

No. 1-16-2892

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARIA STOPKA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 16 M1 711254
SKYE HARVEST ALLEN,)	
)	
Defendant-Appellant,)	Honorable
)	Orville Hambright, Jr.,
(All Unknown Occupants, Defendants).)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court’s order denying the defendant’s motion to vacate, in part, is affirmed.

¶ 2 Following a default judgment against her in this forcible entry and detainer action, *pro se* defendant-appellant, Skye Harvest Allen, filed a motion to vacate. The circuit court of Cook County granted her motion to vacate the order of possession, but denied her motion to vacate the monetary portion of the judgment. The defendant now appeals, arguing that the circuit court

erred in failing to vacate the entirety of the judgment. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On June 20, 2016, plaintiff-appellee, Maria Stopka, filed a joint forcible entry and detainer action against the defendant, pursuant to the Forcible Entry and Detainer Act (735 ILCS 5/9-101, *et seq.* (West 2014) (Act)). The complaint sought to evict the defendant from the plaintiff's property at 2637 W. Rice Street, Chicago, Illinois, and sought damages for unpaid rent in the amount of \$2,000, plus accruing rent.

¶ 5 The circuit court held a hearing on September 2, 2016. The defendant did not appear at the hearing. The court entered a default judgment in favor of the plaintiff for possession of the property and monetary damages in the amount of \$4,400.

¶ 6 On September 16, 2016, the defendant filed a motion to vacate the court's default judgment. In her motion to vacate, the defendant argued that the case was moot because her lease had expired and she had vacated the property prior to the hearing.

¶ 7 On September 28, 2016, the trial court granted the defendant's motion, in part, and vacated the order of possession against her. However, the court also denied the defendant's motion, in part, leaving intact the monetary judgment of \$4,400 against the defendant.

¶ 8 The defendant filed a motion to reconsider.¹ In her motion, the defendant stated that "[d]espite being extremely sick for months, including a week in intensive care, two lengthy hospitalizations, and chronic pneumonia, [the] [d]efendant made every effort to vacate the premises in accordance with her lease on September 1, 2016, and appear in court on September

¹The defendant labeled her motion as an "Emergency Motion to Reconsider" but the trial court noted that no emergency existed.

2[nd].” The defendant claimed that the earliest she could secure movers was 7 a.m. on September 2, 2016, which was during the same time as the hearing, and that she then promptly notified the plaintiff that she had vacated the property and returned the keys. She argued in her motion to reconsider that the forcible entry and detainer action no longer applied to her once she had vacated the premises.

¶ 9 The trial court denied the defendant’s motion to reconsider. The defendant then filed this appeal, challenging the part of the trial court’s order that denied her motion to vacate the \$4,400 judgment.

¶ 10 ANALYSIS

¶ 11 We note that we have jurisdiction to review the trial court’s final order denying, in part, the defendant’s motion to vacate, as the defendant filed a timely notice of appeal following the denial of her motion for reconsideration. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. Jan. 1, 2015).

¶ 12 Defendant presents two arguments as to why the \$4,400 portion of the judgment should be vacated: (1) the plaintiff failed to provide sufficient evidence that the defendant owed her money, and (2) it was improper for the trial court to vacate the possession judgment but not the monetary judgment, as the Act allows monetary judgments only when they are joined in an action for possession.

¶ 13 The defendant first argues that the trial court erred in denying her motion to vacate the entire default judgment against her because the plaintiff provided insufficient evidence and failed to prove her case. The defendant points out that there was no lease and no payment history introduced before the trial court. The defendant argues that “[i]n light of the scanty record, it

appears that the trial [court] merely took [the plaintiff's] word regarding the defendant's lease and how much money, if any, was owed."

¶ 14 A default judgment terminates the litigation and decides the dispute. *Jackson v. Hooker*, 397 Ill. App. 3d 614, 620 (2010). "Judgment by default may be entered for want of an appearance, or for failure to plead, but the court may in either case, require proof of the allegations of the pleadings upon which relief is sought." 735 ILCS 5/2-1301(d) (West 2014). A party may seek relief from any default judgment by filing a motion to vacate within 30 days of its entry. 735 ILCS 5/2-1301(e) (West 2014); *Stotlar Drug Co. v. Marlow*, 239 Ill. App. 3d 726, 728 (1993). "The overriding consideration under section 2-1301(e) is whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits." *Marlow*, 239 Ill. App. 3d 726, 728 (1993). In reviewing a denial of a motion to vacate a default judgment, the ultimate question before this court is whether the trial court properly exercised its discretion in an attempt to serve justice. *Baltz v. McCormack*, 66 Ill. App. 3d 76, 77 (1978). An abuse of discretion is found only if no reasonable person would decide as the trial court did. *Clay v. Huntley*, 338 Ill. App. 3d 68, 74 (2003).

¶ 15 Based on the record before us, the defendant is correct that the plaintiff did not attach a lease or payment history to her complaint. However, the Act does not require the complainant to attach a lease or payment history in order to join a claim for unpaid rent with a demand for possession. Further, the defendant did not appear at the hearing, which allowed the trial court to enter a default judgment against her. And at the hearing, the trial court only had the plaintiff's complaint before it to render a decision, and did not have any evidence to rule against the plaintiff. Section 2-1301(d) states that the trial court *may* require proof of the allegations, not

shall. Since the defendant never answered the plaintiff's complaint, all the allegations were deemed admitted. *Universal Casualty Co. v. Lopez*, 376 Ill. App. 3d 459, 464 (2007).

¶ 16 The defendant's only argument as to why the default judgment should be vacated was that the case was moot, as she had vacated the premises. The defendant did not deny the allegation of unpaid rent and did not provide any evidence in support of vacating the monetary judgment against her, such as proof of rent payments. That is, she never refuted the alleged debt owed to the plaintiff for unpaid rent. Based on the circumstances, it was not unreasonable for the trial court to allow plaintiff's case to proceed to a default judgment. Accordingly, the trial court did not abuse its discretion when it denied the defendant's motion to vacate the portion of the judgment awarding \$4,400 against the defendant.

¶ 17 Alternatively, the defendant next argues that it was improper under the Act for the trial court to grant her motion to vacate only in part. Citing to the Act, the defendant claims that a monetary judgment for unpaid rent can only be joined in an action for possession. Defendant argues that because the portion of the judgment for possession against her was vacated, the law requires the monetary portion of the judgment against her also be vacated, as it cannot stand alone in a forcible entry and detainer action.

¶ 18 "The purpose of the Forcible Entry and Detainer Act is to provide a speedy remedy to allow a person who is entitled to the possession of certain real property to be restored to possession." *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, at ¶ 14. Matters not germane to the distinctive purpose of the proceeding may not be litigated in a forcible entry and detainer action. 735 ILCS 5/9-106 (West 2014). Historically, the "distinctive purpose" of a forcible entry and detainer proceeding was to gain possession of property unlawfully withheld. *Spanish Court Two Condo Ass'n v. Carlson*, 2014 IL 115342, ¶ 15. However, the legislature has

since expanded the purpose of the proceeding to allow claims for unpaid rent to be joined in the complaint. *Id.*; 735 ILCS 5/9-209 (West 2014). The standard of review in a denial of a motion to vacate is whether the trial court abused its discretion. *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010. Interpretation of a statute, though, is a question of law that we review *de novo*. *Ryan v. Board of Trustees of General Assembly Retirement System*, 236 Ill. 2d 315, 319 (2010).

¶ 19 In support of her argument that the monetary portion of the judgment cannot stand on its own, the defendant directs this court's attention to *Case v. Rewerts*, 15 Ill. App. 2d 1 (1957) and *Bismarck Hotel Co. v. Sutherland*, 175 Ill. App. 3d 739 (1988). Our review of these cases, however, show that they are inapplicable and do not lend any support to the defendant's argument. We find *100 W. Monroe Partnership v. Carlson*, 319 Ill. App. 3d 761 (2001) to be more instructive. In *100 W. Monroe*, the defendant made the same argument that the plaintiff was not entitled to a claim of unpaid rent under the Act after the defendant had vacated the premises. *Id.* at 767-68. We rejected the defendant's argument, noting that at the time the complaint was filed, the defendant was still in possession of the premises, which made the demand for unpaid rent proper under the Act. *Id.* at 768. In the instant case, when the plaintiff filed the complaint, the defendant was still in possession of the premises. In fact, the defendant admits she was still in possession of the premises at the time of the September 2, 2016 hearing. The trial court later vacated the judgment of possession against the defendant, but that did not terminate the plaintiff's entire complaint. It would defy the purpose the Act, which explicitly permits claims for rent to be joined, to force the plaintiff to file a new action for unpaid rent simply because the defendant vacated the premises. That inefficient procedure would further defy judicial economy and the interests of justice. Accordingly, we reject the defendant's argument.

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¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.