

NOTICE

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FILED

December 8, 2016
Carla Bender
4th District Appellate Court, IL

2016 IL App (4th) 160283-U

NO. 4-16-0283

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ASHLEY RAY,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
BRIAN LYTTAKER,)	No. 12L257
Defendant,)	Honorable
and)	John M. Madonia,
PATRICIA LYTTAKER,)	Judge Presiding.
Intervenor-Appellee.)	

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

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in (1) ruling certain evidence inadmissible and (2) denying plaintiff's motion to sell property.

¶ 2 In June 2013, plaintiff, Ashley Ray, filed a personal injury action against defendant, Brian Lyttaker, and Donald Lyttaker based on injuries suffered in a dog attack. In January 2015, the trial court entered judgment against Brian in the amount of \$27,000. In September 2015, Ray filed a motion to sell property to satisfy the judgment. In September 2015, Patricia Lyttaker filed a petition to intervene and later filed a motion to dismiss. In April 2016, the court denied Ray's motion to sell property.

¶ 3 On appeal, Ray argues the trial court erred in (1) finding an income and asset form inadmissible and (2) finding she cannot enforce the judgment by requiring the sale of certain property. We affirm.

¶ 4

I. BACKGROUND

¶ 5 In June 2013, Ray filed an amended complaint setting forth a personal injury action against Brian and Donald. Ray alleged she was employed for Donco Construction, d/b/a JF Electric, and was reading the electric meter at 324 East Harpole Street in Williamsville, Illinois, on March 22, 2011. At that time, she was attacked by a dog and suffered severe lacerations to her body, resulting in permanent disfigurement. Counts I (Donald) and II (Brian) alleged violations of section 16 of the Animal Control Act (510 ILCS 5/16 (West 2010)). Count III (Donald) set forth a claim of negligence.

¶ 6 In July 2013, Donald filed his answer. In August 2013, Ray filed a motion for default judgment against Brian, claiming he had not responded to her amended complaint.

¶ 7 In December 2013, Brian testified in a discovery deposition. He stated he had lived at 324 East Harpole Street for seven years. His father, Donald, purchased the house, and his father's name is on the title and deed. Brian had an oral agreement to purchase the house over time with periodic payments. The purchase price was between \$80,000 and \$90,000, and Brian thought he still owed approximately \$40,000 to \$50,000. Brian pays the bills and claims the property taxes on his tax return. Donald pays for the insurance on the property. Brian testified he owned the dog.

¶ 8 In his discovery deposition, Donald testified he bought the property at 324 East Harpole Street six or seven years prior to his testimony. He and Brian had an oral agreement to pay him back when he could make payments. Once Brian paid for the house, Donald stated he would give Brian the title.

¶ 9 In January 2014, Donald filed a motion for summary judgment pursuant to section 2-1005(b) of the Code of Civil Procedure (735 ILCS 5/2-1005(b) (West 2012)). Donald argued

summary judgment should be entered on count I because he was not an “owner” as contemplated by the Animal Control Act. He also argued summary judgment should be entered on count III because he did not owe a duty to Ray.

¶ 10 In April 2014, Ray filed a motion for partial summary judgment as to liability in count II of the amended complaint. Ray argued, based on Brian’s admission that he owned the dog and Ray had a right to be on the property, no material issues of fact existed and summary judgment should be granted on count II.

¶ 11 In September 2014, the trial court granted Donald’s motion for summary judgment with respect to counts I and III of the amended complaint. The court also granted Ray’s motion for summary judgment with respect to Brian’s liability in count II. In January 2015, the court entered judgment against Brian in the amount of \$27,000 plus costs of the suit.

¶ 12 In February 2015, Ray filed a citation to discover assets. In September 2015, Ray filed a motion to sell property to satisfy the judgment. Ray alleged the home at 324 East Harpole Street was initially purchased in 2006 for \$93,500. She also alleged a hearing on the citation to discover assets showed Brian owed approximately \$30,000 on the home. Ray claimed the \$60,000 in equity exceeds any exemption Brian has and the equity can satisfy both the remaining balance owed to Donald and the judgment in this matter. Ray asked the trial court to order the sale of the home with the net proceeds used to pay the outstanding judgment.

¶ 13 In September 2015, Patricia Lyttaker, Donald’s wife, filed a petition to intervene. Patricia alleged sole and exclusive title to 324 East Harpole Street was acquired in April 2006 by her and Donald as joint tenants with right of survivorship. Patricia stated she never agreed to sell the property to Brian. She also argued no judgment lien was ever created against the property, as a judgment was never entered against the owners.

¶ 14 In October 2015, Patricia filed a motion to dismiss, alleging Ray's motion to sell property did not allege facts indicating the consideration in connection with any alleged oral agreement by only one joint tenant to sell the property was ever fully paid. Patricia contended the idea that property jointly belonging to her and Donald, upon which there had never been a judgment lien, should be sold to pay a judgment against Brian is without merit.

¶ 15 In April 2016, the trial court conducted a hearing on the pending motions. Patricia testified she owned the property in joint tenancy with Donald since 2006, and she never agreed to sell the property to anyone.

¶ 16 Patricia's counsel objected to Ray's submission of an income and asset form into evidence. The form, signed by Brian, purports to indicate he has an interest in real estate. Patricia's counsel argued the form did not indicate the real estate to which Brian was referring. The trial court sustained the objection and denied admission of the form. Following arguments, the court denied Ray's motion to sell the property. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Income and Asset Form

¶ 19 Ray argues the trial court erred in finding an income and asset form signed by defendant in a citation to discover assets is not admissible as an admission by a party opponent. We disagree.

¶ 20 “The decision to admit or exclude evidence rests within the sound discretion of the trial court and that decision will not be disturbed absent an abuse of discretion.” *Kovera v. Envirite of Illinois, Inc.*, 2015 IL App (1st) 133049, ¶ 55, 26 N.E.3d 936. “A clear abuse of discretion occurs when ‘the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.’ ” *Blum v. Koster*, 235 Ill. 2d

21, 36, 919 N.E.2d 333, 342 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 21 In the case *sub judice*, Ray’s counsel sought to submit an income and asset form purportedly signed by Brian as evidence at the hearing on the motion to sell property. The form in question is signed by Brian and dated March 9, 2015. When the form asks if he has any interest in real estate, the word “Yes” is circled. Above the word “Mortgage,” the words “approx. \$30k” are written.

¶ 22 “Basic rules of evidence require that a party must lay the foundations for the introduction of a document into evidence.” *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 247, 571 N.E.2d 1107, 1110 (1991). “A proper foundation is laid for the admission of documentary evidence when the document has been identified and authenticated.” *People v. Watkins*, 2015 IL App (3d) 120882, ¶ 36, 25 N.E.3d 1189; see also Ill. R. Evid. 901 (eff. Jan. 1, 2011). Usually the proponent of a document establishes the foundation of a document “through the testimony of a witness who has sufficient personal knowledge to satisfy the trial court that a particular item is, in fact, what its proponent claims it to be.” *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400, 415, 830 N.E.2d 814, 828 (2005). “Without proper authentication no document is admissible.” *CCP Ltd. Partnership v. First Source Financial, Inc.*, 368 Ill. App. 3d 476, 484, 856 N.E.2d 492, 498 (2006).

¶ 23 Here, Ray’s counsel failed to lay a sufficient foundation for admission of the form. No one, including Brian, the purported signer of the document, testified regarding the identity of the document. The address of Brian’s purported interest in real estate is not listed on the document. Moreover, the meaning of “approx. \$30k” is unclear. Without a proper foundation, we find the trial court did not abuse its discretion in refusing to admit the form into

evidence.

¶ 24

B. Motion To Sell Property

¶ 25 Ray argues the trial court erred in finding she could not enforce a judgment by requiring the sale of a home being purchased on a contract for deed. Section 12-101 of the Code of Civil Procedure states, in part, as follows:

“[A] judgment is a lien on the real estate of the person against whom it is entered in any county in this State, including the county in which it is entered, only from the time a transcript, certified copy or memorandum of the judgment is filed in the office of the recorder in the county in which the real estate is located.” 735 ILCS 5/12-101 (West 2014).

“The purpose of the statute ‘is remedial and affords a means of collecting a judgment by forcing the sale of the judgment debtor’s property, real or personal, or both, to the extent necessary to satisfy the debt and costs.’ ” *Maniez v. Citibank, F.S.B.*, 383 Ill. App. 3d 38, 41, 890 N.E.2d 662, 665 (2008) (quoting *Haugens v. Holmes*, 314 Ill. App. 166, 169, 41 N.E.2d 109, 111 (1942)). In regard to real estate, “a lien is general and extends only to the debtor’s interest in the property at the date of judgment.” *In re Application of Klock*, 10 Ill. App. 3d 752, 754, 295 N.E.2d 319, 320-21 (1973).

¶ 26 In this case, Ray obtained a judgment against Brian in the amount of \$27,000 in December 2014. Ray did not record a certified copy or memorandum of the judgment in the Sangamon County Recorder’s office. See 735 ILCS 5/12-101 (West 2014). In September 2015, Ray filed a motion to sell the property at 324 East Harpole Street. As a judgment creditor, Ray could assert no greater rights against the property than could Brian, the judgment debtor.

Although Ray maintained Brian had equity in the property as a purchaser under a contract for deed, the terms of the contract were not known and the contract was not memorialized in a written agreement. At the time of judgment, Brian had no title in the real estate. Instead, the title owners were Donald and Patricia. Thus, Brian had no enforceable interest in the property. He had no home to sell because the home belongs to Donald and Patricia. With no judgment against Donald or Patricia, Ray could not force the sale of their property to satisfy her judgment against Brian. Accordingly, we find the trial court did not err in denying Ray's motion to sell the property.

¶ 27

III. CONCLUSION

¶ 28

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

¶ 29

Affirmed.