award that it was confirming and was thus precluded by principles of *res judicata*. However, we have held that "the general rule is that it is the arbitrator's role to decide the applicability of *res judicata*, except in situations where a party asserts *res judicata* based on the trial court's own prior judgment." *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 898, 908 (2009).

¶ 26 "*Res judicata* provides that a final judgment rendered on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties involved and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action." *Id*. at 907. "*Res judicata* creates a bar as to every matter that might have been offered to sustain or defeat the claim or demand, in addition to every matter that was originally offered." *Id*. "For *res judicata* to apply there must be: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of causes of action; and (3) identical parties or their privies in both actions." *Id*.

¶ 27 "The answer to the question of whether the court or the arbitrator determines the application of *res judicata* depends on whether the *res judicata* objection to the current arbitration proceeding is based on a prior arbitration proceeding or a prior court judgment." *Id*. "The majority of the federal appellate courts hold that where the *res judicata* objection is based on a prior arbitration proceeding, it is a legal defense that is a part of the dispute on the merits for the arbitrator to resolve." *Id*. (citing cases). Thus, "*res judicata* is a gateway procedural question

for the arbitrator rather than a question of arbitrability for the court." *Id*. "However, where the *res judicata* objection is based on a prior court judgment from the same jurisdiction, it is a question for the trial court because it invokes the trial court's authority to protect the finality and integrity of its own prior judgments." *Id*. "The presumption is that the court that issued the original decision has more insight into what was originally considered and decided and thus its preclusive effect." *Id*. at 908. But such a justification does not exist when the original decision was issued by the arbitrator, as the trial court is not " 'uniquely qualified to ascertain its scope and preclusive effect.' " *Id*. (quoting *Chiron Corp*. *v. Ortho Diagnostic Systems, Inc*., 207 F.3d 1126, 1134 (9th Cir. 2000). Nor does such a justification apply when the trial court merely confirmed the decision of the arbitrator. *Id*. at 909.

¶ 28 Here, while the trial court had the authority to review and confirm the award, and while petitioner's new arbitration proceeding appears to generally be duplicative of her first one, the dismissal was not based on the preclusive effect of a prior court ruling. It was based on the preclusive effect of the prior arbitration ruling. Thus, it is the role of the arbitrator to determine the issue of *res judicata*. The arbitrator is in the best position to determine whether, as petitioner contends, there are any new issues subject to arbitration in the case.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the confirmation of the arbitration award, but reverse the dismissal of the new arbitration proceeding. Accordingly, the judgment of the circuit court of Du Page County is affirmed in part and reversed in part, and the cause is remanded.

¶ 31 Affirmed in part and reversed in part; cause remanded.