

No. 1-15-0188

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELOIS POOLE-CLAYTON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 14 M1 015974
)	
AM NORTH, LLC.,)	Honorable
)	Israel A. Desierto,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's ruling in favor of defendant and against plaintiff on plaintiff's allegations of missing and damaged property and infliction of emotional distress is affirmed. The bystander's report and the record disclose no error by the trial court.

¶ 2 Plaintiff, appearing *pro se* in the trial court and in this court, appeals from the circuit court of Cook County's order in which the court found in favor of defendant, AM North, LLC (AM North), and against the plaintiff on plaintiff's small claim complaint for damages resulting from allegations of damaged and missing personal property and emotional distress suffered by

plaintiff as a result of defendant's conduct. Plaintiff alleges that the trial court's ruling was against the manifest weight of the evidence and should therefore be reversed.

¶ 3 On January 2, 2005, following a bench trial, the circuit court entered judgment for the defendant, AM North. On January 23, 2015, plaintiff filed her notice of appeal. Accordingly this court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. May 30, 2008) governing appeals from final judgments entered in the circuit court.

¶ 4 **BACKGROUND**

¶ 5 Plaintiff was a tenant in an apartment building owned and/or managed by Mike Manisorac (Mike)¹ against whom plaintiff levels all of her allegations. Although plaintiff's arguments both in the trial court and in this court direct her allegations to Mike, the actual complaint filed by plaintiff names only AM North as the defendant in this case.

¶ 6 It is inferred from the record that plaintiff was evicted from the apartment in which she lived during the period in question. The reason for plaintiff's eviction is unclear from the record, but at the time of trial she was no longer living in the building in which the acts giving rise to her complaint allegedly took place.

¶ 7 On September 16, 2011, plaintiff filed a *pro se* small claims complaint in the circuit court of Cook County. The complaint, in its entirety, alleged as follows:

"I am suing Mr. Mike Manisorac of AM North LLC (civilly) for the value of my properties that he illegally kept and for the repairs and replacement of my properties. Specifically the repair for my

¹ The spelling of Mike Manisorac's name varies in the record.

computer desk (an estimated value cost of 6900) that was damaged as a result of leaky roof; a mahogany six drawer dresser, valued at \$695.00; an Ashley four chairs and table dinette set valued at \$595.00, a damaged by mildew velvet sofa valued at \$600.00. Finally I am asking for compensation for emotional distress caused by Mr. Manisorac because of medication that I had to take because of his illegal eviction threats in 40° below 0 weather in the winter of 2013 (practically daily).

A letter was mailed to Mr. Manisorac on July 21, 2014 requesting him to resolve these issues. He has totally ignored this letter and has refused to resolve the property and emotional distress issues. I am coming before this court pleading that I be made whole."

¶ 8 The matter proceeded to trial on January 2, 2015. Plaintiff represented herself at trial. Additionally, she presented sworn affidavits from witnesses who were not present at trial. Plaintiff called her nephew Darnell Williams as a witness at trial. Plaintiff also testified in her own behalf. Mike and his wife Agnes Manisorac (Agnes) testified for defendant AM North. The trial proceedings are presented to this court by way of a bystander's report.

¶ 9 Plaintiff testified that while she was a tenant in the building at 1613 N. LeClaire Street in Chicago, owned and/or managed by Mike, she stored with his permission, a dinette set and a dresser in the basement. Plaintiff alleged that the building had a leaking roof and as a result, her furniture and other property inside her apartment were damaged. Darnell Williams, plaintiff's nephew, testified for plaintiff and essentially corroborated her version of the facts. Plaintiff also

presented the sworn affidavits of Wazirah Muhammed, plaintiff's sister; as well as Denise Williams and Edward Floyd, Jr., both of whom claimed to be familiar with the facts. Plaintiff also presented a letter from Sandra Joshua, another tenant in the LaClaire Street building. All of the affidavits and the testimony, as well as the letter when viewed collectively, corroborated plaintiff's allegations.

¶ 10 Mike and Agnes, on direct examination by AM North's attorney, denied that they had a storage area in the basement of the LeClaire building or that they had ever permitted plaintiff to store her furniture there. Mike and Agnes collectively testified that "scaffolding" work was done on the LeClaire building, but the bystander's report discloses no testimony by them regarding a leaking roof. There is nothing in the bystander's report regarding either Mike or Agnes acknowledging any damage or loss of plaintiff's property.

¶ 11 The attorney for AM North elicited an acknowledgement from plaintiff that the lease agreement which she signed shields the landlord from liability for damaged, lost or stolen property. At the conclusion of the evidence, plaintiff made a wide-ranging closing argument which included facts which were not in evidence. However, it should be noted that the bystander's report presented to this court does not disclose the closing argument made by AM North's counsel.

¶ 12 The trial court entered judgment for the defendant, AM North and against plaintiff on the entirety of the complaint. Plaintiff filed a timely notice of appeal.

¶ 13 ANALYSIS

¶ 14 As a preliminary matter we note that plaintiff's brief is in violation of multiple sections of Illinois Supreme Court Rule 341. For example, plaintiff's statement of the facts of the case is replete with argument and conclusions in violation of Rule 341(h)(6) (eff. Jan. 1, 2016). The

Supreme Court Rules governing appellate practice are designed to establish order and procedural normalcy in the appellate process. Plaintiff's *pro se* status does not absolve her of the responsibility of following the Supreme Court Rules. See *Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008). The plaintiff is admonished that she runs the risk of forfeiting her appeal by failing to follow the Supreme Court Rules. That being said, in the interest of bringing this litigation to substantive as well as procedural closure, we will resolve this appeal on the merits.

¶ 15 Plaintiff raises the following issues on appeal: whether (1) the trial court's decision was against the manifest weight of the evidence; (2) the defendant's witnesses were incredible, requiring their testimony to be disregarded by the trial court; (3) the trial court ignored her evidence in making its decision; and (4) the defendant admitted liability for infliction of emotional distress by failing to deny it.

¶ 16 Plaintiff's first two issues can be summarized as bearing on the credibility of the witnesses. Plaintiff essentially argues that the trial court abused its discretion because it ruled against her. She argues that she presented the trial court with affidavits, exhibits and testimony which prove her allegations that her furniture was damaged and that the allegedly stored furniture was stolen or otherwise went missing from the basement of the building. In her appellate brief, plaintiff goes on at length regarding the evidence that she says was presented to the trial court in support of her claim regarding her damaged and missing furniture. She takes issue with the trial court's comment that its ruling was "based on the information" that the court heard. Plaintiff seems to argue that because the court did not specifically itemize the evidence that it relied upon in its ruling, the court must have disregarded the evidence which she believes proves her case.

¶ 17 Defendant counters that the trial court, as the finder of fact, was free to determine which witnesses it found credible. Further, defendant points out that plaintiff also seeks to have this court reweigh the evidence, which would run afoul of established Illinois case law. Defendant argues that plaintiff has not met her burden of affirmatively demonstrating the errors which she asserts were committed by the trial court.

¶ 18 Defendant summarizes the plaintiff's argument with respect to her appeal to be based on "the weight given to evidence, credibility of the witnesses and inferences drawn by the court." Defendant urges this court to leave the trial court's ruling intact arguing that to do otherwise runs afoul of long-standing precedent. Defendant cites *In re Alexander R.*, 377 Ill. App. 3d 553 (2007), as well as *Tully v. McLean*, 409 Ill. App. 3d 659 (2011), in support of its argument that this court must give deference to the trial court's finding since plaintiff has failed to demonstrate any error committed by the trial court. We agree.

¶ 19 Plaintiff's arguments, when broken down into component parts, amount to the assertion that the trial court erred because it did not find plaintiff's evidence sufficient to meet her burden of proof. Included in that assertion is plaintiff's suggestion that the trial court was bound to accept her evidence, including witness affidavits and testimony, over that of the defendant. Plaintiff cites no cases in support of this theory nor can she make such citations since that assertion is inapposite to Illinois law. Plaintiff attempts to buttress her argument by highlighting certain contentions which she claims were unrebutted by defendant. However, that does not save the plaintiff's argument as defendant correctly points out in its opposing argument. It is well established in Illinois law that a trier of fact may reject uncontradicted evidence, if the trier of fact determines that the evidence is untrustworthy. *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 47 (2012) (recognizing that "the trier of fact is always free to

disbelieve any witness"). In other words, the trial court was not obligated to accept plaintiff's version of the events, regardless of whether defendant denied the formal assertions in plaintiff's complaint. Plaintiff is required to prove her case by competent evidence. The record on appeal reveals only an appearance filed by defendant's attorney in response to plaintiff's complaint, but as is customary in small claims cases, no answer rebutting the allegations of the complaint was filed. Therefore, it would have been incumbent upon plaintiff to put forth her evidence at the time of trial, in support of her allegations. Defendant would then have the opportunity to respond and or rebut plaintiff's evidence.

¶ 20 We note that the rules of evidence and procedure which govern the presentation of small claims cases in the circuit court of Cook County are relaxed to facilitate the process for litigants, many of whom appear *pro se*. However, that is not to say that plaintiff is relieved of the obligation of presenting evidence which meets her burden of proof. The record presented on appeal gives no indication that the trial court erred in finding for defendant. Simply put, the trial court within its discretion, found that plaintiff did not meet her burden of proof as to any of the allegations in her complaint. The record shows that plaintiff did not present sufficient, credible evidence in support of her allegations. The facts of the case boiled down to a classic "he said, she said." Clearly the trial court believed defendant's witnesses as to those elements of the facts, which went against plaintiff's complaint. For example, the defendant's witnesses denied that they had allowed plaintiff to store her belongings in the basement or that there was even a storage area in the basement. The defendant also put forth evidence in the form of the lease agreement which puts tenants, including plaintiff, on notice that defendant accepts no responsibility for a tenant's lost or damaged property in the LeClaire Street building. Those factors, if believed by the trial court over plaintiff's evidence, shows that the trial court's decision was not against the

manifest weight of the evidence and that the court did not err in finding for the defendant on the related issue.

¶ 21 In addressing plaintiff's third issue, which asserts that the trial court committed error because it did not "review" the evidence presented by plaintiff in making its ruling, plaintiff makes a lengthy argument on appeal, in which she highlights the evidence which she allegedly presented to the trial court. This evidence included the aforementioned affidavits, photographs, as well as repair estimates, a letter from another tenant as well as testimony from plaintiff and her witness, Darnell Williams. Plaintiff points out that in making its ruling the court did not mention any of her evidence. Plaintiff asserts that the trial court violated her constitutional rights as well as Illinois case law by its failure to mention her evidence in its ruling.

¶ 22 In her argument asserting error by the trial court, plaintiff makes the assertion that the trial court violated procedural rules by failing to explain its ruling. Plaintiff cites several cases in support of her arguments. Our review of those cases makes it clear that plaintiff's reliance is misplaced. In fact the cases are so unrelated to the resolution plaintiff seeks we see no benefit in a lengthy analysis.

¶ 23 Defendant argues that the record shows that the trial court considered all of the evidence in making its ruling. Defendant points to a section in the bystander's report submitted by plaintiff on appeal, which shows that the plaintiff proffered her exhibits to the trial court, the court accepted the exhibits, and stated that it would consider them in its ruling. Defendant summarizes its argument in opposition to plaintiff's assertion that the trial court ignored her evidence by stating that "the trial court weighed the evidence, considered the credibility of the witnesses and found that plaintiff's evidence did not meet her burden of proof." We agree.

¶ 24 There is nothing in the record to suggest that the trial court fell short in its duty to consider all of the evidence before making its decision. There is no obligation for the trial court to itemize every piece of evidence and verbally highlight all of the testimony which it considered in its decision. Contrary to plaintiff's urging, the bystander's report undermines her argument. The only reference in that report to the trial court's consideration of evidence, shows that the court commented that it had *heard and considered all of the evidence* and based its ruling on the evidence it had heard. Accordingly, we see nothing that supports plaintiff's claim that the trial court erred in that it failed to consider her evidence in its ruling.

¶ 25 Plaintiff's final issue is that the trial court erred in not ruling in her favor on her claim of infliction of emotional distress. We note that plaintiff does not specify whether the infliction of emotional distress for which she seeks compensation is intentional or negligent. From the context of the allegation it is likely that plaintiff intended to allege intentional infliction of emotional distress, but given the paucity of facts and the total lack of evidence, we cannot speculate. See *People v. Hunt*, 234 Ill. 2d 49, 58 (2009) (discussing the appellant's duty to present an adequate record). Plaintiff argues that the defendant failed to respond to her allegation of infliction of emotional distress either in a written answer or during trial. Plaintiff then recounts certain facts which she believes proved that she was entitled to a finding in her favor on that issue. Included in plaintiff's recitation are the following allegations: (1) plaintiff was harassed on a daily basis with illegal eviction notices; (2) Mike tried to extort \$881 from plaintiff; (3) plaintiff was threatened with eviction in the middle of winter; and (4) plaintiff sought medical treatment for stress related to these facts.

¶ 26 Defendant counters that the trial court properly ruled in favor of defendant on the issue of infliction of emotional distress because plaintiff failed to meet her burden of proof. Defendant

points out that plaintiff did not present the required evidence to support her claim. There is nothing in the record to support plaintiff's claim that she presented competent evidence to the trial court, in support of her claim of infliction of emotional distress. Defendant highlights and then dismisses as misplaced, plaintiff's argument that defendant's failure to affirmatively deny or refute plaintiff's allegation of infliction of emotional distress, is tantamount to an admission of the claim, thereby negating the need for plaintiff to prove her allegation. Defendant points out that plaintiff's *only* reference to the infliction of emotional distress claim, occurred during plaintiff's closing argument.

¶ 27 The bystander's report discloses that plaintiff mentions infliction of emotional distress initially in her complaint against defendant, but never presented any evidence regarding that claim during trial. In order to prove the elements of her claim, plaintiff was required to prove certain basic facts regardless of whether the emotional distress was intentional or negligent. See *Chang Hyun Moon v. Kang Jun Liu*, 2015 IL App (1st) 143606, ¶ 23.

¶ 28 The record discloses no evidence *whatsoever* by plaintiff which would support her allegation of infliction of emotional distress. The bare bones allegation is contained in the complaint, then not mentioned again until plaintiff's closing argument. It is well established that closing arguments are not evidence but rather are a summation of what the evidence established. In this case the record discloses *no* evidence by the plaintiff regarding her allegation of infliction of emotional distress. The only reference in the bystander's report to anything that approaches infliction of emotional distress is from plaintiff's closing argument and states as follows:

"The winter of 2014, many days were 40 degrees below zero, which put me under a lot of stress with Mike threatening to have me put out in the middle of the night. I was so stressed that I went

to the doctor to get me something to help me with the stress I was under being concerned about being put out in the cold in 40 degree below zero with my property, when I've never been nothing, but a good tenant even in his wife's own words."

¶ 29 Thus, there is *no* evidence in plaintiff's case in chief in support of her claim on this issue. Further, her argument that the allegations as outlined in her bare bones, small claim complaint were not refuted by defendant and therefore admitted and thus establishes defendant's liability, is without legal support and must fail. Therefore, the trial court did not err in ruling in defendant's favor and against plaintiff on her claim for infliction of emotional distress. Accordingly, the judgment of the circuit court of Cook County is affirmed in its entirety.

¶ 30 Affirmed.