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No. 1-10-2712

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY OF CHICAGO,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
)	No. 10 M1 400058
v.)	
)	
CHRISTIANA UDOH,)	The Honorable
)	LaGuina Clay-Clark,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

ORDER

HELD: Order of the circuit court appointing a receiver to vacate and secure defendant's property when the property failed to meet building code requirements and its subsequent order awarding the court-appointed receiver fees once the receiver's responsibilities had been completed upheld on appeal where: the lower court proceedings satisfied due process requirements and the orders did not constitute an abuse of discretion.

¶1 Following a hearing, the circuit court found that defendant, Christiana Udoh, a Chicago landlord and apartment building owner, failed to maintain her building in a manner that satisfied

1-10-2712

the requirements of the City of Chicago's Municipal Code (Code). The court fined Udoh and appointed a temporary receiver to vacate and secure the building until the property was brought into conformance with the Code. On appeal, Udoh disputes the judgment of the circuit court, arguing that the hearing and the court's appointment of the temporary heat receiver violated her right to due process. She also argues that the fee that was subsequently awarded to the receiver was excessive. For the reasons explained herein, we affirm the judgment of the circuit court.

¶2 I. BACKGROUND

¶3 Udoh is the owner of a two-unit residential building located at 11537 South Perry Avenue in Chicago. Darlecia Watts became a tenant of Udoh's in September 2009. At that time, Udoh informed Watts that the heating system in her unit was broken, but that it would be repaired before winter. Udoh further informed Watts that it was important for her to be timely in the payment of her rent because the funds to replace the broken heating unit would come from the rent money that Udoh received. The heating unit in Watts' apartment was not fixed, and on January 7, 2010, the City filed a complaint against Udoh, alleging that she failed to ensure the apartment building met the standards set forth in the City's Code. Specifically, the complaint alleged, in pertinent part, that Udoh failed to maintain the building's boiler and the radiators located in the individual units in safe and sound working condition in violation of sections 13-196-400 and 13-196-440 of the Code and failed to install and maintain approved smoke detectors in each dwelling unit located in the building in violation of sections 13-196-100 through 13-196-160 of the Code. Among the remedies sought by the City was the imposition of fines against Udoh for her failure to ensure that the property met the minimum standards of health and safety

1-10-2712

set forth in the Code as well as the appointment of a receiver, if necessary, to correct the deficiencies in the building and ensure that the premises were brought into conformance with the Code.

¶4 In addition to the complaint, the City also filed a "Verified Petition for Appointment of a Temporary Heat Receiver." In the petition, the City stated, in relevant part:

"4. The premises is without heat and/or hot water, and thereby fail[s] to comply with minimum health and safety standards required for residential buildings by Section 13-196-400 and related sections of the Municipal Code.

5. Lack of heat and/or hot water at the present time of year threatens imminent irreparable harm to the health and lives of tenants and occupants of the premises.

6. Lack of heat and/or hot water at the present time of year constitutes an emergency necessitating immediate court action."

¶5 Given the nature of the building's Code violations, an expedited hearing on the City's complaint was set for January 12, 2010. On January 11, 2010, the day prior to the hearing, Sarah M. Andrew, Assistant Corporation Counsel for the City of Chicago Department of Law, filed an affidavit in which she stated that she spoke to Udoh on the telephone and informed her that an emergency hearing on the City's complaint would be held the next day. Andrew further averred: "It is my understanding that 65 ILCS 5/11-31-2.1 allows for notification by any means practicable and reasonably calculated to give actual notice under the circumstances, including by telephone to the defendant's last known phone number or by mailing to the defendant's last known address."

1-10-2712

¶6 Udoh and Watts both appeared in court for the January 12, 2010, hearing. Following the hearing, the transcripts of which do not appear in the record on appeal, the circuit court entered an order appointing David Feller as a temporary heat receiver due to Udoh's failure to maintain proper heating of the premises in the midst of the winter season. Pursuant to the court's order, Feller was appointed to vacate and secure the premises and assist Udoh's tenant, Darlecia Watts, in relocating while the property was brought into compliance with the Code.

¶7 On February 23, 2010, Feller filed a receiver's report with the circuit court delineating the efforts undertaken to vacate and secure Udoh's property. Feller indicated that he had multiple conversations with Udoh and Watts and provided Watts with funds to move out of Udoh's building and relocate to another residence. Upon receipt of Feller's report, the circuit court discharged Feller as the receiver and granted him permission to file his final accounting and petition for receiver's fees with the court. In a separate order entered the same date, the court ordered Udoh to "apply for and obtain all necessary permits for repair or replacement of furnaces and provide them to the court."

¶8 Feller subsequently filed an accounting of his work on April 5, 2010, including a time sheet detailing the efforts undertaken in connection with Udoh's property. Based on the services provided in this case, Feller petitioned the court to award him fees in the amount of \$3,955.67.

¶9 On June 11, 2010, Udoh filed a *pro se* response to Feller's petition for receiver's fees. She argued that the appointment of a heat receiver was "inappropriate in this case" because "[t]he heating condition in the unit would have been corrected earlier, were it not for Ms. Watts's refusal to pay rents as agreed." Udoh urged the court to order the City "to pay all cost" and to

1-10-2712

award her \$10,000 "in repair cost." The City, in turn, filed a response of its own and urged the court to "grant [Feller's] [a]ccounting in the full amount" and deny Udoh's request for money from the City.

¶10 Feller's petition for receiver's fees was subsequently granted on August 17, 2010. In its order, the court approved a fee in the amount of \$3,955.67. This appeal followed.

¶11 II. ANALYSIS

¶12 On appeal, Udoh first disputes the propriety of the circuit court proceedings and argues that the proceedings failed to accord with due process requirements. Specifically, she argues that she was not afforded fair hearing because the trial court appointed a receiver "based on bias and prejudice" and without hearing testimony from her, Watts, or a City Inspector. Udoh also maintains that her due process right to adequate notice was also violated. Specifically, she argues that she received insufficient notice of the hearing itself, and contends that the City should have given her formal notice of the Code violations as well as an opportunity to remedy those violations before it initiated legal proceedings against her.

¶13 The City responds that Udoh's due process claims are without merit. It argues that her claims pertaining to the fairness of the proceedings cannot be reviewed because no report of the proceedings have been included in the record on appeal. With respect to Udoh's claims regarding sufficient notice, the City contends that Udoh's due process right to notice was satisfied because she received actual notice of, and appeared at, the hearing to appoint a temporary heat receiver. Moreover, given the dangerous condition of the unheated building in the middle of January, the City contends that it was not required to give Udoh time to fix the building's heating unit prior to

1-10-2712

initiating legal action and seeking the appointment of a temporary heat receiver.

¶14 It is well-established that legal proceedings must accord with the constitutional requirements of due process. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. Among the core components of procedural due process is the right of interested parties to notice of legal proceedings and an opportunity to be heard at those proceedings. *Passalino v. City of Zion*, 237 Ill. 2d 118, 124 (2010); *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, ¶16. A party's right to be heard encompasses the right to present evidence and arguments, the right to cross-examine witnesses, and the right to an impartial ruling based upon the evidence presented to the court. *Fischetti*, 2012 IL App (1st) 111008, ¶16. Whether legal proceedings in the lower court were conducted in accordance with procedural due process requirements is an issue of law, which is subject to *de novo* review. *People v. \$30,700.00 United States Currency*, 199 Ill. 2d 142, 155 (2002).

¶15 With respect to Udoh's claim regarding the hearing itself and the trial court's biased and prejudiced decision to appoint a temporary heat receiver without hearing adequate evidence, we find that we are unable to resolve this claim due to the paucity of the record on appeal. Neither a transcript of the hearing nor a suitable alternative permitted by Illinois Supreme Court Rule 323 (Ill. S. Ct. R. 323(c), (d) (eff. Dec. 15, 2005)), including a bystander's report or an agreed statement of facts, appears in the record. Because there is no transcript, bystander's report, or agreed statement of facts of the hearing, we do not know what evidence was presented to the circuit court or what evidence the court relied upon in deciding to appoint the temporary heat receiver. This precludes us from reviewing the substance of Udoh's claim. See *Corral v. Mervis*

1-10-2712

Industries, Inc., 217 Ill. 2d 144, 157 (2005), quoting *Webster v. Hartmann*, 195 Ill. 2d 426, 432 (2001) ("Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding"). We recognize that *pro se* appellants like Udoh are held to a lesser standard of compliance with supreme court rules when seeking appellate review; however, "there is a minimum which even they must meet before the appellate court can adequately review the lower court's decision" and that includes providing "a record of trial court proceedings sufficient to review the issues raised on appeal." *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993); see also *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010). Given the incomplete record in this case, we are required to presume that the court's order appointing the receiver was entered in conformity with the law, including due process requirements, and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984) ("[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant").

¶16 We now turn to Udoh's due process claims pertaining to notice. She first argues that she was "denied her due process right to effective court summons" because she only received notice of the hearing the day before it took place.

¶17 As set forth above, the constitutional safeguards of due process include a party's right to receive notice of a legal proceeding in which the party has an interest. *Passalino*, 237 Ill. 2d at

1-10-2712

124; *United States Currency*, 199 Ill. 2d at 155-56. Although actual notice of a legal proceeding certainly satisfies the due process notice requirement, it is well-established that actual notice is not required. *United States Currency*, 199 Ill. 2d at 156. Rather, due process is satisfied if an attempt is made to provide notice and that notice is " 'reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Id.*, quoting *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 432 (1990); see also *County Collector v. Miller*, 397 Ill. App. 3d 535, 548 (2010) (recognizing that due process does not require actual notice; rather, it merely requires "some notice").

¶18 Here, there is no dispute that Udoh received actual notice of the hearing that was scheduled in the trial court regarding the City's complaint and its petition to appoint a temporary heat receiver. The record contains an affidavit completed by Sarah Andrew, Assistant Corporation Counsel for the City, in which she avers that on January 11, 2010, she spoke to Udoh and provided her with notice of the hearing that was to be conducted the following day. Udoh herself acknowledges that she received this phone call and that she was present at the hearing. Udoh thus does not deny that she received notice. Instead, the crux of her claim is simply that she should have received *more* notice. However, where as here, she received actual notice and was able to appear at the hearing, we are unable to conclude that there was a due process violation.

¶19 We also find Udoh's argument that her right to due process was violated because the City commenced legal proceedings against her and requested the appointment of a temporary heat

1-10-2712

receiver without giving her formal notice of the building's Code violations or time to remedy those violations to be similarly unavailing. Udoh bases her argument on section 11-31-2 of the Code, which provides:

"(a) If the appropriate official of any municipality determines, upon due investigation, that any building or structure therein fails to conform to the minimum standards of health and safety as set forth in the applicable ordinances of such municipality, and the owner or owners of such building or structure fails, *after due notice*, to cause such property so to conform, the municipality may make application to the circuit court for an injunction requiring compliance with such ordinances or for such other order as the court may deem necessary or appropriate to secure such compliance."

(Emphasis added.) 65 ILCS 5/11-31-2(a) (West 2008).

¶20 The City's petition for the appointment of a temporary heat receiver, however, was not based on that Code provision; rather the City was proceeding under section 11-31-2.1(a) (65 ILCS 5/11-31-2.1(a) (West 2008)) of the Code instead, due to the dangers that Udoh's unheated building posed to Watts and other potential tenants. That section, in pertinent part, states:

"If a municipality petitions for appointment of a receiver pursuant to Section 11-31-2 of this Act and it clearly appears from specific facts shown by affidavit or by verified petition or verified complaint that immediate and irreparable injury, loss or damage will result before personal service can practicably be had, a receiver may be appointed upon a showing that the municipality attempted to give notice by any means practicable and reasonably calculated to give actual notice under the circumstances,

1-10-2712

including by telephone to the defendant's last known phone number or by mailing to the defendant's last known address. If a receiver is appointed pursuant to this subsection, another hearing shall be set at the earliest practicable date." 65 ILCS 5/11-31-2.1 (West 2008).

¶21 Unlike section 11-31-2(a), section 11-31-2.1(a) does not require the City to provide a landlord with notice of a Code violation and an opportunity to remedy that violation before seeking the appointment of a receiver. Instead, when circumstances exist that pose an immediate threat to the safety and well-being to the tenants of a building, this provision merely requires the City to provide a landlord with notice of the hearing to appoint a receiver. As discussed above, there is no dispute that Udoh received actual notice of the hearing. Based on the facts in this case, we do not find that the City's failure to provide Udoh with actual notice of the Code violations and an opportunity to remedy those violations before seeking the appointment of a heat receiver constituted a due process violation.

¶22 Moreover, we find Udoh's argument disingenuous as she was clearly aware that the heating system in her building was not working and needed to be repaired. In her *pro se* response to Feller's petition for receiver's fees, Udoh urged the court not to award Feller the requested fees because, in her opinion, a receiver should not have been appointed in the first place. Udoh explained that when she initially rented one of the units in her building to Watts in September 2009, she informed Watts that the building's heating system was broken and that the rent money that she received from Watts would be used to fix the heating system before winter. Udoh blamed Watts' failure to pay her rent in a timely manner as the reason that the repairs were

1-10-2712

not made. Udoh's own trial court filings thus establish that she had notice of her building's failure to conform to the Code but that she failed to make the requisite repairs. Based on the record, we are unable to conclude that the proceedings initiated by the City against Udoh violated her due process rights.

¶23 Udoh next argues that the court abused its discretion in appointing the receiver and approving the receiver's fees. She acknowledges that the building's heating system was broken, but explains that she had not made the repairs because Watts failed to pay her rent and argues that the court's appointment of the receiver merely served to "help a tenant who had been living rent free" and was thus improper. Udoh also contends that the fees awarded to the receiver was excessive.

¶24 The City responds that the court's appointment of the receiver was an appropriate exercise of its equitable powers given the fact that Udoh's tenant was living in an unheated building in the middle of winter and that Udoh had not remedied the problem despite being aware of her building's failure to meet the Code's heating requirements. The City also contends that trial court did not abuse its discretion in awarding Feller \$3,955.67 in receiver's fees because he presented a detailed report accounting for the time and work he spent to complete his court-appointed duties and Udoh made no showing that those fees were unreasonable.

¶25 It is well-established that a court's decision to appoint a receiver to preserve and restore residential property and to obtain compliance with building codes is an appropriate exercise of the court's equity powers where the condition of the property is unsafe and poses a danger to the public. *Community Renewal Foundation, Inc. v. Chicago Title and Trust Co.*, 44 Ill. 2d 284, 291

1-10-2712

(1970). Although no transcript or permissible alternative of the hearing that the court conducted to appoint the temporary receiver appears in the record, Udoh's pleadings indicate that she had knowledge of her building's failure to conform to Code requirements but did nothing to remedy those deficiencies. We reiterate that any incompleteness in the record on appeal will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 391. Notwithstanding the incomplete record, because there was evidence that Udoh failed to remedy the building's heating system despite being aware of the defects and created an unsafe living condition for Watts and any other potential prospective tenants, we cannot conclude that the court erred in appointing a temporary heat receiver. See *Community Renewal Foundation*, 44 Ill. 2d at 291 (finding that the trial court's decision to appoint a receiver to ensure that property was brought into compliance with building codes was "in the public interest" and "an appropriate exercise of [the] court's equity powers" where the building violations rendered the property "unsafe and a danger to the community").

¶26 Having so found, we turn now to the order entered by the trial court awarding David Feller, the court-appointed receiver, \$3,955.67 in receiver's fees. When a receiver completes his court-appointed duties and seeks to recover fees and costs, it is his burden to present sufficient evidence of the reasonableness of his fees. *Brackett v. Sedlacek*, 116 Ill. App. 3d 978, 981 (1983); *Plote v. Minnesota Alden Corp.*, 95 Ill. App. 3d 5, 7 (1981). Generally, this burden is satisfied where the receiver's petition for fees is supported by a time sheet that details the activities performed by the receiver. *Brackett*, 116 Ill. App. 3d at 981; *Plote*, 95 Ill. App. 3d at 7. Once the receiver's burden is satisfied, the burden then shifts to the party opposing the receiver's petition for fees to show that the fees are unreasonable. *Brackett*, 116 Ill. App. 3d at 981; *Plote*,

1-10-2712

95 Ill. App. 3d at 7. Ultimately, the fees awarded by the trial court to a court-appointed receiver will not be reversed absent an abuse of discretion. *Brackett*, 116 Ill. App. 3d at 981; *Plote*, 95 Ill. App. 3d at 7.

¶27 Here, we again observe that the record does not contain documentation of the relevant lower court proceedings pertaining to this claim. *Foutch*, 99 Ill. 2d at 391. Notwithstanding the lack of transcript or bystander's report, the record does contain Feller's petition for fees, Udoh's objection thereto, and a response filed by the City. Feller's petition included a detailed accounting of the services he performed as the court-appointed receiver. The time-sheet that he included lists the time he spent preparing for court and the calls and e-mails that he made to Udoh, Watts, and the City in order to vacate and secure Udoh's property. Feller's time sheet also details the time he spent preparing relevant documents and as well as the time he spent in meetings and site visits. The work for which Feller sought fees is thus clearly identified in his time-sheet. In the written objection that Udoh filed in the lower court in response to Feller's petition for fees, she did not present any meaningful evidence to show that the fees that Feller requested were unreasonable; rather, she reiterated her belief that the appointment of a receiver to vacate and secure her building was improper because the building's broken heating system was the direct result of Watts' failure to timely meet her rental obligations and that the receiver merely assisted Watts in continuing to live rent-free. Ultimately, the record shows that Feller's request for fees was supported by relevant documentation and that Udoh did not present any relevant evidence to refute the reasonableness of his fee request. We are therefore unable to conclude that the trial court abused its discretion in awarding Feller the \$3,955.67 that he sought in receiver's

1-10-2712

fees. *See Brackett*, 116 Ill. App. 3d at 982.

¶28 CONCLUSION

¶29 Accordingly, for the aforementioned reasons, we affirm the judgment of the circuit court.

¶30 Affirmed.