

No. 1-12-0599

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

COMMUNITY MANAGEMENT ASSOCIATION,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 M1 719597
)	
CONSTANCE BRYANT,)	Honorable
)	Sheldon C. Garber,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the judgment in this forcible entry and detainer action where appellant failed to present a sufficient record.

¶ 2 Defendant, Constance Bryant, *pro se* appeals from the trial court's order granting possession of 727 East 60th Street, apartment 1617 (apartment), in Chicago, to plaintiff, Community Management Association. On appeal, defendant contends the trial court erred by failing to hold an evidentiary hearing once it was advised that plaintiff failed to deliver "service of demand" or "notice to quit" as required by the Illinois Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 1982)) (hereinafter Act) and section 5-12-160 of the Chicago Residential Landlords and Tenants Ordinance (hereinafter CRLTO). We affirm.

¶ 3 The appellant's brief does not include a statement of facts as required by Illinois Supreme Court Rule 341(h)(6). Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). We choose not to dismiss the

No. 1-12-0599

appeal on this basis, as the following facts can be gleaned from the single volume of record on appeal.

¶ 4 On August 26, 2011, plaintiff filed a complaint of forcible entry and detainer against defendant and all unknown occupants of 727 East 60th Street, apartment 1617, in Chicago. The complaint alleged that plaintiff was entitled to possession of the apartment, and that defendant owed \$4,600 in accrued rent and damages. Defendant filed a *pro se* appearance and requested a jury trial. On November 4, 2011, the circuit court granted plaintiff's motion for use and occupancy and set the case for trial on December 8, 2011. In a written order entered on December 8, 2011, the case was continued for trial to January 31, 2012. As reflected in the circuit court's handwritten docket sheets, the circuit court entered an order of possession in favor of plaintiff and a judgment against defendant in the amount of \$8,050 on January 31, 2012. The docket sheet further shows that defendant failed to appear for the trial, but that there were four witnesses present in court on that date. The written judgment order is not in the record on appeal.¹ Defendant timely appealed from the judgment.

¶ 5 Plaintiff has not filed an appellee's brief. However, we may consider this appeal under the standards set forth in *First Capitol Mort. Corp. v. Talandis Const. Corp.*, 63 Ill. 2d 128 (1976). A reviewing court may decide the merits of the case, provided that the record is simple and the issues can be decided without the aid of an appellee's brief, or we may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Id.* at 133.

¶ 6 On appeal, defendant contends the trial court erred when it issued the order of possession without first holding an evidentiary hearing because plaintiff failed to deliver "service of demand" or "notice to quit" as required by the Act and section 5-12-160 of the CRLTO. Defendant argues that her testimony at the November 4, 2011, hearing—where she apprised the court of plaintiff's failure to deliver "service of demand" or "notice to quit" as required by the Act and section 5-12-160 before

¹We do know such an order was entered, as the record demonstrates that plaintiff placed the order with the sheriff's office for eviction purposes.

No. 1-12-0599

commencing the forcible entry and detainer action—provided a "legal basis for an evidentiary hearing."

¶ 7 The record shows that the circuit court, by a written order, set November 4, 2011, as a date for hearing on plaintiff's motion for use and occupancy. The written order entered on November 4, 2011, granted plaintiff's motion for use and occupancy, and set the case for trial on December 8, 2011. The order does not reflect that any issue as to notice was raised or considered on that day. The record on appeal does not include a report of proceedings or, in the absence of such a report, a bystander's report, or agreed statement of facts pursuant to Illinois Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) for that date. Because there is no transcript or report of proceedings in the record, this court cannot discern what, if any type of presentation was made by defendant as to notice on November 4.

¶ 8 Further, the matter was set for trial on January 31, 2012, on plaintiff's complaint and prayers for an order of possession of the apartment and an award of damages. The issue of notice would be central to a determination of plaintiff's suit. On that date, four witnesses were present, but defendant failed to appear and failed to present a defense. Defendant has given no reason for her failure to appear and challenge plaintiff's claims. Defendant's objection as to notice could well have been considered if she had appeared for trial.

¶ 9 There is no transcript of the proceedings held on the date the judgment was entered. Therefore, we do not know what was presented to the circuit court in support of the judgment and, in particular, as to the issue of notice. The final judgment order is not in the record, therefore, we have no record of any written findings or conclusions of the circuit court. Any doubts raised by the insufficiency of the record must be resolved against defendant who, as the appellant, has the burden to present this court with a sufficiently complete record of the trial court proceedings to support her claims of error. *Midstate Siding & Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). We must presume that the order of possession

No. 1-12-0599

in favor of plaintiff entered by the trial court was both legally and factually correct in all respects.

Id.

¶ 10 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 11 Affirmed.