2015 IL App (1st) 141310-U

FIRST DIVISION
October 5, 2015

No. 1-14-1310

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY OF CHICAGO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 M1 401090
	)	
JAMES PATRICK McGOWAN,	)	Honorable
	)	Pamela Hughes Gillespie,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the circuit court's denial of defendant's motion to vacate an order staying the demolition of his garage for 30 days where the court did not err in denying him a continuance and refusing his request for a jury trial.

¶ 2 Defendant James McGown appeals, *pro se,* from a trial court order denying his motion to vacate an order stating that the authority of plaintiff City of Chicago (the City) to demolish his garage remained in effect and allowing him 30 days to remove his personal property from the

garage. On appeal, defendant appears to contend that the trial court erred in denying him a continuance to obtain counsel, and in refusing his request for a jury trial. We affirm.

¶ 3 On April 9, 2013, the City filed a complaint for equitable and other relief against defendant alleging 10 violations of the building code with respect to his three-unit residential building at 5617 West 64th Street in Chicago. The violations included allegations that windows, a fence, a shed, and porches were in disrepair. As relevant to this appeal, the complaint alleged that defendant's detached garage was in danger of collapse where the roof was sagging severely with side walls bowed outward, roofing torn, and loose and missing shingles. The complaint also stated the residence in question did "not comply with the minimum standards of health and safety set forth in the Building Code." As relief, the City sought, in part, an order authorizing it to demolish the premises pursuant to section 11-31-1(a) of the Illinois Municipal Code (Code) (65 ILCS 5/11-31-1(a) (West 2012)), if necessary.

¶ 4 Litigation commenced, and defendant was, at times, represented by counsel Dirk Van Beek. On December 2, 2013, the court entered an order authorizing the City to immediately demolish defendant's garage as it was dangerous and hazardous to the public health, safety, and welfare, and was an ongoing nuisance. The record shows that when the streets and sanitation department of the City went to the subject property to demolish the garage, it was filled with defendant's personal property. Therefore, on February 10, 2014, the trial court entered an order stating that the City's authority to demolish the garage remained in full effect, but stayed the demolition for 30 days to allow him to remove his personal property. Following the 30-day period, the City was authorized to remove and dispose of defendant's personal property.

¶ 5 On March 12, 2014, defendant filed a timely motion, through his attorney Van Beek, to vacate the February 10 order. In it, defendant alleged that his attorney was unable to appear in

court on February 10 due to certain family health issues that arose, and that he had a meritorious defense to the City's request for demolition.

¶ 6 On March 31, 2014, the day of the hearing on the motion to vacate, Van Beek sought and was granted leave to withdraw as counsel. According to the memorandum of orders, defendant made an oral request at the hearing for a continuance to allow him to find another attorney, which the trial court denied. The memorandum of orders also indicated that defendant argued he had plans to repair the garage and had the funds to do so, but the City refused to issue him a permit to only repair the garage. The court denied defendant's motion to vacate the February 10 order, and held that the City's authorization to demolish the garage remained in full force and effect.

¶ 7 On April 30, 2014, defendant filed a *pro se* notice of appeal, stating that he was appealing from the March 31, 2014 order denying his motion to vacate. In his notice of appeal, defendant indicated he was seeking relief from this court in the form of a "hearing by jury," and "cost for motion to vacate and all related cost for lack of hearing with plaintiff counsel present."

¶ 8 On appeal, defendant, *pro se*, appears to contend that he had a constitutional right to counsel that was infringed when the court denied his motion for a continuance on March 31, 2014. Defendant also appears to contend that the trial court denied him his right to a jury trial.

¶ 9 As an initial matter, we note that the circuit court's March 31, 2014 order from which defendant appeals is not a final order because it did not dispose of all the claims in this case. However, an order authorizing demolition of a property is generally injunctive in nature (*City of Chicago v. Ramirez*, 366 Ill. App. 3d 935, 943 (2006)), and Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), permits an appeal from any interlocutory order granting,

modifying, refusing, dissolving, or refusing to dissolve or modify an injunction. Accordingly, this court has jurisdiction over defendant's appeal from the trial court's March 31, 2014 order.

¶ 10 In addition, the City correctly observes that defendant's *pro se* appellate brief is significantly deficient under Illinois Supreme Court Rule 341(h)(3),(7) (eff. Feb. 6, 2013), where it did not clearly define the issues, cite to authority, or provide a cohesive argument. Therefore, defendant's appeal is subject to dismissal. See *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 20 (striking the plaintiff's brief and dismissing his appeal where it failed to comply with Supreme Court Rule 341). Notwithstanding, we decline to penalize defendant so severely for these lapses, particularly where we have a sufficient response brief from the City, and thus consider the merits of the case. *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 692 (1992).

¶ 11 To the extent defendant contends that he had a constitutional right to counsel that was infringed when the trial court denied his motion for a continuance, we find said contention without merit. The sixth amendment to the United States Constitution guarantees the right to counsel "in all criminal prosecutions." U.S. Const., amend. VI. In civil cases, no such constitutional right exists. See, *e.g.*, *Ratcliffe v. Apantaku*, 318 Ill. App. 3d 621, 627 (2000) (stating, "an individual in a civil action has no right to counsel under the Illinois Constitution"). Here, the proceedings were civil in nature as the City's complaint was brought, in relevant part, under sections 11-13-15, 11-31-1, 11-31-2 of the Code (65 ILCS 5/11-13-15, 11-31-1, 11-31-2 (West 2012), and thus defendant had no right to counsel. See, *e.g.*, *Smith v. Power*, 346 F.3d 740, 743 (7th Cir. 2003) (stating that section 11-31-1 of the Code authorizes "civil proceedings to demolish unsafe buildings").

¶ 12 As the City indicates in its brief, the proper inquiry centers not on any entitlement to counsel, but on the court's denial of defendant's request, first made at the hearing on his motion

to vacate, to have the matter continued. Section 2-1007 of the Code of Civil Procedure provides the trial court with discretion to grant a continuance "[o]n good cause shown *** and on just terms." 735 ILCS 5/2-1007 (West 2012). A litigant does not have an absolute right to a continuance (*K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22), and this holds true even when a continuance is sought based on the need to retain counsel (*Thilman & Co. v. Esposito*, 87 Ill. App. 3d 289, 294 (1980)). The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court and will not be disturbed on appeal unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion. *K & K Iron Works, Inc.*, 2014 IL App (1st) 133688, ¶ 22.

¶ 13 Where a trial court's ruling is discretionary, that ruling will not be reversed absent a sufficient record showing the basis for the trial court's decision. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). The appellant has the burden to provide us with a sufficient record to support the claims of error. *Id*. Without such a record, it is presumed that the order entered by the trial court conforms to the law and has a sufficient factual basis. *Id*. Here, the trial court held a hearing on March 31, 2014, however, the record does not contain any transcripts from the hearing, nor does it contain a substitute report of proceedings pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Without the report of proceedings or bystander's report, we cannot know what defendant said in requesting the continuance, or the court's reason for rejecting the request. In fact, the memorandum of orders only states that "[defendant] wants > time for [a] lawyer." Therefore, under *Foutch*, we must presume that the trial court acted in conformity with the law and had a sufficient basis for its ruling. *Foutch*, 99 Ill. 2d at 391-92.

¶ 14 Defendant next appears to contend that the trial court erred by not holding a jury trial in this matter. A party's right to a jury trial is reviewed *de novo*. See *People v. Bracey*, 213 Ill. 2d

265, 270 (2004) (reviewing the question of whether the defendant voluntarily waived his right to a jury trial *de novo*).

¶ 15 As the City correctly observes, although defendant states in his brief that he "requested [a] trial by jury," there is nothing in the record supporting this declaration. Moreover, on defendant's own account, the request was for a hearing before a jury on his motion to vacate the demolition order "with a new attorney present," and the request was made on the date of that motion hearing.

¶ 16 Nevertheless, defendant did not have a right to a jury trial because the Illinois Constitution does not guarantee such right in any action that did not exist at common law. Ill. Const. 1970, art. I, § 13 ("[t]he right of trial by jury as heretofore enjoyed shall remain inviolate"); *City of Bloomington v. Bible Truth Crusade*, 197 Ill. App. 3d 793, 796 (1990). Common law did not recognize the right to a jury trial in actions involving equity. *Id*. In addition, special or statutory proceedings that were unknown to common law do not fall within this constitutional provision. *Id*. at 796-97. An action to demolish a building under section 11-31-1 of the Code is both an action in equity and an action that was nonexistent at common law; therefore, no right to a jury exists in this matter. *Id*. at 797.

¶ 17 Defendant also recites various other grievances in his briefs that are not related to the underlying matter at issue here, *i.e.*, the approved demolition of a garage. Thus, we need not and will not address those unrelated arguments.

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 19 Affirmed.