

2012 IL App (2d) 110629-U  
No. 2-11-0629  
Order filed May 8, 2012

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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DAVID JONES and JENNIFER JONES,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiffs-Appellees,	)	
	)	
v.	)	No. 11-LM-988
	)	
JOSEPH HILL and JOI HILL,	)	Honorable
	)	Robert G. Gibson,
Defendants-Appellants.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Hutchinson and Hudson concurred in the judgment.

**ORDER**

*Held:* (1) We corrected mathematical errors in the trial court's judgment; (2) despite defendants' contention that the circuit clerk destroyed certain exhibits, presumably photographs, they agreed to the trial court's accommodation of introducing the photographs via computer, and in any event the lack of such evidence was not the basis for the court's judgment; (3) as defendants' lease had expired, their request to be placed back in possession of the premises was moot.

¶ 1 Plaintiffs, David Jones and Jennifer Jones, filed a forcible entry and detainer complaint against defendants, Joseph Hill and Joi Hill. The trial court awarded plaintiffs possession and, later, awarded them \$8,995 in damages. Defendants appeal, contending that (1) the trial court's damages

award contains mathematical errors; (2) they were deprived of their opportunity to present evidence crucial to their case; and (3) the order for possession should be vacated. We affirm as modified.

¶2 The complaint alleged that defendants rented a house plaintiffs owned. The lease ran through May 2011, but, in March 2011, defendants stopped paying rent. The complaint sought possession of the premises and past-due rent. The trial court awarded plaintiffs possession and, by agreement, continued the matter for a trial on damages only. Defendants filed a counterclaim, alleging that flood damage, mold, and other defects rendered the premises uninhabitable. They also filed an answer and affirmative defenses, again raising the condition of the premises. The counterclaim contained a handwritten notation asking the trial court to vacate the order for possession and to dismiss that portion of the complaint without prejudice.

¶3 The court began a trial on the issue of damages. Much of the trial testimony centered on various problems with the house and plaintiffs' largely unsuccessful attempts to resolve them. The primary issue was what the trial court termed "water infiltration" and resulting mold. Defendants indicated that they wanted to present photographs. At defendants' request, the trial court continued the matter and allowed defendants to bring their laptop computer into the courthouse so that the court could view the photographs. When the trial resumed, Joseph Hill testified narratively while referring to the photographs.

¶4 In a memorandum decision, the trial court awarded plaintiffs \$5,670 in rent and late fees, plus attorney fees of \$2,954 and \$371 in court costs. The court found that "the property had an unusual number of defects throughout the leasehold term, which caused inconvenience and distress to Hill and substantial expense to Jones." The court further found that the parties attempted to work through the issues throughout 2010, as defendants paid rent each month but plaintiffs granted a one-

time rent concession when the flooding was particularly severe. The flooding problems appear to have abated somewhat after August 2010, but reoccurred in February 2011.

¶5 The court rejected defendants' counterclaim and affirmative defenses relating to the condition of the premises, finding that defendants refused to allow plaintiffs access to the premises in February 2011 so that they could attempt to remedy the problem. Defendants timely appealed.

¶6 Appearing *pro se*, as they have throughout the proceedings, defendants contend that (1) the trial court's damages calculation contains mathematical errors; (2) they were denied a fair trial when the circuit clerk's office destroyed some of their original photographs; and (3) the trial court should have vacated the judgment for possession after defendants agreed to move out. We consider these contentions in turn.

¶7 Initially, we note that defendants' brief, in violation of Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008), does not include a statement of the "facts necessary to an understanding of the case." While we would be within our discretion to strike defendants' brief and dismiss the appeal, we decline to do so. Their brief provides some factual background, and plaintiff's brief contains a sufficiently complete statement of facts that we are able to understand the issues.

¶8 Defendants first contend that the judgment contains "mathematical errors." They argue that the calculation of past-due rent does not include a setoff for defendants' security deposit, despite the parties' stipulation that defendants receive credit for it. Defendants also argue that the court improperly calculated the late fees. They do not challenge any other aspect of the damages award.

¶9 Plaintiffs concede that the judgment "does not appear" to credit defendants for their security deposit and that late fees should have been assessed at \$225. Plaintiffs suggest that we remand the cause to the trial court to correctly calculate the damages. However, to do so would cause the parties to incur additional expenses and would waste judicial resources. In light of the straightforward

nature of the calculations, pursuant to Illinois Supreme Court Rule 366(a)(3) (eff. Feb. 1, 1994), we modify the judgment ourselves. See *Abbott v. Fluid Power Pump Co.*, 112 Ill. App. 2d 303, 313-14 (1969) (Rule 366 permits reviewing court to correct mathematical errors in judgment).

¶ 10 The itemized damages are as follows:

March 2011 rent	\$1,800
April 2011 rent	\$1,800
May 1-15, 2011, rent	\$900
5% late fee	\$225
Attorney fees	\$2,954
Court costs	\$371
Credit for security deposit	(\$1,800)
TOTAL	\$6,250

¶ 11 Defendants next contend that they were deprived of an opportunity to completely present their case when the circuit clerk destroyed certain exhibits, presumably photographs, that they intended to introduce into evidence. Plaintiffs point out that it is the obligation of the parties, not the trial court or the circuit clerk, to produce evidence in support of their contentions. In any event, the trial court accommodated defendants' concerns by allowing them to bring their laptop computer to court so that the court could view the photographs. The court did ultimately admit into evidence the photographs from the computer. Other than the cryptic assertion that the photos on the computer "where [*sic*] not viewable by all so that key facts about the dates of when they were taken could not be discussed," defendants do not explain why this accommodation—to which they agreed—was not satisfactory. In any event, defendants cannot establish prejudice. The court found that the conditions of which defendants complained did exist. The court ruled against defendants because they refused

to allow plaintiffs access to the premises, not because it found that the premises were not damaged. Thus, the existence of more readily visible photographs would not have helped defendants on this issue.

¶ 12 Defendants finally contend that the trial court should have vacated the order for possession after they agreed to move out. This issue is moot. An issue is moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party. *In re Merrilee M.*, 409 Ill. App. 3d 983, 984 (2011). Here, it is undisputed that defendants have vacated the premises and do not desire to return. Moreover, the lease expired in May 2011. Thus, reversing the order granting plaintiffs possession would not provide defendants any relief. See *Poulos v. Reda*, 165 Ill. App. 3d 793, 798 (1987) (appeal from order of possession in forcible entry action was moot where lease had expired so that defendant could not be placed in possession).

¶ 13 In conclusion, we modify the trial court's damages award. In all other respects, we affirm the court's judgment.

¶ 14 Affirmed as modified.