2015 IL App (4th) 140272-U

NO. 4-14-0272

FILED
January 20, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

EUGENE D. HANGARTNER and EVELYN R. HANGARTNER, Plaintiffs-Appellees, v. THOMAS W. ALEXANDER, BRENDA L. ALEXANDER, and UNKNOWN OCCUPANTS, Defendants-Appellants.	)	Appeal from Circuit Court of Woodford County No. 13LM58 Honorable John B. Huschen, Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* Defendants' appeal is dismissed for lack of jurisdiction.

¶ 2 In December 2013, plaintiffs, Eugene D. and Evelyn R. Hangartner, filed a complaint for forcible entry and detainer against defendants, Thomas W. and Brenda L. Alexander and any unknown occupants. Plaintiffs alleged defendants were unlawfully withholding possession of the premises located at 1610 State Route 116, Roanoke, Illinois, because all rights defendants had in the property pursuant to a contract for deed dated December 30, 2011, were forfeited and extinguished when defendants failed to make payments as required under the contract. Defendants sought both to dismiss plaintiffs' claim and compel arbitration/mediation. The trial court ordered the parties to "mediate/arbitrate" the issues in this case. Defendants appeal, arguing the court erred by failing to (1) specify which of the two

contractual provisions regarding dispute resolution applied in this case, (2) appoint the American Arbitration Association or some other party to "mediate/arbitrate" the disputes, and (3) find defendants were the prevailing party and entitled to their attorney fees. We dismiss this appeal because the record does not establish we have jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 In December 2013, plaintiffs filed their complaint for forcible entry and detainer against defendants regarding the property which was subject to a contract for deed between the parties. Later that month, defendants filed a motion to dismiss and/or stay the proceedings in the trial court. According to defendants' motion, the contract for deed provided for "mediation and arbitration *** instead of litigation in the event that a dispute arises." Defendants alleged their request for arbitration and/or mediation was refused by plaintiffs. Defendants also asked for their attorney fees and court costs pursuant to the contract.

¶ 5 The contract for deed had two separate provisions marked under the section of the contract titled "Disputes." The first provision, titled "Mediation and Possible Litigation," stated in the event of a dispute, "the parties will try in good faith to settle [the dispute] through mediation" by a mutually selected mediator, the costs of which the parties would share equally. If the dispute was not resolved within 30 days after its referral to the mediator, either party could take the matter to court. The second provision, titled "Mediation and Possible Arbitration," stated the parties would try in good faith to settle any dispute through mediation by a mutually selected mediator. If the dispute was not resolved within 30 days after being referred to a mediator, the dispute would be arbitrated by a mutually selected arbitrator.

¶ 6 On December 30, 2013, defendants filed a motion to compel "arbitration/mediation." On January 7, 2014, plaintiffs' attorney responded to defendants' motion, arguing defendants' demand for "arbitration/mediation" was a delay tactic and the mediation clauses did not apply to a default situation, as in this case.

¶ 7 On February 24, 2014, defendants filed an answer, affirmative defenses, and a counterclaim. That same day, they filed a motion to dismiss plaintiffs' complaint for forcible entry and detainer because plaintiffs had not complied with the dispute provisions of the contract prior to filing suit.

¶ 8 On March 11, 2014, plaintiffs filed their first amended complaint. On March 18, 2014, defendants filed a motion to dismiss the first amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2012)). That same day, defendants filed a separate motion to dismiss plaintiffs' first amended complaint pursuant to section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2012)), again arguing plaintiffs failed to comply with the dispute provisions of the contract before filing their complaint.

¶ 9 On March 27, 2014, plaintiffs' attorney sent the trial court and defendants' attorney a letter stating:

> "[Plaintiffs] are in receipt of [defendants'] March 18, 2014, Motions to Dismiss. We are writing to advise the Court and [defendants] via copy of this letter, that [plaintiffs] do not intend to file any further pleadings in response to [defendants'] March 18, 2014, motions prior to the Court's ruling on the pending motion to compel arbitration.

> In an effort to expedite a resolution in this cause, the [p]laintiffs consent to binding arbitration to be completed within 30 days. First and foremost, [plaintiffs] seek possession of the premises. As a result, mediation is certain to fail."

That same day, defendants' attorney sent an e-mail to the court and plaintiffs' attorney, stating:

> "I just received a copy of the letter [plaintiffs' attorney] sent to you via email. In the last paragraph of her letter I note that she appears to now consent to binding arbitration to be completed within 30 days.
>
> If that is in fact her position and request[,] then my clients, [defendants], become the 'prevailing party' on this issue on page 9 under the hea[d]ing of ATTORNEYS FEES AND COSTS of the Contract for Deed in question which is attached to the Plaintiffs' Complaints and the Defendants' Counterclaim. We are requesting an immediate hearing so that you may award those attorney's fees to my clients before you retire from the bench."

¶ 10 The next day, on March 28, 2014, the trial court entered a docket entry, stating the following:

> "Court has received multiple unauthorized emails from the parties. Based on said emails from the parties and the court's research[, the court] finds the parties clearly intended to mediate any disputes as twice on the contract they marked mediation and not litigation.

Parties are ordered to mediate/arbitrate this dispute within 30 days.

This court does not find defendant to be the prevailing party in connection with this litigation as this is not a final resolution.

Defendants['] request for hearing on fees is denied."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 We first note the record in this case is confusing and the trial court's March 28, 2014, order, which is the subject of this appeal, is not entirely clear. As previously stated, the court ordered the parties to enter into some form of alternative dispute resolution. However, it is not entirely clear whether the court was ordering the parties to engage in mediation, arbitration, or both. The court's docket entry stated: "[T]he parties clearly intended to mediate any disputes as twice on the contract they marked mediation and not litigation. Parties are ordered to mediate/arbitrate this dispute within 30 days." Further, the court did not interpret its order as disposing of the entire case.

¶ 14 Appellate courts have an independent duty to verify their jurisdiction. *Bale v. Barnhart*, 343 Ill. App. 3d 708, 711, 798 N.E.2d 750, 752 (2003). However, the appellate court can only make this determination based on the record supplied to it. It is the appellant's burden to provide this court with a sufficient record, and any doubts resulting from an incomplete record will be held against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984).

¶ 15 Defendants argue we have jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), which states:

"An appeal may be taken to the Appellate Court from an interlocutory order of court:

(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction[.]"

We recognize many cases have held an order granting or denying a motion to compel arbitration can be reviewed as an interlocutory appeal. See *Royal Indemnity Co. v. Chicago Hospital Risk Pooling Program*, 372 Ill. App. 3d 104, 107, 865 N.E.2d 317, 321 (2007); *Pekin Insurance Co. v. Hiera*, 362 Ill. App. 3d 699, 701, 840 N.E.2d 1236, 1237 (2005). However, the Fifth District has held court orders requiring mediation are not appealable pursuant to Rule 307(a)(1). See *Short Brothers Construction, Inc. v. Korte & Luitjohan Contractors, Inc.*, 356 Ill. App. 3d 958, 960-61, 828 N.E.2d 754, 756 (2005).

¶ 16 Based on the record in this case, it is unclear exactly what the trial judge intended when he ordered the parties to "mediate/arbitrate" their dispute. Mediation and arbitration are not synonymous terms. Defendants asked for an order to compel mediation/arbitration, received exactly what they asked for, and now attempt to appeal the order they requested. If the parties are uncertain how to proceed, they need to seek clarification from the trial court, not this court. There is no final order in this case, and, consequently, we dismiss this appeal for lack of jurisdiction.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we dismiss this appeal for lack of jurisdiction.

¶ 19 Appeal dismissed.