2019 IL App (1st) 182662-U
No. 1-18-2662

SECOND DIVISION
September 17, 2019

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 JUDICIAL DISTRICT

Waterton Residential LLC, as Agent for New Vistas II,,	)	Appeal from the Circuit Court Of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 18 M1 710938
Keyanna Chest and Unknown Occupants,	)	The Honorable Martin Paul Moltz,
Defendants,	)	Judge, Presiding.
(Keyanna Chest, Appellant).	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's eviction order entered in plaintiff's favor because defendant violated the terms of the lease was not against the manifest weight of the evidence. The trial court did not abuse its discretion when it denied defendant's motion to reconsider.

¶ 2 Defendant, Keyanna Chest, appeals from the trial court's eviction order entered in favor of plaintiff, Waterton Residential, LLC, and against defendant.

¶ 3 On July 17, 2018, plaintiff filed a complaint against defendant under the Illinois Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101, *et seq.*), alleging it was entitled to possession

of a unit located at 6852 South Crandon Avenue ("property") because defendant violated the terms of her "Model Lease for Subsidized Programs" ("lease"). Specifically, it alleged defendant violated paragraphs 13(e), 23(c)(6)(b), and 23(c)(10) of the lease.

¶ 4 Paragraph 13(e) of the lease stated, in relevant part, that "[t]he tenant agrees not to *** make or permit noises or acts that will disturb the rights or comfort of neighbors." Paragraph 23(c)(6)(b) provided that the landlord may terminate the lease for "criminal activity by a tenant *** that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises." Paragraph 23(c)(10) provided that the Landlord may terminate the agreement if it "determines that the tenant *** has engaged in the criminal activity, regardless of whether the tenant *** has been arrested or convicted for such activity."

¶ 5 Defendant proceeded *pro se* at trial. The common law record does not contain a transcript from the trial. However, the record contains a bystander's report filed under Illinois Supreme Court Rule 323(c) (eff. July 1, 2017). The following facts from trial are taken from the bystander's report.

¶ 6 Mikiel Ratliff testified that she worked for plaintiff and was the manager of the property.[1] Defendant occupied a unit at the property pursuant to the lease. Ratliff became aware of an incident at the property occurring on July 18, 2018, involving defendant and another resident. After the incident, Ratliff viewed video footage of the incident and spoke with defendant about it. Ratliff testified that defendant "stated that she threw her wine glass at the neighbor and subsequently grabbed a kitchen knife." Defendant gave Ratliff a written letter setting forth her version of the incident. Ratliff testified that defendant's conduct violated the terms of the lease

[1] The bystander's report spells the witness's name as "Mikeil Ratcliff." The report of proceedings from the hearing on the motion to reconsider spells her name as "Mikiel Ratliff." We will therefore spell her name as "Mikiel Ratliff."

and, as a result, Ratliff served defendant with a Notice of Termination setting forth the violations. The court admitted the notice into evidence.

¶ 7 The Notice of Termination provided that the reason for the termination of the lease was "material noncompliance" with the terms and stated:

> "On Monday, June 18th, 2018 between the hours of 10:20 p.m. – 3:30 a.m. Tuesday, June 19th, 2018, you and another NVII resident were arguing loudly on the premises that disturbed your neighbors. It was observed on NVII camera footage that you both had sharp objects that you later admitted was a knife and you also threw a glass bottle from off the back porch towards the individuals you were arguing with. Due to this behavior, on June 19th, 2018, you were issued a lease violation and on June 21st, 2018, you met with management and admitted to throw [*sic*] a glass object at the residents' and/or her guest(s)."

Following this explanation, the notice recites paragraphs 13(e), 23(c)(6)(b), and 23(c)(10) of the lease.

¶ 8 Defendant, who had lived at the property for six years, testified that she engaged in an "altercation" with another resident. She testified that "the other tenant spat on her 2-year old child and as a result," she "threw a wine glass off of her porch towards the other resident because spitting was nasty." After the incident, defendant wrote a statement of her version of the events.

¶ 9 On cross-examination, plaintiff's counsel referred defendant to certain sections of her written statement. One section read: "she stated she wanted to fight I said bring yo bad a*** on up here and ima give you exactly what you looking for." Asked whether this is what happened, defendant responded "yes." Another section read: "I know Lisa spit up on my porch the spit

landed on my baby 2 yrs old. I blanked out and went down stairs to fight her." Asked if this is what happened, defendant responded "yes."

¶ 10 Another section of the statement read:

> "She then ran back over to my stairs with a knife in her shorts but I could see it sticking out her shirt so I said b*** you wanna grab a knife I went in my kitchen as well she spit up on my porch again by that time I was so ready to stab the b*** in her throat spitting is the most nastiest shit you could ever do to someone. Monique grabbed me and wouldn't allow me to get to her so I finally said b*** I don't need no knife."

Defendant testified that this statement was true.

¶ 11 Following cross-examination, the court asked defendant if "she had anything else to say, witnesses to call, or anything further to introduce." Defendant responded "no." The court asked defendant how long she needed to vacate the property and defendant responded, "this is bull***. I am gonna lose my apartment over some bull***?" Defendant stated she did not want to move and should not have to move because she was the victim. The court explained that her actions were dangerous, she could have seriously harmed someone, and her conduct violated the lease. Defendant told the court "that the other resident had spat on her child." The court stated that "spitting was not necessarily a criminal act, but that the defendant's actions were." The court entered an eviction order granting plaintiff possession of the property and ordering defendant to move out of the property on or before November 1, 2018.

¶ 12 On November 19, 2018, defendant, through counsel, filed a motion to reconsider, requesting the court vacate the eviction order. She argued, *inter alia,* that plaintiff failed to prove that she violated the terms of lease because it did not establish she engaged in criminal activity or disturbed her neighbors. She asserted she acted in self-defense and threw her wine glass only

after her neighbor spit on her child. Defendant contended that plaintiff failed to produce the video footage from the incident and that, therefore, a presumption arose that the missing footage undermined plaintiff's case.

¶ 13 At the hearing on defendant's motion to reconsider, the court stated that defendant's credibility "was very, very low." It stated that defendant "was belligerent from the very beginning" and "this is something that *** certainly goes to any witness's credibility." With respect to the video footage, defense counsel acknowledged that it was not newly discovered evidence, as it was referenced in the Notice of Termination. The court told the parties that the evidence "really was overwhelming" and it was "fairly strong" against defendant but "if there is a video, which I didn't know anything about, knowing — again, may very well substantiate, you know, the plaintiff's theory. It may substantiate the defendant's theory and may substantiate nothing." The court stated that, "in fairness after reading all the pleadings," it wanted to see the video "if it's at all available." The court continued the hearing on the motion to reconsider for plaintiff to produce the video.

¶ 14 At the next hearing on defendant's motion to reconsider, the parties informed the court that the video footage showing the incident had been erased, after which Ratliff testified. Ratliff testified that on November 2, 2018, which was about a month after the bench trial, she took her computer to plaintiff's IT Department to update the software and, as a result, the video footage and camera software were deleted from her computer. Ratliff testified that she did not intentionally delete the video.

¶ 15 Thereafter, the court stated that the parties both admitted that the video did not show anything and concluded there was "no reason to consider" it. The court denied defendant's

motion to reconsider. In doing so, it found that plaintiff's failure to produce the video at trial did not create a presumption that the video would have undermined plaintiff's case.

¶ 16 Defendant appeals from the trial court's order granting possession of the property to plaintiff. She contends the trial court erred when it found she violated the lease because the evidence did not establish that she engaged in criminal activity or disturbed her neighbors. She argues the evidence established that she acted in self-defense.

¶ 17 Initially, we note that defendant proceeded *pro se* at trial. When a defendant chooses to proceed *pro se*, as here, she is held to the same standard as an attorney. *Ammar v. Schiller, DuCanto & Fleck, LLP*, 2017 IL App (1st) 162931, ¶ 16.

¶ 18 To determine whether a trial court erred in entering a judgment in favor of a plaintiff in an action brought under the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2008)), we review whether the trial court's ruling was against the manifest weight of the evidence. *Wendy & William Spatz Charitable Found. v. 2263 North Lincoln Corp*., 2013 IL App (1st) 122076, ¶ 27. Further, reviewing courts generally use the manifest weight of the evidence standard to review a trial court's judgment after a bench trial, as here. *Battaglia v. 736 North Clark Corp*., 2015 IL App (1st) 142437, ¶ 23.

¶ 19 A trial court's ruling is considered against the manifest weight of the evidence "only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001). Under this standard, the trial court, as the fact finder, is in a superior position to observe witnesses, judge their credibility, and determine the weight it should give to their testimony. *Battaglia*, 2015 IL App (1st) 142437, ¶ 23. We therefore afford great deference to the trial court and may not reweigh the evidence or make an independent determination of the facts. *Jameson*

Real Estate, LLC v. Ahmed, 2018 IL App (1st) 171534, ¶ 59. Under the manifest weight of the evidence standard, "we draw all reasonable inferences in support of the court's judgment." *In re B.C.*, 2018 IL App (3d) 170025, ¶ 30.

¶ 20 In an eviction action, it is the plaintiff's burden to prove its right to possession. *Eckel v. MacNeal,* 256 Ill. App. 3d 292, 296 (1993). Defendant argues that the trial court erred in granting plaintiff possession of the property because plaintiff failed to prove she engaged in criminal activity or disturbed her neighbors and, therefore, did not prove that she violated the lease.

¶ 21 We conclude that the trial court's order granting plaintiff possession of the property due to defendant violating the lease was not against the manifest weight of the evidence.

¶ 22 Under the Criminal Code of 2012 (Code), "[a] person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2018). Under the Code, "[a] person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 ILCS 5/12-1(a) (West 2018). Further, "[a] person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2018).

¶ 23 Under section 23(c)(10) of defendant's lease, the landlord may terminate the lease if it "determines that the tenant, *** has engaged in the criminal activity, regardless of whether the tenant *** has been arrested or convicted for such activity." Thus, plaintiff may terminate the

lease if defendant engaged in criminal activity, even if she was not convicted or arrested for such activity.

¶ 24 Here, the evidence established that, after the incident, defendant told Ratliff that she threw a wine glass at her neighbor and subsequently grabbed a kitchen knife. Defendant admitted at trial that her neighbor spit on her two-year-old child and, as a result, she threw a wine glass "off of her porch towards" her because "spitting was nasty." Defendant acknowledged that her statements to Ratliff after the incident in which she stated that the neighbor "spit up on my porch the spit landed on my baby" and "I blanked out and went down stairs to fight her" was what happened. From this evidence, the court could reasonably infer that defendant was standing above her neighbor, as her neighbor spit "up on" defendant's porch, and that, when defendant threw the wine glass towards her neighbor from this position, she intended to, and did, place her neighbor in reasonable apprehension of receiving a battery, *i.e.*, being hit by the glass. Accordingly, the court could reasonably conclude that she committed assault and thus engaged in criminal activity that threatened the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises. See 720 ILCS 5/12-1(a) (West 2018).

¶ 25 Moreover, the evidence established that, at some point in the altercation, defendant's neighbor ran "back over" to defendant's stairs "with a knife in her shorts" and spit "up on" on defendant's porch again. In response, defendant grabbed a knife and was "ready to stab the b*** in her throat spitting is the most nastiest shit you could ever do to someone," after which the person who was with defendant "grabbed" defendant and would not "allow" her "to get to" the neighbor. From this evidence, the court could reasonably infer that defendant had the intent to make physical contact with the neighbor that was of an insulting or provoking nature, *i.e.*, stab

her in the throat, and that she took a substantial step to do so when she had to be held back and was not allowed "to get to her" neighbor. Thus, the court could have reasonably concluded that defendant engaged in criminal activity. We note that, as previously stated, under defendant's lease, plaintiff could terminate the lease if it determined that she engaged in the criminal activity, regardless of whether she was arrested or convicted of committing any crimes. Thus, plaintiff need not prove that defendant was arrested or actually convicted of assault or attempted battery.

¶ 26 Accordingly, based on this evidence, it was not unreasonable or arbitrary for the court to conclude that defendant engaged in criminal activity that threatened the health, safety, or right to peaceful enjoyment of the residences by persons residing in the immediate vicinity of the premises. We cannot find that the opposite conclusion is apparent or that the court's judgment was not based on the evidence.

¶ 27 Defendant argues that the evidence established that she acted in self-defense and the court erred when it rejected her self-defense claim. Self-defense is a defense in both criminal and civil cases. *Thompson v. Petit*, 294 Ill. App. 3d 1029, 1035 (1998). A defendant who raises a self-defense claim must present evidence in support of each of the following: "(1) force had been threatened against him; (2) he was not the aggressor; (3) the danger of harm was imminent; (4) the force threatened against him was unlawful; (5) he had an actual belief that (a) a danger existed, (b) force was necessary to avert the danger, and (c) the amount of force used was necessary; and (6) his belief was reasonable." *Thompson*, 294 Ill. App. 3d at 1035.

¶ 28 Self-defense does not allow a person to pursue and inflict injury upon even an initial aggressor after the aggressor abandons the altercation. *People v. Belpedio*, 212 Ill. App. 3d 155, 161 (1991). Nor does it justify a person to commit an act of retaliation and revenge. *Id.* at 161. Most cases involving self-defense are criminal cases, but these cases are persuasive authority in

civil cases when a party raises self-defense as an affirmative defense. *Thompson*, 294 Ill. App. 3d at 1035.

¶ 29 Defendant argues that she had the right to engage in self-defense after her neighbor spit on her child. She argues the court erred when it rejected her self-defense claim based on the erroneous belief that spitting on a child is not a crime.

¶ 30 Here, as previously discussed, the evidence at trial established that, in response, to defendant's neighbor spitting "up on" her porch, defendant threw a wine glass towards her because "spitting was nasty." There was no evidence that, after her neighbor spit "up on" her porch, defendant was in imminent danger or that throwing the wine glass towards her neighbor was necessary to avert any danger. Thus, it was not unreasonable or arbitrary for the trial court to reject defendant's self-defense claim.

¶ 31 Defendant asserts that her neighbor "spat on her child," "[s]pitting on a two-year-old child is without a doubt insulting and provoking to the child's parent," and her response was not disproportionate. Although defendant testified at trial that her neighbor spit "on her" child, defendant also testified that she told Ratliff after the incident that her neighbor "spit up on my porch the split landed on" her child. Given that we must draw all reasonable inferences in support of the court's judgment and may not reweigh the evidence, we cannot find that the evidence showed that, when defendant's neighbor spit "up on" defendant's porch, she deliberately attempted to spit at, or on, defendant's child. We agree with the trial court that throwing a wine glass toward someone who just spit up to your porch was a disproportionate response.

¶ 32 Defendant further argues that the court erred when it rejected her self-defense claim based on the incorrect belief that spitting on a child is not a crime. The court stated at trial that

"spitting was not necessarily a criminal act, but that the defendant's actions were." We are unpersuaded by defendant's argument. There is nothing in the record to show that the court ever stated, relied upon, or based its conclusion on the belief that "spitting on a child is not a crime."

¶ 33 Further, with respect to defendant's conduct of grabbing a knife, she asserts she grabbed the knife only after she saw her neighbor approaching her with a knife. The evidence showed that, during the altercation, when the neighbor ran "back" to defendant's stairs, the neighbor had a knife in her shorts that defendant could see sticking out. There is however nothing to show that defendant grabbed a knife because the neighbor was brandishing or coming up the stairs at defendant with the knife such that she was in imminent danger of an attack. Rather, the evidence showed that defendant grabbed a knife in response to her neighbor spitting "up on" her porch for the second time, as she told Ratliff that, after the neighbor spit "up on" her porch again, defendant was "ready to stab" her in "her throat spitting is the nastiest shit you could ever to do someone." From this evidence, the court could reasonably conclude that, after her neighbor spit "up on" defendant's porch again, she was not in imminent danger of harm such that it was necessary for her to be so "ready to stab" her neighbor in the throat with a knife.

¶ 34 Accordingly, based on the foregoing and because we may not reweigh the evidence or make an independent determination of the facts, we conclude that the trial court's ruling that rejected defendant's self-defense claim was not against the manifest weight of the evidence.

¶ 35 Defendant contends that plaintiff failed to establish that she violated the lease based on disturbing her neighbors. Given our conclusion that the trial court's ruling that plaintiff violated the lease based on engaging in criminal activity was not against the manifest weight of the evidence, we need not consider whether plaintiff failed to prove that she violated the lease based on disturbing her neighbors.

¶ 36 Defendant next contends that plaintiff violated the best evidence rule because plaintiff's only witness, Ratliff, testified that she relied on the video to conclude that defendant violated her lease but the video was not admitted into evidence. She asserts that, because plaintiff violated the best evidence rule, the court was required to afford no weight to Ratliff's testimony. Defendant further contends that the court erred at the motion to reconsider when it failed to presume that the "destroyed" and "withheld" video supported her self-defense claim.

¶ 37 Initially, we note that defendant forfeited her challenge to the best evidence rule because she failed to object to Ratliff's testimony at trial and arguments raised for the first time in a motion to reconsider, as here, are forfeited on appeal. *People v. Tharpe-Williams*, 286 Ill. App. 3d 605, 610 (1997) (defendant forfeited her argument to the best evidence rule because she failed to make a contemporaneous objection at trial and raise the issue in her posttrial motion).

¶ 38 Nevertheless, even if we would find that defendant did not forfeit her challenge, we would conclude that the best evidence rule does not apply here. "The best evidence rule states a preference for the production of original documentary evidence when the contents of the documentary evidence are sought to be proved." *People v. Vasser*, 331 Ill. App. 3d 675, 685 (2002). "However, the best evidence rule does not apply when a party seeks to prove a fact that has an existence independent of documentary evidence." *Id.* at 685.

¶ 39 Here, although Ratliff testified that she reviewed a video of the incident, her review of the video was only the preliminary step to this eviction. At trial, she did not testify to the contents of the video nor rely on it during her testimony. Rather, Ratliff testified that she spoke with defendant after the incident and when she did so, defendant told her that defendant "threw her wine glass at the neighbor and subsequently grabbed a kitchen knife." Thus, because Ratliff did not testify about the contents of the video, the best evidence rule does not apply. See *Tharpe-*

Williams, 286 Ill. App. 3d at 611 (the best evidence rule did not apply because the witnesses did not "attempt to testify as to the contents of the videotape").

¶ 40 Defendant claims that, when a party does not object to a violation of the best evidence rule, the weight accorded to that testimony must be reduced. As previously discussed, the best evidence rule does not apply here. Plaintiff therefore did not violate the best evidence rule and the trial court was not required to reduce the weight accorded to Ratliff's testimony.

¶ 41 Defendant further argues that, because plaintiff failed to produce the video at trial and "destroyed" the video after trial, plaintiff created a presumption that the video undermined its case. She asserts that the trial court erred when it denied her motion to reconsider because it failed to apply the presumption to reconsider its decision or grant her a new trial.

¶ 42 At the hearing on the motion to reconsider, the court denied defendant's motion to reconsider, finding that plaintiff's failure to produce the video at trial did not create a presumption that the video would have undermined plaintiff's case. Because defendant is challenging the court's ruling on her motion to reconsider that was based on a new legal theory not presented in any prior proceedings, we review the court's ruling under the abuse of discretion standard. See *Horlacher v. Cohen*, 2017 IL App (1st) 162712, ¶ 80 (when "the motion to reconsider is based on new evidence, facts, or legal theories not presented in the prior proceedings, our standard of review is abuse of discretion"); *Jones v. Live Nation Entertainment, Inc.*, 2016 IL App (1st) 152923, ¶ 29 ("The standard of review is an abuse of discretion for a trial court's denial of a motion to reconsider."). Under this standard, we will find that the trial court abused its discretion "only when it is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Jones*, 2016 IL App (1st) 152923, ¶ 29.

¶ 43 When a party, without a reasonable excuse, fails to produce evidence which is under its control, an unfavorable evidentiary presumption arises. *Berlinger's, Inc. v. Beef's Finest, Inc*., 57 Ill. App. 3d 319, 325 (1978). Under these circumstances, when a party fails to produce evidence, the decision on whether the failure may be used as an adverse inference, is within the trial court's sound discretion. *Simmons v. University of Chicago Hospitals and Clinics*, 162 Ill. 2d 1, 7 (1994).

¶ 44 Here, the record shows defendant knew about the video before trial, as the Notice of Termination referred to the video and Ratliff testified that, after the incident, she reviewed the video. There is nothing in the record to show that plaintiff "withheld" or refused to produce or provide defendant with the video at trial or at the hearing on the motion to reconsider. Rather, the record shows that plaintiff did not rely on the video to prove its case. Nor did the trial court rely on the video when it found she violated the lease. As previously discussed, Ratliff testified that defendant admitted to her that "she threw her wine glass at the neighbor and subsequently grabbed a kitchen knife." The trial court heard defendant testify that "the other tenant spat on her 2-year old child and, as a result," she "threw a wine glass off of her porch towards the other resident because spitting was nasty." The trial court also heard defendant acknowledge that her written statement after the incident in which she stated that her neighbor "spit up on my porch the spit landed on my baby 2 yrs old. I blanked out and went down stairs to fight her" was what happened. We note that, although the trial court stated at the hearing on the motion to reconsider that "in fairness" it wanted to view the video "if it's at all available," it also expressly stated that the evidence "really was overwhelming" and "fairly strong against the defendant."

¶ 45 In addition, at the hearing on the motion to reconsider when the court requested to see the video, Ratliff testified that, about one month after the bench trial and before she left on a

vacation, she took her computer to plaintiff's IT Department to update software, after which the video and camera software were deleted from her computer. She testified that she did not intentionally delete the video.

¶ 46 Under these circumstances, we cannot find that plaintiff failed to produce the video without a reasonable excuse. We therefore cannot find that the court's finding that plaintiff's failure to produce the video at trial did not create a presumption that undermined plaintiff's case was arbitrary, fanciful, or unreasonable or that no reasonable person would agree with its decision. Thus, the trial court did not abuse its discretion when it denied defendant's motion to reconsider.

¶ 47 Finally, in defendant's reply brief, she asserts that the court committed reversible error when it relied on her courtroom behavior as evidence of her guilt. Defendant did not raise this argument in her opening brief but raised it for the first time in her reply brief. Thus, we need not address this argument because an appellant's arguments must be made in the opening brief and cannot be raised for the first time in the reply brief. See Ill. S. Ct. R. 341 (h)(7) (eff. May 25, 2018) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29 (the reviewing court concluded that it need not address appellant's argument that was raised for the first time in her reply brief, stating "an appellant's arguments must be made in the appellant's opening brief and cannot be raised for the first time in the appellate court by a reply brief").

¶ 48 In sum, the trial court's judgment ordering plaintiff possession of the property because defendant violated the terms of the lease was not against the manifest weight of the evidence.

The trial court did not abuse its discretion when it denied defendant's motion to reconsider and found that the missing video did not create a presumption that undermined plaintiff's case.

¶ 49 For the foregoing reasons, we affirm.

¶ 50 Affirmed.