

2015 IL App (2d) 140957-U  
No. 2-14-0957  
Order filed March 27, 2015

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JULIE STREADWICK n/k/a	)	Appeal from the Circuit Court
Julie Glenn,	)	of Ogle County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-LM-117
	)	
RICH FOLK and KRISTIN FOLK,	)	Honorable
	)	John B. Roe,
Defendants-Appellees.	)	Judge, Presiding.

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices McLaren and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly denied plaintiff attorney fees in her forcible-entry action: without an official record of the trial, we could not say that the trial court erred in finding that the parties had entered into a new lease that did not incorporate the original lease's fee provision, and plaintiff was not otherwise entitled by statute to fees.

¶ 2 Plaintiff, Julie Streadwick, now known as Julie Glenn, appeals the denial of her request for attorney fees in a forcible entry and detainer action against defendants, Rich and Kristin Folk. Plaintiff prevailed in the action, but the trial court determined that a new agreement that did not

contain a written provision for attorney fees had been created. Thus, the court denied fees. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 The parties entered into a written residential lease expressly beginning May 1, 2012, and ending April 30, 2013, for the amount of \$850 per month. The written lease contained an attorney-fees provision. It also contained a holdover provision, stating that, if the lessee retained possession after the termination of the term, the lessor could serve written notice that holding over constituted a renewal of the lease for one year at double the rent, created a month-to-month tenancy at double the rent, or created a tenancy at sufferance at a rate of \$40 per day.

¶ 5 On March 21, 2013, defendants sent plaintiff a letter requesting whether they could continue to rent the house on a month-to-month basis at \$700 per month. The letter stated that, if not, they would be moving out in May. On March 23, 2013, plaintiff sent a text message stating “Ok [M]ark will put together a month to month lease.” Defendants paid \$700 for May, which was accepted. A new lease incorporating the terms of the old one was never executed. Defendants did not pay rent for June and, on June 20, 2013, plaintiff filed a five-day notice stating that, without a new lease in place, defendants were holding over and could not unilaterally dictate the terms of a new lease. The letter stated that the previous lease provision for holding over applied and that there was a creation of a tenancy at sufferance at a rate of \$40 per day. Plaintiff demanded rent due in the amount of \$1,640. Defendants did not pay, and plaintiff then filed her complaint for possession and past-due rent. Defendants filed an answer and counterclaims.

¶ 6 After a period in which there were various motions, including plaintiff’s motion for attorney fees, a trial was held. The record indicates that multiple witnesses testified. However,

the record includes only the exhibits from the trial. There is no transcript or substitute for a transcript of the proceedings, other than the date that the trial court reached its decision.

¶ 7 On August 21, 2014, the trial court found in favor of plaintiff on the issue of rent, but denied attorney fees. The court found that the parties formed a new month-to-month lease at the rate of \$700 per month and that defendants left the residence on August 27, 2013. The court awarded plaintiff past-due rent of \$1,330, plus court costs. The court denied defendants' counterclaims. In regard to attorney fees, the court stated that, under the case law, in particular *Bransky v. Schmidt Motor Sales Inc.*, 222 Ill. App. 3d 1056 (1991), when there was a new lease, attorney fees under the old contract would not be given. In response to statements by plaintiff's attorney on the matter, the court further stated, "there was a new lease, and there was, there was much discussion about this." Plaintiff appeals.

¶ 8 II. ANALYSIS

¶ 9 Plaintiff contends that the trial court erred when it denied her motion for attorney fees. She argues that defendants were holdover tenants and that the terms of the written lease, including the attorney-fees provision, thus remained in effect. Defendants argue that a new month-to-month lease was created and that the attorney-fees provision in the expired lease thus did not apply.

¶ 10 Illinois follows the "American Rule," which provides that, absent statutory authority or a contractual agreement, each party must bear its own attorney fees. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 572 (2000). Prevailing parties cannot recover attorney fees unless expressly authorized by a statute or agreement. *Estate of Downs v. Webster*, 307 Ill. App. 3d 65, 70 (1999).

¶ 11 The construction of a lease is a question of law, which we review *de novo*. *Negro Nest, LLC v. Mid-Northern Management, Inc.*, 362 Ill. App. 3d 640, 641 (2005). However, “[t]he existence of an oral contract, its terms, and the intent of the parties are questions of fact, and the trial court’s determinations on those questions will be disturbed only if they are against the manifest weight of the evidence.” *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009). “ ‘A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.’ ” *Id.* (quoting *Best v. Best*, 223 Ill. 2d 342, 350 (2006)). Further, “an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 12 “A tenant who remains in possession after his or her lease has expired becomes a tenant at sufferance.” *Roth v. Dillavou*, 359 Ill. App. 3d 1023, 1027 (2005). “At the landlord’s sole option, a tenant at sufferance may be evicted as a trespasser or treated as a holdover tenant.” *Id.* The essence of a tenancy at sufferance is that the tenant has maintained possession without the landlord’s permission. *Bransky*, 222 Ill. App. 3d at 1061. “A holdover tenancy is created when a landlord elects to treat a tenant, after the expiration of his or her lease, as a tenant for another term upon the same provisions contained in the original lease.” *Roth*, 359 Ill. App. 3d at 1027. “Only the lessor, not the lessee, has the right to decide whether to treat the lessee as a holdover tenant.” *Id.*; *Bransky*, 222 Ill. App. 3d at 1061. “In the absence of evidence to the contrary, a

presumption arises that there is a holding over under the terms of the original lease.” *Bransky*, 222 Ill. App. 3d at 1061.

¶ 13 “Even when a holdover tenancy is not created, the parties’ conduct may create a month-to-month tenancy.” *Roth*, 359 Ill. App. 3d at 1027. “Acceptance of monthly rental payments by the landlord will generally create a month-to-month tenancy.” *Id.* “[I]t is the holding over and paying the same rent, *without further agreement*, that creates a tenancy from month to month.” (Emphasis added.) *Hoefler v. Erickson*, 331 Ill. App. 577, 584 (1947). “Both a holdover tenancy and a month-to-month tenancy are governed by the terms of the original lease.” *Roth*, 359 Ill. App. 3d at 1027. However, the rule that a landlord may, at his or her election, treat the tenant as a holdover tenant under the terms of the original lease is subject to the condition that such holding over after the expiration of the lease is not under any new arrangement made by the landlord with the tenant. *Weber v. Powers*, 213 Ill. 370, 385 (1904).

¶ 14 Applying *Bransky*, plaintiff argues that defendants were holdover tenants, subject to the attorney-fees provision of the original lease. Also applying *Bransky*, defendants argue that a new contract was created that did not subject them to attorney fees.

¶ 15 In *Bransky*, the parties signed an industrial lease with a holdover provision similar to the one at issue in this case, with a term that ended on August 30, 1982. After expiration of the lease, the parties entered into several oral agreements extending the rental based on the same terms and conditions of the written lease. The defendant vacated the premises in April 1987 without paying rent for that month, and the plaintiff sought judgment and attorney fees. The defendant moved for summary judgment, arguing that the lease became a nullity as of August 30, 1982. Since the plaintiff did not invoke any holdover provisions, the defendant argued that none of the obligations of the original lease survived. The trial court agreed, and we reversed.

¶ 16 In reversing, we noted that the defendant remained in possession with the plaintiff's permission under the same terms as the original lease. Thus, either the arrangement was a series of holdover tenancies, or it was a series of new, oral leases. Observing that the plaintiff expressly agreed to allow the defendant to remain in possession under the terms of the original contract, we held that the defendant was not a tenant at sufferance and that the trial court erred in granting his motion for summary judgment.

¶ 17 *Bransky* illustrates the effect of a new agreement on the issue of attorney fees. Here, the trial court specifically found that there was a new lease agreement formed between the parties. But unlike in *Bransky*, that agreement did not incorporate the terms of the original agreement. Thus, the court found that defendants were not holdover tenants under the old agreement, which had expired, and instead were subject to the new agreement. As the new lease did not expressly incorporate the terms of the original lease, the attorney-fees provision was not applicable. The record contains evidence to support the trial court's finding of fact on that matter. In any event, absent a complete record of the matter, we assume that the trial court's factual finding had a sufficient factual basis.

¶ 18 Plaintiff next argues that the forcible entry and detainer statute (735 ILCS 5/9-110 (West 2012)) exhibits the legislature's intent to allow attorney fees. That statute provides in part:

"If during such period of stay the defendant pays the entire amount then due and payable under the terms of the contract other than such portion of the principal balance due under the contract as would not be due had no default occurred and costs and, *if the contract provides therefor*, reasonable attorney's fees as fixed by the court, and cures all other defaults then existing, the contract shall remain in force the same as if no default had occurred." (Emphasis added.) 735 ILCS 5/9-110 (West 2012).

¶ 19 Section 9-110 clearly allows for fees when the contract provides for them. But here, the trial court factually found that a new contract was formed that did not include a fee provision. Section 9-110 does not otherwise provide for an award of fees. Accordingly, the court did not err when it denied the motion for fees.

¶ 20 III. CONCLUSION

¶ 21 The trial court properly denied the motion for attorney fees. Accordingly, the judgment of the circuit court of Ogle County is affirmed.

¶ 22 Affirmed.