2015 IL App (1st) 142073-U

No. 1-14-2073

FIFTH DIVISION
September 30, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SERENA WALKER and TEVONTAE ALDRIDGE,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County.
	)	
v.	)	No. 12 M1 712993
	)	
FRANCES BENGUCHE and SOLOMON BENGUCHE,	)	The Honorable
	)	Leonard Murray,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Palmer concurred in the judgment.

O R D E R

¶1 *HELD*: Plaintiffs failed to demonstrate an express tenancy agreement existed between the parties. Although the parties' behavior suggested a course of conduct implying a tenancy agreement for a period of time, the evidence did not support a tenancy agreement at the time plaintiffs were prevented from gaining access to the subject premises, thus the circuit court's judgment in favor of defendants on the wrongful eviction claim was not against the manifest weight of the evidence.

¶2 Following a bench trial, the circuit court found in favor of defendants, Frances Benguche and Solomon Benguche, on a wrongful eviction action filed by plaintiffs, Serena Walker and Tevontae Aldridge. On appeal, plaintiffs contend the circuit court's judgment was against the manifest weight of the evidence, which demonstrated the parties had an express or implied oral tenancy agreement and plaintiffs were wrongfully prohibited from gaining access to the rental unit. Defendants have not filed a brief in this matter. Accordingly, we consider this appeal on plaintiffs' brief only pursuant to *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). Based on the following, we affirm.

¶3 FACTS

¶4 On June 5, 2012, plaintiffs filed a complaint alleging they were wrongfully evicted from the property located at 6935 S. Artesian in Chicago, Illinois. According to the complaint, Frances owned the subject property and she and Solomon, Frances' son, were the landlords, while Serena and Tevontae, Serena's son, were the tenants, along with Walker's two minor children. The complaint alleged that, on or about May 28, 2012, defendants padlocked the front gate, changed the locks to plaintiffs' residence, and boarded up the front door without a court order and without having filed an eviction case. Plaintiffs requested damages in the amount of $15,000.

¶5 Also, on June 5, 2012, plaintiffs filed an emergency motion to restore possession of the subject premises to them. The circuit court granted the emergency motion on June 8, 2012. Plaintiffs subsequently filed a motion for rule to show cause because defendants had not restored possession to them. On June 19, 2012, the circuit court entered an agreed order stating that Solomon was to allow Walker access to the subject premises to remove all of her property

therein. Then, on July 13, 2012, the circuit court entered another order instructing Solomon to grant Walker access to the subject premises to retrieve the remainder of her property.

¶6 The case proceeded to a bench trial on March 20, 2014. Defendants appeared *pro se*. A transcript from the trial does not appear in the record; however, a bystander's report containing a filing date of November 1, 2014, and a signature indicating it was approved by the judge does appear in the record. The bystander's report provided that, during opening statements, plaintiffs read to the court a number of "admissions" made by defendants in their discovery depositions. In relevant part, during her April 30, 2013, discovery deposition, a transcript of which does not appear in the record, Frances stated that Walker gave Solomon a check for $750 on behalf of Matthew Bledson, the tenant of the subject premises. Frances further stated that the last time she saw Walker in the apartment was March or April of 2012. During his April 30, 2013, discovery deposition, a transcript of which also does not appear in the record, Solomon stated that Walker stayed with Bledson in the building. According to his discovery deposition, on a typical week in 2011, Solomon would see Walker in the building three or four times. Solomon stated that Walker paid rent in cash to Solomon every two or three months on behalf of Bledson. Solomon further stated that he named Walker and Bledson on a five-day eviction notice provided to Bledson. Solomon added that he gave two five-day notices to Walker. Following plaintiffs' opening statement, defendants provided an opening statement during which Frances said "they" owed her money.

¶7 According to the bystander's report, Bledson testified that he was friends with Walker. Bledson stated that he entered into a verbal rental agreement with defendants for the subject premises in June 2011. Bledson additionally stated that he informed defendant that he was moving in February 2012.

¶8 The bystander's report also provided that Walker testified she entered into a verbal tenancy with defendants in June 2011. The parties agreed to a rate of $750 per month for rent. Walker testified that she paid rent through the 2012 Memorial Day weekend. After discovering that, on or about May 28, 2012, the front entrance to the building was padlocked and chained, Walker obtained a court order providing her access to the property to retrieve her personal property. Walker testified, however, that she was unable to retrieve a number of items, including two Play Stations, a Beatles CD collection, computer games, and other personal items, the total value of which was $3,500. Walker stated that she paid the electricity bill for the subject property through Commonwealth Edison. The circuit court then admitted two exhibits into evidence: a picture of the padlocked front entrance of the property and a Commonwealth Edison bill. The June 8, 2012, Commonwealth Edison bill listed Serena Walker with the service location of 6935 S. Artesian Avenue, Unit 1F. Under the itemized section of the bill, charges for "reinstate bad debt-service 5906 N. Kenmore Ave. Unit C7" is listed, along with charges for previous services totaling $1,066.72.

¶9 According to the bystander's report, Solomon testified that the property at issue was rented to Bledson only. Solomon identified Walker as Bledson's girlfriend. The verbal tenancy with Bledson began on July 27, 2011. Solomon issued a receipt demonstrating that he received half of the security deposit from Bledson. Solomon stated that he received rent payments from Walker, but considered them to be payments on behalf of Bledson. When Bledson moved out of the subject premises in March 2012, Solomon inspected the property and did not observe evidence of occupancy. Solomon only observed a few trash bags, no clothing or furniture. According to Solomon, after the court ordered that Walker be given access to the subject premises, he observed Walker remove the trash bags he had previously noted in the property.

The court admitted into evidence the security deposit receipt dated July 27, 2011, which provided that $750 had been received from Matthew Bledson for "1/2 security deposit." The security deposit receipt was signed by Solomon.

¶10 The bystander's report further provided that Frances testified. Frances stated that she only leased the subject premises to Bledson, not Walker. Frances admitted observing Walker at the address numerous times. Frances stated that Walker and Bledson owed her money.

¶11 After the close of evidence, the circuit court took the matter under advisement.

¶12 Then, on April 1, 2014, the parties appeared before the court for a ruling following trial. We quote from the court's ruling at length:

> "The first question in my mind is whether or not Ms. Walker established a landlord/tenant relationship between herself and Mr. Benguche and Ms. Benguche.
>
> The only evidence that was submitted at trial was from the Defendants, and it was a receipt for deposit of a security deposit, and the name on that receipt was not that of Ms. Walker, it was Mr. Bledso[n].
>
> So, the Defendants here maintain that that is, in fact, who they met with and negotiated the creation of a tenancy, and that it came to their [knowledge] after Mr. Bledso[n] began occupying the space, that Ms. Walker was present along with her children.
>
> It's her burden to prove the existence of a landlord/tenant relationship and I don't believe she's done so.
>
> There's not one piece of paper that she's produced to support the fact of a tenancy. If, in fact, she was part of the transaction and her name should have

appeared on the receipt for the security deposit, it seems to me that that complaint should have been lodged well before even the dispute that is before us today came about.

So, as a result[,] I don't believe that Ms. Walker has sustained a burden of proof on demonstrating the fact that she created a tenancy with the two Benguches.

Now, that may not necessarily be in the interim though. There is some suggestion that they were aware of her presence, so the question is by being aware of her presence does that place a burden on them to take into account her occupancy, using that term loosely, and thereby creating some duty on their part to act in a certain fashion towards her?

Now, there's also the testimony here that's conflicting that Mr. Bledso[n] *** approached either Ms. Benguche or her son and suggested that he was leaving or they were leaving some time during the winter of 2012 and, in fact, they were moving somewhere north.

One of the documents that was presented at trial by Ms. Walker is a receipt from Commonwealth Edison and it suggests service at two locations, the subject location on South Artesian and a second location on North Kenmore Avenue in Chicago.

That fact would tend to support the claim by the Benguches that, in fact, Mr. Bledso[n] suggested that they all were relocating and leaving the unit.

And also the fact that Mr. Benguche suggested that he had not seen them for a period of time at the premises.

And because of not having observed them that's what lead him to secure the property based on some less than appropriate activity in the neighborhood.

And, in fact, the receipt that was submitted by Plaintiff suggests charges from a prior bill, and then suggests the new location as being on North Kenmore, and the date of the bill is June 8th, which is approximately one week after the claim is made that they were locked out.

Now, the other part of this case that---even assuming that without regard to the issue of the lockout, assuming that there was proof of some duty on the part of the Defendant to acknowledge Ms. Walker's presence at trial, there were three items for which she was seeking an award.

There were two laptops [*sic*] that she claimed were missing. She suggested that the value, at least the purchase price of those laptops [*sic*] was a thousand dollars each and then—I'm sorry, I misspoke. And there was a stereo system that was suggested to have been the purchase price of $250, and then there were play stations, I think there were two, which apparently bore a purchase price of roughly $700 each.

Beyond the identification of the play station, which is an item that I'm somewhat familiar with, there was no identification of a brand name for the stereo nor *** laptop [*sic*].

***

And moreover, there was no mention of the value of these items at the time of loss. They weren't new. There was no testimony that they were recently

> purchased and therefore new, so therefore they would have had to be used at the time of the claim of loss.
>
> And as we all know nothing has the same value used as it does new, and in the world of computers and electronics anything with the technology changing so rapidly, what you pay a thousand dollars for two weeks ago depreciates significantly because everything progresses as quickly as they do. So, my finding is for the Defendants.
>
> I don't believe that Ms. Walker has sustained a burden of proof in the case. There certainly wasn't sufficient testimony to establish any real loss, if there was, in fact a loss and that's the court's order."

In an April 1, 2014, written order, the circuit court entered judgment in favor of defendants. In so ruling, the circuit court found Walker "was not a tenant of the defendants. After making this finding, the court further [found] that plaintiff ha[d] not sustained her burden of proof." Plaintiffs filed a motion to reconsider, requesting a new trial. The motion was denied on June 19, 2014. This appeal followed.

¶13 ANALYSIS

¶14 Plaintiffs contend an express and/or implied tenancy existed between the parties because defendants recognized Walker as a tenant, thus defendants violated the Chicago Residential Landlords and Tenants Ordinance (RLTO) (Chicago Municipal Code § 5-12-010 *et seq.* (2004)) by preventing her entry to the subject premises.

¶15 Following a bench trial, we review whether the circuit court's judgment is against the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). On review, this court will not substitute its judgment for that

of the trial court unless that judgment is against the manifest weight of the evidence. *Id.* " 'A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *Id.* (quoting *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001)).

¶16 Section 5-12-160 of the RLTO (Chicago Municipal Code § 5-12-160 (1991)) provides that "[i]t is unlawful for any landlord or any person acting at his direction knowingly to oust or dispossess or threaten or attempt to oust or dispossess any tenant from a dwelling unit without authority of law, by plugging, changing, adding or removing any lock or latching device; or by blocking any entrance into said unit." The question in this case is whether plaintiffs were tenants of the subject premises. A tenant is defined in the RLTO as "a person entitled by written or oral agreement, subtenancy approved by the landlord or by sufferance, to occupy a dwelling unit to the exclusion of others." Chicago Municipal Code § 5-12-030(i) (2010).

¶17 Plaintiffs concede that there is no document expressing a tenancy agreement between the parties. Nevertheless, plaintiffs first argue that there was an express oral agreement. Plaintiff, however, provided no evidence to support the express agreement other than Walker's self-serving testimony that she entered into an oral agreement with defendants for tenancy in June 2011. In contrast, Frances and Solomon both testified that the property was rented to Bledson only. Moreover, the only piece of evidence expressly documenting a tenancy was the receipt for half of the security deposit provided by Bledson on July 27, 2011, and signed by Solomon. Based on the record before us, we cannot say the circuit court's decision regarding an express tenancy agreement was against the manifest weight of the evidence.

¶18 We turn next to plaintiffs' argument that there was an implied tenancy agreement between the parties. Plaintiffs argue that an implied tenancy was demonstrated where defendants

acknowledged Walker's presence at the property; Solomon accepted rent checks on a number of occasions from Walker; Frances testified in opening statements at trial that "they" owed her money referring to plaintiffs; Solomon testified at trial that he twice served Walker with five-day eviction notices with her name on the notices; and Walker paid for electricity to the subject premises as demonstrated by her Commonwealth Edison bill.

¶19 We recognize that an implied contract may result where the circumstances and behavior of the parties demonstrate a general course of dealing. *Greenview Ag Center, Inc. v. Yetter Manufacturing Co.*, 246 Ill. App. 3d 132, 137 (1993). Based on the evidence presented in this case, we, however, find that the circuit court's decision was not against the manifest weight of the evidence. We note that the appellate record does not contain a transcript from the trial court proceedings. We acknowledge that plaintiffs have provided a bystander's report. Notwithstanding, it is obvious from reading the April 1, 2014, transcript during which the circuit court announced its findings that the bystander's report does not provide the entirety of the trial proceedings. Courts have repeatedly stated that an appellant has the burden to present a sufficiently complete record of the trial proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id*. at 392. When the record is not sufficiently complete for purposes of review, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id*.

¶20 Plaintiffs argue that Frances identified them as tenants when she "admitted" during her *pro se* opening statement that "they" owed her money. Without a transcript, we have no context for determining who Frances was referring to when she used the term "they." Moreover, contrary to plaintiffs' assertion, we do not find that Frances' statement that "they" owed her

money constituted an admission. The statement was not deliberate, clear, or unequivocal. *Paige-Myatt v. Mount Sinai Hospital Medical Center*, 313 Ill. App. 3d 482, 490 (2000). We, therefore, do not find this statement demonstrated an implied tenancy.

¶21 With regard to plaintiffs' argument that an implied tenancy was demonstrated where defendants acknowledged Walker's regular presence at the property--three to four times per week, Solomon accepted rental payments from Walker even "on behalf of Bledson" every two or three months, Solomon admittedly served Walker with two five-day eviction notices bearing Walker's name, and Walker produced an electricity bill dated June 8, 2012, which was approximately one week after the alleged wrongful eviction, with the subject premises listed as the service location and showing $1,086.72 as outstanding charges owed by her, we tend to agree. These circumstances and behaviors of the parties demonstrated a general course of dealing, such that Walker was also a tenant of the subject premises, along with Bledson. See *Greenview Ag Center, Inc.*, 246 Ill. App. 3d at 137; *cf. Selvy v. Beigel*, 283 Ill. App. 3d 532, 539 (1996) (no implied tenancy agreement found where there was no evidence the landlords knew of the presence of the plaintiffs nor accepted any rental payments from them). We find additional support in the fact that Frances testified at trial that Walker owed her money.

¶22 We, however, conclude that the evidence did not establish a tenancy agreement between the parties *at the time* defendants prevented access to the property, namely, May 28, 2012. Defendants testified that they did not observe anyone entering the property after March of 2012 and, upon inspection, Solomon did not observe any clothes or furniture in the subject premises. The only things of note were garbage bags. There was no evidence to support Walker's self-serving testimony that she paid rent through the date in question. In fact, Bledson testified at trial that he informed defendants of his intent to move from the subject premises in February

2012. Defendants' testimony supports the vacancy of the property around the same time. Plaintiffs have nothing to demonstrate that rent was paid by them for the date in question. Instead, Walker's electricity bill provides that she had established service at a new address. Moreover, the "relationship" between the parties was not long-standing insofar as establishing a course of conduct to support plaintiffs' implied tenancy at the time in question nor was there evidence that a lease term had been established between the parties. The implied tenancy existed based on the knowledge that plaintiffs occupied the property and Walker paid rent, neither factor of which were present at the time defendants' placed locks on the property preventing plaintiffs' access.

¶23 In sum, we conclude that the circuit court's finding that a tenancy did not exist at the time in question, such that defendants were in violation of section 5-12-160 of the RLTO, was not against the manifest weight of the evidence.

¶24 CONCLUSION

¶25 We affirm the judgment of the circuit court.

¶26 Affirmed.