2015 IL App (1st) 140533-U

SECOND DIVISION
May 12, 2015

No. 1-14-0533

MICHAEL McDONALD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	
	)	
SABEEL EL,	)	No. 13 M5 1826
	)	
Intervener-Appellant	)	
	)	
(Felicia Muhammad, Unknown Occupants,	)	Honorable
	)	Russell W. Hartigan,
Defendants).	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

ORDER

¶ 1 Plaintiff, Michael McDonald, filed a forcible entry and detainer action against his tenant, Felicia Muhammad, and any unknown occupants for an apartment unit located at 4525 Rumsey, Oak Lawn, Illinois. Appellant, Sabeel El, alleging that he had an interest in the action as Muhammad's sublessee, was permitted to intervene in the action. On January 10, 2014, after a bench trial, the trial court entered an order of possession in favor of plaintiff.

¶ 2 El, acting *pro se,* filed numerous motions in the trial court prior to and after entry of the order of possession. El filed a notice of appeal, *pro se*, from the trial court's January 10, 2014 order seeking relief from: the striking of his jury demand, denial of his motion for substitution of judge, and denial of his "motion for extension of time to hire an attorney."[1]

¶ 3 We find, as a threshold matter, that the record on appeal is insufficient to allow review of the claimed errors. As appellant, El has the responsibility to present us with a sufficiently complete record of the proceedings to support his claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of an adequate record, we will presume the court's findings conformed to the law and had a sufficient factual basis. *Id*. Any doubts which arise from the absence of a sufficient record will be construed against the appellant. *Id*. While "*pro se* litigants are held to a lesser standard in complying with the rules for appealing to the appellate court," all litigants must provide us with an adequate record to allow for a proper review of the issues raised on appeal. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993).

¶ 4 Here, the record on appeal does not contain complete transcripts of the hearings at issue and is missing several court orders. Attached to El's appellant brief are 11 non-consecutive pages from a transcript of the January 10, 2014 bench trial. The entire transcript of the bench trial appears to be at least 74 pages long. Plaintiff-appellee filed a supplemental record which contains several of the missing court orders as well as a partial transcript consisting of three separate non-consecutive pages from the January 10, 2014 bench trial. We cannot give

[1] To the extent that El asserted in his notice of appeal that he sought relief from the denial of his "motion for extension of time to hire an attorney," because no such argument is raised in his appellate brief, it is therefore deemed waived. *Kincaid v. Ames Department Stores, Inc.*, 283 Ill. App. 3d 555, 570 (1996) (an issue raised in a notice of appeal but not argued in an appellate brief is deemed waived).

consideration to the partial transcripts attached to El's appellate brief and the three pages appellee included in the supplemental record. First, the partial transcript attached to El's brief was not made part of the certified record on appeal. The record cannot be supplemented through attachments to El's appellate brief and we "may not consider documents that are not part of the certified record." *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14 (2009); see also *In re Parentage of Melton*, 321 Ill. App. 3d 823, 826 (2001). Second, both sets of the partial transcripts consist of non-consecutive pages that do not give us an understanding of the context of the statements reflected therein and they do not afford us a complete picture of the trial court proceedings. It is clear that a complete transcript of the proceedings was prepared and the parties chose not to provide us with those transcripts in their entirety as part of the official record on appeal. Therefore, as discussed below, we find that the incomplete appellate record substantially hinders our ability to conduct a meaningful review of the trial court's findings.

¶ 5 El's first argument on appeal is that the trial court erred in denying his petition for substitution of judge for cause pursuant to section 2-1001(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(3) (West 2012)) and in failing to refer ruling on this motion to another judge. In his motion, El alleged that the trial judge had a personal interest in the litigation and displayed prejudice against him in prior hearings. On January 10, 2014, after hearing, the trial court denied El's motion for substitution of judge as "not timely."

¶ 6 A motion for substitution of judge for cause must be brought at the "earliest practical moment" and the movant is not automatically entitled to have another judge hear the motion. See *In re Estate of Wilson*, 238 Ill. 2d 519, 553-54 (2010). "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." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). Here, the record on appeal does not contain a transcript or a substitute report of proceedings (bystander's report) pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005) of the January 10, 2014 hearing on El's motion for substitution of judge or the prior hearings that El referenced in his motion. Without transcripts or a report of the proceedings we cannot know exactly what transpired at the hearings in question, what arguments were presented to the court or what the reasoning of the trial court was in denying El's motion. Therefore, under *Foutch*, we must presume that the trial court acted in conformity with the law and had a sufficient basis in the record for its ruling denying El's motion for substitution of judge for cause. *Foutch*, 99 Ill. 2d at 391-92.

¶ 7 Next, El asserts that the trial court erred in striking his jury demand. Plaintiff moved to strike El's jury demand asserting that El did not have a right to demand a jury trial because: the right to a jury trial is not preserved in every forcible entry and detainer case; the dispute in this case only involved matters of law; and Muhammad's lease had expired prior to El's sublease so he could not reasonably claim possession. After hearing, the trial court granted plaintiff's motion and struck El's jury demand. Although a later written order of the trial court indicates that the trial court concluded that El "was not entitled to a jury," we are not otherwise informed by way of transcripts, a substitute report of proceedings, or the arguments of the parties at the trial court's hearings on plaintiff's motion as to the reasoning of the trial court. In his appellate brief, El included a statement attributed to the trial court ("I talked to the powers to be as far as the administration as far as jury demands, and it is my understanding that a jury demand is not affordable [*sic*] to an intervening party. So a jury demand is denied") that cannot be placed in

context or otherwise explained or evaluated for purposes of appellate review. Without a transcript or a bystander's report for the hearing on plaintiff's motion to strike El's jury demand, we cannot evaluate El's claim and we must presume that the trial court's order conformed to the law. *Id*. at 392.

¶ 8 Lastly, El contends that the trial court erred in denying his motion to vacate the "void" order of possession. Although El did appeal from the January 10, 2014 order of possession, he did not specifically raise relief from the order, on this basis, in his notice of appeal. However, a claim that a judgment of the trial court is void "may be raised at any time, either directly or collaterally." *People v. Brown*, 225 Ill. 2d 188, 195 (2007); see *People v. Thompson*, 209 Ill. 2d 19, 27 (2004). Therefore, we will address El's argument that the order of possession is void.

¶ 9 On appeal, El argues that the order of possession is void because plaintiff's action did not put forth a "justiciable question" before the trial court because El did not have knowledge of the proceedings and was never served; therefore the trial court had no jurisdiction to enter the order of possession. El further argues that the trial court "did not look at the [d]efendant's affidavits nor does the record reflect any evidence" in denying the motion to vacate. El's argument for reversal of the order of possession on the ground that it is void cannot be addressed because, again, the record on appeal does not include a complete transcript or a bystander's report from the January 10, 2014 trial nor a transcript or bystander's report from any other hearing. Any argument El advances relating to "lack of jurisdiction" due to his lack of knowledge of the proceedings is belied by his participation in the proceedings. Therefore we are without a sufficient record to determine whether the trial court considered El's evidence, what weight it gave to his arguments and its reasoning in denying El's motion to vacate. Accordingly, we must presume that the trial

court had a sufficient factual and legal basis for its ruling. *Rock Island County*, 242 Ill. App. 3d at 462.

¶ 10 From our review of the appellate submissions and the record, it is clear that any issue relating to the trial court's findings and the basis for its legal conclusions cannot be reviewed for error, because of an inadequate record of proceedings. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). We cannot make assumptions regarding the circumstances of the trial court's rulings and the intent of the trial court in entering its orders. *Webster*, 195 Ill. 2d at 435. We are not allowed the option to re-open the record and substitute our judgment for that of the trial judge without having a complete record of what took place in the trial court. Accordingly, without a sufficient record from which to review the claimed error, we have no basis to conclude that the trial court erred in rulings. Therefore, we affirm the judgment of the trial court.

¶ 11 Affirmed.