

2018 IL App (1st) 162816-U
No. 1-16-2816
November 5, 2018

FIRST DIVISION

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

STAR CONDOMINIUM ASSOCIATION,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	No. 16 M1 702136
v.)	
)	The Honorable
AMBER CZERWINSKI,)	Orville E. Hambright,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* Where a trial judge grants a motion for substitution of judge as of right, and the case is transferred to a different judge, the original trial judge loses all power and authority over the case and any subsequent orders entered by the original trial judge are of no force or effect.

¶ 2 Plaintiff, Star Condominium Association (Star), filed a forcible entry and detainer complaint against defendant Amber Czerwinski (Czerwinski). Czerwinski filed a counterclaim and a motion for substitution of judge as of right. Judge David S. Skryd (Judge Skryd) granted the motion, and the case was transferred to Judge Orville E. Hambright, Jr.

(Judge Hambright). On April 1, 2016, Judge Hambright entered an agreed settlement order between the parties. However, on June 30, 2016, Star appeared before Judge Skryd and requested the court enter judgment orders for possession of units 106 and 107 from Czerwinski, which Judge Skryd granted. Czerwinski filed this appeal and argues that Judge Skryd had no jurisdiction to enter the June 30, 2016 orders for possession of the units because Judge Skryd previously granted the motion for substitution of judge and the presiding judge transferred the case to Judge Hambright.

¶ 3 We find that the judgment orders for possession of units 106 and 107 entered by Judge Skryd are of no force or effect because Judge Skryd no longer had power and authority over the case to enter the orders once he granted the motion for substitution of judge. Accordingly, we remand this case to the Presiding Judge of the First Municipal Division for proper assignment, pursuant to circuit court rules, to a judge to hear Star's Motion for Enforcement of Agreed Order, and consider Czerwinski's arguments for vacating the parties' agreed settlement order.

¶ 4 I. Background

¶ 5 A. Forcible Entry and Detainer

¶ 6 On February 2, 2016, Star filed the forcible entry and detainer complaint and named as defendants, "Amber Czerwinski and all unknown occupants" and contended Star is entitled to possession of the premises located at 120 E. 49th Street, Unit 107 and 122 E. 49th Street, Unit 106, in Chicago, Illinois. Star alleged Czerwinski failed to pay her proportionate share of assessments in full and she was indebted to Star in the sums of \$6,878.24 for Unit 107 and \$7,403.78 for Unit 106.

¶ 7

B. Czerwinski's Answer and Counterclaim

¶ 8

On March 11, 2016, Czerwinski filed *pro se* answer and a counterclaim to Star's forcible entry and detainer complaint, and included Monroe Barnes (Barnes) as a named defendant. In her answer, Czerwinski argued she and Barnes did not breach the terms of the declaration and bylaws by not paying their share of assessments in full because the parties had a separate agreement which set out a different method by which Czerwinski and Barnes would pay for the assessments. In support of her argument, Czerwinski attached to her answer, as an exhibit, a three page document dated 04/25/14. The document is addressed to the "board," and states it is "a summary of last night's meeting between Star Condo Assoc Board and Mr. Barnes. The topic was waterproofing unit 106." The document also states unit 106 needed repairs due to a water leakage and that Barnes agreed to fix the unit on behalf of Star. In return, Star proposed two methods in which to reimburse Barnes for his services in fixing the unit. First, Star provided it "could provide a credit [to] Mr. Barnes for his assessment arrearage as a down payment, and his monthly assessments would also be handled in the same ma[nner] until he was paid in full." Second, Star provided it "would have to manage a payment plan for the work Mr. Barnes is doing as funds are available . . ." Accordingly, Czerwinski and Barnes requested the court deny Star possession of unit 106 until Star satisfied the debts it owed Barnes for the repairs, expenses, and costs related to fixing the unit.

¶ 9

In her counterclaim, Czerwinski attached as exhibits, three invoices outlining the repairs, expenses and costs for fixing the unit, which totaled \$54,366.54. Accordingly, Czerwinski

requested the circuit court enter a judgment against Star for \$54,366.54, less the alleged total amount in assessment arrears of \$14,282.02, for a total of \$40,084.51.

¶ 10

Substitution of Judge

¶ 11

On March 11, 2016, Czerwinski filed a motion entitled "substitution of judge-before any substantive ruling is made." On March 16, 2016, Judge Skryd granted the motion and transferred the case to Judge E. Kenneth Wright, Jr. (Judge Wright), the Presiding Judge of the First Municipal Division for reassignment. On the same day, Presiding Judge Wright entered an order transferring the case to Judge Hambright. On April 1, 2016, the parties appeared before Judge Hambright for trial. Prior to the start of trial, Czerwinski and Star executed an agreed settlement order which indicated the total assessment arrearage was \$18,617.33. The settlement order provided that to satisfy the assessments owed, Czerwinski agrees to pay 1,500.00 per month in addition to all regularly scheduled monthly rent payments. The settlement order also provided that (i) if Czerwinski complied with the settlement order, the case would remain dismissed and, (ii) if Czerwinski failed to comply, she agreed to allow Star to reinstate the forcible entry and detainer case, to entry of an order for possession instanter, and to judgment for the total amount owed under the settlement order. Judge Hambright entered the agreed settlement order.

¶ 12

On June 30, 2016, Star appeared before Judge Skryd and requested the court enter judgment orders for possession of units 106 and 107, due to the lack of payments pursuant to the parties April 1, 2016 agreed settlement order. Judge Skryd entered a separate possession order for each unit. On July 26, 2016, the cook county sheriff forced entry to the units and

turned over possession of the units to Star. On the same day, Czerwinski filed a motion which stated that she "never received notice to appear in court."

¶ 13

F. Section 2-1401 Petition

¶ 14

On August 4, 2016, Czerwinski filed a section 2-1401 petition requesting the circuit court vacate the parties' April 1, 2016 agreed settlement order. Czerwinski argued she was under duress when she agreed to the settlement order, and the settlement order was unfair and unconscionable. Czerwinski asserted that on the day she executed the agreed settlement order with Star, Star's counsel told Czerwinski that her claim to a right of setoff against her debt to Star was barred by Illinois law pursuant to a 2014 Illinois Supreme Court case, and therefore, she would be evicted unless she agreed to the settlement order. She further asserted that because she was without counsel, without money, with three young children, and threatened with eviction and homelessness, she agreed to sign the settlement order. Finally, she requested the circuit court reverse its June 30, 2016 judgment for possession orders because she never received notice of Star's motion seeking the reinstatement of its case and entry of the orders for possession. On August 5, 2016, the court denied Czerwinski's section 2-1401 petition.

¶ 15

G. Motion to Reconsider

¶ 16

On September 2, 2016, Czerwinski filed a motion to reconsider the court's August 5 denial of her section 2-1401 petition to vacate the April 1, 2016 settlement order. Czerwinski supported her motion with an affidavit in which she averred that three weeks before April 1, 2016, she engaged an attorney to appear on her behalf at the April 1, 2016 forcible entry and detainer case hearing. The attorney informed Czerwinski that the attorney was only there to

obtain a continuance in the case. After learning there would not be a continuance in the case and that the case would proceed to trial, the attorney withdrew as Czerwinski's counsel and left the courtroom. Therefore, Czerwinski requested the court reconsider its denial of her August 5, 2016 section 2-1401 petition. On September 22, 2016, the circuit court denied Czerwinski's motion to reconsider the court's denial of her August 5, 2016 section 2-1401 petition to vacate the April 1, 2016 settlement order.

¶ 17 H. Appeal

¶ 18 On October 18, 2016, Czerwinski filed her notice of appeal and requested this court overturn the circuit court's September 22, 2016 denial of her motion to reconsider the court's denial of her section 2-1401 petition to vacate the April 1, 2016 settlement order.

¶ 19 On August 20, 2018, this court, on its own motion, ordered the parties to file briefs addressing the validity of the orders for possession of the units entered on June 30, 2016. We entered this order after noting that Judge Skryd entered the June 30, 2016 orders for possession three and half months after he granted Czerwinski's motion for substitution of judge and transferred the case to Presiding Judge Wright.

¶ 20 II. Analysis

¶ 21 A. Substitution of Judge

¶ 22 Czerwinski argues Judge Skryd had no jurisdiction to enter the June 30, 2016 orders of possession because Judge Skryd granted a motion for substitution of judge, and the case was transferred to Judge Hambright on March 16, 2016.

¶ 23 Section 5/2-1001(a)(2)(i) of the Illinois Code of Civil Procedure (Code) provides, in pertinent part, that "an application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case." 735 ILCS 5/2-1001(a)(2)(i) (West 2018). Section 5/2-1001(a)(3)(i) of the Code also provides that "each party shall be entitled to a substitution or substitutions of judge for cause." 735 ILCS 5/2-1001(a)(3)(i) (West 2018).

¶ 24 We note that our research has failed to yield any reported decisions with a set of facts as presented in this case, where a judge granted a motion for substitution of judge, transferred the case, and then subsequently entered orders in the same case that was transferred. However, in *Aussieker v. City of Bloomington*, 355 Ill. App. 3d 498 (2005), the Fourth District found that where a "motion requesting substitution of judge is filed before the presiding judge has made a substantial ruling, the right to substitution is absolute." *Id.* at 500. The Fourth District also found that "any order entered after a motion for substitution of judge is improperly denied is void." *Id.* Furthermore, in *In re C.M.A.*, 306 Ill. App. 3d 1061 (1999), this court found that under Illinois law, when a motion for substitution of judge for cause is brought, "that judge loses all power and authority over the case, and any orders entered after a judge's removal or after an improper denial of such motion are of no force or effect." *Id.* at 1067.

¶ 25 Here, Czerwinski filed a motion entitled "substitution of judge-before any substantive ruling is made" on March 11, 2016. Then on March 16, 2016, Judge Skryd granted the motion and transferred the case to Presiding Judge Wright. On the same day, Presiding Judge

Wright entered an order transferring the case to Judge Hambright. On April 1, 2016, Judge Hambright entered the agreed settlement order. However, on June 30, 2016, Star appeared before Judge Skryd and requested the court enter judgment orders for possession of units 106 and 107, which Judge Skryd granted.

¶ 26 We find that when a party successfully brings a motion for substitution of judge as of right, the judge loses all power and authority over the case, and any orders entered after a judge's removal are of no force or effect. *In re C.M.A.*, 306 Ill. App. 3d at 1067. Accordingly, we find the judgment orders for possession of units 106 and 107 entered by Judge Skryd after he granted Czerwinski's motion for substitution of judge as of right are of no force or effect because Judge Skryd no longer had power and authority over the case to enter the orders. Judge Hambright has retired from the circuit court. Therefore, we remand this case to the Presiding Judge of the First Municipal Division for proper assignment, pursuant to circuit court rules, to a judge to hear Star's Motion for Enforcement of Agreed Order, and consider Czerwinski's arguments for vacating the parties' agreed settlement order.

¶ 27 III. Conclusion

¶ 28 We find that the judgment orders for possession of units 106 and 107 entered by Judge Skryd are of no force or effect because Judge Skryd no longer had power and authority over the case to enter the orders once he granted the motion for substitution of judge as of right and transferred the case for reassignment. For the foregoing reasons, the orders of June 30, 2016 are hereby vacated and held null and void. Accordingly, we remand this case for further proceedings consistent with the order.

¶ 29 Vacated and remanded.