2019 IL App (1st) 180650-U

THIRD DIVISION
March 20, 2019

No. 1-18-0650

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STACEY M. GARRETT, M.D.,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	15 CH 8329
	)	
DIANE ANDERSON,	)	Honorable Thomas R. Allen,
	)	Judge Presiding.
Defendant-Appellee.	)	
	)	

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Circuit court did not abuse its discretion by refusing *pro se* defendant's request to admit expert report into evidence. Nor did court abuse its discretion by failing to *sua sponte* grant *pro* se defendant continuance to enable her to secure appearance at trial of expert.

¶ 2 In July 1967, Gus and Gwendolyn Anderson were married. The union produced two children: Bryant Anderson and Dr. Stacey M. Garrett, the latter of whom is the plaintiff in this case (Stacey). In 1993, Gus and Gwendolyn divorced. In 2006, Gus married the defendant, Diane Anderson (Diane).

¶ 3 Before his retirement, Gus ran a business called South Shore Decorating, Inc. In 1976, South Shore Decorating purchased a building located at 6948-6950 South Stoney Island Avenue in Chicago, Illinois ("the Property"). Sometime in 2008, as a result of the economic recession, South Shore Decorating ceased its business operations. On August 14, 2009, South Shore Decorating, Inc. was involuntarily dissolved by the Illinois Secretary of State.

¶ 4 In 2009, South Shore Decorating conveyed the Property to Stacey by warranty deed. We cannot tell from the record the exact date of the conveyance, but it is clear that the transaction occurred before South Shore Decorating's corporate dissolution took place, because the deed was recorded on July 17, 2009.

¶ 5 Thereafter, sometime in 2013, Gus conveyed that same Property to himself and Diane by quitclaim deed. That deed was recorded on April 17, 2013.

¶ 6 In 2015, Stacey discovered the 2013 deed and filed a complaint to quiet title in the circuit court, challenging the validity of the 2013 conveyance and deed. A full bench trial ensued, pitting Stacey as the plaintiff against Diane, who proceeded as a *pro se* defendant.

¶ 7 During the trial, Diane attempted to introduce into evidence a report authored by a handwriting expert whom Diane retained for the purpose of establishing that certain documents, among them the 2009 warranty deed, were forgeries. Diane's attempt the introduce the report occurred during the following colloquy, which we quote in full:

> "THE COURT: All right, you rest your case, so let's see. I think you only had one—
>
> PLAINTIFF'S COUNSEL: Exhibit.
>
> THE COURT: One exhibit, which was Defendant's Exhibit 1. No.
>
> DIANE: It was Exhibit 9.

THE COURT: Exhibit 9, I'm sorry, yes. Do you have a copy of that so I can take a look at it?

DIANE: Okay.

THE COURT: What's this? A handwriting exemplar?

DIANE: Mm hmm. Yes.

THE COURT: Is there any objection?

PLAINTIFF'S COUNSEL: What is the exhibit again? I'm sorry.

THE COURT: Exhibit 9, who did you show this document to?

PLAINTIFF'S COUNSEL: I don't think I saw it, Judge. May I see what it is?

THE COURT: Stacey Garrett was shown it.

DIANE: It was for a grantor, grantee and I had a specialist come in and do a writing test.

PLAINTIFF'S COUNSEL: I'm going to object to this, Judge, this handwriting sample. I didn't have any knowledge about him. There's been no testimony from this particular—

THE COURT: Right. Here's what I'm going to have to explain to you, Diane Anderson. The document—an opinion by any person who is out of court, they're not in court testifying about a subject, is not proper, okay? So reports cannot just be considered as evidence and therefore, I'm going to deny your request to admit Defendant's Exhibit No. 9 into evidence. And let me see that for a minute just so I can state on the record what it is.

(Document tendered)

THE COURT: So Defendant's Exhibit No. 9 purports to be a series of, well, it's a report from a handwriting expert and it's a three page report with attachments, including some copies of the deeds in question here and other signatures of, purportedly of Mr. Johnson.

DIANE: Who's Mr. Johnson.

THE COURT: I'm sorry. Mr. Anderson, Gus Anderson, the grantor. So in any event—

DIANE: And Stacey Anderson.

THE COURT: Well, this is not proper evidence, it's not to be considered and I'm going to deny the request to admit this report into evidence.

DIANE: Well, I had other evidence, but you're saying it only have to come from witnesses.

THE COURT: Yes. You have to have witnesses, real live people. And some report from a guy in Texas doesn't make it so. All right, so you rest. Your evidence is all in."

¶ 8 After trial, the court found that the 2013 deed was invalid:

"After hearing the evidence and really more succinctly after examining the quitclaim deed, it is obvious that there is—that that deed is out of the chain of title, that there is no validity to that deed because the grantor on that date, April 17, 2013, the grantor, Gus Anderson, had—was vested with no title at the time he made that conveyance and his conveyance of his interest, which by the evidence was no interest, conveyed that same interest to his wife, Diane Sanders Anderson and himself.

> So the quitclaim deed conveys whatever interest the grantor has, and on April 17, 2013, Mr. Anderson had no legal interest in the real estate, and therefore this deed conveys no interest to Gus Anderson and Diane Sanders Anderson. And it is under the law a nullity as it relates to transfer of any interest in this property by Gus Anderson.
>
> So my finding is that deed is void. It is of no legal effect and I find for the Plaintiff on that issue."

¶ 9 Thereafter, Diane filed a timely notice of appeal.

¶ 10 On appeal, now represented by counsel, Diane maintains that the circuit court abused its discretion by refusing to admit the expert report into evidence. But that ruling was indisputably correct. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Ill. R. Evid. 801(c) (eff. Jan. 1, 2011). At trial, Diane wanted to prove that the 2009 conveyance was invalid because the deed contained a forged signature. To that end, Diane retained the expert to analyze Gus's handwriting and opine as to whether his signature on the 2009 deed was genuine. And the expert's conclusion, memorialized in the report, was that the 2009 deed conveying the property from South Shore Decorating to Stacey contained a forgery of Gus's signature. Diane clearly sought to introduce the report into evidence for the truth of what the expert attested to in its pages, so the report was inadmissible hearsay. See *People v. Nieves*, 193 Ill. 2d 513, 528 (2000) (contents of expert reports are inadmissible hearsay if offered for truth of matter asserted).

¶ 11 Unable to challenge the ruling on the merits, Diane instead argues that the circuit court abused its discretion by not giving her a continuance (of unspecified length) to procure her expert witness's attendance. But Diane never asked for a continuance, so the best she can argue on appeal is that the trial court should have given her one, anyway, *sua sponte*.

¶ 12 For the proposition that the trial court has an affirmative duty to assist her at trial, Diane cites only Canon 3 of the Code of Judicial Conduct. But Canon 3 doesn't contain language that could be remotely read as shouldering circuit judges with the affirmative duty Diane claims.

¶ 13 In relevant part, Canon 3 states, "A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard." Ill. S. Ct. R. 63(A)(4) (eff. Feb. 2, 2017). It is simply unclear to us how that text creates a positive, affirmative duty on the part of the circuit court to *sua sponte* grant a continuance of unspecified length to enable Diane to secure the attendance of her expert. To the contrary, as even Diane concedes, in civil proceedings, *pro se* litigants are held to the same standards as those represented by counsel and "are not entitled to more lenient treatment." *Titus v. Mohammed Alaeddin & Bashir & Sons, Inc.*, 2018 IL App (3d) 170400, ¶ 10.

¶ 14 Diane further claims that the judge "would not consider *** giving Diane a continuance," but we find no basis for that unsupported conclusion. Judges can only consider things they are formally asked to do or required to do by law. Diane never asked the court for a continuance, and the court was under no affirmative common law or statutory duty to make that request for her.

¶ 15 More generally, Diane claims that throughout the trial, the court was "impatient" with her, "just wanted to get rid of her," and did not provide her with "any explanation *** of the trial process" or "any explanation *** regarding her expert handwriting witness and his unavailability." We have already explained that Diane was entitled to no special treatment as a *pro se* litigant. See *Titus*, 2018 IL App (3d) 170400, ¶ 10. That said, the record flatly contradicts Diane's claim that the trial court failed to give Diane any leniency or guidance along the way.

¶ 16 We would note, first, that at the outset of the trial—in advance of opening statements—when Diane attempted to submit into evidence a number of documents, the trial court explained to her that documents were not automatically admissible:

> "Since you're not an attorney, I'll try and explain this to you. Exhibits get admitted into evidence only after the proper foundation is laid for them and at the time when a witness may or may not be testifying about a document. So we'll take it as we progress here on an individual basis, so I'll make decisions on that."

¶ 17 Nor was that the only time the trial court made concessions for a *pro se* party and explained procedure to her. Early on, when Diane argued an objection directly to Stacy's counsel, the trial court told Diane, "[W]e're right at the beginning stages and let me kind of explain procedure." The court told Diane, "You have to direct your comments to me, okay? Don't talk to the other lawyers individually. Just direct your comments to me."

¶ 18 Later, the trial court explained the motion by Stacy's counsel to exclude witnesses from the courtroom. Before Diane's first cross-examination, the trial court explained to Diane, in layman's terms, that her questions had to be confined to the scope of the witness's direct testimony. In one instance while questioning that witness, as Diane struggled to frame her question, the trial court told her the proper question to ask. The court later explained to Diane how to make an offer of proof.

¶ 19 We could go on with more examples. We will not. Suffice it to say, the trial court was anything but "impatient" with Diane, and on multiple occasions the court tried to assist her as she attempted to ask questions or refer to exhibits during testimony.

¶ 20 True enough, in certain instances, the court interjected when Diane was examining witnesses, but when it did so, it was generally for one of three reasons: (1) the subject matter of

the question Diane was asking was clearly irrelevant, (2) the question Diane was asking had already been asked and answered, or (3) Diane was prefacing her questions with long, rambling, argumentative preambles that were clearly improper.

¶ 21 Such interruptions are proper so long as a judge does not interject so frequently as to impede a party's ability to examine a witness, and the judge's conduct does not evidence bias or favoritism towards a party. See *People v. Pace*, 2015 IL App (1st) 110415, ¶¶ 87-88, *vacated on other grounds*, 75 N.E. 3d 1051 (2016); *People v. Jackson*, 409 Ill. App. 3d 631, 647 (2011) ("To show prejudice in a bench trial, the defendant must show that 'the tenor of the court's questioning indicates the court has prejudged the outcome before hearing all of the evidence.' " (quoting *People v. Smith*, 299 Ill. App. 3d 1056, 1063 (1998))). It is not improper for the court, even *sua sponte*, to preclude a party from asking questions that are repetitive, plainly irrelevant, or couched in argumentative terms.

¶ 22 Here, a full review of the record shows that none of the judge's interjections precluded Diane from meaningfully examining the witnesses. These interruptions, in fact, were intended (once again) to assist Diane in her questioning. This was a bench trial, and as the finder of fact, the trial judge may consider only admissible evidence; it is error for the trial court to do otherwise. *People v. Rowjee*, 308 Ill. App. 3d 179, 185 (1999). So when the trial court was advising Diane that her question was irrelevant, or that she was improperly arguing to the court in her questioning of witnesses, the court was simply telling her that she was not helping her cause, because the court would not consider her argument or irrelevant inquiries, anyway.

¶ 23 Simply put, though it was not required to do so, the trial court obviously attempted to accommodate Diane as a *pro se* litigant—not so far as to relax the rules of evidence, of course, but certainly to help explain procedure and to assist her without becoming her advocate.

¶ 24 As the trial court's evidentiary ruling was correct, and its conduct showed no hint of antagonism or bias toward Diane—indeed, it showed the opposite—we find no error here and affirm the circuit court's judgment.

¶ 25 Affirmed.