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2016 IL App (3d) 150046-U

Order filed March 14, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

JACK F. LYTLE,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellant,)	Kankakee County, Illinois,
)	
v.)	Appeal No. 3-15-0046
)	Circuit No. 13-LM-55
DEANNA L. LYTLE,)	
)	Honorable
Defendant-Appellee.)	Kenneth Leshen
)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

¶ 1 *Held:* Trial court did not err in determining plaintiff was entitled to rent only for months between the date ownership of property was determined and when the defendant moved out and granting plaintiff's motion for a directed verdict on the rent issue.

¶ 2 Plaintiff Jack Lytle filed an amended complaint for wrongful withholding of, and damage to, property he owned in which defendant Deanna Lytle had lived. The trial court granted, in part, Deanna's motion for a directed verdict on rent damages, and following the close of

evidence, awarded Jack \$3,650 in damages, including rent and cleanup costs. Jack appealed. We affirm.

¶ 3

FACTS

¶ 4

In January 2013, plaintiff Jack Lytle filed a forcible entry and detainer action against defendant Deanna Lytle, seeking possession of the home in which Deanna was living in Bradley and damages to the property. Jack sought \$37,000 for 37 months of rent he alleged Deanna failed to pay. Deanna filed a motion to dismiss (735 ILCS 5/2-619 (West 2012)) based on Jack's failure to serve Deanna with the statutory five-day notice for rent due (735 ILCS 5/9-209 (West 2012)). The trial court found that it could not determine as a matter of law whether five-day notice was required because Jack was not seeking rent. Rather, Jack was seeking damages based on allegations of perjury, wrongful withholding of possession, and defrauding of him by Deanna. The trial court dismissed Jack's forcible entry and detainer complaint, finding that Deanna was no longer in possession of the property and that damages alone were not at issue in a forcible entry and detainer action.

¶ 5

In September 2013, Jack filed an amended complaint for wrongful withholding of property and damage to property. The complaint stated that the property was purchased in 1995 by Lawrence, Jack's son and Deanna's ex-husband. Lawrence and Deanna were married in August 1996, and in October 1996, Lawrence conveyed the property to Jack, who assumed the mortgage. Lawrence and Deanna continued to live there together until December 2009, when Lawrence moved out. The complaint further alleged that Deanna "unlawfully withheld possession" from Jack since January 1, 2010; that she "made false statements under oath that she knew were not true"; and that she "intentionally misrepresented that the subject property was marital property so as to remain in the property" and deny Jack possession of it. Jack sought

damages of \$35,000 for 35 months of rent at \$1,000 per month, and \$12,000 for damage to the property. Finally, the complaint stated that a judgment of dissolution was entered in Deanna and Lawrence's dissolution action on November 30, 2012, which provided that Jack was the sole owner of the property.

¶ 6 A bench trial took place. Deanna testified that Lawrence bought the Bradley property and another parcel in 1995 as vacant lots and identified a warranty deed evidencing the purchase. She did not recall when it was conveyed from Lawrence to Jack but identified the warranty deed transferring title to Jack. Deanna also identified an amended complaint seeking a constructive trust she filed in October 2011 against Lawrence and Jack, alleging that Lawrence and Deanna bought the property subsequent to their marriage, that Jack held the property in trust for Lawrence, and that Lawrence paid the mortgage from his business account. The complaint also alleged that Lawrence sold the other vacant lot and used the proceeds from that sale to pay down the mortgage on the subject property. The complaint further alleged that Lawrence moved a home onto the property, which Deanna helped rehabilitate on Lawrence's representation that the property belonged to her and Lawrence, and that she had an equitable title and marital interest in the property.

¶ 7 Deanna denied that she claimed she owned the property before the marriage. She explained that she and Lawrence made the plans together to buy the lots and move a house onto one of them, where they lived, raised their family and "became one." The deeds were signed over to Jack in October 1996 as refinancing so she and Lawrence could build a garage. During the marriage, Lawrence paid the mortgage from his business account. After Lawrence moved out, she remained on the property for three years and did not pay rent. According to Deanna, she and Lawrence did not pay rent at any time they lived on the property. She described the property

as “ours with [Jack’s] name on it.” She admitted the trial court in the dissolution action found the property was not marital as Lawrence bought it before the marriage. She moved out in February 2013.

¶ 8 Lawrence testified that his father owned the house as investment property and he and Deanna took care of it in exchange for living there. He did maintenance on all his father’s properties. After Deanna moved out, he and several of his employees performed repairs on the house for a total cost of \$9,228. He had records in support of the expenses but he could not locate the file. Lawrence testified to the time and materials expended on each repair. He did not bill Jack for the repairs. The bill was contingent on recovery from Deanna for the damages. He calculated that the house would rent for \$1,000 to \$1,200 per month, based on neighboring properties.

¶ 9 Following the close of Jack’s evidence, Deanna moved for a directed verdict. In ruling on the motion, the trial court stated that it weighed the evidence and found Jack was not entitled to rent prior to the entry of judgment in the dissolution action on November 30, 2012, which determined that Jack owned the house. The trial court said that it would not interfere in the rulings of the dissolution case, in which an order of eviction was never entered and which it found would have been the proper venue for Jack to intervene on his rent claim. The trial court granted Deanna’s motion in part on the rent claim for all amounts prior to November 2012 and denied it as far as the three months after the ownership determination was made and before Deanna moved out. Finally, the trial court denied the motion as to the damage claim, except for the cost of painting, which it found was not Deanna’s responsibility.

¶ 10 The trial continued. Jack testified that he owned the property and currently rented it to his granddaughter for \$700 per month rent. She had been the only tenant since Deanna moved

out. He estimated a “fair” rent for the house would be \$1,000 to \$1,200 per month. Deanna testified in her case in chief. She and Lawrence moved into the home in 1996 and raised three children there. Over the years, there was damage to the house, inflicted in part by their son, who was “destructive” during his teen years. Lawrence, too, punched a bedroom door when he was angry and damaged it. According to Deanna, the majority of the damages Jack was claiming occurred over the course of her marriage to Lawrence and before he moved out of the house in 2009. She cleaned the inside of the house before she moved out.

¶ 11 Lawrence testified again on rebuttal. He said they had a fire at the house in 2006, which resulted in smoke and water damage. After the fire, all the carpets were cleaned, the walls were painted, and everything else was wiped down. Lawrence contradicted Deanna’s testimony regarding when the various instances of damage occurred in the house, claiming that the damage was inflicted after he moved out. On cross-examination during rebuttal, Lawrence admitted he did not make all the repairs he testified that he had made.

¶ 12 Jack orally moved for the trial court to reconsider its determination regarding rent damages as determined in its ruling on Deanna’s motion for a directed verdict. The trial court considered the other related actions, including Jack’s motions for forcible entry and detainer, Deanna’s motion for a constructive trust, and the judgment of dissolution. The court noted that the trial court in the forcible entry and constructive trust actions denied both motions and referred the issues to the divorce action. The trial court in the dissolution action also denied Deanna’s motion for a constructive trust, finding Lawrence owned the property before the marriage and transferred it to Jack after the marriage because of the couple’s financial difficulties. The divorce court denied Jack’s claim for rent, finding that he should have filed a counterclaim or an affirmative defense. The divorce court then determined the parties’ marital

estate and distributed it. These rulings were entered as an order on November 30, 2012. The trial court determined that it was not going to go back in time to unravel the dissolution of judgment in which it did not participate, noting that it did not know the theories in that action or the how the obligations and assets were allocated.

¶ 13 Jack asked for damages in the amount of \$9,228, which included the cost of the repairs that were made and the ones remaining to be done. After the trial court asked for but was not provided a specific breakdown of repair costs, it awarded Jack \$650 for cleanup costs and the value of three months' rent. The rent breakdown included December 2012, and January and February 2013 at \$1,000 per month. The cleanup costs included \$200 for a new toilet and \$450 for the rental of a dumpster. The trial court entered an order finding in favor of Jack and against Deanna on those damages. Jack appealed.

¶ 14 ANALYSIS

¶ 15 Jack challenges the trial court's award of damages on his complaint, specifically the trial court orders that granted Deanna's directed verdict, in part, on rent damages and its determination on repair and cleanup costs. He argues on appeal that the trial court erred in finding a forcible entry and detainer action should have been filed in the dissolution action, that Deanna waived a *res judicata* defense, and that he was not required by Illinois law to file a counterclaim.

¶ 16 We begin with Jack's assertion that the trial court wrongly concluded that his forcible entry and detainer action, including his rent request, should have been joined in Lawrence and Deanna's dissolution action. He maintains that a forcible entry and detainer action has limited reach and is not appropriate to be included in a dissolution action.

¶ 17 A forcible entry and detainer action is limited to a determination regarding who is entitled to possession and may include a claim for rent. 735 ILCS 5/9-106 (West 2012). While other claims may not be raised in a forcible entry and detainer proceeding, claims “ ‘germane to the issue of possession’ ” may be litigated and include, in pertinent part, “ ‘claims asserting a paramount right of possession.’ ” *Avenaim v. Lubecke*, 347 Ill. App. 3d 855, 861-62 (2004), quoting *American National Bank by Metroplex, Inc. v. Powell*, 293 Ill. App. 3d 1033, 1044 (1997). A forcible entry and detainer action cannot be used to determine title disputes. *Avenaim*, 347 Ill. App. 3d at 862. We will not reverse a trial court’s determination on a motion for forcible entry and detainer unless it was against the manifest weight of the evidence. *Wendy & William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, § 27.

¶ 18 In this case, the forcible entry and detainer action was germane to the issues in the dissolution proceeding. The trial court considered that any determination regarding rent that would have been paid during the marriage was a matter for the trial court in the dissolution proceeding, where Lawrence and Deanna’s living circumstances were before the court for property distribution and other matters. The trial court reasonably considered that the rent issue was part and parcel of the dissolution action. See 750 ILCS 5/401(b) (West 2012) (judgment of dissolution to include provisions for parental responsibilities, child support, spousal maintenance and property distribution). The trial court’s statements regarding the divorce action were not directed at, nor did they preclude, Jack from seeking the rent he alleged was due. We find there was no error.

¶ 19 We next address Jack’s *res judicata* argument. He failed to develop this argument on appeal but it seems to be directed at Jack’s filings in the other actions, all of which ended up before the trial court in the dissolution action. Jack appears to argue that his claim for rent was

not barred by *res judicata* although the issue was never raised in the lower court or by Deanna on appeal.

¶ 20 *Res judicata* provides that a final judgment on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies, and constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action. *Fuller Family Holdings, LLC v. The Northern Trust Co.*, 371 Ill. App. 3d 605, 616 (2007). *Res judicata* bars further litigation on issues that were actually decided and those that could have been raised and decided in the earlier action. *Fuller Family Holdings, LLC*, 371 Ill. App. 3d at 617. There are three requirements for *res judicata* to apply: a final judgement on the merits by a court of competent jurisdiction, identity of causes of action, and identity of parties or their privies. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). We review *de novo* whether a claim is barred by *res judicata*. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 43.

¶ 21 We agree with Jack that his rent claim was not barred by *res judicata*. None of the requirements are satisfied. Jack's claims were not the same. In the other action, Jack filed a forcible entry and detainer action seeking possession only. In this action, which was not a forcible entry and detainer, he did not seek possession but rather rent and damages for repairs to the house. The demands differed. The trial court confirmed there was no rent demand in any of the earlier proceedings. The original forcible entry and detainer action as decided by the divorce court did not request damages for repairs and cleanup of the house. Finally, the causes of action also differed. Jack filed a forcible entry and detainer action in the earlier proceeding while in the instant cause he filed a complaint for wrongful withholding of, and damage to, property. The record indicated he filed a counterclaim in Deanna's constructive trust action, in which he only sought sanctions. We find that *res judicata* does not bar Jack's claims.

¶ 22 Jack next maintains the trial court's ruling necessitated that he should have filed a counterclaim in the dissolution action in order to recover the rent. He asserts the divorce action was not the appropriate venue for his rent claim. He argues there are no compulsory counterclaims in Illinois and the trial court erred in finding he was required to file one.

¶ 23 Counterclaims are permissive, not compulsory in Illinois, and a defendant is not required to immediately assert his right with a counterclaim. 735 ILCS 5/2-608(a) (West 2012); *Davis v. Lowery*, 228 Ill. App. 3d 660, 662 (1992). A counterclaim is an independent cause of action which must stand on its own merits, regardless of the disposition of the complaint. *Health Cost Controls v. Sevilla*, 307 Ill. App. 3d 582, 589 (1999). It differs from an answer or defense in that it is a cause of action seeking affirmative relief. *Health Cost Controls*, 307 Ill. App. 3d at 589 (quoting *Wilson v. Tramly*, 404 Ill. 307, 309 (1949)). We review issues of law *de novo*. *Village of Richmond v. Magee*, 407 Ill. App. 3d 560, 565 (2011).

¶ 24 Here, the trial court did not suggest that Jack was required to file a counterclaim for rent and other damages in Lawrence and Deanna's dissolution action. The trial court's directive was not that Jack was obligated to file a claim or counterclaim for rent. Rather, the trial court acknowledged that under the facts in this case, Jack's claim for possession was ultimately interwoven with the issues to be determined by the trial court in the dissolution action. Living expenses, such as rent, are the types of expenses the trial court considers in reaching a determination in a divorce. Accordingly, we find no fault with the trial court's conclusion. We do not consider that it found Jack mandated to seek rent in the dissolution action but that the venue was the most appropriate on these facts.

¶ 25 Finally, we consider whether the trial court erred in determining damages. Jack contends that the proper amount of damages would include rent for the period between December 2009,

when Lawrence moved out, and November 2012, when the trial court in the dissolution action determined ownership of the property and entered the judgment of dissolution.

¶ 26 A defendant may move for a directed finding in his favor at the close of the plaintiff's case. 735 ILCS 5/2-1110 (West 2012). In deciding the motion, the court uses a two-part analysis. *Minch v. George*, 395 Ill. App. 3d 390, 398 (2009). The court must first decide as a matter of law whether the plaintiff presented a *prima facie* case, and if so, then it decides, after weighing the evidence, whether sufficient evidence remains to establish the *prima facie* case. *Minch*, 395 Ill. App. 3d at 398. We review *de novo* a trial court's determination whether the plaintiff established a *prima facie* case as a matter of law. *527 S. Clinton, LLC v. Westloop Equities, LLC*, 403 Ill. App. 3d 42, 52 (2010). We will not reverse a trial court's decision to grant a directed verdict unless it was against the manifest weight of the evidence. *527 S. Clinton, LLC*, 403 Ill. App. 3d at 53.

¶ 27 We find that the trial court's determination that Jack was entitled to three months' worth of rent and its grant of Deanna's motion for a directed verdict on this issue were not in error. After the trial court found as a matter of law that Jack presented a *prima facie* case for rent and other damages, it weighed the evidence and found that he was entitled to three months' worth of rent. The trial court reasonably determined that there was no order evicting Deanna in the other actions and that ownership of the property was not established prior to entry of the judgment of dissolution. As discussed above, it properly considered that the issue of rent during the time Lawrence and Deanna were legally married was better determined by the dissolution court when it decided the other marital issues. We find the trial court did not err in awarding Jack three months' rent and denying his claim for rent for the months before the dissolution of judgment was entered.

¶ 28 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 29 Affirmed.

¶ 30 JUSTICE SCHMIDT, specially concurring.

¶ 31 I concur in the judgment.