

No. 1-12-1337

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

THE HABITAT COMPANY, as Property Manager for the) Appeal from
Chicago Housing Authority,) the Circuit Court
) of Cook County
Plaintiff-Appellant,)
)
v.) No. 09 M1 350632
)
TIMIKA WARFIELD,) Honorable
) Leonard Murray,
Defendant-Appellee.) Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred in the judgment.

ORDER

- ¶ 1 **Held:** The trial court's order granting defendant a new trial was affirmed where the record did not affirmatively show that the court abused its discretion when it determined that defendant was denied a fair trial when she was precluded from presenting relevant evidence that could have changed the jury's verdict.
- ¶ 2 This action was brought to recover possession of an apartment based on an alleged lease violation pursuant to the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2008)).

Following a trial, the jury returned a verdict in favor of plaintiff. Defendant filed a posttrial motion and the trial court granted defendant's request for a new trial. Plaintiff now appeals. For the reasons that follow, we affirm.

¶ 3 At the time this action began, defendant Timika Warfield resided in a Chicago Housing Authority (CHA) building at 1230 North Larabee Street, Apartment 810, Chicago, Illinois (the premises), pursuant to a written lease with the CHA. At that time, the premises were managed by H.J. Russell & Company.¹ On November 13, 2009, plaintiff issued defendant a Notice of Termination of Tenancy (the notice). The notice alleged that on September 9, 2009, defendant had an unauthorized occupant, James Hudson, residing in her unit and that on that same date Hudson possessed illegal drugs in defendant's unit and was arrested for possession of narcotics, in violation of defendant's lease.

¶ 4 On December 4, 2009, plaintiff filed the present action to recover possession of the premises. Prior to trial, plaintiff filed its fifth motion *in limine* seeking to exclude "any and all reference to the domestic disputes between the offender, James Hudson, and the defendant and/or any mention of the alleged Order for Protection obtained by the defendant against Hudson." The motion *in limine* referenced a dispute between defendant and Hudson in December of 2009 that resulted in defendant obtaining an order of protection against Hudson. The motion *in limine* also sought to bar evidence of defendant's contention that throughout their relationship, Hudson had

¹During the course of the litigation, defendant was relocated from to 2920 South State Street, Apartment 405, Chicago, Illinois. This CHA unit was managed by plaintiff and the complaint was amended accordingly.

choked and hit defendant, had threatened to kill her on a number of occasions and had harassed and assaulted defendant at her workplace. Plaintiff argued in its motion *in limine* that since Hudson was present in defendant's apartment when the search warrant was executed, the problems in their relationship had no bearing on the allegations in the notice and would unfairly prejudice the jury.

¶ 5 Defendant filed a response to plaintiff's motion *in limine*. Defendant asserted that plaintiff was required to prove that Hudson was an "unauthorized occupant" of her unit, which was defined as "a person residing in the household without CHA approval." Defendant argued that her relationship with defendant was relevant to the trier of fact's determination of whether Hudson was residing in defendant's unit at the time and that, in order to respond to the allegations in the notice, defendant needed to fully explain to the jury the nature of her relationship with Hudson.

¶ 6 Following a hearing, Judge Sheldon Garber granted defendant's fifth motion *in limine*. The court found that allowing testimony regarding instances of domestic violence would create sympathy for defendant.

¶ 7 The case proceeded to a jury trial before Judge Leonard Murray. Prior to the commencement of trial, Judge Murray reviewed the motions *in limine* with the parties because he had not been the judge who ruled on the pretrial motions. During a discussion about defendant's fifth motion *in limine*, Judge Murray clarified that defendant could testify to the general nature of the relationship (that Hudson was abusive), but that she could not provide additional information regarding domestic disputes or specific acts of domestic violence due to Judge Garber's prior

ruling.

¶ 8 The following evidence was presented to the jury at trial.²

¶ 9 Plaintiff's first witness was Chicago police officer Peter Stevens. Officer Stevens testified that he participated in executing the search warrant at the premises on September 9, 2009, and that Hudson was the target of that warrant. Officer Stevens and other police officers forced their way into the premises after knocking and receiving no response. The police found four adult males in the premises along with minor children. Hudson was in the unit and led Officer Stevens to a closet in the front of the apartment and told him there was a bag of marijuana in the pocket of a pair of jeans under a pile of clothes. The officer recovered what he believed to be a bag of marijuana and arrested Hudson for possession of cannabis.

¶ 10 Officer Stevens further testified that he and other officer recovered "proof of residency" documents from a bedroom on the left side of the hallway just past the bathroom. The police found a wallet, two credit cards, three Chicago Police Department inventory slips, one pay stub and an Illinois tax return. None of these documents contained an address that the officer could remember. Officer Stevens also testified that Hudson had an identification card that listed defendant's address, but that card was not produced at trial or mentioned in the police report. The officers also found male clothing in the apartment, which was photographed but not inventoried. None of those photos were produced at trial. Officer Stevens testified that he believed Hudson resided in defendant's unit because of the male clothing, the fact that police had

²These facts are taken from a Bystander's Report of Proceedings certified by the trial court.

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a search warrant for the premises targeting Hudson and because Hudson was present in the unit when the warrant was executed.

¶ 11 Officer Paul Galiardo also participated in the execution of the search warrant at defendant's unit. Officer Galiardo testified that he witnessed Officer Stevens recover what appeared to be marijuana from the closet. The officer knew that documents were recovered from the premises but he did not see the documents or their recovery. Officer Galiardo did not know if Hudson had an identification card listing his address as defendant's unit. He believed that Hudson lived in the unit because the officers had a search warrant for the premises targeting Hudson and because Hudson was in the unit when the warrant was executed.

¶ 12 Cathy Regan of the Illinois State Police crime lab testified that she received the items inventoried by Officer Stevens and that those items tested positive for 54.5 grams of cannabis.

¶ 13 Gwendolyn Hinton, the property manager for H.J. Russel, testified that defendant resided in the Premises at the time of the incident pursuant to a written lease. According to Hinton, the definition of "unauthorized occupant" was "a person residing in the household without CHA approval," as defined in the CHA Admission and Continued Occupancy Policy. Hinton understood that definition to mean that the person had to live in the unit.

¶ 14 Defendant testified on her own behalf that she currently lived in a CHA apartment in Chicago with her five children and one grandchildren. Before she moved to her current apartment in June of 2010, she lived in the premises with the same minor children. Before she moved to the premises, she lived in another apartment in the same building ("Unit 1401"). Defendant described the building in which the premises was located as a high-rise building that

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was part of the Cabrini-Green projects. She also testified that the closets in the front of the premises had curtains but no doors and that the bedroom on the left past the bathroom was her sons' room.

¶ 15 Defendant and Hudson met in 2000 or 2001 and dated for several years. Defendant was living in Unit 1401 during that time and she and Hudson did not live together. They had a child together in 2003 and their relationship ended that same year after Hudson became abusive.

Hudson had visitation with his daughter, but since 2005 visitation exchanges had been handled by Hudson's family members so that defendant did not have to see Hudson in person. Defendant explained that she had obtained some of Hudson's pay stubs and tax information as part of previous efforts to obtain child support from him.

¶ 16 Defendant testified that Hudson was not currently welcome in her home and that the last time he was welcome in her home as a guest was in 2006 or 2007. Defendant did not live with her or stay overnight on September 9, 2009, and she believed Hudson was living with his mother on that date. Hudson had never spent the night with defendant while she lived in the premises. Defendant further testified that she was at work on the evening of September 9 and that police were already at her building when she arrived home. When she got to her floor, defendant saw Hudson in handcuffs and ran up to fight him because she did not want him anywhere near her or the premises. Defendant spoke to the building's security officers the following day about how Hudson had got into the building. Defendant did not know how Hudson had gained access but she knew that he had friends who lived in the building.

¶ 17 Defendant also testified that Hudson had never lived or resided in the premises, never had

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keys to the premises and never kept any of his possessions in the premises. Defendant had not given her new address to Hudson and he had not been to her new apartment.

¶ 18 Defendant's daughter, 17 year-old Jacquice Abron, testified that she was currently living with her mother, siblings and son in defendant's new apartment and that she lived with the same family members the premises. No one else had ever lived with her and her family. Abron testified that Hudson was her sister's father and that she used to see him two to three times a week out front or on different floors of the building in which the premises were located. Abron testified to the following events on September 9, 2009. She came home from school that day and went to the ninth floor of the building to pick up her son from a babysitter. Abron saw Hudson in the hallway and he said hello to her and then she went home. Hudson knocked on the door at 3:30 p.m. and said he wanted to come inside and see his daughter. Abron allowed Hudson in because she was afraid to say no. She explained that her mother had told her not to let Hudson into the premises and she did not want to let him in because she was afraid Hudson would abuse her as he had done to her mother. Abron acknowledged that she did not ask Hudson to leave or call the police. After he entered the premises, Hudson went to the living room and sat on the couch. Abron went to her bedroom to get a diaper and, as she was walking down the hallway, she saw Hudson in the entry area. She thought Hudson was leaving but instead he walked back to the living room. Abron went to her bedroom and she did not hear anyone else enter the apartment. The next thing she remembered was a banging on the door and male voices saying it was the police. She went to the door and the police entered the premises and arrested Hudson. Abron testified that Hudson did not live with her family in the premises and that he did not keep

any belongings there. Hudson also did not have a have a key to the premises, which was why she had to let him in on September 9, 2009.

¶ 19 Defendant's son, 16 year-old Gerald Huntley, testified that he formerly lived in the premises with defendant and his brother, three sisters and a nephew. He also testified that no one else had lived with him and his family. Huntley was not home on September 9 when the search warrant was executed. Huntley testified that Hudson was abusive to his mother. Huntley also testified that he knew Hudson did not live in the premises because he had never seen Hudson there and because Hudson did not keep any belongings in the premises.

¶ 20 Before resting her case, defendant made an offer of proof regarding the domestic violence in her relationship with Hudson. The offer of proof provided that defendant and Hudson engaged in a three-year relationship, during which Hudson became physically, emotionally and verbally abusive. The first incident occurred in 2002, when Hudson locked defendant out of her own home because he was with another woman. Hudson later forced defendant to have intercourse with him, which resulted in defendant becoming pregnant with Hudson's child. Hudson also choked defendant, threatened her life and harassed her at work. Defendant successfully broke off her relationship with Hudson after the couple's daughter was born in 2003 and Hudson went to jail shortly thereafter. Defendant did not want to see Hudson after he was released from jail and she therefore arranged for Hudson's mother and sister to handle visitation exchanges. Defendant did not encounter Hudson for several years and he was not welcome in her home during that time. In December 2009, Hudson attempted to enter the premises without her invitation or consent. He knocked at the door and then forced his way into the premises. Hudson physically

assaulted her and was ultimately arrested for domestic battery. Defendant obtained an order of protection against Hudson as a result of this incident and subsequently moved to a new home, the location of which she did not disclose to Hudson.

¶ 21 The jury returned a verdict in favor of plaintiff. Defendant filed a posttrial motion asking for judgment notwithstanding the verdict or, alternatively, for a new trial due to erroneous pretrial rulings, including the order granting plaintiff's fifth motion *in limine*. The court denied defendant's request for judgment notwithstanding the verdict, stating that although the court might not have reached the same conclusion, it could not say that there was insufficient evidence to support the jury's verdict. However, the court granted defendant's request for a new trial. The court found that defendant had been precluded from presenting evidence that might have led to a different outcome. The court agreed with Judge Garber that the order of protection from December 2009 was properly excluded because it occurred after the case against defendant was filed. However, the court found that any prior instances of domestic violence should have been admissible at trial because the case was based largely on circumstantial evidence and the nature of the relationship between defendant and Hudson was relevant and could have made a difference in the outcome of trial. Plaintiff now appeals that ruling.

¶ 22 A trial court may grant a motion for a new trial where the jury's verdict is against the manifest weight of the evidence or where the losing party has been denied a fair trial. See *Reidelberger v. Highland Body Shop, Inc.*, 83 Ill. 2d 545, 549 (1981). The purpose of a motion for new trial is to give the trial court the opportunity to correct any errors it made during trial. *Gersch v. Kelso-Burnett Co.*, 272 Ill. App. 3d 907, 098 (1995). Great deference is generally

given to a trial court's ruling on a motion for a new trial. *Reidelberger*, 83 Ill. 2d at 548. A motion for a new trial is addressed to the sound discretion of the trial court, and its decision will not be disturbed absent an affirmative showing in the record that the court clearly abused its discretion. *Pecaro v. Baer*, 406 Ill. App. 3d 915, 918 (2010); *Winters v. Kline*, 344 Ill. App. 3d 919, 925 (2003). An abuse of discretion occurs when the court's ruling is arbitrary, fanciful or unreasonable, or where no reasonable person would adopt the court's view. *TruServ Corp. v. Ernst & Young LLP*, 376 Ill. App. 3d 218, 227 (2007). A reviewing court will not reverse a trial court's ruling on a motion for a new trial merely because it would have reached a different decision on the facts. *Reidelberger*, 83 Ill. 2d at 548. The rationale underlying this principle is that the trial court, and not the reviewing court, is in the best position to consider errors that occurred, the fairness of trial to all parties and whether substantial justice was accomplished. *Winters*, 344 Ill. App. 3d at 925.

¶ 23 Plaintiff contends that the trial court abused its discretion by granting defendant's request for a new trial. Plaintiff claims that the jury's verdict was based on the evidence and that there was no error in Judge Garber's decision to grant plaintiff's fifth motion *in limine*. Plaintiff asserts that the motion *in limine* was properly granted because whether defendant and Hudson had domestic disputes was not probative on the question of whether Hudson resided in the premises and would create unfair sympathy for defendant.

¶ 24 We first note that the issue in this case is not whether the jury's verdict was supported by the evidence. The court denied defendant's request for judgment notwithstanding the verdict because it could not say that there was insufficient evidence to support the jury's verdict. Rather,

the court granted defendant's request for a new trial because it concluded that defendant was denied a fair trial when she was precluded from presenting relevant evidence regarding her relationship with Hudson that could have changed the outcome of the trial. Therefore, the question before this court is whether the record clearly shows that the court's determination in this regard was an abuse of discretion. We find that it was not.

¶ 25 In order to prevail at trial, plaintiff was required to prove that Hudson was an "unauthorized occupant" of the premises. The definition of unauthorized occupant used at trial was "a person residing in the household without CHA permission." The definition of "reside" used at trial was to "live, dwell, abide, sojourn, stay, remain, lodge."

¶ 26 Thus, the issue at trial was whether Hudson lived or resided in the premises at the time he was arrested. This was a question of fact and plaintiff's evidence on this issue was not strong and was largely circumstantial. In response to the allegations contained in the notice, defendant testified that she and Hudson never lived together and that their relationship ended in 2003 after Hudson became abusive. In order to support this claim, defendant sought to introduce evidence regarding the nature of her relationship with Hudson, including instances of domestic violence. According to the offer of proof, defendant would have testified that Hudson was verbally, emotionally and physically abusive, that he forced defendant to have sexual intercourse with him which led to her becoming pregnant, and that Hudson choked defendant, threatened her life on a numerous occasions and assaulted her at work. Under these circumstances, the trial court could have reasonably concluded that the evidence defendant sought to introduce was relevant in that it could have substantiated defendant's claims that she and Hudson never lived together, that their

relationship ended in 2003 after Hudson became abusive and that Hudson was not welcome in defendant's home thereafter. The court could have also reasonably concluded that defendant was denied a fair trial when she was precluded from presenting this evidence because it could have changed the jury's verdict. This record does not affirmatively show that the trial court's decision to grant a new trial was an abuse of discretion.

¶ 27 Plaintiff nevertheless claims that Hudson was allowed to testify that Hudson abused her and that whether or not defendant and Hudson had domestic disputes a number of years before Hudson is alleged to have resided in the premises was not probative on the ultimate question before the jury. Plaintiff further claims that for this reason Judge Garber's ruling on the motion *in limine* was not an abuse of discretion and therefore the trial court's order granting defendant a new trial on that basis should be reversed. Plaintiff also asserts that even if Judge Garber's ruling on the motion *in limine* was error, the error was harmless and did not change the outcome of trial.

¶ 28 Contrary to plaintiff's assertion, our focus is on whether the order granting a new trial was an abuse of discretion and not whether Judge Garber's ruling on the motion *in limine* was erroneous. In fact, the trial court did not overrule or alter the ruling on the motion *in limine* but instead adopted and enforced it throughout the course of trial. However, the trial court also had the opportunity to observe the trial and the evidence that was presented and to consider how that ruling affected the jury's verdict and ultimately defendant's right to a fair trial. The rationale underlying the rule that a reviewing court gives deference to a trial court's ruling on a motion for a new trial has been summarized in the following manner:

" Necessarily, the trial court should have the discretion to decide with finality

whether a new trial is necessary in the interests of justice, as it is in his power to observe the multiplicity of situations as they arise during the progress of the trial and is in a better position to weigh the effect upon the jury and to judge whether or not substantial justice had been done.' " *Brown v. Johnson*, 60 Ill. App. 3d 76, 78 (1978) (quoting *Josate v. Mack*, 302 Ill. App. 246, 248 (1939)).

This is precisely what occurred in this case. After observing the trial and considering the circumstantial evidence that was presented, the court concluded that the proposed evidence was relevant and could have changed the outcome of the trial. In so doing, the judge who observed the trial weighed the probative value of the proposed evidence versus the risk that it would cause sympathy for defendant. The court concluded that defendant should have been allowed to introduce the proposed evidence and that defendant was denied a fair trial when she was precluded from doing so.

¶ 29 Although plaintiff claims that the proposed evidence contained in defendant's offer of proof was too remote, conclusory and insufficient to have changed the jury's verdict, the trial court could have reasonably come to the opposite conclusion. The purpose of an offer of proof is to disclose to the trial judge and opposing counsel the nature of the offered evidence and to enable a reviewing court to determine whether exclusion of the evidence was proper. *People v. Andrews*, 146 Ill. 2d 413, 421 (1992). An offer of proof is adequate if it makes known to the trial court, with particularity, the substance of the witness' anticipated testimony. *Andrews*, 146 Ill. 2d at 421. The offer of proof in this case indicated what defendant would testify to with specificity and we find that the offer of proof was sufficient for the trial court to make its ruling on the

motion for a new trial and for this court to review the trial court's determination. Although the instances of domestic disputes and violence occurred a number of years before Hudson is alleged to have resided in the unit, those instances were the basis upon which defendant claimed she ended her relationship with Hudson. Thus, allowing defendant to testify to those instances could have explained and substantiated defendant's claims that the relationship ended and that Hudson did not reside in the premises.

¶ 30 Under these circumstances, we cannot say that it was "arbitrary, fanciful or unreasonable" for the trial court to conclude that the proposed evidence could have altered the jury's verdict and that defendant was denied a fair trial when she was precluded from presenting that evidence. Thus, the record does not affirmatively show that the trial court's order granting defendant a new trial was an abuse of discretion.

¶ 31 Defendant also requests that we review additional alleged errors, including the court's order granting plaintiff's third motion *in limine* and denying defendant's motion for a directed verdict based upon improper service of the notice. Defendant contends that the scope of our review is not limited to the trial court's order granting a new trial but, instead, extends to all rulings of the lower court. However, defendant offers no analysis or citation to relevant authority in support of her claims of error. See 210 Ill. 2d 341(h)(7) (A point raised but unsupported by argument or citation to authority is waived); *Express Valet Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007) (a point raised but unsupported by reasoned argument or citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is therefore waived). Further, we need not consider either issue because we affirm the trial court's order

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granting defendant a new trial.

¶ 32 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 33 Affirmed.