2018 IL App (4th) 180129-U

NO. 4-18-0129

FILED
September 20, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

SUZAN AHMAD and ASHLEY ROBERTS,	)	Appeal from the
Plaintiffs-Appellees,	)	Circuit Court of
v.	)	Champaign County
PAIGE SEKELY,	)	No. 16SC955
Defendant-Appellant.	)	
	)	Honorable
	)	Ronda H. Holliman,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in finding plaintiffs took sufficient efforts to mitigate their damages and granting judgment in their favor.

¶ 2 In December 2016, plaintiffs, Suzan Ahmad and Ashley Roberts, filed a small claims complaint against defendant, Paige Sekely, alleging breach of contract for failure to pay rent under a lease agreement. Defendant later filed a counterclaim. In January 2018, the trial court awarded judgment in favor of plaintiffs for $5327.33 plus court costs.

¶ 3 On appeal, defendant argues the trial court erred in (1) finding plaintiffs took sufficient action to mitigate their damages and (2) granting judgment in favor of plaintiffs. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties in this case were undergraduate students enrolled at the University of

Illinois at Urbana-Champaign. They were also cotenants under a residential apartment lease in Champaign for a period from August 22, 2015, to August 4, 2016. In addition to plaintiffs and defendant, Pranavi Yalamanchili was a signatory to the lease and resided with the parties in the apartment.

¶ 6 In December 2016, plaintiffs filed a small claims complaint against defendant and set forth a claim of breach of contract. The complaint alleged defendant agreed to pay one-fourth of the total monthly rent of $2780, or $695, which she paid in August, September, and October 2015. Plaintiffs claimed defendant vacated the premises on October 21, 2015, and neglected to pay her share of the rent from November 2015 to July 2016. Plaintiffs sought damages of $5396.83, which amounted to defendant's portion of the rent and $69.50 as a late fee on defendant's rent for November 2015.

¶ 7 Defendant filed a "motion to strike" pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), which the trial court denied. In February 2017, defendant filed a response to plaintiffs' complaint, stating she did not make payments after October 21, 2015, because she was not liable for any further payments. As an affirmative defense, defendant claimed plaintiffs failed to mitigate their damages by not making reasonable efforts to sublet the premises. Defendant also filed a counterclaim, claiming plaintiffs and Yalamanchili made the leased premises uninhabitable, which constituted constructive eviction.

¶ 8 The trial court conducted a bench trial in November 2017 and January 2018. Plaintiffs appeared *pro se*, and defendant appeared with counsel. The court invoked Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992), which allows for informal hearings in small claims cases. Defendant testified she was aware the lease called for her to pay rent from August 2015 to July 2016. She acknowledged she did not pay rent from November 2015 to July 2016.

¶ 9 Ahmad testified defendant last paid $695 on October 1, 2015. Ahmad paid her share as well as over $4400 for defendant's share of the rent. She stated she responded on Facebook to people searching for roommates. Exhibit D included Facebook responses made to two females on November 18, 2015, in which Ahmad, Roberts, and Yalamanchili indicated they were looking for a fourth roommate for the next semester. Exhibit E was a Facebook post made by Ahmad on December 5, 2015, on the "University of Illinois UIUC Housing Sublet Roommates page," indicating plaintiffs and Yalamanchili were looking for a fourth roommate for the spring semester and the price was negotiable. Ahmad stated the page was used by people looking for apartments or roommates. Ahmad did not receive a response to her post.

¶ 10 On cross-examination, Ahmad testified she did not communicate with any other individuals outside of the two females in exhibit D. She also stated the Facebook post in exhibit E was the only "advertisement" she published, and she did not publish any advertisements in the newspaper or any other online social media site. Ahmad discussed with the landlord the possibility of finding a new tenant for the spring or summer semester.

¶ 11 Roberts testified she paid $695 per month prior to defendant moving out. After defendant moved out, Roberts paid "an extra $926.15." Roberts received an e-mail from defendant on November 4, 2015, stating the landlord had listed the apartment as a sublet option. As to other efforts to sublet the apartment, Roberts stated Ahmad sent two Facebook messages to two females and made a post on "the University of Illinois Sublets Housing and Roommates page." Roberts also noted in a November 1, 2015, e-mail that plaintiffs had someone interested in subletting the apartment in the summer.

¶ 12 At the close of plaintiffs' case, defense counsel moved for a directed finding, arguing plaintiffs failed to mitigate their damages and relying on *Obernauf v. Haberstich*, 145 Ill.

App. 3d 768, 496 N.E.2d 272 (1986). The trial court denied the motion, stating, in part, as follows:

> "As to your motion for directed verdict, this was a case that was decided in 1986, and one of the things I will point out is the way we communicate with each other, the way we sell things, the way apartments are advertised, all of that has changed from only being able to be done in a newspaper. In 1986 there was no Facebook, at least not to the extent it is now. We didn't routinely do things online, whether it's paying bills, advertising something for sale, and when you put something online, that is very different than putting it for two weeks in a newspaper. So this case is not directly on point. It's very different because the way we do things in 2018, 2015, 2017, is very different. This is also—this case is also different because in the case cited by counsel, that was an oral agreement. This is a written lease. [Defendant] is on the written lease as a lessee. She also agreed as a lessee to pay the rent owed. She is also required under Use, Sublet and Assignment that the lessee understands that any permitted assignment or sublease will not release lessee from liability for rent or other obligations due hereunder, and that lessee expressly remains liable for payment of rent and full performance of all terms and provisions of this lease in the event of any default by any assignee or sublessee.
>
> So we start off with the differences. The defendant in this

> case is on the lease. It's a signed lease. This is not an oral agreement between two parties like in the case cited by counsel. Further, the Facebook messages and the Facebook posting are all items that remain online viewable to people longer than two weeks. That is the nature of Facebook. This is the nature of an online posting. But the plaintiffs weren't the only ones required under the lease to mitigate. [Defendant] was on the lease as a written lessee. It was also her requirement. So I do not find that the case counsel has cited is directly on point. It's different in that that was an oral agreement; this is a written lease, which the defendant is under the same obligations in the nature of the mitigation, which is done differently today. It lasts a lot longer than the two weeks as indicated in that case, so they are not the same. So motion for directed verdict is denied."

Following the court's ruling, defense counsel asked whether the court was "taking judicial notice of aspects of the way online media works outside of that which has been presented at trial." The court stated as follows:

> "Judges are allowed to use their own experiences in life and can draw from them, and simple knowledge is use of online media. The main difference is that this is not an advertisement which was only for two weeks, and also the main difference is the defendant is part of [the] lease. She is—this is not an oral agreement; this is [a] signed agreement, and she is under the same obligations. They

> have mitigated. I do not find that it so lacks mitigation that a motion for a directed verdict is necessary, so the motion for directed verdict is denied."

¶ 13 In defendant's case, defendant testified to her theory of constructive eviction. At the close of the evidence and following arguments, the trial court found plaintiffs' actions did not constitute constructive eviction. As to plaintiffs' complaint, the court found defendant entered into a lease and she remained liable for payment of rent. The court also found plaintiffs "took it upon themselves to try and mitigate, but the defendant was also under an obligation to try and mitigate, and the only thing she did was list it with the realty company." The court stated defendant was liable for rent from November 2015 through July 2016 and awarded judgment of $5327.33 plus court costs in favor of plaintiffs. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 A. Lack of an Appellee's Brief

¶ 16 Initially, we note plaintiffs have not filed a brief in this case. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment. However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court should decide the merits of the appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). Because we find defendant's brief sufficiently presents the issues for review and the record is sufficiently simple, we will decide the merits of this appeal from the facts and legal arguments before us without the aid of an appellee's brief.

¶ 17 B. Mitigation of Damages

¶ 18 Defendant argues the trial court erred in ruling plaintiffs took sufficient action to mitigate their damages in this case and granting judgment in their favor. We disagree.

¶ 19 "Generally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12, 965 N.E.2d 393. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 1130 (2002).

¶ 20 In landlord-tenant law, a landlord is required to "take reasonable measures to mitigate the damages recoverable against a defaulting lessee." 735 ILCS 5/9-213.1 (West 2016). "The purpose of section 9-213.1 of the Act is to require a landlord to undertake reasonable efforts to relet the premises after a defaulting tenant departs, rather than allowing the premises to stand vacant and then attempting to collect the lost rent in the form of damages." *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 609, 913 N.E.2d 33, 42 (2009).

¶ 21 In the case *sub judice*, the lease dispute involved multiple tenants rather than a tenant and a landlord. However, like the landlord's duty to mitigate damages in the face of a defaulting tenant, the question in this case centers on whether plaintiffs sufficiently mitigated their damages after defendant vacated the apartment. The question of whether a plaintiff has mitigated his or her damages is generally a question of fact. *Danada Square*, 392 Ill. App. 3d at 607, 913 N.E.2d at 40.

¶ 22 At trial, the evidence indicated defendant vacated the apartment on October 21, 2015. Ahmad testified she responded on Facebook on November 18, 2015, to two females

searching for roommates. She made a Facebook post on December 5, 2015, on the "University of Illinois UIUC Housing Sublet Roommates page," indicating plaintiffs and Yalamanchili were looking for a fourth roommate for the spring semester and the price was negotiable. Ahmad also discussed with the landlord the possibility of finding a new tenant for the spring and summer semesters.

¶ 23 Defendant argues the *Obernauf* case shows the actions taken by plaintiffs in this case failed to sufficiently mitigate their damages. In *Obernauf*, 145 Ill. App. 3d at 769, 496 N.E.2d at 273, the plaintiff brought a small claims action for breach of an oral contract against a co-lessee. In her attempt to mitigate damages, the plaintiff placed an advertisement in the local paper for two weeks attempting to sublease the apartment without success. *Obernauf*, 145 Ill. App. 3d at 770, 496 N.E.2d at 273-74. The trial court found the plaintiff failed to mitigate damages. *Obernauf*, 145 Ill. App. 3d at 770, 496 N.E.2d at 274. In affirming the trial court, the Second District noted the plaintiff did not dispute her failure to mitigate her damages, which was "amply supported by the evidence." *Obernauf*, 145 Ill. App. 3d at 773, 496 N.E.2d at 276.

¶ 24 We find *Obernauf* of little value to the facts in this case. That case was decided in 1986, and the Second District did not analyze what constituted reasonable efforts to mitigate damages. In contrast, this case involved college students in 2015, a time when a classified advertisement in the local newspaper, as opposed to the use of online social media, may offer little hope of finding a new roommate. Moreover, reasonable efforts depend on a number of factual situations, including location, type of property, and market, and resist a simple comparison.

¶ 25 Defendant also takes issue with the trial court's judicial notice of the public's general use of Facebook in 2015 and beyond. In a small claims case, a court "may relax the

rules of procedure and the rules of evidence" and "adjudicate the dispute at an informal hearing." Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992). Rule 201(b) of the Illinois Rules of Evidence (eff. Jan. 1, 2011) states "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." "As an evidentiary matter, judicial notice is reviewed for abuse of discretion." *People v. Messenger*, 2015 IL App (3d) 130581, ¶ 27, 40 N.E.3d 417. "It is certainly appropriate for a judge to use his [or her] background, experience and common knowledge when making a discretionary ruling." *Tampam, Inc. v. Property Tax Appeal Board*, 208 Ill. App. 3d 127, 138, 566 N.E.2d 905, 913 (1991).

¶ 26 We find the trial court did not abuse its discretion in taking judicial notice of the prevalence of online media, including Facebook. See *People v. Glover*, 363 P.3d 736, 746 n.6 (Colo. Ct. of App. 2015) (noting the popularity of Facebook). That we are a computer-driven society and consumers, especially young adults, utilize online social media to conduct multiple aspects of their lives is a matter of common knowledge and beyond dispute. Defendant argues the judicial notice was taken at the end of the evidence "when there was no opportunity for the parties to analyze or address its potential shortcomings." However, defense counsel first questioned the court's judicial notice of online media at the close of plaintiffs' case, and thus counsel had the opportunity to address any shortcomings thereafter.

¶ 27 Having found the trial court did not abuse its discretion in considering the Facebook messages and post, we also find the court's conclusion that plaintiffs sufficiently mitigated their damages was not against the manifest weight of the evidence. Ahmad responded to two messages from students in need of housing. Moreover, she made a Facebook post on "the

University of Illinois Sublets Housing and Roommates page," a site where students looking for a place to live could meet those with space to rent. The court found the post remained on the website "throughout the time [plaintiffs] were looking for a roommate." Ahmad also discussed finding a new tenant with the landlord. Defendant does not offer any suggestion as to what plaintiffs were required to do to show reasonable efforts at mitigation, other than her claim that it requires more than a two-week notice in the newspaper as in *Obernauf*. Under the circumstances, plaintiffs' efforts to mitigate their damages were reasonable. Accordingly, as defendant had entered into the lease and failed to pay rent after vacating the premises, we find the court did not err in granting judgment in favor of plaintiffs and not in favor of defendant on her affirmative defense.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court's judgment.

¶ 30 Affirmed.