

No. 1-11-1950

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FREEDOM MORTGAGE COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff- Appellee,)	
)	
v.)	NO. 10 M1 729220
)	
HENRY BLAIR, CANDY BLAIR and UNKNOWN)	
OCCUPANTS,)	The Honorable
)	Sheldon C. Barber,
Defendants-Appellants.)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

¶ 1 *Held:* Issues not raised before the trial court cannot be raised for the first time on appeal. The trial court properly granted summary judgment.

¶ 2 *Pro se* defendant Candy Broderick Blair appeals from the trial court's order granting summary judgment and possession of 5400 South Hermitage Avene (the property), to plaintiff Freedom Mortgage Company (Freedom Mortgage). On appeal, Candy contends that summary judgment was improper because Freedom Mortgage failed to properly serve defendants Henry Blair and Candieshoppe, FTLLC, Inc (Candieshoppe). She further contends that genuine issues

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of material fact remain as to whether she is the rightful owner of the property and the validity Freedom Mortgage's deed to the property. We affirm.

¶ 3 Although the record on appeal does not include a report of proceedings, the following facts can be gleaned from the common law record.

¶ 4 On March 10, 2009, Freedom Mortgage acquired the property from Federal National Mortgage Association via "special warranty deed." In December 2010, Freedom Mortgage filed a complaint in forcible entry and detainer against Henry Blair and all unknown occupants of 5400 South Hermitage Avenue, first floor. The complaint alleged that Freedom Mortgage was entitled to possession of the property and that defendants were tenants held over from a mortgage foreclosure proceeding on the property. The record reflects that this action was later consolidated with the action against the occupants of the second floor of the property.

¶ 5 In January 2011, *pro se* defendant Candy Broderick Blair appeared in court and was given 14 days to obtain an attorney. Candy filed a *pro se* jury demand on behalf of defendants, "Henry Blair, et al."

¶ 6 Freedom Mortgage subsequently filed a motion for summary judgment alleging that it was entitled to possession of the property and that defendants had not filed either an answer or any counter-affidavits refuting the facts contained in the complaint. Attached to the motion was the affidavit of Freedom Mortgage Chief Financial Officer Stan Moskowitz averring that defendants were holdover tenants from a mortgage foreclosure proceeding against the property and that defendants did not have a lease agreement with Freedom Mortgage.

¶ 7 In their *pro se* response, defendants Henry and Candy Blair alleged that summary judgment was improper because Candy had entered into a lease with the former owner of the property, which contained an option to buy. In reliance upon this option, she had invested in the

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property and established Candieshoppe, a nonprofit organization. The response further alleged fraudulent mortgage practices, *i.e.*, former owner John Hubert obtained a loan from Federal National Mortgage Association "well in excess" of the amount he could repay and he defaulted. The response finally alleged that in the absence of these fraudulent practices Candy would be the owner of the property.

¶ 8 Attached to the motion in support was a printout from the recorder of deeds website indicating a lease between grantor Hubert and grantee Candy. Also attached were the affidavits of Candy and Henry. Candy averred that she was the current tenant of the property, had invested \$16,000 in the property, and had a lease with an option to buy. Henry averred consistently with Candy regarding the couple's investment in the property. The lease is not attached.

¶ 9 Ultimately, the court granted Freedom Mortgage's motion for summary judgment and entered an order of possession in favor of Freedom Mortgage.

¶ 10 On appeal, Candy contends *pro se* that the trial court improperly granted summary judgment when Henry was not properly served and Candieshoppe was never served. Candy further contends that summary judgment was improper because genuine issues of material fact remained, such as whether she was the "rightful" owner of the property and whether Freedom Mortgage's deed to the property was valid.

¶ 11 Initially, this court must address Freedom Mortgage's request that Candy's brief be stricken and this appeal dismissed based upon her failure to comply with the mandates of Supreme Court Rule 341(h) (eff. Jul. 1, 2008).

¶ 12 Candy's *pro se* status does not relieve her of the burden of complying with our supreme court's rules mandating the format for appeals to this court, and this court is not required to search the record to determine what legal issues are involved in an appeal. *Twardowski v.*

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Holiday Hospitality Franchising, Inc., 321 Ill. App. 3d 509, 511 (2001). Although this court is not bound to enforce strict compliance with supreme court rules in those cases where the basis for an appeal is clear despite a party's inadequate brief, this court has the inherent authority to dismiss an appeal when an appellant's brief fails to comply with supreme court rules. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). However, our jurisdiction to entertain a *pro se* party's appeal is not destroyed by a nonconforming brief as long as this court understands the issues the *pro se* party intends to raise and has the benefit of a cogent brief from the other party.

Twardowski, 321 Ill. App. 3d at 511. Therefore, this court declines Freedom Mortgage's request to strike Candy's brief.

¶ 13 Turning to the merits, Candy first contends that Freedom Mortgage failed to properly serve Henry and Candieshoppe.

¶ 14 Initially, this court notes that Candy has forfeited this argument on appeal by failing to raise it before the trial court. *In re Shautae P. and Kyla P.*, 2012 IL App (1st) 112280, ¶ 93 (April 5, 2012). It is well established that an appellant's failure to raise an issue in the circuit court results in waiver of that issue on appeal. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 695 (2010) ("Generally, a party who does not raise an issue in the trial court forfeits the issue and may not raise it for the first time on appeal.").

¶ 15 Even were this court to overlook the failure to raise this issue before the trial court, a party "may 'object to personal jurisdiction or improper service of process only on behalf of himself or herself, since the objection may be waived.'" *In re M.W.*, 232 Ill. 2d 408, 427 (2009), quoting *Fanslow v. Northern Trust Co.*, 299 Ill. App. 3d 21, 29 (1998); see also 735 ILCS 5/2-301(a) (West 2010) ("a party may object to the court's jurisdiction over the party's person"); Candy has not cited any authority to support her position that she has standing to object to the

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trial court's jurisdiction over another party.

¶ 16 In any event, it is well settled that personal jurisdiction may be acquired over a party by his appearance or by effective service of summons. *In re M.W.*, 232 Ill. 2d at 426. Here, the record reflects that Henry was served by substitute service pursuant to section 2-203(a) of the Code of Civil Procedure (735 ILCS 5/2-203(a) (West 2010)). There is no indication in the record that Henry objected to the trial court's personal jurisdiction. Even assuming that there were deficiencies in service, section 2-301(a-5) of the Code of Civil Procedure specifically provides that a party forfeits all objections to the trial court's personal jurisdiction over that party by filing a responsive pleading or motion other than one seeking an extension of time to answer or otherwise appear. 735 ILCS 5/2-301(a-5) (West 2010). Candy filed a *pro se* jury demand on behalf of "Henry Blair, et al," and Henry and Candy filed a *pro se* response to Freedom Mortgage's motion for summary judgement supported by Henry's affidavit. Although the record does not indicate whether Henry was physically present in the courtroom alongside Candy, he participated in the proceedings before the trial court. See *Pecoraro v. Kesner*, 217 Ill. App. 3d 1039, 1043 (1991) (defendant's actions, "taken in their totality, show that he invoked the court's jurisdiction"). Therefore, Henry forfeited any purported objection to the court's personal jurisdiction over him. 735 ILCS 5/2-301(a-5) (West 2010).

¶ 17 Although Candy argues on appeal that Candieshoppe was not properly served, she fails to explain why service upon this entity was necessary, and does not argue this issue. A reviewing court is entitled to have issues clearly defined with relevant authority cited. *In re Marriage of Bates*, 212 Ill. 2d 489, 517 (2004). Therefore, this court finds that this issue is forfeited. See *Bates*, 212 Ill. 2d at 517 (declining to review issue when a party failed to provide the court with "an adequate basis to grant her relief on this issue").

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¶ 18 Candy next contends that the trial court erred in granting summary judgment to Freedom Mortgage when genuine issues of material fact remained as to whether she is the rightful owner of the property and the validity of Freedom Mortgage's deed to the property.

¶ 19 Summary judgment is proper where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). Although a nonmoving party is not required to prove her case at the summary judgment stage, she must nonetheless present a factual basis that would arguably entitle her to judgment; speculation or conjecture is insufficient to withstand summary judgment.

Village of Palatine v. Palatine Associates, LLC, 2012 IL App (1st) 102707, ¶ 42 (Mar. 16, 2012). The trial court's grant of summary judgment is subject to *de novo* review. *Outboard Marine Co. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 20 A forcible entry and detainer proceeding is a summary statutory proceeding to adjudicate and restore rights of possession and, as such, should not be burdened by matters unrelated to the issue of possession. *Sawyer v. Young*, 198 Ill. App. 3d 1047, 1053 (1990). The only questions that are to be answered in such a proceeding concern which party is entitled to immediate possession of the property and whether a defense that is germane to the action defeats the plaintiff's asserted right to possession. *First Illinois Bank & Trust v. Galuska*, 255 Ill. App. 3d 86, 90 (1993); see also 735 ILCS 5/9-106 (West 2010) (matters not "germane" to the purpose of the proceedings shall not be introduced). Claims that are germane to the issue of possession generally fall into one of four categories: (1) claims asserting a paramount right of possession; (2) claims denying the breach of any agreement vesting possession in plaintiff; (3) claims

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challenging the validity or enforceability of the document upon which plaintiff's right to possession is based; and (4) claims questioning a plaintiff's motivation for the bringing of the forcible action. *Sawyer*, 198 Ill. App. 3d at 1054

¶ 21 Although Candy argues before this court, as she did before the trial court, that Freedom Mortgage acquired its deed to the property through fraudulent mortgage practices, she fails to support that contention with any facts. A party's speculation and conjecture is insufficient to withstand summary judgment. *Village of Palatine*, 2012 IL App (1st) 102707, ¶ 42.

¶ 22 Candy next contends that a genuine issue of material fact remains as to whether she is the rightful owner of the property because she entered into a lease with an option to buy with the former landlord. We disagree.

¶ 23 Here, it is undisputed that Freedom Mortgage acquired the property after a mortgage foreclosure proceeding and that Freedom Mortgage did not enter into a lease with Henry and Candy. Although Candy averred that she had entered into a lease with an option to buy with the former owner, the record does not contain a copy of that lease or any indication that she exercised that option. Summary judgment is improper when reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact (*Espinoza v. Elgin, Joliet & Eastern R.R. Co.*, 165 Ill. 2d 107, 114 (1995)); this is not one of those cases. Based on this court's review of the record, we find that there is no genuine issue of material fact with regard to Freedom Mortgage's right to possess the property, and that Candy has failed to raise a factual issue which would pose a germane defense to defeat Freedom Mortgage's right of possession. See *First Illinois Bank & Trust*, 255 Ill. App. 3d at 94. Accordingly, the trial court did not err when it granted Freedom Mortgage's motion for summary judgment.

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¶ 24 The judgment of the circuit court of Cook County is affirmed.

¶ 25 Affirmed.