2018 IL App (1st) 171369-U
Order filed: June 8, 2018

FIRST DISTRICT
FIFTH DIVISION

No. 1-17-1369

RVFM 11 SERIES, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 17 M1 701418
	)	
ADRIANE JACKSON,	)	Honorable
	)	David A. Skryd,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: In this forcible entry and detainer action, we reversed the circuit court's denial of defendant's motion to vacate a default order of possession which was filed on the date the default order of possession was entered and explained defendant's tardy appearance in court on that date, and where substantial justice would be served by a trial on the merits.

¶ 2 Defendant-appellant, Adriane Jackson, appeals from the denial of her timely motion to vacate a default order of possession entered in favor of plaintiff-appellee, RVFM 11 Series, LLC (RVFM) in its forcible entry and detainer action. In light of our conclusions that substantial justice would be achieved by vacating the default order of possession and the denial was based on errors of law, we reverse and remand this matter with directions.

¶ 3 On May 15, 2016, RVFM and defendant executed an installment land sales contract for the sale of a residence located at 4605 Provincetown Drive, Country Club Hills, Illinois (the residence). The contract provided that, upon defendant's default and her refusal to relinquish possession, RVFM had the right to bring an action under the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq*. (West 2016)) (Act) after service of the required notice.

¶ 4 On January 25, 2017, RVFM filed a complaint against defendant pursuant to the Act[1], to recover possession of the residence. Through the complaint and its attachments, RVFM maintained that it served a notice of default and demand for possession on defendant on October 6, 2016, by posting it at the residence and, on September 30, 2016, by certified mail to the residence. RVFM also asserted that, on November 18, 2016, it served a declaration of forfeiture and extinguishment of all rights of purchaser in the contract for sale (declaration) on defendant by posting it at the residence, and on November 23, 2016, by certified mail to the residence.

¶ 5 On February 15, 2017, the first court date, defendant had not been served, and the case was continued to March 15, 2017. On that date, defendant appeared in court and, according to an order that had been entered, she submitted to the court's jurisdiction, and waived service of process. The case was then continued to March 23, 2017, and, later, to March 30, 2017.

¶ 6 On March 30, 2017, when the matter was called, defendant was not in the court room and the court entered an *ex parte* order of possession against her, which was stayed until April 6, 2017. In that same order, the court also provided for the sealing of the court records.

¶ 7 Later that day, defendant *pro se* filed a motion seeking to "reopen case" explaining that she had arrived 10 minutes late to court after the entry of the default order of possession because

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[1] As of January 1, 2018, the Act is now known as "The Eviction Act" (735 ILCS 5/9-101 *et seq*. (West 2018)).

of traffic problems. The motion also requested that the court transfer the case to the Markham court house as it was "closer to [defendant's] home." Defendant's notice of motion stated that she would present the motion in courtroom 1402 on April 12, 2017, before Judge Karkula. The motion to reopen was treated by the court and the parties as one to vacate the default order of possession.

¶ 8 On April 7, 2017, defendant *pro se* filed a motion to dismiss the case based on the alleged lack of prefiling notice required under the Act. Again, defendant's notice of the motion stated that the motion to dismiss would be presented on April 12, 2017, in courtroom 1402, before Judge Karkula.

¶ 9 On April 12, 2017, Judge David Skryd, who was then sitting in courtroom 1402, denied the motion to vacate the default order of possession and the motion to dismiss. As to the motion to vacate, Judge Skryd indicated that he was not allowed to disturb another judge's ruling and, in any event, because it had been sealed, he could not review the file.

¶ 10 On April 28, 2017, defendant, by newly retained counsel, filed a motion to reconsider the denial of the motion to vacate. On May 10, 2017, Judge Skryd denied this motion.

¶ 11 On July 3, 2017, this court granted defendant's motion for leave to file a late notice of appeal from the April 12, 2017 order denying defendant's motion to vacate. According to the electronic docket, on August 21, 2017, on defendant's motion, the circuit court "remove[d] the case from impoundment" so that the record on appeal could be prepared and filed.

¶ 12 RVFM has failed to file an appellee's brief and, as a consequence, this court ordered that the matter be taken on the appellant's brief and the record. We will not, however, reverse an order of the circuit court *pro forma* in the absence of an appellee's brief. *First Capitol Mortgage*

Corp. v. Talandis Construction Corp., 63 Ill. 2d 128, 131. When the matter is easily decided in the absence of an appellee's brief, as here, we will decide the merits of an appeal. *Id.*

¶ 13 On appeal, defendant argues that the circuit court erred in denying her motion to vacate the default order of possession. Defendant maintains that, under section 2-1301 of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2016)), her motion to vacate was filed with due diligence and that granting the motion would not unduly prejudice RVFM but, instead, would achieve substantial justice.

¶ 14 Section 2-1301(e) provides that a court "may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." *Id.*

¶ 15 When considering a motion to vacate under section 2-1301(e), "the overriding consideration is simply 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." *In re Haley D.*, 2011 IL 110886, ¶ 57 (citing *In re Marriage of Jackson*, 259 Ill. App. 3d 538, 542 (1994) and *People ex rel. Reid v. Adkins*, 48 Ill. 2d 402, 406 (1971)). The movant need not demonstrate the existence of a meritorious defense or a reasonable excuse for not having timely asserted such defense. *Id.* "But the court may take such factors into consideration in determining whether the totality of circumstances justifies setting aside the default." *John Isfan Construction, Inc. v. Longwood Towers, LLC*, 2016 IL App (1st) 143211, ¶ 46 (citing *Havana National Bank v. Satorius–Curry, Inc.*, 167 Ill. App. 3d 562, 565 1988)).

¶ 16 We review the denial of a section 2-1301(e) motion for an abuse of discretion. *Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 26. "An abuse of discretion occurs when the trial court 'acts arbitrarily without the employment of conscientious judgment or if its

decision exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted.' " *Id*. (quoting *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941 (1999)). "If a trial court's decision rests on an error of law, then it is clear that an abuse of discretion has occurred, as it is always an abuse of discretion to base a decision on an incorrect view of the law." *North Spaulding Condominium Ass'n v. Cavanaugh*, 2017 IL App (1st) 160870, ¶ 46.

¶ 17 The default order awards RVFM possession of the residence without a trial on the merits. Section 2-1301 recognizes that "a default judgment is a 'drastic remedy that should be used only as a last resort.' " *Longwood Towers, LLC*, 2016 IL App (1st) 143211, ¶ 46 (quoting *Haley D.*, 2011 IL 110886, ¶ 69). Further, it is preferred that "controversies be decided on their merits, and section 2-1301(e) is liberally construed toward that end." *Id.* Defendant acted with diligence in seeking to vacate the default order of possession by filing her motion to reopen on the very day that the order was entered. She explained that her tardiness to court of 10 minutes was due to traffic issues. Defendant, in her motion to dismiss the action, raised a defense to the suit that she had not received the required notice. The motion to dismiss was filed within days of the entry of the default order of possession. Under the circumstances, we conclude that substantial justice would be served and it would be reasonable to compel RVFM to trial so that the issues can be fully litigated.

¶ 18 Further, the circuit court judge denied the motion to vacate judgment without considering its substance for the stated reasons that the order of possession was entered by another judge and the court file had been sealed.

¶ 19 However, a judge may review an order of another judge which is erroneous or "if changed facts or circumstances make the prior order [un]just." *Richichi v. City of Chicago*, 49

Ill. App. 2d 320, 325 (1964). See also *Lake County Riverboat L.P. ex rel. FRGP, L.P. v. Illinois Gaming Board*., 313 Ill. App. 3d 943, 950 (2000) ("A trial judge may review, modify, or vacate an interlocutory order at any time before final judgment, even if the original order was entered by another trial judge ***.").

¶ 20 Further, any sealing of the record from public view would not have prevented the circuit court from reviewing it for purposes of determining whether the motion to vacate should be granted. Therefore, the circuit court's denial of the motion to vacate was based on errors of law, which require a finding of an abuse of discretion.

¶ 21 For the reasons stated, we reverse the denial of the motion to vacate the default order of possession and remand the matter to the circuit court with directions to vacate the default order of possession.

¶ 22 Reversed; remanded with directions.