2016 IL App (5th) 150555-U

NO. 5-15-0555

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MARK LAUTENSCHLAEGER and CHERYL LAUTENSCHLAEGER,	)	Appeal from the Circuit Court of St. Clair County.
Plaintiffs-Appellants,	)	
v.	)	No. 15-MR-169
MARCELLA TIEMANN,	)	Honorable Robert P. LeChien,
Defendant-Appellee.	)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Goldenhersh and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order granting the appellee's motion to dismiss and motion for summary judgment is affirmed where the appellants failed to appeal the circuit court's prior ruling settling all relevant issues in favor of the appellee.

¶ 2 Appellants Mark and Cheryl Lautenschlaeger appeal from the circuit court's order granting the combined motion to dismiss and for summary judgment filed by the appellee, Marcella Tiemann. The appellants leased farmland from the appellee and argue that a purported lifetime lease is still in effect. The circuit court held that its prior finding

that a later lease superseded the purported lifetime lease had become the law of the case and, therefore, the appellants could not succeed at trial. We affirm.

¶ 3 BACKGROUND

¶ 4 Sometime prior to 2009, the appellee purchased 32 acres of farmland near Mascoutah, Illinois. She thereafter made a verbal lease with the appellants for them to farm the 32 acres on a crop share basis. On June 24, 2009, the appellee purchased from the appellants 42 more acres of farmland on Zink Road in St. Clair County and granted the appellants a right of first refusal and option on the 42 acres. She entered into an agreement with the appellants to farm the 42 acres as well as the other 32 acres on a crop share basis. The appellee maintains that this agreement was a verbal lease. The appellants argue that, also on June 24, 2009, the appellants and the appellee executed a written lease granting the appellants a lease "for the life of Alvin E. Tiemann and Marcella J. Tiemann and Mark C. Lautenschlaeger and Cheryl A. Lautenschlaeger and their heirs *** with no ending date" to farm the land under a crop share basis.

¶ 5 On August 24, 2013, the appellee entered into a written cash farm lease with the appellants and Martin and Rachael Lautenschlaeger for the 74 acres of farmland. The term of the lease was from January 1, 2014, to January 1, 2015, at which time the appellants as lessees were to surrender possession if a written extension had not been executed. The appellants argue that the 2013 lease did not require an extension and was merely intended to continue the purported 2009 lease as a cash farm lease rather than on a crop share basis. The appellants argue that language in the 2013 lease was intended to automatically renew the 2013 lease annually.

¶ 6 On September 9, 2014, the appellee sent a notice of nonrenewal of lease to the appellants. On April 10, 2015, the appellee sent a notice of no trespassing to the appellants, informing them that they were "hereby forbidden to enter upon/trespass upon" the 74 acres of farmland and that, if the appellants violated this notice, they would "be held liable for such trespass/damage and [would] be prosecuted to the fullest extent of the law." The appellants have produced no evidence showing that they had taken any action on the 74 acres of farmland to prepare to farm the land for the coming season prior to receiving this notice.

¶ 7 On May 8, 2015, the appellants filed a verified complaint for declaratory judgment and injunctive relief. The appellants sought a declaration that they were the rightful tenants to the 74 acres of farmland "for the year 2015 and future years." The appellants also sought damages for the appellee's alleged breach of contract and an injunction "restraining [the appellee] from barring [the appellants'] access to the subject farm land" and allowing the appellants "to continue to farm the subject property under the terms of the previously agreed to lease." On May 19, 2015, the circuit court entered an order restraining the appellants, the appellee, or any respective agents of either from "perform[ing] any farming operations on the subject land pending a hearing on [the appellants'] application for a preliminary injunction." On May 27, 2015, the appellee filed an answer and affirmative defenses to the verified complaint.

¶ 8 On May 27, 2015, and June 2, 2015, the circuit court held a hearing on the appellants' motion for preliminary injunction. At the end of the hearing, the circuit court ruled that the purported 2009 lease "would have been superseded by the [2013] written

lease." The circuit court further found that the 2013 lease did not automatically renew, that the 2013 lease had expired, and that the appellants had not "held over" in such a way as to permit continued farming outside the lease. On July 6, 2015, the circuit court entered a written order denying preliminary injunction. In the written order, the circuit court again stated that "the [2009] purported lifetime lease *** is superseded by the 2013 lease," that "the 2013 lease *** does not contain an automatic renewal provision" and had "expired by its terms," that the appellants "may not farm the property unless the evidence establishes that they have held-over so that by operation of law their possession is converted to a year-to-year lease," and that "[t]here is no evidence of holdover." The circuit court also stated that it "expressly finds that there is no just reason for delaying the enforcement or appeal of this Order, or both."

¶ 9 On September 28, 2015, the appellants filed a motion for leave to amend complaint. On October 6, 2015, the circuit court granted the appellants' motion for leave to amend complaint. On October 6, 2015, the appellants filed an amended complaint. Count I of the amended complaint sought a declaratory judgment that the appellants were the rightful tenants to the 74 acres of farmland "for the year 2015 and future years." Count II sought damages for breach of contract. The amended complaint relied entirely on evidence presented during the hearing on the motion for preliminary injunction, especially the purported 2009 lease. On October 13, 2015, the appellee filed a combined motion to dismiss and motion for summary judgment pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)). The appellee noted that the circuit court had decided "that the purported lifetime lease (the 2009 lease) is superseded

by the 2013 lease" and that "[the appellants] did not timely challenge the decision." Therefore, the appellee argued, this decision had become the law of the case. Because the appellants' amended complaint was "based upon the purported 2009 lease," the appellee argued that the appellants' causes of action in the amended complaint "are barred by the Court's decision in the July 6, 2015 Order." Further, "[b]ased upon the pleadings *** and the testimony and other evidence presented at the preliminary injunction hearing," the appellee argued that "there is no genuine issue as to any material fact with respect to Counts I and II of [the appellants'] amended Complaint, and [the appellee] is entitled to judgment as a matter of law."

¶ 10 On November 12, 2015, the appellants filed an answer to the motion to dismiss and for summary judgment. In the answer, the appellants again relied heavily upon the purported 2009 lease. The appellants further argued that discovery had not been completed, that the circuit court should not actually decide contested issues of fact or the ultimate merits of the case at a preliminary injunction hearing, and that the circuit court never ruled on the merits of the underlying claims regarding the purported 2009 lease. On November 20, 2015, the circuit court granted the appellee's combined motion to dismiss and for summary judgment, finding that the purported 2009 lease had been superseded by the 2013 lease, that this finding is the law of the case, and that the 2013 lease had expired and had not automatically renewed. On December 18, 2015, the appellants filed notice of appeal.

¶ 11 ANALYSIS

¶ 12 The appellants argue that the circuit court improperly granted the appellee's combined motion to dismiss and for summary judgment, which was filed pursuant to section 2-619.1. Under this provision, "motions for involuntary dismissal or other relief under Section 2-619 [735 ILCS 5/2-619 (West 2014)] and motions for summary judgment under Section 2-1005 [735 ILCS 5/2-1005 (West 2014)] may be filed together as a single motion." 735 ILCS 5/2-619.1 (West 2014). The appellee's combined motion consisted of a section 2-619 motion to dismiss and a section 2-1005 motion for summary judgment.

¶ 13 " 'The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation.' " *Stark Excavating, Inc. v. Carter Construction Services, Inc.*, 2012 IL App (4th) 110357, ¶ 36 (quoting *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003)). "A section 2-619 motion admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts," and a ruling court "must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). Our review of a section 2-619 dismissal is *de novo*. *Id.* Granting a section 2-1005 motion for summary judgment " 'is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.' " *Howle v. Aqua Illinois, Inc.*, 2012 IL App (4th) 120207, ¶ 41 (quoting *West Bend Mutual*

Insurance v. Norton, 406 Ill. App. 3d 741, 744 (2010)). We also review a circuit court's decision on a motion for summary judgment *de novo*. *Benson v. Stafford,* 407 Ill. App. 3d 902, 911 (2010).

¶ 14 The appellants argue that the case should not be dismissed because the circuit court had denied only the preliminary injunction prior to granting the appellee's combined motion. The appellants argue that there are still genuine issues of material fact surrounding the purported 2009 lease and the 2013 lease, and therefore discovery should be allowed to continue, leading to a trial on the merits. The appellee argues that the circuit court's ruling that the purported 2009 lease is superseded by the 2013 lease became the law of the case when the appellants failed to file a motion to reconsider that ruling. Therefore, the appellee argues, there are no genuine issues of material fact left to decide, and the circuit court properly granted the appellee's combined motion.

¶ 15 "[A]s a general rule, the failure of a party to challenge a legal decision when it has the opportunity to do so renders that decision 'the law of the case for future stages of the same litigation, and [that party is] deemed to have waived the right to challenge that decision at a later time.' " *Liccardi v. Stolt Terminals, Inc.*, 178 Ill. 2d 540, 547 (1997) (quoting *Aardvark Art, Inc. v. Lehigh/Steck-Warlick, Inc.*, 284 Ill. App. 3d 627, 632 (1996)). Generally, a trial court's order becomes the law of the case only if there is a final appealable order. *Swain v. City of Chicago*, 2014 IL App (1st) 122769, ¶ 9. Therefore, interlocutory orders, which do not dispose of all of the controversy between the parties, generally cannot constitute law of the case. *Ericksen v. Village of Willow Springs*, 279 Ill. App. 3d 210, 214-15 (1995).

¶ 16 However, if an interlocutory order is denied on the merits of the case, it can constitute law of the case. In *Strata Marketing, Inc. v. Murphy*, a company sought a temporary restraining order in order to enforce a covenant not to compete against a former employee and her new employer. *Strata Marketing, Inc. v. Murphy*, 317 Ill. App. 3d 1054, 1058-59 (2000). The defendants filed a motion to dismiss, claiming the covenant was overbroad and that the plaintiff failed to set forth a cause of action. *Id.* at 1060. The circuit court granted the defendants' motion to dismiss and denied the plaintiff's request for a temporary restraining order, explicitly ruling that the covenant was "totally unenforceable" and that the complaint "[did] not [meet] muster." *Id.* The plaintiff appealed only the circuit court's judgment granting the defendants' motion to dismiss. *Id.* at 1061.

¶ 17 In considering the plaintiff's appeal of the defendants' motion to dismiss, the court noted that "[a]ppeals from the denial of a [temporary restraining order] and from the granting of a motion to dismiss are separate appeals." *Id.* The court noted that the circuit court had denied the temporary restraining order on the merits, that therefore the circuit court had concluded the plaintiff could never succeed on the merits, and that the time period to appeal the temporary restraining order had expired. *Id.* The court thus held that the finding that the covenant was "totally unenforceable" had become law of the case. *Id.* Moreover, because "the facts and rulings on the [temporary restraining order] and motion to dismiss are intrinsically involved," the court held that, "even if we determined that the trial court erred in granting the motion to dismiss, [the plaintiff] would have no relief available upon any remand because the contract has been held unenforceable." *Id.* at

1066. Therefore, the court held that any issues in the motion to dismiss involving the validity of the covenant were *res judicata*. *Id.*

¶ 18 In this case, the circuit court explicitly held that the purported 2009 lease would have been superseded by the 2013 lease, that the 2013 lease did not automatically renew, that the 2013 lease had expired, and that the appellants had not "held over" in such a way as to permit continued farming outside the lease. The circuit court's written order containing these rulings was entered on July 6, 2015. An appeal from an interlocutory order, such as the July 6, 2015, order denying preliminary injunction, "must be filed in the Appellate Court within the same 30 days unless the time for filing the record is extended by the Appellate Court or any judge thereof." Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010). The appellants never filed an appeal from the order denying preliminary injunction, nor did they seek an extension of the time for filing the record for appeal. Thus, the circuit court's rulings in the July 6, 2015, order have become the law of the case, and we must consider those rulings absolute when evaluating the appellants' amended complaint.

¶ 19 The October 6, 2015, amended complaint seeks a declaratory judgment that they are the rightful tenants of the 74 acres of farmland by arguing that the purported 2009 lease was a lifetime lease, that the 2013 lease was merely renegotiating portions of the purported 2009 lease, and that the lifetime lease provision of the purported 2009 lease is still in effect. However, because the law of the case states that the 2013 lease controls, that it has expired, and that the appellants did not hold over, there is no legal basis to grant the declaratory judgment. The amended complaint also seeks damages for breach

of contract caused by the appellee barring the appellants from the 74 acres of farmland and allowing other tenants to farm the land. However, because the law of the case precludes the appellants from showing they are the rightful tenants to the 74 acres of farmland, they likewise cannot prevail on this claim. Therefore, because the appellants' amended complaint is entirely precluded by the law of the case, we must affirm.

¶ 20 CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the circuit court of St. Clair County.

¶ 22 Affirmed.