

NOTICE

Decision filed 03/18/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 140545-U

NO. 5-14-0545

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

DAWN R. BROOKS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Washington County.
)	
v.)	No. 14-LM-10
)	
ALFRED L. CROSS, d/b/a White House)	
Business Group,)	Honorable
)	Daniel J. Emge,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Schwarm and Justice Welch concurred in the judgment.

ORDER

- ¶ 1 *Held:* The judgment of the circuit court is affirmed where all issues raised by the defendant are waived for failure to raise the issues at trial and/or in a posttrial motion.
- ¶ 2 A judgment in the amount of \$3,686.24 was ordered against the defendant, Alfred Cross, for a case of forcible entry and detainer brought by the plaintiff, Dawn R. Brooks. The defendant's motion for rehearing/motion to reconsider based upon an alleged conflict of interest on the part of the real estate agent was denied. The defendant files this timely *pro se* appeal. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On or about January 4, 2014, the parties entered into negotiations regarding the plaintiff's bar located at 532 North Kaskaskia Street in Nashville, Illinois. According to the defendant's testimony at trial, after speaking with the real estate broker and Ms. Brooks about his interest in purchasing the property, "I told her I wanted to lease it with an option to buy and needed to fix it up before I could go get money to buy it, and we talked about a year's lease." Both the purchase and lease agreements were provided by Ms. Christy Lackey of C & C Realty, a real estate broker, and she had each of the parties initial and/or sign both the purchase agreement and the lease agreement. In the Southwestern Illinois Regional Multiple Listing Service, Inc., contract to purchase commercial real estate, which was signed by both parties on or about January 4, 2014, Ms. Lackey was listed as both the listing broker and the selling broker, as well as the designated agent for both seller and buyer. The lease agreement, which was signed on or about January 10, 2014, and commencing on January 13, 2014, showed that rent would be \$500 per month, and the defendant provided a \$1,000 check for the first and last months' rent. On the date the lease agreement was signed by the defendant, he and the broker entered the property and found it flooded. A note was made on the lease agreement regarding these conditions which was initialed by the defendant.

¶ 5 According to the record, at some point after this, the defendant changed the locks on the bar and the shed, stopped payment on the \$1,000 check, returned the keys to the agent, and was finally served with paperwork for this lawsuit under the pretense of a release and satisfaction of the lease. The record contains three transcripts: (1) the April

24, 2014, initial court appearance where the right of possession was transferred from the defendant to the plaintiff, (2) the August 6, 2014, hearing on the merits, and (3) the October 6, 2014, motion for rehearing/motion to reconsider hearing which was denied.

¶ 6 At the August 6, 2014, hearing, copies of the lease and purchase agreements were entered into evidence, along with other items, and testimony was heard. Ms. Lackey was subpoenaed as a witness for the plaintiff. There was no objection to her testifying, nor any objection made during her testimony. The record shows Ms. Lackey testifying, "I represented both of them in the sale." Further in the transcript, defense counsel states, "When you were helping with this sale and representing both parties ***." The defendant was a witness on his own behalf as well and testified in the narrative. Much evidence and testimony discussed the interactions of each of the parties, individually and together, with the broker, but no statement alluded to a conflict issue, used the term "conflict," nor specifically requested the adjudication of such an issue.

¶ 7 After the hearing, the court ordered the defendant to pay to the plaintiff the amount of \$3,686.24, which included prorated back rent, attorney fees, and court costs. The defendant filed a timely motion for rehearing, stating only one issue: "the defendant has become aware there is a potential conflict that may have a decision as to a Judgment being entered against the Defendant. It is the belief this Court should be made aware of such issue, and said Court, make a decision as to the issue of a potential conflict." At the hearing, the court stated, "I guess we will treat as a motion to reconsider," and heard argument from defense counsel. Counsel opined that the defendant felt he was tricked

into waiving the conflict of the real estate broker's representing both him and the seller. The court denied his motion.

¶ 8 The defendant filed a timely appeal. He raises the following issues on appeal: (1) a breach of duty by broker to testify for petitioner over defendant; (2) lack of constructive possession on the part of the defendant; (3) potential damages for defendant due to abrogation of lease; (4) improper standard by judge for determining constructive possession; (5) lack of judicial duty of care to review conflict; and (6) lack of timing for judge to make decision on the alleged conflict.

¶ 9 ANALYSIS

¶ 10 Issues that could have been raised, but were not, are waived. *People v. Williams*, 209 Ill. 2d 227 (2004). This court has stated, "[t]o preserve an issue for review, a party must make the appropriate objections in the trial court or the issue will be waived. [Citation.] The party must state specific grounds for any objections, and other grounds not stated are waived on review. [Citation.] The purpose of these requirements is to allow the trial court an opportunity to properly consider the objection and rule on it. [Citation.] *Ficken v. Alton & Southern Ry. Co.*, 291 Ill. App. 3d 635, 644-45 (1996).

¶ 11 In addition to raising an issue at trial, Illinois law is clear that a written posttrial motion raising an issue is necessary to preserve any error for appellate review. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 855 (2010) (citing *Orzel v. Szewczyk*, 391 Ill. App. 3d 283, 287 (2009)). The purpose of this court's rules requiring objection at trial and a posttrial motion is to encourage parties to raise issues in the trial court, thus ensuring both that the trial court is given an opportunity to correct any errors prior to appeal and that a

party does not obtain a reversal through his or her own inaction. *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14 (citing *People v. Denson*, 2014 IL 116231, ¶ 13).

¶ 12 In this case, the defendant's constructive possession and abrogation of lease arguments (2, 3, and 4) are waived for failure to raise those issues during trial and in the posttrial motion. With regard to the remaining arguments, which allude to a conflict, while the defendant does make a statement regarding an alleged conflict in his posttrial motion, he did not make this claim at trial. He did not object at trial to the real estate broker's testifying, nor did he raise any objections in regard to her actual testimony. Therefore, this argument is also waived. "A reviewing court will affirm the judgment of the trial court if it is justified in the law for any reason or ground appearing in the record ***." *W.F. Smith & Co. v. Lowenstein*, 4 Ill. App. 3d 153, 159 (1972). Because all issues raised by the defendant are waived on appeal, we affirm the judgment of the circuit court.

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, the judgment of the circuit court of Washington County is affirmed.

¶ 15 Affirmed.