2015 IL App (2d) 141125-U
No. 2-14-1125
Order filed October 7, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CAROLYN HAMEEDAH CARR,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-LM-2159
	)	
TARIK M. CARR and	)	
ILANA WILSON,	)	Honorable
	)	John J. Scully,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly denied defendants' motion to quash service, as plaintiff satisfied the statutory requirements for service by posting and mailing; (2) the trial court did not abuse its discretion in denying defendants' motion to vacate a default judgment, as they did not establish any viable defense to the suit.

¶ 2 Defendants, Tarik M. Carr and Ilana Wilson, appeal *pro se* from a judgment of the circuit court of Lake County denying their motion to quash service and their motion to vacate a default judgment and awarding possession of a residence to plaintiff, Carolyn Hameedah Carr. Because service was proper and plaintiff was entitled to possession of the residence, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are taken from the common-law record and the bystander's report filed pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005).[1] On September 12, 2014, plaintiff filed *pro se* a complaint in forcible entry and detainer against defendants, seeking to have them removed from the basement of her house at 3110 Ezekiel Avenue, Zion. She alleged that defendants had exceeded their permission to stay in the basement of her house and that she was entitled to possession. She did not claim any rent due.

¶ 5 On September 12, 2014, plaintiff obtained a summons that directed defendants to appear on October 2, 2014. An affidavit of service from a deputy sheriff stated that service was attempted at 3110 Ezekiel Avenue on September 15, 2014, September 16, 2014, September 22, 2014, and September 23, 2014, and that on each of those dates no one answered the door. The affidavit further stated that service was attempted on September 25, 2014, and that defendants "refused to open the door."

¶ 6 Because of the failed attempts at service, plaintiff requested service by posting and mailing. In requesting that form of service, plaintiff explained to the court that she owned the residence and that she had allowed defendants to live in the basement beginning in early 2012 with the understanding that they would leave in a few months. According to plaintiff, there was no oral or written lease and no rent was charged or paid. She asked defendants several times over many months to move out, but they refused. Therefore, plaintiff felt that she needed to file suit to have them removed.

[1] Defendants filed a motion to certify their proposed bystander's report, and plaintiff objected and submitted her own version. Because it found neither bystander's report to be accurate, the trial court prepared its own. See *People v. Martinez*, 361 Ill. App. 3d 424, 429 (2003); *In re Dawn H.*, 281 Ill. App. 3d 746, 753-54 (1996).

¶ 7 The trial court authorized service by posting and mailing, and return of the summons was set for October 16, 2014. On October 3, 2014, the sheriff's office posted the summons at the Waukegan city hall, the Waukegan public library, and the sheriff's office. On October 3, 2014, the summons was also mailed to defendants at the 3110 Ezekiel Avenue address.

¶ 8 On October 16, 2014, defendants failed to appear. Plaintiff testified that on August 11, 2014, she posted a "notice to terminate" on defendants' door in the basement and that later that day or the following day Tarik Carr acknowledged reading the notice. Plaintiff testified that there was no oral or written lease and that no rent had ever been charged or paid. Plaintiff explained that she allowed defendants to live in the basement for a few months but that after that they refused to leave.

¶ 9 The trial court found that the notice to terminate had been proper and that the service of summons was effective. The court held defendants in default and entered judgment in plaintiff's favor. It ordered defendants to vacate the premises by the end of the day on October 23, 2014.

¶ 10 On October 23, 2014, defendants filed their appearances. They also filed *pro se* a combined motion to quash service and to vacate the October 16, 2014, judgment. In that combined motion, defendants asserted that, because service was improper, the court should quash service and vacate the default judgment.

¶ 11 On October 29, 2014, the trial court conducted a hearing on defendants' combined motion, at which defendants and plaintiff testified. Plaintiff testified that she posted the "quit notice" on defendants' door on August 11, 2014, and that Tarik Carr acknowledged having received it. At the hearing, both defendants denied receiving that notice. The court found plaintiff more credible and that defendants knew of the notice.

¶ 12 On the service of summons, the trial court found that defendants had been avoiding service and that service by posting and mailing was proper. The court further found, based on Wilson's testimony, that defendants had received the October 3, 2014, mailing notifying them of the summons and the October 16, 2014, return date.

¶ 13 The court also noted that defendants did not produce a written lease or any evidence of an oral lease. They did not assert that they had ever paid any rent to stay in the basement.

¶ 14 The court denied the motion to quash service and the motion to vacate the default judgment. The court stayed enforcement of the judgment until November 12, 2014.

¶ 15 On November 5, 2014, defendants filed their notice of appeal and a motion to stay the judgment pending appeal. On November 12, 2014, the trial court denied the motion to stay. Defendants filed a motion to stay in this court, and we granted that motion, in part, staying enforcement of the judgment until December 4, 2014. We denied defendants' motion to reconsider and to extend the stay further pending appeal.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendants essentially contend that there was no personal jurisdiction over them because plaintiff failed to establish the need for service by posting and mailing. Defendants further posit that they were entitled to possession by virtue of a valid lease. They also assert that the trial court was prejudiced against them when it denied their motion to quash service and to vacate the default judgment. Finally, defendants maintain that this court should consider, as part of this appeal, their proposed counterclaims. Plaintiff has not filed a response brief, but the issues are simple enough for us to resolve them without one. See *First Capitol Mortgage Co. v. Talandis Construction Co.*, 63 Ill. 2d 128, 133 (1976).

¶ 18 On review of a ruling on a motion challenging jurisdiction based on a lack of proper service, the standard is *de novo* if the trial court's ruling was based solely on documentary evidence. *Equity Residential Properties Management Co. v. Nasole*, 364 Ill. App. 3d 26, 31 (2006). However, where there has been an evidentiary hearing regarding jurisdiction, some courts have held that the standard is whether the ruling was against the manifest weight of the evidence. *Household Finance Corp., III v. Volpert*, 227 Ill. App. 3d 453, 456 (1992). On the other hand, this court has applied the clearly-erroneous standard. *Dargis v. Paradise Park*, 354 Ill. App. 3d 171, 177 (2004). Under that latter standard, reversal is proper only if the court is left with the definite and firm conviction that an erroneous finding was made. *Dargis*, 354 Ill. App. 3d at 177.

¶ 19 As for an order denying a motion to vacate a default judgment, traditional considerations of due diligence and whether there is a meritorious defense remain relevant in deciding whether substantial justice has been done between the parties. *Wells Fargo N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 32. Nonetheless, the overriding consideration is whether substantial justice was done. *In re Haley D.*, 2011 IL 110886, 57. We review the denial of a motion to vacate for an abuse of discretion. *Simpson*, 2015 IL App (1st) 142925, ¶ 32. An abuse of discretion occurs when the court acts arbitrarily without conscientious judgment or its decision exceeds the bounds of reason and ignores legal principles such that substantial prejudice results. *Simpson*, 2015 IL App (1st) 142925, ¶ 32.

¶ 20 We first address the issue of whether the trial court properly denied defendants' motion to quash service. A judgment rendered without personal jurisdiction is void even if the defendant had actual knowledge of the proceedings. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294,

308 (1986). Unless the defendant appears or waives service, personal jurisdiction can be acquired only by service of process in the manner prescribed by statute. *Thill*, 113 Ill. 2d at 308.

¶ 21 Section 9-107 of the Act provides for constructive service (via posting and mailing) when the plaintiff files an affidavit stating, among other things, that upon due inquiry the defendant cannot be found or is concealed within the state such that process personally cannot be served. 735 ILCS 5/9-107 (West 2014). The affidavit must identify the location of the defendant's residence, if known, or if not known must state that upon diligent inquiry the affiant has been unable to ascertain the defendant's residence. 735 ILCS 5/9-107 (West 2014).

¶ 22 Here, plaintiff submitted the required affidavit in support of her request for service by posting and mailing. She averred that upon due inquiry defendants were concealed within the state and that they resided in the basement of her home. In support of those averments, the file contained an affidavit of service of a sheriff's deputy who stated that personal service had been attempted on four different dates in September 2014 and that no one answered the door on any of those dates. More importantly, the affidavit of service stated that when service was attempted on September 25, 2014, the occupants refused to open the door. Plaintiff's affidavit, combined with the affidavit of service, established a proper basis under section 9-107 to authorize service by posting and mailing.

¶ 23 Moreover, at the hearing on defendants' motion to quash service, the trial court found that defendants had been avoiding service and that service by posting and mailing was therefore proper. The court also found that defendants had received the mailed service. When we view all of the evidence, including the affidavits and the testimony at the hearing, we cannot say that the denial of the motion to quash service was either against the manifest weight of the evidence or clearly erroneous.

¶ 24 We next address the issue of whether the trial court abused its discretion in denying defendants' motion to vacate. It did not. Although defendants' acted diligently in seeking to vacate the judgment, they did not establish that they had a meritorious defense. After conducting an evidentiary hearing, the court found that there was no evidence of either a written or oral lease or that defendants had ever paid any rent to plaintiff. The record shows that defendants were allowed to stay in the basement merely by permission of plaintiff. Because plaintiff was free to terminate her permission at any time, defendants had no viable defense to plaintiff's suit. Thus, substantial justice was done, and the court did not abuse its discretion in denying the motion to vacate.

¶ 25 That leaves defendants' contention that the trial court was prejudiced in its rulings. There is nothing in the record to support that contention. The court relied solely on the evidence before it and provided defendants a reasonable opportunity to state their position and defend against the complaint.[2]

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Lake County denying the motion to quash service and the motion to vacate the default judgment.

¶ 28 Affirmed.

[2] Because we agree with the trial court's rulings regarding defendants' motions, we need not address their proposed counterclaims.