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2013 IL App (3d) 120726-U

Order filed August 15, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE BANK OF NEW YORK MELLON,) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
Plaintiff-Appellee,) Will County, Illinois,
)
v.) Appeal No. 3-12-0726
) Circuit No. 10-LM-2784
TIMOTHY ROBINSON and)
SHANA ROBINSON,) Honorable
) M. Thomas Carney,
Defendants-Appellants.) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err when it granted plaintiff's motion to extend the court's order for possession.
- ¶ 2 Following the trial court's "Order Approving Report of Sale and Distribution, Confirming Sale and Order of Possession" (foreclosure judgment), plaintiff filed a forcible entry and eviction action (eviction action) against defendants. The court granted the motion and entered an order for possession, valid for 120 days (see 735 ILCS 5/9-117 (West 2010)). After the 120 days had expired,

plaintiff filed a motion to extend the order for possession. The court granted the motion. Defendants, acting *pro se*, filed two motions attacking the court's order granting the extension. At a hearing, the trial court denied the motions. Defendants appeal.

¶ 3

FACTS

¶ 4 At the time of this appeal, defendants resided on a piece of property in Joliet, although they were not the record owners. The property was subject to foreclosure proceedings beginning with a foreclosure judgment in 2009. The plaintiff acquired the rights to the property and brought an eviction action against all occupants of the property, including defendants. The court entered an order for possession in favor of the plaintiff, valid for 120 days (see 735 ILCS 5/9-117 (West 2012)).

¶ 5 More than 30 days after the order for possession, defendants filed a petition to vacate it. 735 ILCS 5/2-1401 (West 2012). The trial court denied the petition and, on appeal, this court affirmed. *JP Morgan Chase Bank, NA v. Robinson*, No. 3-10-0822 (2012) (unpublished order under Supreme Court Rule 23). While the appeal was pending, plaintiff did not enforce the order for possession, and the 120 days lapsed. After the appeal, defendant moved for an extension of the order for possession. 735 ILCS 5/9-117 (West 2012). On May 30, 2012, the court granted the motion.

¶ 6 Defendants then filed the two motions directly at issue in this appeal: a motion to "Reconsider Decision on May 30, 2012" and a motion to "dismiss Plaintiff's Complaint and Eviction case with prejudice." After a hearing, the trial court denied defendants' motions. Defendants appeal.

¶ 7

ANALYSIS

¶ 8 We construe defendants' motions together as a motion to reconsider the court's grant of an extension of the order for possession. As defendant stated in court, "I know you can't do anything in [the underlying] foreclosure, but I do see right here that, under Illinois Code 735 ILCS 5/[/]9-117,

that we can bring another legal or applicable claim to this Court."

¶ 9 Section 9-117 of the Code of Civil Procedure governs extension of orders for possession. 735 ILCS 5/9-117 (West 2012). From what this court can glean from defendants' written motions and the transcript of the hearing on those motions, defendants were asking the court to reconsider its grant of an extension of the order for possession. We therefore conclude that the present appeal is taken from the trial court's denial of defendants' motion to reconsider.

¶ 10 This court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) because the court's order granting plaintiff's motion for extension is a final judgment. On review we must determine whether the trial court's decision to grant the motion for extension was against the manifest weight of the evidence. See *S & D Service, Inc. v. 915-925 W. Schubert Condominium Ass'n*, 132 Ill. App. 3d 1019 (1985) (applying manifest weight of the evidence standard in reviewing trial court's decision to grant order for possession).

¶ 11 Section 9-117 requires a trial court to grant a motion for extension of an order for possession unless the defendant establishes at least one of the following: (1) that the tenancy has been reinstated; (2) that the breach upon which the judgment was issued has been cured or waived; (3) that the plaintiff and defendant entered into a postjudgment agreement whose terms the defendant has performed; or (4) that other legal or equitable grounds exist that bar enforcement of the judgment. 735 ILCS 5/9-117 (West 2010).

¶ 12 In the present case, defendants have not established any of the four section 9-117 defenses. *Id.* At the hearing on the motion to reconsider, defendants argued that other legal or equitable grounds existed that should bar enforcement of the judgment. In support of that argument, defendants attempted to present evidence that the underlying judgment of foreclosure was

illegitimate. The trial court dismissed that argument, finding that principles of finality prevented it from reevaluating the foreclosure judgment. Defendants presented no other evidence to establish a section 9-117 defense, and the court denied their motion to reconsider. We find that the trial court's decision to grant plaintiff's motion for extension was not against the manifest weight of the evidence.

¶ 13 In their appellant's brief, defendants claim that the hearing on the motion to reconsider was conducted in a manner that violated the defendants' due process right to present a defense. In support of this claim, defendants cite to a decision of the Court of Appeals of Indiana, *Reynolds v. Capps*, 968 N.E.2d 789 (2012). That case involved an appeal from an eviction order entered against defendant Reynolds. The eviction order was entered after a hearing conducted by a court reporter during which Reynolds was not given the opportunity to present evidence. The court of appeals held that the hearing violated Reynolds' right to due process and reversed the eviction order. *Id.*

¶ 14 The *Reynolds* case is distinguishable from the present facts. Unlike *Reynolds*, the hearing in the present case was before a judge. Also unlike *Reynolds*, the defendants here were given the opportunity to present a defense. After hearing defendants describe their evidence, the trial court determined that the evidence was irrelevant to establishing a section 9-117 defense and declined to consider the evidence further. The trial court's decision to limit defendants' presentation of evidence the court found irrelevant is different than a hearing in which the defendant is not permitted to present any evidence. Defendants' right to due process was not violated.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.