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2015 IL App (3d) 140219-U

Order filed July 14, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

LILLY MAE VEGA,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellant,)	Knox County, Illinois.
)	
v.)	Appeal No. 3-14-0219
)	Circuit No. 2013 L 0044
MICHAEL D. ANDERSON and)	
JENNIFER M. ANDERSON,)	The Honorable
)	David L. Vancil,
Defendants-Appellees.)	Judge, Presiding.
)	

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Schmidt and Wright concurred in judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing plaintiff's cause of action and ordering sanctions against her as she failed to establish defendants took title of the subject property with notice of her claim of ownership.

¶ 2 This case involves a dispute over ownership of the property located in Knox County at 1195 Willow Lane, Galesburg, Illinois (the subject property). Plaintiff, Lilly Mae Vega, filed a complaint seeking forcible entry and detainer and/or damages against the defendants, Michael D. Anderson and Jennifer M. Anderson (the Andersons), who allegedly took ownership of the

property with notice of her preceding claim of ownership. Vega appeals the trial court's striking of portions of her affidavit in support of her reply to the Andersons' motion to dismiss that argued their lack of notice of Vega's claim of ownership of the subject property. Because of this striking, Vega argues the trial court subsequently granted the Andersons' motions to dismiss and for sanctions against her in error. We affirm.

¶ 3

FACTS

¶ 4

We have gleaned as much of the actual facts of this case as we could from the record on appeal, the parties' briefs, and oral argument. We are still in the dark about what actually happened. The issue presented to us, however, is narrow and capable of resolution without a full understanding of all of the underlying transactions.

¶ 5

Vega is in possession of a copy of a deed for the subject property purportedly given to her by James and Cindy Campbell (the Campbells) in November 2005. Vega notes that at the time she received this document she gave the Campbells' attorney, Karen Stumpe, \$75,000 to hold in escrow for the subject property and several other pieces of property she was buying from the Campbells. There is no original deed in the record nor has any deed evidencing sale of that property to Vega ever been recorded in Knox County. Vega further claims that she paid the Campbells, through Stumpe, over \$500,000 toward the purchase of all of the properties in March of 2006. The record contains a document from First Midwest Bank, dated February 22, 2013, stating that on March 17, 2006, \$531,479.57 was "withdrawn from Lilly Vega's account *** for the benefit of [the Campbells] regarding a real estate transaction between the two parties". Included in the record is also a promissory note made out to the Campbells dated October 3, 2006, for over \$1.3 million and an email from Cindy dated January 27, 2007, stating that Vega owed the Campbells \$1.3 million dollars.

¶ 6 In October 2006, the Campbells deeded all the properties, including the subject property, to Thomas Phanco. Those deeds were recorded. In 2007, Vega learned of the sale of the properties to Phanco and asserts she took action to have the properties legally shown as hers. The record shows her first action was her motion for a continuance or dismissal in response to Phanco's forcible entry and detainer action filed in October 2007, which sought to have Vega and her mother removed from the properties. After Phanco moved for default judgment, the trial court reviewed the pleadings, affidavits, other evidence of record, including Phanco's recorded title to the properties with the Knox County Recorder's Office, and the arguments of the parties. It then granted possession of the properties to Phanco.

¶ 7 The bank holding Phanco's mortgage foreclosed on the properties in 2008. After the sheriff's sale of the subject property and several transfers of the parcel evidenced by deeds recorded with the Knox County Recorder's Office, the Anderson's acquired ownership by warranty deed in March 2012. They recorded their deed in Knox County on April 27, 2012.

¶ 8 On March 15, 2013, Vega recorded her deed to the subject Knox County property in Peoria County. On November 1, 2013, she filed a complaint for a forcible entry and detainer order and/or damages against the Andersons. She attached a copy of her November 2005 deed, notice of its 2013 recording in Peoria County, and a copy of a certified notice to terminate tenancy and vacate the property addressed to "Unknown Occupants" at the subject property.

¶ 9 The Andersons moved to dismiss the complaint, asserting that they took the property without notice of Vega's alleged title and attaching a copy of her deed showing it had not been recorded until after they purchased the subject property and recorded their deed. They also attached copies of their recorded warranty deed for the subject property as well as individual affidavits regarding their joint tenancy ownership of the property. They affirmed that at no time

were they made aware of any claim by Vega of a right to ownership or possession. They also argued that the recording of Vega's title was a nullity as it was not recorded in the county where the property was located pursuant to the Illinois Conveyance Act (Conveyance Act) (765 ILCS 5/28 (West 2012)).

¶ 10 In response to the motion to dismiss, Vega denied most of its allegations and filed an affidavit in support of the denial. She also filed a motion to show priority to quiet title with its own attached affidavit. Vega's affidavits in support of her motions primarily discussed the selling of the subject property to Phanco in 2007 and her subsequent efforts to confirm her ownership. Vega claimed she made local real estate agencies aware of her claim of ownership of the properties and published a public notice. She contended that the Andersons were aware of her claim of title, specifically averring in her attached affidavit:

"74. *** Defendant's real estate agents and brokers were aware that Vega owned the property.

84. Vega started making demands to stop the defendant from closing prior to the defendant's closing."

¶ 11 The Andersons moved to strike portions of Vega's affidavits, including those paragraphs quoted above as conclusory, argumentative, and/or lacking evidentiary or legal foundation. Their response to Vega's motion to show priority to quiet title argued that the motion presented no statutory or equitable basis for relief.

¶ 12 The Andersons also answered Vega's original complaint and affirmatively asserted that they took ownership of the subject property without notice of Vega's claim of ownership. Attached were affidavits from the Andersons and from their attorney, Pamela Wilcox, who

represented them in the purchase of the subject property. Wilcox confirmed in her affidavit that she had found no record of Vega's alleged 2005 deed and was unaware of her claim of title until the Andersons were served with the notice to vacate the property pursuant to Vega's filing of her claim.

¶ 13 On February 4, 2014, a hearing on all pending motions was conducted. Vega filed additional exhibits that included a timeline from 2004-2013 listing transactions regarding the properties and correspondence from 2009-2014 documenting other actions she took to have the title to the subject property and the other properties affirmed as hers. Most of the timeline and documents discussed her legal battle with respect to another property and not the subject property.

¶ 14 In its February 14 opinion, the trial court, granted the Andersons' motion to strike portions of Vega's affidavits and Vega's motion to show priority to quiet title pursuant to the Andersons' response to the motion was also stricken. The trial court granted the Andersons' motion to dismiss Vega's cause of action with prejudice holding that as a matter of law, the Andersons "took title free and clear of any claim [Vega] may assert."

¶ 15 The Andersons moved for sanctions against Vega, arguing that (1) her complaint was not well grounded in law and (2) her pleadings in response to their motion to dismiss were intended to harass and cause unnecessary delay or needless increase in their litigation costs. After a hearing on the motion, the court awarded sanctions against Vega in the amount of \$7,532.91.

¶ 16 Vega timely appealed.

¶ 17 ANALYSIS

¶ 18 The issue before us of whether the trial court's grant of the Andersons' motion to dismiss was appropriate hinges on whether the paragraphs identified by Vega from her affidavit were

properly stricken. They present a question of fact about whether the Andersons had notice of Vega's claim of ownership of the property that would preclude dismissal.

¶ 19 Vega argues that the trial court erred in granting the Andersons' motion to strike portions of her affidavit in support of her reply to the Andersons' motion to dismiss. She asserts that though portions of her affidavit were rightfully stricken, paragraphs 74 and 84 were not. She argues she could testify to her own demands and it could be inferred that the Andersons' real estate agent and broker had notice of her claim of ownership of the subject property. Because the knowledge of an agent is imputed to its principal, she contends the Andersons had notice of her claim of ownership and did not lawfully take title to the property. She, therefore, concludes the granting of the Andersons' motion to dismiss and subsequent award of sanctions were erroneous.

¶ 20 The Andersons contend that the trial court did not err in striking the portions of Vega's affidavit that they identified in their motion to strike including the paragraphs Vega highlights here on appeal. They argue that the highlighted paragraphs were legally insufficient as they provide no support for her own claimed action nor do they identify the alleged agents or brokers purportedly associated with the Andersons that Vega made the demands upon and who thus knew of her ownership claim. Additionally, the Andersons argue that Vega waived the argument of inferences regarding notice as she failed to argue it in the trial court. Thus, they contend those paragraphs and the others were duly stricken. The Andersons assert the following grant of their motions to dismiss and for sanctions was proper.

¶ 21 As an initial matter, we review the Andersons' argument against Vega's assertion of inferences that could be drawn from paragraph 84 as having not been raised in the trial court. Issues not raised at the trial level are considered waived on appeal. *Standard Mutual Insurance Co. v. Mudron*, 358 Ill. App. 3d 535, 538 (2005). Nonetheless, our court is able to

consider such issues "when necessary for a just result and for the maintenance of a sound and uniform body of precedent." *Id.* Though Vega failed to argue at trial the inference that could be drawn from paragraph 84 in her affidavit as it relates to paragraph 74, consideration of it here on appeal allows for a more complete understanding of our decision.

¶ 22 Under section 5/30 of the Conveyance Act, a deed takes effect and is enforceable against all creditors and subsequent purchasers, without notice, once it is filed and recorded. 765 ILCS 5/30 (West 2012). A title purchaser of land from the legal holder of record is protected against any unrecorded deed of which the purchaser has no notice. *Home Savings & State Bank v. Peoria Agricultural & Trotting Society*, 206 Ill. 9, 11 (1903); *King v. Dekalb County Planning Department*, 394 Ill. App. 3d 699, 705 (2009).

¶ 23 The record is clear that Vega recorded her title to the property nearly a year *after* the Andersons' purchased the subject property and recorded their title. Thus Vega must show that the Andersons' had notice of her claim of title at the time of their purchase in some other way in order to sustain her cause of action.

¶ 24 A claim of title under the Conveyance Act can be dismissed under section 2–619 of the Code of Civil Procedure (735 ILCS 5/2–619 (West 2010)) if the plaintiff is unable to prove any set of facts that would support her cause of action. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277-78 (2003). Judgment is based solely on whether the plaintiff can state and sustain her claim of title as a matter of law. *Feltmeier*, 207 Ill. 2d at 278. We review *de novo* the question of law independent of the trial court's ruling. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 452 (2002). All well-pled facts in the complaint along with reasonable inferences that may be drawn from them are reviewed in a light most favorable to the plaintiff and are accepted as true. *Doe v.*

Montessori School of Lake Forest, 287 Ill. App. 3d 289, 296 (1997). However, conclusions of law or facts not supported with specific factual allegations are disregarded. *Id.*

¶ 25 The non-moving party to a motion to dismiss is afforded an opportunity to submit affidavits in support of their challenge to the motion. Affidavits regarding motions for involuntary dismissal under section 5/2-619 are governed by Supreme Court Rule. IL S. Ct. R. 191 (eff. Jan. 4, 2013); 735 ILCS 5/2-619(f). According to the rule, such an affidavit must be made on the personal knowledge of the affiant who is competent to testify at trial to the facts averred. IL S. Ct. R. 191 (eff. Jan. 4, 2013). It must describe with specificity the facts upon which it is based. *Id.* "Unsupported assertions, opinions and conclusory statements do not comply with the rule and may be stricken." *Lewis v. Rutland Township*, 359 Ill. App. 3d 1076, 1079 (2005) (citing *Geary v. Telular Corp.*, 341 Ill. App. 3d 694, 699 (2003)).

¶ 26 The two paragraphs Vega identifies from her affidavit, on their face, violate the rule as they were not made with specificity. She failed to discuss whom she may have made the alleged demands to in paragraph 84 with regard to her attempt to stop the Andersons' closing on the property. Thus an inference cannot be drawn as to the Andersons' agents and brokers being aware of her claim of ownership as professed in paragraph 74. Moreover, none of the evidence she provided in support of her claim upholds these assertions. The documents do not discuss, show, or lead to an inference that the Andersons or their agents and brokers had notice of Vega's claim of ownership to the subject property prior to their purchase. The Andersons' closing attorney Wilcox swore in her affidavit to having no notice. Vega's shotgun approach of notifying the local real estate agencies of her claim of ownership as well as her alleged notice in the newspaper are far from actual proof that the Andersons or their agents and brokers had notice of her claim of title. Because of this failing these paragraphs in the affidavits were properly stricken

and Vega has not shown that the Andersons took title to the subject property with notice. Dismissal of her cause of action was, therefore, proper.

¶ 27 We also find the court's imposition of sanctions against Vega was proper. "We review the trial court's ruling on sanctions for an abuse of discretion." *In re Estate of Hoover*, 155 Ill. 2d 402, 419 (1993). Such a ruling is governed by Supreme Court Rule 137. IL S. Ct. R. 137 (eff. July 1, 2013). A court may impose sanctions upon the signer of the pleading "to prevent abuse of the judicial process by penalizing the litigant who brings vexatious or harassing actions that are based on false statements or without legal foundation." (Emphasis in original.) *Wittekind v. Rusk*, 253 Ill. App. 3d 577, 580 (1993) (quoting *Singer v. Brookman*, 217 Ill. App.3d 870, 879 (1991)); *Id.* We use an objective standard regarding what was reasonable at the time the complaint was filed to determine if the rule had been violated. *Rusk*, 253 Ill. App. 3d at 580 (citing *In re Marriage of Sykes*, 231 Ill.App.3d 940, 946 (1992)).

¶ 28 Vega failed to prove that the Andersons took title to the subject property with notice of her claim of ownership. Moreover, her persistence with her claim against them was not reasonable as she had clearly identified several other individuals, specifically the Campbells and Stumpe, who were directly involved in the selling of the subject property to Phanco which began the challenges she currently seems to face. Further, the notice to vacate the subject property was not sent to the Andersons but to "Unknown Occupants." It thus appears Vega did not take the time to investigate who exactly had acquired ownership of the subject property, let alone identify which real estate agents and/or brokers may have had knowledge of her claim of ownership imputable to the Andersons. The judgment in favor of the Andersons for sanctions against Vega is thus affirmed.

¶ 29

CONCLUSION

¶ 30 The judgment of the circuit court of Knox County is affirmed.

¶ 31 Affirmed.