2016 IL App (4th) 150717-U

NO. 4-15-0717

FILED
March 30, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TROY MILLER,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Coles County
MICHAEL McGEE, GILBERTO TITO QUINONES, and NICHOLAS RAMSEY,	)	No. 14LM403
Defendants-Appellees,	)	
and	)	
OLADAPO AKINDELE, DAVID MITCHELL, and ERIC STARKS,	)	Honorable
	)	Brien J. O'Brien,
Defendants.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in finding no judgment should be entered against defendants in this landlord-tenant dispute.

¶ 2 In February 2015, plaintiff, Troy Miller, filed an amended complaint against defendants, Michael McGee, Gilbert Tito Quinones, Nicholas Ramsey, Oladapo Akindele, David Mitchell, and Eric Starks, for nonpayment of rent and damages. In July 2015, the trial court issued its memorandum opinion and found no judgment against defendants would be entered.

¶ 3 On appeal, plaintiff argues the trial court erred in (1) ruling a written release was not required to release a sublessor, (2) ruling he failed to mitigate damages, (3) ruling that reaching a prelitigation settlement released the nonsettling obligors from liability, (4) applying the wrong standard as to the burden of proof, (5) acting as an advocate for defendants, and (6)

excusing defendants from filing an answer and imposing different evidentiary standards. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2015, plaintiff filed an amended complaint against defendants for nonpayment of rent relating to a residence located at 1021 9th Street in Charleston. Plaintiff alleged he is the lawful owner and landlord of the residence. In count I, the complaint alleged defendants leased the premises and owed $9,301.35 in rent, utilities, late fees, and damages after allowing them all just credits, deductions, and setoffs. In count II, plaintiff alleged Ramsey owed $2,100 for rent, utilities, late fees, and damages after allowing credits, deductions, and setoffs.

¶ 6 Plaintiff attached a copy of the lease signed by Akindele, Mitchell, Quinones, Starks, and McGee to the amended complaint. The lease was not signed by plaintiff. Along with a security deposit of $500 per person, the lessees agreed to pay $16,080 for the 12-month lease, with $1,340 due each month. The lease required a security deposit of $2,000. The nine-page lease also included a schedule of costs for possible repairs.

¶ 7 In June 2015, the trial court conducted a bench trial on the amended complaint. According to plaintiff on appeal, Mitchell, Starks, and Akindele settled prior to trial and were no longer involved in the litigation. Quinones, McGee, and Ramsey appeared *pro se*.

¶ 8 Plaintiff testified he purchased the subject property in 2012. He also testified regarding a lease different from the one attached to the amended complaint. Based on this new lease, plaintiff stated the lessees agreed to pay $18,000, payable in monthly installments of $1,500. The lease required a security deposit of $2,500. Six individuals were listed on this lease, including Quinones and Ramsey. It was also signed by plaintiff but not McGee. As to the

discrepancy over the two different leases, plaintiff's counsel stated the one without plaintiff's signature was a draft lease and was inadvertently provided to defendants. Plaintiff stated he later found out McGee was living at the property. Plaintiff stated Ramsey intended to have Cameron Douglas sublet the premises. At some point, Douglas decided not to reside at the property. Plaintiff stated he only received $16,225 from all of the lessees. The lease term went from August 5, 2013, to July 26, 2014. As a result of collection efforts, plaintiff received $3,600, and he agreed the amount should be credited against the $9,301.35 prayed for in the complaint.

¶ 9 Plaintiff stated he retook possession of the five-bedroom, furnished house at the end of July 2014. He testified to exhibit No. 3, which listed 37 items regarding damages and late fees pertaining to the property, including broken floor joists, missing stove knobs, main drain damages, damaged garage lights, a dented garage door, and floor damages. He stated the hardwood floors had been refinished when he bought the property but "they were in really bad shape" in July 2014. Gum on the floor had to be scraped off and the floor needed to be refinished. Plaintiff stated floor joists were "busted" and a basement pole supporting the joists was missing. New studs had to be put in and jack posts installed. Upon cleaning the stove, plaintiff found the knobs were missing and had to be replaced. Plaintiff stated the main drain in the basement required repair. Plaintiff also thought there were "three dents in the garage door" that could not be repaired. The top of the garage lights had been knocked off and had to be repaired.

¶ 10 On cross-examination, plaintiff stated he did not have any pictures of the condition of the floor after the prior tenants vacated the premises. He did not have any pictures of the missing stove knobs. He also did not have pictures of the dents in the garage door or pictures of the door prior to the tenants moving in.

¶ 11 Christopher Larson testified he works for Eastern Illinois Properties and is also self-employed at Countrywide Custom Carpentry. He has experience in refinishing hardwood floors and described the condition of the floor at the subject property. He stated he would charge $1,500 to refinish the floors in the house.

¶ 12 Nicholas Ramsey testified he entered into the lease in February 2013. He stated Cameron Douglas signed the lease to sublet from Ramsey. Douglas was later allowed to pay $300 to get out of the lease. Ramsey believed he was no longer bound by the lease after Douglas signed it.

¶ 13 Tito Quinones testified he entered into the lease in February 2013. He moved in sometime in late August or early September 2013 and lived with Mitchell, Starks, and Akindele. In January 2014, McGee moved into the house. Quinones was not aware of any dents in the garage door. He stated he came home once and the floor "felt soft." He looked in the basement and saw "the pole was on the floor."

¶ 14 Michael McGee testified he moved into the house in January 2014 and became the fifth roommate. He stated the main drain in the basement clogged on at least two occasions. He stated the knobs on the stove were there when he moved out in August 2014.

¶ 15 In July 2015, the trial court issued its memorandum opinion. The court found McGee, Quinones, and Ramsey were entitled to a $3,600 credit against any judgment. The court also found security deposits in the amount of $2,500 were available to be applied toward any award or judgment.

¶ 16 As to Nicholas Ramsey, the trial court found he and plaintiff agreed to find a sublessee and he notified plaintiff he would not be moving in. Sometime thereafter, Douglas became the sublessee, and Ramsey assumed his liability under the lease had ended. The court

stated plaintiff failed to present evidence Ramsey had been informed the prospective sublessee never moved in. Further, the court found plaintiff failed to make efforts to mitigate his damages. The court found in favor of Ramsey on count II.

¶ 17 As to the repair costs, the trial court found plaintiff failed to meet his burden of proof with respect to the broken floor joists, the stove knobs, the main drain, the garage door dents, the garage lights, and the late fees. The court found plaintiff partially met his burden of proof with respect to painting and patching holes, cleaning, the floors, and the kitchen table and chairs. The court found a total of 50 hours of labor would reasonably have been required to return the property to a rentable condition. The court awarded plaintiff $1,500 for 50 hours of work at $30 per hour. Although the court found the floor had been damaged beyond the normal wear and tear, it also found the floor would have likely needed refinishing on a periodic basis. The court awarded $750 to plaintiff for the floor damage. The court awarded $200 to plaintiff to replace the kitchen table and chairs. The court also awarded plaintiff $2,599.74 for other listed repairs.

¶ 18 Adding the figures together, the trial court awarded $5,049.74 to plaintiff. The court found defendants were entitled to a credit of $2,500 from the security deposits, leaving a balance due of $2,549.74. The court also found defendants were entitled to a credit of $3,600 as a result of the settlement agreements reached prior to trial. As the figure exceeded the total awarded to plaintiff, the court stated no judgment would be entered against defendants. The court also stated defendants were not entitled to any refund, as the overage was paid by the settling defendants. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. Lack of an Appellees' Brief

¶ 21 Initially, we note appellees have not filed a brief in this case. A reviewing court is not compelled to serve as an advocate for the appellees and is not required to search the record for the purpose of sustaining the trial court's judgment. However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellees' brief, the court should decide the merits of the appeal. On the other hand, if the appellant's brief demonstrates *prima facie* reversible error and the contentions in the brief find support in the record, the trial court's judgment may be reversed. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976).

¶ 22 B. Written Release

¶ 23 Plaintiff argues the trial court erred in ruling a written release was not required to release a sublessor. We disagree.

¶ 24 In this case, the lease stated, in part, as follows:

> "Subletting will only be permitted with the consent of the Lessor. If Lessor agrees to sublet premises then Lessee(s) agrees to pay a $200.00 per person subletting fee. This fee applies whether the premises are relet under a sublease or totally separate lease."

¶ 25 Plaintiff contends Ramsey did not pay the $200 subletting fee and he did not release him from the lease. Thus, plaintiff argues Ramsey remained liable for unpaid rent, late fees, and damages in the amount of $2,100. However, Ramsey testified he and plaintiff agreed on finding a sublessee to take his place. Ramsey also stated he informed plaintiff well in advance he would not be moving in. Nothing indicates plaintiff demanded the $200 payment from Ramsey at that time. Instead, Ramsey assumed his liability under the lease had ended. As the evidence appears to indicate plaintiff released Ramsey from his responsibility under the

lease, we find the trial court did not err in finding in favor of Ramsey.

¶ 26 C. Failure To Mitigate Damages

¶ 27 Plaintiff argues the trial court erred in ruling he failed to mitigate his damages. We disagree.

¶ 28 Here, the trial court found plaintiff "presented no evidence that he made efforts to mitigate his damages as required by 735 ILCS 5/9-213.1." Under section 9-213.1 of the Code of Civil Procedure, "a landlord or his or her agent shall take reasonable measures to mitigate the damages recoverable against a defaulting lessee." 735 ILCS 5/9-213.1 (West 2014). "The purpose of section 9-213.1 of the Act is to require a landlord to undertake reasonable efforts to relet the premises after a defaulting tenant departs, rather than allowing the premises to stand vacant and then attempting to collect the lost rent in the form of damages." *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 609, 913 N.E.2d 33, 42 (2009).

¶ 29 The landlord has the burden of proving he complied with the duty to mitigate. *Danada Square, LLC*, 392 Ill. App. 3d at 608, 913 N.E.2d at 41. "If a landlord cannot show that it took reasonable steps to mitigate its damages, the damages that it could otherwise recover are reduced, and 'losses which reasonably could have been avoided are not recoverable.' [Citation.]" *Danada Square*, 392 Ill. App. 3d at 608, 913 N.E.2d at 41.

¶ 30 The lease at issue ran from August 5, 2013, to July 26, 2014. Ramsey signed the lease on February 14, 2013. At some point, Ramsey testified he and plaintiff reached an agreement whereby Ramsey would find a sublessee. Thereafter, Cameron Douglas became the sublessee and signed the lease on July 1, 2013. Ramsey never moved in and felt he was no longer bound by the lease. At some point, Douglas paid $300 to get out of the lease.

¶ 31 We note "a landlord's duty to mitigate is triggered after the tenant abandons the

premises." *Block 418, LLC v. Uni-Tel Communications Group, Inc.*, 398 Ill. App. 3d 586, 591, 925 N.E.2d 253, 257 (2010). It does not appear plaintiff notified Ramsey that Douglas backed out of the lease and that he had better find a new sublessee or be held responsible for his share of the rent. Moreover, it does not appear plaintiff notified the other roommates that they too would be held responsible for the full extent of the rent after Ramsey and Douglas did not move into the residence and thereby give them the opportunity to find a suitable replacement. We find the trial court did not err in finding plaintiff failed to make efforts to mitigate his damages.

¶ 32 D. Prelitigation Settlement

¶ 33 Plaintiff argues the trial court erred in ruling that reaching a prelitigation settlement with a joint and several tenant released the nonsettling obligors from liability. We disagree.

¶ 34 Plaintiff cites the rule that "[w]hen a plaintiff settles with one party, the remaining tortfeasors remain jointly and severally liable for the full amount of the judgment, minus the amount of the settlement." *Rodgers v. St. Mary's Hospital of Decatur*, 149 Ill. 2d 302, 311, 597 N.E.2d 616, 620 (1992). Plaintiff argues his right to recover late fees under a joint and several lease should not have been impaired by his settlement with Starks.

¶ 35 The trial court found the "claimed late charges of $1200 appear to relate to Eric (Starks) and Tito (Quinones) being late on the last month's rent. The Plaintiff reached a settlement with Defendant Starks, thereby forfeiting his right to recover late charges from him." We find the court did not err in finding plaintiff forfeited his right to recover late charges from Starks. To find otherwise would allow a landlord to settle with a defendant and then receive a windfall by going after the remaining defendants for the amount already included in the settlement.

¶ 36 E. Damages and the Burden of Proof

¶ 37 Plaintiff argues the trial court erred in applying the wrong standard as to the burden of proving damages. We disagree.

¶ 38 "A tenant is required only to leave an apartment in the same condition as it was when possession was taken, normal wear and tear excepted." *Ikari v. Mason Properties*, 314 Ill. App. 3d 222, 228, 731 N.E.2d 975, 980 (2000). " 'If the premises are not left in that condition, normal wear and tear excepted, then the landlord has the right to hold the tenant liable for the costs of returning the premises to such condition so that they may be re-let.' " *First National Bank of Des Plaines v. Shape Magnetronics, Inc.*, 135 Ill. App. 3d 288, 292, 481 N.E.2d 953, 955 (1985) (quoting *Pyramid Enterprises, Inc. v. Amadeo*, 10 Ill. App. 3d 575, 579, 294 N.E.2d 713, 716-17 (1973)).

¶ 39 As this case involved a bench trial, the trial court's findings of fact will not be disturbed unless they are against the manifest weight of the evidence. *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884, 890, 931 N.E.2d 285, 290 (2010). "A finding is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Southwest Bank of St. Louis*, 401 Ill. App. 3d at 890, 931 N.E.2d at 290.

¶ 40 In the case *sub judice*, the trial court found plaintiff failed to meet his burden of proof with regard to the broken floor joists, the stove knobs, the main drain damages, the garage door dents, the lights on the garage, and the late fees. The court found no credible evidence to establish defendants, other permitted tenants, or invited guests caused the damage to the floor joists, the main drain, the garage door, and the garage lights. Moreover, the court stated plaintiff presented no photographs of the stove and did not call the witness, his mother, who claimed to

have found the knobs missing. The court was in the best position to judge the credibility of the witnesses and the weight to be given to their testimony. Based on a review of the record, we find the court's ruling was not unreasonable, arbitrary, or not based on the evidence.

¶ 41 F. The Trial Court as an Advocate for Defendants

¶ 42 Plaintiff argues the trial court erred in acting as an advocate for defendants. We disagree.

¶ 43 "A trial judge has an obligation to assure the public that justice is administered fairly and must avoid the appearance of impropriety." *In re Maher*, 314 Ill. App. 3d 1088, 1098, 734 N.E.2d 95, 102 (2000). Moreover, "the trial court must not depart from its function as a judge and may not assume the role as an advocate for either party." *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26, 16 N.E.3d 763; see also *In re Marriage of Drewitch*, 263 Ill. App. 3d 1088, 1093, 636 N.E.2d 1052, 1057 (1994) (stating a trial judge "must take the case as the parties have presented it").

¶ 44 Plaintiff argues the trial court made hearsay and foundational objections on defendants' behalf. At trial, the court interrupted the examination by plaintiff's counsel, stating, "Let's not get into hearsay here. This is obviously hearsay. I know that these gentlemen are not objecting, but I'm not just going to turn a blind eye to obvious hearsay." The court later interjected, "let's make sure we establish foundation. Okay. Now gentlemen, it's not my job to make objections for you, okay, but when something calls for obvious hearsay, I'm going to intervene. I'll allow this testimony as long as you can establish foundation for it and if you can't, then I won't consider it."

¶ 45 Plaintiff also objects to the trial court's statements at the close of first day of trial when, while discussing the next court date, the court stated, in part, as follows:

"Now, I have to walk a really fine line here between being the Judge and being an advocate. I can't be an advocate for Mr. Miller. I can't be an advocate for you gentlemen, but there are things that you can do that would require Mr. Miller to produce things that you are looking for, like this notebook that you made reference to."

When defendants asked about plaintiff providing names of possible witness, the court stated:

"You could, um; I guess it's the timing of this that concerns me because here we are now in the midst of trial. So these are things that should have been done prior to trial and I—I know you guys aren't lawyers and I understand that. You may be with the benefit of hindsight now that you wish you had done that, but you have the same opportunity to send written questions to him as he did to you. Okay? I really can't tell you much more than that because we're now getting to the point where I'm giving you advice and I really can't do that, but just as he asked you for information prior to trial, you now have a month and six days where you could ask him for information. See how that works.

***

If you're going to do that you need to move quickly because he would have 28 days to respond to your questions and we're about, I'm not sure if it's 36 days exactly, but so you need to get moving on that. Okay."

¶ 46 We note "a trial judge is allowed greater latitude to comment during a bench trial than might be acceptable during a jury trial." *In re Marriage of Click*, 169 Ill. App. 3d 48, 53, 523 N.E.2d 169, 172 (1988).

> " ' "It is the judge's duty to see that justice is done, and where justice is liable to fail because a certain fact has not been developed or a certain line of inquiry has not been pursued it is his duty to interpose and either by suggestions to counsel or an examination conducted by himself avoid the miscarriage of justice, but in so doing he must not forget the function of the judge and assume that of the advocate." ' [Citations.]" *Village of Kildeer v. Munyer*, 384 Ill. App. 3d 251, 257-58, 891 N.E.2d 1005, 1012 (2008).

¶ 47 In this case, the trial court had not one *pro se* defendant, but three. "Even under the best of circumstances, the conduct of a trial involving a *pro se* litigant presents enormous difficulties for any trial judge." *Pavilon v. Kaferly*, 204 Ill. App. 3d 235, 250, 561 N.E.2d 1245, 1254 (1990).

> " 'The heavy responsibility of ensuring a fair trial in such a situation rests directly on the trial judge. The buck stops there. There is no law that requires a litigant to have a lawyer. The lawyer for the opposing side cannot be expected to advise the opposing party who is *pro se*. The judge cannot presume to represent the *pro se* party. In order that the trial proceed with fairness, however, the judge finds that he must explain matters that

would normally not require explanation and must point out rules and procedures that would normally not require pointing out. Such an undertaking requires patience, skill and understanding on the part of the trial judge with an overriding view of a fair trial for both sides.' [Citation.]" *Pavilon*, 204 Ill. App. 3d at 250-51, 561 N.E.2d at 1254-55.

¶ 48 We find the trial court did not overstep its bounds as a judge and become an advocate for defendants. The court was well within its discretion to remind plaintiff's counsel that it would not consider hearsay or evidence lacking a foundation, even in the absence of an objection from defendants. Also, the court did not continue the trial to allow defendants an opportunity to conduct further discovery. Instead, the court simply told defendants what could be done in the time until the trial resumed. We find no abuse of discretion.

¶ 49 Plaintiff also argues the trial court permitted defendants to introduce evidence not disclosed in discovery and facilitated entry of that evidence into the record. In their case, defendants sought to introduce three pictures of the garage door. Quinones took the pictures on the day of trial and stored them on his cell phone. Plaintiff's counsel objected, arguing defendants did not tender any photographs during discovery and did not move to supplement their responses prior to trial. Given that the pictures were located on the phone, the court asked how defendants intended to get them into the record. Defendants suggested they e-mail them to the court. The court provided its e-mail address but an attempt to send them proved inadequate. McGee suggested the photos be developed at a local store and inserted into the record the following morning. The court responded as follows:

"Well, just in the interest of finishing this trial, we need to

> have something that's going to move us forward. So you know I don't want to keep anybody's phone, all right, but I want to have an accurate record of the proceedings. So I can allow you to use the photographs to ask Mr. Miller questions on the condition that I have hard copies of them brought to the Clerk's office tomorrow morning."

The court overruled counsel's objection to these measures. Quinones then handed plaintiff the phone and asked questions regarding the pictures therein. After calling Quinones to the stand and asking foundational questions regarding the contents of the photos, the court admitted them into evidence.

¶ 50 "[*P*]*ro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067, 916 N.E.2d 45, 57 (2009). Here, defendants had ample opportunity in the months before trial to submit photos of the garage in discovery and have hard copies available at trial. They failed to do so. The court's decision to facilitate the introduction of the photos of the garage into the evidentiary record was unorthodox. However, we find the introduction of the photos did not result in prejudice.

¶ 51 G. Excusing Defendants From Filing an Answer

¶ 52 Plaintiff argues the trial court erred in excusing defendants from filing an answer and imposing a different evidentiary standard among the parties. We disagree.

¶ 53 Here, at a pretrial hearing, counsel indicated her desire to propound written discovery on defendants and requested they file a written answer to the claims. The trial court

stated there had been a denial of the allegations and it was "inclined to just let the oral denial stand rather than ordering them to actually file answers." The court then discussed an appearance fee and asked counsel how she wanted to proceed. Counsel suggested a case-management conference in 45 days. The court deferred the appearance fee until that date and told defendants they had to answer any questions submitted by counsel. The court set the status conference and deferred the appearance fee until that date. Counsel stated, "That's fine."

¶ 54 Plaintiff's counsel did not raise the issue of defendants filing a written answer throughout the remainder of the hearing. Thus, it appears counsel acquiesced to proceeding in the fashion articulated by the trial court. In the end, this matter was a simple case. The amended complaint set forth general allegations that defendants failed to pay rent and owed a certain amount for rent, utilities, late fees, and damages. Defendants denied owing the amounts, and we fail to see any prejudice by defendants not filing a written answer.

¶ 55 In his remaining arguments, plaintiff contends the trial court held defendants to a different evidentiary standard and used different definitions of hearsay between the parties. However, plaintiff does not set forth any case law in support of his contentions. Thus, we need not address them. See *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37, 992 N.E.2d 103 (stating failure to support an argument with relevant authority results in forfeiture of that argument).

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court's judgment.

¶ 58 Affirmed.