

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).

2015 IL App (4th) 140194-U

NO. 4-14-0194

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 27, 2015

Carla Bender

4th District Appellate

Court, IL

THE CITY OF GRAFTON, ILLINOIS,

Plaintiff-Appellee,

v.

MERIT REALTY, INC.,

Defendant-Appellant.

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Appeal from

Circuit Court of

Jersey County

No. 13MR33

Honorable

Eric S. Pistorius,

Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.

Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* This appeal is dismissed as moot because the remedy that defendant requests, reversal of the trial court's judgment, would bestow no practical benefit on defendant.

¶ 2 Plaintiff, the City of Grafton, Illinois, sought judicial permission to demolish a derelict building at 324 Market Street. See 65 ILCS 5/11-31-1 (West 2012). The complaint named defendant, Merit Realty, Inc., because at the beginning of the case, defendant was the recorded owner of the property.

¶ 3 Defendant's president and secretary, Charles D. Bonnell and Anita Murray, attempted to represent defendant in the proceeding, but because they were nonlawyers, the trial court forbade them to do so (see *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 17), and the court gave defendant 21 days to retain an attorney. The 21 days passed,

the scheduled date of trial arrived, and still defendant had retained no attorney. The bench trial proceeded.

¶ 4 After hearing the evidence, the trial court entered a judgment in plaintiff's favor and against defendant. Ultimately, in its written order, the court characterized the judgment as a default judgment against defendant.

¶ 5 Defendant then hired an attorney, who filed a motion to vacate the default judgment. The trial court denied the motion, and defendant appeals.

¶ 6 We dismiss this appeal as moot. Our reason is as follows. Defendant informs us that, immediately before the trial, Bonnell, in his capacity as defendant's president, conveyed 324 Market Street to himself in his individual capacity. If defendant no longer owned the property at the time of the trial, the judgment has merely an academic significance to defendant. All the judgment did was authorize the demolition of the derelict building and the imposition of a lien on the land to cover the costs of demolition. As far as we can see, the demolition and the lien are of no practical consequence to defendant if, at the time the trial court awarded those remedies, defendant no longer had any ownership interest in the land. Therefore, this appeal is dismissed as moot.

¶ 7 I. BACKGROUND

¶ 8 On June 20, 2013, plaintiff filed a civil complaint against defendant. In its complaint, plaintiff alleged that defendant owned a building at 324 Market Street in Grafton, and plaintiff sought authorization to demolish the building because it was abandoned and unsafe. See 65 ILCS 5/11-31-1 (West 2012).

¶ 9 On September 16, 2013, defendant's secretary, Anita Murray, and its president, Charles D. Bonnell, neither of whom was an attorney, filed an answer on defendant's behalf. The answer was signed only by Murray and Bonnell.

¶ 10 On October 3, 2013, in a case management conference, the trial court told Bonnell "that his corporation was prohibited by law from proceeding *pro se* through its officers and should retain counsel" (to quote from defendant's brief). The docket entry for that date says: "Accordingly, cause continued to 10-31-13 at 8:30 a.m. in [o]rder to allow defendant time to retain counsel."

¶ 11 On October 8, 2013, plaintiff filed a motion to amend its complaint so as to name "Jersey County Trustee, Joseph Meyer & Associates" (trustee), as an additional defendant. The proposed first amended complaint alleged, as before, that defendant was the owner of the property, but it also alleged that the trustee, as a delinquent-tax buyer, likewise had an interest in the property. The trial court granted the motion the same day it was filed. The record does not appear to contain an answer to the first amended complaint. Nor does the record appear to contain an order requiring defendant to answer the first amended complaint. See *In re Detention of Duke*, 2013 IL App (1st) 121722, ¶ 24 ("The procedure to follow when answering an amended pleading is not covered by the Illinois Code of Civil Procedure, but [is] left to the discretion of the circuit court.").

¶ 12 On October 22, 2013, an attorney, Stephen P. Schrimpf, filed an entry of appearance on behalf of the trustee. Therein, the trustee expressly consented to the entry of a demolition order.

¶ 13 On October 25, 2013, the circuit clerk received a letter from Murray requesting a continuance for 45 to 60 days "to secure an attorney." The trial court scheduled this request to be heard at 8:30 a.m. on October 31, 2013.

¶ 14 On October 31, 2013, according to the docket entry for that date, plaintiff appeared by its counsel, but "[n]either the defendant nor counsel appear[ed]." Noting that on October 3, 2013, it gave defendant 21 days to obtain counsel, the trial court denied Murray's motion for a continuance and scheduled a bench trial for 1 p.m. on November 19, 2013.

¶ 15 On November 19, 2013, Bonnell filed a demand for a jury trial, and Murray filed a motion for dismissal on the ground that defendant no longer owned 324 Market Street. Along with her motion for dismissal, Murray filed a warranty deed, signed on November 18, 2013, by "Charles D. Bonnell" as "President" of defendant, in which he conveyed 324 Market Street to "Charles D[.] Bonnell, An Individual." According to the county recorder's file stamp, the warranty deed was recorded on November 19, 2013, at 11:24 a.m. (The trial was scheduled to begin at 1 p.m.)

¶ 16 Immediately before the trial, the trial court denied Murray's motion for dismissal. The court remarked:

"THE COURT: And it just so happens that the future buyer's the former President of the corporation. And owner of the corporation I'm assuming is that right? Motion to Dismiss will be denied. The City of Grafton will be permitted to amend by interlineation both the current and former owner. The court deems this transfer a sham transfer for the sole purpose of avoiding the pursuit to this cause of action by the City of Grafton."

The court also denied Bonnell's demand for a jury trial.

¶ 17 After those rulings, plaintiff's attorney told the trial court:

"MR. NAPP: Your Honor the defendants do not have any pleadings on file at this time admitting or denying the Complaint. And I move for an Order of Default in this case and I would like to submit evidence by way of exhibits."

The court told Bonnell and Murray: "It would appear that you can't represent yourself if you're incorporated. Therefore the answer that you filed is in essence a nullity." The court then told Napp: "So what I'm going to [do] given these circumstances, I'm not gonna grant the Motion for Default but simply allow you to present your case which will include the photographs that you referenced."

¶ 18 Plaintiff presented exhibits, mostly photographs of the building. The trial court admitted them into evidence after hearing objections by Murray and Bonnell.

¶ 19 Bonnell then offered an appraisal of the property. The trial court responded:

"THE COURT: Okay. Here's the problem. You can't submit it. Once again, you can't act as your own attorney.

ANITA MURRAY: Which is why we deeded it over to Mr. Bonnell. Is so that he can act as his own counsel.

THE COURT: But I deem that transfer to be a transfer in an effort to avoid this cause. You didn't ask . . . you didn't ask to substitute parties. You asked to dismiss the cause of action. Had you asked to substitute parties it may well have been permitted. But you did not. You asked to have it dismissed because the

property had been sold. Therefore, we're back to where we started again. You can't submit that."

¶ 20 Next, plaintiff called Bruce Wickehauser, its supervisor of building and zoning. In his testimony, he described the dilapidated condition of 324 Market Street, and he estimated that residential rehabilitation would cost \$160,000 and that commercial rehabilitation would cost \$240,000. He did not believe the property was worth even its tax value of \$7,490.

¶ 21 On November 19, 2013, after hearing the evidence, the trial court entered an order of demolition. The first paragraph of the order noted that plaintiff had appeared by Napp and that the trustee, represented by Schrimpf, had consented to the proposed demolition. As for defendant, the order said: "The remaining defendant having failed to appear for non-jury trial called on this date, said defendant is now in default and, on motion of plaintiff's attorney, said default is ordered to be taken and same is hereby entered of record."

¶ 22 The second paragraph of the order found that "the defendants," *i.e.*, defendant and the trustee, were "the owner of legal title and lien holders of record" and that the building was "dangerous, unsafe and beyond reasonable repair."

¶ 23 In the final paragraph, the order awarded the following relief:

"[T]he plaintiff is authorized and empowered to demolish or cause to be demolished the structure located on the premises described in the Complaint herein and that the cost of the demolition, cost of these proceedings including attorney's fees, and other costs related to the enforcement of these proceedings shall be made a lien on the premises as provided by the aforementioned Illinois Compiled Statutes and the Grafton City Code."

¶ 24 On December 12, 2013, an attorney, Scott W. Schultz, entered his appearance for defendant and, pursuant to section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2012)), moved to vacate the default judgment against defendant. He also moved to stay the demolition until the motion to vacate was heard.

¶ 25 On February 11, 2014, after hearing arguments on these motions by Schultz, the trial court made the following docket entry:

"Statements and arguments made. The Court finds that substantial justice was achieved and that the defendants were given an extraordinary period of time, given the nature of this type of litigation, to secure counsel and failed to do so. An evidentiary hearing was held with significant and persuasive evidence both by way of testimony and photographic evidence which clearly demonstrated the allegations contained in plaintiff's complaint. Accordingly, Motion to Vacate denied."

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 The judgment below was against defendant. Therefore, we do not question that defendant has the right to appeal. See Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008); *Harrison v. Kamp*, 395 Ill. 11, 18 (1946); *Trompeter Construction Co. v. First Federal Savings & Loan Ass'n of Ottawa*, 62 Ill. App. 3d 173, 176 (1978). Despite the right to appeal, however, an appeal can be moot, in which case the appellant would be entitled merely to a decision that the appeal is moot. *In re Tekela*, 202 Ill. 2d 282, 294 (2002); *Harrison*, 395 Ill. at 18. In other words,

although a losing party has the right to appellate review, such appellate review is subject to the doctrine of mootness. *Tekela*, 202 Ill. 2d at 294.

¶ 29 An appeal is academic or moot as to a party if the relief the party seeks in the appeal would bestow no practical benefit on the party. *People v. Capitol News, Inc.*, 137 Ill. 2d 162, 170 (1990); *Trompeter*, 62 Ill. App. 3d at 176-77. Given the argument that defendant makes in its brief, *i.e.*, that right before the trial, defendant made a lateral pass, so to speak, by conveying the property to Bonnell, we do not see how defendant—as opposed to Bonnell—would now gain anything from a reversal of the trial court's judgment. Defendant alone has appealed. Bonnell has not appealed. Therefore, defendant must assert its own interest, not that of Bonnell. See *Commercial Credit Loans, Inc. v. Espinoza*, 293 Ill. App. 3d 923, 929 (1997).

¶ 30 The argument in defendant's brief leads us to the conclusion that defendant has no real interest in this appeal. Defendant argues, on the authority of *Downtown Disposal*, that the trial court abused its discretion by refusing to vacate the default judgment against defendant. According to defendant, the court should have vacated the default judgment because the problem of defendant's being represented by nonlawyers was somehow eliminated when, immediately before the trial, defendant conveyed the property to Bonnell in his individual capacity. (It would seem, rather, that all this conveyance effectively did was add another defendant, Bonnell.) The trial, however, resulted in an order of demolition and a lien on the property, nothing more. If, before the trial, defendant sold 324 Market Street to Bonnell, defendant henceforth had no reason to care if the building thereon were demolished or if a lien were put on the land to cover the cost of demolition—because the land no longer belonged to defendant; it belonged to Bonnell.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we dismiss this appeal as moot.

¶ 33

Appeal dismissed.