2019 IL App (1st) 171595-U

No. 1-17-1595

Order filed on July 23, 2019.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ANTHONY COURTNEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 15 M1 01353
	)	
5746 N. SHERIDAN, LLC,	)	The Honorable
	)	Thomas R. Mulroy,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Mason and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's award of attorney fees was proper where plaintiff was a prevailing party and the amount awarded was reasonable under the context of Chicago's Residential Landlord and Tenant Ordinance. Defendant's challenge to the punitive damages award was forfeited due to an insufficiently developed argument.

¶ 2 Following a bench trial, the trial court found defendant-landlord 5746 N. Sheridan, LLC, (Sheridan) liable to plaintiff-tenant Anthony Courtney for damages he sustained when he discovered bed bugs in his new apartment. After finding that Sheridan was negligent and

violated the City of Chicago's Residential Landlord and Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-070 (amended Nov. 6, 1991)), the court awarded plaintiff $4,440, which included punitive damages, and an additional $25,550.00 in attorney fees. The court denied plaintiff relief on two other counts, however. On appeal, Sheridan asserts that plaintiff was not a prevailing party, precluding an award of attorney fees, and that the amount of fees awarded was unreasonable. It further contends that the award of punitive damages did not comply with the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-604.1 (West 2016)). For the following reasons, we affirm the judgment in all respects.

¶ 3 I. BACKGROUND

¶ 4 In May 2014, plaintiff entered into a lease agreement to rent unit 208 at 5746 N. Sheridan Road in Chicago. In addition to the apartment lease, plaintiff and Sheridan each signed a "Bug/Hoarder Addendum," which certified that the apartment was "free of all bugs and in very good condition." Nevertheless, shortly after moving into the unit, plaintiff reported to Sheridan that he had discovered bed bugs in the apartment.

¶ 5 In February 2015, plaintiff sued both Sheridan as owner of the property and Peter Popovic, Sheridan's sole employee, for damages arising from the bed bug infestation. The complaint alleged violations of the RLTO (count 1), violations of the Consumer Fraud and Deceptive Business Practices Act (the Act) (count 2), negligence (count 3), and violations of the Premises Liability Act (count 4). Count 2 sought punitive damages. Popovic was dismissed from the action given that he executed the lease while acting in his official capacity as Sheridan's agent.

¶ 6 After nearly two years of litigation, the matter went to a bench trial in February 2017. According to the parties, no court reporter was present at trial. In addition, Sheridan has not

provided an appropriate substitute for a transcript. See Ill. S. Ct. R. 323 (eff. July 1, 2017). Following trial, the court entered judgment for plaintiff on the RLTO (count 1) and negligence (count 2) counts but entered judgment against him on the remaining two counts. The court awarded plaintiff $3,440.00 for four month's rent on count 1, $500.00 in compensatory damages on count 3 and $500.00 in punitive damages on count 3. The court apparently found Sheridan's conduct was willful and wanton but did not identify a statutory basis for awarding punitive damages.

¶ 7 In March 2017, plaintiff filed a petition seeking $26,337.50 in attorney fees based on section 5-12-180 of the RLTO, which generally allows a prevailing plaintiff to recover court costs and reasonable attorney fees. Plaintiff argued that the fees sought were reasonable and attached a sworn affidavit from plaintiff's attorney, stating that his hourly rate was $350 and that his fee was contingent on recovery. Counsel also provided an itemized timesheet documenting the work he performed on the case.

¶ 8 In response, Sheridan argued that plaintiff was not a "prevailing plaintiff" under the RLTO and, therefore, did not merit an award of attorney fees. Alternatively, Sheridan maintained that the amount of fees requested was excessive and unreasonable. Sheridan objected to a substantial portion of the entries on the timesheet but did not argue that plaintiff was required to provide additional information regarding the reasonableness of the fees requested. Furthermore, Sheridan apparently argued for the first time, in response to plaintiff's fee petition, that the court erred in awarding punitive damages because plaintiff failed to request them by filing a pretrial motion to amend the complaint. 735 ILCS 5/2-604.1 (West 2016).

¶ 9 In a written order issued on May 19, 2017, the trial court found that plaintiff was a prevailing party entitled to attorney fees under the RLTO because "the only issue in this case

related to the bed bugs in 5746 N. Sheridan" and the court resolved the bed bug issue in his favor. Additionally, he succeeded on the count alleging violations of the RLTO and received a total recovery of $4,400. The court found that counsel's rate of $350 per hour was fair and reasonable but reduced the amount of fees incurred with respect to seven tasks catalogued on the timesheet. The court awarded plaintiff $25,550.00 in attorney fees. Moreover, the court found that Sheridan improperly presented its challenge to the punitive damages award, presumably because Sheridan had not filed a separate motion seeking modification of the court's judgment. 735 ILCS 5/2-1203(a) (West 2016). Sheridan now appeals.

¶ 10 II. ANALYSIS

¶ 11 A. The Prevailing Plaintiff

¶ 12 Sheridan first contends that plaintiff was not a prevailing party under the RLTO and, consequently, was not entitled to attorney fees. It is well-settled that a trial court has broad discretionary powers in awarding attorney fees and its decision will not be reversed on appeal unless the court abused its discretion. *In re Estate of Healy*, 137 Ill. App. 3d 406, 411 (1985). A court abuses its discretion only where no reasonable person would take the view adopted by the court. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). Additionally, a reviewing court may not reverse an award of attorney fees simply because it may have reached a different conclusion. *Plambeck v. Greystone Management. & Columbia National Trust Co.*, 281 Ill. App. 3d 260, 273 (1996).

¶ 13 In general, each party in a lawsuit must bear the cost of litigation irrespective of the outcome. *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 238 (1995). In exceptional circumstances, a statutory provision or an agreement between the parties allows the successful litigant to recover attorney fees. *Id*. The RLTO contains such a fee-shifting provision.

Section 5-12-180 provides, in pertinent part, that: "[e]xcept in cases of forcible entry and detainer actions, the prevailing plaintiff in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney's fees." Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991).

¶ 14 Sheridan asserts that any statute which serves as an exception to the general rule concerning attorney fees must be strictly construed. *Calagno v. Personalcare Health Management, Inc.*, 207 Ill. App. 3d 493, 502 (1991) (strictly construing section 155 of the Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, par. 767)). Before resorting to other aids of construction, however, we must first and foremost adhere to the legislative intent underlying this ordinance's plain language. *Henry by Henry v. St. John's Hospital*, 138 Ill. 2d 533, 540 (1990); see also *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, ¶ 23 (recognizing that statutory construction is subject to *de novo* review).

¶ 15 The RLTO states that it is to be "liberally construed and applied to promote its purposes and policies." Chicago Municipal Code, § 5-12-010 (amended Mar. 31, 2004). In addition, this court consistently recognizes that the purpose of the RLTO is to protect tenants. See *Trutin v. Adam*, 2016 IL App (1st) 142853, ¶ 33; *Shadid v. Sims*, 2015 IL App (1st) 141973, ¶ 5. The attorney fee provision was intended "to give financial incentive to attorneys to litigate on behalf of those clients who have meritorious cases but who, due to the limited nature of the controversy, would not normally consider litigation as being in their client's financial best interest." *Pitts v. Holt*, 304 Ill. App. 3d 871, 873 (1999). Further, a relatively minimal recovery does not limit the sum of attorney fees a plaintiff can receive. *Id.* at 874. Such a restriction would undermine robust enforcement of the RLTO. *Id.* Our analysis is instructed by these policy considerations.

¶ 16 Sheridan maintains that plaintiff was not a prevailing party because he only succeeded on two of the four counts raised in his complaint. Sheridan relies on a limited line of cases, involving contractual fee shifting provisions, which have held that when a dispute involves multiple claims and both parties have won and lost on different claims it may be appropriate to find that neither party is the prevailing party. See *e.g., Brown & Kerr, Inc. v. American Stores Properties, Inc.*, 306 Ill. App. 3d 1023, 1035 (1999). This court has also held, however, that a prevailing party is one who succeeds on any significant issue in the action and achieves some benefit in bringing suit. *Grossinger Motorcorp, Inc. v. American National Bank & Trust Co.*, 240 Ill. App. 3d 737, 753 (1992). Moreover, requiring that a plaintiff succeed on all counts to be considered prevailing would be inconsistent with the RLTO's goal of encouraging attorneys to represent tenants. See *Pitts*, 304 Ill. App. 3d at 873.

¶ 17 Here, plaintiff requested attorney fees based on the fee-shifting provision of the RLTO. He succeeded on the entirety of his RLTO claim, as well as his negligence claim, and received the monetary benefit of $4,400. Based on this favorable outcome, the trial court was entitled to find that plaintiff prevailed and had a right to recover attorney fees, notwithstanding that two counts of plaintiff's complaint were dismissed.

¶ 18 B. Reasonable Attorney Fees

¶ 19 Sheridan alternatively posits that the attorney fees awarded should be considerably reduced. First, Sheridan argues that plaintiff can only receive attorney fees for the time that his counsel spent on prevailing issues. The United States Supreme Court has held that in certain complaints with multiple counts, "the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim

basis. Such a lawsuit cannot be viewed as a series of discrete claims." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Furthermore, Illinois courts have applied this "common core of facts" test. See, *e.g*. *Robinson v. Point One Toyota, Evanston*, 2017 IL App (1st) 152114, ¶ 37 (applying the test to a request for attorney fees under the Consumer Leasing Act); *Johnson v. Thomas*, 342 Ill. App. 3d 382, 404 (2003) (applying the test to the plaintiff's request for attorney fees under the Truth in Lending Act).

¶ 20 Plaintiff's complaint alleged that Sheridan knew bed bugs existed in the apartment building and that Sheridan breached its legal duty by failing to remedy the problem. Each of the four counts alleged in the complaint stemmed from that same common core of facts. The hours expended on the litigation, therefore, cannot be divided on a claim-by-claim basis. Pursuant to *Hensley*, it is appropriate to award attorney fees based on the time afforded to the entire suit.

¶ 21 Sheridan also contends that the trial court's explanation as to the reasonableness of the fee award was insufficient. As stated, the RLTO provides that a prevailing plaintiff is entitled to all court costs and *reasonable* attorney fees. "[A] trial court has the discretion to independently review and consider the contents of the entire court file in determining whether *** the fees requested are reasonable." *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 596 (2000). In determining the reasonable value of an attorney's services, courts generally assess the attorney's skill and standing, the nature of the case, the novelty and difficulty of the issues involved, the matter's importance, the degree of responsibility required, the customary charges for comparable services, the benefit provided to the client, and whether the fees are reasonably connected to the amount involved in the litigation. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 102. With respect to the last factor, however, courts use a distinct approach in cases arising under the RLTO. The amount recovered should not limit the amount of

attorney fees awarded because doing so would leave tenants unable to engage counsel. See *Pitts*, Ill. App. 3d at 874-875.

¶ 22 Here, the court below cited those relevant factors in its order awarding attorney fees. The court also struck time from seven tasks presented in plaintiff's fee petition, thereby finding the remaining fees requested to be reasonable and awarding $25,550.00 in fees. Sheridan has not shown that plaintiff's attorney actively inflated his fees by devoting a great portion of his efforts to patently unnecessary legal paths or by claiming expenses for extraordinary items. *Cf. First National Bank of Chicago v. Edgeworth*, 94 Ill. App. 3d 873, 886-87 (1981) (finding that a *significant* portion of the legal services billed for were devoted to lengthy yet superfluous hearings and issues that were "foreign to and contradictory in theory" to the plaintiff's desired outcome, and thus reducing the trial court's attorney fee award). In addition, Sheridan has failed to provide a report of proceedings. Accordingly, our record does not reveal what further explanation the court did or did not provide. Nor does it demonstrate whether plaintiff's attorney provided any further clarification. We must therefore presume that the trial court acted within its discretion in reviewing the entire file and ensuring the reasonableness of the fees awarded. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984) (stating that "[a]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis").

¶ 23 C. Punitive Damages

¶ 24 Finally, Sheridan asserts that the trial court incorrectly awarded punitive damages because plaintiff did not properly request them pursuant to section 2-604.1 of the Code. In

addressing this contention, we disregard all arguments based on the evidence produced at trial, which does not appear in our record.

¶ 25 In its reply brief to plaintiff's petition for attorney fees, Sheridan contested the $500.00 punitive damages award. Plaintiff argues, however, that Sheridan forfeited any argument related to punitive damages by failing to raise it in a post-judgment motion. Yet, Illinois Supreme Court Rule 366 dictates with respect to bench trials that "[n]either the filing of nor the failure to file a post-judgment motion limits the scope of review." Ill. S. Ct. R. 366 (eff. Feb. 1, 1994). Additionally, section 2–1203 of the Code is in accord, stating that parties in a non-jury case "may" file a post-judgment motion within 30 days after the entry of a judgment. 735 ILCS 5/2-1203 (West 2016). The statute permits post-judgment motions in a non-jury case but does not require them. See *Arient v. Shaik*, 2015 IL App (1st) 133969, ¶ 28 (holding that failure to file a post-judgment motion on an issue in a non-jury trial does not result in forfeiture of the matter according to both Rule 366 and section 2-1203). Consequently, Sheridan did not forfeit this contention by failing to file a post-judgment motion. That being said, we find that Sheridan forfeited the issue of punitive damages by failing to comply with Illinois Supreme Court Rule 341(h)(7) (May 25, 2018).

¶ 26 Rule 341(h)(7) requires an appellant's arguments to "contain the contentions of the appellant and the reasons therefor." Specifically, "a reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented." *Klein v. Caremark International, Inc.*, 329 Ill. App. 3d 892, 905 (2002). Further, this court is not "a repository into which an appellant may foist the burden of argument and research." *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010).

¶ 27 Pursuant to the Code, "in all actions on account of bodily injury or physical damage to property, based on *negligence* *** no complaint shall be filed containing a prayer for relief seeking punitive damages." (emphasis added) 735 ILCS 5/2-604.1 (West 2016). Instead, a party must seek leave from the court in a pretrial motion to amend the complaint to include a punitive damages request. *Id.*

¶ 28 Sheridan claims in its opening brief that punitive damages were not mentioned or requested by plaintiff until opening statements. This assertion is rebutted by the record, as plaintiff requested punitive damages in count 2 of his complaint, which alleged violations of the Consumer Fraud and Deceptive Business Practices Act. (815 ILCS 505/10a(c) (West 2016)). Thus, the complaint sought punitive damages in a non-negligence count. Compare *Fiala v. Bickford Senior Living Group., LLC*, 2015 IL App (2d) 150067, ¶ 56 (finding that "it would not make sense, based on our reading of section 2–604.1 as not applying to intentional torts, to preclude a request for punitive damages in a claim for an intentional tort simply because the plaintiff chose to also plead a claim sounding in negligence") with *McCann v. Presswood*, 308 Ill. App. 3d 1068, 1072 (1999) (asserting that "section 2–604.1 applies and precludes plaintiffs from requesting punitive damages on the face of any complaint based, even in part, on negligence"). Sheridan has not addressed whether this was proper or put it on notice that punitive damages were being sought, notwithstanding that damages were awarded under a different count.

¶ 29 Because Sheridan has not developed a cohesive argument on this issue, its contention is forfeited.

¶ 30 III. CONCLUSION

¶ 31 Here, the record supports the trial court's determination that plaintiff was a prevailing party and the amount of attorney fees awarded was reasonable. Further, Sheridan did not develop a cohesive argument to contest the court's award of punitive damages.

¶ 32 For the foregoing reasons, we affirm the court's judgment in all respects.

¶ 33 Affirmed.