

NOTICE
Decision filed 11/29/16. 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) 150257-U

NO. 5-15-0257

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).

ALBERT J. DAVINROY, JR.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 06-L-609
)	
JEFFREY ROSS, d/b/a ROSS PROPERTIES,)	
and BARBARA HENDRICKS, d/b/a)	
NORTHEND TOWING, INC.,)	Honorable
)	Julia R. Gomric,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding of abandonment was not against the manifest weight of the evidence where the court's determination relied on evidence which showed the appellant intended to retrieve some items and not others and failed to reclaim personal property over a significant period of time.

¶ 2 In 2006, the appellant, Albert Davinroy, Jr. (Davinroy), filed a two-count complaint against the appellee, Jeffrey Ross (Ross), and defendant, Northend Towing, for conversion of personal property, located at North 89th Street in East St. Louis, Illinois. The facts pertinent to this appeal are as follows.

¶ 3 On January 20, 2005, Ross purchased real property from Elizabeth Davinroy, executor of the estate of her late husband, Albert Davinroy, Sr., in East Saint Louis, Illinois. The real estate sold consisted of three parcels of land, with one parcel containing two apartment buildings—1304 North 89th Street and 1306 North 89th Street—and a pole barn with no street address. The other two parcels of land had no buildings.

¶ 4 Davinroy, the son of Elizabeth and Albert Davinroy, Sr., resided on the property for approximately 20 years. Prior to his father's death, Davinroy resided at and operated a plumbing business on 1304 North 89th Street. Following his father's death in November 1998, Elizabeth Davinroy was appointed executor of the estate, filed a will contest, and subsequently sold the property to Ross, amid Davinroy's objection.

¶ 5 Following the sale of the property, Ross and Davinroy attempted to negotiate leasing arrangements to use the pole barn for storage. However, there is no record that written or verbal lease terms were reached. On March 4, 2005, Davinroy received a 30-day notice of termination letter, which instructed him to vacate 1304 North 89th Street. Following the receipt of this letter and the conclusion of 30 days, Davinroy failed to vacate.

¶ 6 On May 11, 2005, Ross filed a forcible entry and detainer action against Davinroy with regard to 1304 North 89th Street. The complaint stated, "the Defendant, AL DAVINROY, JR. and all other occupants, unlawfully withhold possession thereof from the said Plaintiff, in regard to the premises at 1304 North 89th Street, East St. Louis, Illinois."

¶ 7 The trial court set proceedings for June 13, 2005. However, Davinroy failed to appear and the court found in favor of Ross. On two separate occasions, June 20, 2005, and October 31, 2005, Davinroy was served with a writ of eviction. Following the June 2005 service,

Ross cancelled the writ of eviction and provided Davinroy with additional time to remove his belongings. However, after Davinroy failed to make progress, Ross requested a second writ of eviction on October 31, 2005.

¶ 8 On August 1, 2005, Davinroy, with knowledge of the forcible entry and detainer action, provided Ross's attorney with a \$500 check in an attempt to enter into a one-year lease agreement for use of the pole barn. Ross did not cash this check and the check was returned.

¶ 9 On September 28, 2005, a bench trial was held regarding Ross's filing of the forcible entry and detainer action. The trial court entered a judgment for possession of the property to Ross and directed Davinroy to vacate immediately. Once again, Davinroy did not vacate the premises.

¶ 10 On November 16, 2005, physical eviction and removal of Davinroy's personal property took place when the local sheriff appeared and hauled away his personal property from 1304 North 89th Street. Davinroy briefly participated in the removal of his property from 1304 North 89th Street and some items from the pole barn. However, as Davinroy removed property from 1304 North 89th Street, he immediately moved it into the apartment building located at 1306 North 89th Street. After a few hours, an altercation arose between Davinroy and the police, resulting in Davinroy's arrest.

¶ 11 Shortly thereafter, Davinroy returned and removed most of his personal property from 1304 North 89th Street. However, at that time, Davinroy left behind furniture, business papers, and equipment in the pole barn.

¶ 12 On December 14, 2005, the trial court entered a judgment that the cause was settled and closed.

¶ 13 On December 16, 2005, Davinroy returned to the property for the day to remove his belongings from the pole barn.

¶ 14 On February 28, 2006, roughly two months after the eviction set out took place, Ross discovered that Davinroy's backhoe had been moved to the property, without his knowledge or consent. At that time, Ross scheduled a private tow request with Northend Towing to have Davinroy's backhoe, dually welding truck, and Cadillac removed from the property.

¶ 15 On October 5, 2006, Davinroy filed a complaint against Ross for the conversion of personal property.

¶ 16 On March 3, 2015, the trial court conducted a bench trial where testimony from both parties was presented, exhibits were admitted, and depositions were taken. At trial, Davinroy testified that he was unable to remove his personal property because "every time I went on to get [items] I was *** arrested and going to jail ***." Davinroy testified to a laundry list of items for which he alleges Ross converted, totaling approximately \$134,000 in damages.

¶ 17 Ross testified that he had attempted to evict Davinroy for 17 months from the time Ross purchased the property on January 25, 2005, until June 2006, when he took full possession of the North 89th Street properties. Ross contended that he made several attempts to evict Davinroy, but that all efforts had failed. Ross testified that he once saw Davinroy at a local grocery store and asked Davinroy if he planned to vacate the premises, at which time Davinroy indicated he did not plan to leave. Moreover, Ross testified that after

the eviction set out, Davinroy moved belongings onto the property without his consent, including the large backhoe, for which he requested \$18,000 in damages.

¶ 18 On April 21, 2015, the trial court ruled in favor of Ross, finding that Davinroy had abandoned his personal property, as he had failed to make adequate effort to retrieve his property. At the hearing on the motion to reconsider, the trial court stated:

"It is clear to this Court that Plaintiff's actions were intended to thwart the new owner's use and full possession of the real property by leaving his personal items. In doing so, Plaintiff abandoned these items."

Davinroy filed a timely notice of appeal.

¶ 19 The main issue on appeal is whether the trial court erred in finding that Davinroy abandoned his personal property. We first must address a preliminary matter before we turn to the merits of Davinroy's claims. Davinroy argues that Ross lacked legal authority to remove items from all three parcels of land. Thus, the trial court lacked jurisdiction under the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2010)), as Ross failed to strictly adhere to the statutory requirements that establish jurisdiction. In particular, he argues that Ross served him with a 30-day notice of termination letter at 1304 North 89th Street, with no mention of 1306 North 89th Street or the pole barn.

¶ 20 Under the Act, Ross was required to plead and prove that he was entitled to possession and that Davinroy was unlawfully withholding possession from him. 735 ILCS 5/9-106 (West 2010) ("On complaint by the party or parties entitled to the possession of such premises being filed in the circuit court for the county where such premises are situated, stating that such party is entitled to the possession of such premises (describing the same

with reasonable certainty), and that the defendant (naming the defendant) unlawfully withholds the possession thereof from him, her or them, the clerk of the court shall issue a summons."); *Chicago Housing Authority v. Walker*, 131 Ill. App. 2d 299, 301 (1970). The forcible detainer plaintiff is also required to provide a description of the property at issue with reasonable certainty. 735 ILCS 5/9-106 (West 2010); *Worley v. Ehret*, 36 Ill. App. 3d 48, 54 (1976).

¶ 21 First, we grant Davinroy's second motion for leave to supplement the record, filed with our court on September 23, 2016, and taken with the case. We also grant Ross's motion to supplement the record on appeal, filed on September 30, 2016, and taken with the case. As such, we deny Davinroy's motions to strike specific allegations of fact and strike statement of facts, both filed on September 8, 2016. We recognize that the complaint for the forcible entry and detainer order did not state "1306 North 89th Street" or make reference to the pole barn. Regardless, we do not find that Ross lacked authority to enter and then detain Davinroy's personal property. First, it is undisputed that at the time of the forcible entry and detainer action, Davinroy resided in the apartment building located at 1304 North 89th Street, and it was understood by both parties that Davinroy also had personal property in the pole barn, for which there was no street address that could have been included on the complaint. Testimony at trial demonstrated that Davinroy did not reside or have personal property at 1306 North 89th Street. In fact, Ross testified that the apartment building at 1306 North 89th Street was uninhabitable, which is supported by a condemnation letter from the City of East St. Louis, condemning the building as of November 21, 2005, roughly five days following Davinroy's eviction set out.

¶ 22 Additionally, it is clear from the record that Davinroy was fully aware that his mother had sold the entire property to Ross, which included two apartment buildings and the pole barn, as evidenced by the warranty deed signed by Elizabeth Davinroy on January 20, 2005. Moreover, the facts adduced at trial show that at the time of the eviction set out, Ross had attempted to evict Davinroy from the entire property for nearly 10 months, and that the relationship between the two was contentious, especially given that Ross had previously refused to lease the pole barn to Davinroy.

¶ 23 Based on the record, we find that an eviction notice to 1304 89th Street sufficed to provide Davinroy with plenty of notice to vacate the entire property, as 1306 North 89th Street was an uninhabitable building, and the pole barn had no separate address to include on the complaint, but was located on the same parcel of land as the building at 1304 North 89th Street. Thus, we find that the complaint, coupled with the facts which proceeded, provided Davinroy with sufficient notice to vacate the entire North 89th Street property, and not only the apartment building at 1304 North 89th Street.

¶ 24 We next address the merits of Davinroy's claim regarding the trial court's finding of abandonment. On April 21, 2015, the trial court entered judgment in favor of Ross, finding that the personal property at issue was abandoned by Davinroy. On May 20, 2015, Davinroy filed a motion to reconsider, contending that the court's application of abandonment was erroneous, as he had "continually and without exception expressed his desire to retrieve his personal property." We disagree and find that the trial court's determination was not against the manifest weight of the evidence.

¶ 25 In general, property is considered to be abandoned when the owner, intending to relinquish all rights to the property, leaves it free to be appropriated by any other person. *Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc.*, 372 Ill. App. 3d 461, 467 (2007). As a general rule, abandonment is not presumed and the party seeking to declare an abandonment must prove the abandoning party intended to do so. See *Pieszchalski v. Oslager*, 128 Ill. App. 3d 437, 447 (1984). A finding of abandonment is a factual determination which will not be disturbed on appeal unless it is against the manifest weight of the evidence. *People ex rel. Illinois Historic Preservation Agency v. Zych*, 186 Ill. 2d 267, 278 (1999); *Bell Leasing Brokerage, LLC*, 372 Ill. App. 3d at 467. Where there are different ways to view the evidence, or alternative inferences to be drawn from it, the view of the trier of fact must be accepted so long as it is reasonable. *Zych*, 186 Ill. 2d at 278. It is not the function of a reviewing court to reweigh evidence. *Bell Leasing Brokerage, LLC*, 372 Ill. App. 3d at 468.

¶ 26 Based on the record, it is clear to this court that Davinroy's attempts to retrieve his personal property were illusory and intended to thwart Ross's use and full possession of the entire property. When Davinroy was first served with the 30-day termination notice, he made no attempt to vacate or remove belongings from the premises. In fact, as previously stated, it took Ross 17 months to evict Davinroy, because Davinroy refused to leave the premises until he was forcibly removed and arrested. Additionally, Davinroy moved a backhoe onto the property without Ross's knowledge or consent roughly one year after Ross purchased the real estate, which was three months after Davinroy was evicted.

¶ 27 Moreover, testimony at trial shows that on several occasions Ross took off of work to meet Davinroy at the property, but that Davinroy failed to appear to retrieve his personal property. Thus, the record reflects that Davinroy had ample opportunity over the course of 17 months to retrieve his personal belongings from the property, but failed to do so. We find that Davinroy's failure to act demonstrated a lack of interest in his personal property or else he would have removed these items, and would have refrained from moving additional, more expensive items, that he now seeks damages for, onto the property following the eviction.

¶ 28 Moreover, Davinroy's failure to retrieve his personal property from Northend Towing also supports this determination, as Davinroy only paid storage fees to reclaim possession of his Cadillac, leaving the backhoe and a dually welding truck at Northend Towing's tow yard for years. As such, this significant time delay and Davinroy's actions show that he chose to retrieve some items while discarding others. Thus, we find that the trial court's determination was not unreasonable in finding that the vehicles and other personal property were abandoned.

¶ 29 Lastly, as we affirm the trial court's order finding abandonment on the part of Davinroy, we refrain from addressing the alternative argument regarding the insufficiency of evidence pertaining to Davinroy's damages provided before the court.

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 31 Affirmed.