

No. 1-18-2025

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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JAROSLAW ICIEK, Personally and on	)	Appeal from the
Behalf of FSI, LLC an Illinois Limited Liability	)	Circuit Court of
Company, and MASTER SERVICE GROUP, INC., an	)	Cook County
Illinois Corporation,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 17 L 756
	)	
MARIO MAJEWSKI, and FLOOD SPECIALISTS,	)	
INC., an Illinois Corporation,	)	Honorable
	)	Patrick J. Sherlock,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the order of the circuit court granting the defendants’ motion to reconsider the circuit court’s prior order vacating a bar of the plaintiffs’ untimely rejection of an arbitration award and reinstating the arbitration award.

¶ 2 The plaintiffs, Jaroslaw Iciek, personally and on behalf of FSI, LLC (FSI), and Master Service Group, Inc. (MSG), appeal from the order of the circuit court granting the defendants’, Mario Majewski and Flood Specialists, Inc.’s (Flood), motion to reconsider the circuit court’s

prior order vacating a bar of the plaintiffs' untimely rejection of an arbitration award. The circuit court's grant of the motion to reconsider effectively reinstated the bar of the plaintiffs' rejection of the arbitration award and reinstated the award in favor of the plaintiffs. For the reasons that follow, we affirm.

¶ 3 The following facts, relevant to our disposition of this appeal, were adduced from the pleadings and orders of record. On March 27, 2017, the plaintiffs were granted leave to file a nine-count amended complaint against the defendants, the details of which are irrelevant to this appeal. On June 20, 2017, the circuit court entered an order referring the case to commercial mandatory arbitration. Prior to arbitration, the director of the arbitration program sent an email to counsel for the parties stating, "Counsel should review Circuit Court Rule 25 for information on the commercial arbitration process." (Emphasis omitted.)

¶ 4 The case proceeded to arbitration; and the following day, on October 27, 2017, the arbitrator entered an award of \$105,000 in favor of the plaintiffs. On November 9, 2017, the plaintiffs rejected the arbitration award—more than seven business days after its entry. Subsequently, the defendants filed a motion to bar the plaintiffs' rejection as untimely pursuant to Circuit Court Rule 25.11, which requires either party to reject the award "within seven business days after receiving the notice of the award." Cook County Cir. Ct. R. 25.11 (Dec. 1, 2014). On November 16, 2017, the circuit court granted the motion to bar the plaintiff's rejection and entered judgment on the \$105,000 arbitration award in favor of the plaintiffs. The plaintiffs then filed a motion to vacate the November 16, 2017 order barring their rejection of the award, arguing that: (1) substantial justice was not done by entering the award; (2) good cause exists to grant an extension of time to reject the award; (3) the 30-day rejection period provided by Illinois Supreme Court Rule 93 should control over the conflicting seven business day rejection period

provided by Circuit Court Rule 25.11; and in the alternative, (4) the proceedings should be stayed under Supreme Court Rule 274 and, they should be allowed to apply to correct the award pursuant to Supreme Court Rule 92(d).

¶ 5 On December 28, 2017, the circuit court found that Supreme Court Rule 93 was in conflict with Circuit Court Rule 25.11 and that deference should be given to the supreme court rule. Consequently, the circuit court granted the plaintiffs' motion to vacate the judgment barring their rejection of the arbitration award and set the matter for status to "discuss a final discovery schedule and setting of a trial date." No final judgment was entered at this time.

¶ 6 On June 4, 2018, the defendants filed a motion to reconsider the circuit court's December 28, 2017 order vacating its previous order that barred the plaintiffs' rejection of the arbitration award. The defendants argued that the seven business day rejection period provided by Circuit Court Rule 25.11 should control over the 30-day rejection period provided by Supreme Court Rule 93. To support this position, the defendants relied on this court's decision in *Jones v. State Farm Mutual Automobile Insurance Co.*, 2018 IL App (1st) 170710, entered days prior to the defendants' filing of the motion to reconsider and after the plaintiffs rejected the award. According to the defendants, in *Jones*, this court held that Circuit Court Rule 25.11, which is inconsistent with Supreme Court Rule 93, is valid and enforceable over Supreme Court Rule 93 when determining timeliness of the rejection of an arbitration award because the supreme court authorized the circuit court's mandatory arbitration program and, consequently, approved any deviations between the program's rules and the supreme court's rules.

¶ 7 On July 3, 2018, the plaintiffs filed a response to the defendants' motion to reconsider arguing, *inter alia*, that good cause existed, pursuant to Supreme Court Rule 183, to extend the time for rejecting the arbitration award beyond seven business days. The plaintiffs attached

affidavits of their attorneys to the response. In these affidavits, the attorneys stated that they were aware of the seven business day rejection period provided by Circuit Court Rule 25.11, but that they believed that Supreme Court Rule 93 would govern. According to the plaintiffs' attorneys, they immediately filed the notice of the rejection of the award well in advance of the 30-day rejection period provided by Supreme Court Rule 93 and close to the seven business day rejection period provided by Circuit Court Rule 25.11 (eight business days) in order to mitigate any risk that the defendants might argue and prevail on the argument that Circuit Court Rule 25.11 controls.

¶ 8 On August 20, 2018, the circuit court granted the defendants' motion to reconsider and entered judgment on the arbitrator's award in the amount of \$105,000 in favor of the plaintiffs. The circuit court reasoned that the plaintiffs failed to provide good cause for not complying with Circuit Court Rule 25.11 as it "clearly and unambiguously indicates that a rejection must be within the seven business day window to be timely." This appeal followed.

¶ 9 On appeal, the plaintiffs maintain that: (1) good cause exists to extend the time to file a rejection of the arbitration award pursuant to Supreme Court Rule 183; (2) *Jones* should not be applied retroactively; and alternatively, (3) Supreme Court Rule 93 should apply instead of Circuit Court Rule 25.11. According to the defendants, the circuit court did not abuse its discretion by refusing to extend the time to reject the arbitration award pursuant to Supreme Court Rule 183 when the plaintiffs failed to provide good cause for noncompliance with Circuit Court Rule 25.11. The defendants further maintain that this court correctly decided *Jones*, that the plaintiffs waived any argument concerning the retroactive application of *Jones*, and that the circuit court correctly applied *Jones* to the case at bar.

¶ 10 We first address the issue of whether good cause existed to extend the time to file a rejection of the arbitration award pursuant to Supreme Court Rule 183. According to the plaintiffs, good cause existed to extend the rejection period beyond the seven business days provided in Circuit Court Rule 25.11 based on the belief that Supreme Court Rule 93 and Circuit Court Rule 25.11 were both applicable and that the supreme court rule should control when local and supreme court rules are in conflict. They maintain that this belief that the supreme court rule controlled was further supported by the circuit court's December 28, 2017 order which gave deference to the supreme court rule over the local rule. We disagree.

¶ 11 Supreme Court Rule 183 provides: "The court, for good cause shown on motion after notice to the opposite party, may extend the time for \*\*\* 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." Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). It is the moving party's burden to establish good cause. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007). Whether good cause exists is a matter left within the sound discretion of the circuit court and this court will not disturb the circuit court's decision absent an abuse of discretion. *Id.* at 353-54. The circuit court may be found to have abused its discretion only where "no reasonable man would take the view adopted by the circuit court." *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 377 (2003).

¶ 12 Based on the record before us, we cannot say that the circuit court abused its discretion when it found that the plaintiffs did not establish good cause for failure to comply with Circuit Court Rule 25.11. Both parties were apprised of the rules governing arbitration through an email sent prior to the arbitration hearing instructing the attorneys that "Circuit Court Rule 25" governed the proceedings. Moreover, counsel for the plaintiffs admitted to being aware of

Circuit Court Rule 25.11, and anticipating that the defendants might rely on it to argue that rejection of the award beyond the seven business day time period is untimely.

¶ 13 We agree with the plaintiffs that attorney mistakes, negligence, and inadvertence can be considered in a good cause analysis pursuant to Supreme Court Rule 183 (see *Vision Point*, 226 Ill. 2d at 351, 353); however, we are unpersuaded that this is a case of mistake, negligence, or inadvertence. Here, the plaintiffs' attorneys admitted to making a conscious *choice* not to comply with Circuit Court Rule 25.11 based on the assumption that Supreme Court Rule 93 applied despite specific instructions, by the director of the arbitration program, that the controlling rule was Circuit Court Rule 25.11. Based on the plaintiffs' attorneys' admitted awareness of and failure to adhere to Circuit Court Rule 25.11, we cannot say that no reasonable person would have adopted the view of the circuit court. Therefore, we affirm the order of the circuit court which granted the defendant's motion to reconsider, holding that the plaintiffs failed to establish good cause for untimely rejecting the arbitration award.

¶ 14 Nevertheless, the plaintiffs maintain that Supreme Court Rule 93 and Circuit Court Rule 25.11 are in conflict and that the supreme court rule should control. A review of the interpretation and compatibility of supreme court rules and local rules is construed in the same manner as statutes; therefore, review is *de novo*. See *Vision Point*, 226 Ill. 2d at 342.

¶ 15 In *Jones*, 2018 IL App (1st) 170710, we addressed this very issue of whether Supreme Court Rule 93 or Circuit Court Rule 25.11 controls in the determination of when a rejection of an arbitration award is timely. We found that Circuit Court Rule 25.11, a provision of the circuit court's mandatory arbitration program providing seven business days to reject an arbitration award, is inconsistent with Supreme Court Rule 93, which provides 30 days to reject an arbitration award. *Jones*, at ¶ 23. However, the supreme court has the authority to approve, and

did approve, the circuit court's mandatory arbitration program, including provisions of the program inconsistent with supreme court rules, such as Circuit Court Rule 25.11. See *Jones*, at ¶¶ 26-35, 38. Because the supreme court has implicitly approved the inconsistency between the two rules with respect to the time period within which to reject an arbitration award by approving the implementation of the arbitration program and specifically stating that the program "shall continue to be administered through local rules (*Jones*, at ¶ 34, citing Ill. S. Ct. M.R. 9166 (eff. Oct. 1, 2016)), we find that Circuit Court Rule 25.11 controls.

¶ 16 Lastly, the plaintiffs argue that the *Jones* decision should not be applied retroactively to this case. We note that the plaintiffs did not raise this argument before the circuit court. Arguments not raised before the circuit court cannot be raised for the first time on appeal and are forfeited. *Parikh v. Division of Professional Regulation of Department of Financial and Professional Regulation*, 2012 IL App (1st) 121226, ¶ 28. According to the plaintiffs, even though the word "retroactively" was never raised below, at minimum, the issue was presented and presenting the issue is enough to have raised the issue below. We recognize that this court has held that even vague arguments are sufficient to find that an argument was raised below. See *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15. However, no such vague argument was raised in the record before us. Consequently, we find that the plaintiffs' argument regarding the retroactive application of *Jones* is forfeited.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 18 Affirmed.