

No. 1-09-0964

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 allowed under Rule 23(e)(1).

FOURTH DIVISION
JUNE 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROSE DISKIN and PATRICK DISKIN,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees,)	Cook County.
)	
v.)	Nos. 08 M1 716846
)	08 M1 726462
)	
NOULA KOTSOPODIS,)	Honorable
)	Diane M. Shelley and
)	Sheldon C. Garber,
Defendant-Appellant.)	Judges Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concur with
the judgment.

O R D E R

HELD: Where defendant did not appear at trial, having requested continuance of trial date, court did not err in entering judgment in her absence, and record contains no basis to disturb award of past-due rent; the trial court's judgment was affirmed.

Defendant Noula Kotsopodis appeals *pro se* the trial court's orders awarding plaintiffs Rose and Patrick Diskin possession of an apartment and damages of \$13,650 in unpaid rent. On appeal, defendant seeks reversal of that judgment and contends she was denied her right to a jury trial on the complaint. We affirm.

The following facts are ascertainable from the record on appeal. In July 2008, plaintiffs filed a complaint seeking possession of the second floor apartment at 5705 West Giddings Street in Chicago. The complaint alleged defendant owed 11 months of rent dating back to August 2007, at \$650 per month, for a total of \$7,150.

On October 8, 2008, plaintiffs voluntarily dismissed their complaint and refiled their claim against defendant for the use and occupancy of the apartment and for unpaid rent, which by then totaled \$9,750. On December 3, defendant filed a *pro se* appearance and jury demand. Defendant continued to live in the apartment.

On January 13, 2009, plaintiffs filed a motion for summary judgment seeking possession of the premises and an accumulated \$11,700 in unpaid rent for 2007 and 2008. The same day, the court ordered defendant to pay \$650 rent for January and to pay that amount of rent each month she lived in the apartment. Eight days later, when defendant had not paid the January rent, plaintiffs requested a bench trial on their complaint. On

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January 26, the court gave defendant 14 days to respond to plaintiffs' motion for summary judgment.

Defendant filed a motion to strike and dismiss plaintiffs' complaint, which the court denied on February 9. Defendant was present in court that day, and the court continued the case to March 16.

On March 16, defendant did not appear, and the court set the case for trial on April 1 at 2:00 p.m. The order stated plaintiffs' counsel was to "give defendant [a] copy of [the] trial order with [a] cover letter [stating] that [the] court will strike jury demand if defendant fails to provide jury instructions." Although defendant did not appear in court on March 16, she filed on that date a response to plaintiffs' summary judgment motion and requested time to compile necessary documents. Defendant asserted that before the court entered judgment, it should consider damages owed to her "due to [the] illegal eviction."

On March 31, defendant filed a motion requesting additional time to compile documents including copies of checks she gave to plaintiffs, medical and police records and "other miscellaneous documents needed for trial." Defendant asserted a continuance was necessary to allow her time to "address issues pertaining to [the] complexity of [the] case." Defendant asked that the trial be continued for at least 30 days after the April 1 date, or

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until May 9. The record contains a notice of motion drafted by defendant for the case to be heard on April 9.

On April 1, defendant did not appear for trial. The court's order noted defendant had not appeared in court by 3:31 p.m., which was 90 minutes after the time set for trial, and stated the court was "informed of the motion filed by the defendant on 3/31/09." The order stated "the defendant's motion for 4/9/09 is stricken instanter," and the court also struck defendant's jury demand. The court ordered defendant to vacate the apartment and entered a judgment against defendant of \$13,650. Enforcement of the judgment was stayed until April 8.

On April 10, defendant filed an "emergency motion for stay of possession" and also filed a motion to vacate the judgment, noting her March 31 request for a continuance. In her motion to vacate, defendant asserted the judge "was aware of my Motion for Continuance scheduled to be heard on April 9, 2009 and should not have made any decisions in this case on April 1." Defendant further stated the judge "must have also known" when defendant did not appear on the set trial date of April 1 that defendant "was not given proper notice" by plaintiffs' counsel that proceedings would occur in her absence. Defendant asked that the order for possession and the judgment against her be vacated and the case be set for trial.

Plaintiffs filed a response to defendant's motion to vacate the judgment, asserting that by defendant's own admissions, she was aware of the April 1 trial date. Plaintiffs also stated their attorney sent a copy of the March 16 order to defendant, which gave notice of the April 1 trial date, by mail and placed a copy under the apartment door. The response stated that testimony was given at trial by plaintiffs and their "subpoenaed witness."

On April 13, the court denied defendant's motion to vacate the judgment. Defendant filed a notice of appeal of the April 1 judgment and order of possession and the April 13 denial of her motion to vacate the judgment.

On appeal, defendant, who is acting *pro se*, challenges the judgment both procedurally and substantively. She contends the trial court erred in entering the April 1 judgment in her absence, and she further asserts that the judgment was entered without plaintiffs' attorney "offering proof that the judgment is accurate or legitimate."

Before addressing defendant's contentions on appeal, we consider plaintiffs' assertion that defendant's brief does not comply with the supreme court rules. Plaintiffs argue defendant's brief lacks a cogent statement of facts and also is devoid of citations to relevant authority to support a conclusion that the judgment was in error. The insufficiency of defendant's

brief does not affect this court's jurisdiction to decide the appeal, and we elect to dispose of this appeal on the merits. See, e.g., *Tannenbaum v. Lincoln National Bank*, 143 Ill. App. 3d 572, 575 (1986) (reviewing court could decipher issues appellant intended to raise and also had benefit of opposing party's brief).

We first address the procedure by which the judgment was entered. Defendant contends the court was aware of her March 31 motion seeking a continuance of the trial to April 9 and asserts the court "knew" she would not be present in court on April 1.

The record establishes that defendant had notice of the April 1 trial date. The court's April 1 order states that, having been informed of defendant's motion filed on March 31, the court was striking defendant's "motion for 4/9/09," which we interpret to refer to defendant's request to continue the trial to April 9.

A litigant does not have an absolute right to a continuance, and the grant or denial of a motion for a continuance lies in the sound discretion of the trial court. *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007). Once a case has reached the trial stage, a party seeking a continuance must give especially grave reasons to support such a request because of the potential inconvenience to witnesses, the parties and the court. *Teitelbaum v. Reliable Welding Co.*, 106 Ill. App. 3d 651, 656 (1982). Defendant did

not secure a ruling on her motion for a continuance prior to the date previously set for trial, which was April 1. Defendant bore the responsibility of obtaining a ruling on her request, filed the day before trial, for a later trial date before she could presume the trial had been continued to the April 9 date she sought. See *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 432-33 (2007). The court acted within its discretion to strike defendant's request for a continuance.

Defendant also challenges the sufficiency of the evidence to support the judgment. As the appellant, defendant bears the burden of presenting a sufficiently complete record to support her claims of error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Defendant has not provided any report of proceedings in the trial court or a bystander's report as part of the record on appeal. Absent a report of proceedings or written order explaining the court's ruling, the reviewing court must indulge in every reasonable presumption favorable to the judgment and will presume the trial court followed the law and had a sufficient basis for its ruling. *Foutch*, 99 Ill. 2d at 391-92; *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893, 902 (2010). According to plaintiffs, the trial court heard testimony from them and also from a witness in support of their case.

Defendant contends on appeal that she was "illegally evicted" from the apartment in July 2007, which was more than a

year before plaintiffs filed their complaint for possession of the premises. As plaintiffs point out, defendant supports this argument with numerous "exhibits" appended to her appellate brief. The record on appeal cannot be supplemented by attaching documents to the appendix of a brief. *Whittmanhart, Inc. v. CA, Inc.*, 402 Ill. App. 3d 848, 852 (2010). Moreover, defendant's assertions do not contradict the plaintiffs' judgment consisting of past-due rent, and defendant had the opportunity to present evidence in support of her position at trial. In conclusion, the trial court did not err in entering judgment for plaintiffs on April 1 in defendant's absence, and this court lacks any basis to disturb the trial court's judgment.

Accordingly, the judgment of the trial court is affirmed.

Affirmed.