

1-10-3563

2011 IL App (1st) 103563-U
No. 1-10-3563

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 under Rule 23(e)(1).

FIFTH DIVISION
December 23, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FIFTY PRAIRIE COMMONS CONDOMINIUM ASSOCIATION)	Appeal from the
)	Circuit Court of
)	
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	
)	No. 10 M1 713240
JAMILAH JUBKINS,)	
)	
)	
Defendant-Appellee,)	Honorable
)	William Gomolinski,
)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

Held: This court must presume that the circuit court correctly denied plaintiff's motion for a monetary judgment where plaintiff failed to provide a record showing the reasons for the trial court's denial of that motion. However, even if the record were complete, plaintiff could not prevail on the merits, since the lack of a

1-10-3563

monetary judgment was incorporated in the consent decree entered by the court, which had the requisite in personam jurisdiction over both parties for the entry of that order.

¶ 1 Plaintiff Fifty Prairie Commons Condominium Association appeals from an order from the circuit court of Cook County denying its motion for a "money judgment" against defendant Jamilah Jubkins in an action for both unpaid rent and possession of the premises, predicated on defendant's failure to pay rent.

¶ 2 BACKGROUND

¶ 3 We have not been provided with a transcript of the proceedings at the trial level, and plaintiff has provided only a sparse common law record. Based on this limited record, we are only able to glean what appears to be the following facts and procedural history, which, as shall be more fully discussed below, are not sufficient to give us the facts on record pursuant to Illinois Supreme Court Rules 321 (S. Ct. R. 321 (eff. Feb. 1, 1994)) and 323 (S. Ct. Rs. 323 (eff. Dec. 13, 2006)).

¶ 4 On June 14, 2010, plaintiff filed a complaint in forcible entry and detainer against defendant, in which plaintiff alleged that defendant had breached the terms of her lease agreement by failing to pay rent on a residence that she rented from plaintiff and was located at 5001 South Prairie Avenue, Unit 5001C, in Chicago. As a result of defendant's actions, plaintiff sought possession of those premises, where defendant still resided, and \$900 in accrued rent.

¶ 5 The common law record discloses that a summons was issued on the date the complaint was filed, which listed defendant's address as the premises which are the subject of the

1-10-3563

complaint. On June 19, 2010, a sheriff's return was filed, indicating that a sheriff was unable to serve defendant at that address two days before. On June 29, the circuit court granted a motion apparently filed by plaintiff for someone named Tony Hardy to serve process on defendant. On June 17, 2010, Hardy filed an affidavit which stated that he had served defendant with a copy of the complaint earlier on that same day. However, on July 27, 2010, the circuit court entered an order stating that a motion to quash service was granted "by agreement," and directing plaintiff to issue an alias summons by "posting" pursuant to section 9-107 of the Forcible Entry and Detainer Act (735 ILCS 5/9-107).

¶ 6 Consequently, plaintiff filed a summons for service by "posting" on public buildings two days later, on July 29, 2010. Attached to that summons was an affidavit from plaintiff's attorney, who checked a box indicating that defendant "cannot be found after diligent inquiry." Further, he checked another box that indicates that, not only can defendant herself not be found, but even her place of residence cannot be ascertained after diligent inquiry. Further, the affidavit lists the address of the premises which she rents from plaintiff as her "last known" place of residence. It appears that on August 2, 2010, the Cook County Sheriff served the alias summons by posting and by mailing it to the address listed on the affidavit.

¶ 7 On the next court date, August 17, 2010, the circuit court entered an "in rem order of possession" in favor of plaintiff, which states that plaintiff was entitled to recover possession of the premises at 5001 South Prairie Avenue, Unit 5001C from defendant and any unknown occupants. The order further stated that enforcement of that judgment was stayed until August 31, 2010. The order appears to be prepared by plaintiff's attorney, and bears defendant's

1-10-3563

signature next to her name, where the order identifies her as the defendant.

¶ 8 Subsequently, on August 30, 2010, the day before the judgment could be enforced, defendant filed a motion for "more time" on the premises, which states that defendant has a small child with a chronic illness and needed more time to move. On September 10, 2010, the circuit court entered an order granting defendant's motion and staying her eviction until September 19, 2010. On September 14, 2010, defendant again filed a motion for "more time in the unit," and set the matter for hearing on September 23, 2010. On September 21, 2010, two days before the hearing date on defendant's motion, plaintiff filed a "motion for judgment," which sought to recover from defendant a monetary judgment in the amount of \$4,500 for past rent that had accrued through the end of the stay date of September 17, 2010. Plaintiff set this matter for hearing on September 30, 2010.

¶ 9 On September 23, 2010, the hearing date on defendant's new motion to stay her eviction, the circuit court entered an order striking defendant's motion, and noting that defendant did not appear in court. On September 30, 2010, when plaintiff's motion for a monetary judgment was set for hearing, it appears that the motion was then denied. However, the record on appeal contains only the first page of the court's written order, and recites only part of the factual background of this matter, from the date the complaint was filed through the order on July 27, 2010.¹ The only complete version of the circuit court's written order is attached to plaintiff's brief as an appendix.

¹Although the first page of the circuit court's written order does not contain a file stamp, plaintiff alleges that the order was issued on October 6, 2010.

1-10-3563

¶ 10 On November 5, 2010, plaintiff filed a motion to reconsider the circuit court's denial of its motion for a monetary judgment. In that motion, plaintiff alleged that when the circuit court denied its motion for a monetary judgment, the court erroneously stated that its prior order of August 17, 2010, granting plaintiff possession of the premises at 5001 South Prairie Avenue, was a consent decree. In its motion to reconsider, plaintiff contends that it never agreed to delete a monetary judgment from that order, which did not enter such a judgment against defendant because it was only an *in rem* order against the property. In addition, plaintiff's motion to reconsider stated that on the date the court entered that order of possession, it lacked jurisdiction to enter a consent decree because defendant, whose consent was required, refused to submit to the jurisdiction of the court. Plaintiff further argued, in that motion, that even if a valid consent decree had been entered, it was implicitly set aside by the court when it granted defendant additional time to remain in the unit, contrary to the stay date in the order of possession. On November 17, 2010, the circuit court entered an order which denied plaintiff's motion, but did not include the court's reason for that decision.

¶ 11 ANALYSIS

¶ 12 On appeal from that order, plaintiff again contends that the circuit court erred in denying plaintiff's motion for a monetary judgment because no valid consent decree was entered into by the parties. According to plaintiff, when the parties appeared in court on August 17, 2010, defendant did not dispute the service by posting, but the court nevertheless asked defendant if she wished to submit to the court's jurisdiction and defendant responded that she did not. Plaintiff further alleges that the court then entered an *in rem* order of possession, which did not

1-10-3563

grant plaintiff a monetary judgment against defendant, because of defendant's refusal to submit to the court's jurisdiction and not because the parties agreed to the terms of that order. Further, plaintiff maintains that even if the parties had entered into a consent decree, it would be void because defendant refused to submit to the court's jurisdiction. In addition, plaintiff argues that even if the order of possession had been entered pursuant to a valid consent decree between the parties, it was set aside by the court when it granted, over plaintiff's objection, defendant's motion for an extension of time to remain in the unit. Lastly, plaintiff contends that when defendant filed a motion to stay the execution of the order of possession, she submitted to the jurisdiction of the circuit court, and the court may now grant plaintiff a monetary judgment for unpaid rent, instead of limiting plaintiff's remedy to an *in rem* order of possession.

¶ 13 We initially note that defendant has not filed a brief in this matter. We will, however, consider plaintiff's appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). We next note that plaintiff refers to matters outside of the record, in violation of Rule 341(h)(7), and has failed to include in its brief a concise statement of the applicable standard of review for each issue with citation to authority, as required by that rule. Ill. S. Ct. R. 341(h)(7) (eff. Jul. 1, 2008). However, we are not inclined to dismiss the appeal on that basis alone. More significant is the fact that petitioner has not provided us with a sufficient record of the proceedings below to permit us to properly evaluate the merits of this appeal, much less decide this appeal in his favor. See *Lill Coal Co. V. Bellario*, 30 Ill. App. 3d 384, 385 (1975); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 14 Our supreme court held, in *Foutch*, 99 Ill. 2d at 392, that an appellant has the burden to

1-10-3563

present a sufficiently complete record of the proceedings at the trial level to support a claim of error by that court. In the absence of such record on appeal, it will be presumed that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis, and any doubts which may arise from incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. In *Foutch*, 99 Ill. 2d at 392, where appellant did not provide a transcript or bystander's report of the hearing on a motion to vacate, the reviewing court had no basis for holding that the trial court had committed an error in denying the motion. Similarly in *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 423-24 (2009), where appellant failed to provide a transcript, bystander's report or agreed statement of fact of the circuit court's hearing in which it found that it had jurisdiction over appellant, our supreme court held it must presume that the circuit court's finding was correct. See also *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (holding that in the absence of an adequate record preserving the claimed error, any doubts arising from the incompleteness of the record will be resolved against the appellant, and the order of the circuit court will be affirmed); see also *Coleman v. Windy City Balloon Port, Ltd.*, 160 Ill. App. 3d 408, 419 (1987), citing *Mileke v. Condell Memorial Hospital*, 124 Ill. App. 3d 42, 48-49 (1984), *In re marriage of Hofstetter*, 102 Ill. App. 3d 392, 396 (1981) (“[i]t is not the obligation of the appellate court to search the record for evidence supporting reversal of the circuit court. *** When portions of the record are lacking, it will be presumed that the trial court acted properly in entry of the challenged order and that the order is supported by the part of the record not before the reviewing court”), but see *Gonella Baking Co. v. Clara's Pasta di Casa, Ltd.*, 337 Ill. App. 3d 385, 388 (2003) (a record of the proceedings

1-10-3563

below may be unnecessary where an appeal confronts solely a question of whether a genuine issue of fact exists, which we review *de novo*).

¶ 15 In this case, plaintiff has failed to provide us with any report of the proceedings below. See S. Ct. R. 323(a) (eff. Dec. 13, 2005) (the report of the proceedings, “may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal”). Nor is there a bystander’s report which is authorized under Illinois Supreme Court Rule 323(c) (See S. Ct. R. 323(c)) (eff. Dec. 13, 2005) (“[i]f no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection”), nor any agreed statement of facts filed by the plaintiff which is authorized by Rule 323(d) (See S. Ct. R. 323(d) (eff. Dec. 13, 2005) (“[t]he parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings”).

¶ 16 All that appears before us is the common-law record, which includes plaintiff's complaint, the motions filed by both parties throughout the proceedings, and the orders entered by the circuit court. Although plaintiff alleges that when the court denied its motion for a monetary judgment, it issued a written order which explained the reasons for that denial, the record contains only the first page of that order. That page does not include any part of the court's analysis, and merely contains a partial statement of the background facts. Contrary to plaintiff's allegations, the order, as contained in the record, does not state that the reason for

1-10-3563

denying plaintiff's motion for a monetary judgment was its belief that the parties had entered into an agreement pursuant to which plaintiff would not seek a monetary judgment against plaintiff. More significantly, the portion of the order before us does not state any part of its reasoning or what evidence was presented at the hearing, on which the court may have based its decision to deny plaintiff's motion for a monetary judgment.

¶ 17 Although plaintiff attached to his brief what purports to be a complete copy of the circuit court's entire written order denying his motion for a monetary judgment, it is well established that this court may not consider documents that are not part of the certified record on appeal. *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine*, 392 Ill. App. 3d 1, 14 (2009). In fact, attachments to appellate briefs that are not contained in the certified record on appeal cannot be used to supplement that record and are, therefore, not properly before the reviewing court. *Id.*; see also *Ahn Bros. v. Buttitta*, 143 Ill. App. 3d 688, 690 (1986). In that case, there was no copy of the written order reflecting the court's final judgment in the record, this court found that it lacked jurisdiction to entertain the appeal, even though a copy of such order was contained in an appendix to the appellant's brief. *Ahn Bros.*, 143 Ill. App. 3d at 690. Thus, the purported copy of the circuit court's complete order, attached to plaintiff's brief is not properly before this court, and may not be considered in our review of the circuit court's decision below.

¶ 18 Thus, we cannot review any of the other issues raised or assess the trial court's findings and basis for its legal conclusions. As such, without a record of the proceedings, we can only speculate as to the reasons for the circuit court's decision to deny plaintiff's motion for a

1-10-3563

monetary judgment. Such speculation is not an adequate basis upon which we may conclude that the circuit court erred in denying that motion. Therefore, under these circumstances, we must presume that the circuit court's ruling had a sufficient factual basis and was in conformity with the law. See *Gulla and Kanaval*, 234 Ill. 2d at 423-24; see also *Foutch*, 99 Ill. 2d at 392; *Coleman*, 160 Ill. App. 3d at 419.

¶ 19 Moreover, even if we were to consider the complete order attached to plaintiff's brief, which states that the reason why it denied plaintiff's motion for a monetary judgment was because the order of possession was entered pursuant to a consent decree, plaintiff would fare no better. First, even if we were to consider such written order, the record still contains no evidence to support plaintiff's contention that the order of possession was not entered pursuant to a consent decree between the parties. As discussed above, in the absence of a record of the proceedings, we must presume that the circuit court's finding was correct and supported by the record not before us. *Foutch*, 99 Ill. 2d at 392.

¶ 20 Furthermore, plaintiff's contention that the circuit court lacked jurisdiction to enter a consent decree because defendant had not submitted to the court's jurisdiction is unpersuasive. It is well established that generally any action on the part of a defendant which recognizes the case as being in court will be considered a general appearance, which subjects her to that court's jurisdiction, unless that action was for the sole purpose of contesting the court's jurisdiction. *Bickel v. Subway Development of Chicagoland, Inc.*, 354 Ill. App. 3d 1090, 1096 (2004); *Pecoraro v. Kesner*, 217 Ill. App. 3d 1039, 1043-44 (1991). The reason for this rule is that " a person cannot, by his voluntary action, invite the court to exercise its jurisdiction and at the same

1-10-3563

time deny that this jurisdiction exists.' " *Id.* at 1044 (quoting *Lord v. Hubert*, 12 Ill. 2d 83, 87 (1057)).

¶ 21 While defendant in this case agreed to an order that was *in rem*, instead of *in personam*, her participation in the proceeding by stipulating to that order was sufficient to constitute a general appearance. *McKnelly v. McKnelly*, 38 Ill. App. 3d 637, 639, 640 (1976). In *McKnelly*, 38 Ill. App. 3d at 640, this court held that where the defendant entered into a stipulation with the plaintiff and the court entered an order pursuant to that agreement, the defendant's actions constituted a general appearance and the court, therefore, had acquired personal jurisdiction over him. Moreover, defendant apparently entered into an agreement not only to relinquish possession of her residence, but also to the date by which she would evacuate the premises, namely, August 31, 2010. The order bears her signature to reflect her agreement to that date. Thus, her agreement with plaintiff constituted a general appearance by defendant, and the court, therefore, had personal jurisdiction over her. Accordingly, we conclude that the order entered pursuant to the consent decree was not void, as plaintiff contends.

¶ 22 Likewise, plaintiff's contention that any agreement by the parties was implicitly set aside when the court granted defendant's motion to stay her eviction lacks merit. Plaintiff has failed to cite to authority in support of that argument as required by Rule 341(h) and instead, merely asserts that the circuit court erred in denying his motion for a monetary judgment because any consent decree to the contrary was set aside when the court, over plaintiff's objection, granted defendant's motion to remain in the unit past the agreed upon stay date. Since respondent has failed to comply with Rule 341(h) and articulate a cohesive legal argument supported by

1-10-3563

authority, we cannot reach the merits of his contention. *Bank of Ravenswood v. Maiorella*, 104

Ill. App. 3d 1072, 1074 (1982). For that matter, we note that there is nothing in the record before

us to support its contention that it did, in fact, object to defendant's request for an extension of

time to evacuate the premises, so as to render the court's conduct a breach in the terms of the

consent decree. As previously mentioned, we must, therefore, presume that the circuit court's

decision in denying plaintiff's motion for a monetary judgment had sufficient factual basis and

was in conformity with the law. *Foutch*, 99 Ill. 2d at 392.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.